

MEDICAL CAPTIVE INSURANCE COMPANY PROCUREMENT POLICIES AND PROCEDURES

**GOVERNMENT OF THE DISTRICT OF
COLUMBIA**

OFFICE OF RISK MANAGEMENT



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I. Mission

The mission of the Office of Risk Management (ORM) is to reduce the probability, occurrence and cost of risk to the District of Columbia government through the provision of risk identification and insurance analysis and support to District agencies, and by efficiently and fairly administering the District's public workers' compensation and tort liability programs. ORM and its Director, the Chief Risk Officer, are also responsible for the administration and management of the Medical Captive Insurance Company ("the Captive"), pursuant to D.C. Law 17-196, the "District of Columbia Medical Liability Captive Insurance Agency Establishment Act of 2008" (D.C. Official Code § 1-307.81, *et seq.*) ("the enacting statute").

II. Purpose and Background

The purpose of the Medical Captive Insurance Company ("the Captive") is to provide medical malpractice liability insurance policies for non-profit community health centers, including coverage for the staff, contractors, and volunteer service providers for the services provided at the health centers. *See* D.C. Official Code § 1-307.82(b). This manual governs the Captive's policies and procedures for entering into contracts pursuant to the Captive's enacting statute, which authorizes the Captive to enter into contracts "as are necessary or proper to carry out the provisions and purposes" of the act. D.C. Official Code § 1-307.83. These policies and procedures are necessary because the Captive is exempt from the requirements of the "District of Columbia Procurement Practices Act of 1985" (D.C. Official Code § 2-301.01, *et seq.*). *See* D.C. Official Code § 1-307.92. The Chief Risk Officer, however, may also procure contracts at his or her discretion by following the requirements of the PPA.

III. General Principles

Contracts entered into in accordance with these policies and procedures shall abide by the following general principles.

- A. All contracts entered into by ORM on behalf of the Captive shall be entered into solely for the purpose of carrying out the provisions and purposes of the enacting statute, including, but not limited to, the following:
 - i. Hiring of a captive manager. The captive manager runs the day-to-day affairs of the Captive and reports to the Chief Risk Officer. *See* D.C. Official Code § 1-307.84 and the Captive's Plan of Operation.
 - ii. Hiring of other Captive staff. The Chief Risk Officer is authorized to hire other professionals and staff as are necessary or appropriate to implement the enacting statute. *See* D.C. Official Code § 1-307.84(b).
 - iii. Hiring of a third party administrator (TPA). The Captive's enacting statute and Plan of Operation authorize the adjustment and payment of claims against Captive members through use of administrative review and resolution. *See* D.C. Official Code § 1-307.87(b)(6).
 - iv. Hiring of attorneys and/or law firms to assist with Captive operations, including legal compliance, responding to claims and notices of potential claims against Captive members, and any other legal issues that may arise.
 - v. Hiring or procuring services or goods as are necessary to further to purposes of the enacting statute.
- B. All contracts entered into by ORM on behalf of the Captive shall be competitively bid, except those contracts entered into pursuant to section IV. G. of this manual.
- C. Procurements or purchases of \$2500 or less are exempt from the requirements of this manual.
- D. All contracts entered into by ORM on behalf of the Captive shall be paid for using funds appropriated or reserved for the Captive.

IV. Contracting procedure

This section describes the procedures to be followed by the Captive and ORM when soliciting and awarding contracts. The Chief Risk Officer may delegate any of the responsibilities and/or authority conferred on him or her by this manual. *See* D.C. Official Code § 1-307.84(c).

A. Scope of work and justification for contract

Upon deciding that a contract is necessary to further the operation and policy goals of the Captive, the Chief Risk Officer shall draft a scope of work for the contract, which shall include:

- i. Legal authorization for and requirements of the contract.
- ii. Purpose of the contract.
- iii. Anticipated work product, scope, requirements and deliverables.
- iv. Projected timeline for the contract.

