

Detroit-Wayne Mental Health Authority

Name Of

Protocol: Procurement Ethics Policy

Effective Date: October 1, 2013

Reviewed On:

Revised On:

Page 1 of 6

Approved by:

Title: Purchasing Director

I. POLICY:

It is the policy of the Detroit-Wayne Mental Health Authority ("Authority") that organizations and individuals employed or independently contracted with for services, goods, and/or construction, abide by certain ethical and legal standards presented herein.

II. PURPOSE:

The purposes of this policy are:

- 2.1 To establish some practical means to maintain the integrity of the Authority's contracting and purchasing procedures and to ensure that Authority resources are used for their intended public objectives;
- 2.2 To ensure the continued fair and open award of all the Authority's contracts and to avoid the opportunity and incentive for businesses to attempt to make private arrangements with Authority officers and employees, or their close advisers, to secure special and unfair advantages in competing for Authority contracts for services, goods, and construction; and
- 2.3 To establish enforcement mechanisms for this policy through the Authority's contracting procedures and rules for vendor behavior, which are in addition to those enforcement mechanisms provided by law.

III. APPLICATION:

This policy applies to all contracts, leases, real estate transactions and concession agreements entered into by the Authority, except for those entered into with other units of government.

IV. DEFINITIONS:

- 4.1 *Authority Procurement.* Any transaction by which the Authority acquires, trades, or rents goods, equipment, land, services, or construction for Authority use; enters into concession agreements; or rents, sells, or disposes of Authority property.
- 4.2 *Authority Business.* Any business which, or person who has taken part in Authority Procurement as a contractor or as a Authority-approved sub-contractor within the previous 24 months, or which is expected to take part in Authority Procurement within the next 12 months. "Expected to take part" means that some specific action has taken place which manifests an intent to compete for an

Detroit-Wayne Mental Health Authority

Name Of Protocol: Procurement Ethics Policy
Effective Date: October 1, 2013
Reviewed On:
Revised On:

Page 2 of 6

Authority Procurement, such as, the active solicitation of Authority work, a response to a bid or request for proposals, or a written request to be included on the bidders mailing list.

- 4.3 *Authority Contract Manager.* An individual employed by the Authority, for the purposes of performing contract management services for the Authority, including, but not limited to Authority executives, or a member of the Authority Board or any Board committee charged with contract management duties.
- 4.4 *Shared Business Venture.* A Shared Business Venture exists when the principal beneficiary of such venture and an Authority Contract Manager each have a substantial financial interest in one or more of the same business ventures. A Substantial Financial Interest in a disclosed blind trust is not a conflict of interest.
- 4.5 *Substantial Financial Interest.*
- 4.5.1 Ownership of any interest or involvement in any relationship from which, or as a result of which, a person within the past year has received, or is presently or in the future entitled to receive, more than \$500.00 per year, or its equivalent; except
- 4.5.1.1 That a person who deposits personal funds in a financial institution and earns interest on these funds, or who has a loan, at a rate and on terms available to the general public is not deemed to have a financial interest in that institution; and
- 4.5.1.2 That ownership of stocks and bonds which are listed and traded on the American, or New York Stock Exchanges, NASDAQ, or foreign stock exchanges, which have a current value of less than \$10,000.00, and which constitute less than one percent of the total outstanding shares of any specific ventures, or ownership of any amount of a publicly-traded mutual fund, is not deemed to be a Substantial Financial Interest;
- 4.5.2 Ownership of five percent or more of any property or business; or
- 4.5.3 Holding a key position in a business such as an officer, director, trustee, partner, sales manager, or the like, or holding any position of management, but not including persons who serve without compensation on the board of directors of a charitable organization, which has recognized status under section 501(c)(3) of the Internal Revenue Code.
- 4.6 *Gratuity.* A payment, loan, subscription, advance, deposit of money, service, or a gift of anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is provided in exchange. Nominal value means not more than \$50.00 per person per transaction, or \$100.00 total per year from any one business or concessionaire. A contribution to a political committee or to an officeholder expense fund is not deemed to be a Gratuity.
- 4.7 *Immediate Family Member.* A spouse, a former spouse, children, parents, brothers, sisters, grandparents, brother-in-law, and sister-in-law.

