



# FEDERAL PROCUREMENT POLICY

## Contents

<b>Federal Grant Procurement Policy</b> .....	2
General Procurement Standards and Code of Conduct .....	2
Competition .....	3
Methods of Procurement .....	4
Procurement by Micro-Purchase Procedures .....	4
Procurement by Small Purchase Procedures.....	5
Procurement by Sealed Bids (Formal Advertising) .....	5
Procurement by Competitive Proposals.....	5
Procurement by Noncompetitive Proposals.....	6
Small and Minority Businesses, Women’s Business Enterprises, and Labor Surplus Area Firms .....	6
Contract Cost and Price .....	6
Federal Awarding Agency or Pass-Through Entity Review.....	7
Bonding Requirements .....	8
Contract Provisions .....	8

## Federal Grant Procurement Policy

These procedures are intended to serve as guidelines for the procurement of construction services for Calhoun-Liberty Hospital that involve the use of U.S. Housing and Urban Development Community Development Block Grant – Disaster Recovery (CDBG-DR) funds and Federal Emergency Management Agency (FEMA) funds. These guidelines meet state requirements and the standards established in Section 2 CFR 200, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards. The Calhoun-Liberty Hospital will maintain oversight to ensure that contractors procured under these guidelines perform in accordance with the terms, conditions and specifications of their contracts or purchase orders.

### General Procurement Standards and Code of Conduct

Calhoun-Liberty Hospital Association (herein referred to as “the hospital”) and its affiliated organizations maintains these standards of conduct covering conflict of interest and governing the performance of its employees engaged in the selection, award, and administration of the contracts as required by 2 CFR 200.318.

- No employee, officer, or agent must participate in the selection, award, or administration of a contract supported by a federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.
- The officers, employees, and agents of the hospital must neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts.
- The hospital certifies that it does not have a parent, affiliate, or subsidiary organization that is not a local government or tribe. In the event that organizational conflicts of interests are discovered, hospital staff and officers will not solicit or accept gratuities, favors, or anything of monetary value from the affiliate organization. Generally, bids and services that can be reasonably obtained elsewhere will not be procured from the affiliate organization.
- The hospital’s procedures will avoid acquisition of unnecessary or duplicative items. Consideration will be given to consolidating or breaking out procurements to obtain a more economical purchase, where practical. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.
- The hospital will award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.
- The hospital will maintain records sufficient to detail the history of procurement. These records will: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

- The hospital may use time and material type contracts only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and material type contract means a contract whose cost to a non-Federal entity is the sum of:
  - The actual cost of materials; and
  - Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

Recognizing that this formula generates an open-ended contract price, each contract will set a ceiling price that the contractor exceeds at its own risk. Further, the hospital will assert a high degree of oversight to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

- The hospital alone is responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. It is recognized that these standards do not relieve the hospital of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the hospital unless the matter is primarily a federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

## Competition

- All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of section CRF 200.319 (outlined in this section) and section 200.320 (outlined in the Methods of Procurement Section below). To ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, and invitations for bids or requests for proposals must be excluded from competing for such procurements. Some situations considered to be restrictive of competition include but are not limited to:
  - 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” instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and
  - Any arbitrary action in the procurement process.
- The hospital will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. It is recognized that nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) 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 following procedures apply to procurement transactions:

- The hospital will incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description will not, in competitive procurements, contain features which unduly restrict competition.
  - The description may include a statement of the qualitative nature of the material, product, or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications will be avoided if possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and
  - The hospital will identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.
- The hospital will ensure that any 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. Also, the hospital will not preclude potential bidders from qualifying during the solicitation period.

## Methods of Procurement

The following methods of procurement may be used by the hospital for purchases and expenses associated with federal funding. All methods of procurement will be subject to the requirements of Section 255.0525, F.S., regarding advertising for competitive bid proposals, where applicable. This includes:

- The solicitation of competitive bids or proposals for any state construction project that is projected to cost more than \$200,000 shall be publicly advertised once in the Florida Administrative Register at least 21 days prior to the established bid opening.
- For state construction projects that are projected to cost more than \$500,000, the advertisement shall be published in the Florida Administrative Register at least 30 days prior to the established bid opening and at least once in a newspaper of general circulation in the county where the project is located at least 30 days prior to the established bid opening and at least 5 days prior to any scheduled prebid conference.
- The bids or proposals shall be received and opened publicly at the location, date, and time established in the bid or proposal advertisement.
- If the location, date, or time of the bid opening changes, written notice of the change must be given, as soon as practicable after the change is made, to all persons who are registered to receive any addenda to the plans and specifications.

