

SUPPLEMENTAL GENERAL CONDITIONS FOR HEALTH INSURANCE

Effective May 10, 2011

Article 1 Intent and Purpose. House Bill 331 – 2009. The 2009 Utah Legislature passed House Bill 331 entitled “**Health Reform – Health Insurance Coverage in State Contracts**” which law became effective July 1, 2009 (hereinafter “HB331”). This bill has been amended by HB20 of the 2010 Utah Legislative Session as well as HB 128 of the 2011 Utah Legislative Session. These laws require certain state entities to require a contractor who contracts with the state entity to offer the contractor’s employees qualified health insurance coverage as defined in Utah Code Annotated 26-40-115, and further defined on the DFCM website at <http://dfcm.utah.gov/downloads/Health%20Insurance%20Benchmark.pdf> during the duration of the contract if the contract is over a certain amount, and if the contract is a construction and/or or design contract. The intent of the Articles of these Supplemental General Conditions is to provide the necessary provisions to the General Conditions as a result of such Bills. The purpose of this Article is to comply with UCA Section 63A-5-205 as well as Utah Code Administrative Rule R23-23 which are both hereby incorporated by reference herein.

Article 2. Applicability of this Article. This Article only applies to those contracts as required by UCA Section 63A-5-205 as well as Utah Code Administrative Rule R23-23. In case of conflict, UCA Section 63A-5-205 supersedes Rule R23-23. As stated in Rule R23-23-4:

((1) Except as provided in Rule R23-23-4(2) below, this Rule R23-23 applies to all design or construction contracts entered into by the Division or the Board on or after July 1, 2009, and

(a) applies to a prime contractor if the prime contract is in the amount of \$1,500,000 or greater; and

(b) applies to a subcontractor if the subcontract is in the amount of \$750,000 or greater.

(2) This Rule R23-23 does not apply if:

(a) the application of this Rule R23-23 jeopardizes the receipt of federal funds;

(b) the contract is a sole source contract; or

(c) the contract is an emergency procurement.

(3) This Rule R23-23 does not apply to a change order as defined in Section 63G-6-103, or a modification to a contract, when the contract does not meet the initial threshold required by Rule R23-23-4(1).

(4) A person who intentionally uses change orders or contract modifications to circumvent the requirements of subsection (1) is guilty of an infraction.

(Note: "Subcontractor" includes subcontractors at any tier that meet the definition provided in UCA Section 63A-5-208.)

Article 3. Definitions. The following definitions apply to this Article:

3.1 "Contractor" means the person/entity under direct contract with the Division herein. If the direct contract includes a Design Professional, then the Design Professional is a "Contractor" for purposes of this Article.

3.2 "Design Professional" means the Architect or Engineer, its Subconsultants or Subcontractors at any tier, or any of their agents, employees, including those employed directly or indirectly, or other persons or entities for whose acts the Design Professional or its Subconsultants/Subcontractors at any tier may be liable.

3.3 "Employee(s)" means an "employee," "worker" or "operative" as defined in Utah Code Annotated S34A-2-104 who:

(i) works at least 30 hours per calendar week; and

(ii) meets employer eligibility waiting requirements for health care insurance which may not exceed the first day of the calendar month following 90 days from the date of hire.

3.4 "State" means the State of Utah.

3.5 "Director" includes an authorized designee of the Director.

Article 4. Health Insurance Certification. Contractor hereby certifies that the Contractor and all applicable subcontractors and subconsultants at any tier that is subject to UCA 63A-5-205 and Utah Administrative Code Rule R23-23, has and will maintain for the duration of this contract, an offer of qualified health insurance coverage for their employees; all in accordance with UCA 63A-5-205, and Utah Administrative Code Rule R23-23.

Rule R-23-23-7

(1) through (7) as well as Rule R23-23-8 indicate the following:

R23-23-7. Requirements and Procedures a Contractor Must Follow.

A contractor (including consultants and designers) must comply with the following requirements and procedures in order to demonstrate compliance with Section 63A-5-205.