Detroit-Wayne Mental Health Authority

Name Of Protocol: Procurement Ethics Policy
Effective Date: October 1, 2013
Reviewed On:
Revised On:

Page 3 of 6

4.8 *Principal Beneficiary.* A person who owns ten percent or more of any real property or business, or who holds a key position in the business, such as, an officer, director, trustee, partner, senior engineer, or sales manager.

V. STANDARDS:

5.1 *Duties of the Authority.*

5.1.1 Each department of the Authority shall identify by name and title those persons within their department who belong on the Authority Contract Managers list. The Purchasing Director shall make this list readily available to the proposed awardee of any contract which requires Board approval so as to determine whether any conflicts exist.

5.1.2 The Authority's Personnel Director shall maintain a public file of all disclosures, and shall make copies available to the public pursuant to the terms of the Freedom of Information Act.

5.2 *Duties of Authority Contract Managers.* Authority Contract managers shall abide by the requirements of the Authority's Conflict of Interest Policy and its Standards of Conduct.

5.3 *Disclosure Duties of an Authority Business.*

5.3.1 Before the award to an Authority Business of a contract which requires Authority Board approval, the principal beneficiaries of such Authority Business, and/or those individuals who exercise significant discretion in making a bid or response, shall file with the Authority Purchasing Director a Ethics in Contracting Vendor form; providing disclosure information based upon their best knowledge and belief:

5.3.1.1 Of any immediate family relationship, or

5.3.1.2 Of any shared business venture, with any Authority employee whose name is on the contract managers list.

5.3.2 An Immediate Family Member relationship exists when:

5.3.2.1 A Principal Beneficiary of the Authority Business is an Immediate Family Member of an Authority Contract Manager, or

5.3.2.2 An Immediate Family Member of an Authority Contract Manager has been employed by the Authority Business within the previous 12 months, or if there has been any discussion of the future employment such Immediate Family Member within the previous 12 months.

Detroit-Wayne Mental Health Authority

Name Of

Protocol: Procurement Ethics Policy

Effective Date: October 1, 2013

Reviewed On:

Revised On:

Page 4 of 6

5.3.3 If a Shared Business Venture exists, then any contract with the Authority Business shall require the vote of at least a two-thirds majority of the Board to approve that contract. A copy of all relevant Board actions shall be included with the contract file.

5.3.4 The Purchasing Director shall maintain business disclosures pursuant to this section with the applicable contract file for at least three years after such disclosure is submitted.

5.4 *Authority Business Requirements Regarding Gratuities.*

5.4.1 A business shall not offer, give, or agree to give any Authority employee a Gratuity or gift for themselves or for an Immediate Family Member, except as permitted below:

5.4.1.1 Opportunities, benefits, and services that are available on the same conditions as for the general public.

5.4.1.2 Anything for which the Authority employee receives fair market value.

5.4.1.3 Anything provided on the basis of a personal friendship unless the Gratuity was provided because of the employment position of the Authority employee.

5.4.1.4 Food or refreshments totaling not more than \$75.00 per person per transaction, or \$150.00 total per year to any one Authority employee.

5.4.1.5 Complimentary copies of trade publications, books, reports, pamphlets, calendars, periodicals or other informational materials of nominal value.

