



**GENESEE COUNTY COMMUNITY
MENTAL HEALTH PIHP
POLICY MANUAL**

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CHAPTER: Fiscal Management		POLICY #: 05-002-95	PAGE: 1
SECTION: Fiscal Management		SUBJECT: Procurement	
WRITTEN BY: J. De Lay	TECHNICAL REVIEW BY: J. De Lay	AUTHORIZED BY: D. Russell, CEO	

I. APPLICATION

- PIHP Board
 CMH Personnel
 Genesee County CA
 Other:
 PIHP Personnel
 CMH Sub-Contractors
 CA Sub-Contractors

II. POLICY STATEMENT:

The purpose of these Regulations is to provide for the fair and equitable treatment of all persons involved in public purchasing by Genesee County Community Mental Health, herein after referred to as the “agency”, to maximize the purchasing value of public funds in procurement, and to provide safeguards for maintaining a procurement system of quality and integrity. Per Board Resolution #075-01, the Agency will seek to purchase goods from Genesee County vendors prior to purchases outside of Genesee County.

These regulations apply to contracts for the procurement of supplies, services, and construction, entered into by the agency after the effective date of these Regulations. Procurement shall be conducted in accordance with applicable federal and state law and regulations. Nothing in these regulations shall prevent this agency from complying with the terms and conditions of any grant, gift, or bequest that is otherwise consistent with law.

Procurement information shall be a public record to the extent provided in Act 442 of the Public Acts of 1976 (Michigan Compiled Laws (MCL) 15.231 et seq.), as amended, and shall be available to the public as provided in said statute.

Whether a competitive procurement or non-competitive solicitation process is used, the Agency will ensure that organizations or individuals selected and offered contracts have not been previously sanctioned by the Medicaid or other federal programs resulting in prohibition of their participation in the program.

At the time of bidding, any bidder shall disclose any known direct or indirect financial interests (including but not limited to ownership, investment interests, or any other form of remuneration) that may be present between the contractor or his/her potential subcontractors, and CMH personnel. This disclosure shall be made to the BP of Business Operations who will forward the information to the CEO.

All licensed general contractors participating in an RFP process will, as part of their bid, include a list of any known potential subcontractors, including the portion of bid work being contracted out to other licensed contractors or licensed builders. This listing of potential subcontractors shall be limited to the name of the company, name of the company’s owner(s), and business address. If any other subcontractor is selected after a bid is awarded, the successful bidder shall provide CMH with the name of the company, its owner(s), and address. This requirement is not intended to apply to

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minimal relationships such as the purchase of a small dollar amount of supplies to complete a project.

III. CONFLICT OF INTEREST

Personnel engaged in the development, advertising, reviewing, scoring, recommending bids shall sign a statement attesting that they do not have a conflict of interest involving any of the bids submitted whether real or perceived. Personnel should immediately inform their supervisor if there is a potential conflict of interest and that personnel will be recused from the procurement process in this instance. Conflict of interest includes financial interests that encompass employment, ownership, investment interests and other financial contracts and arrangements by the personnel or their immediate family members to the personnel's knowledge as well as themselves.

IV. AUTHORITY AND DUTIES

A. Principal Purchasing Official

Except as otherwise provided herein, the Vice President of Business Operations shall serve as the principal public purchasing official for the agency, and shall be responsible for the procurement of supplies, services, and construction in accordance with these regulations, as well as the management and disposal of supplies.

B. Duties

In accordance with these regulations, the Vice President of Business Operations or their designee shall:

1. Procure or supervise the procurement of all supplies, services, and construction needed by the agency.
2. Exercise direct supervision over the agency's centralized and de-centralized purchasing system and general supervision over all other inventoried equipment valued at least \$5,000.00.
3. Sell, trade, or otherwise dispose of surplus supplies and equipment belonging to the agency.
4. Establish and maintain processes for specification development, contract administration and inspection and acceptance, in cooperation with the agency programs using the supplies, services, and construction.

C. Approval and Award

The Vice President of Business Operations shall make no bid award of any contract other than of Small Purchases unless approved by the agency's Board of Directors.

D. Operational Procedures

Consistent with these regulations, and with the approval of the agency's Board of Directors, the Vice President of Business Operations may adopt operational procedures relating to the execution of his or her duties. The Vice President of Business Operations may also delegate authority to purchase certain supplies, services, or construction items to other agency employees if such delegation is deemed necessary for the effective procurement of those items.

