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Owner Karry Steele:  
Senior Director of  
Business  
Operations  
Area Fiscal  
Management-  
Policy  
Applicability Genesee Health  
System  
References Policy

## Procurement, 05-002-95

### I. APPLICATION

All GHS Staff; Contractual Staff; Students; Volunteers

### II. SCOPE

This policy applies whenever Genesee Health System (GHS) purchases supplies or services.

### III. POLICY STATEMENT

This policy defines the fair treatment of those involved in GHS procurement—the process for buying, purchasing, renting, leasing, or other acquisition—of supplies and services. It is designed to maximize the quality and quantity of what GHS purchases with public funds and safeguard GHS's purchasing system.

### IV. GENERAL RULES

Board Resolution 075-01 requires that GHS purchase supplies or services from Genesee County before purchasing supplies or services outside of Genesee County. Purchasing will meet federal and state laws and regulations. Nothing in this policy will prevent GHS from complying with the terms and conditions of any grant, gift, or bequest otherwise consistent with law. Purchasing information is a public record and is available to the extent recognized under Michigan Compiled Laws, Section 15.231 – Section 15.246. GHS will ensure that it does not purchase supplies or services from a business or individual excluded

from participation in the Medicaid program or any other federal program. GHS procurement/competitive bidding policy must conform to the Bureau of Primary Care's expectation for all health center programs covered under section 330 of the Public Health Service Act and OMB (Office of Management and Budget) 2 CFR 200 Uniform Guidance. Specifically, it must comply with 45 CFR 75 Subpart E: Cost Principles.

## **V. SENIOR DIRECTOR OF BUSINESS OPERATIONS, CONTRACTS, GENERAL PROCEDURE**

- A. 1. **Senior Director of Business Operations Purchasing Responsibilities**
- a. The Senior Director of Business Operations or designee is primarily responsible for purchasing supplies and services, managing supplies and services, and disposing of supplies and services for GHS.
  - b. The Senior Director of Business Operations or designee:
    - a. Will supervise all of GHS's purchase of supplies and services, including but not limited to the purchase of supplies and services.
    - b. Will supervise any GHS purchased equipment that is valued at a minimum of \$5,000.00.
    - c. Will sell, trade, or dispose of surplus supplies and surplus equipment owned by GHS.
    - d. Will approve and award small purchases by the rules for small purchases.
    - e. Has the discretion to propose additional procedures for purchasing, subject to the Board's approval.
    - f. Will keep any documents related to procurement in a file called "Procurement File" for each type of procurement GHS requires.
    - g. Has the discretion to designate another person employed at GHS to help him or her purchase supplies and services, manage supplies and services, and dispose of supplies and services.
    - h. Will perform any other duties as outlined in this policy.

2. **Types of Purchase**

There are six ways the Senior Director of Business Operations or designee may decide to purchase supplies or services for GHS:

- 1. Competitive Sealed Bidding
- 2. Competitive Sealed Proposals
- 3. Small Purchases

4. Single Source Purchases
5. Emergency Purchases
6. At the Senior Director of Business Operations' or designee's discretion, in any other manner that is in the best interests of GHS

### 3. Types of Contracts

There are five ways the Senior Director of Business Operations or designee may structure contracts for each type of purchase:

1. **"Multi-Term Contract"** means an agreement for the purchase of services or supplies for longer than 365 days. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds. All multi-term contracts must:
  - a. Include the length of the contract and the criteria to renew the contract in the final written contract.
  - b. Only be used by GHS if it has funds to purchase the supplies or services for the entire first 365 days of the contract.
  - c. Include in the final written contract that the estimated amount of supplies or services that are purchased cover the entire length of the contract and not a single term.
  - d. Be for an amount of supplies or services that have a reasonably firm price over each term of the contract and for the entire length of the contract.
  - e. The maximum time for any Multi-Term Contract is five years unless otherwise stipulated by contract, and it must be approved by the Board.
2. **"Multiple Source Contract"** means an agreement, with more than one bidder or offeror, for similar supplies or services.
  - a. All multiple source contracts are:
    1. Made at the discretion of the Senior Director of Business Operations or designee when necessary for adequate delivery, adequate supply, adequate service, or adequate product compatibility;
    2. Not to be made when a single award can be made without sacrificing quality or quantity;
    3. Not a way to be used to divide business so as to make a larger and single contract a Multiple Source Contract, nor to make available supply or supplier selection to allow for preferential treatment unrelated to quantity or quality;
    4. Limited to the least number of suppliers needed; and
    5. Approved by the Director of Business Operations or

designee in a written document that describes the reasons for a multiple source contract.

