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## PROCUREMENT AND PURCHASING

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### OVERVIEW

**Compliance with Federal Regulations** - Subgrantees shall use MDHS procurement procedures stated in this manual, which reflect applicable state and local laws and regulations, and conform to the standards set forth in 45 CFR Part 74 and Part 92, and Section 31-7-13 Mississippi Code of 1972, Annotated. These guidelines apply to purchases for contractual services, commodities, and equipment.

**EXCEPTION:** A general exception is allowed for subgrantees that are Institutions of Higher Learning and for other state agencies. Institutions of Higher Learning and other state agencies are required to follow the procurement requirements applicable to those particular entities. However, those procurement requirements must conform to the standards set forth in 45 CFR Part 74 and Part 92 or applicable federal law.

**Subgrantee's Use of Lower-Tier Subrecipients** - If the provisions of a subgrant agreement allow a lower-tier subrecipient to manage and administer subgrant-supported projects, the lower-tier subrecipient must be bound by the lower-tier subrecipient agreement to adhere to the MDHS Subgrantee Manual, applicable state and federal law, and all guidelines established by the MDHS Funding Division.

**Code of Conduct** - There can be no conflict of interest, real or apparent, in the award or administration of a contract supported by subgrant funds. The subgrantee shall maintain a written code or standards of conduct which shall govern the performance of their officers, employees or agents engaged in the award and administration of contracts supported by federal funds. See 45 CFR Part 74 and Part 92 or applicable federal law for further specific guidance.

**Open and Free Competition** - All procurement transactions shall be conducted in a manner that provides maximum open and free competition consistent with 45 CFR Part 74 and Part 92 or applicable federal law. Procurement procedures shall not restrict or eliminate competition. Examples of what is considered to be restrictive of competition include, but are not limited to, the following:

- Placing unreasonable requirements on firms/service providers in order for them to qualify to do business;
- Noncompetitive practices between firms/service providers;
- Organizational conflicts of interest; and
- Requiring unnecessary experience and excessive bonding requirements.

**Written Procurement Policies** - The subgrantee shall have written procurement procedures and may adopt by reference procedural requirements of 45 CFR Part 74 and Part 92 or applicable federal law.

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### PROCUREMENT GUIDELINES

Subgrantees are advised to pay particular attention to 45 CFR Part 74 and Part 92 or applicable federal law regulating procurement. Stated therein are the governing regulations and implementing guidelines for all procurement activity undertaken with grant funds. Some of those items, with particular applicability to MDHS subgrants, are:

#### Procurement Standards

1. Subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions and specifications of their contracts or purchase orders.
2. Procedures will allow for analysis of the most economical approach in purchasing, including lease versus purchase alternatives. Each proposed procurement must be reviewed to avoid the purchase of unnecessary or duplicate items.
3. Subgrantees will make awards 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.
4. Subgrantees will maintain records sufficient to detail the significant history of a procurement.
5. These standards do not relieve the subgrantee of any contractual responsibilities under its subgrants. The subgrantee is responsible, in accordance with good administrative practice and sound business judgement, for the settlement of all contractual and administrative issues arising out of any procurement entered in support of a subgrant. These include, but are not limited to, source evaluation, protests, disputes and claims.

#### METHOD OF PROCUREMENT

\_\_\_\_\_All procurement transactions shall be made by one of the following methods.

1. **PROCUREMENT BY SMALL PURCHASE PROCEDURES:** For procurement of services, supplies, or other property with an aggregate cost of at least \$3,500.00, but not more than \$15,000.00, written price or rate quotations shall be obtained from at least two qualified sources. The aggregate sum of all items being purchased is considered one purchase.
2. **PROCUREMENT BY SEALED BIDS:** Formal advertising in a newspaper of general circulation once each week for two consecutive weeks for competitive sealed bids is required for all purchases that exceed \$15,000.00. Bids may not be due less than seven working days following the date the last advertisement appears in the newspaper.

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3. **PROCUREMENT BY COMPETITIVE PROPOSALS:** Formally publicizing a request for proposals which normally results in conducting competitive negotiation with more than one source submitting an offer. This method is generally used when conditions are not appropriate for the use of sealed bids. All evaluation factors and their relative importance will be identified. There will be procedures for technical evaluations of the proposals and selection of an awardee. Awards are made to the proposal most advantageous to the program, with price and other factors considered.
  
4. **SOLE SOURCE PROCUREMENT:** Noncompetitive negotiation with a single source. In the purchase of noncompetitive items or services only available from one source, a certification of the conditions and circumstances requiring the purchase shall be filed by the subgrantee with the appropriate MDHS Funding Division Director. Upon receipt of such certification, the appropriate MDHS Funding Division Director shall forward the certification to the MDHS Executive Director for approval, then the certification will be forwarded to the Department of Finance and Administration which will authorize or deny the purchase.
  
5. **EMERGENCY PROCUREMENT:** The appropriate MDHS Funding Division Director may approve and the Executive Director may authorize, an emergency procurement under the conditions defined in state law, provided such emergency procurement shall be made with such competition as is practicable under the circumstances.

\*\* Explicit federal and state regulations apply to each procurement method. Subgrantees may proceed with procurement activities only after careful study of the regulations reveals all requirements have been met.

