



Colorado Health Benefit Exchange (COHBE)

Use by COHBE for Federal Grant Funds

Procurement Policy

- 1. PURPOSE OF PROCUREMENT POLICY.** COHBE is the recipient of Federal grant funds the use of which is subject to certain Notices of Grant Awards, (“NGAs”), OMB Circular A-110, certain Health and Human Services (“HHS”) grant administration regulations found in 45 C.F.R. Part 74, the HHS Grants Policy Statement dated January 1, 2007, and certain HHS Standard Terms and Conditions under ARRA, as revised July 6, 2009 (hereinafter collectively referenced as the “Applicable Federal Rules”). The purpose of these policies is to establish COHBE’s procedures for the use of Federal grant funds for the procurement of supplies and other expendable property, equipment, real property and other services, consistent with the Applicable Federal Rules.
- 2. INTERPRETATION.** This Policy shall be construed and applied to promote COHBE’s compliance with the Applicable Federal Rules, as well as with all applicable state laws. In the event of a conflict between the provisions of this Policy and the requirements of an applicable state or federal statute or regulation, the applicable statute or regulation shall prevail. This Policy sets forth internal guidelines for the benefit of COHBE and its officers, directors, workforce members and agents, and does not confer any right or other benefit on any third party. The provisions of this Policy may not be used by any third party in any action or other proceeding against COHBE or its interests.
- 3. CODE OF CONDUCT.** COHBE will designate a single point of contact within COHBE to interface and communicate with prospective vendors. In addition, COHBE will follow organizational policy regarding Open Records disclosure and confidentiality during the full procurement process. No officer, director, workforce member, or agent shall participate in the selection, award, or administration of a contract if a real or apparent conflict of interest would be involved. Such a conflict would arise when the officer, director, workforce member, or agent, any member of his or her immediate family, his or her partner, or an organization that employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award. The officers, directors, workforce members, and agents of COHBE shall follow the organization’s Conflict of Interest policy regarding the acceptance of gratuities, favors, or anything of monetary value from contractors, or parties to sub-agreements. Officers, workforce members, directors, and agents of COHBE shall be subject to disciplinary actions for violations of these standards.
- 4. PROCUREMENT PLANNING.** Each potential procurement opportunity (involving proposed expenditures in excess of \$150,000 (“Proposed Procurement”)) shall be subject to Board approval as follows:

 - A. The Board shall determine whether the Property Procurement is necessary or advisable.
 - B. The Board shall consider which type of procurement vehicle is most appropriate (e.g., whether the lease or purchase and, if purchase, whether fixed

price, cost reimbursement or cost incentive) to COHBE's interest, and whether an RFP shall be used.

C. If an RFP is used, the Board and ED & CEO shall consider whether COHBE will conduct the vendor evaluation and selection process alone, or through a committee made up of appointees, subject matter experts, and/or organization personnel, which may include impacted stakeholders

For purposes of this Section 4, Proposed Procurement shall include procurement agreements, statements of work, sub-contracts and other arrangements to spend Federal grant funds under existing contracts.

5. COMPETITION. All procurement transactions shall define and subsequently utilize criteria to limit the pool of qualified bidders to a practical and manageable number, while still promoting open and free competition within such pool. Criteria used to limit the vendor pool to a practical number will be drafted and recommended by COHBE's staff, for approval by COHBE's Board. COHBE 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. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to COHBE, 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 COHBE. Any and all bids or offers may be rejected when it is in COHBE's best interest to do so.

COHBE shall evaluate and score/rank bidders once the proposals are returned for review to establish a "top X" number of vendors. Where applicable, COHBE will participate in vendor demonstrations and potential site visits, using defined criteria to further evaluate vendor performance against requirements, all for the purpose of selecting the proposal deemed to best advance COHBE's interests. The results of the RFP Process will be communicated to COHBE's board and the selection will be promoted across participating communities.

6. PROCUREMENT PROCEDURES. All procurements by COHBE shall comply with the requirements below:

A. COHBE will avoid purchasing unnecessary items.

B. When practical and appropriate, for purchases over \$150,000, an analysis will be made of lease and purchase alternatives to determine which would be the most economical and practical procurement for COHBE.

