

Memorial Healthcare System’s Business and Procurement Code

I. INTRODUCTION, PURPOSE, SCOPE AND APPLICATION OF THIS CODE

The South Broward Hospital District d/b/a Memorial Healthcare System (“Memorial”), a special taxing district of the State of Florida, was established by the Florida Legislature in 1947 under chapter 24415, Laws of Florida, as amended, and was recodified in chapter 2004-397, Laws of Florida, and chapter 2016-258, Laws of Florida, (collectively, the “District’s Charter”). As a special taxing district, Memorial is not necessarily subject to all Florida laws and regulations relating to business and procurement matters. However, Memorial must still, and it is the policy of Memorial to, conduct its business efficiently, with integrity, and in compliance with all applicable laws and regulations. Accordingly, and consistent with the District’s Charter, the Board of Commissioners of South Broward Hospital District (the “Board”) establishes this Business and Procurement Code (the “Code”) to provide guidance to Memorial in its business affairs and the conduct of orderly administrative procurements under ordinary circumstances for the purposes of promoting competitive, fair, open, and transparent procurement processes to facilitate Memorial’s effective and efficient operation, to reduce the appearance of improprieties and opportunities of favoritism, and to establish public confidence in the process by which Commodities and Services are procured. To that end, this Code shall govern and apply to the conduct of business and purchase of Commodities and Services by Memorial, except as otherwise provided in this Code, under applicable law, the terms of a particular grant or funding source, or to the extent a more specific Board resolution or other policy applies to the particular business affairs or the specific type of procurement. Notwithstanding anything herein to the contrary, nothing in this Code shall be construed or interpreted to preclude the Board from engaging in its own independent competitive bidding process, waiving any irregularities or procedures of this Code as it pertains to a particular Competitive Solicitation, waiving the Competitive Solicitation Process, or otherwise waiving any bidding procedures, in whole or part, when the Board determines that such actions are in the best interest of Memorial.

II. DEFINITIONS

The words and acronyms delineated in this Section shall have the meanings set forth below wherever they appear in this Code, regardless of whether they are capitalized, unless (a) the context in which they are used clearly requires a different meaning, or (b) a different definition is prescribed for a particular section of this Code. Words not defined shall be given their common and ordinary meaning unless the context in which they are used requires otherwise. When the context requires, the gender of all words consists of the masculine, feminine, and neuter, the number of all words includes the singular and plural, and, when appropriate, the form of a word includes the past tense, present participle, or gerund.

1. “**Applicable Law**” means the District’s Charter, the Florida Constitution, and federal and state laws, rules, and regulations applicable to Memorial, all as amended from time to time and then in effect.
2. “**Bid**” means any offer, bid, quotation, proposal, or reply submitted by a Bidder in response to a Competitive Solicitation issued by Memorial under the Competitive Solicitation Process.
3. “**Bid Documents**” means the documents developed for a Competitive Solicitation or other informal or formal competitive mechanism inviting Bids that contains the applicable terms and conditions and plans, specifications, information, elements, and description of the Commodities or Services being Procured.
4. “**Bid Bond**” means a financial or contractual instrument issued by a surety that guarantees the Bidder will not withdraw its Bid.
5. “**Bid Waiver**” means the waivers to the Competitive Solicitation Process delineated in Section VI.B. (Bid Waivers) of this Code.
6. “**Bidder**” means a Vendor submitting a Bid to Memorial in response to a Competitive Solicitation as part of the Competitive Solicitation Process.
7. “**Board**” means the Board of Commissioners of South Broward Hospital District.
8. “**Budget**” means the expenditures of Memorial that the Board has approved at a regular or a special meeting called for that purpose consistent with § 200.065, Fla. Stat., as well as any budgetary amendments adopted by the Board from time to time throughout the budget year.
9. “**Business and Procurement Code Policy Appendix**” means Memorial’s Business and Procurement Code Policy Appendix, the appendix to this Code that incorporates and contains all the Board ratified policies that supplement, relate to, or otherwise apply to this Code.

10. **“Business Day”** means any day other than a Saturday, Sunday, or a legally recognized federal holiday.
11. **“CEO”** means the President and Chief Executive Officer who oversees and is responsible for all of Memorial’s day-to-day business and operations.
12. **“CFO”** means the Chief Financial Officer who oversees and is responsible for all of Memorial’s financial matters.
13. **“Code”** means this Business and Procurement Code.
14. **“Code of Conduct”** means Memorial’s Code of Conduct, then in effect and as amended from time to time, as established by Memorial’s Corporate Compliance Department.
15. **“Collusive Bidding”** means an agreement among two or more Bidders to work together to gain an unfair market advantage, to engage in market manipulation, restraint of trade, or bid rigging, or to otherwise engage in any other conduct or conspiracy that violates or implicates the Sherman Antitrust Act or Clayton Antitrust Act, both as codified in 15 U.S.C. § 1, *et seq.*, or any other federal or state law governing free market competition.
16. **“Commodity”** means any supplies, materials, goods, merchandise, equipment, Information Technology Systems, and other personal property Procured, purchased, leased, or otherwise Contracted for by Memorial.
17. **“Competitive Conditions”** means engaging in formal or informal competitive solicitations for Procurements under the Procurement Threshold that are not otherwise subject to the Competitive Solicitation Process, and which may include telephonic bids, informal price quotations, Requests for Quotes, and any combination or all of the procedural Competitive Solicitation Process procedures.
18. **“Competitive Solicitation”** means a competitive solicitation for sealed Bids under the Competitive Solicitation Process.
19. **“Competitive Solicitation Process”** means the process through a Competitive Solicitation of requesting and attempting to receive two or more competitive sealed Bids from Responsible and Responsive Bidders for certain Procurements equal to or over the Procurement Threshold as provided in this Code.
20. **“Cone of Silence”** is the period during the Competitive Solicitation Process where certain communications between Vendors and Memorial are prohibited, as described in further detail in Section V.D.2. (Cone of Silence) of this Code.
21. **“Construction Services”** means all labor and services provided in connection with the construction or improvement to real property owned by or under the control of Memorial.
22. **“Consulting Services”** means services rendered by an independent contractor with professed knowledge or professional expertise who provides specialized guidance for specialized services required by Memorial. **“Consulting Services”** includes, but is not limited to, legal services, lobbyist services, management services, finance-related services, and accounting and audit services.
23. **“Contract”** means any contractual and written agreement binding Memorial, regardless of what it may be called or referred to, for the Procurement or disposal of Commodities and Services of any kind. The term **“Contract”** also includes any amendments, modifications, supplemental agreements, addendums, exhibits, and attachments concerning the foregoing.
24. **“Contractual Service”** means the rendering of time and effort rather than the furnishing of specific Commodities by an independent contractor Vendor. The term **“Contractual Service”** does not include Professional Services, Consulting Services, Construction Services, Electrical Work, and Professional Design Services.
25. **“Cooperative Purchasing Program”** means a Procurement process to Procure Commodities or Contractual Services where one or more Government Entities combine their buying requirements and aggregate demand into a single Contract to enhance their purchasing power and which may also include shared Procurement programs and resources as well as advice and assistance.
26. **“CPO”** means the Chief Procurement Officer, the individual who is designated and delegated such authority by the CEO to serve as the principal public purchasing agent of Memorial, irrespective of such individual’s formal title, and who is responsible for Memorial’s Procurement of Commodities and Services in accordance with this Code.
27. **“CPO’s Written Decision”** shall have the meaning ascribed to such term in Section V.D.17(e)(iii) (Written Decision of CPO) of this Code.

