



UNIVERSITY POLICY

SUBJECT:	PURCHASING SERVICES	TITLE:	PRODUCT EVALUATION	
CATEGORY: Check One	Board of Trustees <input type="checkbox"/>	Presidential <input checked="" type="checkbox"/>	Functional <input type="checkbox"/>	School/Unit <input type="checkbox"/>
Responsible Executive:	Vice President for Supply Chain Management		Responsible Office:	Purchasing Services & Contract Management
CODING:	00-01-60-30:00	ADOPTED:	10/12/11	AMENDED:

LAST REVIEWED: 10/12/11

I. PURPOSE

To establish guidelines and procedures, and to define the responsibilities of University personnel, for obtaining educational, clinical, research, and other support products for evaluation and to ensure that purchasing process for any product that was evaluated/tried is fair, transparent, and designed to ensure that the University is obtaining quality goods and services at the best possible value, in compliance with applicable State requirements, and all UMDNJ policies and procedures.

II. ACCOUNTABILITY

The President shall ensure compliance with this policy. The Executive Vice President, Senior Vice Presidents, Deans, Presidents/CEOs of the Healthcare Units, and Vice Presidents shall implement, and comply with this policy.

Instances of non-compliance with established procedures will be identified through the Vice President for Supply Chain Management for documented appropriate action.

III. APPLICABILITY

This policy shall apply to all UMDNJ personnel in connection with the evaluation and procurement of goods and services by purchase, lease or otherwise under the authority, or acting on behalf, of UMDNJ. This policy shall apply to the procurement of any equipment or service whose projected aggregate cost, including the costs associated with the procurement of consumable supplies and maintenance, exceeds \$5,000 annually.

IV. DEFINITION

Product Evaluation – A process during which a product or service is left with or used by the University for a pre-determined period of time for the purpose of evaluating the capabilities and capacities of the product or service within the standard framework of its use.

V. REFERENCES

- A. Purchasing Process [00-01-60-05:00](#)
- B. Waiver of Bids [00-01-60-10:00](#)
- C. Major Equipment Purchases [00-01-70-55:00](#)

VI. POLICY

A. Requirements:

All UMDNJ personnel shall observe the highest possible standards of business and personal ethics in the conduct of their duties and responsibilities. As employees and representatives of UMDNJ, each individual must practice honesty and integrity in fulfilling their responsibilities and comply with the University's Code of Ethics and compliance policies and all applicable laws and regulations.

UMDNJ personnel must only contact vendors when such contact is consistent with UMDNJ policy, state laws and regulations. Staff members must not misrepresent their ability to obligate the University. Inappropriate contact with vendors may subject employees to sanctions up to and including termination.

The act of a vendor supplying of a product or service to UMDNJ for the purpose of evaluating the capabilities and capacities of that product shall have no influence on the future use of other products or services offered by that vendor.

All requests to initiate and conduct product or service evaluations must comply with the process set forth herein. In addition, evaluation of products or services must be in accordance with any existing policies and procedures in effect in the School or Unit in which the product is being evaluated.

B. Responsibilities:

End users are responsible for identifying a need for a product or service that will advance the University's mission and participation in the process set forth herein. End users will establish evaluation criteria that will be used during the evaluation process. Composition and retention of a written evaluation document is a requirement of the evaluation process. In addition, end users are responsible for all costs associated with modifications to facilities or infrastructure as required for installation of equipment.

Supply Chain Management is responsible for timely response to a request to initiate an equipment trial and shall participate in the process set forth herein. Supply Chain Management will assist the end user in establishing product evaluation criteria. If an end user wishes to purchase a product after evaluation, Supply Chain Management will conduct a procurement process consistent with the requirements of the University's Purchasing Process policy.

Legal Management is responsible to draft, modify, and review Product Evaluation Agreements as required, and ensure that agreements are executed in accordance with University policy.

C. Enforcement:

If it is discovered that an End User has conducted an unauthorized product evaluation, no procurement activity related to that product will be undertaken until a product evaluation consistent with the requirements of this policy has been completed.

VII. PROCEDURE

A. Identification of Need for Evaluation by End User

An end user identifies the need for a product that will advance the University's mission. After initial examination of available data, the end user determines that an on-site evaluation is critical prior to procurement. The end user must obtain approval to initiate the evaluation process from their Department Chairperson, or by a responsible individual designated by their respective School or Unit. The end user completes the Major Equipment Check List and submits it as described in University policy, Major Equipment Purchases, 00-01-70-55:00.

