

## **Procurement Contract and Vendor Rules Arkansas Health Insurance Marketplace (Sherrill's draft)**

**Preface:** The Purpose of these Rules is to establish the policies and procedures for vendors doing business with the Arkansas Health Insurance Marketplace (AHIM). These Rules are issued pursuant to the authority vested in the AHIM under Ark. Code Ann. § 23-61-801 et seq.

### **Section 1. Definitions.**

- 1.1 "Act" means the Arkansas Health Insurance Marketplace Act.
- 1.2 "Addendum" or "Addenda" means an addition or deletion to, a material change in or general interest explanation of, a solicitation document.
- 1.3 "AHIM" means the Arkansas Health Insurance Marketplace.
- 1.4 "Award" means either the act or occurrence of the AHIM's identification of the person with whom the AHIM will enter into a contract.
- 1.5 "Bid" means a response to an Invitation to Bid.
- 1.6 "Bidder" means a person that submits a bid in response to an Invitation to Bid.
- 1.7 "Board" means the member(s) of the Arkansas Health Insurance Marketplace Board of Directors as appointed under Ark. Code Ann. § 23-61-803.
- 1.8 "Business Manager" means the Business Manager or acting Business Manager of the AHIM
- 1.9 "Closing" means the date and time announced in a solicitation document as the deadline for submitting offers.
- 1.10 "Competitive Bidding" or "Competitive Bid" means a method of procurement which requires obtaining bids by
  - 1. Telephone;
  - 2. Written form (including physical mail)
  - 3. Electronic communication (including email and facsimile)
- 1.11 "Contract" means agreements, regardless of what they may be called, for the purchase, lease, rental or other acquisition of goods and services and for the disposal of surplus commodities and services not otherwise exempt.

1.12 "Contract Price" means as the context requires:

1. The maximum payments that the AHIM will make under a contract if the contractor fully performs under the contract;
2. The maximum not-to-exceed amount of payments specified in the contract; or
3. The unit prices for goods and services in the contract.

1.13 "Contractor" means the person with whom the AHIM enters into a contract.

1.14 "Eligible Entity" means an entity that has experience in individual and small group health insurance, benefit administration, or other experience relevant to the responsibilities to be assumed by the entity. "Eligible Entity" does not mean a health insurer or an affiliate of a health insurer.

1.15 "Emergency" means circumstances that:

1. Could not have been reasonably foreseen;
2. Require prompt execution of a contract to remedy the condition, and
3. Meet one of the following two conditions:
  - a. The circumstances create a substantial risk of loss or revenue, damage or interruption of services or substantial threat to property, public health, welfare, or safety when the circumstances could not have been reasonably foreseen; or
  - b. The circumstances require immediate and decisive action to protect the security, credibility, or integrity of the AHIM.

1.16 "Executive Director" means the Executive Director of the AHIM.

1.17 "Goods and Services" or "Goods or Services" means supplies, equipment, materials, and services including personal services and any personal property, including any tangible, intangible and intellectual property and rights and licenses in relation thereto, that the AHIM is authorized by law to procure.

1.18 "Information Technology Contract" means a contract for the acquisition, disposal, repair, maintenance or modification of hardware, software or services for computers or telecommunications.

- 1.19 "Invitation to Bid" or "ITB" means all documents, whether attached or incorporated by reference, used for soliciting bids using a competitive bidding process in which specifications, price and delivery (or project completion) will be the predominant award criteria.
- 1.20 "Major Procurement" or "Major Procurement Contract" means a contract for a product or service costing more than one hundred thousand dollars (\$100,000). Major Procurement Contract does not include a material, supply, equipment, or service common to the ordinary operations of the AHIM.
- 1.21 "Offer" means a response to a solicitation document.
- 1.22 "Offeror" means a person who submits an offer.
- 1.23 "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation or any other legal or commercial entity.
- 1.24 "Proposal" means a response to a Request for Proposal.
- 1.25 "Proposer" means a person that submits a proposal in response to a Request for Proposal.
- 1.26 "Request for Proposal" or "RFP" means all documents, whether attached or incorporated by reference, used for soliciting proposals using a competitive proposal process in which price is not the sole determining factor for contract award.
- 1.27 "Responsible Bidder/Proposer/Offeror" means a vendor who submits a bid, offer, quote or proposal in response to a solicitation and who, in the reasonable opinion of the AHIM:
1. Is able and is otherwise qualified in all respects to perform fully the contract requirements without delay; and
  2. Has the integrity and reliability which will assure good faith performance.
- 1.28 "Responsive Bidder/Proposer/Offeror" (also "Responsive Bid", "Responsive Offer" or "Responsive Proposal" as applicable) means an offer that substantially complies in all material respects with applicable solicitation document requirements. When used alone, "Responsive" means having the characteristics of substantially complying in all material respects with applicable solicitation document requirements.