28. **“Design and Construction Code”** means Memorial’s Design and Construction Code included as part of the Business and Procurement Code Policy Appendix.
29. **“Direct Purchase from a Government Entity”** shall have the meaning ascribed to such term in Section VI.B.1(b) (Direct Purchases from Government Entities) of this Code.
30. **“District’s Charter”** means South Broward Hospital District’s enabling legislation, ch. 2004-397, Laws of Florida, as amended by ch. 2016-258, Laws of Florida, and any subsequent amendments or successor legislation thereof.
31. **“Electrical Work”** means the installation and design of electrical wiring, fixtures, appliances, apparatus, raceways, conduit, or any part thereof, which generates, transmits, transforms, or utilizes electrical energy in any form.
32. **“Emergency Purchase”** shall have the meaning ascribed to such term in Section VI.B.1(c) (Emergency Purchases) of this Code.
33. **“Exemption”** shall have the meaning ascribed to such term in Article VI. (Exemptions, Waivers, and Emergency Purchases) of this Code.
34. **“Government Entity”** means any government entity including, but not limited to, (a) any state, regional, county, local, or municipal government entity of Florida or another state; (b) any department, division, bureau, commission, public authority, board, local government, single-purpose or multipurpose special district, or political subdivision of Florida or another state, or any public agency, separate legal entity, or administrative entity of any the foregoing, whether executive, judicial, or legislative; (c) any public school, community college, state university, educational institution or body of government in Florida or another state; (d) any and all federal or tribal agencies or entities, whether executive, judicial, or legislative; (e) any public agencies or entities of any state, federal, or tribal governments; and (f) any other units of Florida government, the federal government, other state governments, or tribal governments.
35. **“Group Purchasing Organization”** shall have the meaning ascribed to such term in Section VI.B.1(d) (Group Purchasing Organizations) of this Code.
36. **“Impracticality Waiver”** shall have the meaning ascribed to such term in Section VI.B.2(a) (Impracticality Waiver) of this Code.
37. **“Information Technology System”** means equipment, hardware, software, firmware, programs, systems, networks, infrastructure, media, and related material used to automatically, electronically, and wirelessly collect, receive, access, transmit, display, store, record, retrieve, analyze, evaluate, process, classify, manipulate, manage, assimilate, control, communicate, exchange, convert, converge, interface, switch, or disseminate information of any kind or form.
38. **“Invitation to Bid”** means a written or electronically posted Competitive Solicitation for competitive sealed bids as defined in further detail in Section V.B.1. (Invitations to Bid) of this Code.
39. **“Invitation to Negotiate”** means a written or electronically posted Competitive Solicitation for competitive sealed replies to select one or more Vendors with which to commence negotiations for the Procurement of Commodities or Contractual Services as defined in further detail in Section V.B.3. (Invitations to Negotiate) of this Code.
40. **“Legacy Purchase”** shall have the meaning ascribed to such term in Section VI.B.2(b) (Legacy Purchases) of this Code.
41. **“Legal Counsel”** means the General Counsel in charge of the Office of the General Counsel of Memorial, all legal counsel employed by and working in the Office of the General Counsel of Memorial, and/or any other legal counsel reporting to or retained by Memorial’s Office of the General Counsel.
42. **“Memorial”** means the fictitious name of the South Broward Hospital District, a special tax district established by the Florida legislature, and all of its departments, divisions, units, wholly owned entities, and other fictitious names now established and as further established from time to time by the Board. The term **“Memorial”** shall expressly exclude all joint ventures, cooperatives, or interlocal arrangements of South Broward Hospital District unless the governing documents or articles of such ventures, cooperatives, or interlocal arrangements indicate otherwise or unless the Board establishes a policy to subject such joint venture, cooperative, or interlocal arrangement to the provisions of this Code.
43. **“Notice of Award”** means the formal notice of award to one or more Bidders under a Competitive Solicitation.

44. **“Open-Ended Contract”** means a Contract entered into with a Vendor with open and indefinite terms such as price, goods, quantity, or services.
45. **“Owner-Direct Purchases”** shall have the meaning ascribed to such term in Section VI.B.1(e) (Owner-Direct Purchases) of this Code.
46. **“P-Card”** means a corporate credit card for small dollar transactions made in the course of Memorial’s official business that affords the cardholder the convenience of purchasing without going through the purchase order or reimbursement process.
47. **“Payment Bond”** means a financial or contractual instrument issued by a surety that guarantees that subcontractors will be paid for labor and materials expended on the Contract.
48. **“Performance Bond”** means a financial or contractual instrument issued by a surety that guarantees satisfactory completion of a project or Contract.
49. **“Piggyback Contract”** shall have the meaning ascribed to such term in Section VI.B.1(f) (Piggyback Contracts) of this Code.
50. **“Procurement”** means the buying, purchasing, renting, leasing, or otherwise acquiring of any Commodities or Services, and all functions that pertain thereto, including the description of requirements, selection, and solicitation of sources and award of Contracts.
51. **“Procurement Threshold”** means the Board-established threshold amount, equal to 0.1% of the previous fiscal year’s net patient revenue, that mandates compliance with the Competitive Solicitation Process unless otherwise exempt or waived pursuant to this Code.
52. **“Professional Design Services”** means those services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping subject to the Consultants’ Competitive Negotiation Act, § 287.055, Fla. Stat.
53. **“Professional Services”** means non-Construction Services, non-Electrical Work, and non-Professional Design Services that require specialized knowledge and skill, usually of a mental or intellectual nature and usually requiring specialized degrees, professional licensure, certification, registration, or professional or specialized expertise, experience, and knowledge related to patents, proprietary information, or business acumen.
54. **“Project Custodian”** means the individual or individuals at Memorial requesting the acquisition of Commodities or Services needed for Memorial’s operations and who are ultimately responsible for the Procurement of such Commodities or Services.
55. **“Protest”** means a Bidder’s protest of a Competitive Solicitation or award pursuant to the process provided in Section V.D.17. (Bid Protests) of this Code.
56. **“Protester”** means the interested Bidder Protesting the terms of a Competitive Solicitation or a Competitive Solicitation’s award.
57. **“Protest Bond”** shall have the meaning ascribed to such term in Section V.D.17(d)(i) (Requirement of Protest Bond) of this Code.
58. **“Protest Procedures”** means the formal procedures governing the Protest process provided in Section V.D.17. (Bid Protests) of this Code.
59. **“Public Facility”** shall have the meaning ascribed to such term in Fla. Admin. Code R. 12A-1.094(1)(c).
60. **“Public Works Project”** shall have the same meaning ascribed to the term “public works” in Fla. Admin. Code R. 12A-1.094(1)(c).
61. **“Purchase Order”** means a document formalizing a transaction with a Vendor and conveying acceptance of a Vendor’s Bid or the Procurement of Commodities and Services unrelated to a Bid.
62. **“Qualifying Project”** shall have the meaning ascribed to such term in § 255.065, Fla. Stat.
63. **“Related Bidders”** means Bidders or the principals thereof which have a direct or indirect ownership interest in another Bidder submitting a Bid in the same Competitive Solicitation or in which a parent company or the principals thereof of one Bidder have a direct or indirect ownership interest in another Bidder submitting a Bid in the same Competitive Solicitation.