1. Notification to Supply Chain Management

The end user notifies a designated Supply Chain Equipment Evaluation Coordinator of the need to initiate an evaluation. Supply Chain Management verifies need for evaluation with end user's Department Chairperson or with an individual designated by the appropriate School or Unit.

2. Draft Performance Specifications

If required, Supply Chain Management meets with the end user and assists in the development of performance specifications. This process may include a review of a specific product/service specification, or may consist of a summary of required equipment functionality.

3. Market Research

Supply Chain Management will perform market research to determine if providers of similar products/services exist. In addition, Supply Chain Management will determine if a contract source (Group Purchasing Organization-GPO, State of New Jersey, UMDNJ) is available. If multiple sources are available, each source will be independently investigated to determine if they should participate in the evaluation process. When research is complete, the end user and Supply Chain Management will determine the number of vendors that will be given the opportunity to provide product(s) or service(s) for evaluation. The number of vendors offered trials should represent all vendors with significant market share in a specific product/service category. If, after market research, it is determined that a product/service with specific, demonstrably necessary functionality is only available from a single vendor, an evaluation with that vendor may be authorized, after execution of an Evaluation Agreement.

4. Preparation of Evaluation Criteria

Supply Chain will engage the end user to establish criteria that will be used to evaluate each item accepted for product evaluation.

B. Initiating a Product Evaluation

1. Determination of Procurement Vehicle

The end user and Supply Chain Management will agree on the process that will be utilized to acquire the desired product. The process must comply with requirements stated in the UMDNJ Purchasing Process policy. If the estimated cost of the product exceeds the Public Bid threshold, and no contract sources are available, Supply Chain Management will examine the feasibility of conducting evaluation(s) in the context of the Public Bid process.

a. Selection of Vendors

The number of vendors offered opportunities to provide products for evaluation should represent vendors with significant market share in a specific product category. Special consideration may be granted to vendors holding UMDNJ, GPO, or State of New Jersey contract, or to registered New Jersey Small Business vendors.

b. Product Evaluation Agreement (EXHIBIT)

All evaluations will only be authorized upon the execution of a Product Evaluation Agreement. The agreement will define the roles, responsibilities, rights and liabilities of both parties, include a fixed term, and specifically address any costs to UMDNJ associated with the evaluation, particularly with respect to consumable supplies that may be required during the evaluation period, maintenance and repair of products during the evaluation, and cost of removal of product at the end of the evaluation process.

Upon execution of a Product Evaluation agreement, a “No Cost” purchase order will be issued to the vendor offering the product for evaluation.

c. Delivery of Equipment

The vendor will deliver product to the appropriate UMDNJ Receiving location, and is responsible for delivery to and installation at the location at which the trial will be conducted. For highly technical and expensive equipment, loading dock staff should play NO role in the receipt or installation of the equipment to be used in the trial except perhaps to escort the vendor to the site for installation/testing. Schools and Units may specify delivery methods and locations consistent with their existing policies and procedures.

d. Demonstration and Training

The vendor may provide a product demonstration to the end user and Supply Chain Management representatives. The vendor will provide UMDNJ personnel with sufficient training to enable the operation of the product during the evaluation period. All training required by the manufacturer must be provided by the vendor and completed by all interested UMDNJ personnel. Supply Chain Management will maintain a record of each individual receiving training during an evaluation.

e. Use and Evaluation

The end user will use the product offered for evaluation during the term specified in the Product Evaluation Agreement exactly as it is approved for use. An off-label use of products, equipment, or devices during the evaluation period is not permitted. At the end of the evaluation period, the end user will complete a product evaluation. Supply Chain Management will retain a copy of each evaluation report.

f. Return of Product

At the end of the term specified in the Product Evaluation Agreement, the vendor will arrange the removal of their product from University premises.

C. Procurement Process to Obtain Product After Evaluation

It is imperative that a “level playing field” be maintained throughout the procurement process. The procurement process utilized to procure products that have undergone evaluation must comply with requirements stated in the UMDNJ Purchasing Process policy. Whenever possible, products shall be purchased under the authority of the Public Bid process.