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V. SOURCE SELECTION & CONTRACT FORMATION

A. Competitive Sealed Bidding:

1. Conditions for use
All procurement contracts of the agency shall be awarded by the use of competitive sealed bidding except as otherwise provided in Sections titled: Competitive Sealed Proposals; Small Purchases; Sole Source Procurement; Emergency Procurements; of these Regulations.
2. Invitation for Bids
An invitation for bids shall be issued and shall include specifications, and all contractual terms and conditions applicable to the procurement. Specifications developed to obtain client services will be developed by a Committee made up of at least, but not limited to, agency personnel and clients. The Committee may also include business/industry professionals, experts and interested individuals. Client input related to the development of specifications and evaluation criteria is required for all requests for proposals for client services. Specifications shall detail the method for answering questions.
3. Public Notice
Adequate public notice of the invitation for bids shall be given, which notice shall be not less than fourteen (14) calendar days prior to the date set forth therein for the opening of bids. Such notice may include publication in a newspaper of general circulation, placed a reasonable time prior to bid opening. The public notice shall state the place, date, and time of bid opening.
4. Bid Opening
Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The amount of each bid, and such other relevant information as the Vice President of Business Operations deems appropriate, together with the name of each bidder shall be recorded; the record and each bid shall be open to public inspection in accordance with provisions of the Mental Health Code.
5. Bid Acceptance and Bid Evaluation
Bids shall be unconditionally accepted without alteration or correction, except as authorized in these Regulations. Bids shall be evaluated based on the requirements set forth in the invitation for bids, which may include criteria to determine acceptability such as inspection, testing, quality, proof of concept, service delivery, and suitability for a particular purpose. Bids obtained for the provision of services shall be evaluated by a Committee comprised of agency personnel and clients. In the best interest of the agency, business and industry professionals, experts and other interested persons may also comprise the Evaluation Committee. Those criteria that will affect the bid price and be considered in the evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The invitation for bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that are not set forth in the invitation for bids.
6. Correction or Withdrawal of Bids; Cancellation of Awards
Corrections or withdrawal of inadvertently erroneous bids before or after bid opening, or cancellation of awards or contracts based on such bid mistakes, may be permitted where appropriate. Mistakes discovered before bid opening may be modified or withdrawn by written or telegraphic notice received in the office designated in the invitation for bids prior

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to the time set for bid opening. After bid opening, corrections in bids shall be permitted only to the extent that the bidder can show by clear and convincing evidence that a mistake of a non-judgmental character was made, the nature of the mistake, and the bid price actually intended. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the agency or fair competition shall be permitted. In lieu of bid correction, a low bidder alleging a material mistake of fact may be permitted to withdraw its bid if:

- a. the mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or
- b. the bidder submits evidence which clearly and convincingly demonstrates that a mistake was made. All decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the Vice President of Business Operations.

7. Award

The contract shall be awarded with reasonable promptness by appropriate written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids. In the event the low responsive and responsible bid exceeds available funds, the Vice President of Business Operations is authorized to negotiate an adjustment of the bid price with the low responsive and responsible bidder, in order to bring the bid within the amount of available funds.

8. Multi-Step Sealed Bidding

When it is considered impractical to prepare initially a purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced offers to be followed by an invitation for bids limited to those bidders whose offers have been determined to be technically acceptable under the criteria set forth in the first solicitation.

B. Competitive Sealed Proposals

1. Conditions for Use

When the Vice President of Business Operations determines that the use of competitive sealed bidding is either not practical or not advantageous to the agency, a contract may be entered into by use of the competitive sealed proposals method. This method will be used when the service or product required can be provided through different or diverse specifications, when contractual agreements will require negotiation and development with the selected offeror, or when it is advantageous to the agency to request modifications to the offer.

2. Request for Proposals

Proposals shall be solicited through a request for proposals.

3. Public Notice

Adequate public notice of the request for proposals shall be given in the same manner as provided in the Section titled Competitive Sealed Bidding, Public Notice.