- b. GHS's obligation to purchase the quantity of supplies and services it actually needs is limited by the Uniform Commercial Code.
  - c. GHS reserves the right to separate Multiple Source Contracts if a particular quantity of supplies or services exceeds the amount specified in the final written contract.
  - d. The Senior Director of Business Operations or designee reserves the right to take bids or offers separately if an amount of supplies or services is greater than the amount specified in the final written contract; and
  - e. The Senior Director of Business Operations or designee reserves the right to take bids or offers separately if the amount of supplies or services under the contract will not meet a non-reoccurring special need.
3. **"Group Purchasing Contracts"** means entering a contract with a group of other health care entities to take advantage of the benefits of large purchases to increase quality and quantity of supplies and services purchased by GHS. At the discretion of the Senior Director of Business Operations or designee, GHS reserves the right to separate groups if in its best interests.
4. **"Shared Risk Contract"** means a performance contract for the purpose of managing supports and services. Shared Risk Contracts must:
- a. Include language that protects GHS consumers from practices that would withhold medically necessary treatment under 42 C.F.R § 417.497 (L).
  - b. Not allow a contractor to overspend the total budget for any contract period.
  - c. Not shift financial liability to consumers because of PHP debt, PHP loss, or PHP insolvency.
5. **"Discretionary Contracts"** means a contract entered into at the Senior Director of Business Operations' or designee's discretion in any other form that is in the best interest of GHS. Decisions for entering into discretionary contracts must be documented and maintained for at least seven years from the date the contract was entered into.

#### 4. **General Procurement Procedure**

- 1. GHS determines when to purchase supplies or services.
- 2. The Senior Director of Business Operations or designee determines the type of purchase that GHS requires. The type of contract will also be determined by the Senior Director of Business Operations or designee at

any time when it is reasonably apparent which type of contract should be used.

3. The Senior Director of Business Operations or designee and those involved in procurement, including the contractor, must follow the rules that apply to a particular type of purchase.
4. The Senior Director of Business Operations or designee may award contracts.
5. After the award, the Board has the discretion to approve all contracts that are not small purchases. Small purchases do not require Board approval.

#### 5. **Miscellaneous Procedures**

1. When in GHS's best interest, GHS will establish per capita rates.
2. GHS will enter collectively bargained agreements when necessary.

### B. **Rules for Different Types of Purchases**

#### 1. **Competitive Sealed Bidding**

1. **Conditions for Use.** The Senior Director of Business Operations or designee has the discretion to use Competitive Sealed Bidding to purchase supplies and services.
2. **Invitation for Bids.** An invitation for bids—any document, whether attached or incorporated by reference, utilized for soliciting sealed bids—will be issued by the Senior Director of Business Operations or designee in consultation with a committee of GHS staff, consumers business or industry professionals, experts, interested individuals, or any other person for issuing an invitation for bids. The invitation will include the supply or service, the contract terms that apply, the time bids will be opened, and the method bidders will use to answer questions posed by the committee.
3. **Public Notice.** The Senior Director of Business Operations or designee must give public notice of an invitation for bids at least 14 calendar days before the date set for bidding to begin. The notice may be published in a generally circulated newspaper. All notices must include the place, date, and time bidding begins.
4. **Bid Opening.** The Senior Director of Business Operations or designee will open the bids publicly, in the presence of one or more witnesses, and at the date, time, and place designated in the invitation for bids. The name of each bidder and the amount of each bid will be recorded. Other information deemed important by the Senior Director of Business Operations or designee will also be recorded as public record.
5. **Evaluation.** The Senior Director of Business Operations or designee will unconditionally accept the bids, without alteration, unless corrected or withdrawn. Bids will be evaluated based on the requirements in the invitation for bids. The Senior Director of Business Operations or designee may also require inspections, testing, quality, proof of concept, service delivery, and suitability. Bids to provide services will be evaluated under

GHS Policy #08-203-01 – Consumer Participation in Provider Selection. When it is in GHS's best interests, business and industry professionals, experts, and other interested persons may evaluate the bid. Criteria affecting bid price will be objectively measurable (such as discounts, transportation costs, and total or life cycle costs).

