

MODEL

Health Center Procurement Policy

I. Introduction and Statement of Purpose.

The policy of the Community Health Center (“CHC”) regarding its procurement standards incorporates those required by the Federal Government in the U.S. Department of Health and Human Services (“DHHS”) regulations found at 45 CFR Part 74, (which are also contained in OMB Circular A-110). As revisions are made to 45 CFR Part 74 and OMB Circular A-110, they are automatically included in the CHC’s policy.

This policy applies to the procurement of:

- Supplies and other expendable property,
- Real property, and
- Services.

II. Standards of Conduct.

All procurement actions will be conducted in accordance with the CHC’s Standards of Conduct which are separately set forth. Those Standards of Conduct are based on the following general principles:

Principle One: No CHC employee, contractor, agent, officer, or member of the Board of Directors will participate in the selection, award, or administration of a contract or award if such participation would create a real or apparent conflict of interest (as defined in the Standards of Conduct).

Principle Two: CHC employees, contractors, agents, officers or members of the Board of Directors will neither solicit nor accept gratuities, favors, bribes, or anything of value from contractors or parties to sub-agreements (e.g., subcontracts and sub-grants).

Principle Three: CHC employees, contractors, agents, officers or members of the Board of Directors who violate the Standards of Conduct will be subject to disciplinary action, the level and extent of which will be determined based on the severity of the violation.

III. Competitive Procurements.

All procurement transactions will be conducted in a manner to provide, to the maximum extent practical, open and free competition. The CHC will be sensitive to, and seek to avoid, organizational conflicts of interest or non-competitive practices among contractors. Consultants who want to bid for a contract from the CHC are prohibited from drafting the contract’s specifications, request for proposals and the like.

Solicitations will clearly set forth all requirements that the bidder or offeror will fulfill in order

for the bid or offer to be evaluated by the CHC's personnel. Awards will be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the CHC, in terms of price, quality and other factors. The CHC retains the right to reject any and all bids or offers when it is in the CHC's interest to do so. The CHC's general policy is to solicit a minimum of three bids.

IV. Sole-Source Procurements.

On certain occasions, the nature of work to be procured is highly specialized or contains unique design/performance specifications that are essential, and only one responsible source exists that will satisfy the CHC's requirements. In other instances, the vendor or consultant is the sole manufacturer or provider of a particular good or service, or the item/service to be procured is compatible with other mechanisms of a system already in operation. Under such circumstances, a bid process may not be feasible and a sole source contract will be awarded.

The reason(s) justifying a sole source procurement, together with a description of the supplies or services required to meet the CHC's needs, should be documented in the appropriate file. When a sole source contract is being paid for through grant dollars, the sole source justification should be disclosed to the funding source.

V. General Procurement Procedures.

The following procedures will apply to all CHC procurements. Additional guidance concerning these procedures is found in CHC's procurement checklists and forms that are separately set forth.

- Employees should avoid purchasing unnecessary items.
- Where appropriate, an analysis should be made of lease and purchase alternatives to determine which would be the most economical and practical procurement for CHC and for the Federal Government when Federal funds are used in whole or in part.
- Solicitations for goods and services must provide for all of the following:
 - A clear and accurate description of the technical requirements for the material, product or service. In competitive procurements, such descriptions should not contain features that unduly restrict competition.
 - Requirements that the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals.
 - A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.

- The specific features of “brand name or equal” descriptions that bidders are required to meet when such items are included in the solicitation.
 - The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement.
 - Preference, to the extent practicable and economically feasible, of products and services that conserve natural resources and protect the environment and are energy efficient.
- Positive efforts will be made to utilize small businesses, minority-owned firms, and women’s business enterprises, whenever possible. In meeting this goal, employees will take all of the following steps:
- Ensure that small businesses, minority-owned firms, and women’s business enterprises are used to the fullest extent practicable.
 - Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women’s business enterprises.
 - Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women’s business enterprises.
 - Encourage contracting with consortia of small businesses, minority-owned firms and women’s business enterprises when a contract is too large for any one of these firms to handle individually.
 - Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Department of Commerce’s Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms, and women’s business enterprises.
- The types of procuring instruments used (e.g., fixed price contracts, purchase orders, and incentive contracts) will be appropriate for the particular procurement and appropriate for promoting the best interests of the CHC’s program or project involved. The “cost-plus-a-percentage-of- cost” or “percentage of construction cost” methods of contract will not be used.
- Contracts will be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration will be given to matters such as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources. Employees will ensure that no contracts are entered into with entities that, or