- 1.29 "Signed" or "Signature" means any mark, word or symbol attached to or logically associated with a document and executed or adopted by a person, with the intent to be bound.
- 1.30 "Solicitation" means all documents, whether attached or incorporated by reference, utilized for soliciting bids, offers, quotes, or proposals.
- 1.31 "Solicitation Document" means an Invitation to Bid, Request for Proposal or other document issued to invite offers from prospective contractors.
- 1.32 "Specification" means any description of the physical or functional characteristics or of the nature of goods or services. Specifications generally will state the result to be obtained and may, on occasion, describe the method and manner of doing the work to be performed.
- 1.33 "Vendor" means a person, corporation or entity who provides or proposes to provide goods or services to the AHIM under a major procurement contract. Vendor does not include:
1. An employee of the AHIM;
  2. A retailer
- 1.34 "Work" means the furnishing of all materials, equipment, labor and incidentals necessary to successfully complete any individual requirement in a contract and successful completion of all duties and obligations imposed by the contract.
- 1.35 "Written" or "Writing" means conventional paper documents, whether handwritten, typewritten or printed, in contrast to spoken words. It also includes electronic transmissions or facsimile documents when required by applicable law or permitted by a solicitation document or contract.

## **Section 2. General Policies.**

- 2.1 Objective. It is the policy of the AHIM, to the extent that is reasonable given the objectives of the AHIM, to conduct its contracting affairs in an open, competitive manner in accordance with these Rules.
- 2.2 Authority of the Executive Director.
- A. The Executive Director is authorized to initiate procurements and enter into all contracts and contract amendments for goods and services except when:

1. The goods and services are an expense over five thousand dollars (\$5,000) and was not previously approved in the AHIM budget. The Executive Director must seek Board approval.
  2. The goods and services are an expense over fifty thousand dollars (\$50,000). The Executive Director must seek Board approval.
  3. The Executive Director determines that the contract should be reviewed by the Board before it is executed; or
  4. As otherwise provided in these Rules.
- B. Price Reduction. The Executive Director is authorized without further specific approval action by the AHIM, to execute any contract amendment that results in a reduction of the price paid by the AHIM per item, unit or other measure of the goods or services provided under the contract, and may exercise any option under a contract previously approved by the AHIM, where the option terms of the approved contract establish a specific price for the goods or services to be acquired under the option.
- C. Emergency Procurements. The Executive Director is authorized to make an emergency procurement as defined in Section 1.15 of these Rules.
- D. Delegation by Executive Director. The Executive Director may delegate to any of the employees of the AHIM the exercise or discharge of any of the powers, duties or functions of the Executive Director in these Rules.
- E. Lack of an Executive Director. If the AHIM does not have an Executive Director to initiate procurement, the Board may designate one of its members or an agent of the AHIM to exercise the authority granted to the Executive Director in these Rules. Prior to the award of a contract under these Rules the designee must seek approval of the award of the contract by the Board.

### **Section 3. Solicitations.**

#### **3.1 Limitations Regarding Submissions of Solicitations.**

- A. The AHIM is committed to a competitive procurement process that maintains the highest level of integrity. Therefore, no communication outside the procurement process initiated by vendors, their attorneys, representatives, or others promoting their position, other than normal business activities not associated with the procurement, will be allowed with any officer, employee, or member of, or consultant or advisor to, the AHIM. Any attempt to influence any employees, officers, consultants, advisors or Board members with respect to a procurement, whether such

attempt is oral or written, formal or informal, is strictly prohibited and will result in disqualification.