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4. Receipt of Proposals
No proposals shall be handled so as to permit disclosure of the identity of any offeror or the contents of any proposal to competing offerors during the process of negotiation. A register of proposals shall be prepared containing the name of each offeror, the number of modifications received, if any, and a description sufficient to identify the item offered. The register of proposals shall be open for public inspection only after contract award.
5. Evaluation Factors
The request for proposals shall state the relative importance of price and other evaluation factors.
6. Discussion with Responsible Offerors and Revisions to Proposals
As provided in the request for proposals, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and conformance to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of the identity of competing offerors or of any information derived from proposals submitted by competing offerors.
7. Award
Award shall be made to the responsible offeror whose proposal is determined, to be the most advantageous to the agency, taking into consideration price and the evaluation factors set forth in the request for proposals. The bid file shall contain the basis on which the award is made.

C. Small Purchases

1. General
Any contract not exceeding \$20,000.00 may be made in accordance with the small purchase procedure authorized in this Section. Contract requirements shall not be artificially divided so as to constitute a small purchase under this Section.
2. Small Purchases over \$10,000 and under \$20,000.00
Insofar as it is practical for small purchases in excess of \$10,000.00 no less than three businesses shall be solicited to submit written quotations. Award shall be made to the business offering the lowest reasonable and acceptable quotation. The names of the businesses submitting quotations, and the date and amount of each quotation, shall be recorded and maintained as a public record.
3. Small Purchases under \$10,000.00
The Vice President of Business Operations shall maintain operational procedures for making small purchases of \$10,000.00 or less. Purchase of items between \$50.00 and \$5,000.00 require at least one verbal or written quote. Purchase of items with a value between \$5,000.00 and \$10,000.00 require at least three written quotes. Such procedures provide for obtaining adequate and reasonable competition for the supply, service or construction being purchased. Further, such operational procedures require the preparation and maintenance of

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written records adequate to document the competition obtained, properly account for the funds expended, and facilitate an audit of the small purchase made.

D. Sole Source Procurement:

A contract may be awarded without competition when the Vice President of Business Operations determines, after conducting a good faith review of available sources, that there is only one source for the required supply, service, or construction item. The Vice President of Business Operations shall conduct negotiations, as appropriate, as to price, delivery, and terms. A record of sole source procurements, to include a written determination of the basis for each sole source purchase shall be maintained as a public record and shall list each contractor's name, the amount and type of each contract, and a listing of the item(s) procured under each contract.

E. Emergency Procurements:

Notwithstanding any other provisions of these Regulations, the Vice President of Business Operations may make or authorize others to make emergency procurements of supplies, services, or construction items when there exists a threat to public health, welfare, or safety; provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the file. As soon as practicable, a record of each emergency procurement shall be made and shall set forth the contractor's name, the amount and type of the contract, and a listing of the item(s) procured under the contract.

F. Cancellation of Invitations for Bids or Requests for Proposals:

An invitation for bids, a request for proposals, or other solicitation may be canceled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation, when it is in the best interests of the agency. The reasons therefore shall be made part of the bid file. Each solicitation issued by the agency shall state that the solicitation may be canceled and that any bid or proposal may be rejected in whole or in part for good cause when in the best interests of the agency. Notice of cancellation shall be sent to all businesses solicited. The notice shall identify the solicitation, explain the reason for cancellation, and, where appropriate, explain that an opportunity will be given to compete on any re-solicitation or any future procurements of similar items. Reasons for rejection shall be provided upon request by unsuccessful bidders or offerors.

G. Responsibility of Bidders and Offerors

If a bidder or offeror who otherwise would have been awarded a contract is found non-responsible, a written determination of non-responsibility, setting forth the basis of the finding, shall be prepared by the Vice President of Business Operations. The unreasonable failure of a bidder or offeror to supply promptly information in connection with an inquiry with respect to responsibility may be grounds for a determination of non-responsibility with respect to such bidder or offeror. The final determination shall be made part of the bid file and be made a public record.

H. Bid, Payment, and Performance Bonds on Supply or Service Contracts

Bid surety, payment bonds, or performance bonds or other security may be required for supply contracts or service contracts in conformance with State law or as the Vice President of Business Operations deems advisable to protect the agency's interest. Any such bonding requirements shall be set forth in the solicitation. Bid surety, payment bonds, or performance bonds shall not be used as substitute for a determination of a bidder or offeror's responsibility

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I. Types of Contracts

1. General Authority

Subject to the limitation of this section, any type of purchases or contract which is appropriate to the procurement and which will promote the best interest and best value of the agency, may be used.

