



SUPPLEMENTAL GENERAL CONDITIONS FOR HEALTH INSURANCE

July 1, 2009

Revised May 11, 2010

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. This bill requires certain state entities to require a contractor who contracts with the state entity to offer the contractor’s employees qualified health insurance coverage 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 Articles 1 through 7 of these Supplemental General Conditions is to provide the necessary provisions to the General Conditions as a result of such Bill. 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. Rule R23-23 has been approved for filing by the Utah State Building Board. This Rule reflects this new filing made in May of 2010, because the statute supersedes the Rule. The newly proposed Rule R23-23-4, which applies to this contract, indicates the applicability as follows:

R23-23-4. Applicability of Rule.

- (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,*
 - (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)” is as defined in 63A-5-205(1)(c) and includes only those employees that live and/or work in the State of Utah along with their dependents. “Employee” for purposes of this Article, shall not be construed as to be broader than the use of the term employee for purposes of State of Utah Workers’ Compensation laws along with their dependents.
- 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

(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 Subsections 63A-5-205(1)(e)(i) and (iii) 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 any of the following:

(a) As delineated on the DFCM website at <http://dfcm.utah.gov/downloads/Health%20Insurance%20Benchmark.pdf>, a health benefit plan and employer contribution level with a combined actuarial value at least actuarially equivalent to the combined actuarial value of the benchmark plan determined by the Children’s Health Insurance Program under Subsection 26-40-106(2)(a), and a contribution level of 50% of the premium for the employee and the dependents of the employee who reside or work in the State, in which:

(i) The employer pays at least 50% of the premium for the employee and the dependents of the employee who reside or work in the State; and

for purposes of calculating actuarial equivalency under this Rule R23-23-7(3)(a):
rather than the benchmark plan's deductible, and the benchmark plan's out-of-pocket maximum based on income levels, the deductible is \$750 per individual and \$2,250 per family; and the out-of-pocket maximum is \$3,000 per individual and \$9,000 per family;
dental coverage is not required; and
other than Subsection 26-40-106(2)(a), the provisions of Section 26-40-106 do not apply; or
(b)(i) is a federally qualified high deductible health plan that, at a minimum, has a deductible that is either; the lowest deductible permitted for a federally qualified high deductible health plan; or
(B) a deductible that is higher than the lowest deductible permitted for a federally qualified high deductible health plan, but includes an employer contribution to a health savings account in a dollar amount at least equal to the dollar amount difference between the lowest deductible permitted for a federally qualified high deductible plan and the deductible for the employer offered federally qualified high deductible plan;
(ii) an out-of-pocket maximum that does not exceed three times the amount of the annual deductible;
and
(iii) under which the employer pays 75% of the premium for the employee and the dependents of the employee who work or reside in the State.
(4) The health insurance must be available upon the first day of the calendar month following the initial 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 pre-qualification 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.

(ii) *An employer has an affirmative defense to a cause of action under Rule R23-23-7(8)(c)(i) as provided in Subsection 63A-5-205(3)(g)(ii).*

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.

Article 5. Recertification. As indicated in the recitation of Rule R23-23-7(2) above, the Director or designee 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. Contractor and all applicable subcontractors and subconsultants will be subject to all applicable penalties under UCA 63A-5-205 and Utah Administrative Code Rule R23-23.

Article 6. Indemnity.

- 6.1. Contractor shall protect, indemnify and hold harmless, the Division as well as the State and its officers, employees, agents, representatives and anyone that said indemnitees may be liable for, against any claim, damages or liability arising out of or resulting from violations of this Article, whether violated by employees, agents, or contractors of the following:
 - 6.1.1 The Contractor;
 - 6.1.2 Subcontractor/Subconsultant at any tier; and/or
 - 6.1.3 any entity or person for whom the Contractor or Subcontractor/Subconsultant may be liable.
- 6.2 Notwithstanding Article 6.1 above, Design Professionals under direct contract herein shall only be required to indemnify under Article 6.1 above for a liability claim that arises out of the Design Professional's services, unless the liability claim arises from the Design Professional's negligent act, wrongful act, error or omission, or other liability imposed by law.

Article 7. Require in Subcontracts. The Contractor will provide these same requirements in all applicable subcontracts and require that it be continued in all applicable subcontracts at every tier.