

**BOARD OF DIRECTORS OF THE
NEW MEXICO HEALTH INSURANCE EXCHANGE**

Policy Title: Procurement Policy

Issue Date: March 21, 2014

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I. Authority

The New Mexico Health Insurance Exchange Act provides that the New Mexico Health Insurance Exchange (NMHIX) is a non-profit public corporation. The Act further provides that the NMHIX is governed by a Board of Directors and is exempt from the New Mexico Procurement Code. The Board of Directors adopts this Procurement Policy to ensure that NMHIX procurement of services and items of tangible personal property meets strict standards of transparency and accountability, and to ensure that the NMHIX is a conscientious steward of public money involved in the operations of the NMHIX.

II. Procurement Policy

- A. **General.** The NMHIX generates operational funds necessary for its administrative expenses as provided in the New Mexico Health Insurance Exchange Act and in accordance with NMSA 1978, § 59A-23F-4. The purpose of this policy is to establish the procedures by which NMHIX may efficiently expend funds for the procurement of services and items of tangible personal property in a manner consistent with all applicable state and federal rules.
- B. **Authority to Contract Delegated to Chief Executive Officer.** The NMHIX Board delegates authority to procure services and items of tangible personal property to the Chief Executive Officer (CEO) of the NMHIX, and to the staff of the NMHIX as directed by the CEO.
1. In accordance with Section 4.10 of the NMHIX Plan of Operation, as it may be amended from time to time, the CEO may contract with vendors and procure services and items of tangible personal property necessary to meet NMHIX obligations and directives. This authority is subject to oversight of the Board and shall not be exercised in excess of any limitations and restrictions imposed by the Board.
- C. **Limitations and restrictions.**

1. The CEO shall regularly report all procurement to the Board. The report shall be made at all Board meetings, and shall include: (1) a list of current contracts, identifying the contractor, amount spent on the contract to date, term of the contract, and maximum amount payable under the contract, if any, and (2) a register of checks issued by the NMHIX to make payments pursuant to the current contracts.
2. The CEO may procure services and items of tangible personal property in an amount not exceeding or not expected to exceed sixty thousand dollars (\$60,000) without prior Board authorization. Any contract that exceeds or is expected to exceed sixty thousand dollars (\$60,000) over the lifetime of the contract shall be approved by the Board before execution of the contract. Before a contract is amended to exceed sixty thousand dollars (\$60,000) the amendment shall be approved by the Board.
3. After consultation with the Finance Committee, the CEO may make purchases to address emergency conditions in excess of the limitations of this Policy, and without prior Board authorization, if the CEO determines that such a purchase is necessary to avoid or prevent a threat to public health, welfare, safety, or property. The determination shall be in writing and shall be included in the procurement file. The CEO shall use due diligence in determining the basis for the emergency procurement, in the selection of the contractor, and in establishing the terms of the contract. The CEO shall inform the Board of the emergency procurement at the next scheduled Board meeting.
4. Contracts shall generally be for a term of one year or less, with the possibility of additional terms, not to exceed a total of five years. A contract may have a term of more than one year, provided that the CEO explains the reason for the extended term and places the determination in the procurement file.

D. Competitive procurement.

1. At all times, the NMHIX shall procure services and items of tangible personal property in a manner to provide, to the maximum extent practical, open and free competition, to provide for the fair and equitable treatment of all persons involved in procurement, to maximize the purchasing value of NMHIX funds, and to provide safeguards for maintaining a procurement system of quality and integrity.
2. The NMHIX shall use the most appropriate method of procurement for the services or items of tangible personal property to be procured, given the circumstances.

3. For all procurement exceeding or expected to exceed sixty thousand dollars (\$60,000), and where feasible to do so, the NMHIX shall use a competitive sealed bid process or a competitive sealed proposal process.

i. Competitive sealed bids.

1. Competitive sealed bids may be used when the award of a contract will be made to the lowest price responsive bidder on the basis of price and other quantifiable factors.