64. **“Request for Information”** means a written or electronically posted request to Vendors (which is not an offer and may not be accepted to form a binding Contract) for information concerning Commodities or Services.
65. **“Request for Proposal”** means a written or electronically posted Competitive Solicitation for competitive sealed proposals for the Procurement of Commodities or Services which is awarded to one or more Responsible and Responsive Bidders based on established criteria as defined in further detail in Section V.B.2. (Request for Proposals) of this Code.
66. **“Request for a Quote”** means a formal or informal electronic, written, or oral request for written pricing or services information for Commodities or Services from Vendors participating in or available through Cooperative Purchasing Programs, Group Purchasing Organizations, or State Term Contracts.
67. **“Responsible Bidder”** means a Bidder who, as determined by Memorial, has the capability in all respects to fully perform the Contract requirements and the integrity and reliability that will assure good faith performance.
68. **“Responsible and Responsive Bidder”** means a Bidder that is a Responsible Bidder and a Responsive Bidder.
69. **“Responsive Bid”** means a Bid submitted by a Responsible Bidder that conforms in all material respects to the Competitive Solicitation.
70. **“Responsive Bidder”** means a Bidder who, as determined by Memorial, has submitted a Responsive Bid that conforms in all material respects to a Competitive Solicitation.
71. **“Routine Expenditures”** shall have the meaning ascribed to such term in Section VII.6. (Direct Payments by Checks or Purchase Orders) of this Code.
72. **“Selection Committee”** means a group of persons appointed by the CPO or the CPO’s designee to evaluate Bids submitted in response to a Competitive Solicitation.
73. **“Services”** means collectively the rendering of Contractual Services, Professional Services, Consulting Services, Construction Services, Electrical Work, and Professional Design Services.
74. **“Small Business Enhancements”** means strategies designed by Memorial that are intended to increase Procurement opportunities with Small Business Vendors in accordance with Memorial’s Economic and Small Business Development Initiative Policy in the Business and Procurement Code Policy Appendix.
75. **“Small Business Vendor”** means a Vendor recognized and certified as meeting the requirements of one or more of the Small Business categories of Memorial’s Economic and Small Business Development Initiative.
76. **“Sole Source and Sole Brand Purchase”** shall have the meaning ascribed to such term in Section VI.B.2(c) (Sole Source and Sole Brand Purchases) of this Code.
77. **“SP”** means a Standard Practice or Procedure established or prescribing methods and procedures consistent with best practices to be followed for the Procurement of Commodities and Services.
78. **“Spending Threshold”** means the threshold amount referenced in Memorial’s Authorized Official, Contract Execution, and Delegation of Authority Policy in the Business and Procurement Code Policy Appendix, which permits authorized signatories to execute Contracts and requisitions without obtaining further Board approval.
79. **“Standardization Purchase”** shall have the meaning ascribed to such term in Section VI.B.2(d) (Standardization Purchases) of this Code.
80. **“State Term Contract”** means a Contract competitively procured by the Florida Department of Management Services according to §§ 287.056 and 287.057, Fla. Stat.
81. **“Supply Chain Services”** means the entire purchasing and procurement department overseen by the CPO and includes all such purchasing-related divisions of the department.
82. **“Surplus Property”** means property of Memorial that is obsolete or the continued use of which is uneconomical or inefficient or which serves no useful function.
83. **“Vendor”** means any person, sole proprietorship, partnership, corporation, joint venture, joint stock company, any other business or legal entity (whether for-profit or not-for-profit), union, committee, club, any other organization or group, and any combination of the foregoing seeking to do or that is or potentially will be doing business with or providing any Commodities, Services, or personnel to Memorial.
84. **“Written and Timely Appeal”** shall have the meaning ascribed to such term in Section V.D.17(f)(i) (Time and Form Requirements of Appeals) of this Code.

III. PROCUREMENT ORGANIZATION AND AUTHORITIES

The CEO of Memorial shall appoint a CPO, whose role may be served by a current employee of Memorial. The CPO shall perform the duties of the principal public purchasing official for Memorial and shall be responsible for the Procurement of Commodities and Services in accordance with this Code. Except as otherwise provided in this Code, the CPO shall be responsible for:

1. Interpreting the provisions of this Code and resolving any ambiguities related to the interpretation of this Code;
2. Procuring or supervising the Procurement of all Commodities and Services needed by Memorial that are subject to this Code, ensuring compliance with this Code by Memorial and Vendors doing business with Memorial, and taking reasonable steps to ensure that Commodities and Services are Procured in a manner that fosters and permits competition among businesses whenever practicable;
3. Establishing policies, procedures, and SPs governing the Procurement of Commodities and Services governed by or Exempt from this Code;
4. Soliciting and advertising Bids for Commodities, Contractual Services, Construction Services, Electrical Work, and Professional Design Services, which are subject to the Competitive Solicitation Process by this Code or Applicable Law;
5. Performing pre-purchase analysis to ensure that Memorial and its employees and departments are adhering to this Code, including the Competitive Solicitation Process requirements and any applicable and assigned Small Business Vendor participation;
6. Developing and approving Small Business Enhancements to encourage Small Business Vendor participation in Memorial's Procurement opportunities;
7. Approving Emergency Purchases and Bid Waivers unless further Board approval is required;
8. Establishing procedures for issuance and approval of Purchase Orders in accordance with the terms of a Contract, as applicable;
9. Establishing and maintaining programs for the inspection, testing, and acceptance of Commodities and Services;
10. Monitoring and supervising Vendor performance and taking appropriate action to address Vendor performance issues; and
11. Any other purchasing duties and responsibilities delegated by the CEO or reasonably determined by the CPO as appropriate to supervise Memorial's Procurements consistent with this Code.

Unless otherwise stated in a Board policy, resolution, or Applicable Law, the authority to approve all Procurements for Commodities or Services subject to this Code is hereby vested in the CPO. The CPO may establish committees or maintain departments responsible for assisting the CPO with the CPO's respective duties as outlined herein and may further delegate any of the authority vested in the CPO under this Code to designees within Memorial. Any committees, departments, or individuals delegated authority by the CPO shall be authorized to exercise such delegated authority to the same extent as the authority vested in the CPO under this Code, and any provision of this Code that references the CPO shall be deemed to include a reference to any committees, departments, or individuals delegated such authority. Any Procurement decision by the CPO, or any applicable committees, departments, or individuals delegated such authority by the CPO shall be valid and binding on Memorial and its employees, departments, and all Vendors wishing to do business with Memorial.

IV. CODE OF ETHICS, INTEGRITY, AND PROFESSIONAL CONDUCT

The conduct of Competitive Solicitations shall always foster integrity and transparency and be consistent with Applicable Law, including, but not limited to, 42 U.S.C. § 1320a-7b, § 112.3148, Fla. Stat., § 112.313, Fla. Stat. and § 838.22, Fla. Stat. Accordingly, Memorial and its officers, employees, and agents, as well as Vendors that currently do or offer or intend to or do business with or provide Services for or Commodities to Memorial, shall at all times comply with all Applicable Law and Memorial's Code of Conduct and shall conform their conduct and perform their responsibilities to Memorial in an ethical and proper manner. In the event an officer, employee, agent, or current or future Vendor violates any Applicable Law or Memorial's Code of Conduct, such individual may be subject to disciplinary action up to and including termination from employment or suspension or debarment from future Procurement opportunities, and such conduct may subject the individual to civil and/or criminal penalties.

V. ACQUISITION PROCEDURES

The CPO shall select or approve the method of Procurement based on the application of the guidelines set forth in this Code. Unless a Procurement is Exempt, a Bid Waiver applies, an Emergency Purchase needs to be made, or unless otherwise authorized by this Code, or Applicable Law, all Memorial Contracts subject to this Code shall be Procured in accordance with the methods outlined herein.