**Competitive Purchasing**

**(a) Purchases Under \$3,500**

Purchases which do not involve an expenditure of at least Three Thousand Five Hundred Dollars (\$3,500), exclusive of freight or shipping charges, may be made without advertising or otherwise requesting competitive quotes; provided, however, that nothing contained in this paragraph shall be construed to prohibit any agency or governing authority from establishing procedures which require competitive quotes on purchases under Three Thousand Five Hundred Dollars (\$3,500).

**(b) Purchases Between \$3,500 and \$15,000**

Purchases which involve an expenditure of at least Three Thousand Five Hundred Dollars (\$3,500), but not more than Fifteen Thousand Dollars (\$15,000) exclusive of freight and shipping charges, may be made from the lowest and best vendor without publishing or posting advertisements for bids, provided at least two competitive written quotes have been obtained.

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The term “competitive written quotes” means a quote submitted on a quote form furnished by the subgrantee and signed by authorized personnel representing the vendor, or a quote submitted on a vendor’s letterhead or quote form signed by authorized personnel representing the vendor. Quotes obtained from a magazine, newspaper or internet advertising are not acceptable.

**(c) Purchases Over \$15,000**

Purchases which involve an expenditure of more than Fifteen Thousand Dollars (\$15,000) exclusive of freight and shipping charges shall be made from the lowest and best bidder after advertising for competitive sealed bids once each week for two consecutive weeks in a regular newspaper published in the county or municipality in which such agency or governing authority is located. The date, as published, for the bid opening shall not be less than seven working days after the published notice has been completed. The notice shall state the time and place at which bids shall be received; types of supplies, and/or equipment to be purchased, and the contact person. If plans or specifications are not published, notice should state where copies may be obtained. Specifications shall be written so as not to exclude any supplier.

**(d) Sole Source/Noncompetitive Purchases**

Noncompetitive items are items available from one source only.

In connection with the purchase of noncompetitive items only available from one source, a certification of the conditions and circumstances requiring the purchase shall be filed by the subgrantee with the appropriate MDHS Funding Division Director. Upon receipt by the MDHS Funding Division, the certification will be forwarded to the MDHS Executive Director for approval of the request for a sole source procurement to be forwarded to the Department of Finance and Administration (DFA) for authorization. Only after receiving authorization from DFA will the purchase be deemed a sole source procurement. All authorizations must be received prior to any procurement transactions. The appropriate MDHS Funding Division Director and the MDHS Executive Director may approve, and the Department of Finance and Administration may authorize, a sole source procurement under the conditions defined in state law, provided that the sole source procurement shall be made according to the established purchasing rules and regulations and shall not be made so as to circumvent the competitive purchasing requirements.

**(e) Purchase of Used Equipment**

Subgrantees who would like to purchase used equipment shall submit a written request and justification to the appropriate MDHS Funding Division Director for approval before proceeding with the purchase. This is in addition to the established requirements set out in the Procurement and Purchasing section and the Inventory Management section of this manual.

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**(f) Purchases Made Under State Contract**

Agencies that can purchase under state contract can do so without prior approval or obtaining written quotes. All other purchases must follow the guidelines outlined in the Purchasing Procedures.

**(g) Subgrantee Files**

Each subgrantee must maintain adequate files to support any purchases made. A copy of the quotes that were obtained (purchases between \$3,500 and \$15,000) or a copy of the legal notice (purchases over \$15,000) must also be on file to support the choice of lowest and/or best bid. The subgrantee must provide adequate justification if the purchase is not awarded to lowest and/or best bidder.

Purchases made by formal bid process or otherwise shall be public record to the extent provided in Section 25-61-1 et seq. Mississippi Code of 1972, Annotated.

Information pertaining to the results of any bid may be reviewed at the subgrantee's offices at any time during normal working hours subsequent to the time of the bid opening. This authority shall be granted only to any business or person who has submitted bids on the particular transaction. The subgrantee may restrict the availability of the bids during the evaluation process so as to improve the efficiency of the evaluation and award process. Businesses or persons not participating in the process will not be permitted access to any applicable file until after an award is made. All information and documents applicable to the awarded contract shall be available to any business or person; provided, however, that records furnished by third parties which contain trade secrets or confidential commercial or financial information shall not be subject to inspection, examination, copying or reproduction until notice to said third parties has been given, but such records shall be released within a reasonable period of time unless the said third parties shall have obtained a court order protecting such records as confidential.

**(h) Emergency Procurement**

Emergency procurement is limited to only those supplies, equipment or services required to meet the emergency. Circumstances that could meet the definition of an emergency are listed in section 31-7-1 (f) MS Code of 1972, Annotated. Prior to making an emergency procurement, a written justification of the circumstances attributing to the emergency must be submitted to the appropriate MDHS Funding Division. Upon receipt by the MDHS Funding Division, the justification will be forwarded to the MDHS Executive Director for authorization of the request for an emergency procurement. The MDHS Executive Director shall determine that an emergency exist in regard to the purchase, so that the delay incident to giving opportunity for competitive bidding would be detrimental to the interest of the state. Authorization must be received prior to any procurement transactions and purchases shall only be made for the purpose of meeting the needs of the emergency. The appropriate MDHS Funding Division Director may approve and the MDHS Executive Director may authorize, emergency purchases under the conditions defined in state law, provided that such emergency purchases shall be made according to the established purchasing rules and regulations and shall not be made so as to circumvent the competitive purchasing requirements.