**Procurement: Sample Policy and Procedure[[1]](#footnote-1)**

**Policy.**

[*PCA-HCCN name*] (“PCA-HCCN”) is committed to ensuring that goods and services are purchased in an effective and efficient manner that provides, to the maximum extent practicable, open and free competition, and that is in compliance with the provisions of applicable federal statutes and executive orders. PCA-HCCN will establish and maintain appropriate procedures addressing the procurement of goods and services with federal funds to accomplish this objective.

**Procedure.[[2]](#footnote-2)**

**1. Code of conduct.** PCA-HCCN will maintain written standards of conduct governing the performance of its directors, officers, employees, contractors and agents engaged in the award and administration of contracts.

1. No director, officer, employee, contractor or agent will participate in the selection, award, or administration of a contract supported by federal funds if a real or apparent conflict of interest would be involved.

* “Conflict” is defined as a situation under which 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.

1. No director, officer, employee, contractor or agent will solicit or accept gratuities, favors or anything of monetary value from contractors or parties to subcontracts.
2. Contractors that develop or draft grant applications or contract specifications, requirements, statements of work, invitations for bids and/or requests for proposals are excluded from competing for such procurements.
3. No director, officer, employee, contractor or agent will participate in the selection, award, or administration of a contract supported by federal funds if an organizational conflict would be involved.

* An “organizational conflict” exists when the PCA-HCCN is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization because of relationships with a parent company, affiliate, or subsidiary organization.

1. Violations of the code of conduct, whether by an officer, employee, director, or agent of PCA-HCCN shall result in disciplinary action against said individual(s).

**2. Written procurement procedures.** PCA-HCCN will establish written procurement procedures that will, at a minimum, provide the following:

1. PCA-HCCN will not purchase unnecessary items.
2. Where appropriate, PCA-HCCN will perform an analysis of lease and purchase alternatives to determine the most economical and practical procurement.
3. PCA-HCCN will award contracts to capable vendors who have not been debarred or suspended by the Federal Government (taking into account factors such as vendor integrity, past performance, and available resources).
4. Solicitations for goods and services will include a clear and accurate description of the technical requirements for the procurement (which will not unduly restrict competition in cases of competitive procurements); requirements which the bidder/offeror must fulfill and all other evaluation factors; a description of technical requirements in terms of performance required; specific features of “brand name or equal” descriptions; and other applicable requirements set forth in 45 C.F.R. Part 75.
5. PCA-HCCN will use positive efforts to utilize small businesses, minority-owned firms and women’s business enterprises.
6. PCA-HCCN will determine the type of procuring instrument to be used based on appropriateness for the particular procurement and for promoting the best interest of the program or project involved.
7. PCA-HCCN will contract with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. PCA-HCCN will consider factors such as integrity, past performance, financial and technical resources and accessibility to such resources.
8. PCA-HCCN, upon request and in accordance with the specifications set forth in 45 C.F.R. Part 75, will make available to DHHS, pre-award review and procurement documents.

**3. Maximizing competition.** PCA-HCCN will provide for full and open competition in contracting with third parties to the maximum extent feasible. Accordingly, unless a procurement qualifies as a micro-purchase or a sole source procurement can otherwise be justified, PCA-HCCN will seek competing bids in response to clear and accurate requests for proposals.

PCA-HCCN 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. In addition, PCA-HCCN will not preclude potential bidders from qualifying during the solicitation period.

PCA-HCCN will make contract awards to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to PCA-HCCN in terms of price, quality and other factors, as determined in the sole discretion of PCA-HCCN. As part of the bid evaluation process, PCA-HCCN will review and evaluate the bidder’s qualifications and experience, as appropriate based on the goods/services to be procured. PCA-HCCN will set forth all requirements that the bidder or offeror shall fulfill in order for the bid or offer to be evaluated. PCA-HCCN reserves the right to reject any and all bids or offers when it is in PCA-HCCN’s best interest to do so.

**4. Methods of procurement.** PCA-HCCN will select and use one of the following methods of procurement for each purchase and abide by the requirements of each:

1. *Procurement by micro-purchases.* This method of procurement involves the acquisition of supplies or services, the aggregate dollar amount of which does not exceed $3,000 (or $2,000 in the case of acquisitions for construction subject to the Davis-Bacon Act. To the extent practicable, PCA-HCCN will distribute micro-purchases equitably among suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.
2. *Procurement by small purchase procedures.* This method of procurement is allowed for purchases that do not cost more than the simplified acquisition threshold (currently $150,000). When using this method of procurement, PCA-HCCN shall obtain price or rate quotations from an adequate number (typically no fewer than three) of qualified sources.
3. *Procurement by sealed bids (formal advertising).* Where micro-purchase and small purchase procedures are not available and where otherwise appropriate, PCA-HCCN shall use the sealed bid method of procurement of goods and services.