2. An invitation for bids shall be issued publicly, posted on the NMHIX website, and shall include:

a. The specifications for the services or items of tangible personal property to be procured;

b. The process for evaluating the bids;

c. The factors on which the bids will be evaluated and the contract awarded;

d. The date, time, and place where the bids are to be submitted; and

e. The date, time, and place where the bids will be publicly opened.

3. All invitations for bids shall provide a reasonable amount of time for prospective bidders to prepare and submit bids.

4. Bids shall be submitted to the NMHIX in a sealed envelope marked with the bidder's name.

ii. Competitive sealed proposals.

1. Competitive sealed proposals may be used when the award of the contract may be based on reasons other than price or other quantifiable factors, and the CEO has made a determination that use of competitive sealed bids is not practicable or advantageous for the NMHIX.

2. A request for proposals shall be issued publicly and shall include:

- a. The specifications for the services or items of tangible personal property to be procured;
 - b. Proposed contractual terms and conditions applicable to the procurement;
 - c. The process for evaluating the proposals;
 - d. The factors on which the proposals will be evaluated and the relative weight to be attributed to those factors; and
 - e. The date, time, and place where the proposals are to be submitted.
3. All requests for proposals shall provide a reasonable amount of time for prospective bidders to prepare and submit proposals.
4. All requests for proposals shall identify a Procurement Administrator, who shall lead the procurement. The Procurement Administrator shall be the sole person authorized to communicate with offerors or any other person concerning the procurement.
5. Proposals received in response to a request for proposals shall be thoroughly evaluated by an Evaluation Committee. Members of the Evaluation Committee shall not communicate outside of the Evaluation Committee about the proposals, the evaluation process, or any other matter concerning the procurement from the date the request for proposals is issued until the Evaluation Committee informs the Board or a Board committee about the results of its evaluation. All communications made on behalf of the Evaluation Committee shall be made by the Procurement Administrator. Members of the Evaluation Committee shall affirmatively review and comply with all conflict of interest policies in this Procurement Policy and in the NMHIX Code of Conduct: Governing Principles and Conflict of Interest.
6. NMHIX Board members and staff shall not serve as references for an offeror.
7. The award shall be made to the offeror whose proposal is the most advantageous to the NMHIX.

4. NMHIX is not required to use the competitive sealed bid or competitive sealed proposal process under the following circumstances: (1) the expected value of the contract is sixty thousand dollars (\$60,000) or less, (2) an emergency or exigent condition exists that will not permit a delay resulting from competitive solicitation, or (3) the services or items of tangible personal property are only available from a single source. In such circumstances, the NMHIX may use other methods of procurement, provided that the NMHIX shall:
 - i. Procure the services or property with competition as is practicable under the circumstances;
 - ii. Conduct a good faith review of available sources;
 - iii. Obtain, when possible, a quotation or bid regarding the goods or services from at least three qualified and interested parties;
 - iv. Conduct a cost or price analysis; and
 - v. Conduct negotiations, as appropriate, regarding price, delivery, quantity, and other terms of the procurement.

5. Prior to amendment of any contract, the CEO shall ensure that the amendment is consistent with the procurement procedures utilized for the original contract.
 - i. If a contract was procured without a competitive sealed bid or proposal because the expected value of the contract was sixty thousand dollars (\$60,000) or less, the contract shall not be amended to increase the value of the contract in excess of sixty thousand dollars (\$60,000). Instead, the goods or services shall be the subject of a new procurement.
 - ii. If a contract was procured without a competitive sealed bid or proposal because of an emergency or exigent condition, or because the goods or services were available from only one source, the contract shall not be amended to extend the term or increase the value of the contract unless the emergency or exigent circumstances still exist or if the goods or services are still available from only one source.
 - iii. The scope of services for the amendment shall be consistent with the scope of services described in the original procurement.