B. Solicitation of bids

The Chief Risk Officer shall invite at least three potential contractors to submit bids on all proposed contracts. The Chief Risk Officer may invite only two potential contractors to submit bids on a proposed contract if only two contractors are qualified to provide the goods or services and the Chief Risk Officer documents the appropriate justification in the contract file. Solicitations for bids shall be made orally, in writing, or through public advertisements. Advertisements shall be made either on ORM's website and/or through media publications with broad circulation in the District of Columbia, Maryland and Virginia. Any solicitation shall include a copy of the scope of work and information on the procedure and deadline for submitting bids. The solicitation shall state that all bids shall be submitted in writing to:

Chief Risk Officer
Office of Risk Management
One Judiciary Square
441 4th Street, NW
Suite 800 South
Washington, DC 20001

C. Timeline

After a solicitation has been made, ORM shall accept bids for at least ten business days from the date of solicitation.

D. Requirements

- (i) ORM shall award contracts only to contractors who possess the skills, knowledge, expertise and abilities required to fulfill the requirements of the contract. Contracts awarded for the following purposes shall meet the following minimum requirements:

- a. Hiring of a captive manager. The captive manager runs the day-to-day affairs of the Captive and reports to the Chief Risk Officer. *See* D.C. Official Code § 1-307.84 and the Captive’s Plan of Operation. The captive manager, in conjunction with the Chief Risk Officer, drafts insurance and other policies, conducts research and analysis, reports on the status and financial condition of the Captive to the Commissioner of the Department of Insurance, Securities and Banking, and may hire a third party administrator to adjudicate claims against Captive members. Any captive manager contracted with by ORM shall have, at a minimum, expertise in, or access to experts in, the fields of actuarial analysis, accounting, insurance and reinsurance, and clinical loss prevention.
- b. Hiring of other Captive staff. The Chief Risk Officer is authorized to hire other professionals and staff as are necessary or appropriate to implement the enacting statute. *See* D.C. Official Code § 1-307.84(b). Such staff shall have expertise in insurance and reinsurance, clinical loss prevention, risk management and/or other relevant areas.
- c. Hiring of a third party administrator (TPA). The Captive’s enacting statute and Plan of Operation authorize the adjustment and payment of claims against Captive members through use of administrative review and resolution. *See* D.C. Official Code § 1-307.87(b)(6). Either ORM or the Captive manager may contract with a TPA for this purpose, at the discretion of the Chief Risk Officer. Any TPA contracted with by ORM and the captive manager shall have expertise in claims adjustment, third party mediation and arbitration.
- d. Hiring of attorneys and/or law firms to assist with Captive operations, including legal compliance, defending claims and notices of potential claims against Captive members, and any other legal issues that may arise. Any attorney(s) and/or law firms contracted with ORM shall have demonstrated expertise in litigation, mediation, medical malpractice, insurance and/or other relevant areas.

E. Award

- (i) Upon receipt of bids, the Chief Risk Officer shall:
 - a. Review each bid received.
 - b. Evaluate each bid using a scoring system that awards points for the following categories:
 - i. Responsiveness to requirements of scope of work/solicitation. Maximum points – 30.
 - ii. Possession of the skills, knowledge, expertise and abilities required to fulfill the requirements of the contract. Maximum points – 50.
 - iii. Competitiveness of the bid, which represents the most efficient and effective use of the Captive’s funds. Maximum points – 20.

- c. Award the contract to the bidder with the highest score. The Chief Risk Officer may select a bidder who did not receive the highest score if a justification for such a selection is documented in the contract file.
- d. Issue an acceptance letter to the winning bidder.

(ii) The Chief Risk Officer may convene a review panel to review bids. Recommendations from any review panel are advisory only. The final decision to award the contract rests solely with the Chief Risk Officer.