1. Public Bid

The Public Bid process will be utilized whenever possible to procure products that have undergone evaluation. The end user and Supply Chain Management will examine the time required to effectively and objectively evaluate a product to determine if the Public Bid process is appropriate. When a Public Bid is the designated procurement vehicle, the University’s intent to request product evaluations from some or all bidders will be clearly stated in the RFP requirements. A copy of a sample Product Evaluation Agreement will be included in the RFP. After bid opening, the RFP evaluation committee will perform a technical evaluation of all proposals received, and invite a “short list” of responsible bidders to present products for evaluation. The Evaluation Committee will recommend contract award to the responsible bidder presenting the most advantageous offer, price and other factors considered. If, in the opinion of the Evaluation Committee, one bidder offers what is determined to be a superior product, that bidder’s offer may be selected as most advantageous, regardless of price.

2. Contract Purchase

UMDNJ may purchase products in excess of the Public Bid threshold without public advertising under the authority of preexisting contracts. Contract sources may include GPO contracts, UMDNJ contracts, or State of New Jersey contracts. If, after evaluation, the end user determines that a product is satisfactory, the end user may proceed with the purchase of product if a preexisting contract exists. Equipment purchases in the aggregate of \$500,000 require the additional approval of the Vice President for Supply Chain Management.

3. Waiver of Bid

If, after market research, it is determined that a product with specific, demonstrably necessary functionality is only available from a single source the end user may seek authorization to purchase the product by submitting a Waiver of Bid request consistent with the requirements of the University's Waiver of Bid policy. The waiver request shall document and discuss in sufficient detail the evaluation undertaken during the Evaluation process.

D. Expedited Competitive Bid Competition

If, after market research, and in consultation with Supply Chain Management, it is determined that several potential providers of the desired product are present, but factors exist that make procurement via the traditional Public Bid process infeasible, product evaluations may be initiated with each vendor, after execution of Product Evaluation Agreements. At the conclusion of all evaluation periods and after the completion of comprehensive product evaluations, the Supply Chain Management will conduct an Expedited Competitive Bidding opportunity among all vendors who participated in the evaluation process. After bid proposals are received, the end user and Supply Chain Management will conduct a final evaluation and present a contract award recommendation. Upon approval of the recommendation, a contract will be awarded to the responsible bidder presenting the most advantageous offer, price and other factors considered.

VIII. EXHIBIT

Product Evaluation Agreement

By Direction of the President:

SIGNATURE ON FILE

Vice President for Supply Chain Management

**EXHIBIT
PRODUCT EVALUATION AGREEMENT**

This Equipment Evaluation Agreement, made effective as of _____, 20__ (this "Agreement"), is by and between University of Medicine and Dentistry of New Jersey (the "University"), a body corporate and politic of the State of New Jersey, a public entity, with offices at 65 Bergen Street, Newark, New Jersey 07101, and _____, a _____ corporation with offices at _____ ("Vendor").

WHEREAS, Vendor is in an authorized seller/manufacturer of _____ and related supplies ("Equipment"), and University desires to evaluate such Equipment from Vendor;

NOW, THEREFORE, in consideration of the foregoing and the mutual promises, covenants and agreements set forth below, and for other good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, the parties agree as follows:

1. Vendor agrees to provide the Equipment to the University for the purpose of evaluating the Equipment. Vendor agrees to allow the University to evaluate the Equipment for a period of [_____].
2. Vendor will ship the Equipment upon receipt of a no charge PO for the Equipment and this signed Agreement. Terms are FOB Destination. Title to the Equipment will at all times remain solely in Vendor. During the term of this Agreement, the University agrees not to remove any plaques or labels affixed to the Equipment indicating that it is the property of Vendor.
3. If the Equipment shall require repair service while in University's possession, Vendor shall at Vendor's sole cost and expense, during the term of this Agreement, provide all normal on-site repair service required to maintain the Equipment in good operating condition. University agrees that it will not permit the Equipment to be serviced by non-Vendor personnel without the prior express written authorization of Vendor.
4. The Equipment must be returned to Vendor at the end of the evaluation period. **THIS AGREEMENT DOES NOT CONSTITUTE INTENT TO PURCHASE BY THE UNIVERSITY.**
5. By entering into this Agreement, Vendor acknowledges that the Equipment will not be insured by the University, and the University will not be liable for any theft, loss or damage to the Equipment whatsoever. The University's sole responsibilities will be limited to exercising reasonable care of, and providing reasonable security for the Equipment.
6. Vendor shall defend, indemnify and hold harmless the University against any and all liability, claims, demands, damages, losses and expenses in connection with or arising out of this Agreement.
7. Vendor shall maintain, at its sole cost and expense, commercial general liability coverage, including coverage for product liability/completed operations and contractual liability, of not less than one million dollars (\$1,000,000) per incident and three million dollars (\$3,000,000) in annual aggregate and general liability coverage of one million dollars (\$1,000,000) per occurrence and three million dollars (\$3,000,000) in annual aggregate. Vendor shall separately maintain Umbrella Liability including product liability coverage with a limit of liability no less than \$5,000,000 each occurrence. If the form of insurance is "claims made," Vendor shall maintain appropriate tail coverage for claims made after the termination of this agreement regarding acts or omissions that occurred during the term of this agreement. Vendor shall provide the University no less than thirty (30) days prior notification of any cancellation, termination or material alteration of any such policy. Vendor shall secure replacement of such insurance coverage, upon similar terms and provisions as available, and furnish University with Proof of Insurance. Such Proof of Insurance shall be directed to:

