



Policy Title: Procurement		
Department: Contracts		
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POLICY:

It is the policy of CFCHS to obtain in a cost-effective and responsive manner the goods and services required by CFCHS, ensuring a review of prospective procurements to avoid unnecessary duplication and receive best value; to provide safeguards for the maintenance of a procurement system of quality and integrity; to establish clear lines of procurement authority and accountability; to provide for increased public confidence in the procedures followed in public procurement; to promote the fair and equitable treatment of all persons who deal with CFCHS’ procurement system; and to foster broad-based competition within the free enterprise system.

RELATED POLICIES: Behavioral Health Service Procurement

REFERENCES

- Office of Management and Budget (OMB) Super Circular 2 CFR Part 200
- 287.057, Florida Statutes

PURPOSE:

The purpose of these standards is to establish procedures for CFCHS for the procurement of supplies and other expendable property, equipment, real property and other services.

PROCEDURES:

1. Code of Conduct
 - a. No employee, officer, or agent must participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity must neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial, or the gift is an unsolicited item of nominal value.
 - b. Members of the CFCHS board of directors shall comply with all relevant fiduciary duties, including those governing conflicts of interest, when they vote upon matters related to procurement contracts in which they have a direct or indirect financial or personal interest. Officers, employees, directors, and agents of CFCHS shall be subject to disciplinary actions

for violations of these standards.

2. Competition

All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. CFCHS shall be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be excluded from competing for such procurements. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to CFCHS, price, quality and other factors considered. Solicitations shall clearly set forth all requirements that the bidder or offeror shall fulfill in order for the bid or offer to be evaluated by CFCHS. Any and all bids or offers may be rejected when it is in CFCHS's interest to do so. In all procurements CFCHS shall avoid practices that are restrictive of competition. These include but are not limited to:

- a. Placing unreasonable requirements on firms in order for them to qualify to do business;
- b. Requiring unnecessary experience and excessive bonding;
- c. Noncompetitive pricing practices between firms or between affiliated companies;
- d. Noncompetitive awards to consultants that are on retainer contracts;
- e. Organizational conflicts of interest;
- f. Specifying only a brand name product instead of allowing an equal product to be offered and describing the performance of other relevant requirements of the procurement; and
- g. Any arbitrary action in the procurement process.

3. Exemptions from Competition

In accordance with 287.057, F.S., the following contractual services and commodities are not subject to the competitive-solicitation requirements:

- a. Artistic services.
- b. Academic program reviews if the fee for such services does not exceed \$50,000.
- c. Lectures by individuals.
- d. Legal services, including attorney, paralegal, expert witness, appraisal, or mediator services.
- e. Health services involving examination, diagnosis, treatment, prevention, medical consultation, or administration. The term also includes, but is not limited to, substance abuse and mental health services involving examination, diagnosis, treatment, prevention, or medical consultation if such services are offered to eligible individuals participating in a specific program that qualifies multiple providers and uses a standard payment methodology. Reimbursement of administrative costs for providers of services purchased in this manner are

also exempt. For purposes of this subparagraph, the term “providers” means health professionals and health facilities, or organizations that deliver or arrange for the delivery of health services.

- f. Services provided to persons with mental or physical disabilities by not-for-profit corporations that have obtained exemptions under s. 501(c)(3) of the United States Internal Revenue Code or when such services are governed by Office of Management and Budget Circular A-122. However, in acquiring such services, the agency shall consider the ability of the vendor, past performance, willingness to meet time requirements, and price.
 - g. Medicaid services delivered to an eligible Medicaid recipient unless the agency is directed otherwise in law.
 - h. Family placement services.
 - i. Prevention services related to mental health, including drug abuse prevention programs, child abuse prevention programs, and shelters for runaways, operated by not-for-profit corporations. However, in acquiring such services, the agency shall consider the ability of the vendor, past performance, willingness to meet time requirements, and price.
 - j. Training and education services provided to injured employees pursuant to s. 440.491(6).
 - k. Contracts entered into pursuant to s. 337.11.
 - l. Services or commodities provided by governmental entities.
 - m. Statewide public service announcement programs provided by a Florida statewide nonprofit corporation under s. 501(c)(6) of the Internal Revenue Code which have a guaranteed documented match of at least \$3 to \$1.
4. Exceptions for Direct Payment
- Certain purchases are excluded from the procurement processes set forth in this policy and are considered appropriate for direct payment. Direct payments are limited to the following:
- a. Dues and memberships in trade and professional organizations;
 - b. Subscriptions for periodicals and newspapers;
 - c. Advertisements;
 - d. Postage;
 - e. Public utility services from natural or regulated monopolies including but not limited to gas, electric, water, and sewer;
 - f. Employee reimbursements for CFCHS-approved expenses including but not limited to travel and training; and

- g. Professional services. Professional services are defined as those services involving the provisions of advice, instruction, or specialized work from an individual, firm, or corporation specifically licensed to provide such services.