2. Multi-Term Contracts

a. Specified Period - Unless otherwise provided by law, a contract for supplies or services may be entered into for any period of time deemed to be in the best interests of the agency, provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefore.

b. Determination Prior to Use - Prior to the utilization of a multi-term contract, it shall be determined:

- i. that estimated requirements cover the period of the contract and are reasonably firm and continuing; and
- ii. that such a contract will serve the best interests of the agency by promoting economies in agency procurement.

3. Multi Source Contracting

a. General

A multiple source award is an award of an indefinite quantity contract for one or more similar supplies or services to more than one bidder or offeror. The obligation to order the agency's actual requirements is limited by the provision of Uniform Commercial Code.

b. Limitations on Use

A multiple source award may be made when award to two or more bidders or offerors for similar products or services are necessary for adequate delivery, service, or product compatibility. Any multiple source awards shall be made in accordance with the provisions of Sections Competitive Sealed Bidding; Competitive Sealed Proposals; Small Purchases; Emergency Procurement, as applicable. Multiple source awards shall not be made when a single award will meet the agency needs without sacrifice of economy or service. Awards shall not be made for the purpose of dividing the business, making available product or supplier selection to allow for user preference unrelated to utility or economy, or avoiding the resolution of tie bids. Any such awards shall be limited to the least number of suppliers necessary to meet the valid requirements.

c. Contract and Solicitation Provisions

All eligible users of the contract shall be named in the solicitation, and it shall be mandatory that the actual requirements of such users that can be met under the contract be obtained in accordance with the contract, provided that:

- i. The agency shall reserve the right to take bids separately if a particular quantity requirement arises which exceeds its normal requirement or an amount specified in the contract; and

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- ii. The agency shall reserve the right to take bids separately if the Vice President of Business Operations or designee approves a finding that the supply or service available under the contract will not meet a nonrecurring special need of the agency.
 - d. Intent to Use
If a multiple source award is anticipated prior to issuing a solicitation, the agency shall reserve the right to make such an award and the criteria for award shall be stated in the solicitation.
 - e. Determination Required
The Vice President of Business Operations or designee shall make a written determination setting forth the reasons for a multiple source award, which shall be made a part of the bid file.
- 4. Group Purchasing
 - a. When in the Agency's best interest and provide best value, the Agency will maximize purchasing through group purchasing practices. The Agency, by coming together with other resources and programs will become a more effective purchaser of mental health services, services for people with developmental disabilities and substance abuse services for the Medicaid population and other priority populations. As the agency responsible for these purchases of services, the agency will, through this type of purchasing get better value while ensuring quality and access.
- 5. Shared/jointed risk
 - a. The Agency may choose to contract with a provider who will accept shared financial risk for managing supports and services through a performance contract. The focus of these contracts will be on quality of care, accessibility and cost-effectiveness.
 - b. Contract for a shared/joint risk will include a provision that protect recipients from any practices that results in the withholding of services that would otherwise be provided according to medical necessity criteria and best practice standards, consistent with 42 CFR 417.479, Subpart L. These contracts shall compliance with federal regulations governing contracts with a risk base.
 - c. The assumption of a shared risk arrangement between the Agency and the contractor shall not permit the contractor to overspend its total operating budget for any contract period. The contractor shall not pass on, or in any manner shift financial liabilities to a beneficiaries resulting from PHP financial debt, loss and/or insolvency.
- 6. Per Capita Rate Setting
When in the best interest and value of the Agency, the Agency will develop per capita rates.
- 7. Collective Bargaining
When applicable, the Agency shall enter into Collective Bargaining negotiation and agreements. The focus of Collective Bargaining will be cost effectiveness and best value to the Agency.

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J. Contract Clauses and Their Administration:

1. Contract Clauses

All agency contracts for supplies and services shall include provisions necessary to define the responsibilities and rights of the parties to the contract. The Vice President of Business Operations or designee may issue clauses appropriate for supply or service contracts, addressing among others the following subjects:

- a. the unilateral rights of the agency to order in writing changes in the work within the scope of the contract;
- b. the unilateral rights of the agency to order in writing temporary stopping of the work or delaying performance that does not alter the scope of the contract;
- c. variations occurring between estimated quantities of work in contract and actual quantities;
- d. defective pricing;
- e. liquidated damages;
- f. specified excuses for delay or nonperformance;
- g. termination of the contract for default;
- h. termination of the contract in whole or in part for the convenience of the agency;
- i. suspension of work ordered by the agency and
- j. site conditions differing from those indicated in the contract, or ordinarily encountered, except that a differing site conditions clause need not be included in a contract when the contract is negotiated or when the contractor provides the site or design.

