

BOARD OF HEALTH – PROGRAM, POLICY, & APPEALS COMMITTEE

Agenda for February 21, 2024 at 8:30 AM

1. Call to Order
 - a. Roll Call
 - b. Approval of the Agenda*
2. Public Comment
3. New Business
 - a. BOH Intergovernmental Agreement*
 - b. Procurement Policy*
4. Public Comment
5. Adjournment - Next meeting: Full Board meets February 22, 2024. PPA next meeting is scheduled for March 20, 2024

Public Comment:

For the purpose of public participation during public hearings or during the public comment portion of a meeting, every speaker prior to the beginning of the meeting is requested but not required to provide the Board with his or her name, address and subject to be discussed. Speakers are requested to provide comments that are civil and respectful. Each speaker will be allowed to speak for no more than three (3) minutes at each public comment opportunity.

AGREEMENT FOR THE OPERATION OF THE BRANCH,
HILLSDALE, AND ST. JOSEPH COMMUNITY HEALTH
AGENCY FOR BRANCH, HILLSDALE, AND ST. JOSEPH
COUNTIES

THIS AGREEMENT made and entered into this 13th day of December A.D., 2012, by and between the Boards of Commissioners of Branch, Hillsdale, and St. Joseph Counties (hereinafter collectively referred to as "Counties").

WITNESSETH:

WHEREAS, Act 368 of Public Acts of 1978, as amended, of the State of Michigan provides that any combination of counties may elect to establish a District Health Department by a majority vote of each County Board of Commissioners;

WHEREAS, the Counties of Branch, Hillsdale, and St. Joseph have operated the Branch-Hillsdale-St. Joseph Community Health Agency since January 1, 1972.

WHEREAS, the Counties believe that it is prudent to formalize the rights and obligations of each county and their relationship to the Branch-Hillsdale-St. Joseph Community Health Agency;

WHEREAS, the counties desire to modify the organizational framework for the Community Health Agency;

WHEREAS, Article 7, Section 28 of the Michigan Constitution of 1963 and Act 7 of the Public Acts of 1967, as amended, MCL 124.501 et seq., permit counties to, by agreement, perform functions that could be performed by individual counties;

WHEREAS, the Counties desire to enter into an agreement to continue a public entity known as the Branch-Hillsdale-St. Joseph Community Health Agency, and to specify the powers and duties under which it will operate pursuant to the above cited authority; and

WHEREAS, Section 2448 of the Public Health Code, as amended (MCL 333.2448), expressly provides for intergovernmental contracts to reorganize local health departments.

THEREFORE, for and in consideration of the mutual covenants hereinafter contained, IT IS HEREBY AGREED as follows:

SECTION I.

ESTABLISHMENT

Pursuant to the Public Health Code, 1978 PA 368, MCL 333.1101 et seq., as amended, and pursuant to the Michigan Constitution of 1963, Article 7, Section 28, and 1967 PA 7, as amended, MCL 124.501, et seq., the duly elected Commissioners of Branch, Hillsdale, and St. Joseph Counties, State of Michigan hereby state the desire to continue the public entity known as the Branch-Hillsdale-St. Joseph Community Health Agency (hereinafter referred to as the "Community Health Agency").

SECTION II.

DEFINITIONS

The following terms for this Agreement shall have the meanings attached to them:

"Board" means the Branch-Hillsdale-St. Joseph Community Health Agency Board of Health (hereinafter sometimes referred to as "Board of Health").

"Health Officer" means the health officer of the Branch-Hillsdale- St. Joseph Community Health Agency.

"Department" means the Department of Community Health of the State of Michigan.

"Director" means the director of the Department of Community Health of the State of Michigan.

SECTION III.

PURPOSE OF THE DEPARTMENT

The purpose of the Branch-Hillsdale-St. Joseph Community Health Agency is to provide a range of public health services for persons located within the three (3) counties as required by and permitted under 1978 PA 368, as amended. The Board shall carry out the applicable provisions of the Public Health Code and shall, subject to the rules designated by the Michigan Department of Community Health, provide services permitted under the Public Health Code.

SECTION IV.

AREA SERVED

The Board shall provide the services set forth herein to persons who are located within Branch, Hillsdale, and St. Joseph Counties.

SECTION V.