6. **Discussion and Revision.** Discussions may be conducted with those submitting proposals only for proposals determined by the Senior Director of Business Operations or designee as likely to be awarded. The discussions are to determine whether all purchasing and other requirements are met. Discussions will treat all involved with fairness. The Senior Director of Business Operations or designee may allow revisions after the submission of an RFP, but prior to award. In any discussion, no identification of, or information from, competing proposals will be disclosed to anyone outside of GHS.
7. **Award.** The Senior Director of Business Operations or designee has the discretion to award the contract. Awards will be made within a reasonable amount time, through written notice, to the lowest bidder submitting a bid conforming to all material requirements and having the capability in all respects to perform all contract requirements, taking into consideration all relevant factors.
8. **Approval.** After award, the Board of Directors has the discretion to approve the bid.
9. **Multi-Step Bidding.** When it is considered impractical to initially prepare a purchase description to support an award based on price, an invitation for bids may request unpriced bids. The Senior Director of Business Operations or designee will evaluate unpriced bids. Bidders whose bids are deemed acceptable will be invited to bid again by submitting priced bids. These bids will then be evaluated and an award will be made.
10. **Correction or Withdrawal of Bids; Cancellation or Withdrawal of Awards.** Corrections or withdrawal of inadvertently erroneous bids, or cancellation or withdrawal of awards of inadvertently erroneous bids, may be permitted by the Senior Director of Business Operations or designee. Mistakes discovered before bid opening may be corrected or withdrawn by written notice received by the Senior Director of Business Operations or designee at any place designated in the invitation for bids. After bid opening, corrections or withdrawal of bids will be permitted if the bidder clearly shows a clerical mistake, the nature of the mistake, and what was meant. After bid opening, no changes in bids can be made which are prejudicial to GHS's best interests or to fair competition. All bid corrections or withdrawals, and award cancellations or withdrawals, must be supported by a written determination by the Senior Director of Business Operations or designee.

## 2. **Competitive Sealed Proposals**

1. **Conditions for Use.** The Senior Director of Business Operations or



designee has the discretion to use competitive sealed proposals to purchase supplies and services. The Senior Director of Business Operations or designee must use competitive sealed proposals when the supplies or services can be purchased through different or diverse specifications, when contractual agreements will require negotiations and development, or when GHS may request modifications.

2. **Request for Proposals.** The Senior Director of Business Operations or designee will issue a Request for Proposal (RFP). An RFP is any document, whether attached or incorporated by reference, utilized for soliciting sealed proposals. The RFP will include the supply or service, the contract terms that apply, a ranking of the importance of price and any other factors the Senior Director of Business Operations or designee deems relevant, the time proposals will be opened, the method for submitting proposals, and how questions may be answered.
3. **Public Notice.** The Senior Director of Business Operations or designee must give public notice of an RFP at least 14 calendar days before the deadline for accepting proposals. The notice may be published in a generally circulated newspaper and/or on the GHS website ([www.genhs.org](http://www.genhs.org)) and must include the place, date, and time for accepting proposals.
4. **Receipt of Proposals.** All RFPs will be confidential to protect competition and the identity of the bidder, and the contents of any proposal will not be disclosed to anyone outside of GHS. A register of RFPs will be prepared by the Senior Director of Business Operations or designee containing the name of each bidder, the number of modifications received, and a proposal sufficient to identify the item offered. The register will be open to the public after the Board approves the award.
5. **Evaluation.** The Senior Director of Business Operations or designee will unconditionally accept the proposals, without alteration, unless revised or withdrawn. Proposals will be evaluated based on the requirements specified in the RFP. The Senior Director of Business Operations or designee may also require inspections, testing, quality, proof of concept, service delivery, and suitability. Proposals to provide services will be evaluated under GHS Policy #08-203-01 – Consumer Participation in Provider Selection. When in GHS's best interests, business and industry professionals, experts, and other interested persons may evaluate the proposal. Criteria affecting proposal price will be objectively measurable (such as discounts, transportation costs, and total or life cycle costs).
6. **Discussion and Revision.** Discussions may be conducted with those submitting proposals only for proposals determined by the Senior Director of Business Operations or designee as likely to be awarded. The discussions are to determine whether all purchasing and other requirements are met. Discussions will treat all involved with fairness. The Senior Director of Business Operations or designee may allow revisions after the submission of an RFP, but prior to award. In any

discussion, no identification of, or information from, competing proposals will be disclosed to anyone outside of GHS.

