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**Springfield Community Health Center**

**Procurement Policy**

**Date Last Updated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Board Approved: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

1. **Policy**

The Springfield Community Health Center (CHC) or (Health Center) is committed to ensuring that goods and services are purchased in a manner that provides open and free competition and is in compliance with the procurement standards found in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal awards located at 2 CFR Part 200 (as implemented by the Department of Health and Human Services (DHHS) at 45 CFR 75, state and local statutes and executive orders as applicable).

## This policy is applicable to all procurements of any non-employee services to be funded with federal funds. (can be applicable to all purchases – is only required for federal funds – Health Center should tailor policy accordingly).

* SEE \_\_\_\_ disbursement policy organizational approval threshholds

This policy references the simplified acquisition threshold (SAT) and micro-purchase threshold. These figures are updated for inflation periodically and will be subject to change. At least annually, the CHC will reference the Federal Acquisition Regulations to determine if these thresholds have changed and will update this policy accordingly.

Compliance with this policy is required to be documented for procurements with federal grant funds greater than the Simplified Acquisition Threshold (SAT) of $250,000.

1. **Accountability**

The following Health Center staff are responsible for ensuring compliance with and overseeing the following aspects of this board approved policy:

* Chief Financial Officer

1. **Code of Conduct**

The Health Center will maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award, and administration of contracts. The Health Center will also maintain written standards of conduct covering organizational conflicts of interest with a parent, affiliate, or subsidiary organization of the CHC that is not a state, local government, or Indian tribe. A conflict of interest exists when an employee, officer, agent, any member of his or her immediate family, or organization has a financial or other interest in or a tangible personal benefit from a firm considered for contract. The standards for conduct will provide for disciplinary actions to be applied for violations of such standards. (See the standards of conduct policy – describe location)

No CHC Board member, employee or agent will participate in the selection, award, or administration of a contract if a real or apparent conflict of interest would be involved.

No CHC Board member, employee, or agent will solicit or accept gratuities, favors or anything of monetary value from contractors, or parties to subcontracts. See Conflicts of Interest Policy.

In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, and invitations for bids and/or requests for proposals are excluded from competing for such procurements.

1. **General Procurement Standards**

The CHC will have procedures for procurement transactions which ensure the following:

* 1. Competition

All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards in this section. Some of the situations consider to be restrictive of competition include but are not limited to the following:

* Placing unreasonable requirements on firms in order for them to qualify to do business
* Requiring unnecessary experience and excessive bonding
* Noncompetitive pricing practices between firms or between affiliated companies
* Noncompetitive contracts to consultants that are on retainer contracts
* Organizational conflicts of interest
* Specifying only a “brand name” product instead of allowing “an equal” product to be offered
* Any arbitrary action in the procurement process

The CHC prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in cases where applicable Federal statutes expressly mandate or encourage geographical preference. However, when contracting for architectural and engineering services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

The CHC will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Additionally, the CHC will not preclude potential bidders from qualifying during the solicitation period.

* 1. Procedures for Procurement Transactions

The CHC will have written procedures for procurement transactions. These procedures must ensure that all solicitations:

* + - Solicitations for goods and services will include a clear and accurate description of the technical requirements for the material, product, or service to be procured (which will not unduly restrict competition).
    - May include a statement of the qualitative nature of the material, product, or service to be procured
    - When necessary, will set forth minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications will be avoided when possible. When it is impractical or uneconomical to make a clear and accurate description of technical requirements, the description may include a “brand name or equivalent” description to define the performance or other salient requirement of procurement. The specific features of the named brand which must be met will be clearly stated and identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

The CHC will identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

The CHC will not purchase unnecessary or duplicative items. The CHC will give consideration to consolidating or breaking out procurements to obtain a more economical purchase. When appropriate, the CHC will perform an analysis of lease and purchase alternatives to determine the most economical and practical procurement.

The CHC will determine the type of procuring instrument to be used (e.g. fixed price contracts, purchase orders, and incentive contracts) based on appropriateness for the particular procurement and for promoting the best interest of the program or project involved.

The CHC will only use a time and materials type contract after it is determined that no other type of contract is suitable, given that there is a set ceiling price which the contractor exceeds at their own risk. A high degree of oversight will be exerted by the CHC in these contracts to reasonably assure that the contractor is using efficient methods and effective cost controls. “Time and materials type contract” is defined as a contract whose cost to the CHC is the sum of the actual cost of the materials, direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

The CHC, in accordance with good administrative practice and sound business judgment, will solely be responsible for the settlement of all contractual and administrative issues which may arise out of procurements, such as source evaluation, protests, disputes, and claims.

To foster economy and efficiency, the CHC is encouraged to enter into state and local intergovernmental agreement or inter-entity agreements where appropriate, use Federal excess and surplus property in lieu of purchasing new when it is found feasible, and use value engineering clauses for construction projects when projects are large enough to offer cost reduction. Value engineering is defined as a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

* 1. Small and Minority Owned Business

The CHC will take all necessary affirmative steps to utilize small businesses, minority-owned firms, women’s business enterprises, and labor surplus area firms when possible.