- B. All bids, offers, quotes or proposals and the contracts resulting from solicitations are subject to the requirements of and must comply with the Act, regardless of whether or not specifically addressed in either the solicitations or the proposal. All potential vendors shall read and be familiar with the Act, a copy of which may be obtained through a link on the AHIM's web site.
  - C. The AHIM shall not under any circumstance be responsible for any expenses incurred by a vendor in preparing and submitting a proposal.
  - D. All materials submitted to the AHIM by vendors shall upon submission become the property of the AHIM and may be used as the AHIM deems appropriate.
  - E. From the time a solicitation is issued until either: (1) Six (6) months after the award of a contract; or (2) The rejection of all bids, offer, quotes, or proposals received by the AHIM, vendors are prohibited from officially or unofficially making any employment offer or proposing any business arrangement whatsoever to any AHIM employee, officer, or board member.
- 3.2 Addenda to Solicitation Documents. The AHIM reserves the right to make changes to any solicitation by issuance of a written addendum or amendment. The AHIM may issue any such addendum or amendment at any time prior to entering a contract regarding the applicable procurement.
- 3.3 Cancellation, Rejection, or Delay of a Solicitation. Any procurement described in a solicitation document may be cancelled, delayed or any or all offers may be rejected in whole or in part, when the cancellation, delay or rejection is in the best interest of the AHIM as determined by the AHIM.
- 3.4 Pre-Closing Modifications or Withdrawal of Offers. An offeror may modify or withdraw its offer in writing prior to closing. An offeror shall prepare and submit any modifications to its offer to the AHIM. The last offer received by the AHIM prior to closing will supersede any previous offers received unless the offer is identified by the offeror as an alternate offer.
- 3.5 Mistakes. To protect the integrity of the competitive procurement process and to assure fair treatment of offerors, the AHIM shall carefully consider whether to permit waiver or correction for mistakes.
- 3.6 Inspection of Solicitation Records.

- A. All data, materials, and documentation originated and prepared for the AHIM pursuant to solicitations shall belong exclusively to the AHIM and may be available to the public in accordance with these Rules. Under no circumstances will the AHIM be liable to any vendor or to any other person or entity, for any disclosure of any trade secret or confidential information.
- B. Upon the AHIM's issuance of a notice of intent to award a major procurement contract, the AHIM's procurement files for such major procurement will be open for public inspection. Notwithstanding the foregoing:
  - 1. The AHIM shall not be required to make available for public inspection information protected by or otherwise not required to be disclosed pursuant to applicable law, or these Rules; and
  - 2. The AHIM may delay making its procurement files available to the public for such reasonable period of time as the AHIM determines is necessary for it to redact or otherwise secure that portion of its procurement files that will not be made available to the public. The AHIM's procurement records that are made available to the public shall be available for inspection during the AHIM's regular office hours.

3.7 Pre-Solicitation Process. Whenever the AHIM wants to evaluate the availability, durability, adaptability, or other specifications of goods or services in advance of seeking to procure such goods or services, the Executive Director may elect to utilize a pre-solicitation process to identify potential offerors or possible solutions to the need being addressed. The Executive Director may opt to use any or all of the following methods to acquire information:

- 1. Oral presentations;
- 2. Pre-solicitation notices;
- 3. Pre-solicitation conferences;
- 4. Requests for information;
- 5. Site visits; or
- 6. Any other method the Executive Director deems appropriate in his or her discretion.

#### **Section 4. Source Selection.**

- 4.1 Generally. The AHIM will usually conduct a competitive process for goods or services by issuing a solicitation document. The AHIM shall award contracts for goods or services by one of the source selection methods in this section subject to the following exceptions:
- A. Small Procurements. Any procurement of goods or services not exceeding five thousand dollars (\$5,000) may be awarded without a competitive process.
  - B. Intermediate Procurements. Any procurement of goods or services between five thousand dollars (\$5,000) and one hundred thousand dollars (\$100,000) shall be awarded under the procedures for a major procurement or by competitive bidding as follows:
    - 1. The AHIM shall obtain three (3) competitive bids.
    - 2. If three (3) competitive bids are not obtained on purchases when bids are required, the form must show the names of at least three (3) firms contacted in attempting to obtain competition or show the reason three (3) firms were not contacted.
    - 3. Only firms which sell the type of commodity or service to be procured shall be contacted.
    - 4. The procurement contract shall be awarded to the responsive and responsible bidder who has submitted the lowest bid that meets the requirements, criteria, and specifications of the procurement bid request.
    - 5. Repeated small quantity procurements to circumvent the competitive bid limits or failure to obtain competitive bids without justification shall constitute a violation of these procedures.
- 4.2 Contracts to Assist With the Planning, Implementing, and Operating the AHIM. AHIM will only contract with an Eligible Entity to assist with the planning, implementing, and operating of the AHIM, giving preference to Eligible Entities that have relevant experience.
- 4.3 Sole-Source Procurements. For purposes of these Rules, "sole-source procurements" means those procurements which, by virtue of the performance specification, are available from a single source. Procurements under this section shall be approved in advance by the Board.
- 4.4 Requests for Proposals.
- A. The provisions of this subsection shall be applicable solely to solicitations of major procurement contracts by means of an RFP.