2. Price Adjustments

Adjustments in price resulting from the use of contract clauses per established requirements shall be computed in one or more of the following ways:

- a. by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
- b. by unit prices specified in the contract or subsequently agreed upon;
- c. by the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;
- d. in such other manner as the contracting parties may mutually agree;
- e. in the absence of agreement by the parties, by a unilateral determination by the agency of the costs attributable to the events or situations under such clauses with adjustment of profit or fee as computed by the agency as accounted for in accordance with generally accepted accounting procedures and subject to the provisions of Section Appeals and Remedies.

3. Standard Clauses and Their Modification

The Vice President of Business Operations or designee, after consultation with Corporation Counsel, may establish standard contract clauses for use in agency contracts. If the Vice President of Business Operations or designee establishes any standard clauses addressing the subjects set forth in 2-J, such clauses may be varied provided that the circumstances justify

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such variations, and provided that notice of any such material variation be stated in the invitation for bids or request for proposals.

K. Contract Administration

A contract administration system designed to insure that a contractor is performing in accordance with the solicitation under which the contract was awarded, and the terms and conditions of the contract, shall be maintained.

L. Approval of Accounting System

1. Except with respect to firm fixed price contracts, the Vice President of Business Operations may determine that a contract type will not be used unless:

- a. the proposed contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated; and
- b. the proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted cost accounting principles.

M. Right to Inspect

The Agency may, at reasonable times, inspect the place of business, or worksite of a contractor or subcontractor at any tier which is pertinent to the performance of any contract awarded by the Agency.

N. Right to Audit Records

1. Audit of Cost or Pricing Data

The agency may at reasonable times and places, audit the books and records of any contractor who has submitted cost or pricing data as a part of its bid or proposal, to the extent that such books, documents, paper, and records are pertinent to such cost or pricing data for seven years from the date of final payment under the contract.

2. Contract Audit

The agency shall be entitled to audit the books and records of a contractor or subcontractor at any tier under any negotiated contract or subcontract other than a firm fixed-price contract to the extent that such books, documents, paper, and records are pertinent to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of seven years from the date of final payment under the prime contract and by the subcontractor for a period of seven years from the date of final payment under the subcontract.

O. Agency Procurement Records

1. Bid File

All determinations and other written records pertaining to the solicitation and award of a contract shall be maintained for the agency in a bid file by the Vice President of Business Operations or designee.

2. Retention of Procurement Records

All procurement records shall be retained and disposed of by the agency in accordance with agency record retention policies and procedures.

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VI. SPECIFICATIONS

A. Maximum Practicable Competition:

All specifications shall be drafted so as to promote overall economy for the purposes intended and encourage competition in satisfying the agency's needs, and shall not be unduly restrictive. The policy enunciated in this Section applies to all specifications including but not limited to, those prepared for and by the agency.

B. Brand Name or Equal Specifications:

1. Brand name or equal specifications may be used when the Vice President of Business Operations determines that:
 - a. no other design or performance specification or qualified products list is available;
 - b. time does not permit the preparation of another form of purchase description, not including a brand name specification;
 - c. the nature of the product or the nature of the agency's requirements makes use of a brand name or equal specification suitable for the procurement; or
 - d. use of a brand name or equal specification is in the agency's best interests.
2. Brand name or equal specifications shall seek to designate three or as many different brands as are practicable, as "or equal" references and shall further state that substantially equivalent products to those designated will be considered for award.
3. Unless the Vice President of Business Operations determines in writing that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specifications shall include a description of the particular design, functional, or performance characteristics which are required.
4. Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.

C. Brand Name Specification:

1. Since use of a brand name specification is restrictive of product competition, it may be used only when the Vice President of Business Operations makes a determination that only the identified brand name item or items will satisfy the agency's needs.
2. The Vice President of Business Operations shall seek to identify sources from which the designated brand name item or items can be obtained and shall solicit such sources to achieve whatever degree of price competition is practicable. If only one source can supply the requirement, the procurement shall be made under Paragraph E (Sole Source Procurement).