Affirmative steps will include:

* + - * Placing the aforementioned businesses on solicitation lists
      * Assuring the aforementioned businesses are solicited whenever they are potential sources.
      * Dividing total requirements into smaller tasks or quantities when feasible to permit maximum participation of the aforementioned businesses.
      * Establishing delivery schedules, where the requirement permits, to encourage participation of the aforementioned businesses
      * Using the assistance of organizations such as the Small Business Administration and the Minority Business Development Agency when appropriate.
      * Requiring the prime contractor (if subcontracts are to be let) to take the affirmative steps listed in first five steps listed above.
  1. Contract Cost and Price

The CHC will document in the procurement files some form of cost or price analysis made in connection with every procurement action in excess of the SAT which is currently $250,000 including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the CHC must make independent estimates before receiving bids or proposals.

The CHC will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, the CHC will consider the complexity of the work to be performed, the risk taken on by the contractor, the investment made by the contractor, the amount of subcontracting, the quality of past performance, and area industry profit rates for similar work.

The CHC will use costs or prices based on estimated costs for contracts only to the extent they would be allowable under Subpart E (Cost Principles) of 45 CFR Part 75.

The CHC will not use the cost plus percentage of cost and percentage of construction cost methods of contracting.

* 1. Procurement Records

The CHC will establish and maintain procurement records and files sufficient to detail the history of the procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, justification for contractor selection / rejection, selection of contract type including justification when bids are not obtained, and the basis for the contract price.

* 1. Contract Administration

The CHC will maintain a system for contract administration that ensures contractor compliance with the terms, conditions and specifications of the contract and adequate and timely follow up of all purchases. The CHC will evaluate and document contractor performance in terms of whether the contractor has met the terms, conditions and specifications of the contract.

The CHC recognizes that standards in 45 CFR 75 do not relieve the entity of any contractual responsibilities under its contracts, and that the HHS awarding agency will not substitute its judgment for that of the CHC unless the matter is primarily a federal concern. Violations of law will be referred to the local, tribal, state, or Federal authority having proper jurisdiction.

For construction or facility improvement contracts or subcontracts exceeding the SAT, the bonding policy and requirements of the CHC may be accepted if the HHS awarding agency or the CHC has determined that the Federal interest is adequately protected. If this determination has not been made, the minimum bonding requirements are as follows:

* + 1. There must be a bid guarantee in the form of a firm commitment such as a bid bond, certified check, or other negotiable instrument from each bidder equivalent to five percent of the bid price as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time frame specified.
    2. There must be a performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor’s obligations under such contract.
    3. There must be a payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in execution of the work provided for in the contract.
    4. In situations where bonds are required, the bonds will be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR Part 223.

1. **Procurement Methods**

The CHC will use one of the following methods of procurement depending on the specifications of the purchase, set forth below:

* 1. Micro-Purchase

Procurement by micro- purchase is defined as the acquisition of supplies or services in which the aggregate dollar amount does not exceed $10,000 (Updated June 2018).

Requirements:

1. To the extent practicable, the CHC will distribute micro-purchases equitably among qualified suppliers.
2. If the CHC finds the price reasonable, it may award micro-purchases without soliciting competitive quotations.
3. Threshold applies to aggregate purchase cost rather than cost of individual items (for example, if total office supply cost is $11,000 for 10 items then purchase does not qualify as micro)
4. No cost or price analysis is required
   1. Small Purchases

Procurement by small purchase is defined as relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold which is currently set at $250,000 (FAR 2.101).

Requirements:

1. When using this method, the CHC must obtain price or rate quotations from an adequate number of qualified sources and will maintain support for rate quotes. (HC to define adequate number – at least two)
   1. Examples of qualified sources include the following:
      1. Internet search
      2. Vendor price listing
      3. Verbal quotes
2. $250,000 threshold should not be used as lower limit for allowing competition
3. No cost or price analysis is required
   1. Sealed Bids

Procurement by sealed bids (or formal advertising) occurs when bids are publicly solicited and a firm fixed price contract is awarded to the responsible bidder whose bid, conforming to all CHC terms and conditions for the procurement, is the lowest in price. This is the preferred method for construction if the following conditions are present:

Procurement cost is greater than the SAT of $250,000.

A complete, adequate, and realistic specification description is available.

Two or more responsible bidders are willing and able to compete for the business.

The procurement lends itself to a firm fixed price contract and the selection of the bidder can be made principally on price.

