




University Senate CHARGE

Date:	November 21, 2012
To:	Leslie Felbain Chair, Equity, Diversity, and Inclusion (EDI) Committee
From:	Martha Nell Smith  Chair, University Senate
Subject:	Alignment of Procurement Contracts with UM Non-Discrimination Values
Senate Document #:	12-13-29
Deadline:	March 29, 2013

The Senate Executive Committee (SEC) requests that the Equity, Diversity, & Inclusion (EDI) Committee review the attached proposal, “Alignment of Procurement Contracts with UM Non-Discrimination Values.”

The Board of Public Works (BPW) and the Joint Committee on Administrative, Executive, and Legislative review of the General Assembly (AELR) gave the University System of Maryland (USM) the authority to adopt its own procurement policies and procedures in 1999. This authority was granted subject to review and approval of the policies by the BPW and AELR. Therefore, any changes to the policy would require similar approval.

The SEC requests that the EDI Committee review the relevant procurement policies and recommend whether they require revision in order to be consistent with UM’s nondiscrimination policies as well as with our stated values.

Specifically, we ask that you:

1. Review the ‘Nondiscrimination in Employment’ provision in the University System of Maryland Procurement Policies and Procedures (<http://www.usmd.edu/regents/bylaws/SectionVIII/apptrme.html>).
2. Review the ‘Commercial Non-Discrimination Clause’ required under Maryland state law. See Anno. Code of Maryland, State Finance and Procurement Article and COMAR 21.07.01.16 (attached).
3. Review the University’s Social Responsibility Affidavit (attached).

4. Review the Policy on Non-Discrimination on the Basis of Sexual Orientation and Gender Identity or Expression (VI-1.05).
5. Consult with a representative from the Department of Procurement and Supply.
6. Consult with the University's Office of Legal Affairs.
7. If appropriate, recommend whether the University of Maryland (UMD) should recommend to the University System of Maryland (USM) that the Procurement Policies and Procedures should be revised to align with the University's values of nondiscrimination.

We ask that you submit your report and recommendations to the Senate Office no later than March 29, 2013. If you have questions or need assistance, please contact Reka Montfort in the Senate Office, extension 5-5804.



University Senate PROPOSAL FORM

Name:	Mark Brimhall-Vargas
Date:	October 18, 2012
Title of Proposal:	Alignment of procurement contracts with UM non-discrimination values
Phone Number:	52840
Email Address:	Brimhall@umd.edu
Campus Address:	2411 Marie Mount Hall
Unit/Department/College:	Office of Diversity Education and Compliance
Constituency (faculty, staff, undergraduate, graduate):	Staff
Description of issue/concern/policy in question:	<p>The UM policies on procurement and/or contracting of vendors do not appear to contain criteria for selection that focuses on adhering to the campus diversity goals as stated in <i>Transforming Maryland: Expectations for Excellence in Diversity and Inclusion</i> or as outlined in existing policies such as:</p> <ul style="list-style-type: none">• University of Maryland Code on Equity, Diversity, and Inclusion (VI-1.00(B))• University of Maryland, College Park Policy on Inclusive Language (VI-1.00(C))• Policy of Non-Discrimination on the Basis of Sexual Orientation and Gender Identity or Expression (VI-1.05) <p>In order to meet our campus goals of diversity and inclusion, I believe that contractors on our campus should adhere to these standards and that the procurement process should take these policies into account when granting contracts to vendors.</p>
Description of action/changes you would like to see implemented and why:	<p>I would like to see the Senate investigate the possibility that the procurement process could consider the company's stated goals and behavioral history when deciding to grant (or not grant) a contract.</p>

Suggestions for how your proposal could be put into practice:	I think that amending our current policies on procurement to include requirements around diversity and inclusion would be very helpful in creating an inclusive climate.
Additional Information:	

Please send your completed form and any supporting documents to senate-admin@umd.edu or University of Maryland Senate Office, 1100 Marie Mount Hall, College Park, MD 20742-7541. Thank you!

CONTRACT TERMS AND CONDITIONS

21.07.01.26

- (i) Notify the procurement officer within 10 days after receiving notice under §E(2)(h)(ii), above, or otherwise receiving actual notice of a conviction;
- (j) Within 30 days after receiving notice under §E(2)(h)(ii), above, or otherwise receiving actual notice of a conviction, impose either of the following sanctions or remedial measures on any employee who is convicted of a drug or alcohol abuse offense occurring in the workplace:
 - (i) Take appropriate personnel action against an employee, up to and including termination; or
 - (ii) Require an employee to satisfactorily participate in a bona fide drug or alcohol abuse assistance or rehabilitation program;
- and
- (k) Make a good faith effort to maintain a drug and alcohol free workplace through implementation of §E(2)(a)—(j), above.