7. **Award.** The Senior Director of Business Operations or designee has the discretion to award the proposal that is determined to be the most advantageous to GHS. The Senior Director of Business Operations or designee will document, in writing, the basis for the award.
8. **Approval.** After award, the Board of Directors has the discretion to approve the proposal.
9. **Correction or Withdrawal of Proposals; Cancellation or Withdrawal of Awards.** Corrections or withdrawal of inadvertently erroneous proposals, or cancellation or withdrawal of award of inadvertently erroneous proposals, may be permitted by the Senior Director of Business Operations or designee. Mistakes discovered before the opening of proposals may be corrected or withdrawn by written notice received by the Senior Director of Business Operations or designee at any place designated in the request for proposals. After the opening of proposals, corrections or withdrawal of proposals will be permitted if it can clearly be shown: that a clerical mistake was made, the nature of the mistake, and what was meant. After opening the proposals, no changes in proposals can be made prejudicial to GHS's best interests or fair competition. All proposed corrections or withdrawals, and award cancellations or withdrawals, must be supported by a written determination by the Senior Director of Business Operations or designee.

### 3. **Small Purchases**

1. **General.** Any contract less than \$50,000.00 is a small purchase. Small purchases will follow the procedure outlined for small purchases below. Contracts may not be artificially divided to make their prices less than \$50,000.00.
2. **Small Purchases between \$25,000 and \$50,000.00.** The Senior Director of Business Operations or designee must solicit at least three written quotations. The Senior Director of Business Operations or designee will award businesses offering the lowest reasonable and acceptable quotation. The names of the businesses submitting quotations, and the date and amount of each quotation, will be recorded by the Senior Director of Business Operations or and maintained as a public record.
3. **Small Purchases less than or equal to \$25,000.00.** The Senior Director of Business Operations or designee will determine the procedures for small purchases less than or equal to \$25,000.00. Any procedure determined by the Senior Director of Business Operations or designee will be designed to promote adequate and reasonable competition. The procedure must also facilitate audits of small purchases less than or equal to \$25,000.00. The Senior Director of Business Operations or designee will document, in writing, the competition obtained and the funds that are spent.

### 4. **Single Source Purchases**



At the discretion of the Senior Director of Business Operations or designee, and after the Senior Director of Business Operations or designee conducts a good faith review of available sources and determines that only one source for the required supply or service is reasonably available, a single source purchase may be made. The Senior Director of Business Operations or designee will negotiate all terms of the purchase. A written record will document the single source purchase, the basis for the single source purchase, the contractor's name, the amount and type of the contract, and the supplies or services purchased. This record will be a public record.

## **5. Emergency Purchases**

The Senior Director of Business Operations or designee may make or authorize others to make emergency purchases of supplies or services if there is a threat to public health, welfare, or safety. Emergency purchases will be made with as much competition as possible. Within a reasonable time, the Senior Director of Business Operations or designee will document, in writing, the basis of the emergency and the reason the Senior Director of Business Operations or designee chose a particular contractor. A written record of emergency purchases will be made and must indicate the contractor's name, the amount and type of the contract, and each supply or service purchased.

## **6. Cancellation or Rejection by the Senior Director of Business Operations or Designee**

1. The Senior Director of Business Operations or designee may, prior to approval by the Board, cancel an invitation for bids, an RFP, or any other purchase if in the best interests of GHS. In addition, the Senior Director of Business Operations or designee may reject any bid, proposal, or offer, in whole or in part, when in the best interests of GHS. The reasons for the cancellation or rejection will be documented, in writing, by the Director of Business Operations or designee.
2. Each solicitation issued by GHS must state that the solicitation may be canceled, and that any bid, proposal, or offer may be rejected, in whole or in part, when in the best interests of GHS. Notice of cancellation will be sent to all non-GHS participants. The notice will identify the solicitation that is being canceled, explain the reason for the cancellation, and indicate whether any opportunity will be given to compete on any re-solicitation for the same or similar purchase. Reasons for cancellation or rejection will be provided upon request to unsuccessful bidders or offerers.