Requirements:

1. The CHC will solicit bids from an adequate (HC to define adequate number – at least two) number of known suppliers, giving them sufficient time to respond before the set opening bid date. *The bid date must be publically advertised if CHC is a State, Local, or Tribal government.*
2. In the invitation for bids, the CHC will include any specifications and pertinent attachments as well as define the items or services in order for the bidder to properly respond.
3. The CHC will open all bids at the time and place set forth in the invitation. *The bid must be publically if CHC is a State, Local, or Tribal government.*
4. The CHC will award a firm fixed price contract, in writing, to the responsive and responsible bidder which has the lowest price, taking into consideration factors specified in the bidding documents such as: payment discounts (where prior experience indicates they are usually taken advantage of), transportation costs, and life cycle costs.
5. If any or all bids are rejected, there will be a sound reason, which the CHC will document.
6. A cost and price analysis must be performed for these purchases, and the entity must make independent estimates before receiving bids or proposals.
   1. Competitive Proposals

Procurement by competitive proposals is conducted with more than one source submitting an offer, and either a fixed price or cost reimbursement type contract is awarded. Generally, this is used when conditions are not appropriate for the use of sealed bids.

Requirements:

1. Procurement cost must be greater than the SAT of $250,000.
2. The CHC will publicize requests for proposals and identify all evaluation factors and their relative importance, ensuring that any response to public proposal requests are considered to the maximum extent practical.
3. The CHC will solicit proposals from an adequate number of qualified sources. (HC to define adequate number – at least two)
4. The CHC will have a written evaluation method for conducting technical evaluations of the proposals received and for selecting recipients.
5. The CHC will award contracts to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.
6. The CHC may use competitive proposal procedures for procurement of professional services from architectural/engineering (A/E) firms when they are evaluated and chosen based on the level of qualification for the procurement services needed. This method, where price is not used as a selection factor, will be subject to negotiation of fair and reasonable compensation, and may only be used for professional services from A/E firms and no other types of services.
7. If any or all bids are rejected, there will be a sound reason, which the CHC will document.
8. A cost and price analysis must be performed for these purchases, and the entity must make independent estimates before receiving bids or proposals.
   1. Noncompetitive (Sole-Source) Proposals

Procurement by noncompetitive proposals is defined as procurement through solicitation of a proposal from only one source. This method will only be used when one or more of the following circumstances apply:

1. The item is only available from a single source.
2. A public exigency or emergency requiring the purchase will not permit a delay which would result from competitive solicitation.
3. The HHS awarding agency or pass-through entity expressly authorizes the sole-source procurement in response to a written request from the CHC.
4. After soliciting a number of sources, competition is determined to be inadequate.
5. Sole source purchases are applicable at any level when one of the aforementioned criteria is met
6. **HHS Review**

Upon request of HHS or other awarding agency, the CHC will make certain items available to review including technical specifications on proposed procurements where the HHS awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review will generally take place prior to the time the specification is incorporated into a solicitation document, thus it is called pre-procurement review. However, if the CHC desires to have the review after the solicitation is developed, it may, but such review by the HHS awarding agency or pass-through entity may be limited to the technical aspects of the proposed purchase.

Upon request of HHS or other awarding agency, the CHC will make available pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates in the following circumstances:

* Procurement procedures or operations fails to comply with the procurement standards
* Procurement is expected to exceed the SAT and is to be awarded without competition/one bid offer received
* Procurement is expected to exceed the SAT and specifies a “brand name” product
* Proposed contract is expected to exceed the SAT and is to be awarded to a contractor other than the lowest bidder under the sealed-bid method
* A proposed contract modification changes the scope of a contract or increases the contract amount by more than the SAT

1. **Contract Provisions and Administration**

The CHC will ensure that, as applicable, all contracts for procurements purchased with Federal funds contain the contract provisions specified 45 CFR Part 75 (HHS adoption of Uniform Grant Guidance) Appendix II which we have copied below for ease of reference.

In addition to other provisions required by the HHS agency, all contracts made by the CHC under the Federal award must contain provisions covering the following as applicable:

* For contracts in excess of the simplified acquisition threshold, which is currently set at $250,000, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
* All contracts in excess of $10,000 must address termination for cause and for convenience by the CHC including the manner by which it will be

effected and the basis for settlement.

* Equal Employment Opportunity: All contracts that meet the definition of “federally assisted construction contract” must include the “Equal Employment Opportunity” clause
* Contract Work Hours and Safety Standards Act (40 U.S.C. 3701–3708). Where applicable, all contracts awarded by the CHC in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR part 5). Under 40 U.S.C. 3702 of the Act, each contractor must 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 one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must 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.
* Davis Bacon Act: **When required by Federal program legislation** (this is not typical and required unless the terms and requirements of the grant make it applicable i.e. for a construction grant), all prime construction contracts in excess of $2,000 awarded by non-Federal entities must include a provision for compliance with the Davis – Bacon Act. In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The CHC must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The CHC must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland ‘‘Anti-Kickback’’ Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR part 3). The Act provides that each contractor or sub recipient must 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 or she is otherwise entitled. The CHC will report all suspected or reported violations to the Federal awarding agency.
* 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).
* 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 exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 45 CFR 75.213and 2 CFR part 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.’’ SAM Exclusions 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.
* Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding $100,000 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.

BKD Note: Most of the language in this policy is derived from The Uniform Grants Guidance located in 2 CFR 200 (as implemented by HHS at 45 CFR Part 75).