C. When practical and appropriate, formal solicitations for goods and services over \$150,000 will provide for all of the following:

(i) A clear and accurate description of the technical requirements for the material, product or service to be procured. Such a description shall not contain features which unduly restrict competition.

- (ii) Requirements and all other factors to be used in evaluating proposals submitted in response to solicitations.
- (iii) 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.
- (iv) When relevant, the specific features of "brand name or equal" descriptions that are to be included in responses submitted to solicitation.
- (v) The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement.
- (vi) Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient.

D. Reasonable efforts shall be made by COHBE to utilize qualified small businesses, minority-owned firms, and women's business enterprises, whenever practical.

E. The type of procuring instruments used (e.g., fixed price contracts, cost reimbursable contracts, purchase orders, and incentive contracts) shall, as determined by COHBE, be appropriate for the particular procurement and for promoting the best interest of COHBE for the project involved. COHBE shall not use the "cost-plus-a-percentage-of-cost" or "percentage of construction cost" methods of contracting.

F. Contracts shall be made only with responsible contractors who have the demonstrated 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.

G. COHBE has a separate Consultant Procurement Policy, which will be followed for the procurement of Personal/Professional Services Agreements.

H. COHBE shall, on request, provide for pre-award review by HHS under certain limited circumstances such as:

- (i) COHBE's procurement procedures or operation fails to comply with Applicable Federal Rules.
- (ii) The procurement is expected to exceed the then simplified acquisition threshold and is to be awarded without competition or only one offer is received.
- (iii) The procurement, which is expected to exceed the then simplified acquisition threshold specifies a "brand name" product

(iv) The proposed award exceeds the then simplified acquisition threshold and is to be awarded under a sealed bid procurement to other than the apparent low bidder .

(v) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the amount of the then simplified acquisition threshold.

7. CONTRACT PROVISIONS. COHBE's procurement contracts shall include, in addition to the usual and customary terms of a commercially reasonable agreement, and to the extent applicable, the following provisions:

A. Contracts in excess of the then simplified acquisition threshold shall set forth administrative, contractual, or legal remedies in instances in which the contractor violates or breaches the contract terms, and shall provide for such other remedial actions as may be appropriate.

B. All contracts in excess of the then simplified acquisition threshold shall provide for termination by COHBE, and shall set forth the conditions under which, and the manner by which, termination shall be effected and the basis for settlement (if any).

C. Except as otherwise required by statute, in the event that COHBE is required by the terms of a federal grant to contract (or subcontract) for construction or facility improvements, the contract(s) shall provide for COHBE to follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the amount to be paid under the construction contract or subcontract exceeds \$100,000, in which case HHS may accept the bonding policy and requirements of the recipient, provided HHS has made a determination that the Federal Government's interest is adequately protected.

D. All negotiated contracts (except those for less than the then simplified acquisition threshold) awarded by COHBE shall include a provision to the effect that COHBE the federal awarding agency, and the Comptroller General of the United States (or any of their duly authorized representatives) 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 (even including small purchases), awarded by COHBE shall contain the procurement provisions set forth in Appendix A to the OMB Circular A-110, 74.48 and Appendix A.

COHBE's procurement contracts shall require the vendor to agree that any and all sub-contracts into which the vendor enters for the purpose of satisfying its contractual obligations to COHBE will contain, to the extent applicable, any and all of the provisions set forth above in this Section 7, paragraphs A through E.

When appropriate, any procurement contract into which COHBE enters will state the maximum amount of money for which the COHBE may become liable to the third party

under the agreement, and will state the cost principles to be used in determining allowable costs in the case of cost-type contracts.

8. DEBARMENT AND SUSPENSION. COHBE shall not enter into a procurement contract with any person listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Non-procurement Programs in accordance with E.O.s 12549 and 12689, "Debarment and Suspension." Prior to entering into a procurement contract that exceeds the then small purchase threshold COHBE shall require the vendor to provide the required certification regarding its exclusion status and that of its principal employees.

9. PROCUREMENT SUBJECT TO NGAs, AS REVISED. To the extent COHBE intends to enter into a procurement contract for which COHBE's payment will be dependent upon federal grant funds, wherein applicable, such contract shall include provision making COHBE's obligations to pay the vendor contingent on the otherwise restricted grant funds being released through the issuance of original and/or revised NGAs.