UMDNJ-Risk & Claims Management
Administration Complex, 1313
30 Bergen Street, P.O. Box 1709
Newark, New Jersey 07101

8. This Agreement and the rights of the parties shall be construed and governed by the Constitution and laws of the State of New Jersey, including the New Jersey Contractual Liability Act N.J.S.A. 59:13-1 et seq. and the New Jersey Tort Claims Act N.J.S.A. 59:1-1 et seq. and any cause of action shall have jurisdiction and venue only in the courts of the State of New Jersey, County of Essex.

9. The relationship of the parties established by this Agreement is that of independent contractors, and nothing contained herein shall be construed to (a) give either party any right or authority to create or assume any obligation of any kind on behalf of the other or (b) constitute the parties as partners, joint ventures, co-owners or otherwise as participants in a joint or common undertaking.

**EXHIBIT (continued)
PRODUCT EVALUATION AGREEMENT**

10. The failure of either party to enforce at any time for any period any provision hereof shall not be construed to be a waiver of such provision or of the right of such party thereafter to enforce each such provision, nor shall any single or partial exercise of any right or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right or remedy.

11. In no event shall either party use the other party's name, trademarks or logos, or any names, trademarks or logos of any affiliate of the other party, for any purpose. Without limiting the foregoing, neither party shall originate any publicity, news release, or other announcement, written or oral, whether to the public press, the trade or otherwise, relating to this Agreement, or to the existence of an arrangement between the parties without the prior written approval of the other party.

12. Neither party may assign this Agreement without the prior written consent of the other party and any attempt to do so shall be void. Subject to the foregoing sentence, this Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

13. Compliance Obligations.

(a) Each party certifies that it shall not violate the federal anti-kickback statute, set forth at 42 U.S.C. §1320a-7b(b) ("Anti-Kickback Statute"), or the federal "Stark Law," set forth at 42 U.S.C. § 1395nn ("Stark Law"), with respect to the performance of its obligations under this Agreement.

(b) Vendor has received a copy of UMDNJ's Code of Conduct and UMDNJ's Stark Law and Anti-Kickback Statute Policies and Procedures. UMDNJ's Code of Conduct is available at <http://www.umdj.edu/complweb/code/conduct.pdf>. UMDNJ's Stark Law and Anti-Kickback Statute Policies and Procedures are available at the following web addresses: http://www.umdj.edu/oppmweb/university_policies/ethics_compliance/PDF/00-01-15-60_05.pdf; http://www.umdj.edu/oppmweb/university_policies/ethics_compliance/PDF/00-01-15-60_10.pdf; and, http://www.umdj.edu/oppmweb/university_policies/ethics_compliance/PDF/00-01-15-60_15.pdf.

(c) Each party shall ensure that its individuals providing service under the agreement who meet the definition of "Covered Persons" (as such term is defined in the "Corporate Integrity Agreement between the Office of Inspector General of the Department of Health and Human Services and the University of Medicine and Dentistry of New Jersey" available at <http://www.umdj.edu/presweb/president/UMDNJ-CIA.pdf>) shall comply with UMDNJ's Compliance

14. This agreement sets forth the entire understanding, and hereby supersedes any and all prior agreements, oral or written, heretofore made, between the parties with respect to the subject matter of this agreement, and there are not representations, warranties, covenants, agreements, or collateral understanding, oral or otherwise, express or implied, affecting this instrument that are not expressly set forth herein.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed by their duly authorized representatives.

University of Medicine and Dentistry of New Jersey
65 Bergen Street
Newark, NJ 07101
Phone
Fax

[VENDOR'S NAME]

Phone
Fax

Denise Mulkern

Authorized Representative Name

Signature

Signature

Title Senior Vice President for Finance

Title

Date

Date