

**UTILITY DEBT SECURITIZATION AUTHORITY
PROCUREMENT LOBBYING GUIDELINES
MARCH 28, 2017**

I. INTRODUCTION

In furtherance of the Utility Debt Securitization Authority’s (“UDSA’s”) commitment to ensure the transparency and accountability of its operations, the following guidelines (the “Guidelines”) set forth UDSA’s policy on recording attempts to influence the outcome of UDSA’s (a) Procurements and (b) Rules, Regulations or Ratemaking activity. These Guidelines are applicable to all employees, officers and Trustees of UDSA and are in compliance with the requirements of the “Procurement Lobbying Law” found in the State Finance Law and the “Lobbying Contacts” provisions of the Public Authorities Law. The restrictions and/or reporting requirements associated with both types of lobbying activity are outlined below.

II. PROCUREMENT LOBBYING

This section of the Guidelines has been issued pursuant to the State Finance Law, which generally prohibits, with limited exception, individuals or entities from communicating with anyone other than the person(s) designated by UDSA to communicate with such individuals or entities about a procurement for a prescribed period of time during the procurement process. UDSA is required to collect and record certain information pertaining to attempts to influence the procurement (a “**Contact**,” defined below) during the procurement period from the earliest solicitation of a proposal to the final approval of the procurement (the “**Restricted Period**,” defined below). The specific requirements related to these activities are set forth as follows:

A. Statutory Definitions¹

Article of Procurement

A commodity, service, technology, public work, construction, revenue contract, the purchase, sale or lease of real property or an acquisition or granting of an interest in real property that is the subject of a governmental procurement.

Contact²

Any oral, written or electronic communication with UDSA staff or its consultants about UDSA procurement under circumstances where a reasonable person would infer that the

¹ Defined terms are in bold.

² Note that the statutory definition for “Contact” is different for Procurement Lobbying discussed in Article II of these Guidelines and for Rule, Regulation or Ratemaking Lobbying discussed in Article III of these Guidelines.

communication was intended to influence the procurement.

Governmental Entity

All New York State agencies and authorities; both houses of the Legislature; the Unified Court System; municipal agencies and their respective employees.

UDSA Procurement

shall mean (i) the preparation or terms of the specifications, bid documents, requests for proposals, or 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**.

Offerer

The individual or entity, or any employee agent or consultant or person acting on behalf of such individual or entity, that **Contacts** UDSA about a **UDSA Procurement** during the restricted period of the procurement.

Procurement Contract

Any contract or other agreement for an **Article of Procurement** involving an estimated annualized expenditure in excess of \$15,000. Grants, State Finance Law Article XI-B contracts between UDSA and not-for-profit organizations, intergovernmental agreements, railroad and utility force accounts, utility relocation project agreements or orders, and eminent domain transactions shall not be deemed **Procurement Contracts**.

Restricted Period

The period of time commencing with the earliest date of written notice, advertisement or solicitation of a request for proposal, invitation for bids, or solicitation of proposals, or any other method for soliciting a response from **Offerers** intending to result in a **Procurement Contract** with UDSA and ending with the final contract award and approval by

UDSA, and where applicable, the Office of the State Comptroller.

B. Exemptions

Certain communications are exempt from the Guidelines. These include: (i) submissions in response to an invitation for bid, a request for proposal or other solicitation, (ii) submissions of written questions to an invitation for bid, a request for proposal or other solicitation, (ii) submissions of written questions to a designated contact set forth in an invitation for bid, request for proposal or other solicitation, (iii) participation in a conference provided for in an invitation for bid, request for proposal or other solicitation, (iv) contract negotiations, (v) inquiries regarding the factual status of a **Procurement Contract**, and (vi) complaints and protests regarding the procurement process and outcome.

In addition, any communication received by UDSA from members of the New York State Legislature or the Legislative Staff, when acting in their official capacity, shall not be considered a **Contact** for recording purposes.