## **7. Responsibility of Bidders**

1. **Determination of Non-Responsibility.** If a bidder who otherwise would have received an award is found to not have the capability in all respects to fully perform the contract requirements and/or the tenacity, perseverance, experience, integrity, reliability, capacity, facilities, equipment, and credit that will assure good faith performance, the bid will be rejected by the Senior Director of Business Operations or designee and documented as any other rejection. The failure of a bidder to promptly

supply information to GHS is grounds for rejection.

#### 8. **Bid, Payment, and Performance Bonds on Supply or Service**

Bid surety, payment bonds, performance bonds, or other security may be required for contracts under state law or because the Senior Director of Business Operations or designee determines security is required to protect GHS's interests. Surety requirements will be set forth in the solicitation. Surety will not be used as a substitute for a determination that has the capability in all respects to perform fully the contract requirements and/or the tenacity, perseverance, experience, integrity, reliability, capacity, facilities, equipment, and credit that will assure good faith performance.

### C. **Rules that Apply to All Purchases**

#### 1. **Board Approval.** The Board must approve all contracts after they are awarded. The approval process is:

1. The Senior Director of Business Operations or designee, along with the Corporate Compliance Officer, will review all mandatory disclosures required; parts of any award, including any disclosure of subcontractors the contractor intends to use for the award; and prepare for the Board a written summary of all potential ethical or prohibited conduct, including actual or potential conflicts of interest that may affect GHS if the Board awards the contract.
2. The Board will review any disclosures required of the Board to ensure that no Board member has any personal financial benefit, actual or potential conflict of interest, or any relationship to the contract that could be detrimental to, or not in the best interests of, GHS.
3. If the Board determines that a potential or actual personal financial benefit, actual or potential conflict of interest, or actual or potential unethical or prohibited conduct may not be in the best interests of GHS; or if it is illegal or results in a conflict of interest that cannot be properly managed by the Board, the Board must not approve the contract.
4. The Board may take any other action it deems necessary to protect the interests of GHS, including, but not limited to, isolating the Board member with the conflict from all aspects of the contract.

#### 2. **Contract Clauses**

All GHS contracts will include the terms necessary to define the responsibilities and rights of the parties to the contract. The Senior Director of Business Operations or designee may require specific contract language that addresses the following subjects:

1. The unilateral rights of GHS to order, in writing, changes in the work within the scope of the contract.
2. The unilateral rights of GHS to order, in writing, temporary stoppage of the work or delays in performance that do not alter the scope of the contract.

3. Variations occurring between estimated and actual quantities of work in the contract.
4. Defective pricing.
5. Liquidated damages.
6. Specified excuses for delay or nonperformance.
7. Termination of the contract for default.
8. Termination of the contract, in whole or in part, for the convenience of GHS.
9. Suspension of work ordered by GHS.
10. Site conditions differing from those indicated in the contract, or ordinarily encountered, except that a "differing site conditions" clause need not be included in a contract when the contract is negotiated or when the contractor provides the site or design.
11. Any other contract clause the Senior Director of Business Operations or designee deems necessary to protect the interests of GHS.

### 3. Price Adjustments

1. Price adjustments resulting from the use of contract clauses must be computed:
  - a. By agreement on a fixed price adjustment before the start of performance, or as soon as possible.
  - b. By unit prices specified in the contract or later agreed to.
  - c. By the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or later agreed to.
  - d. In such other manner as the parties may agree.
  - e. In the absence of agreement by the parties, by a unilateral determination by GHS of the costs attributable to the events under contract clauses, with price adjustment as computed by GHS and through generally accepted accounting procedures, and subject to the provisions of the Appeals and Remedies section below.
2. **Standard Clauses and their Modification.** The Senior Director of Business Operations or designee, in consultation with Corporate Counsel, may establish standard clauses for use in GHS contracts. If the Senior Director of Business Operations or designee establishes any standard clauses about subjects in Section C-2 (10), such clauses may be varied if the circumstances justify the variations, and if notice of any material variation is stated in the invitation for bids or an RFP.

### 4. Contract Administration

A contract administration system designed to insure that a contractor is performing in accordance with all GHS requirements for purchasing, and the terms of the contract, will be maintained by the Senior Director of Business Operations or designee.

