

## I. PURPOSE OF PROCUREMENT POLICY

The Colorado Health Benefit Exchange, doing business as Connect for Health Colorado (“C4HCO”), is the recipient of federal grant funds the use of which is subject to certain Notices of Grant Awards, (“NGAs”), OMB Circulars A-110 and A-87, certain Health and Human Services (“HHS”) grant administration regulations, HHS Grants Policy Statement and certain HHS Standard Terms and Conditions (hereinafter collectively referenced as the “Applicable Federal Rules”). C4HCO also obtains funding pursuant to its enabling legislation (C.R.S. §10-22-101 *et seq.*), from non-federal grant funding sources, and generally from its operation as a state-based marketplace.

The purpose of this Procurement Policy is to establish prudent policies and procedures for the:

- (i) use of federal grant funds for the Procurement of supplies and other expendable property, equipment, real property and Professional Services consistent with the Applicable Federal Rules;
- (ii) use of other funds and revenues for the Procurement of supplies and other expendable property, equipment, real property and for Professional Services consistent with ethical, responsible and reasonable business practices; and
- (iii) Procurement of goods and services that fosters thoughtful business practices and meaningful Board of Directors (“Board”) oversight of the expenditure of federal grant funds and the funding of the Business Initiatives of C4HCO.

## II. KEY TERMS

*Procurement* is defined as the purchase of goods and services in a defined contractual relationship between C4HCO and one prime vendor. Defined contractual relationships generally anticipate incorporation and reference to an underlying statement of work (“SOW”) or a series of SOWs.

*Business Initiative* is defined as a course of action undertaken by C4HCO to implement a defined business need of the organization. A Business Initiative may trigger a Procurement with one vendor or a linked group of Procurements with one or more vendors.

*Statement of Work* is defined as a distinct product or service that is supplied by one prime vendor pursuant to a written agreement with the prime vendor. Each SOW should have defined begin and end dates, and fixed or estimated costs. Each SOW should be limited to single operational purpose. An SOW or an associated change request, ~~or~~ change order ~~or work~~ constitutes a Procurement under this Policy. In the event a defined SOW does not exceed the ~~simplified~~ simplified applicable acquisition threshold (even if performed by the same vendor under the same master services agreement), such SOW shall not require Board or Finance Committee approval.

*Professional Services* are defined as contracted services performed by a Subject Matter Expert (“SME”) generally remunerated on an hourly basis or on a fixed price basis as prudent business practice may dictate. Consultants providing Professional Services procured under this Policy are meant to enhance the employed workforce members of C4HCO and generally perform services not performed by C4HCO employees.

### **III. INTERPRETATION**

This Policy shall be construed and applied to promote C4HCO's compliance with the Applicable Federal Rules, as well as with all applicable state laws and regulations. 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 is intended to harmonize state and federal authority whenever possible. Further, this Policy sets forth internal guidelines for the benefit of C4HCO and its officers, directors, workforce members (as defined in the Workforce Member Handbook) 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 C4HCO or its interests.

### **IV. CODE OF CONDUCT**

C4HCO shall follow organizational policy regarding open records disclosure and confidentiality during the 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 C4HCO 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 C4HCO shall be subject to disciplinary action for violation of these standards. In all Procurement C4HCO shall avoid practices that are restrictive of competition. These include, but are not limited to:

- ✓ Using unreasonable requirements on firms in order for them to qualify to do business;
- ✓ Requiring unnecessary experience and excessive bonding or insurance coverages; and
- ✓ 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.

### **V. COORDINATED MONITORING & OVERSIGHT**

C4HCO shall utilize a coordinated process for maintaining a common repository of all agreements and Procurements to ensure record retention and associated documentation reflecting: (i) Board and/or Finance Committee approval (as necessary); (ii) senior management approval (as necessary); (iii) appropriate execution; (iv) use of commercially reasonable terms and conditions; (v) use of federally required contract terms (as applicable); (vi) proper evidence of invoicing and payment in C4HCO's accounting systems (including suitable documentation of delivery or

performance); (v) compliance with terms and conditions associated with the use of federal grant funds (as required); and (vi) general compliance with Applicable Federal Rules.

Oversight, periodic review and spot checks of compliance with the requirements of this Section V specifically, and this Policy generally shall be conducted at the direction of the CFO by C4HCO's Controller. As necessary, additional training or specific procedures shall be provided to C4HCO's workforce members to address non-compliance as directed by the CFO. Responsibility for oversight and application of this Procurement Policy shall reside with CFO with the assistance of the Controller, ~~the identified procurement contract~~SOW manager and General Legal Counsel.