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VII. APPEALS AND REMEDIES

A. Bid Protests:

1. Right to Protest

Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the Vice President of Business Operations. A protest with respect to an invitation for bids or request for proposals must be submitted in writing to the Vice President of Business Operations prior to the opening of bids or the closing date of proposals, unless the aggrieved person did not know and should not have known of the facts giving rise to such protest prior to bid opening or the closing date for proposals. The protest must be submitted within 7 calendar days after such aggrieved person knows or should have known of the facts giving rise thereto. A protest with respect to the award of the contract must be submitted in writing within 7 calendar days after the award of the bid.

2. Stay of Procurements During Protests

In the event of a timely protest (i.e., before an award of a contract) the Vice President of Business Operations shall not proceed further with the solicitation or award of the contract until the above administrative remedy has been exhausted or until the Chief Executive Officer makes a determination on the record that the award of a contract without delay is necessary to protect substantial interests of the agency.

3. Entitlement to Costs

When a protest is received and sustained by the Chief Executive Officer after the award of a contract and the protesting bidder or offeror should have been awarded the contract under the solicitation but was not, then the protesting bidder or offeror shall be entitled to the reasonable costs incurred in connection with the solicitation, including bid preparation costs other than attorney's fees.

B. Contract Claims:

1. Decision of the Vice President of Business Operations

All claims by a contractor against the agency relating to a contract, except bid protests, shall be submitted in writing to the Vice President of Business Operations for a decision. The contractor may request a conference with the Vice President of Business Operations on the claim. Claims include, without limitation, disputes arising under a contract, and those based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or revision.

2. Notice to the Contractor of the Vice President of Business Operations Decision

The decision of the Vice President of Business Operations shall be promptly issued in writing, and shall be immediately mailed or otherwise furnished to the contractor. The decision shall state the reasons for the decision reached.

3. Finality of the Vice President of Business Operations Decision; Contractor's Right to Appeal

The Vice President of Business Operation's decision shall be final and conclusive unless, within 7 calendar days from the date of receipt of the decision, the contractor mails or otherwise delivers a written appeal to the Chief Executive Officer.

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4. Failure to Render Timely Decision

If the Chief Executive Officer does not issue a written decision regarding any contract controversy within 7 days after written request for a final decision, or within such longer period as may be agreed upon between the parties, then the aggrieved party may proceed as if an adverse decision had been received.

C. Authority of the Vice President of Business Operations to Settle Bid Protests and Contract Claims:

The Vice President of Business Operations is authorized to settle any protest regarding the solicitation or award of an agency contract, or any claim arising out of the performance of an agency contract, prior to an appeal to the Chief Executive Officer.

D. Remedies for Solicitations or Awards in Violation of Law:

1. Prior to Bid Opening or Closing Date for Receipt of Proposals

If prior to the bid opening or the closing date for receipt of proposals, the Vice President of Business Operations determines that a solicitation is in violation of federal, state, or municipal law, then the solicitation shall be canceled or revised to comply with applicable law.

2. Prior to Award

If after bid opening or the closing date for receipt of proposals, the Vice President of Business Operations determines that a solicitation or a proposed award of a contract is in violation of federal, state, or municipal law, then the solicitation or proposed award shall be canceled.

3. After Award

If, after an award, the Vice President of Business Operations determines that a solicitation or award of a contract was in violation of applicable law, then:

a. If the person awarded the contract has not acted fraudulently or in bad faith:

- i. the contract may be ratified and affirmed, provided it is determined that doing so is in the best interests of the agency;
- ii. the contract may be terminated and the person awarded the contract shall be compensated for the actual costs reasonably incurred under the contract, plus a reasonable profit, prior to the termination; or

b. if the person awarded the contract has acted fraudulently or in bad faith the contract may be declared null and void or voidable, if such action is in the best interests of the agency.

VIII. ETHICS IN PUBLIC CONTRACTING

A. Employee Conflict of Interest:

It shall be unethical for any agency employee, contractor, volunteer, or other person to participate directly or indirectly in a procurement contract when they know that:

- 1. They or any member of their immediate family has a financial interest pertaining to the procurement contract; or

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2. any other person, business, or organization with whom they or any member of their immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement contract.

B. Gratuities and Kickbacks:

1. Gratuities

It shall be unethical for any person to offer, give, or agree to give any employee, or for any employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request, influencing the content of any specifications or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefore.