- A. Procurements Less than the Procurement Threshold.** For Procurements and Contracts estimated to be less than the Procurement Threshold, the CPO shall establish internal policies, procedures, and SPs for Competitive Conditions that promote competition and govern the appropriate method of Procurement. Procurements and Contracts less than the Procurement Threshold may, but are not required to, be let via a Competitive Solicitation. When determining the most appropriate Competitive Conditions for Procurements under the Procurement Threshold that are not otherwise subject to the Competitive Solicitation Process, the CPO may employ any, all, or any combination of the Competitive Solicitation Process's procedures below. The CPO's decision to utilize any combination or all procedures of the Competitive Solicitation Process for Procurements that are not otherwise subject to the Competitive Solicitation Process does not in and of itself require strict compliance with all the Competitive Solicitation Process's requirements or entitle or create any right or privilege to a Vendor (such as a Protest) unless Applicable Law, an applicable policy, SP, or the Procurement's Bid Documents explicitly indicate otherwise.
- B. Procurements Equal to or More than the Procurement Threshold Subject to the Competitive Solicitation Process.** For those non-Exempt Procurements for which a Bid Waiver does not apply and that are estimated to be equal to or more than the Procurement Threshold, Contracts may only be let after engaging in the Competitive Solicitation Process following the posting or publishing of notice or a formal advertisement. The CPO shall select the most appropriate Competitive Solicitation. Such Competitive Solicitations include, without limitation:
- 1. Invitations to Bid.** The Invitation to Bid may be used when Memorial can specifically define the scope of work for which a Contractual Service is required or when Memorial can establish precise specifications defining the actual Commodity or group of Commodities required. In an Invitation to Bid, the Contract or Contracts shall be awarded to the Responsible and Responsive Bidder or Bidders that submit the lowest Responsive Bid.
 - 2. Request for Proposals.** The Request for Proposals may be used when the purposes and uses for which the Commodity, group of Commodities, or Services being sought can be specifically defined and Memorial can identify necessary deliverables. A Contract awarded under a Request for Proposals shall be made to the Bidder or Bidders determined most advantageous to Memorial, taking into consideration criteria including, but not limited to, pricing and cost, the Bidders' capability, adequacy of personnel, experience, and past record of performance. Only non-material changes may be made to the statement of work following issuing a Notice of Award.
 - 3. Invitations to Negotiate.** The Invitation to Negotiate may be used to determine the best method for achieving a specific goal or solving a particular problem, and it identifies one or more Responsive Bidders with which Memorial may negotiate to receive the best value. So long as the stated goals or questions of the Invitation to Negotiate remain unchanged, the statement of work may be negotiated and changed before or after issuing a Notice of Award.
- C. General Acquisition Matters.** The following general authority, rules, and tenets shall apply to the Procurement of Commodities and Contractual Services which are subject to this Code:
- 1. Publication of Procurement Threshold.** Due to the annual fluctuations in the Procurement Threshold amount, it is important that Memorial's officers, employees, and agents be informed of this figure. Accordingly, each year, after the Board approves the previous fiscal year's audited financial statements, the CFO shall provide the Procurement Threshold amount to the CPO, and the CPO shall annually publish such amount for Memorial's internal use.
 - 2. Determining the Threshold Categories for Procurement.** While the Spending Threshold is based on each separate Contract year, when ascertaining if Procurements are equal to or over the Procurement Threshold and subject to the Competitive Solicitation Process, it shall be calculated based on the projected total Contract price over each consecutive five-year period of a Contract. The estimated total Contract price over subsequent five-year periods shall undergo independent evaluation and shall not be combined with previous five-year periods to make such a determination.

3. **Dividing Procurements.** Procurements or Contracts may not be divided with the intent to bypass or evade the provisions of this Code. Any Procurements or Contracts that are divided to circumvent the requirements of this Code shall be considered ultra vires and void ab initio.
 4. **Ultra Vires Procurements.** Except as provided in this Code, no officer, employee, or agent of Memorial may Procure any Commodities or Services or enter into any Contract subject to this Code's provisions other than through the guidelines established in this Code. Any Purchase Order or Contract made contrary to the provisions herein shall be considered ultra vires, may not be approved, and, unless subsequently ratified by the proper authority, Memorial shall not be bound thereby.
 5. **Temporary Extensions Pending Procurements.** To ensure continuity and avoid disrupting or interfering with Memorial's operations, the CPO may grant temporary Contract extensions pending the proper Procurement of Commodities and Contractual Services subject to the provisions of this Code.
 6. **Requests for Information.** The CPO may issue Requests for Information seeking general information about Commodities, Contractual Services, or suppliers to assist the CPO in the Competitive Solicitation Process or in determining acquisition methodology. Requests for Information may not be treated as offers and may not be accepted by Memorial to form a binding Contract. To the extent a Request for Information is issued, the CPO is not required to utilize any information gathered from the Request for Information, nor is a Vendor who responds to a Request for Information excluded from participating in any resulting Competitive Solicitation.
 7. **Qualified Short Lists and Requests for Qualifications.** The CPO may establish qualified short lists of Vendors, Commodities, and Contractual Services as the CPO determines, at his or her sole discretion, are in the best interests of Memorial provided the establishment of such short lists are permitted under Applicable Law. When establishing such short lists, the CPO shall issue requests for qualifications or such other form of Competitive Conditions requesting Bids from Vendors to determine such Vendors' suitability for participation on such short lists and may enter into Open-Ended Contracts with the awarded Vendors chosen to participate in the short lists.
 8. **Other Governing Policies and Procedures.** Notwithstanding any specific Exemptions to this Code, the Board has established and promulgated policies and procedures complementary to this Code that pertain to the Procurement of Commodities and Services to ensure an open, transparent, and fair Procurement process. To that end, any policies governing such Procurements, including, without limitation, those in the Business and Procurement Code Policy Appendix, are hereby incorporated by reference as if fully set forth herein. In the event of a conflict between this Code and any resolution or policy established by the Board governing a specific Procurement, the applicable resolution or policy shall control, unless explicitly stated otherwise. The CPO may also establish internal policies and SPs that the CPO deems necessary to administer, implement, and interpret this Code, including the establishment of additional procedures governing Procurements regardless of whether the Procurements are governed by this Code or Exempt from this Code; provided, however, in no event may any policies or SPs contain provisions that conflict with the requirements of this Code or any policies established by the Board. Memorial's officers, employees, and agents are responsible for reviewing and complying with all applicable procurement policies established by the Board and the CPO and raising any issues of applicability or interpretation with the CPO as appropriate.
- D. General Guidelines and Procedures Governing the Competitive Solicitation Process.** The following guidelines, standards, and procedures shall govern the Competitive Solicitation Process:
1. **Procedure of Competitive Solicitations.** The CPO has the ultimate authority to determine a Competitive Solicitation's proper form, format, method, and procedure.
 2. **Cone of Silence.** Beginning on the date when a Competitive Solicitation is noticed or formally advertised and continuing until the later of the date of the final award of the Competitive Solicitation, the date of rejection of all Bids in response to the Competitive Solicitation, or the date of final disposition by Memorial of any Protest to the Competitive Solicitation, all communications between any actual or prospective Bidder, as well as any contractor, lobbyist, or consultant acting for or on behalf of such actual or prospective Bidder, and any member of the Selection Committee or other Memorial officer, employee, department, division, agent, or Board member concerning the particular Competitive Solicitation or Procurement are prohibited ("Cone of Silence"). In addition to any penalties under state law, breaching or violating the Cone of Silence during a Competitive Solicitation may, at Memorial's sole discretion, result in disqualification of the offending Bidder from the Competitive Solicitation, as well as possible suspension or debarment

from participating in any future Memorial Procurements or Competitive Solicitations, and may result in disciplinary action for the offending Memorial officer, employee, or agent. The Cone of Silence shall not apply to (a) communications to or with the designated point of contact identified in any Competitive Solicitation; (b) presentations by any Bidder at a scheduled oral presentation; or (c) presentations at duly noticed Selection Committee meetings. All Competitive Solicitations shall include provisions describing the requirements and prohibitions of this Cone of Silence.