individuals who, are debarred, suspended, or otherwise ineligible by virtue of Federal agencies' implementation of Executive Orders 12549 and 12689 concerning debarment and suspension.

- On request by the awarding Federal agency, the CHC will make available (for a pre-award review) relevant procurement documents such as requests for proposals or invitations for bids, independent cost estimates, etc., when any one of the following conditions apply:
 - The procurement is expected to exceed the simplified acquisition threshold (defined in 41 U.S.C. § 403(11) and currently set at \$100,000) and is to be awarded without competition or only one bid or offer is received in response to a solicitation.
 - The procurement, which is expected to exceed the simplified acquisition threshold (currently set at \$100,000), specifies a “brand name” product.
 - The proposed award over the simplified acquisition threshold is to be awarded to other than the apparent low bidder under a sealed bid procurement.
 - A proposed contract modification changes the scope of a contract or increases the contract amount by more than the amount of the simplified acquisition threshold (currently set at \$100,000).
- The procurement files in connection with the procurement action will contain and document some form of cost and price analyses. Price analysis is an examination of the price proposed by the vendor and a determination as to whether the price is fair. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, catalog or established prices, market prices, prices based on prior competition, historical prices and similar indicia, together with discounts. Cost analysis examines the individual cost elements that comprise the total proposed price to determine reasonableness, allocability, and allowability (as set forth in OMB Circular A-122). Elements of a cost analysis may include labor rates, material costs, overhead/indirect rates, and general/administrative expenses.

VI. Procurement Records For Purchases Over The Simplified Acquisition Threshold.

With respect to purchases in excess of the simplified acquisition threshold, the responsible CHC employees will maintain procurement records and files that include at a minimum: (a) the basis for contractor selection, (b) justification for lack of competition when competitive bids or offers are not obtained, and (c) the basis for award cost or price.

VII. Contract Administration.

CHC employees responsible for procurements will evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions, and specifications

of their contract.

VIII. Contract Provisions.

All contracts, including small purchases, awarded by CHC and its contractors will contain the following:

- Provisions requiring the contractor to maintain and furnish to the CHC certain programmatic and financial reports and records pertaining to the items/service provided under the contract.
- Provisions requiring the contractor to provide notice to, and obtain approval from, the CHC prior to implementing any significant and/or material changes to the scope of work or the budget.
- Provisions requiring compliance with:
 - Equal Employment Opportunity. All contracts will contain a provision requiring compliance with Executive Order 11246 (“Equal Employment Opportunity”), as amended by Executive Order 11375 (“Amending Executive Order 11246 Relating to Equal Employment Opportunity”) and as supplemented by regulations at 41 C.F.R. Part 60 (“Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor”).
 - Copeland Anti-Kickback Act (18 U.S.C. § 874 and 40 U.S.C. § 276(c)). All contracts and sub-grants in excess of \$2,000 for construction or repair awarded by the CHC and its sub-recipients will include a provision for compliance with the Copeland Anti-Kickback Act, 18 U.S.C. § 874, as supplemented by Department of Labor regulations, 29 C.F.R. Part 3, “Contractors and Subcontractors on Public Work Financed in Whole or in Part by Loans or Grants from the United States.” The Act provides that each contractor or sub-recipient will be prohibited from inducing by any means, any person employed in the construction, completion or repair of public work, to give up any part of the compensation to which he is otherwise entitled. CHC employees will report all suspected or reported violations to the Federal awarding agency.
 - Davis-Bacon Act, as amended (40 U.S.C. §276a to a-7). When required by Federal program legislation, all construction contracts awarded by CHC and its sub-recipients of more than \$2,000 will include a provision for compliance with the Davis-Bacon Act, 40 U.S.C. 276a to a-7, and as supplemented by Department of Labor regulations, 29 C.F.R. Part 5 (“Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction.” Under this Act, contractors will be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors will be required to pay wages not less than once a week. The CHC employee(s) responsible for such procurements will place a copy of the current

prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract will be conditioned upon the acceptance of the wage determination. CHC employees will report all suspected or reported violations to the Federal awarding agency.

- Rights to Inventions Made Under a Contract or Agreement. Contracts or agreements for the performance of experimental, developmental, or research work will provide for the rights of the Federal Government and NACHC in any resulting invention in accordance with 37 C.F.R. part 401 (“Rights to Inventions Made by Nonprofit CHCs and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements”) and any further implementing regulations issued by the U.S. Department of Health and Human Services.

In addition, contracts and subcontracts in excess of the simplified acquisition threshold will contain the following:

- Contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as appropriate.
- Suitable provisions for termination by CHC, including the manner by which termination will be effected and the basis for settlement. In addition, such contracts will describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.
- All negotiated contracts will include a provision to the effect that CHC, the federal awarding agency, the U.S. Comptroller General, or any of their duly authorized representatives will have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts, and transcriptions.
- Provisions requiring compliance with:
 - Contract Work Hours and Safety Standards Act (40 U.S.C. § 327-333). Where applicable, all contracts awarded by CHC in excess of \$100,000 for construction contracts and for other contracts that involve the employment of mechanics or laborers will include a provision for compliance with sections 102 and 107 of the Contract Work Hours and Safety Act, 40 U.S.C. 327-333, as supplemented by Department of Labor regulations, 29 C.F.R. Part 5. Under section 102 of the Act, each contractor will be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1 ½ hours times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic will be required to work in surroundings or

under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

- Clear Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251 et seq.). Contracts and sub-grants of amounts in excess of \$100,000 will contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, 42 U.S.C. 7401 et seq., and the Federal Water Pollution Control Act, as amended 33 U.S.C. 1251 et seq. Violations will be reported to the U.S. Department of Health and Human Services and the appropriate Regional Office of the Environmental Protection Agency.
- Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Contractors who apply or bid for an award of more than \$100,000 will file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or CHC for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, office or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. 1352. Each tier will also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the CHC.
- Debarment and Suspension (Executive Orders 12549 and 12689). Certain contracts will not be made to parties listed on the nonprocurement portion of the General Services Administration's "List of Parties Excluded from Federal Procurement or Nonprocurement Programs" in accordance with Executive Orders 12549 and 12689, "Debarment and Suspension." (See 45 C.F.R. Part 76.) This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory authority other than E.O. 12549. Contractors with awards that exceed the simplified acquisition threshold will provide the required certification regarding their exclusion status and that of their principals prior to award.

Except as otherwise required by statute, an award that requires the contracting (or subcontracting) for construction or facility improvements will provide for the recipient to follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction contract or subcontract exceeds \$100,000. For those contracts or subcontracts exceeding \$100,000, the Federal awarding agency providing the funding source may accept the bonding policy and requirements of the recipient, providing that the Federal agency has made a determination that the Federal Government's interest is adequately protected. If such a determination has not been made, the minimum requirements will be as follows:

- A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” will consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time frame specified.
- A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contractor’s obligations under such a contract.
- A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by statute of all persons supplying labor and material in the execution of the work provided for in the contract.

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While based on principles of Federal law and sound business guidelines, this model policy does not constitute, and is not a substitute for, legal advice. If legal advice or other expert assistance is required, the services of a competent professional should be sought. In particular, a health center with questions regarding the legality of specific terms of its “Procurement Policy” should consult with competent legal counsel.