2. Kickbacks

It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

C. Contemporaneous Employment Prohibited:

It shall be unethical for any employee who is participating directly or indirectly in the procurement process to become or to be, while such an agency employee, the employee of any person contracting with the governmental body by whom the employee is employed.

D. Use of Confidential Information

It shall be unethical for any employee or former employee knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person.

E. Attestation by CMH Personnel

Each CMH staff who participates in the bid procurement or quote selection process shall complete a *Confidentiality, Non-Disclosure, and Conflict of Interest for Procurement* form pertaining to the specific selection under way. The forms are completed no later than the day bids are opened or a quote is selected.

IX. DEFINITIONS

Business - Any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.

Change Order - A written order signed and issued by the Vice President of Business Operations directing the contractor to make changes which the “changes” clause of the contract authorizes the Vice President of Business Operations to order without the consent of the contractor.

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Client - An individual who has received or is receiving services from the Department of Community Health, a Community Mental Health program, or services from the private sector equivalent to those offered by the Community Mental Health program, or a member of the individual's family or a mental health advocate.

Contract Modification (bilateral Change) - Any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.

Confidential Information - Any information which is available to any employee only because of the employee's status as an employee of the agency and is not a matter of public knowledge or available to the public on request.

Contract - All types of agency agreements, regardless of what they may be called, for the procurement of supplies, services, or construction.

Contractor - Any person having a contract with the agency or a using agency thereof.

Cost Analysis - The evaluation of cost data for the purpose of arriving at costs actually incurred or estimates of costs to be incurred, prices to be paid, and costs to be reimbursed.

Cost Data. - Information concerning the cost of labor, material, overhead, and other cost elements which are expected to be incurred or which have been actually incurred by the contractor in performing the contract.

Direct or Indirect Participation - Involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase, request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity.

Employee - An individual drawing a salary or wages from the agency.

Financial Interest - Ownership of an interest or involvement in any relationship from which, or as a result of which, a person within the past year has received, or is presently or in the future entitled to receive, more than \$100 per year, or its equivalent; a) Ownership of any property or business; or
b) Holding a position in a business such as officer, director, trustee, partner, employee, or the like, or holding any position of management.

Gratuity - A payment, loan, subscription, advance, deposit of money, service, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.

Immediate Family - Spouse, child, parent, sibling

Invitation for Bids - All documents, whether attached or incorporated by reference, utilized for soliciting sealed bids.

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Multi-Term Contract - An agency agreement for the purchase of services or supplies entered into for a period of more than one calendar year.

Name or Equal Specification - A specification limited to one or more items by manufacturer's names or catalogue numbers to describe the standard of quality, performance, and other salient characteristics needed to meet agency requirements, and which provides for the submission of equivalent products.

Name Specifications - A specification limited to one or more items by manufacturer's names or catalogue numbers.

Procurement - The buying, purchasing, renting, leasing, or otherwise acquiring of any supplies, services, or construction. It also includes all functions that pertain to obtaining of any supply, service, or construction, including description of requirements, selection, and solicitation of sources, preparation and award of contract, and all phases of contract administration.

Request for Proposals - All documents, whether attached or incorporated by reference, utilized for soliciting proposals.

Responsible Bidder or Offeror - A person who has the capability in all respects to perform fully the contract requirements, and the tenacity, perseverance, experience, integrity, reliability, capacity, facilities, equipment, and credit which will assure good faith performance.

Responsive Bidder - A person who has submitted a bid which conforms in all material respects to the requirements set forth in the invitation for bids.

Services - The furnishings of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. This term shall not include employment agreements or collective bargaining agreements.

Specification - Any description of the physical or functional characteristics or of the nature of a supply or service. It may include a description of any requirement for inspecting, testing, or preparing a supply or service for delivery.

Supplies - All property, including but not limited to equipment, materials, printing, insurance, and leases of real property, excluding land or a permanent interest in land.

X. FORMS LOCATED ON THE INTRANET:

Confidentiality, Non-Disclosure and Conflict of Interest for Procurement form

XI. DEVELOPMENT AND EVALUATION:

The Vice President of Business Operations will review this policy annually.

XII. IMPLEMENTATION AND REVISIONS:

01-18-95 - implemented

04-19-01 – revised

06-01-02 – revised

09-01-03 – revised

10-01-07 – revised