- B. Issuance of RFP. The AHIM shall prepare and issue an RFP and evaluate proposals in accordance with this subsection. Failure by the AHIM to comply with any technical requirement of this subsection shall not alone be deemed a defect requiring re-issuance of the RFP or rejection of all bids, offers, quotes, or proposals, such decision remaining in the discretion of the AHIM.
- C. RFP Document. An RFP shall set forth provisions including:
1. A clear description of the scope of products and services.
  2. Directions for making proposals;
  3. Deadline requirements.
  4. RFP requirements and proposal restrictions;
  6. Description of the factors that will be used to evaluate the proposals.
  6. Declaration of certain contract terms and conditions which shall be required by the AHIM, if applicable.
- D. RFP Review and Approval. Each RFP must be reviewed and approved by the Executive Director prior to publication to ensure achievement of procurement objectives, protection of the AHIM's interest, and fairness to potential vendors
- E. Bid Solicitation. The AHIM will actively solicit bids from such businesses or otherwise make such businesses aware of opportunities to bid for major procurement contracts. The AHIM is not required to send a solicitation notice to more than a total of three (3) vendors; provided however, that the AHIM may send a solicitation notice to fewer than three (3) vendors, if, in the opinion of the Executive Director, fewer than three (3) vendors are qualified.
- F. The AHIM shall communicate, clarify, and negotiate in the best interests of the AHIM, provided that all communication is conducted in a manner so as not to disclose any information that would give one or more vendors unfair advantage or unfairly enable one or more vendors to improve their proposal. Specifically, negotiations will only be permitted with the vendor whose bid, offer, quote, or proposal is the highest rated bid, offer, quote, or proposal. In the event that negotiations with the highest rated vendor fail to result in a contract, or if for any other reason a contract with such vendor is not executed, the AHIM may conduct negotiations with the second highest vendor and so forth until a contract is successfully executed.

- G. Evaluation and Award. Proposals shall be evaluated in accordance with the solicitation and in such a manner as to reasonably assure that all proposals are impartially considered and AHIM requirements are adequately met.

#### 4.5 Alternative Methods.

- A. The AHIM reserves the right to use an alternative procurement method if that method will be more likely to: (1) Maximize the AHIM's net revenue; (2) Achieve the specific business objective or business objectives of the procurement; or (3) Aid the Executive Director in fulfilling the statutory mandate to operate and administer the AHIM.
- B. Alternative procurement methods may include, but are not limited to, specialized vendor pre-qualifications, multistep bids or proposals, single proposer negotiations, competitive negotiations between two or more proposers, brand name solicitations, and cooperative procurements. The AHIM shall conduct the alternative procurement method in accordance with the process set forth in the applicable solicitation document.

#### 4.6 Emergency Procurements.

- A. The Executive Director may make emergency procurements. The AHIM must, at a minimum, receive three (3) competitive bids when required unless the emergency is critical. If three (3) competitive bids are not obtained on purchases when bids are required, the form must show the names of at least three (3) firms contacted in attempting to obtain competition or show the reason three (3) firms were not contacted.
- B. All emergency procurements shall be approved in advance by the Board. Where time or circumstance does not permit prior approval, approval must be obtained at the earliest practical date. Requests for approval shall be made in writing and shall include appropriate documentation.

### **Section 5. Disputes.**

#### 5.1 Filing of a Protest.

- A. Any actual or prospective bidder, proposer, offeror, or contractor who is aggrieved in connection with the solicitation or award of a procurement contract may file a protest seeking a determination with respect to any matter related to the solicitation or award of a procurement contract except as otherwise provided herein. An aggrieved person who files a protest is hereinafter referred to as a "Petitioner". Other than as expressly set forth in these Rules, nothing contained herein shall confer any rights or

remedies upon any aggrieved person or petitioner, or impose any duties or obligations upon the AHIM.

- B. The protests shall be in writing, shall be filed by delivery by hand or courier to the Executive Director with a copy to the Business Manager at the headquarters of the AHIM.
  - C. The protest shall include the following information:
    - 1. The name, address, and telephone number of the petitioner;
    - 2. The signature of the petitioner;
    - 3. Identification of the solicitation or contract number that is the subject of the dispute;
    - 4. A statement of the legal and factual grounds supporting the position of the petitioner, including copies of relevant documents;
    - 5. Any other documentation the petitioner wishes to submit in support of petitioner's position; and
    - 6. A statement of the relief requested whether legal, equitable, or otherwise. If a monetary award is requested, the amount shall be stated.
  - D. For a protest to be timely filed, the original protest manually signed by the petitioner must be physically received by the AHIM within five (5) business days from the precipitating event.
  - E. The petitioner shall be required to provide a suitable bond to the AHIM in certified funds at the time the protest is filed. Failure to provide such bond with any protest will result in the dismissal of such protest.
  - F. The amount of the bond shall be the amount established in the applicable solicitation. In the event that no amount is specified in the applicable solicitation, the bond shall be seventy-five thousand dollars (\$75,000) or fifty percent (50%) of the value of the procurement contract amount in controversy, whichever is less.
- 5.2 Notice to Others. In the event a protest is filed, the Executive Director shall immediately provide a copy of the protest to the Board and to the successful person or entity, if an award has been made, or, if no award has been made, to all persons or entities who have submitted bids or proposals.