C. Violations

A violation of these Guidelines occurs when there is a **Contact** during the **Restricted Period** between the **Offerer** and someone other than the person(s) designated by UDSA to receive communications for the particular **UDSA Procurement**. This includes instances where the **Offerer Contacts** UDSA regarding a procurement of another **Governmental Entity**.

Attempts by an **Offerer** to influence a **UDSA Procurement** in a manner that would result in a violation of the Public Officers Law or any other applicable ethics code shall also be a violation of these Guidelines.

D. Procedures

a. Notifying Vendors of Procurement Lobbying Guidelines

- i.** For each **Procurement Contract**, UDSA will designate a person or persons to receive communications from **Offerers** concerning the **UDSA Procurement**.
- ii.** UDSA will incorporate a summary of the policy governing lobbying during a **UDSA Procurement** in its documents relating to the **Procurement Contract** and provide a copy of the policy and prohibitions regarding permissible communications to **Offerers**.

- iii. UDSA shall seek written affirmation from all **Offerers** indicating that they understand and agree to comply with these Guidelines (*See Attachment 1*).

b. Making Determinations of Responsibility

- i. Prior to award of a **Procurement Contract**, UDSA must make a responsibility determination with respect to the **Offerer** to be recommended for the award of the contract based upon, among other things, the information supplied by that **Offerer**, using the **Offerer Disclosure of Prior Non-Responsibility Determinations Form** (*See Attachment 2*), whether it has been found non-responsible within the last four years by any **Governmental Entity** for: (1) failure to comply with State Finance Law § 139 j, or (2) the intentional provision of false or incomplete information. This disclosure must be certified by the **Offerer** and must affirmatively state that the information supplied by the **Offerer** to UDSA is complete, true and accurate.
- ii. The **Procurement Contract** must include a provision allowing UDSA to terminate the contract if the certification is subsequently found to be incomplete, false or inaccurate. Admissions by the **Offerer** of past findings of non-responsibility may constitute a basis for rejection of the **Offerer** by UDSA. UDSA can award a contract to the **Offerer** despite the past findings of non-responsibility if it determines that the award of the **Procurement Contract** to the **Offerer** is necessary to protect public property or public health or safety, and that the **Offerer** is the only source capable of supplying the required **Article of Procurement** within the necessary time frame. The basis of such a finding must be included in procurement record of the **UDSA Procurement**.

c. Recording Contacts

- i. All UDSA employees must record any **Contact** from any person or entity. **Contacts** may be initiated by parties with an interest in the **UDSA Procurement** that are not necessarily connected directly to the **Offerer**. **Contacts** may come in the form of telephone conversations, correspondence, electronic mail and person-to-person discussions. The Record of Contact Form (*See Attachment 3*) should be used to record all **Contacts**. The form is also available to employees on the UDSA Intranet.
- ii. Examples of **Contacts** for which a Record of Contact must be completed include:

1. During the **Restricted Period**, an **Offerer Contacts** a UDSA employee (other than the employee designated to receive such communications) to discuss the **Offerer's** cost, competitiveness or its suitability to be selected for a contract.
 2. A court reporter, expert witness or any other vendor offers a UDSA employee a gift of any monetary value during the **Restricted Period**.
- iii.** Examples of permissible communications which may be directed to persons other than those designated by UDSA to receive communications from **Offerers** concerning the **UDSA Procurement** include:
1. Inquiries as to the status of the procurement process.
 2. Requests to be included on UDSA's **Offerer** list.
 3. Receipt of advertising material.
 4. Intra-agency communications of administrative details concerning the procurement.
 5. Responses to UDSA-issued Requests for Information.
 6. Written questions submitted by **Offerers** regarding a solicitation during the allowable time period of a competitive procurement.
 7. Complaints about the procurement process or outcome.
 8. Participation in an **Offerer's** conference as provided for in a Request for Proposals of Invitation for Bids.
 9. Submission of a proposal or bid in response to a Request for Proposals or Invitation for Bids.
 10. Contract negotiations.
 11. Debriefing of an **Offerer** after a contract award has been made.