(3) If the business is an individual, the individual shall certify and agree as set forth in §E(4), below, that the individual shall not engage in the unlawful manufacture, distribution, dispensing, possession, or use of drugs or the abuse of drugs or alcohol in the performance of the contract.

(4) I acknowledge and agree that:

- (a) The award of the contract is conditional upon compliance with COMAR 21.11.08 and this certification;
- (b) The violation of the provisions of COMAR 21.11.08 or this certification shall be cause to suspend payments under, or terminate the contract for default under COMAR 21.07.01.11 or 21.07.03.15, as applicable; and
- (c) The violation of the provisions of COMAR 21.11.08 or this certification in connection with the contract may, in the exercise of the discretion of the Board of Public Works, result in suspension and debarment of the business under COMAR 21.08.03.

F. CERTAIN AFFIRMATIONS VALID

I FURTHER AFFIRM THAT:

To the best of my knowledge, information, and belief, each of the affirmations, certifications, or acknowledgements contained in that certain Bid/Proposal Affidavit dated _____, 20____, and executed by me for the purpose of obtaining the contract to which this Exhibit is attached remains true and correct in all respects as if made as of the date of this Contract Affidavit and as if fully set forth herein.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: _____

By: _____ (printed name of Authorized Representative and affiant)

_____ (signature of Authorized Representative and affiant)

.26 Commercial Nondiscrimination Clause.

A. The following provision is mandatory for all State contracts and subcontracts: "As a condition of entering into this Agreement, Contractor represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland. As part of such compliance, Contractor may not discriminate on the basis of race, color, religion, ancestry, national origin, sex, age, marital status, sexual orientation, disability, or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Contractor retaliate against any person for reporting instances of such discrimination. Contractor shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. Contractor understands that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of Contractor from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

STATE PROCUREMENT REGULATIONS

21.07.01.26

B. The following provision is mandatory for all State contracts: "As a condition of entering into this Agreement, upon the Maryland Human Relations Commission's request, and only after the filing of a complaint against Contractor under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, as amended from time to time, Contractor agrees to provide within 60 days after the request a complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past 4 years on any of its contracts that were undertaken within the State of Maryland, including the total dollar amount paid by Contractor on each-subcontract or supply contract. Contractor further agrees to cooperate in any investigation conducted by the State pursuant to the State's Commercial Nondiscrimination Policy as set forth under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, and to provide any documents relevant to any investigation that are requested by the State. Contractor understands that violation of this clause is a material breach of this Agreement and may result in contract termination, disqualification by the State from participating in State contracts, and other sanctions."

Administrative History

Effective date: July 1, 1981 (8:13 Md. R. II-5)

Regulation .09A amended effective May 6, 1985 (12:9 Md. R. 816)

Chapter revised effective January 9, 1989 (15:27 Md. R. 3138)

Regulation .03 amended effective August 2, 1993 (20:15 Md. R. 1221)

Regulation .05 amended effective October 2, 2000 (27:19 Md. R. 1730); July 9, 2001 (28:13 Md. R. 1216)

Regulation .08 amended effective December 25, 2000 (27:25 Md. R. 2284)

Regulation .11A amended effective November 22, 1993 (20:23 Md. R. 1086)

Regulation .12A amended effective November 22, 1993 (20:23 Md. R. 1086)

Regulation .20 amended effective January 26, 1998 (25:2 Md. R. 79); December 25, 2000 (27:25 Md. R. 2284)

Regulation .25 amended effective October 1, 1990 (17:19 Md. R. 2322); August 2, 1993 (20:15 Md. R. 1221); August 8, 2011 (38:16 Md. R. 946)

Regulation .26 adopted as an emergency provision effective August 8, 1997 (24:18 Md. R. 1294); emergency status rescinded effective October 16, 1997 (24:23 Md. R. 1608)

Regulation .26 adopted effective March 12, 2007 (34:5 Md. R. 562)

**PRINCIPLES OF SOCIAL RESPONSIBILITY
and
SOCIAL RESPONSIBILITY AFFIDAVIT INFORMATION**

I. Principles of Social Responsibility

A. As provided for in Section VIII. C. of the University System of Maryland Procurement Policies and Procedures, the University is required to make purchases from and award contracts to “responsible” contractors. The Procurement Officer may use certain factors, including but not limited to a satisfactory record of integrity and business ethics to determine if a bidder or offeror is responsible. The University has determined that a bidder or offeror’s record of integrity and business ethics includes a demonstrated commitment to providing goods and services in an ethical, and socially and environmentally responsible manner by compliance with all applicable:

- (1) Federal and state labor relations and employment laws;
- (2) Federal and state non-discrimination in employment laws;
- (3) State of Maryland Commercial Nondiscrimination laws;
- (4) State of Maryland, Minority Business Enterprise (“MBE”) laws; and,
- (5) Federal and state health, safety and environmental laws.

