

## Article 6 – Contracts and Procurement

### 5.6.1 Use of Federal Court Contracting Waiver

#### (a) Policy

The California Correctional Health Care Services (CCHCS) or the California Prison Health Care Receivership Corporation (CPR) may solicit providers of, and award contracts for goods and/or services in accordance with the June 4, 2007 Federal Court Order Waiving State Contracting Statutes, Regulations and Procedures (“Federal Court Waiver”), and the alternative contracting procedures (“Alternative Contracting Procedures”) approved therein.

#### (b) Responsibility

The Director, Health Care Policy and Administration, CCHCS shall ensure compliance with this procedure.

#### (c) Procedure

(1) Contracting units within CCHCS and CPR may seek guidance to award contracts under the Federal Court Waiver using the Alternative Contracting Procedures for those contracts within the scope of the Federal Court Waiver. Generally, such guidance should be sought where time is of the essence and use of standard state contracting procedures would delay or prevent delivery of essential goods and/or services.

#### (2) Documentation and Checklist:

(A) For each contract processed under the Alternative Contracting Procedure, the contracting unit shall create and maintain a Contract File containing the key documents identified in this procedure in hard copy. It is not necessary for the Contract File described in this procedure to be separate from the Standard Contract File otherwise maintained by the contracting unit.

(B) The “[Federal Court Waiver Contract Checklist](#)” shall be completed by contracting units and submitted with each final contract approval package. A copy of the Federal Court Waiver Checklist shall be maintained in the Contract File.

(C) The scope of this procedure is limited to complying with the requirements of the Federal Court Waiver. Other document retention practices may apply as required by other departmental procedures.

#### (3) Determining if the Federal Court Waiver Applies:

(A) As of the approval date of this procedure, the Federal Court has authorized the use of the Alternative Contracting Procedure for certain projects, including, but not limited to: information technology technical and operational infrastructure, health information management, telemedicine, recruitment and hiring, pharmacy, radiology services, laboratory services, credentialing, nursing leadership development, and asthma care.

(B) Project area waiver limits can be located in the following location: <https://cchcs.ca.gov/reports/>. No plans to use the Alternative Contracting Procedure should proceed without the consultation and prior approval of the CCHCS Office of Legal Affairs (COLA). For the purpose of this procedure, the term “COLA” includes designated outside counsel.

#### (4) Requesting Approval to Use the Alternative Contracting Procedure:

Contracting units planning to use the Alternative Contracting Procedure for a contract shall obtain the prior written approval of COLA, which shall:

(A) Identify the appropriate waiver project area.

(B) Identify the specific alternative process to be used (e.g., Expedited Formal, Urgent Informal, or SoleSource).

(C) Be maintained by the contracting unit in the Contract File.

#### (5) Soliciting a Contractor:

The Federal Court Waiver establishes an Alternative Contracting Procedure allowing the solicitation of contractors using one of three following processes:

##### (A) Expedited Formal Process

##### 1. Applicability

a. The Expedited Formal process shall be used for all higher cost contracts (e.g., contracts whose total contract price is estimated to be valued at \$750,000 or more).

b. The Expedited Formal process also presumptively applies to contracts whose total contract price is estimated to be valued at \$75,000 - \$750,000, unless it is determined that urgent circumstances require use of the Urgent Informal process.