ESTABLISHMENT OF THE BOARD

The Counties hereby establish a Board of Health. The Board shall set policy and procedures governing the operation of the Community Health Agency and shall have ultimate authority regarding the exercise of the Community Health Agency powers. The Board shall be composed of six (6) members: two (2) members from Branch County, two (2) members from Hillsdale County, and two (2) members from St. Joseph County. Board members shall be appointed by the applicable Board of Commissioners and must be currently serving as County Commissioners. The Board shall elect a chairperson and vice-chairperson. The chairperson and vice-chairperson shall not be from the same county. It may create additional officers and such committees as it deems appropriate. The Board shall set its meeting dates and adopt rules of procedures and determine the number of members who will constitute a quorum of the Board; provided, however, the Board may recommend that the respective board of county commissioners dissolve the Community Health Agency only by a majority vote of the entire Board. As used in this Agreement, the terminology "entire board" shall mean the six (6) members of the Board or lesser number if a vacancy exists in the number of representatives to which each county is entitled. All meetings of the Board shall comply with Michigan's Open Meetings Act, being 1976 Public Act 267, as amended. Actions taken by the Board prior to the effective date of this Agreement are hereby ratified.

SECTION VI.

TERM OF BOARD MEMBERSHIP,
VACANCIES, REMOVAL FROM OFFICE

The term of office of Board members shall commence January 1st and run through December 31st or until their successors are qualified and appointed to office. Board members shall be appointed by the respective Boards of Commissioners for two (2) year terms running from January 1st through December 31st commensurate with Board of Commissioners terms, or until their successors are qualified and appointed. Membership shall cease upon any member ceasing to be a County Commissioner.

Vacancies shall be filled for unexpired terms in the same manner as original appointments. A Board member may be removed from the Board by the appointing Board of Commissioners.

SECTION VII.

BOARD DUTIES

The Board shall:

- a) Annually examine and evaluate the public health needs of the Counties and the public and non-public services necessary to meet those needs.

- b) Review and approve an annual program statement and budget. The format and documentation of the annual program statement and budget shall be specified by the Department.
- c) Submit the annual program statement and budget to the Department by such date as is specified by the Department.
- d) Submit to each Board of Commissioners an annual request for County funds to support the Community Health Agency. Such request shall be in the form and at the time determined by the Boards of Commissioners.
- e) Take action to secure private, federal, state, and other public funds to help support its programs.
- f) Approve and authorize all contracts, which may be effectuated by delegation to the Health Officer.
- g) Review and evaluate the quality, effectiveness, and efficiency of services being provided by its programs.
- h) Appoint a health officer and a medical director, who shall each meet the standards of training and experience established by the Department.
- i) Establish general policy guidelines within which the health officer shall execute the Community Health Agency programs.
- j) Audit all claims against the Community Health Agency and apportion approved claims as provided under the approved formula established under Section 2417 of the Public Health Code, as amended (MCL 333.2417).
- k) The Community Health Agency shall maintain liability insurance in such amounts as the Board shall determine.

SECTION VIII.

POWERS OF THE BOARD

The Board shall have all the rights, powers, duties and obligations of a District Health Department created under MCL 333.2415, as are set forth in the Public Health Code, Public Act 368 of 1978, as amended. IN addition, the Board shall have the following powers and duties, to the extent these powers and duties are not in consistent with the powers of a District Health Department.

- 1. To enter into contracts, including contracts for the purchase of public health services with private persons and/or entities or public agencies.
- 2. To acquire ownership, custody, operation, maintenance, lease or sale of real or personal property, subject to any limitation on the payment of funding therefore now or subsequently imposed by the Public Health Code, 1978 PA 368, as amended.
- 3. To dispose of, divide, and distribute property.
- 4. To accept gifts, grants, assistance, funds or bequests.

