



Responsible Office: Contracts & Procurement

Policy Title: Procurement Lobbying Law
SFL §139 J & K

Prepared By: Carter Lard

Policy Number: P-32

Effective Date: March 3, 2008

Summary

The purpose of this policy (this "Policy") is to ensure that SUNY Downstate Medical Center complies with the provisions of State Finance Law §139-j (Restrictions on Contacts during the Procurement Process) and §139-k (Disclosure of Contacts and Responsibility of Offerers), commonly referred to as the Procurement Lobbying Law (the "Law") which took effect on January 1, 2006. The Law applies to any Procurement Contract for any transaction which will exceed \$15,000. It is the policy of SUNY Downstate Medical Center ("DMC") that all employees who are involved with Procurement Contracts become familiar with all requirements of SFL§139-j SFL§139-k.

Definitions

Restricted Period is the period of time commencing with the earliest written notice, advertisement or solicitation of a request for proposal, invitation for bid or solicitation of proposals or any other method for soliciting a response from a potential vendor (or other Offerer) intending to result in a Procurement Contract with DMC ending with the final contract award and approval by DMC and where applicable, the Office of State Comptroller.

Offerer/Vendor is the individual or entity or any employee, agent or sales representative or person acting on behalf of such individual or entity that contacts DMC about a Procurement during the Restricted Period of such procurement.

Contact is any oral, written or electronic communication with DMC under circumstances where a reasonable person would infer that the communication was intended to influence the procurement.

Designated Contact(s) are the person(s) who are appointed by the DMC's Contract and Procurement Department to receive all communications (oral, written or electronic) during the Restricted Period of the Procurement Contract.

Permissible Contact is either (1) an oral, written or electronic communication, other than a Contact, with a Designated Contact(s) or (2) a Permissible Subject Matter Communication, which is Permissible even if directed at other than a Designated Contact.

Permissible Subject Matter Communication includes the following:

- Submission of a bid, proposal or response for a Procurement Contract
- Submission of written questions when written responses are to be provided to all Offerers/Vendors in accordance with a process set forth in the solicitation
- Participation in a pre-bid conference requested during a solicitation
- Negotiations with the Offerer/Vendor after a tentative award
- Debriefing/ review of a Procurement Contract award
- Filing of written disputes with DMC's Ethics Officer, SUNY Administration and Office of the State Comptroller

Impermissible Contact is (1) any oral, written or electronic communication with someone other than DMC's Designated Contact(s) that fall outside of the Permissible Subject Matter Communication category or (2) any Contact directed at a Designated Contact.

Procurement is the preparation of the terms of the specifications, bid documents, requests for proposals or other evaluation criteria for a Procurement Contract, (ii) solicitation for a Procurement Contract, (iii) evaluation of a Procurement Contract, (iv) award, approval, denial or disapproval of a Procurement Contract, or (v) approval or denial of an assignment, amendment (other than amendments that are authorized and payable under the terms of the procurement contract as it was finally awarded or approved by the comptroller, as applicable), renewal or extension of a procurement contract, or any other material change in the Procurement Contract resulting in a financial benefit to the Offerer.

Procurement Contract is any contract or other agreement for an article of procurement (including, but not limited to, goods, services, technology, real property transactions, construction, consultant contracts, etc.) involving an estimated annualized expenditure in excess of fifteen thousand dollars.

Procurement Record is the documentation of decisions made and any approach taken in the procurement process and summarized in the Procurement Record checklist.

Policy

SUNY Downstate Medical Center's policy requires that for all Procurements exceeding an annualized expenditure of \$15,000 (commodities, services and real estate transactions) initiated after January 1, 2006:

- A. SUNY Downstate Medical Center's Contracts and Procurement Department will appoint Designated Contacts for each Procurement, which Designated Contacts shall be the only staff contacted relative to such Procurement during the Restricted Period.
- B. All Contact, both Permissible and Impermissible by an Offerer/Vendor or Representative regarding a procurement during the Restricted Period must be recorded on the form attached here to as Exhibit "A" and filed in the procurement record. Because Designated Contacts retain primary responsibility for recording Contacts, any other individuals that receive Contact must immediately notify a Designated Contact of such Contact in writing and provide sufficient information to enable documentation thereof.

This Policy also restricts communications between a potential Offerer/Vendor or a person acting on behalf of the Offerer/Vendor, including its lobbyist, to communicate with person other than Designated Contacts. Further, the Policy prohibits any communication (contact) of any kind which a reasonable person would infer as an attempt to unduly influence the award, denial or amendment of a Procurement Contract.

Procedure

DMC Policy Guidelines

- A. DMC's Contracts and Procurement Management department must designate the staff person(s) for each procurement who may be contacted by Offerers/Vendors relative to such procurement.
- B. It is the responsibility of DMC's Contract and Procurement Management department to ensure both that the Affirmation Form (attached hereto as the Acknowledgement Form) is completed by the Offerer/Vendor for each Procurement and that the Lobbying Law Department Notification Memo is e-mailed to the User Department for each Procurement transactions exceeding \$15,000.
- C. DMC must record all contacts, both Permissible and Impermissible which occur during the Restricted Period.
- D. Any DMC employee who becomes aware that an Offerer/Vendor has violated the provision of the Law by making Impermissible Contact during a Procurement must immediately log the Contact communication and notify the DMC's Ethics Officer (718-270-3023) who shall investigate such incident.
- E. Prior to award of a Procurement Contract, DMC must include in its vendor responsibility review, a determination of compliance with provisions of the Law and must disclose a previous violation of the Law within the previous four (4) years during any other governmental Procurement.

Vendor Violations

- A. Any Offerer/Vendor who is found to have knowingly and willfully violated the restrictions on Permissible Contacts under the Law, shall, after being afforded due process in accordance with the Law, be found non-responsible and shall not be awarded the Procurement Contract. An award to such Offerer may be made only if DMC determines that such award is necessary to protect public property, health or safety and that the Offerer/Vendor is the only source capable of supplying the commodity/service within the necessary timeframe. Justification must be included in the Procurement Record.
- B. Any subsequent or additional determination of non-responsibility within four (4) year of the prior determination of non-responsibility based on Impermissible

Contacts shall result in such Offerers ineligibility to submit a proposal or be awarded any Procurement Contract for a period of four (4) years from the date of the second final determination.

1. All DMC solicitations shall require Vendor disclosure of findings of non-responsibility within the previous four (4) years by any governmental entity due to Impermissible Contacts under the Law.
2. Any determinations of non-responsibility or debarment due to such violations of the Law shall be reported to the Office of General Services (OGS); OGS, on its website, maintains an up-to-date list of Offerers/Vendors determined non-responsible or debarred.

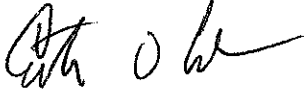
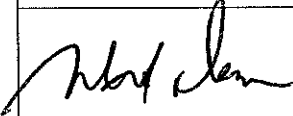

Appendices

- Vendor Acknowledgement Form
- Lobbying Law Department Notification Memo

Contact

If you have any questions concerning this policy, contact Contracts and Procurement at extension 1132.

Approval/Updates

Date Approved/Reviewed	By	Title
 3/12/08	Carter O. Lard	Director, Contracts and Procurement Management
 3/12/08	Martin J. Deane	Assistant Vice President Materials Management
 3/13/08	Frederick J. Hammond, Jr.	Senior Vice President and Chief Financial Officer