The above laws are referred to as “Social Responsibility Laws.” The bidder or offeror’s compliance with the above laws is referred to as “Social Responsibility.”

B. Each bidder or offeror shall complete a Social Responsibility Affidavit, in the form that follows, as part of a bid or proposal submitted to the Procurement Officer in response to any solicitation to furnish goods or services of any kind including, but not limited to architectural or engineering services; construction; construction related services; maintenance; consulting; information technology (hardware, software and services); equipment or other commodities.

C. The Procurement Officer shall consider information provided in the Social Responsibility Affidavit to determine if a bidder or offeror is responsible. A determination that a bidder or offeror is not responsible may be considered as the basis for eliminating that bidder or offeror from further consideration for a contract award.

D. After award, the University may terminate a contract for default if the bidder or offeror did not disclose the requested information; misrepresented relevant information to the Procurement Officer; or was subject to a final judgment of non-compliance with applicable Social Responsibility Laws post-award. In such cases, the University may also institute proceedings to debar the vendor from further State contracts, or pursue such other remedies as may be permitted by law or the contract.

II. Social Responsibility Affidavit and Disclosure

A. The bidder or offeror agrees that if it is the subject of a final, non-appealable judgment with respect to compliance with applicable Social Responsibility Laws after the date of this affidavit,

the bidder or offeror will immediately make a full disclosure in writing to the Procurement Officer of all relevant facts and circumstances. This disclosure shall include a description of actions which the bidder or offeror has taken or proposes to take to correct the violation. If the contract has been awarded and performance has begun, the vendor shall continue performance until notified by the Procurement Officer of any contrary action to be taken.

B. CERTIFICATION OF COMPLIANCE WITH SOCIAL RESPONSIBILITY LAWS

I HEREBY AFFIRM THAT:

(1) There has been no final, non-appealable judgment made during the last five years against the bidder or offeror for noncompliance with federal or state labor relations and other employment laws or regulations, including but not limited to the National Labor Relations Act, as amended; the Davis-Bacon Act, as amended; the Fair Labor Standards Act, as amended; the Maryland Living Wage law, State Finance and Procurement Article, §18-101 et seq., Annotated Code of Maryland; the Maryland Prevailing Wage law, State Finance and Procurement Article, §17-201 et seq., Annotated Code of Maryland; federal and state child labor laws; federal minimum wage laws and; the Family Medical Leave Act, except as follows (explain below or add additional sheets):

(2) There has been no final, non-appealable judgment made during the last five years against the bidder or offeror for violation of federal or state non-discrimination in employment laws or regulations, including but not limited to laws prohibiting discrimination on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or disability unrelated in nature and except so as to reasonably preclude the performance of the employment, except as follows (explain below or add additional sheets):

(3) There has been no final, non-appealable judgment made during the last five years against the bidder or offeror for violation of the State of Maryland Commercial Non-Discrimination Policy, State Finance and Procurement Article, §19-101 et seq., Annotated Code of Maryland, except as follows (explain below or add additional sheets):

(4) There have been no instances during the last five years of failure by the bidder or offeror to meet mutually agreed upon goals for minority business participation (MBE) on

projects performed for the University or any other State of Maryland agency, or any other sanctions for MBE program non-compliance; or any final, non-appealable judgment of noncompliance with the State of Maryland Minority Business Participation law, State Finance and Procurement Article, § 14-308 et seq., Annotated Code of Maryland, except as follows (explain below or add additional sheets):

(5) There has been no final, non-appealable judgment made during the last five years against the bidder or offeror for violation of federal or state health, safety or environmental laws or regulations , including but not limited to the U.S. Occupational Safety and Health Act standards; Maryland Occupational Health and Safety laws, State Labor and Employment Article, § 5-101 et seq., Annotated Code of Maryland, or the Federal Noise Control Act of 1972, except as follows (explain below or add additional sheets):

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF.

Date: _____ By: _____
(Authorized Representative and Affiant)