**5. Approval of Accounting System**

1. Except with respect to firm fixed price contracts, the Senior Director of Business Operations or designee may determine that a contract type will not be used unless:
  - a. The proposed contractor's accounting system will permit timely development of all necessary information about the cost of labor, material, overhead, and other expected costs, in the form required by the specific contract type; and
  - b. The proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted cost accounting principles.

**6. Right to Inspect**

GHS may at reasonable times inspect the place of business or worksite of any contractor or any subcontractor awarded a contract under this policy.

**7. Right to Audit Records**

1. **Audit of Cost or Pricing Data.** GHS may, at reasonable times and places, audit any contractor who has submitted cost or pricing data as a part of its bid or proposal, for up to seven years from the date of final payment under the contract.
2. **Contract Audit.** GHS will be entitled to audit any contractor or any subcontractor under any negotiated contract or any negotiated subcontract other than a firm fixed-price contract. Records will be maintained by the contractor or subcontractor for a period of seven years from the date of final payment.

**8. Agency Purchasing Records**

1. **Bid File.** All determinations and other written records pertaining to the solicitation and award of a contract will be maintained by the Senior Director of Business Operations or designee for GHS in a bid file.
2. **Retention of Procurement Records.** All procurement records will be retained and disposed of by GHS in accordance with GHS record retention policies and procedures.

**9. Mandatory Disclosures**

All contractors participating in the procurement process must disclose a list of subcontractors, suppliers, or other vendors the contractor knows will be used, or that the contractor may plan on using, in the event of a contract award and approval. The disclosure must be in a separate writing made at the same time the contractor

submits a bid, proposal, or other document for the Senior Director of Business Operations or designee's consideration for award. If a contractor decides to use a subcontractor, supplier, or other vendor at any time after the contractor submits a bid, proposal, or other document for the consideration for award, the contractor must first disclose the use of that subcontractor to the Senior Director of Business Operations or designee in a written document and obtain the approval of both the Senior Director of Business Operations or designee and the Board. If an award has not been made, failure to follow this policy is grounds to reject the contractor's submission. If an award has been made but not yet approved by the Board, the Senior Director of Business Operations or designee has the discretion to cancel the award. If the contract has already been awarded and approved, failure to follow the mandatory disclosure rules is a material breach of any contract with GHS and may result in cancellation of the contract based on the sole discretion of the Board.

#### 10. **Contract Descriptions**

1. The Senior Director of Business Operations or designee has the discretion to determine the specific details of a contract, including any description of the physical or functional characteristics, or of the nature of a supply or service, or descriptions of any requirement for inspecting, testing, or preparing a supply or service for delivery. These are called "contract specifications."
2. All specifications, drafted by GHS or not, must be drafted to promote and encourage competition in satisfying GHS's needs and cannot be unreasonably restrictive.
3. Brand name or "or equal" specifications:
  - a. **Use.** Brand name or "or equal" specifications—a specification limited to one or more items by manufacturer names or catalogue numbers to describe the standard of quality, performance, and other salient characteristics needed to meet GHS's requirements, and which provides for the submission of equivalent products—may be used when the Senior Director of Business Operations or designee determines that:
    1. No other design or performance specification or qualified products list is available
    2. Time does not permit the preparation of another form of purchase description, not including a brand name specification.
    3. The nature of the product or of GHS's requirements makes use of a brand name or equal specification suitable for the procurement.
    4. Use of a brand name or "or equal" specification is in GHS's best interests.
  - b. **Designation of Several Brand Names.** Brand name or "or equal" specifications will seek to designate as many different brands as

is practicable. These brands will be stated as "or equal" brands. The specifications will also state that substantially equivalent products to those designated will be considered for award.

- c. **Required Characteristics.** Unless the Senior Director of Business Operations or designee determines, in writing, that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or "or equal" specifications will include a description of the particular characteristics required.
  - d. **Nonrestrictive Use.** Where a brand name or "or equal" specification is used in a solicitation, the solicitation will explain that the use of a brand name is for the purpose of describing desired characteristics and is not intended to restrict competition.
- 4. If the Senior Director of Business Operations or designee determines, in consultation with any relevant person, that only a single specific brand name is in the best interests of GHS, the Senior Director of Business Operations or designee may designate a specification requiring that brand name.
  - 5. The Senior Director of Business Operations or designee will use reasonable efforts to identify all sources from which the designated brand name or any "or equal" brands can be obtained, and must solicit these sources to achieve the most price competition possible. If the Senior Director of Business Operations or designee determines that only one source of the brand name is available, procurement will follow single source purchasing rules.