When following this procurement procedure, PCA-HCCN shall solicit bids from an adequate number of known suppliers so as to maximize competition, and provide them sufficient response time prior to the date set for opening the bids.[[3]](#footnote-3) Where feasible and economical, PCA-HCCN shall publicize the solicitation through appropriate periodicals of general circulation and trade press. The bid invitation must include any specifications and pertinent attachments, and must define the items or services in order for the bidder to properly respond. All bids will be 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 bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must 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. PCA-HCCN may reject any or all bids if there is a sound documented reason.

1. *Procurement by competitive proposals*. Where micro-purchase and small purchase procedures are not available and where otherwise appropriate, PCA-HCCN shall use the competitive proposal method of procurement of goods and services. If PCA-HCCN elects to use this procurement method, the following requirements apply:
   1. Requests for proposals must be publicized and identify all evaluation factors and their relative importance;
   2. Proposals must be solicited from an adequate number of qualified sources using methods of publicity reasonably calculated to elicit the greatest number of proposals from responsible bidders;
   3. PCA-HCCN will have a written method for conducting technical evaluations of the proposals received and for selecting recipients; and,
   4. Contracts must be awarded to the responsible firm whose proposal is most advantageous to PCA-HCCN, with price and other factors considered.
2. *Qualifications based procurement*. PCA-HCCN may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby PCA-HCCN evaluates competitors’ qualifications 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, can only be used in procurement of A/E professional services.
3. *Sole source procurements*. PCA-HCCN may procure goods and services without competition (i.e., from a sole source) only in one of the following limited circumstances:
   1. The item is available only from a single source;
   2. A public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
   3. The Federal awarding agency or pass-through entity expressly authorizes the use of sole source procurement in response to a written request from the PCA-HCCN; or,
   4. After solicitation from a number of sources, competition is determined inadequate.

**5. Conducting cost/price analysis.** PCA-HCCN will perform a cost or price analysis for every procurement in excess of the simplified acquisition threshold (currently $150,000) including contract modifications. At a minimum, the cost/price analysis must include the basis for vendor selection. If applicable, it will include a justification for the lack of competition (i.e., sole source procurement); and the basis for the award cost or price.

**6. Procurement records and files.** PCA-HCCN will establish and maintain procurement records and files. For every procurement action, PCA-HCCN will document in the procurement files a detailed description of the scope of contracted services/goods; a justification for contracting for such services; PCA-HCCN’s solicitations for bids and relevant response; and some form of cost or price analysis made in connection with every procurement action. For purchases in excess of the small purchase threshold, PCA-HCCN will maintain records documenting the basis for contractor selection and, as applicable, justifying a “sole source” procurement, as well as the basis for award cost or price.

**7. Contract administration.** PCA-HCCN 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. PCA-HCCN will evaluate and document contractor performance in terms of whether the contractor has met the terms, conditions and specifications of the contract. PCA-HCCN will ensure that, as applicable, all contracts contain the contract provisions specified in 45 C.F.R. Part 75 Appendix II.

**8. Oversight and monitoring.** To facilitate contract administration, PCA-HCCN will include in all procurement contracts requirements that the contractor:

1. Notify and receive prior approval from PCA-HCCN in the event that there is cause for a material change in the scope of work or the approved budget for such services.
2. Develop, maintain and furnish programmatic records and reports which pertain, directly or indirectly, to the services provided by the contractor and which PCA-HCCN and/or DHHS may reasonably deem appropriate and necessary for the monitoring and auditing of the contract.
3. Prepare and maintain financial records and reports, supporting documents, statistical records, and all other books, documents, papers or other records pertinent to the contract for a period of three (3) years (or longer, if required by applicable state and/or federal law) (the “Retention Period”) from the date the contract expires or is terminated or, if an audit, litigation, or other action involving the records is started before the end of the Retention Period, until the end of the Retention Period or until the audit, litigation, or other action is completed, whichever is later.
4. Make available to PCA-HCCN, DHHS and the Comptroller General of the United States, or any of their duly authorized representatives, upon appropriate notice, such records, reports, books, documents, and papers pertinent to the products and services provided under the contract, as may be necessary for audit, examination, excerpt, transcription, and copy purposes, for as long as such records, reports, books, documents, and papers are retained.

**This policy and procedure shall be periodically reviewed and updated consistent with the requirements and standards established by the Board of Directors and PCA-HCCN management, federal and state laws and regulations, and applicable accrediting and review organizations.**

**Responsible parties:**

### Signature Date

### Executive Director

Signature Date

1. The Authors of these materials include attorneys at the law firm of Feldesman Tucker Leifer Fidell LLP. The sample documents offer general guidance based on federal law and regulations and do not necessarily apply to all PCAs-HCCNs under all facts and circumstances. Further, these materials do not replace, and are not a substitute for, legal advice from qualified legal counsel. [↑](#footnote-ref-1)
2. Authors’ note: Using the following sample as a guide, PCAs-HCCNs should tailor the procedure to reflect their own structures and operations. [↑](#footnote-ref-2)
3. Note: For state, local, and tribal governments, the invitation for bids must be publicly advertised. [↑](#footnote-ref-3)