## **VI. PROCUREMENTS IN EXCESS OF THE SIMPLIFIED ACQUISITION AND BUSINESS INITIATIVE THRESHOLDS**

For purposes of this Section VI, Procurements may include agreements, SOWs, sub-contracts and other arrangements to spend funds under existing contracts. The provisions in this section VI are meant to establish requirements for both the use of federal grant funds expended for individual Procurements and funds from all sources expended for a defined Business Initiative. Board approval (as recommended by the Finance Committee of the Board) is required for a Procurement in excess of the simplified acquisition threshold of \$150,000 when federal grant monies are used. Board approval (as recommended by the Finance Committee of the Board) is required for a Business Initiative in excess of \$250,000 regardless of the source of funds.

Requirements: For each Procurement opportunity involving expenditures of federal grants funds in excess of \$150,000 and/or a Business Initiative in excess of \$250,000, the Board (or appropriate Board Committee) shall provide direction and C4HCO shall appropriately document:

- ✓ Whether the Procurement/Business Initiative is necessary or advisable;
- ✓ Which type of procurement vehicle is most appropriate (*e.g.*, whether to lease or purchase and, if purchase, whether fixed price, cost reimbursement or cost incentive);
- ✓ Whether an RFP, RFS, RFI (or other similar mechanism/method) shall be used:
  - If an RFP is used, an identification of the selection process and the participants in the selection process (*e.g.* SMEs, stakeholders, Board Committees).

Additionally, Procurements or Business Initiatives shall be solicited with the following:

- ✓ A sufficiently detailed description of the technical requirements (functions to be performed or performance required, including acceptable characteristics or minimum acceptable standards) for the material, product or service needed. Such description shall not contain features which unduly restrict competition;

- ✓ A statement of C4HCO criteria used to evaluate the proposed Procurement consistent with the reasonable and prudent needs of the organization and the scope of the Procurement at issue;
- ✓ C4HCO shall maintain such records as are necessary to sufficiently document the Procurement; including (as appropriate):
  - The rationale for the method of Procurement;
  - The rational for the selection of contract type;
  - The basis for the contract price; and
  - Information regarding cost/price review and analysis.
- ✓ No contractual relationship shall be made with parties 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." Contractors with awards that exceed the Applicable Federal Rules small purchase threshold shall provide the required certification regarding its exclusion status and that of its principal employees.

Simplified Acquisition Threshold Application & Oversight: Applies to Procurements paid for with Federal funds with initial stated costs over ~~the term of a calendar year~~ a consecutive twelve month period expected to exceed \$150,000 for a discrete statement of work or a distinct work order, change request or change order. A series of work orders, change requests or change orders provided under a master service agreement shall not be aggregated for the purpose of determining whether the simplified acquisition threshold has been exceeded.

In the event an initial Procurement below the simplified acquisition threshold meets or exceeds such threshold during the term of the Procurement (or ~~one calendar year~~ a consecutive twelve month period, whichever is less) then management shall provide information to the Board and/or Finance Committee as may be reasonably prudent to meet the stated purposes of this Policy. For example, if the expected cost of a Procurement exceeds the simplified acquisition threshold by an immaterial amount, then no further action is warranted. ~~Material costs overruns for any Procurement that ultimately exceeds the simplified acquisition threshold shall be identified and addressed in a commercially prudent and reasonable manner, including providing information to the Board and/or Finance Committee consistent with the purpose of this Policy.~~

Business Initiative Threshold Application & Oversight: Applies to Business Initiatives with initial stated costs over the term of a calendar year expected to exceed \$250,000.

If the costs of a Business Initiative exceed the \$250,000 threshold ~~over one calendar year~~ a consecutive twelve month period, then management shall provide information to the Board

and/or Finance Committee as may be reasonably prudent to meet the stated purposes of this Policy. If the expected cost of a Business Initiative exceeds \$250,000 by an immaterial amount, then no further action is warranted. ~~Material costs overruns associated with a Business Initiative shall be identified and addressed in a commercially prudent and reasonable manner, including providing information to the Board and/or Finance Committee consistent with the purpose of this Policy.~~

Multi-Year Procurements and Business Initiatives: It may be cost effective to negotiate multi-year agreements in the purchase of goods, services, equipment, leased real property and leased equipment as circumstances warrant. In the event a multi-year Procurement is reasonable and cost-efficient and the cumulative value of such Procurement exceeds \$150,000, then management shall provide information to the Board and/or Finance Committee to meet the stated purposes of this Policy.

Material Cost Overruns and Budget Variances: Material cost overruns for any Procurement or Business Initiative that ultimately exceeds the applicable respective threshold shall be identified and addressed in a commercially prudent and reasonable manner, including providing information to the Board and/or Finance Committee consistent with the purposes of this Policy, including tracking and reporting material variances against C4HCO's budget.