F. Sub-contracts

- (i) Any contract awarded by the Chief Risk Officer on behalf of the Captive shall include a provision stating that the contractor shall not subcontract any of the contractor's work or services to any subcontractor without the prior written consent of the Chief Risk Officer. Any work or service so subcontracted shall be performed pursuant to a subcontract agreement, which the Chief Risk Officer will have the right to review and approve prior to its execution by the contractor. Notwithstanding any such subcontractor approved by the District, the contractor shall remain liable to the District for all of the contractor's work and services required hereunder.
- (ii) Contracts shall also require contractors, if they engage in subcontracts, to subcontract 35 percent of the total dollar value of contracts with businesses certified by the Small and Local Business Opportunity Commission (SLBOC) or the Department of Small and Local Business Development (DSLBD) as applicable, as local business enterprises, disadvantaged business enterprises, resident-owned business, local business enterprises with their principal offices located in an enterprise zone, small business enterprises or longtime resident businesses. The Contractor shall submit to the Chief Risk Officer a quarterly report of its subcontracting activity. This paragraph shall not apply to experts retained by law firms hired by the Captive.

G. Sole Source Contracts

- (i.) Contracts may be awarded through noncompetitive negotiations when the Chief Risk Officer determines in writing that one of the following conditions exists:
 - (a) There is only one qualified source for the required commodity or service;
 - (b) The contract is with a vendor who maintains a price agreement or schedule with any federal agency, so long as no contract executed under this provision authorizes a price higher than is contained in the contract between the federal agency and the vendor;
 - (c) The contract is with a vendor who agrees to adopt the same pricing schedule for

the same services or goods as that of a vendor who maintains a price agreement or schedule with any federal agency, if no contract executed under this paragraph authorizes a price higher than is contained in the contract between the federal agency and the vendor;

(d) A vendor has already worked on the same project or provided the same service to the Captive, and a competitive bid would result in a duplication of work and cost that would result in a financial loss to the Captive; or

e. Contracts for the purchase of commodities, supplies, equipment, or services that would ordinarily be purchased on a competitive basis when there are exigent circumstances.

(f) Only one qualified vendor bids on a solicitation that is made through a public advertisement.

(ii) When considering a sole source contract, the Chief Risk Officer shall draft a scope of work pursuant to subsection B. of this section and shall evaluate the bid using the same process and rigor as is used to evaluate competitive bids. If a sole source bid is approved, the Chief Risk Officer shall prepare a sole source justification and place a copy of the sole source justification in the contract file created pursuant to subsection H.

H. Documentation

(i) Before ORM executes a contract with a successful bidder, the Chief Risk Officer shall notify in writing each bidder whose bid was not selected.

(ii) The agency shall establish official records of contract files and retain the records of all proposed and awarded contracts, including the work product of the contract. The records shall be maintained and made publicly available consistent with all applicable federal and District of Columbia laws and common law privileges.

I. Payment Method

(i) Contracts executed pursuant to this manual shall be entered into the District's Procurement Automated Support System (PASS) for payment. Because the Captive has independent procurement authority, only Office of Risk Management approval(s) will be required, pursuant to the policy and practice of the Office of Contracting and Procurement.

(ii) Once the PASS approval process is completed, invoices shall be submitted to the Office of the Chief Financial Officer for payment. Payment shall not exceed the amount on the invoice.

J. Reporting

The Chief Risk Officer shall report information regarding its contracting practices, including all current contracts, in the Captive's annual report to the Mayor and Council required by its enacting statute. *See* § 1-307.83.

K. Effective Date

The effective date of this manual is January 14, 2011. Its policies and procedures shall not apply to contracts entered into by the Captive or by ORM on behalf of the Captive prior to this date.

DEFINITIONS

Captive – the Medical Captive Insurance Company

Chief Risk Officer – Director of the DC Office of Risk Management

Enacting statute - D.C. Law 17-196, the "District of Columbia Medical Liability Captive Insurance Agency Establishment Act of 2008" (D.C. Official Code § 1-307.81, *et seq.*).

ORM – Office of Risk Management.

Plan of Operation – the document required by D.C. Official Code § 1-307.87 and approved by the Commissioner of the Department of Insurance, Securities and Banking, which documents the operating policies and procedures of the Captive and the Captive manager, as well as the procedures for applying to be a member of the Captive, approving Captive applications, and adjudicating claims against members.

Scope of Work - Document that describes the requirements for a contract.

Review Panel - Team of qualified individuals responsible for reviewing, scoring and recommending bidders for contracts.