5.3 Confidential Information. If the petitioner believes the protest contains material that should be withheld, a statement advising the Executive Director, with a copy to the Business Manager, of this fact shall accompany the protest submission.

5.4 Decision by the Executive Director.

- A. The Executive Director shall have the exclusive authority to decide all protests.
- B. After submittal of a timely protest and prior to issuance of a written decision to that protest, the petitioner shall be afforded an opportunity to discuss with the Executive Director the issues giving rise to the protest.
- C. The Executive Director shall issue a written decision within thirty (30) calendar days after a protest has been filed. If necessary, the time limit for the decision may be extended for an additional thirty (30) calendar days, with notice given to the petitioner in writing. The decision shall include:
  - 1. A brief description of the claim;
  - 2. A reference to the pertinent contract provision;
  - 3. A brief statement of the factual and legal issues; and
  - 4. A statement of the Executive Director's decision, with supporting rationale and the remedial action, if any.

5.5 Procedure for Filing an Appeal to the Board.

- A. A petitioner may appeal a decision of the Executive Director to the Board. Any appeal from a decision of the Executive Director must be filed with the Chair of the Board at the AHIM headquarters within five (5) business days after the receipt of such decision to be considered timely.
- B. Notice of any appeal shall also be filed with the Executive Director and the General Counsel of the AHIM by delivery by hand or courier to the headquarters of the AHIM.
- C. An appeal must be in writing and shall contain the following:
  - 1. Copy of the decision of the Executive Director; and
  - 2. The basis for the precise factual or legal error in the decision of the Executive Director or hearing officer from which the appeal is taken.

- D. The Board shall notify interested parties of the appeal by certified mail, return receipt requested, or any other method by which a written business record of delivery is kept, such as hand delivery by courier, express mail, or overnight express courier within five (5) calendar days after the appeal is filed.
- E. Any interested party may file a written brief stating its position on the appeal within five (5) business days after receipt of such notice.

#### 5.6 Board's Decision.

- A. The Board may review the record without a hearing or oral argument and issue a written decision on behalf of the AHIM.
- B. The Board may in its sole discretion: (1) Conduct its own review or investigation; (2) Conduct a de novo review in whole or in part; or (3) Allow oral argument, in the manner and under procedures that the Board deems appropriate under the circumstances.
- C. A copy of the Board's written decision will be sent to the appellant by certified mail, return receipt requested, or any other method by which a written business record of delivery is kept, such as hand delivery by courier, express mail or overnight express courier. The original written decision shall be retained by the AHIM. The written decision of the Board will be final, and no further appeal to the AHIM will be allowed.

- 5.7 Exclusive Remedy. These Rules provide the exclusive procedure for asserting a claim against the AHIM arising out of or relating to any matter related to the procurement process for any procurement contract. Neither an aggrieved person, nor petitioner, nor any other interested party has a right to any remedy against the AHIM with respect to any matter related to the procurement process for any procurement contract except in accordance with the procedures set forth in these Rules.

## **Section 6. Contracts.**

- 6.1 Approval Required. The Executive Director or his or her designee must approve and sign each AHIM purchase order or contract. Only the Executive Director or his or her designee is authorized to bind the AHIM in contractual agreements. A purchase order, notice of contract award, or contract signed by other AHIM personnel is null and void and shall not obligate the AHIM to payment for products and services.
- 6.2 Contractual Award and Agreement. The AHIM shall award the contract to the responsible offeror submitting solicitation whose bid, offer, quote or proposal represents the best value to the AHIM and offers what the AHIM believes will

result in the greatest long-term benefit to the State of Arkansas, the greatest integrity for the AHIM, and the best services and products for the public unless otherwise stated in the solicitation document. The AHIM may award by item, groups of items or the entire offer provided such award is consistent with the solicitation document and in the best interest of the AHIM as determined by the AHIM.