Grant Requirements: Expenditure and use of federal grant funds should generally be limited to the terms, conditions and time period associated with such funds by matching expenditures to the defined grant terms and time period, if any. Prior approval for use of federal grant funds outside the terms and conditions of such grant shall be obtained from the granting agency and reasonable documentation retained to reflect such approval. To the extent C4HCO enters into a Procurement for which payment is dependent upon federal grant funds, wherein applicable, such Procurement shall include such provisions making C4HCO's obligations to pay expressly contingent on the grant funds being released through the issuance of original and/or revised Notices of Grant Awards.

Federal Agency Review: When federal funds are used AND exceed the simplified acquisition threshold ~~are anticipated to be expended to fund a new Procurement business relationship~~, C4HCO shall seek ~~pre-award~~ advanced review of the new business relationship by HHS (or such other federal agency, as applicable) when the:

- ✓ ~~Procurement~~ New business relationship is inconsistent with Applicable Federal Rules requiring a waiver or other evidence of approval from a federal oversight agency or entity;
- ✓ ~~Procurement~~ New business relationship ~~exceeds the simplified acquisition threshold and~~ is to be awarded without competition or only one offer is received;
- ✓ ~~Procurement, which is exceeds the simplified acquisition threshold,~~ New business

relationship specifies the use of a “brand name” product; or

- ✓ ~~Proposed award exceeds the simplified acquisition threshold and is to be awarded New business relationship is established through a~~ under-sealed bid ~~processurement~~ to other than the apparent low bidder.

## VII. ADDITIONAL PROCUREMENT PROCEDURES

Subject to practicality, economic feasibility and the application of prudent business practices all Procurements shall comply with the requirements below:

- ✓ Avoid purchasing unnecessary items;
- ✓ Utilization of qualified small businesses, minority-owned firms, and women's business enterprises;
- ✓ Use of products and services that conserve natural resources and protect the environment and are energy efficient;
- ✓ The type of procuring instruments used (*e.g.* fixed price contracts, cost reimbursable contracts, purchase orders, and incentive contracts) shall, as determined by C4HCO, be appropriate for the particular Procurement and for promoting the best interests of C4HCO for the project involved. C4HCO shall not use the "cost-plus-a-percentage-of-cost" or "percentage of construction cost" methods of contracting;
- ✓ Contracts should 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 and accessibility to other necessary resources;
- ✓ When relevant, the specific features of "brand name or equal" descriptions that are to be included in responses submitted to solicitation; and
- ✓ When appropriate and feasible, any Procurement into which C4HCO enters shall state the maximum amount of money for which the C4HCO may become liable to the third party, and shall enumerate the cost principles used in determining allowable costs in the case of cost-type contracts.

## VIII. COMPETITION

Procurement transactions shall define and utilize criteria as determined by C4HCO management to limit the pool of qualified bidders to a practical and manageable number, while still promoting



open and free competition within such pool. C4HCO shall be alert to organizational conflicts of interest, as well as noncompetitive practices among contractors that may restrict or eliminate competition. Awards shall be made to the bidder whose bid is responsive to the solicitation and is most advantageous to C4HCO, with price, quality and other factors considered. Solicitations shall clearly set forth all requirements that the bidder shall fulfill in order for the bid to be evaluated by C4HCO. Any and all bids may be rejected when it is in C4HCO's best interest to do so. Where applicable, C4HCO will participate in vendor demonstrations and potential site visits to further evaluate potential vendor performance against requirements for the purpose of selecting the proposal deemed to best advance C4HCO's interests.

## IX. CONTRACT PROVISIONS

Procurements shall include, in addition to the usual and customary terms of a commercially reasonable agreement as determined by legal counsel providing advice to C4HCO, and to the extent applicable, the following provisions:

- ✓ Administrative, contractual, or legal remedies in instances in which the contractor violates or breaches the contract terms, and other remedial actions as may be appropriate;
- ✓ Conditions under which, and the manner by which, termination shall be effected and the basis for settlement (if any);
- ✓ Except as may be otherwise required by statute, **in the event that C4HCO is required by the terms of a federal grant to contract** (or subcontract) for construction or facility improvements, the contract(s) shall provide for C4HCO 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;
- ✓ **Procurements in excess of the simplified acquisition threshold** shall include a provision to the effect that C4HCO, the federal agency awarding federal grant monies, 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;
- ✓ Ability to audit or assess performance, service levels or other metrics and provide for notice of material deficiencies with a process for cure, dispute resolution or other appropriate redress;
- ✓ Maximum obligation or liability of C4HCO using "not to exceed" conditions, caps or other

commercially reasonable methods to manage costs. Open-ended agreements (or SOWs) for time and materials should contractually provide a process under which submitted costs are reviewed and subject to correction by the CFO and designated accounting staff.

