

**February 1, 2008**

**Principles and Procedures**

**For**

**The Competitive Procurement of Human Services**

**Introduction**

This report is submitted to the Human Services and Public Health Committees of the General Assembly pursuant to Public Act 07-195, *An Act Concerning the State Purchase of Service Contracts for Health and Human Services*. The act requires the Secretary of the Office of Policy and Management (OPM) to submit a plan for the competitive procurement of health and human service by February 1, 2008.

Since contracting for human services is decentralized in Connecticut state government, procurement plans need to be developed by each contracting agency. In this report OPM sets forth a framework of principles and procedures for executive branch agencies to follow in developing their individual strategies for the competitive procurement of human services.

In addition, the report includes background information on POS contracts and competitive procurement, a statement of purpose, the OPM planning process and the agency planning process and format for competitive procurement plans.

**Background**

In a November 5, 2005 formal opinion, the Attorney General concluded that there is no legal distinction between a purchase of service agreement and personal service agreement (PSA) and that both are subject to the competitive procurement requirements contained in C.G.S. 4-212, et seq. Following this opinion, OPM developed certain administrative requirements and procedures for agencies entering into POS contracts. Effective March 13, 2006 OPM requires that all agencies must secure OPM's approval before entering into most POS contracts.

As a result of these requirements, OPM has derived an operational definition of a purchase of service contract. A POS contract is defined as *an agreement between a state agency and an organization for the purchase of direct human services to clients*. The contract generally is not used for the sole purpose of purchasing administrative or clerical services, material goods, training or consulting services. POS contracts are used to contract with partnerships as well as corporations but cannot be used to contract with individuals.

Since the issuance of the Attorney General's opinion and the implementation of its administrative requirements, OPM has stressed the importance of competitively procuring POS contracts and has encouraged POS agencies to do so. In addition OPM, as chair of the POS agencies' monthly meeting, has asked each agency represented at these meetings to prepare a competitive procurement plan for OPM's review. Six state agencies (namely, the Departments of Correction, Children and Families, Developmental Services, Mental Health and Addiction Services, Public Health and Social Services) are now developing plans.

The Secretary of OPM has the statutory authority to waive the competitive procurement requirements set out in the PSA statute for any POS contract between a State agency and a human service private provider. Since 2006 OPM has made extensive use of this authority to ensure continuity of care in health and human services and to allow agencies sufficient time to develop logical and orderly plans. For example, in FY 2007 OPM granted 642 waivers to 7 agencies. These waivers represent 44% of all POS requests submitted to OPM in FY 2007. In many instances approval was contingent upon standards to be developed and plans to be submitted to competitively procure these services in the future. A summary of FY 2007 contracting activities for executive branch agencies is available in OPM's first annual POS report to the General Assembly; the report is also available on OPM's home page @ <http://www.ct.gov/opm/site/default.asp>.

## **Purpose**

This report is a summary of the standards for competitive procurement that OPM is developing in collaboration with State agencies and in consultation with private provider representatives. It sets out the overall philosophy and direction for agencies to follow in creating their individual plans. The principles and procedures highlighted below will enable agencies to purchase quality and cost-effective services for clients from private providers in an open, transparent and fair manner. These principles balance the need for a stable yet dynamic competitive procurement process with adequate protection for vulnerable persons.

## **OPM Planning Process**

OPM continues to meet at least monthly with POS agencies to develop a standard planning format and discuss outstanding issues. Agencies are conducting a review of their current services, deciding the basis for procurement, setting priorities and developing a timeframe for their procurement.

Additionally OPM has met periodically with the Connecticut Nonprofit Human Services Cabinet and made several presentations to private providers. Both the Connecticut Association of Nonprofits (CTNonprofits) and the Connecticut Community Providers Association (CCPA) have sponsored forums and invited OPM to participate and respond directly to provider questions and concerns.