(1) Demonstrating Compliance with Health Insurance Requirements. The following requirements must be met by a contractor (including consultants, designers and others under contract with the Division)

that is subject to the requirements of this Rule no later than the time the contract is entered into or renewed:

(a) demonstrate compliance by a written certification to the Director that the contractor has and will maintain for the duration of the contract an offer of qualified health insurance coverage for the contractor's employees and the employee's dependents; and

(b) The contractor shall also provide such written certification prior to the execution of the contract, in regard to all subcontractors (including subconsultants) at any tier that is subject to the requirements of this Rule.

(2) Recertification. The Director shall have the right to request a recertification by the contractor by submitting a written request to the contractor, and the contractor shall so comply with the written request within ten (10) working days of receipt of the written request; however, in no case may the contractor be required to demonstrate such compliance more than twice in any 12-month period.

(3) Demonstrating Compliance with Actuarially Equivalent Determination. The actuarially equivalent determination required by Subsection 63A-5-205(1)(e) is met by the contractor if the contractor provides the Director with a written statement of actuarial equivalency from either the Utah Insurance Department; an actuary selected by the contractor or the contractor's insurer; or an underwriter

who is responsible for developing the employer group's premium rates.

For purposes of this Rule R23-23-7(3), actuarially equivalency is achieved by meeting or exceeding The requirements of Section 26-40-115 which are also delineated on the DFCM website at <http://dfcm.utah.gov/downloads/Health%20Insurance%20Benchmark.pdf> .

(4) The health insurance must be available upon the first day of the calendar month following ninety (90) days from the date of hire.

(5) Architect and Engineer Compliance Process. Architects and engineers that are subject to this Rule must demonstrate compliance with this Rule in any annual submittal under Section 63G-6-702. During the procurement process and no later than the execution of the contract with the architect or engineer, the architect or engineer shall confirm that their applicable subcontractors or subconsultants meet the requirements of this Rule.

(6) General (Prime) Contractors Compliance Process. Contractors that are subject to this Rule must demonstrate compliance with this Rule for their own firm and any applicable subcontractors, in any prequalification process that may be used for the procurement. At the time of execution of the contract, the contractor shall confirm that their applicable subcontractors or subconsultants meet the requirements of this Rule.

(7) Notwithstanding any prequalification process, any contract subject to this Rule shall contain a provision requiring compliance with this Rule from the time of execution and throughout the duration of the contract.

(8) Hearing and Penalties.

(a) Hearing. Any hearing for any penalty under this Rule conducted by the Board or the Division shall be conducted in the same manner as any hearing required for a suspension or debarment.

(b) Penalties that may be imposed by Board or Division. The penalties that may be imposed by the Board or the Division if a contractor, consultant, subcontractor or subconsultant, at any tier, intentionally violates the provisions of this Rule R23-23, may include:

(i) a three-month suspension of the contractor or subcontractor from entering into future contracts with the State upon the first violation, regardless of which tier the contractor or subcontractor is involved with the future design and/or construction contract;

(ii) a six-month suspension of the contractor or subcontractor from entering into future contracts with the State upon the second violation, regardless of which tier the contractor or subcontractor is involved with the future design and/or construction contract;

(iii) an action for debarment of the contractor or subcontractor in accordance with Section 63G-6-804 upon the third or subsequent violation; and

(iv) monetary penalties which may not exceed 50 percent of the amount necessary to purchase qualified health insurance coverage for an employee and the dependents of an employee of the contractor or subcontractor who was not offered qualified health insurance coverage during the duration of the contract.

(c)(i) In addition to the penalties imposed above, a contractor, consultant, subcontractor or subconsultant who intentionally violates the provisions of this Rule shall be liable to the employee for health care costs that would have been covered by qualified health insurance coverage.

R23-23-8. Not Create any Contractual relationship with any Subcontractor or Subconsultant.

Nothing in this Rule shall be construed as to create any contractual relationship whatsoever between the State of Utah, the Board, or the division with any subcontractor or subconsultant at any tier.