5. Methods of Procurement

- a. Procurement by **micro-purchases**. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (§ 200.67 Micro-purchase). To the extent practicable, the non-Federal entity must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable. The micro-purchase threshold is set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions). It is **\$10,000** except as otherwise discussed in Subpart 2.1 of that regulation, but this threshold is periodically adjusted for inflation.
- b. Procurement by **small purchase** procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold (§ 200.88 Simplified acquisition threshold). If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources. The simplified acquisition threshold is set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions) and in accordance with 41 U.S.C. 1908. As of the publication of this part, the simplified acquisition threshold is **\$250,000**, but this threshold is periodically adjusted for inflation.
- c. Procurement by **sealed bids** (formal advertising). Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price.
 - i. The sealed bid method is the preferred method for procuring construction if the following conditions are present:
 - a) A complete, adequate, and realistic specification or purchase description is available;
 - b) Two or more responsible bidders are willing and able to compete effectively for the business; and
 - c) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.
 - ii. If sealed bids are used, the following requirements apply:
 - a) Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised;
 - b) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;

- c) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;
 - d) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
 - e) Any or all bids may be rejected if there is a sound documented reason.
- d. Procurement by **competitive proposals**. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. The competitive solicitation processes shall be used for procurement of commodities or contractual services in excess of the threshold amount provided for CATEGORY TWO in s. 287.017, F.S. (**\$35,000** as of this writing). If this method is used, the following requirements apply:
- i. Solicitations shall be made available simultaneously to all vendors¹;
 - ii. Solicitations must include the time and date for the receipt of bids, proposals, or replies and of the public opening²;
 - iii. Solicitations must be publicized and identify all evaluation factors and their relative importance. Any response to publicized solicitations must be considered to the maximum extent practical;
 - iv. Proposals must be solicited from an adequate number of qualified sources;
 - v. The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and for selecting recipients.
 - vi. Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and
 - vii. The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

¹ Section 287.057, F.S.

² Section 287.057, F.S.

viii. Types of competitive proposals:

a) Request for Proposal (RFP)

CFCHS shall use a request for proposals when the purposes and uses for which the commodity, group of commodities, or contractual service being sought can be specifically defined and CFCHS is capable of identifying necessary deliverables. Various combinations or versions of commodities or contractual services may be proposed by a responsive vendor to meet the specifications of the solicitation document.

b) Invitation to Negotiate (ITN)

The invitation to negotiate is a solicitation which is intended to determine the best method for achieving a specific goal or solving a particular problem and identifies one or more responsive vendors with which CFCHS may negotiate in order to receive the best value.

c) Group Purchasing Organizations

CFCHS recognizes purchases made through Group Purchasing Organizations as a best practice in certain industries with associated efficiencies, savings, and speed. CFCHS may participate in one or more group purchasing organization (GPO), which shall be selected competitively in accordance with this policy. As a condition of CFCHS's participation in a GPO, the GPO shall whenever possible solicit bids and proposals from certified Small Business Enterprises and local vendors, and shall cooperate with CFCHS in the facilitation of participation of those vendors at all tiers of CFCHS purchases under GPO contracts.

e. Procurement by **noncompetitive proposals** is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:

- i. The item is available only from a single source;
- ii. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- iii. The federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or
- iv. After solicitation of a number of sources, competition is determined inadequate.

6. Procurement procedures
 - a. All procurement by CFCHS shall comply, at a minimum, with the requirements below:
 - i. CFCHS must avoid purchasing unnecessary items.
 - ii. Where appropriate, an analysis is made of lease and purchase alternatives to determine which would be the most economical and practical procurement.
 - iii. Solicitations for goods and services provide for all of the following:
 - a) A clear and accurate description of the technical requirements for the material, product or service to be procured. In competitive procurements, such a description shall not contain features which unduly restrict competition.
 - b) Requirements which must be fulfilled and all other factors to be used in evaluating proposals submitted in response to solicitations.
 - c) 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.
 - d) When relevant, the specific features of "brand name or equal" descriptions that are to be included in responses submitted to solicitation.
 - e) The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement.
 - f) Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient.
 - b. Positive efforts shall be made by CFCHS to utilize small businesses, minority-owned firms, and women's business enterprises, whenever possible. CFCHS shall take all of the following steps to further this goal.
 - i. Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.
 - ii. 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.
 - iii. 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.