3. **Advertising Procedures.** For all Procurements that are estimated to be equal to or greater than the Procurement Threshold and are subject to the Competitive Solicitation Process, the CPO shall ensure that proper notice or a formal advertisement inviting sealed Bids shall be published in a manner that is appropriate and advantageous to Memorial under the circumstances with the goals of fostering transparency and fair competition, and ensuring cost savings and competitive pricing for Memorial without compromising quality. At a minimum, such Procurements shall be advertised on Memorial's website.
4. **Bid Documents.** The ultimate authority as to what shall be included in the Bid Documents is hereby vested in the CPO, and the CPO shall be responsible for constructing and maintaining all Bid Documents and the terms and conditions therein for the solicitation of Bids. At a minimum, all Bid Documents used for Competitive Solicitations shall contain (a) a reference to this Code to put Bidders on notice that they are subject to its conditions; (b) the deadline for the submission of Bids; (c) the time and date of the public opening; (d) pertinent terms and conditions applicable to the Competitive Solicitation; (e) reference to relevant Bidder preferences applicable to the Bid under Florida law; (f) the requirement of form submittal for any forms or documents which under Applicable Law are required to be submitted; (g) the criteria that will be used to determine Responsible and Responsive Bidders and the acceptability and relative merit of a Bid; (h) the criteria that will be used and considered to select the Bidder or Bidders that will be awarded Contracts; and (i) a reference to the Protest Procedures outlined in this Code.
5. **Memorial's Economic and Small Business Initiative.** The Board is committed to the economic growth and well-being of small and local businesses, and Memorial's Economic and Small Business Development Initiative encourages and supports the participation of local and small businesses in Memorial's Procurements. To that end, Memorial shall endeavor to support Small Business Vendors when engaging in the Competitive Solicitation Process consistent with the procedures outlined in Memorial's Economic and Small Business Development Initiative Policy in the Business and Procurement Code Policy Appendix.
6. **Special Preferences Under Florida Law.** The CPO shall ensure that any preferences required under Applicable Law are applied to the Procurement of Commodities and Services. Such preferences include, without limitation, preference to Florida businesses under § 287.084, Fla. Stat., preference to Commodities manufactured, grown, or produced in Florida under § 287.082, Fla. Stat., preference to state printing under § 283.35, Fla. Stat., and other preferences provided in chapter 287, Florida Statutes and other Applicable Law.
7. **Responsible and Responsive Bidders.** Contracts Procured under Competitive Solicitations, including Invitations to Bid, shall only be awarded to Responsible and Responsive Bidders, and the CPO is responsible for determining whether a Bidder responding to a Competitive Solicitation is qualified, submitted a Responsive Bid, and is a Responsible and Responsive Bidder. When deciding whether a Bidder is a qualified and Responsible Bidder, the CPO may consider multiple factors including, without limitation, a Bidder's reliability, past performance, honesty and integrity necessary to a faithful performance of the Contract, skill and business judgment, experience and facilities for carrying out the Contract, previous conduct under other Contracts, and the quality of the Bidder's prior work.
8. **Bid, Performance, and Payment Security.** The CPO may require Bidders responding to any Competitive Solicitation to post Bid Bond security to ensure that they will honor the terms of their Bid. The CPO may also require Bidders responding to any Competitive Solicitation to post Payment Bond and Performance Bond, which may be in addition to any Bid Security. The amount of the Bond required to be posted shall be a percentage of the estimated total cost of Commodities or Services being Procured or such other amount fixed by Applicable Law and the required form of the Bond shall be set forth in the Bid Documents.
9. **Collusive Bidding.** Engaging in Collusive Bidding in Competitive Solicitations at Memorial is prohibited. Bidders that engage in Collusive Bidding Practices may be precluded from participating in Competitive Solicitations or doing business with Memorial. All determinations regarding Collusive Bidding and the current or future participation of Bidders suspected of engaging in such Collusive Bidding Practices shall be the responsibility of the CPO. Where two or more Related Bidders submit Bids pursuant to a Competitive Solicitation, such Bids shall be presumed Collusive, and the Related Bidders' Bids may be rejected. The

foregoing presumption may be rebutted by credible evidence from all the Related Bidders that show independence and pro-competitive conduct, and such evidence may include, without limitation, documentation, attestations, or affidavits as to each Related Bidder's independence, the extent of ownership, control, and management of the Related Bidders' business entities, and other such credible evidence pertaining to the preparation and submittal of the Related Bidders' Bids.

10. **Minimal Bids and Extensions.** If the CPO determines it is in the best interest of Memorial, the CPO may award a Contract to a sole Responsible and Responsive Bidder for Competitive Solicitations that receive only one Bid, and in any Competitive Solicitation that receives fewer than three Bids by the due date and time, the CPO may, at the CPO's discretion, proceed forward with the Competitive Solicitation or extend the deadline and seek additional Bids by issuing an addendum and noticing or formally advertising such extension. The CPO shall determine the length of any extension period(s).
11. **Cancellation of Solicitation, Rejection of Bids, and Waiver of Minor Irregularities.** Any Competitive Solicitation may be canceled, or any or all Bids may be rejected, in whole or in part, when it is in the best interests of Memorial as determined by the CPO at the CPO's sole discretion. The CPO also is permitted and has the right to waive any or to request or require a Bidder to correct any minor irregularity, technicality, or omission of any Bid or Competitive Solicitation if the CPO determines, at the CPO's sole and absolute discretion, that doing so will serve Memorial's best interests. Any waivers or requests for correction of minor technicalities, omissions, or irregularities shall be applied consistently to all Bidders in a particular Competitive Solicitation, and under no circumstances may a waiver be granted if the granting of such waiver would restrict competition or adversely affect competition by providing one Bidder with an unfair competitive advantage over another Bidder.
12. **Selection Committees.** With the exception of Invitations to Bid, Selection Committees shall be utilized to evaluate Bids subject to the Competitive Solicitation Process. The CPO is responsible for determining and approving the number and composition of voting and non-voting members of Selection Committees (which may consist of Memorial and non-Memorial employees), and the CPO may modify or substitute members or increase or decrease membership on a Selection Committee for any reason and at any time during the Competitive Solicitation Process. All appointed Selection Committee members shall be provided with appropriate instructions and training regarding their respective roles and responsibilities. Before serving on the Selection Committee, each appointed member shall execute a Conflict-of-Interest Certification Form and be reminded of the Cone of Silence.
13. **Effect of Award and Authority to Award and Rescind.** In all Competitive Solicitations, the CPO has the ultimate authority to determine the appropriateness of issuing an award to a Bidder based on the best interests of Memorial. After an award is issued, Memorial and the awarded Bidder shall enter into a Contract incorporating the requirements of the Competitive Solicitation with terms required under Applicable Law and other terms acceptable to Memorial. No award is final until a Notice of Award is sent to the successful Bidder, and the issuance of an award shall not be deemed to create a binding Contract of Memorial until a written Contract has been duly executed by both the selected Bidder and Memorial. The CPO may rescind an award at any time before the effective date of a Contract if the CPO determines, at the CPO's sole discretion, that such rescission is in Memorial's best interests. In the event that the CPO rescinds all Bids and intends to reissue the Competitive Solicitation, the CPO shall concurrently provide notice of Memorial's intent to reissue the Competitive Solicitation in accordance with § 119.071(1)(b), Fla. Stat.
14. **Authority to Re-Award After Rescission or Termination.** If an award is rescinded or Contract is terminated that was the subject of the Competitive Solicitation Process, the CPO may award a Contract to one or more Responsible and Responsive Bidders (in the order of such Bidders' rankings) without issuing another Competitive Solicitation if the CPO determines, at the CPO's discretion, that it is in Memorial's best interests not to resolicit Bids and if the rescinding or termination is within 12 months after the award was announced and the Selection Committee concluded its deliberations; provided, however, that any Bidder awarded a Contract following the rescinding of an award or termination of a Contract shall honor the price, offerings, and representations in such Bidder's Bid subject to changes and modifications of the price no greater than 20 percent as provided in Section V.D.15. (Authority to Negotiate Changes and Modifications of the Awarded Price) of this Code.
15. **Authority to Negotiate Changes and Modifications of the Awarded Price.** Notwithstanding the type of Competitive Solicitation utilized, Memorial may negotiate and agree with a successful Bidder in any Competitive Solicitation for changes and modifications to the successful Bid provided the total value of

changes and modifications do not exceed 20 percent of the agreed/awarded price and such changes and modifications shall not be considered a material deviation or modification of the Competitive Solicitation.