#### **D. Appeals and Remedies**

##### **1. Authority of the Senior Director of Business Operations or Designee to Settle Bid Protests and Contract Claims**

The Senior Director of Business Operations or designee is authorized to settle any bid or proposal protest, or any contract claim, before an appeal to the Chief Executive Officer.

##### **2. Bid or Proposal Protests**

- 1. **Right to Protest.** Any actual or prospective bidder or offeror who is aggrieved in connection with the solicitation or award of a contract may protest to the Senior Director of Business Operations or designee. A protest with respect to an invitation for bids or an RFP must be submitted in writing to the Director of Business Operations or designee before the time when the Senior Director of Business Operations or designee opens the bids or the date proposals are no longer accepted. The Senior Director of Business Operations or designee may accept a protest if the aggrieved person did not know and should not have known of the facts giving rise to such protest before the Senior Director of Business Operations or



designee opens the bids or the date proposals are no longer accepted. In any case, protests must be submitted prior to the award of the bid. A protest about award of a contract must be submitted in writing within seven calendar days after award of the bid.

2. **Stay of Procurements During Protests.** If a protest is made within the limits and rights to protest, the Director of Business Operations or designee will not proceed further with purchasing the supplies or services associated with the bid or proposal being protested until the procedure for protests has been completed, or until the Senior Director of Business Operations or designee makes a written determination that delay would not be in the best interests of GHS.
3. **Entitlement to Costs.** When a protest is received and sustained by the Director of Business Operations or designee after contract award, and the protesting bidder/offeror should have been awarded the contract but was not, at the Senior Director of Business Operations's or designee's sole discretion the protesting bidder or protecting offeror is entitled to reasonable costs that were incurred with the bid or offer, including bid preparation costs as evidenced by original receipts, documented by line item descriptions and summarized by the protesting bidder/offeror in a spreadsheet format. "Reasonable costs" do not include attorney fees.

### 3. Contract Claims

1. **Decision of the Senior Director of Business Operations or Designee.** Claims that are not bid protests must be submitted in writing to the Senior Director of Business Operations or designee, requesting a final decision regarding the claim. Claimant may request a conference with the Senior Director of Business Operations or designee to discuss the basis for the claim. Claims may include disputes arising under a contract, breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission. The Senior Director of Business Operations or designee will issue a written decision about the merits of the claim.
2. **Notice to the Contractor of the Senior Director of Business Operations or Designee's Decision.** The decision of the Senior Director of Business Operations or designee will be promptly issued in writing and will be immediately given to the claimant. The decision must state the reasons for conclusions that are reached.
3. **Finality of Decision; Rights to Appeal.** The Senior Director of Business Operations's or designee's decision is a final decision which may be appealed in writing and sent to the Chief Executive Officer within seven calendar days from the date the decision is received by the claimant.
4. **Failure to Render Timely Decision.** If the Senior Director of Business Operations or designee fails to issue a written decision within seven days after the Senior Director of Business Operations or designee's receipt of the written request for a final decision, or within a longer agreed-upon period, the claimant may appeal as if a final decision has been made, and

may exercise its rights to appeal.

#### 4. Remedies

1. **Prior to Close.** If the Senior Director of Business Operations or designee determines that a solicitation for procurement is in violation of federal, state, or municipal law, before the Senior Director of Business Operations or designee opens the bids or before the date proposals are no longer accepted, the solicitation must be canceled or revised to comply with the law.
2. **Prior to Award.** If after the Senior Director of Business Operations or designee opens the bid, or the date after proposals are no longer accepted, the Senior Director of Business Operations or designee determines that a proposed award is in violation of federal, state, or municipal law, then the award must be canceled.
3. **After Award.** If after an award the Senior Director of Business Operations or designee determines that an award was in violation of federal, state, or municipal law, then:
  - a. If no fraud or bad faith:
    1. The award may be altered to conform to the law, and approved by the Board.
    2. The award may be canceled and the awardee must be compensated for the actual costs reasonably incurred under the contract as evidenced by original receipts, documented by line item descriptions and summarized by the awardee in a spreadsheet format, plus a reasonable profit, prior to the termination.
    3. If the person awarding the contract has acted fraudulently or in bad faith, the contract may be declared null and void or voidable, if such action is in the best interests of GHS.