Both agency and nonprofit cabinet representatives have had an opportunity to review and comment on a working draft of the OPM planning principles (presented below). We fully expect the valuable working relationship OPM has with POS agencies and provider representatives to continue through implementation of competitive procurement plans in 2008 and beyond.

### **POS Agency Planning**

Contracting procedures vary markedly from one POS agency to another and agency plans will reflect these differences. Nonetheless, the agencies have agreed to use a standard competitive procurement planning format. Agency plans will include the following common elements:

- Purpose of the plan
- Current organization structure and procurement contracting practices
- Plan approach and process (e.g., geographic regions, service types)
- Factors considered for re-procurement
- Oversight
- Additional considerations
- Implementation

### **Core Planning Principles**

Agency plans for competitive procurement of human services must meet operational requirements and be in accordance with existing legislation (including PA 07-195), regulations and policies. Also key in any human service planning effort is the primacy of the client. Re-procurement priorities should minimize disruption of services and ensure continuity of care for vulnerable persons.

Beyond these essential requirements, OPM expects agency plans to reflect current best practices. For example, OPM urges agencies to adopt a strategic planning focus rather than a purely operational one. Competitive procurement planning provides an agency with the opportunity to develop new and innovative service models that consider the agency's mission and objectives as well as research advancements, changing demographics and client needs.

Best practices for contracting in the public sector are based upon the following principles:

- Openness
- Transparency
- Fairness
- Competition
- Cost Effectiveness
- Standardization and
- Accountability

These values are expressed or implied in the specific policies and procedures highlighted below. The policies and procedures are organized in three key issue areas: (1) request for proposals (RFPs); (2) waivers from competitive procurement; and (3) multi-year contracting. These issues have generated much discussion - and some misunderstanding – among State agencies, private providers and private provider representatives. For example, early in the planning process, OPM needed to clarify our intent that an agency may issue multiple contracts as a result of a single RFP.

It should be noted that these policies and procedures are, for purposes of this report, illustrative rather than exhaustive in nature and are not presented in order of priority. We plan to incorporate this information into a comprehensive “*OPM Standards and Procedures for POS Agreements*” document.

### **Request for Proposal (RFP) Requirements**

Enumerated below are key planning principles and procedures regarding RFPs.

1. Beyond programmatic, fiscal and administrative considerations, agencies should consider the date of the last RFP and the impact of their re-procurement schedule on other state agencies.
2. Where possible, agencies purchasing similar or identical services should strive to coordinate their procurement processes.
3. Agencies with programs that are funded in part by other agencies must coordinate RFP schedules to ensure that programs remain fully operational.
4. Agencies with master or consolidated contracts with a single provider may need to “unbundle” multiple services for re-procurement.
5. All eligible providers must have equal opportunity to compete for State contracts. No RFP requirements can specify any features that unnecessarily discriminate, either directly or indirect, against current or potential providers.
6. There shall be a minimum of seven weeks between release of the RFP and the due date of the proposal unless an emergency situation dictates a shorter period of time.
7. Private providers who participate in the development of an RFP for new or existing treatment models or service delivery systems cannot compete for a contract to provide these services.
8. Agencies shall notify current providers ninety days in advance when contracts, in whole or in part, will be re-procured or a waiver will be requested.
9. Evaluation criteria should include such items as the prospective contractor’s community history, experience with the client population, performance, staffing patterns, etc. to ensure that the contract is awarded to the most responsible (rather than simply the lowest-cost) proposal.
10. The relative weight given to each evaluation criterion may (at the discretion of the agency) be included in the RFP.
11. Administrative efficiencies, such as a streamlined standard RFP process, should be implemented to benefit both providers and state agencies.

## **Criteria for Waivers from Competitive Procurement**

OPM anticipates completing a staggered re-procurement over the next three to five years. Therefore, unless competitive requirements are specifically waived, all POS contracts must be re-procured by FY 2012-2113. All new programs and services must be competitively procured. Requests for waivers should be submitted to OPM for approval at least 120 days prior to the execution of the contract. In no case will retroactive approval be given for a sole source contract (ie. services may not begin until all necessary approvals are obtained in advance of a fully executed contract).