A construction project may not be divided into more than one project for the purpose of evading the requirements in this section.

## Procurement by Micro-Purchase Procedures

Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed \$10,000 (or \$2,000 in the case of acquisitions for construction subject to the Davis-Bacon Act). To the extent

practicable, the hospital will distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the hospital considers the price to be reasonable.

### **Procurement by Small Purchase Procedures**

Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold and are under \$100,000. If small purchase procedures are used, price or rate quotations will be obtained from an adequate number of qualified sources.

### **Procurement by Sealed Bids (Formal Advertising)**

Bids are publicly solicited, and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The following will be required for all sealed bids:

- The invitation for bids will be publicly advertised and bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids.
- The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services for the bidder to properly respond.
- The invitation for bids will include minimum criteria to define a responsible bidder, which will not restrict responses but instead ensure that the selected vendor has the experience needed to perform the work outlined in the scope.
- All bids will be publicly opened at the time and place prescribed in the invitation for bids.
- A firm fixed price contract award will be made in writing to the lowest responsive, and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs will be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of.
- Any or all bids may be rejected if there is a sound documented reason.

### **Procurement by Competitive Proposals**

The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. The following will be required for all competitive proposals:

- Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals will be considered to the maximum extent practical.
- Proposals must be solicited from an adequate number of qualified sources.
- The hospital will have a written method for conducting technical evaluations of the proposals received and for selecting recipients.

- Contracts will be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.

The hospital notes that it may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated, and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, will only be used in procurement of A/E professional services and will be compliant with section 287.055, F.S. It will not be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort. Procurement of grant administration services will be conducted through a separate process from other procurement and will comply with CDBG-DR Program requirements.

### **Procurement by Noncompetitive Proposals**

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

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

### **Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms**

The hospital will take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps will include:

- Placing qualified small and minority businesses and women's business enterprises on solicitation lists.
- Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources.
- Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises.
- Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises.
- Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.
- Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in in this section.

### **Contract Cost and Price**

The hospital will perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold 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 hospital will make independent estimates before receiving bids or proposals.

The hospital 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, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

Costs or prices based on estimated costs for contracts under the Federal award will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the hospital under 2 CFR 200. The hospital may reference its own cost principles that comply with the Federal cost principles.

The cost plus a percentage of cost and percentage of construction cost methods of contracting will not be used.

### **Federal Awarding Agency or Pass-Through Entity Review**

The hospital understands that it must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal 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 generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the non-Federal entity desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

The hospital will make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, if it is perceived that:

- The hospital's procurement procedures or operation fails to comply with the procurement standards in this part.
- The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation.
- The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product.
- The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement.
- A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.

The hospital may be exempt from the pre-procurement review of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.

The hospital understands that it may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third-party contracts are awarded on a regular basis.

The hospital may self-certify its procurement system, but it is recognized that self-certification will not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the hospital that it is complying with these standards. hospital entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

## **Bonding Requirements**

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the hospital provided that the Federal awarding agency or passthrough entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements below will be followed:

- A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
- 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.
- 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 the execution of the work provided for in the contract.

## **Contract Provisions**

The following contract provisions will be included in any contracts awarded using federal funding.

- All contracts will comply with 2 CFR 200.326 and Appendix II as it relates to contract clauses, where applicable.
- Contracts for more than the simplified acquisition threshold currently set at \$250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, 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 non-Federal entity including the manner by which it will be affected and the basis for settlement.
- The Calhoun-Liberty Hospital Association and Federal Agencies to be permitted to require changes, remedies, changed conditions, access and record retention, and suspension of work clauses approved by the governing body.
- **Equal Employment Opportunity.** Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment

Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

- **Davis-Bacon Act, as amended (40 U.S.C. 3141-3148).** When required by Federal program legislation, 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 (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). 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 non-Federal entity 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 non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
- **Copeland “Anti-Kickback” Act (40 U.S.C. 3145), 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 subrecipient 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 non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
- **Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).** Where applicable, all contracts awarded by the non-Federal entity 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.
- **Rights to Inventions Made Under a Contract or Agreement.** If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 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. 7401-7671q.) 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).
- **Energy Policy and Conservation Act (42 U.S.C. 6201).** Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Act.
- **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 governmentwide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), “Debarment and Suspension.” The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)**—Contractors that apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- **Section 3 Clause (24 CFR Part 135.38).** All section 3 covered contracts shall include the following clause (referred to as the section 3 clause):
  - The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
  - The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
  - The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the

section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

- The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.
- The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.
- Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.