5. To make claims for federal or state aid payable to the participants in the programs of the Board.
6. To incur debts, liabilities or obligations which do not constitute the debts, liabilities or obligations of any of the parties to this agreements, subject to any limitations thereon which are now or hereafter imposed by the Public Health Code, 1978 PA 368, as amended.
7. To, in its own name, employ employees and agents, which employees or agents shall be considered employees or agents of the board. The Board shall have the powers, duties and responsibility for establishing policies, guidelines and procedures for employees and shall have the power, duty and responsibility to establish wages and fringe benefits such as, but not limited to, sick leave, vacation, health insurance, pension and life insurance; to provide for workers' compensation and for any and all other terms and conditions of employment of an employee of the Board. However, any employee initially transferred to the Branch-Hillsdale-St. Joseph Community Health Agency by any of the contracting Counties or from the predecessor Branch-Hillsdale-St. Joseph Community Health Agency shall continue to have all benefits, obligations and status with respect to pay, seniority credits, and sick leave, vacation, insurance and pension credits that the individual held as a County or Community Health Agency employee. The above-stated conditions and limitations upon the transfer of County or Community Health Agency employees shall not serve to limit the right of the Board to hire County or Community Health Agency employees voluntarily seeking a job change upon such terms and conditions as the Board and the individual may agree.
8. To fix and collect charges, rates, rents or fees where appropriate and to promulgate rules and regulations related thereto. They shall include the power to set fees for the Community Health Agency services as authorized by Section 2444 of the Code. All fees shall be paid into the general fund of the Community Health Agency.
9. The powers of the Community Health Agency shall be liberally construed consistent with the Constitution and statutes of this state.

SECTION IX.

HEALTH OFFICER

The health officer shall function as the chief executive and administrative officer of the Branch-Hillsdale-St. Joseph Community Health Agency and shall execute and administer the Branch-Hillsdale-St. Joseph Community Health Agency in accordance with the approved program statement and budget, the general policy guidelines established by the Board, the applicable procedures and regulations, and the provisions of state statute. The terms and conditions of the health officer's employment, including tenure of service, shall be as mutually agreed to by the Board and health officer and shall be specified in writing.

SECTION X.

FINANCES

The Board shall have the budgetary and financial control over the Community Health Agency. The Board shall base its request for county financial contributions on the proposed budgetary needs of the Community Health Agency. These financial contributions may come from the general fund of each county or from any fees collected by the Community Health Agency in that county or a combination thereof. Payment of the financial contribution of each county shall be made under such terms as shall be specified by the Board and approved by the respective boards of commissioners. The financial contribution shall be approved by each county based on the financial needs of the Community Health Agency. The contribution scheduled shall be allocated pro-rata among the counties based on the percent of population of each county as compared to the population of the tri-counties as shown in the last decennial federal census. The last decennial federal census shall be adjusted by subtracting the State prison population from Branch County's population. In the event that the services of the Community Health Agency are requested or required to be provided at the State prison, Branch County shall be responsible for any and all associated costs up to a capped amount. The capped amount shall be calculated by multiplying the current year's pro-rata rate and the prison population as recorded on January 1st of the current year. The financial contribution shall be computed annually and shall be approved as required by Section 2417 of the Public Health code (MCL 333.2417). Nothing in this Agreement shall bind a county to accept the annual allocation request by the Board.

If a county fails to allocate its full amount requested, the Board may not pass its budgetary shortfall to the other counties. However, the board in its discretion may elect one of more of the following options, taking into account the amount of the non-payment, its duration, the financial condition of the Community Health Agency and such other factors as it deems relevant:

1. Reduce services in the non-paying county consistent with the non-payment;
2. Raise fee rates for services in the amount the Board deems necessary.
3. Recommend the dissolution of the Community Health Agency.
4. Any combination of the above as determined by the Board.

State and local contributions and all other funds received shall be handled and banked directly by one of the treasurers of one of the member counties as selected by the Board, which has the duty to insure that the funds are banked and accounted for consistent with requirements of law for local governmental units.

The Board shall be credited all investment income (minus reasonable handling fees) derived from the assets of the Community Health Agency. All interest income shall also be credited into the general fund of the Community Health Agency.

SECTION XI.

AUDIT

The Community Health Agency shall conduct an annual agency audit in accordance with the law and as directed by the Board. A copy of the audit shall be given to each Board member upon its completion. If requested by a county, a representative of the auditing firm and the Community Health Agency shall appear before the Board of Commissioners of each county and answer questions regarding the audit or any other aspect of Community Health Agency activities. The counties shall have access to all Community Health Agency records except those records subject to a legally recognized privilege.

SECTION XII.

INFORMATION

The Board shall provide to Branch-Hillsdale-St. Joseph Counties, separately and/or jointly, as requested, any and all information related to the operations of the Board on a timely basis.

SECTION XIII.

NOTICES

Any notices required by this Agreement shall be deemed made when mailed certified mail, return receipt requested, to each county clerk, to each chairperson of the Board of Commissioners of each participating county, and the Health Officer of the Community Health Agency.

SECTION XIV.