E. Procurement measures consistent with federal rules and regulations.

1. NMHIX shall comply with federal rules and regulations when procurement of

services and tangible personal property involves the use federal funds. NMHIX shall comply with those procurement standards set forth in 45 C.F.R. 74 and 45 C.F.R. 92.36, including as follows:

- i. NMHIX shall avoid purchasing unnecessary items.
 - ii. Where appropriate, NMHIX shall make an analysis of lease and purchase alternatives to determine which would be the most economical and practical procurement.
 - iii. Solicitations for goods and services shall provide for all of the following:
 1. A clear and accurate description of the technical requirements for the material, product, or service to be procured. In competitive procurements, such a description shall not contain features which unduly restrict competition.
 2. Requirements which the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals.
 3. A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.
 4. The specific features of “brand name or equal” descriptions that bidders are required to meet when such items are included in the solicitation.
 5. The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement.
 6. Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient.
 - iv. NMHIX shall make positive efforts and shall take all required steps to utilize small businesses, minority-owned firms, and women's business enterprises, whenever possible.
2. NMHIX shall determine the appropriate type of procuring instrument (e.g., hourly rate, fixed price contracts, cost reimbursable contracts, purchase orders, and incentive contracts) which shall be appropriate for the particular procurement and

for promoting the best interest of the program or project involved. The “cost-plus-a-percentage-of-cost” or “percentage of construction cost” methods of contracting shall not be used.

3. Contracts shall be made only with responsible contractors who possess the potential 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 or accessibility to other necessary resources. In certain circumstances, contracts with certain parties are restricted by Executive Orders 12549 and 12689, “Debarment and Suspension.”

F. Protest or complaint.

1. Any person who is aggrieved by a procurement action of the NMHIX may file a complaint with the Exchange.
2. Complaints may be made orally, but a formal complaint shall be made in writing and shall (1) describe in detail the circumstances giving rise to the complaint, (2) be signed by the person responsible for submitting the complaint, and (3) be submitted to the Exchange within ninety (90) days of the incident giving rise to the complaint. The Exchange shall assist a complainant who needs or requests assistance in formalizing an oral complaint.
3. The Exchange shall promptly review the complaint and shall attempt to resolve the circumstances giving rise to the complaint and respond to the complainant.
4. If the aggrieved party is not satisfied with the resolution, the aggrieved party may notify the CEO directly of its disagreement with the resolution. The CEO may:
 - i. Direct further investigation of the complaint;
 - ii. Confirm or reject the Exchange’s resolution of the complaint; or
 - iii. Take further action as deemed appropriate.
5. The CEO shall periodically report to the Board regarding the resolution of procurement complaints against the Exchange, to determine if the Board should take action to address significant or recurring issues.

G. Conflict of interest. NMHIX hereby enacts the following standards of conduct governing the performance of its employees engaged in the award and administration of contracts:

1. No employee, officer, or agent of NMHIX shall participate in the selection, award, or administration of a contract if a real or apparent conflict of interest would be

involved. For the purposes of this Policy, such a conflict would arise when the employee, officer, or agent, or 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 the firm selected for an award. The officers, employees, and agents of NMHIX shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subagreements, unless the gift is an unsolicited item of nominal value. Disciplinary action, up to and including dismissal, may result from violations of these standards by NMHIX officers, employees, or agents.

- H. **Non-discrimination.** NMHIX will not discriminate against any prospective contractor 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.
- I. **Interpretation.** This Policy shall be construed and applied to promote NMHIX's compliance with applicable federal and state laws, rules, and regulations. This Policy establishes internal guidelines for the benefit of NMHIX and its officers, directors, employees, representatives, 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 NMHIX or its interests.

PASSED, APPROVED, AND ADOPTED this 18th day of May, 2018.

NEW MEXICO HEALTH INSURANCE EXCHANGE BOARD

Approved by:

A handwritten signature in blue ink, appearing to read "James R. Damron MD".

Dr. James R. Damron
Chair