- Equal Employment Opportunity - All contracts shall contain a provision requiring compliance with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR 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. 276c) - All contracts and sub-grants in excess of \$2000 for construction or repair awarded by recipients and sub-recipients shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or 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 shall 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. The recipient shall 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 the recipients and sub-recipients of more than \$2000 shall 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 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction"). Under this Act, contractors shall 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 shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the Federal awarding agency.
- Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333) - Where applicable, all contracts awarded by recipients in excess of \$2000 for construction contracts and in excess of \$2500 for other contracts that involve the employment of mechanics or laborers shall include a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333),



as supplemented by Department of Labor regulations (29 CFR Part 5). Under Section 102 of the Act, each contractor shall 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 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 shall 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.

- Rights to Inventions Made Under a Contract or Agreement - Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.
- Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended - Contracts and sub-grants of amounts in excess of \$100,000 shall 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 shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) - Contractors who apply or bid for an award of \$100,000 or more shall 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 shall 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 recipient.
- Debarment and Suspension (E.O.s 12549 and 12689) - No contract shall be made to parties 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." This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principal employees.

#### **X. Single Distributor and Sole Source Procurements**

Procurement by noncompetitive proposals is Procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. Procurement by noncompetitive proposals may be used when one of the following circumstances applies:

- ✓ The item is available only from a single source;
- ✓ Exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- ✓ The funding source specifically authorizes the use of noncompetitive proposals;
- ✓ After solicitation of a number of sources, competition is determined inadequate; or
- ✓ In the exercise of appropriately documented prudent business judgment the demonstrable cost, administrative burden or other such business consideration would make solicitation from a number of sources unnecessary or unfeasible.

Sole source Procurements in excess of \$150,000 shall require Board approval with presentation of cost/price analysis or other information sufficient to allow informed Board review. [For clarity, once a contractual relationship has been established consistent with the requirements of this Policy additional Procurements from the same vendor shall not be subject to this Section X unless the subject matter of the Procurement is determined to be wholly unrelated to the prior provision of services with the existing vendor.](#)

#### **XI. Low Dollar Recurring Administrative Expenses / Reimbursements**

To manage a risk-based process for expediting low-risk, low-dollar recurring purchases C4HCO shall utilize a corporate credit card held by the Controller and CEO. Implementation of accounting procedures to review and approve monthly expenditures and such training as may be required to ensure appropriate use shall be established and periodically reviewed by the CFO and Controller.

C4HCO's Workforce Member Handbook shall control the procedures and policy for reimbursement of expenses as managed by the Controller. No written agreement shall be required for Procurements with an associated value less than \$5,000 or such other amount as may be established from time-to-time by the CFO as circumstances warrant.

## **XII. Consultant Procurement Provisions**

To the degree applicable, the foregoing Policy provisions shall apply to contracts or other arrangements with consultants providing Professional Services.

- ✓ Consultants will be hired via a competitive process. In this process, a vendor pool will be determined and proposals will be sought from qualified candidates.
- ✓ Due to the nature of consulting relationships, it may sometimes be in the best interest of the organization to establish vendor relationships based on specific factors such as: subject expertise, professional work experience, etc.
- ✓ C4HCO will not discriminate against any person offering professional services because of race, religion, color, sex, physical handicap unrelated to such person's ability to engage in the particular work, national origin, ancestry, or sexual orientation.
- ✓ Procurement from small, minority, women-owned, and Colorado-based businesses is encouraged.
- ✓ Consultants act as independent contractors and nothing contained in their consultant services contracts with shall be deemed to create an employer-employee relationship, including the requirement that they accept and follow C4HCO's Workforce Member Policies & Procedures. Consultants must submit appropriate documentation reflecting services provided sufficient to document appropriate payment to such consultants.
- ✓ For independent contractor consultants C4HCO shall use the then current Independent Contractor Agreement template as approved and modified from time to time by legal counsel. Where feasible, the following conditions shall apply:
  - No detailed control how services are performed;
  - No set hours of work;
  - Consultant to provide materials and tools to perform services;
  - No provision of benefits or withholding of taxes;
  - Minimal training provided;

- No permanent work station; and
  - Consultant *may* work for other organizations.
- ✓ The selection of consultants for projects will be undertaken with regard to the following criteria:
- For a scope of work expected to cost under \$150,000 annually, the CEO is authorized to review applicants and hire the consultant whose credentials are deemed to best match the work requirements.
  - For defined scopes of work expected to be at or greater than \$150,000 annually, review and approval by the Finance Committee of the Board is required.
  - Factors heavily weighted in consultant arrangements include referrals, references, subject matter expertise, experience and continuity.