

## **100531 Procedure in Furtherance of Fair Competition in Contract Negotiations**

### **(a)**

Prior to beginning contract negotiations with any hospital: (1) The Executive Director shall request that the hospital certify in writing that no individual participating in the negotiation on behalf of the hospital is also representing, providing consultation to, negotiating on behalf of, or otherwise participating in the contract negotiations for any other competing hospital; and (2) The Executive Director shall request that the hospital demonstrate that it has obtained reasonable written assurances from individuals participating in the negotiations on its behalf that they will not collaborate or discuss the negotiations with any other individual who is not participating in the negotiations on behalf of said hospital. Such other individuals shall include but not be limited to individuals who may be representing, consulting with, negotiating on behalf of, or otherwise participating in the contract negotiations for any other competing hospital. Such assurances shall be in the form of written declarations under penalty of perjury.

### **(1)**

The Executive Director shall request that the hospital certify in writing that no individual participating in the negotiation on behalf of the hospital is also representing, providing consultation to, negotiating on behalf of, or otherwise participating in the contract negotiations for any other competing hospital; and

**(2)**

The Executive Director shall request that the hospital demonstrate that it has obtained reasonable written assurances from individuals participating in the negotiations on its behalf that they will not collaborate or discuss the negotiations with any other individual who is not participating in the negotiations on behalf of said hospital. Such other individuals shall include but not be limited to individuals who may be representing, consulting with, negotiating on behalf of, or otherwise participating in the contract negotiations for any other competing hospital. Such assurances shall be in the form of written declarations under penalty of perjury.

**(b)**

For purposes of this section the following definitions of terms shall apply: (1) Competing hospital. A competing hospital is any hospital, under a different ownership, which is located in the same or a contiguous Health Facility Planning Area which is also in the process of negotiating a Medi-Cal contract with the Executive Director. (2) Participate in negotiations. An individual is considered to participate in the negotiations on behalf of a hospital if he or she attends the negotiation sessions or is involved in preparing, approving or giving advice with respect to the hospital's negotiating strategy or contract proposal. However, an individual shall not be considered to participate in negotiations as a result of rendering educational or consultative services which do not involve a communication between the hospital and the individual regarding the specific content of a term of the hospital's contract proposal, or the specific content of a term of the contract under negotiation.

**(1)**

Competing hospital. A competing hospital is any hospital, under a different ownership, which is located in the same or a contiguous Health Facility Planning Area which is also

in the process of negotiating a Medi-Cal contract with the Executive Director.

**(2)**

Participate in negotiations. An individual is considered to participate in the negotiations on behalf of a hospital if he or she attends the negotiation sessions or is involved in preparing, approving or giving advice with respect to the hospital's negotiating strategy or contract proposal. However, an individual shall not be considered to participate in negotiations as a result of rendering educational or consultative services which do not involve a communication between the hospital and the individual regarding the specific content of a term of the hospital's contract proposal, or the specific content of a term of the contract under negotiation.

**(c)**

The Executive Director shall refuse to negotiate with any hospital which does not provide certification or reasonable assurances as requested in accordance with the foregoing. For good cause shown, the Executive Director may, in the exercise of his sound discretion, waive, in writing, such certification or assurances.

**(d)**

This statement is not intended to prohibit or restrict the disclosure of the terms of a negotiated binding contract to the extent that such disclosure is in accordance with applicable law.

**(e)**

This section shall not apply in situations where the Executive Director has invited a group of hospitals to negotiate a contract as a unit pursuant to Welfare and Institutions Code Section 14087.26.