16. **Public Records and Sunshine Law.** All Bidders and Vendors are hereby put on notice that Memorial is subject to Florida's Public Records Law (ch. 119, Fla. Stat.) and Florida's Government in the Sunshine Law (ch. 286, Fla. Stat.), and all Bids, documents, and other materials sent to Memorial, as well as the Competitive Solicitation Process, are subject to such laws unless otherwise exempt under Applicable Law. It is the responsibility of all Bidders and Vendors, consistent with Applicable Law and any other directions or conditions contained in a Competitive Solicitation's Bid Documents, to protect such Bidders' and Vendors' trade secrets or proprietary information submitted to Memorial. Memorial shall not be responsible for protecting any Bidders' or Vendors' trade secrets or proprietary information. A Bidder's submission of a Bid under a Competitive Solicitation and a Vendor's entry into a Contract with Memorial constitutes the agreement by such Bidders and Vendors to indemnify, defend, and hold Memorial, its commissioners, officers, employees, and agents harmless from and against any actions concerning a public records request due to the Bidder's or Vendor's assertion of an exemption under Florida law. If a Bidder or Vendor has any questions regarding the application of these laws, such questions should be sent to Memorial's Custodian of Public Records at mhslegal@mhs.net.
17. **Bid Protests.** Memorial aims to ensure the prompt and fair resolution of Protests. While a Bidder's ability to Protest enhances the accountability of the Procurement process, the Protest process must not interfere with the prompt and efficient acquisition of Commodities and Contractual Services needed by Memorial to perform its health care operations. To that end, the Board has established the Protest Procedures applicable to Protests of Competitive Solicitations and awards under the Competitive Solicitation Process. Unless expressly required under Applicable Law or the conditions of a grant or funding source, or unless explicitly stated in the Bid Documents or a particular policy relevant to the Commodity or Service being Procured, Protests shall only be applicable to the Competitive Solicitation Process for Procurements equal to or over the Procurement Threshold. Protests relating to Competitive Solicitations or awards below the Procurement Threshold or otherwise not subject to the Competitive Solicitation Process are not required to be considered by Memorial. A Bidder's ability to Protest Bids not subject to the Competitive Solicitation Process shall be determined by the CPO, and if deemed appropriate, shall be delineated in the applicable Bid Documents. All Protests shall be limited only to Protests contending that the Competitive Solicitation or award is contrary to Applicable Law, the District's Charter, this Code, Memorial's Policies and Procedures, or the Competitive Solicitation's specifications. Minor or immaterial deviations from this Code shall not constitute grounds for a Protest or appeal by a Bidder affected by the activity at issue. All Protests shall conform to the procedures herein and shall be directed to the CPO. Those Protests that are untimely or which do not strictly conform to the Protest Procedures below shall be dismissed unless waived by the CPO. The specific Protest Procedures are as follows:
 - (a) **General Matters.**
 - (i) *Exhaustion of Administrative Remedies.* All Protests shall follow the procedures herein and all appeals shall be exhausted as an administrative remedy to be satisfied as a condition precedent to filing and initiating any civil action against Memorial concerning a Competitive Solicitation or award.
 - (ii) *Guidance and Assistance.* The CPO and CFO may consult and obtain guidance, advice, and assistance from Legal Counsel regarding any Protest and appeal.
 - (iii) *Settlements and Resolutions.* The CPO, or his or her designee, shall have the authority, in consultation with Legal Counsel, to settle and resolve a Protest or appeal of an aggrieved Protester concerning the Competitive Solicitation or award prior to the commencement of an action in court or another venue of competent jurisdiction concerning the controversy.
 - (iv) *Intervenors.* At the CPO's sole discretion, the CPO may allow an awardee to participate in a Protest as an intervenor if deemed advantageous to the resolution of the matter by the CPO.
 - (v) *Standard and Burden in Protests.* The burden in any Protest of any Competitive Solicitation or award is on the Protester to credibly establish that the intended action by Memorial is materially contrary to Memorial's governing statutes, the District's Charter, this Code, Memorial's Policies and Procedures, or the Competitive Solicitation's specifications. The burden in any appeal of the CPO's Written Decision of a Protest shall be whether the findings and conclusions of the CPO's Written Decision are arbitrary or capricious.

- (b) Standing to Protest.
- (i) Standing to Protest Competitive Solicitations and Addenda. Any actual or prospective Bidder that is an interested party and is aggrieved in connection with a Competitive Solicitation's or issued addenda's specifications may challenge such specifications consistent with the requirements herein.
 - (ii) Standing to Protest Bid Awards. Any actual Responsible and Responsive Bidder that is aggrieved in connection with an award of a Contract under a Competitive Solicitation may Protest such award consistent with the requirements herein.
- (c) Time and Writing Requirements for the Submission of Bid Protests.
- (i) Protests of Competitive Solicitations and Addenda. Any actual or prospective Bidder who is an interested party and is aggrieved in connection with a Competitive Solicitation's or issued addenda's specifications may challenge such specifications by submitting a timely and written Protest to the CPO no later than 72 hours following the Competitive Solicitation's notice or formal advertisement and release of the Bid Documents under a Competitive Solicitation, or, if any addenda are issued under a Competitive Solicitation, no later than 72 hours following the issuance of the addendum being challenged. The issuance of an addendum to a Competitive Solicitation shall not restart the time limitation Protest clock for Protesting the initial Competitive Solicitation's specifications or any previously issued addenda, and a Protest following the issuance of an addendum to a Competitive Solicitation shall only apply to the addendum specifically issued in the previous 72-hour period. The written Protest shall: (1) adequately identify the Competitive Solicitation and number; (2) set forth a detailed statement of the legal and factual grounds of Protest, including copies of relevant documents; (3) provide a statement as to how the Protester is interested and aggrieved; (4) state the relief requested; and (5) be signed by an authorized official of the Protesting Bidder with proper contact information including an email address. THE FAILURE TO TIMELY SUBMIT A WRITTEN PROTEST OF A COMPETITIVE SOLICITATION OR ADDENDUM WITH ALL THE REQUIRED COMPONENTS CONSISTENT WITH THIS SECTION SHALL CONSTITUTE A WAIVER OF ANY AND ALL PROTEST RIGHTS OF THE APPLICABLE COMPETITIVE SOLICITATION AND/OR ADDENDA.
 - (ii) Protests of Bid Awards. Any actual Responsible and Responsive Bidder that is aggrieved in connection with an award of a Contract pursuant to a Competitive Solicitation may Protest such award by submitting a timely and written Protest to the CPO no later than five Business Days after the date Memorial issues the Notice of Award. The issuance of an award shall not restart the time limitation Protest clock for the initial Competitive Solicitation or any previously issued addenda, and a Protest following an award to a Competitive Solicitation shall only apply to the award being Protested. The written Protest shall: (1) adequately identify the Competitive Solicitation and number; (2) set forth a detailed statement of the legal and factual grounds of Protest, including copies of relevant documents; (3) provide a statement as to how the Protester is aggrieved; (4) state the relief requested; and (5) be signed by an authorized official of the Protesting Bidder with proper contact information including an email address. THE FAILURE TO TIMELY SUBMIT A WRITTEN AWARD PROTEST WITH ALL THE REQUIRED COMPONENTS CONSISTENT WITH THIS SECTION SHALL CONSTITUTE A WAIVER OF ANY AND ALL PROTEST RIGHTS OF THE AWARD.
- (d) Protest Bond.
- (i) Requirement of Protest Bond. A precondition to any Protest is that a bond be posted payable to Memorial by the Protester ("Protest Bond"). The amount of the Protest Bond shall be (a) \$5,000 for Protests of a Competitive Solicitation or issued addenda; or (b) \$5,000 or 1 percent of the total cost of the awarded Bid, whichever is greater, for Protests of awards. A Protester, in lieu of posting a Protest Bond, may submit a cashier's check, official bank check, money order, or other noncancelable instrument in the amount of the required Protest Bond.
 - (ii) Form of Protest Bond. The Protest Bond filed pursuant to a Protest shall be substantially in the same form provided in Fla. Admin. Code R. 28-110.005(2).
 - (iii) Purposes and Use of Protest Bond. The Protest Bond shall be conditioned upon the actual costs incurred by Memorial when addressing the Protest and payment of all costs adjudged against the