COUNTY ORDINANCES

Nothing in this agreement shall restrict the right of a county to enact a local ordinance affecting its public health needs and setting fees in any such ordinance. However, any such ordinance shall not impose an obligation or duty on the Community Health Agency or its personnel unless (a) the ordinance has been approved by the Board; provided, however, that the Board's approval shall be limited to assessing the financial and personnel impact of the ordinance on the Community Health Agency, the legality and enforceability of the proposed ordinance and potential liability to the Community Health Agency. (The general public policy considerations of whether the proposed ordinance is needed is solely the responsibility of the county which is considering enacting the proposed ordinance), (b) an agreement has been reached with the county which enacted the ordinance regarding the disposition of any fees required by the ordinance; and (c) an agreement has been reached with the county which enacted the ordinance regarding the reimbursement to the Community Health Agency of any costs of enforcement.

SECTION XV.

ORDINANCE UNIFORMITY

Each county understands the legal and practical importance of ordinance uniformity throughout the District. Each county agrees to make every effort to keep its public health ordinances uniform with those of other counties within the tri-counties. However, this Agreement acknowledges that local conditions and political desires within a particular county may result in some unique ordinance provisions.

SECTION XVI.

DURATION OF THIS AGREEMENT
AND RIGHTS UPON TERMINATION

- a) This Agreement shall continue indefinitely unless a county withdraws as provided by this Agreement.
- b) This Agreement may be terminated by the following method:
The county(ies) may give written notice of its(their) desire to withdraw as a member of the Community Health Agency to the Board of Health and to the other counties which are a party to this Agreement. The effective date of the withdrawal by the withdrawing county(ies) shall be effective sixty (60) days from the date of receipt from the withdrawing county(ies). The property division provisions of paragraph XVI.c.1 shall continue to apply to all counties, including the withdrawing county, until the property division has been completed; otherwise, this Agreement shall be terminated as to the withdrawing county on the effective date of the withdrawal.
- c) Property Division.
 - 1. If the county(ies) withdraws pursuant to Paragraph (b) above, then the following procedure shall be used. The withdrawing county(ies) shall not be obligated to pay (or will be reimbursed if it already had paid) a pro-rata portion of its(their) financial contribution attributable to the remainder of the calendar year after the effective date of the dissolution. In addition, the withdrawing county(ies) shall receive all real and personal property located within the boundaries of the withdrawing county(ies). The withdrawing county(ies) will assume any existing debt applicable to the assets which it receives. The distribution of assets shall take place as soon as possible after the effective date of the dissolution.

2. Nothing contained herein shall preclude the three (3) counties from otherwise jointly agreeing in writing to any distribution of the real and personal property among themselves as they deem proper.

- d) If the withdrawing County will assume the responsibility for any health jurisdiction or function previously performed by the Community Health Agency, or if it will assume the responsibility to pay the wages of or employ any former employee of the Community Health Agency, MCL 333.2448 shall apply, and the Withdrawing County will provide an appropriate assurance or evidence to the Community Health Agency documenting its compliance. MCL 333.2448 provides:

A city, county, district, or part thereof may enter into a intergovernmental contract necessary or appropriate to a reorganization or an assumption or relinquishing of a health jurisdiction or function authorized by this part. The contract shall provide that an employee transferred shall not lose any benefits or right as a result of the transfer.

SECTION XVII.

STATUS OF THE BOARD

The Board established pursuant to this agreement shall be a separate legal public entity with the power to sue and be sued.

SECTION XVIII.

AMENDMENT PROCEDURES

This agreement may be amended only by the mutual agreement of the participating counties pursuant to resolution authorized by each of the County Boards of Commissioners and entered into in writing, and approved as may be required by the Urban Cooperation Act (MCL 124.501, et seq.) and the Public Health Code (MCL 333.1101, et seq.)

SECTION XIX.

CONFLICT OF PROVISIONS

If there is any conflict between this agreement and the Public Health Code (MCL 333.1101, et seq.), as existing or as subsequently amended, the Public Health Code shall prevail, and those provisions of this agreement inconsistent therewith shall be deemed null, void and of no effect.

SECTION XX.

CONTINUITY

All assets and liabilities as well as the contractual rights and obligations currently in the name of the existing Branch-Hillsdale-St. Joseph Community Health Agency shall continue. Each county authorizes its Chair and Clerk to execute such documents as are necessary to effectuate this provision. The created Community Health Agency hereby agrees to assume all such transfers.