None of the above communications require the preparation of a Record of Contact unless such communication constitutes an attempt to influence the **UDSA Procurement**.

- iv. If a UDSA employee is in doubt about whether a communication was intended to influence the **UDSA Procurement**, he or she should record the communication on the Record of Contact Form and submit it to the Director and Procurement for further investigation.
- v. The UDSA Officer responsible for the procurement, or his or her designee, will be required to ensure that all Records of Contacts are included in the procurement record for the related **Procurement Contract**.

E. Investigation of Contacts/Penalties for Violations

- a. All reported **Contacts** will be immediately investigated by the Director of Procurement, or his or her designee. If the Director of Procurement finds sufficient cause to believe that an **Offerer** has violated these Guidelines, the **Offerer** will be notified in writing of the investigation and will be afforded an opportunity to respond to the alleged violation. Investigations will be completed as soon as practicable so as not to delay the progress of the **UDSA Procurement**.
- b. If the Director of Procurement should find at the conclusion of the investigation that the **Offerer** knowingly and willfully made a prohibited **Contact** in violation of these Guidelines, then the **Offerer** shall be disqualified as non responsible, unless UDSA makes a finding that the award of the **Procurement Contract** to the **Offerer** is necessary to protect public property or public health or safety, and that the **Offerer** is the only source capable of supplying the required **Article of Procurement** within the necessary time frame. The basis of such a finding must be included in the procurement record of the **Procurement Contract**.

III. RULE, REGULATION OR RATEMAKING LOBBYING

This section of these Guidelines has been issued pursuant to the Public Authorities Law, and establishes measures to create and maintain records of any attempt by a “**Lobbyist**” (as defined below) to influence: (a) the adoption or rejection of any rule or regulation by UDSA, and/or (b) the outcome of any ratemaking proceeding by UDSA, as follows:

A. Statutory Definitions³

Contact Any conversation, in person or by telephonic or other remote means, or correspondence between any **Lobbyist** engaged in the act of **Lobbying** and any employee, officer or trustee within UDSA who can make or influence a decision on the subject of the **Lobbying** on behalf of the UDSA.

Lobbying Any attempt to influence: (a) the adoption or rejection of any rule or regulation by UDSA, and/or (b) the outcome of any ratemaking proceeding by UDSA.

Lobbyist Every person or organization retained, employed or designated by any client to engage in **Lobbying**. **Lobbyist** does not include any officer, director, trustee, employee, counsel or agent of the state, or of any municipality or subdivision of New York State, when such persons are discharging their official duties.⁴

B. Responsibilities

- a. An employee, officer or trustee who is contacted by a **Lobbyist** shall make a contemporaneous record of such **Contact** on a form including the day and time of the **Contact**, the identity of the **Lobbyist** and a summary of the substance of the **Contact**. The employee, officer or trustee shall notify and deliver the completed form to the General Counsel.
- b. The General Counsel shall prescribe such form to be used by all employees, officers and trustees to record such lobbying **Contacts** under these Guidelines. (Attachment 4)
- c. Upon receipt of a record of **Contact**, the General Counsel shall maintain or cause to be maintained such record for a period of not less than seven (7) years in a filing system that is indexed or otherwise organized in a manner in which such records are readily identifiable and referenced to UDSA decisions regarding (a) the

³ Defined terms are in bold.

⁴ Officers, directors, trustees, employees, counsels or agents of colleges as defined by New York Education law §2(2) are considered lobbyists for purposes of PAL §2987.

adoption or rejection of any rule or regulation by UDSA and (b) the outcome of any ratemaking proceeding by UDSA.

Any questions regarding these Guidelines and/or interpretation of these Guidelines should be directed to UDSA's General Counsel.