- iv. Encourage, when practical, contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.
 - v. Use the services and assistance, as appropriate and practical, 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.
- c. Electronic posting. CFCHS shall provide for the electronic posting of solicitations, award notices, determinations and other matters related to procurement on a centralized Internet website designated by CFCHS for this purpose.
- d. The type of procuring instruments used (e.g., fixed price contracts, cost reimbursable contracts, purchase orders, and incentive contracts) shall be determined by CFCHS but shall be appropriate for the particular procurement and for promoting the best interest of the program or project involved. The "cost-plus-a-percentage-of- cost" or "percentage of construction cost" methods of contracting shall not be used.
- e. Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources.
7. Cost and price analysis
Some form of cost or price analysis shall be made and documented in the procurement files in connection with every procurement action above \$500 in value. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability, consistent and allowability.
8. Procurement records
Procurement records and files for purchases in excess of the small purchase threshold as fixed at 41 U.S.C. 403(11) shall include the following at a minimum: (a) the rationale for the method of procurement (b) selection of the contract type (c) contractor selection or rejection and (d) basis for the contract price.
9. Contract administration
A system for contract administration shall be maintained to ensure contractor conformance with the terms, conditions and specifications of the contract and to ensure adequate and timely follow up of all purchases. CFCHS shall evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions and specifications of the contract.
10. Business Associates Agreement
Any vendor or subcontractor with access to Protected Health Information (PHI) must complete a business associate agreement with CFCHS.

11. Contract provisions

CFCHS shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts. The following provisions shall also be applied to subcontracts.

- a. Contracts in excess of the Simplified Acquisition Threshold shall contain 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 may be appropriate.
- b. All contracts in excess of the Simplified Acquisition Threshold shall contain suitable provisions for termination by CFCHS, including the manner by which termination shall be affected and the basis for settlement. In addition, such contracts shall 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.
- c. For contracts dealing with construction or facility improvements CFCHS shall comply with all requirements imposed by its funding sources (and the government regulations applicable to those funding sources) with regard to construction bid guarantees, performance bonds, and payment bonds.
- d. All negotiated contracts (except those less than the Simplified Acquisition Threshold) awarded by CFCHS shall include a provision to the effect that CFCHS shall 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.
- e. All contracts, including small purchases, awarded by CFCHS and their contractors where the source of the funds, directly or indirectly, is the federal government, shall contain the following procurement provisions:
 - i. All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.
 - ii. All contracts containing \$10,000 or more shall comply with Executive Order 11246, Equal Employment Opportunity, as amended by Executive Order 11375 and others, and as supplemented in Department of Labor regulation 41 CFR, Part 60 if applicable.
 - iii. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended - Contracts and subgrants of amounts in excess of \$150,000, must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

- iv. Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (U.S.C. 6201).
- v. Debarment and Suspension (Executive Orders 12549 and 12689) – A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), "Debarment and Suspension." The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- vi. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) - Contractors that apply or bid for an award of \$100,000 or more must 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 organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer 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 must 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 non-Federal award.

12. Authority

Except as otherwise provided herein and subject to the direction of the CEO, the person(s) designated by the CEO shall perform the duties of procurement and purchasing for CFCHS on the particular matter or matters and shall be responsible for the procurement of goods and services in accordance with this policy and such other duties as assigned by the CEO. The CEO and/or designee shall sign and take responsibility for the authoring of the bids, solicitations, purchase requisitions and orders, vendor selection, negotiation, and/or the entire procurement process.

13. Duties

The CEO or designee shall:

- a. Procure or supervise the procurement of all goods and services needed by CFCHS;
- b. Solicit and advertise for bids and proposals for goods and services without the need for action by the Board of CFCHS;
- c. Establish and maintain programs for the monitoring, inspection, testing, and acceptance of goods and services; and
- d. Ensure compliance with this policy by reviewing and monitoring procurements conducted by any designee.
- e. CFCHS Board of Directors shall have final approval of contracts resulting from the Sealed Bid

and Competitive procurement processes. Board approval is not required for Micro-purchases, Small Purchases, and Non-competitive procurements.

14. Unauthorized Purchases

An unauthorized purchase is a purchase or commitment of funds by an employee that does not have the authority to do so, or a purchase or commitment of funds by an authorized employee but not in accordance with applicable law or this policy. The CEO or the Board of Directors may require one or more of the following actions:

- a. Payment for any unauthorized purchase may be deemed the personal responsibility of the employee that made the purchase or commitment; and
- b. The employee may be subject to disciplinary action up to and including termination.