

PROCUREMENT TECHNICAL REQUIREMENT

PROCUREMENT AND SELECTIVE CONTRACTING UNDER MANAGED CARE

Introduction

The assumption of managed care responsibilities for specialized Medicaid mental health, developmental disabilities and/or substance abuse services has implications for the procurement and selective contracting activities of Community Mental Health Service Programs (CMHSPs) and Regional Substance Abuse Coordinating Agencies (RSACAs). Soliciting providers and programs for the service delivery system, acquiring claims processing capabilities, enhancements to management information system capacity, or obtaining general management's services to assist in the administration of the managed care program, must be done with due deliberation and sensitivity to procurement and contracting issues.

Procurement of Automatic Data Processing Services and Comprehensive Administrative or Management Services

The Michigan Department of Community Health's (MDCH) plan to make sole source "sub-awards" for the administration and provision of Medicaid mental health, developmental disability and substance abuse services raises questions about the applicability of federal procurement regulations to CMHSP and RSACA procurement and contracting activities. Federal regulations regarding procurement are described in the Code of Federal Regulations, (45 CFR Part 74; 42 CFR § 434), Office of Management and Budget Circular A-110, and State Medicaid Manual Part 2 (Sections 2083 through 2087).

In general, these regulations and requirements give the State fairly wide latitude in determining the procedural aspects and applicable circumstances for procurement processes. However, the MDCH's preliminary interpretation of these regulations suggests that procurement for significant automatic data processing services related to the operation of the Medicaid carve-out program, and contracts for comprehensive management services (so-called MSO or ASO arrangements) must be conducted in compliance with federal procurement requirements outlined in the documents listed above.

Procurement and Contracting for Service Providers

CMHSPs and RSACAs will also be soliciting providers to furnish programs, services and/or supports for Medicaid recipients needing mental health, developmental disability or substance abuse services. When soliciting providers, it should be the objective of each CMHSP or RSACA to acquire needed services and supports at fair and economical prices, with appropriate attention to quality of care and maintenance of exiting-care relationships and service networks currently used by Medicaid recipients. Procurement processes should be used to solicit such services. Depending on the circumstances (e.g., local area market conditions, kind or quantity of services needed, etc.) various methods for selecting providers may be used including:

1. Procurement for Selective Contracting¹

The CMHSP or RSACA (as the managing entity) purchases services from a limited number of providers who agree to fulfill contractual obligations for an agreed upon price. The managing entity identifies the specific services to be provided, seeks proposals/price bids, and awards contracts to the best bidders. Contracts are let only with a sufficient number of providers to assure adequate access to services. The prospect of increased volume induces providers to bid lower prices.

2. Procurement to Obtain Best Prices Without Selective Contracting

Under an “any willing and qualified provider” process, bids can be solicited and used to set prices for a service, and then contracts or provider agreements can be offered to any qualified provider that is willing to fulfill the contract and meet the bid price.

(NOTE: A procurement process must be used when the managing entity is planning to restrict or otherwise limit the number of providers who can participate in the program.)

3. Non-Competitive Solicitation and/or Selection of Providers

Under certain circumstances, the managing entity may select providers without a competitive procurement process. These circumstances are:

- The service is available only from a single source;
- There is a public exigency or emergency, and the urgency for obtaining the service does not permit a delay incident to competitive solicitation;
- After solicitation of a number of sources, competition is determined inadequate;
- The services involved are professional services (e.g., psychological testing) of limited quantity or duration;
- The services are unique (e.g., financial intermediaries for consumers using vouchers or personal service budgets) and/or the selection of the service provider has been delegated to the consumer under a self-determination program; and

¹ Competitive procurement is usually pursued through either a COMPETITIVE SEALED BIDDING method (the process of publicizing government needs, inviting bids, conducting public bid openings, and awarding a contract to the lowest responsive and responsible bidder) or a COMPETITIVE SEALED PROPOSAL process (method of publicizing government needs, requesting proposals, evaluating proposals received, negotiating proposals with acceptable or potentially acceptable offerors, and awarding the contract after consideration of evaluation factors in the RFP and the price offered).