Protester for any subsequent court proceedings, as applicable. After completion of the Protest or court proceedings as applicable, Memorial shall recover all such costs and charges incurred when addressing the Protest and any other costs or charges ordered by a court, as applicable. The Protest Bond shall be returned to the Protester if the Protester prevails, or if the Protester does not prevail, after the Protester remits payment to Memorial of any costs and charges incurred by Memorial throughout the pendency of the Protest.

- (iv) Forfeiture of Protest Bond. The entire amount of the Protest Bond shall be forfeited if the CPO reasonably determines that a Protest was filed for a frivolous or improper purpose, including, but not limited to, the purpose of harassing, causing unnecessary delay, or causing needless costs for Memorial, other Bidders, or other parties.
- (e) Procedure Following a Timely and Proper Protest. The following Protest Procedures shall apply following a properly qualified Protester's timely Competitive Solicitation or award Protest.
 - (i) Issuance of Stay by CPO During Pendency of Protest. In the event of a timely Competitive Solicitation or award Protest, the CPO may decide, at the CPO's sole and absolute discretion, to stay the pendency of the Competitive Solicitation Process or award as applicable until a final decision on the Protest is issued by the CPO.
 - (ii) Protest Preconditions. The preconditions to the consideration of any Protest are: (1) Protest Bond is posted and submitted concurrently with the Protest (or other noncancelable substitute instrument as provided herein); (2) the Protest was submitted timely within the time limits prescribed herein; (3) the Protest is being made by a properly qualified Protester with standing to Protest the Competitive Solicitation or award; and (4) the Protest is in writing, signed by an authorized official, and contains all the required components as outlined in this Section. Any Protest that fails to adhere to the foregoing preconditions shall be dismissed.
 - (iii) Written Decision of CPO. If the Protest is not resolved by mutual agreement, the CPO, or his or her designee, shall endeavor to issue a written decision on the Protest within (a) 30 days after receipt of the Protester's written and timely Protest if the Protest is based on a Competitive Solicitation or the issuance of an addendum; or (b) 60 days after receipt of the Protester's written and timely Protest if the Protest is based on an award (collectively, the "CPO's Written Decision"). The CPO may extend the foregoing time limits for good cause, and any time extensions shall be communicated to the Protester. The CPO's Written Decision shall state the reasons for the action taken and advise the Protester of its right to appeal the decision in accordance with this Code. The CPO's Written Decision shall be provided to the Protester by email and/or by certified mail, return receipt requested, and if the Protest is based on an award, a copy of the CPO's Written Decision shall be provided to the intended awardee by email and/or by certified mail, return receipt requested. Such delivery through the foregoing methods shall be deemed sufficient delivery of notice of the CPO's Written Decision. In the event of delivery by email, such notice of the CPO's Written Decision shall be deemed received by the Protester upon sending the email.
- (f) Procedure for Appeal of CPO's Decision. The following procedures shall apply following a properly qualified Protester's Written and Timely Appeal.
 - (i) Time and Form Requirements of Appeals. To the extent the Protester is dissatisfied with the findings and conclusions in the CPO's Written Decision, the aggrieved Protester may appeal the CPO's Written Decision by filing a written appeal with Memorial's CFO within five Business Days of the date of receipt of the CPO's Written Decision from the CPO ("Written and Timely Appeal"). The Written and Timely Appeal shall: (1) adequately identify the Competitive Solicitation and number; (2) attach a copy of the CPO's Written Decision being appealed along with all supporting documents that were submitted with the original Protest; (3) set forth a detailed statement of the legal and factual grounds for the appeal; (4) state the relief requested; and (5) be signed by an authorized official of the appealing Protester with proper contact information including an email address. THE FAILURE TO SUBMIT A WRITTEN AND TIMELY APPEAL SHALL CONSTITUTE WAIVER OF ALL APPEAL RIGHTS AND THE CPO'S WRITTEN DECISION SHALL BE DEEMED AS FINAL.
 - (ii) Issuance of Stay by CFO During Pendency of Appeal. If a Protester submits a Written and Timely Appeal, the CFO may decide, at the CFO's sole and absolute discretion, to continue or issue a

stay to the pendency of the Competitive Solicitation Process or award as applicable until a final decision on the Protest is issued by the CFO.

- (iii) *Written Decision of CFO.* To the extent a Written and Timely Appeal is filed, the CFO shall endeavor to render a written decision on the Written and Timely Appeal within (a) 30 days after receipt of the notice of the Written and Timely Appeal if the Protest is based on a Competitive Solicitation or the issuance of an addendum; or (b) 90 days after receipt of the notice of the Written and Timely Appeal if the original Protest is based on an award. The CFO may extend the foregoing time limits for good cause, and any time extensions shall be communicated to the Protester. The CFO's written decision shall state the reasons for the decision and actions taken, if any, and shall be provided to the appealing Protester by email and/or by certified mail, return receipt requested. The CFO's written decision shall be the final order on the Protest.

VI. EXEMPTIONS, WAIVERS, AND EMERGENCY PURCHASES

Notwithstanding the Competitive Solicitation Process as delineated herein, Procurements that are exempt or waived shall not be subject to the Competitive Solicitation Process. An "Exemption" permanently exempts specific categories of Commodities or Services from the Competitive Solicitation Process due to their unique nature, while a "Bid Waiver" waives the Competitive Solicitation Process temporarily for a particular Commodity or Service because it meets certain conditions. With the exception of Construction Services, Electrical Work, and Professional Design Services, which are entirely Exempt from all the provisions of this Code (unless otherwise provided in the Design and Construction Code), for all other Procurements that are Exempt or meet the requirements of a Bid Waiver, while they may not be required to engage in the Competitive Solicitation Process, they are still subject to other applicable provisions of this Code as well as other policies, procedures, and guidelines established for Memorial that govern the Procurement of Commodities and Services.

