



Policy Title: Procurement Policy

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I. Authority

The New Mexico Health Insurance Exchange Act provides that the New Mexico Health Insurance Exchange, also known as beWellnm, is a non-profit public corporation. The Act further provides that beWellnm 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 beWellnm procurement of services and items of tangible personal property meets strict standards of transparency and accountability, and to ensure that beWellnm is a conscientious steward of public money involved in the operations of beWellnm.

II. Procurement Policy

A. General. beWellnm has received federal grant funds the use of which is subject to certain notice of grant award statements (NGAs), Office of Management and Budget (OMB) circulars, including OMB Circular A-110, certain Health and Human Services Department (HHS) grant administration regulations found in 45 C.F.R. Part 74 and Part 92, the HHS Grants Policy Statement dated January 1, 2007, and other applicable federal or state rules. beWellnm may also generate or receive funds from other sources, as described in NMSA 1978, § 59A-23F-4. The purpose of this policy is to establish the procedures by which beWellnm may efficiently expend grant funds and other 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 beWellnm Board delegates authority to procure services and items of tangible personal property to the Chief Executive Officer (CEO) of beWellnm, and to the staff of beWellnm as directed by the CEO.

1. In accordance with Section 4.10 of the beWellnm 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 beWellnm 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 beWellnm 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 one hundred thousand dollars (\$100,000) without prior Board authorization. Any contract that exceeds or is expected to exceed one hundred thousand dollars (\$100,000) over the lifetime of the contract shall be approved by the Board before execution of the contract. Before a contract is amended to exceed one hundred thousand dollars (\$100,000) 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, beWellnm 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 beWellnm funds, and to provide safeguards for maintaining a procurement system of quality and integrity.

2. beWellnm 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 one hundred thousand dollars (\$100,000), and where feasible to do so, beWellnm 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 beWellnm 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 beWellnm 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 beWellnm.

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. Proposals shall be submitted to beWellnm in a sealed envelope marked with the bidder's name.
 5. The award shall be made to the offeror whose proposal is the most advantageous to beWellnm.
4. beWellnm 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 one hundred thousand dollars (\$100,000) 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, beWellnm may use other methods of procurement, provided that beWellnm 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.

E. Procurement measures consistent with federal rules and regulations.

- 1. beWellnm shall comply with federal rules and regulations when procurement of services and tangible personal property involved the use federal funds. beWellnm 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. beWellnm shall avoid purchasing unnecessary items.
 - ii. Where appropriate, beWellnm 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. beWellnm 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. beWellnm 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 beWellnm 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:
 1. Direct further investigation of the complaint;
 2. Confirm or reject the Exchange's resolution of the complaint; or
 3. 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. beWellnm 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 beWellnm 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 beWellnm 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 beWellnm officers, employees, or agents.

H. Non-discrimination. beWellnm 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. beWellnm shall require contractors to comply with Executive Order 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor." (45 CFR Appendix E)

I. Interpretation. This Policy shall be construed and applied to promote beWellnm's compliance with applicable federal and state laws, rules, and regulations. This Policy establishes internal guidelines for the benefit of beWellnm 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 beWellnm or its interests.