- Existing residential service systems, where continuity of care arrangements are of paramount concern.

In these situations, the managing entity may employ noncompetitive negotiation to secure the needed services. The single- or limited-source procurement process involves soliciting interest and negotiating with a single or limit set of providers. Again, this may be used where competition for a service is deemed inadequate or when the uniqueness of the services or other considerations limits competitive procurement possibilities.

Whether a competitive procurement or noncompetitive solicitation process is used, the managing entity must ensure that organizations or individuals selected and offered contracts have not been previously sanctioned by the Medicaid program resulting in prohibition of their participation in the program.

Checklists for Procurement
(adapted from Section 2087 of the State Medicaid Manual)

This checklist is provided as a guide for planning procurement activities. Use is not mandatory.

1. Planning Checklist

- * Has an analysis been conducted to determine if a procurement process should be initiated (need for services, available providers, likelihood of cost savings, etc.)? Have consumers and family members been involved in this analysis?
- * If a procurement process is warranted, what form should it take?
 - * Automatic data processing (ADP) services, significant management information system enhancements, comprehensive management support functions
 - * Full Compliance with CFR regulations, OMB Circulars and HCFA State Medicaid Manual
 - * Acquisition of Service Provider Capacity - Network Participation
 - * Competitive Sealed Bids
 - * Competitive Negotiation
 - * Non-Competitive Negotiations (if solicitation falls under the exception criteria listed above)

2. Request for Proposals Checklist (Competitive Procurement for Providers)

- * Have consumers and families been involved in developing the request for proposals?
- * Are the major time frames of the RFP for response by competitors, evaluation period, award, contract negotiation, implementation and contract start-up time adequate to assure interested contractors a sufficient period to prepare a proposal and assume operations in an orderly manner?
- * Does the RFP contain a detailed and clear description of the scope of work to be contracted?
- * Does the RFP provide for:
 - * Answering written questions from a prospective bidder about the RFP?
 - * Acceptance of a late or alternate proposal or withdrawal of a proposal?

- * Evidence of adequate financial stability of the bidder and of any parent organization?
 - * Performance standards?
 - * A time-frame requirement for guarantee of all prices quoted in the proposal?
 - * Acceptance by a bidder of any reduction in payments for nonperformance?
 - * A bidders' conference?
 - * The general overall evaluation criteria, including maximum points available by category?
 - * A reference to applicable code requirements, administrative rules, board policies, and managed care program stipulations?
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- * Does the RFP provide for open solicitation of all technically competent contractors?
 - * Does the RFP list procedures for handling changes to the RFP that occur after some proposals are submitted, identify who will be notified of the changes, and describe how they will be made?
 - * Are there any requirements in the RFP that would unduly or unfairly restrict or limit competition among prospective bidders?
 - * Does the RFP include a copy of the Managing Entity's proposed contract?

Proposal Evaluation Plan (PEP) Checklist

- * Does the PEP consider the following in the evaluation of proposals?
 - * Contractor Capability
Staff qualifications and general experience; Experience with Title XIX or similar programs; Experience in service to the target populations; Contractor stability (including financial stability and reputation in the field); Evaluation by previous clients.
 - * Technical Approach
Understanding of the scope, objectives, and requirements; Proper emphasis on various job elements; Responsiveness to specifications; Clarity of statement of implementation plan.
 - * Financial Aspects
Realism of total cost estimate and cost breakdown; Realism of estimated hours of staff time; Hourly rate structure; Reasonableness of implementation costs; Reasonableness of turnover costs.

4. Report of the Selection Committee Checklist

- * Are consumers and family members included on the proposal evaluation team?
- * If a contractor that did not submit the lowest offer was selected, was its selection justified as being most advantageous to the CMHSP or RSACA?
- * Is the selection committee's tabulation of proposal scores complete and accurate?
- * Is the evaluation process free of bias?
- * Is a meeting for debriefing of unsuccessful bidders offered after the announcement of the contract award?
- * Did the evaluation committee substantiate reasons a prospective bidder was determined to be non-responsive?
- * Did the evaluation committee document valid reasons for not awarding the maximum points in each category and/or the reasons for awarding bonus points?