SECTION XXI.

EFFECTUATION OF AGREEMENT

This agreement shall not take effect until this agreement is approved by the Governor of the State of Michigan and the Director of the State Department of Community Health as provided for by law. Upon receipt of the approval of the Governor and after filing with the County Clerk of each county and the Secretary of State, this agreement shall take effect on January 1, 2013.

The name of the entity and its administrative office's business address are Branch-Hillsdale-St. Joseph Community Health Agency, 570 Marshall Road, Coldwater, Michigan 49036. Any subsequent change thereof by the Board shall be reported in writing to the forming Counties, the State Department of Community Health and the Governor of Michigan.

The persons signing this agreement hereby verify by their signatures that they are authorized to execute this agreement pursuant to appropriate County Board of Commissioners resolution.

IN THE PRESENCE OF:

Donald Vodka
Bob Hutz

Alan E. Frijon
ALAN RINKELBERG
Dee Abbott
Dee C. Stott

James F. Spinner
Phyllis Jung

BRANCH COUNTY
Adrian Smith
BY: CHAIRPERSON, BOARD OF COMMISSIONERS
Sharon Kwasnik 11/27/12
ATTEST: COUNTY CLERK

HILLSDALE COUNTY
Andy W. Dden
BY: CHAIRPERSON, BOARD OF COMMISSIONERS
Marney M. East
ATTEST: COUNTY CLERK

ST. JOSEPH COUNTY
[Signature]
BY: CHAIRPERSON, BOARD OF COMMISSIONERS
Paul J. Bender
ATTEST: COUNTY CLERK

Resolution

To approve the intergovernmental agreement under the urban cooperation act for the Branch-Hillsdale-St. Joseph Community Health Agency for Branch, Hillsdale and St. Joseph Counties

WHEREAS, pursuant to the Michigan Public Health Code, the Counties of Branch, Hillsdale and St. Joseph established the Branch-Hillsdale-St. Joseph Community Health Agency; and

WHEREAS, the Counties of Branch, Hillsdale, and St. Joseph wish to continue the existing tri-county public health department structure through the continuation of a separate legal entity as permitted under the Michigan Constitution of 1963, Article VII, Section 28; and the Urban Corporation Act, PA 7 of 1967, as amended, being MCLA 124.501, et seq.; and

WHEREAS, the respective Counties have reviewed and agreed to the terms of the "Intergovernmental Agreement for the Branch-Hillsdale-St. Joseph Community Health Agency."

THEREFORE BE IT RESOLVED, that the attached "Intergovernmental Agreement for the Branch-Hillsdale-St. Joseph Community Health Agency" is approve.

BE IT FURTHER RESOLVED, that the Board Chairperson is authorized to sign the finalized "Intergovernmental Agreement for the Branch-Hillsdale-St. Joseph Community Health Agency."

BE IT FURTHER RESOLVED, that a certified copy of this Resolution and the attached "intergovernmental Agreement" for the Branch-Hillsdale-St. Joseph Community Health Agency" shall be filed with the County Clerk's office and the Michigan Secretary of State's office.

BE IT FURTHER RESOLVED, that a copy of this Resolution, and the attached "Intergovernmental Agreement for the Branch-Hillsdale-St. Joseph Community," shall be sent to the Michigan Governor's office pursuant to the Urban Cooperation Act, PA 7 of 1967.



Dale Swift, Chairman


_____ 11/21/12

Teresa Kubasiak, County Clerk

ST. JOSEPH COUNTY
RESOLUTION NO. 20-2012

**AMENDING THE INTERGOVERNMENTAL AGREEMENT FOR THE
BRANCH-HILLSDALE-ST. JOSEPH COMMUNITY HEALTH AGENCY**

WHEREAS, pursuant to the Michigan Public Health Code, the Counties of Branch, Hillsdale and St. Joseph established the Branch-Hillsdale-St. Joseph District Health Department January 1, 1972; and

WHEREAS, in December 1997 the Counties entered into a written agreement establishing the Branch-Hillsdale-St. Joseph Community Health Agency; and

WHEREAS, the Counties of Branch, Hillsdale, and St. Joseph wish to continue the existing tri-county public health agency structure created in 1997 as permitted under the Michigan Constitution of 1963, Article VII, Section 28; and the Urban Corporation Act, PA 7 of 1967, as amended, being MCLA 124.501, et seq.; and

WHEREAS, the respective Counties have chosen to amend the terms of the December 1997 "Intergovernmental Agreement for the Branch-Hillsdale-St. Joseph Community Health Agency."