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2. Procedure

- a. Contracting units shall develop a Request for Proposal (RFP) or similar solicitation (e.g., Request for Qualifications or Request for Bids) for the desired goods and/or services. The prior written approval of COLA shall be obtained prior to issuing the RFP or similar solicitation.
- b. Contracting units shall publish the RFP for a period of at least seven calendar days and retain evidence of all publications in the Contract File. RFPs shall be published on the CCHCS website and in a trade publication of general circulation and/or an internet-based public RFP clearinghouse (e.g., [https://cchcs.ca.gov/project\\_rfp/](https://cchcs.ca.gov/project_rfp/)). In addition, contracting units may send the RFP directly to potential contractors.
- c. The contracting unit shall notify COLA, and COLA shall notify the parties in *Plata v Newsom* that the RFP has been published. The notice sent to the Plata parties shall be copied to the contracting unit and maintained in the Contract File.
- d. The response period for the RFP shall be a minimum of 30 calendar days. All responses shall be maintained by the contracting unit in the Contract File. If fewer than three potential contractors submit proposals, the contracting unit shall make reasonable, good faith efforts to identify additional bidders and solicit their responses to the RFP. Such efforts shall be documented and maintained in the Contract File.
- e. The contracting unit shall establish a selection committee consisting of at least three persons, all of whom with relevant experience, none of whom are affiliated with or otherwise have any conflict of interest with, any bidder, or have any conflict of interest in participating in the selection committee generally. Contracting units shall obtain certifications from the committee members to that effect and maintain the certification in the Contract File. The "[Conflict of Interest Certification for Contractor Selection Committee Members](#)" form shall be used for this purpose.
- f. Criteria for selection of the recommended bidder may be set forth in the RFP and otherwise may, in the reasonable determination of the selection committee, including, but not limited to:
  - 1) Cost factors;
  - 2) Reputation of the bidder for responsiveness and timeliness of performance;
  - 3) Quality of service or product performance;
  - 4) Ability of the bidder to provide innovative methods for service delivery; and
  - 5) Other similar factors the selection committee deems relevant.
- g. The selection committee may conduct interviews of some or all of the bidders, may respond to questions posed by bidders, and provide additional information to bidders. For contracts whose total contract price is estimated to be valued at \$750,000 or more, the selection committee shall conduct interviews of at least the top two bidders.
- h. The selection committee, via the contracting unit, shall provide the Receiver or designee a written recommendation regarding the proposed contractor. The recommendation shall include an explanation of the basis for the recommendation. The selection recommendation may be submitted prior to or concurrent with the submission of the final contract for approval. A copy of the recommendation shall be maintained in the Contract File.

(B) Urgent Informal Process

1. Applicability

- a. The Urgent Informal process is designed to provide contracting units with the flexibility to move more quickly than permitted by the Expedited Formal process when urgent circumstances required. Nonetheless, it still requires a competitive bidding process to the extent possible.
- b. Contract units may utilize the Urgent Informal bidding process for contracts whose total contract price is estimated to be valued at \$75,000 - \$750,000 if it is determined that urgent circumstances do not permit sufficient time to utilize the Expedited Formal bidding process because:
  - 1) The additional delay that would result from utilizing the Expedited Formal process would substantially risk endangering the health or safety of inmates or staff, or
  - 2) The contract is essential to the "critical path" of a larger project and the additional delay that would result from utilizing the Expedited Formal process would significantly interfere with timely or cost-effective completion of the larger project.

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- c. The Urgent Informal process may also be used for any contract whose total contract price is reasonably estimated to be valued at less than \$75,000.
- d. As set forth above, contracting units shall consult with COLA in determining if the use of the Urgent Informal process is appropriate.

2. Procedure

- a. Contracting units shall make reasonable, good faith efforts to identify and solicit at least three proposals and will accept additional unsolicited bids that may be submitted, contracting units shall document all potential contractors solicited in the Contract File.
- b. Contracting units may, at their discretion, develop an RFP prior to soliciting bidders, establish a response period with respect to any such RFP, and/or establish a selection committee to assist in the selection of the recommended bidder. Any written solicitation shall be maintained in the Contract File.
- c. All responses, including verbal responses, shall be documented and maintained in the ContractFile.
- d. Criteria for selection of the recommended bidder, in the reasonable determination of the contracting unit, may include, but will not be limited to, cost, reputation of the bidder for responsiveness and timeliness of performance, quality of service or product performance, ability of the bidder to provide innovative methods for service delivery, and other similar factors the contracting unit deems relevant.
- e. The contracting unit shall provide a written recommendation regarding the selection of the contractor to the Receiver, or designee, explaining the basis for the recommendation. The recommendation may be submitted prior to or concurrent with the submission of the final contract for approval. A copy of the recommendation shall be maintained in the Contract File.