Waivers will continue to be granted at the discretion of the Secretary of OPM. Based on our review of agency requests for waivers since 2006, OPM has concluded that there are a variety of situations where waivers are appropriate. Therefore waivers may be granted when any of the following conditions exist:

- the contracts are for core life services for vulnerable clients, for example, those in residential facilities;
- continuity of care outweighs the need for competitive procurement;
- most providers in the system already have a state contract and are licensed, highly regulated and inspected;
- the State has invested a significant amount of bond money in real estate or physical plant for a program;
- there are zoning or siting implications that make service location or relocation problematic;
- the State is contracting with municipalities or other governmental entities;
- emergency services are needed; or
- RFP costs exceed the value of the contracted services.

## **Multi-year Contracting**

Many POS agencies are moving from annual to multi-year contracts. This is logical since the nature of most human services being purchased has been predicated on a long-term relationship existing between the State and the private provider. Historically many POS contracts have not been re-procured. They have been “renewed” annually with continuity of services generally assured regardless of the timing of the paperwork.

It now is advisable to extend multi-year contracting to virtually all POS contracts through the procurement process. Exceptions to this rule may include new providers with no performance history or existing providers that agencies have had performance issues with in the past.

The appropriate length of a contract is best determined by the contracting agency within the following limits. The initial term may be from three to five years with one or two

options for renewal as a possibility. Contract terms should not exceed seven to ten years; long-term contracts will include the usual provisions for amendment and termination. Agency “approved provider lists” will not be open-ended; providers must be “certified” periodically to be added to or remain on the list. Generally OPM will only approve sole source contracts for less than three years.

The potential benefits of multi-year contracts for both State agencies and private providers are several:

1. Reduce paperwork;
2. Stabilize services and contractor relationships;
3. Establish and manage long-term program and performance targets; and
4. Stagger the re-procurement of services and contract renewals.

A number of factors should be considered in determining the appropriate length of a POS contract including (1) the maturity or predictability of the services and (2) client, contractor and funding stability.

Significant planning and communication will be necessary to implement and institutionalize long term, multi-year POS contracting. For example, the RFP should clearly state the multi-year nature of the contract, the extended scope of services, the scope of amendments and annual funding restrictions. The information provided in the RFP must be sufficient to allow prospective contractors to respond appropriately with a proposal for the entire duration of the contract.

## **Conclusion**

Connecticut State government, through its agencies, spends hundreds of millions of dollars annually on the purchase of human services. Historically, most of these POS contracts have not been competitively procured. We believe that best practices need to replace past practices for POS contracting. Competition is not only the basis for best value; it is, more importantly, an opportunity for State government to establish POS contracting procedures that reflect the highest standards of openness and transparency.

Clearly, there are competing interests inherent in the competitive procurement of human services. Our goal is a stable yet progressive human services delivery system. We do not expect massive changes in our private provider network; we do expect an evolving private provider system that supports optimum services and service delivery for changing client needs.

All POS contracts will not be re-procured in a single year. The next three to five years are expected to be a transition period of staggered re-procurement. During this time OPM will continue to approve non-competitive extensions of existing contracts where appropriate. These noncompetitive contract renewals will be reported in our annual POS activity report.

## Next Steps

To implement plans for competitive procurement of POS contracts in 2008, OPM will focus its attention on the following activities:

- Agencies will complete and submit procurement plans to OPM for review and approval.
- OPM will work with the POS agencies to coordinate the re-procurement of multi-agency funded services.
- OPM will begin to streamline and standardize procurement protocols to ease administrative burden on agencies and providers.

Beyond 2008, OPM expects to standardize budget structures and fiscal reporting formats and develop a comprehensive “*Standards and Procedures for Purchase of Service Agreements*” manual that includes the principles and procedures for competitive procurement outlined in this report.