#### E. Ethics in Public Procurement

It is unethical and prohibited for any GHS employee, contractor, subcontractor, supplier or other vendor, volunteer, or other person to participate—through decision, approval, disapproval, recommendation, preparation of any part of a purchase, request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity—in a procurement contract when they know that:

1. They or any member of their family has or could have a personal financial benefit, has or could have a conflict of interest relating to the procurement contract.
2. Any other person, business, or organization with whom they or any member of their family is negotiating, or has an arrangement concerning prospective employment, is involved in the procurement contract.

##### 1. Employee Conflict of Interest

It is unethical for any GHS employee, contractor, subcontractor, supplier or other vendor, volunteer, officer, Board Member or other person to participate—through decision, approval, disapproval, recommendation, preparation of any part of a purchase, request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity—in a procurement contract when they know that they have or may have a personal financial benefit or conflict of interest from their GHS position which may inappropriately influence judgment or compromise ability to carry out GHS responsibilities or could be a detriment to GHS's integrity.

Examples of such benefits include: gratuities, payments, loans, subscriptions, advances, deposits of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received, kickbacks, offers of employment, referral fees, influences on audits, investigations, advice, request, protests, or claims.

## 2. **Contemporaneous Employment Prohibited**

It is unethical and prohibited for any GHS employee participating – directly or indirectly – in the procurement process to contemporaneously hold employment with any contractor or subcontractor without the approval of the Board.

## 3. **Use of Confidential Information**

It is unethical and prohibited for any GHS employee or former employee to knowingly use any information (which is available to any employee only because of the employee's status as an employee of GHS and is not a matter of public knowledge or available to the public on request) for actual or anticipated personal benefit, or for the actual or anticipated personal gain of any other person or entity.

# VI. DEFINITIONS

**"Conflict of Interest"** means that a GHS employee or Board Member, or a member of the employee's or Board Member's family, is in a position to receive personal financial benefit outside of GHS by virtue of his or her GHS position in a manner which may inappropriately influence judgment or compromise the ability to carry out GHS responsibilities, or could be a detriment to GHS's integrity, or is not in the best interests of GHS.

**"Consumer"** means an individual who received or is receiving services from the Department of Community Health, a Community Mental Health program, or from the private sector equivalent to those offered by the Community Mental Health program, or a member of the individual's family, or a mental health advocate.

**"Contract"** means all types of GHS agreements, regardless of what they may be called, for the

procurement of supplies or services.

**"Contractor"** means any person having a contract with GHS.

**"Employee"** is anyone receiving W-2 wages from GHS.

**"Family"** means spouse, birth or adoptive parent, child, sibling, step-parent, step-brother or sister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, grandchild, great-grandchild, spouse of a grandparent, grandchild or great-grandchild, or domestic partner.

**"Personal Financial Benefit"** is defined as anything of monetary value including salary, commissions, fees, honoraria, equity interests, interests in real or personal property, dividends, royalty, rent, capital gains, intellectual property rights, and forgiveness of debt. "Personal financial benefit" does not include:

1. Compensation received from GHS.
2. Payments from not-for-profit entities for participation in seminars, lectures, or other educational activities.
3. Payments from government or not-for-profit entities for participation on advisory committees or review panels.
4. Any financial interest arising solely by means of investment in a mutual, pension, or other institutional investment fund over the management and investments of which the employee or an associated family member does not exercise control.

**"Supplies and Services"** means all property, including but not limited to, equipment, materials, printing, insurance, and leases of real property (excluding land or a permanent interest in land); and the furnishings of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. The term includes construction projects but does not include employment agreements or collective bargaining agreements.

## VII. DEVELOPMENT AND EVALUATION

The Senior Director of Business Operations will review this policy annually.

### Approval Signatures

Step Description	Approver	Date
Approver	Glen Chipman: Chief Financial Officer	10/2023
Policy Owner	Karry Steele: Senior Director of Business Operations	10/2023

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## Applicability

Genesee Health System

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