5.4.1.6 Complimentary tickets or admission to events in support of non-profit or charitable organizations.

5.4.1.7 Admission or registration fee, travel expenses, entertainment, lodging, meals or refreshments that are furnished to the Authority employee (i) by the sponsor(s) of an event, appearance or ceremony which is related to official business of the Authority in connection with such an event, appearance, or ceremony and to which one or more of the public are invited; or (ii) in connection with teaching, a speaking engagement or the provision of assistance to an organization or another governmental entity, as long as the Authority does not compensate the employee for admission or registration fees, travel expenses, entertainment, meals or refreshments for the same activity; and (iii) such fees, travel expenses, entertainment, meals or refreshments are customarily provided to others in similar circumstances.

Detroit-Wayne Mental Health Authority

Name Of Protocol: Procurement Ethics Policy
Effective Date: October 1, 2013
Reviewed On:
Revised On:

Page 5 of 6

5.4.1.8 Acceptance of unsolicited advertising of promotional material and other items of nominal value.

Each of the exceptions listed in this section is mutually exclusive and independent of each other.

5.4.2 An Authority Business shall not offer, give, or agree to give any Authority Contract Manager an offer of employment for themselves or for a relative or domestic partner that is intended to induce or to influence any decision made as a representative of the Authority.

5.4.3 An Authority Business shall make no payment, Gratuity, or offer of employment on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

5.5 *Sanctions for Neglect or Misrepresentation of Required Disclosures or Violations of These Ethical Standards.*

5.5.1 Any Authority Business which violates this Procurement Ethics Policy or any applicable laws, shall be subject to disciplinary action, up to and including termination of employment or independent contract, as applicable.

5.5.2 The Purchasing Director, in conjunction with Corporation Counsel, shall include in all contracts which require approval of the Authority Board, provisions by which any one or more of the following sanctions shall be imposed upon a contractor who knowingly collaborates in or induces a violation of any of the ethical standards as set forth in this Policy:

5.5.2.1 Termination of contracts, with a liquidated damages provision; or

5.5.2.2 Debarment or suspension; or

5.5.2.3 Recovery of value transferred or received in breach of the ethical standards set forth in this Policy.

Recovered compensation shall be credited to the fund from which initially disbursed.

5.5.3 Upon a showing that a subcontractor has paid a surcharge to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order thereunder, the purchase order or other form of contract shall expressly provide that it shall be conclusively presumed that the amount of the surcharge was included in the price of the subcontract or order and ultimately borne by the Authority and will be recoverable from the recipient. In

Detroit-Wayne Mental Health Authority

Name Of
Protocol: Procurement Ethics Policy
Effective Date: October 1, 2013
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Revised On:

Page 6 of 6

addition, that amount may also be recovered from the subcontractor making such payments. Recovery from one offending party shall not preclude recovery from other offending parties

- 5.6 *Prohibition Against Brokers and Contingent Fees.* Ann Authority Business shall not permit another person or business to solicit or secure an Authority contract upon an agreement or understanding for a commission, percentage, brokerage, or other type of contingent fee, except for retention of bona fide employees or for bona fide established commercial selling agencies, for the purpose of securing business with the Authority. A person may solicit such business on a fixed fee basis if the fee is to be paid whether or not a contract is awarded.
- 5.7 *Subcontractor surcharges.* A person shall not make any payment, gratuity, or offer of employment on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order

VI. QUALITY ASSURANCE/IMPROVEMENT:

The Authority shall review and monitor Authority Business adherence to this policy as one element in its network management program, and as one element of the QAPIP Goals and Objectives.

VII. COMPLIANCE WITH ALL APPLICABLE LAWS:

Authority staff, contractors and subcontractors are bound by all applicable local, state and federal laws, rules, regulations and policies, all federal waiver requirements, state and county contractual requirements, policies, and administrative directives in effect and as amended.

VII. AMENDMENT AND VALIDITY

Other resolutions or parts of resolutions which are inconsistent with the provisions of this policy are hereby superseded and amended. If any provision of this policy or any article, section, sentence, clause, phrase or word or application thereof, is in any circumstances held by a court of law to be invalid, the remainder of this policy and the application of any article, section, sentence, clause, phrase or word, shall not be affected.