(C) Sole Source Process

1. Applicability

- a. The Sole Source process is designed to permit contracting units to utilize a sole source when it is determined, after reasonable efforts under the circumstances, that there is no other reasonably available source.
- b. The Sole Source process shall only be used as a last resort.
- c. As set forth above, contracting units shall consult with COLA in determining if the award of a sole source contract is appropriate.

2. Procedure

- a. The contracting unit shall document the efforts made to identify potential contractors and maintain the documentation in the Contract File.
- b. The contracting unit shall provide a written recommendation regarding the proposed sole source award to the Receiver, or designee, explaining the basis for the recommendation. The recommendation may be submitted prior to or concurrent with the submission of the final contract for approval. A copy of the recommendation shall be maintained in the Contract File.

**(6) Contract Preparation**

(A) Proposed contracts using the Alternative Contracting Procedure shall be submitted by the contracting unit to COLA for review and written approval as to form and legality, prior to submission of the contract to the Receiver or designee for final approval.

(B) Contracting units shall maintain the written approval of COLA in the Contract File.

**(7) Final Contract Routing & Contract Numbers**

(A) Contracting units shall route contracts processed under the Federal Court Waiver for final approval through the Receiver's Custodian of Records. All final approval packages shall include:

- 1. A routing slip or transmittal letter including all necessary departmental approvals;
- 2. A recommendation for approval, including the contractor selection recommendation if not previously submitted (this may be included in the transmittal letter);
- 3. An original contract for signature; and
- 4. A copy of the completed Federal Court Waiver Contract Checklist.

(B) The Receiver's Custodian of Records shall maintain a log of all contracts executed by the California Department of Corrections and Rehabilitation (CDCR) or CPR under the Federal Court Waiver. After a

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contract is executed by the Receiver, or designee, the contract shall be returned to the Custodian of Records who shall log the CDCR agreement number, or assign and log a CPR contract number.

- (C) The Receiver's Custodian of Records shall maintain original executed CPR contracts and copies of executed CDCR contracts (returning CDCR originals to the applicable contracting unit) in a central contract file. In addition, the Receiver's Custodian of Records shall maintain all final approval packages, including the Federal Court Waiver Contract Checklist, in the central contract file. All original source documents identified in the Federal Court Waiver Contracts Checklist shall be maintained by the contracting unit in the unit's Contract File.

**(8) Reporting**

The Receiver's Custodian of Records, in consultation with COLA and the applicable contracting unit as needed, shall be responsible for preparing the contracting report for inclusion in the Receiver's Tri-Annual Report to the Court. The reports shall include a summary that:

- (A) Specifies each contract awarded during the quarter;
- (B) Provides a brief description of each such contract;
- (C) Identifies which of the projects or categories of projects the contract pertains to;
- (D) Identifies the method used to award the contract (e.g., Expedited Formal, Urgent Informal, or SoleSource);
- (E) Lists all bidders for each contract, identifies which bidders were solicited directly, and identifies the successful bidder;
- (F) Notes if fewer than three bidders responded to a solicitation;
- (G) Explains the determination that one (or both) of the criteria for using the Urgent Informal process were satisfied for contracts using the Urgent Informal process whose total contract price is estimated to be between \$75,000 - \$750,000; and,
- (H) Explains the basis for determining that no other sources were reasonably available for contracts that are sole-sourced.

**(9) Approval and Review**

The CCHCS Director of Health Care Policy and Administration and the COLA Chief Counsel shall review this procedure annually.

**References**

- *Plata v. Newsom*, June 4, 2007 Order Waiving State Contracting Statutes, Regulations and Procedures
- *Plata v. Newsom*, Supplemental Orders Waiving State Contracting Statutes, etc., dated 08/13/07 (Supp. Waiver No. 1), 01/25/08 (Supp. Waiver No. 2), 12/20/07 (Supp. Waiver No. 3), 04/23/08 (Supp. Waiver No. 4), 07/01/08 (Supp. Waiver No. 5), 07/02/08 (Supp. Waiver No. 6), 09/18/08 (Supp. Waiver No. 7) and 01/30/09 (Supp. Waiver No. 8).

**Revision History**

Effective: 06/2009

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