THEREFORE BE IT RESOLVED, that the attached amended "Intergovernmental Agreement for the Branch-Hillsdale-St. Joseph Community Health Agency" is approve.

BE IT FURTHER RESOLVED, that the Board Chairperson is authorized to sign the finalized amended "Intergovernmental Agreement for the Branch-Hillsdale-St. Joseph Community Health Agency."

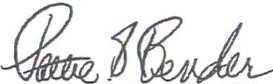
BE IT FURTHER RESOLVED, that a certified copy of this Resolution and the attached amended "Intergovernmental Agreement" for the Branch-Hillsdale-St. Joseph Community Health Agency" shall be filed with the County Clerk's office and the Michigan Secretary of State's office.

BE IT FURTHER RESOLVED, that a copy of this Resolution, and the attached amended "Intergovernmental Agreement for the Branch-Hillsdale-St. Joseph Community," shall be sent to the Michigan Governor's office pursuant to the Urban Cooperation Act, PA 7 of 1967.

STATE OF MICHIGAN)
) SS
COUNTY OF ST. JOSEPH)

I, PATTIE S. BENDER, Clerk of the St. Joseph County Board of Commissioners and Clerk of the County of St. Joseph, do hereby certify that the above Resolution was duly adopted by the said Board on December 5, 2012.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the Circuit Court at Centreville, Michigan, this 12th day of December 2012.


Pattie S. Bender, Clerk

<p>Program: Administration</p> <p>Subject: Procurement Policy</p>	<p>Effective Date: 10/4/2018</p>
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Purpose: To ensure all supplies, equipment, construction, and services are obtained in an open and effective manner and in full compliance with the provisions of applicable federal statutes and executive orders.

Policy Statement: Prior to starting a procurement process, Branch-Hillsdale-St. Joseph Community Health Agency (Referred to as “The Agency” going forward) must review the procurement to ensure that it complies with all parts of **2 CFR 200-317-326**.

Implementing Procedure:

GENERAL PROCUREMENT STANDARDS (Sec. 200.318):

The Agency:

- Must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
- Must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts.
- Must avoid acquisition of unnecessary or duplicative items.
- Will seek to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.
- Will seek to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.
- Will use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.
- Must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of the proposed procurement. Consideration must be given to contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. Awards, subawards and contracts with parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities are not allowed.
- Must maintain records sufficient to detail the history of procurement. These records will include, but are not limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.
- May use a time and materials type contract only after a determination that no other contract is suitable and if the contract includes a **ceiling price that the contractor exceeds at its own risk**.

Reviewed Date: 10/1/2023

A time and materials type of contract means that a contract whose cost to the grantee is the sum of the actual cost of materials and direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

- Accepts sole responsibility, in accordance with good administrative practice and sound business judgement, for the settlement of all contractual and administrative issues arising out of procurement.

METHODS OF PROCUREMENT (Sec 200.320):

1. Procurement by small purchase procedures: For purchases up to \$149,999 – (“Simple Acquisition Threshold” defined in 41 U.S.C. 403(11) set at \$150,000):

Small purchases are those that are relatively simple and informal for items such as supplies, services or other property. If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources to ensure that the selection process is competitive in accordance with these policies. “Adequate Number” as well as specific rules governing small purchases are further defined in The Agency’s Purchasing Policy.

2. Procurement by sealed bids:

Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming to all the material items and conditions of the invitation for bids, is the lowest price. *This method is preferred for procuring construction, if the following are present,*

- A complete, adequate, and realistic specification or purchase description is available
- **Two or more** responsible bidders are willing and able to compete effectively for the business, and
- The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

If sealed bids are used, the following requirements apply:

- Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids. The invitation for bids must be publicly advertised.
- The invitation for bids, which will include any specifications and pertinent attachments, 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 and responsible 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.
- Any or all bids may be rejected if there is a sound documented reason.

3. Procurement by competitive proposals, i.e. Requests for Proposals (RFPs):

Competitive proposals are normally conducted with more than one source (supplier) submitting an offer and either a fixed-price or cost-reimbursement type contract is awarded. This is generally used when conditions are not appropriate for the use of small, large or sealed bids - *architectural, audit and third-party administration must use the competitive proposal method.* The following requirements apply:

- Requests for proposals (RFP) must be publicized and identify all evaluation factors and their relative importance. In most cases, solicitation by mail or newspaper or professional journals is appropriate. A telephone call is not sufficient.
- Any response to publicized RFPs must be considered to the maximum extent practical.
- Proposals must be solicited from an adequate number of qualified sources.
- The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and for selecting recipients.
- Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.
- The grantee may use competitive proposal procedures for qualifications-based procurement of architectural/engineering A/E professional services. This method, where price is not used as a selection factor can only be used in the procurement of A/E professional services.

Procuring audit services (Sec. 200.509). The grantee must follow the procurement standards in sections 200.317-326, as applicable.

In requesting proposals for audit services:

- 1) Objectives and scope of the audit should be made clear, and
- 2) Grantee must request a copy of the audit organization's peer review report which the auditor is required to provide under GAGAS (Generally Accepted Government Auditing Standards).

Factors to be considered in evaluating each proposal for audit services include:

- 1) Responsiveness to the request for proposal,
- 2) Relevant experience,
- 3) Availability of staff with professional qualifications and technical abilities,
- 4) Results of external quality control reviews, and
- 5) Price.

4. Procurement by noncompetitive proposals:

Procurement through solicitation of a proposal from only one source. The grants reform clarified that this may be used only when one or more of the following circumstances apply:

- The item is available only from a single source.
- The public demand or emergency for the requirement will not permit a delay resulting from competitive solicitation (emergency situations).
- The federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from The Agency.
- After solicitation of a number of sources, competition is determined inadequate.

COMPETITION (Sec. 200.319):

All procurement transactions must be conducted in a manner providing full and open competition constituent with the standards for Part 200. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurement. Some situations that could be restrictive of competition include, but are not limited to:

- Placing unreasonable requirement(s) on firms in order for them to qualify.
- Requiring unnecessary experience and excessive bonding (insured in the event of a loss).
- Noncompetitive pricing practices between firms or between affiliated companies.

- Noncompetitive contracts to consultants that are on retainer contracts.
- Organizational conflicts of interest.
- Specifying only a “brand name” product instead of allowing “an equal” product.
- Any arbitrary action in the procurement process.

The Agency must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local or tribal geographic preferences, except where expressly mandated or encouraged.

The Agency must maintain written procedures for procurement transactions which Maintained in RFPs:

- Incorporate clear and accurate description of the technical requirements for materials, products or services to be procured.
- Identify all requirements that must be fulfilled by the offeror and all factors to be used in evaluating the bids or proposals.
- Ensure that all prequalified lists of offerors/products used for acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition.

CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN’S BUSINESS ENTERPRISES AND LABOR SURPLUS AREA FIRMS (Sec. 200.321):

The Agency must take all necessary steps to assure that minority businesses, women’s business enterprises and labor surplus firms are used when possible. These steps include:

- Placing qualified small and minority businesses (SMBs) and women’s business enterprises (WBEs) on solicitation lists.
- Assuring that SMBs and WBEs are solicited whenever they are potential sources.
- Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by SMBs and WBEs.
- Establishing delivery schedules, where the requirement permits, which encourage participation by SMBs and WBEs.
- Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.
- Requiring the prime contractor, if subcontracts are allowed, to take the affirmative steps listed in the above statements.

CONTRACT COST AND PRICE (Sec. 200.323):

The Agency must perform some form of cost or price analysis in connection with each procurement, which are further explained below.

COST ANALYSIS is used:

- When the bidder is required to submit the elements that make up the estimated cost.
- When sufficient price competition is lacking
- For all single-source procurements.

PRICE ANALYSIS is used when price reasonableness can be established on the basis of a catalog or the market price of a product on processes set by law or regulation.

BONDING REQUIREMENTS (Sec. 200.325):

For construction or facility improvement contracts/subcontracts exceeding the Simple Acquisition Threshold (currently set at \$150,000), the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

- A bid guarantee from each bidder equivalent to five percent of the bid price. The bid guarantee must consist of a firm commitment such as a bid bond, certified check or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
- A performance bond on the part of the contractor for 100 percent of the contract price. This is so the obligations of the contract are completely fulfilled.
- A payment bond on the part of the contractor for 100 percent of the contract price. A payment bond is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

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