- A. **Exemptions.** Due to their unique nature, the following categories of Commodities and Services equal to or over the Procurement Threshold are Exempt from the Competitive Solicitation Process: (1) accounting or auditing services; (2) general employment matters and employment contracts, including clinical and staffing agency contracts; (3) finance-related services; (4) legal services and experts retained by the Office of the General Counsel of Memorial; (5) lobbying services; (6) managed care contracting; (7) marketing and advertising services; (8) pharmaceuticals and products specific to the regional pharmacy departments; (9) physician services, advanced practice provider services, and nursing services; (10) mail and postage; (11) products specific to the nutritional systems department; (12) Construction Services, Electrical Work, and Professional Design Services; (13) Professional Services and Consulting Services; (14) purchasing and procurement of federal awards or other funding sources when required to engage in another competitive process; (15) real estate initiatives and services including the acquisition, lease, or rental of real property and related licenses; (16) Routine Expenditures established pursuant to a written policy in accordance with Section VII.6. (Direct Payments by Checks or Purchase Orders) of this Code; (17) subscriptions for periodicals and educational material whether in electronic or hard copy form; (18) travel and entertainment-related services, including Memorial sponsored events at hotels, restaurants, and other entertainment venues; (19) utility services; (20) works of art, art design, and related artistic services; (21) services of investigators and other professionals related to a confidential investigation or special project of limited duration; and (22) any other Commodity or Service Exempted from the Competitive Solicitation Process as provided in this Code or referenced in any policy in the Business and Procurement Code Policy Appendix.
- B. **Bid Waivers.** A Contract for a Procurement equal to or over the Procurement Threshold may be awarded or entered into without following this Code's Competitive Solicitation Process when a Bid Waiver applies and the Board accordingly waives this Code's Competitive Solicitation Process and permits Memorial to directly Contract for such Procurements meeting the requirements or standards of one of the categories of Bid Waivers in this Section. The use of any applicable Bid Waivers in Section VI.B.1. (Bid Waivers not Requiring Further Board Approval or Action) of this Code for Procurements equal to or above the Procurement Threshold do not need further Board approval; however, the use of any Bid Waivers in Section VI.B.2. (Bid Waivers Equal to or Above the Procurement Threshold Requiring Further Board Approval) of this Code for Procurements equal to or above the Procurement Threshold shall require further Board approval as delineated herein. The CPO shall determine the appropriateness of using any Bid Waivers for Procurements that are less than the Procurement Threshold, and notwithstanding the applicability of a Bid Waiver for Procurements equal to or over the Procurement Threshold, the CPO shall have the authority to determine that it is within Memorial's best interests and require Memorial to proceed with the Competitive Solicitation Process. Nothing herein shall be construed or interpreted as limiting the authority conferred to the Board or Memorial under the District's Charter or Applicable Law, and nothing herein prohibits the Board from excepting a Procurement from the Competitive Solicitation

Process for reasons outside of the following Bid Waivers when the Board finds that such exception is in the best interest of Memorial. The use of any of the below Bid Waivers shall not entitle any Bidder to a Protest pursuant to Section V.D.17. (Bid Protests) of this Code. For Commodities or Services Procured through a federal grant or when using federal funds, the below Bid Waivers may be used only when such federal grant or conditions to use federal funds permit such use of the below Bid Waivers.

1. **Bid Waivers not Requiring Further Board Approval or Action.** The Board waives this Code's Competitive Solicitation Process without further Board approval or action when any of the following Bid Waivers apply to such Procurements regardless of whether such Procurements are equal to or above the Procurement Threshold:
 - (a) Cooperative Purchasing Programs. When it is in the best interest of Memorial and consistent with Applicable Law, Memorial may Procure Commodities or Contractual Services through Cooperative Purchasing Programs. Participation in a "Cooperative Purchasing Program" means and includes, without limitation, the use of State Term Contracts, cooperative state purchasing programs, buying cooperatives recognized or permitted under Florida law, buying cooperatives recognized or permitted under federal law (such as the General Services Administration), and any user access programs or other cooperative purchasing programs established by one or more Government Entities. When seeking Procurements from Cooperative Purchasing Programs, Memorial may issue a Request for a Quote from the participating Vendors, and the use of a Request for a Quote does not constitute a Competitive Solicitation that is subject to any Competitive Solicitation Process formalities. Nor does the issuance of a Request for Quote entitle any responding Vendor to a Protest under Section V.D.17. (Bid Protests) of this Code. Memorial may also, at its sole and absolute discretion, negotiate the terms and pricing of any Cooperative Purchasing Program Contract, provided such negotiation is consistent with Applicable Law. The CPO shall review and approve all requests for a Bid Waiver to Procure through a Cooperative Purchasing Program and the most appropriate Contract solicitation process for Procurements through a Cooperative Purchasing Program. All items presented to the CPO seeking Procurement through a Cooperative Purchasing Program shall be validated and approved as conforming to generally accepted public procurement standards before further action may be taken.
 - (b) Direct Purchases from Government Entities. When the CPO determines that it is in the best interest of Memorial and consistent with Applicable Law, Memorial may Procure Commodities or Contractual Services via a "Direct Purchase from a Government Entity," which means and includes the Procurement of Commodities or Contractual Services directly from a Government Entity that is in the business of providing or that is otherwise capable of directly providing the Commodities or Contractual Services sought.
 - (c) Emergency Purchases. The Board recognizes that from time to time, emergency situations arise, and the immediate Procurement of Commodities or Contractual Services is necessary for the proper, safe, and efficient operations of hospitals, medical centers, and non-acute health care facilities that provide patient care. Accordingly, and notwithstanding any other provision of this Code, the Board hereby waives the Competitive Solicitation Process for bona fide Emergency Purchases following the CPO's determination that it is necessary to make such an "Emergency Purchase," which means an actual or perceived emergency exists or will exist that may (1) threaten Memorial's continued compliance with regulatory requirements; (2) pose a threat, danger, or loss to the life, health, safety, or welfare of patients, employees, the public, or to Memorial's properties or infrastructure (including its Information Technology Systems); or (3) cause disruption to Memorial's operations, thereby necessitating the immediate Procurement of certain Commodities or Contractual Services to address, eradicate, or ameliorate the emergency without following the Competitive Solicitation Process. Any Emergency Purchases equal to or above the Procurement Threshold shall be reported to and ratified by the Board as soon as practicable following the Emergency Purchase.
 - (d) Group Purchasing Organizations. The Board recognizes that Procurements made through Group Purchasing Organizations are best practices in hospital Procurements nationwide with associated efficiencies, savings, and speed. Accordingly, the Competitive Solicitation Process may be waived for Procurements of Commodities or Contractual Services when utilizing a "Group Purchasing Organization," which means a for-profit or not-for-profit organization created by or on behalf of groups of buyers of related categories and markets to combine and form a purchasing consortium to obtain cost-saving and efficiency advantages of volume purchases. Memorial may issue a Request for a Quote from the participating Vendors of a Group Purchasing Organization when seeking Procurements from such Group Purchasing Organization, and the use of a Request for a Quote does not constitute a

Competitive Solicitation that is subject to any Competitive Solicitation Process formalities. Nor does the issuance of a Request for Quote entitle any responding Vendor to a Protest under Section V.D.17. (Bid Protests) of this Code.

- (e) Owner-Direct Purchases. Rather than reimburse a contractor for the costs of materials or supplies used in a Public Works Project, which would include sales and use tax, Memorial may determine, at its sole and absolute discretion, that it is in its best interest to use its tax-exempt status by engaging in an “Owner-Direct Purchase,” which means the direct purchase of materials or supplies that will be affixed to a Public Facility as part of a Public Works Project. Owner-Direct Purchases do not need to follow the Competitive Solicitation Process; provided, however, that all Owner-Direct Purchases shall adhere to and be Procured according to the procedures set forth in § 212.08(6), Fla. Stat. and Fla. Admin. Code R. 12A-1.094, and such Owner-Direct Purchases (1) may only be for the purpose of Memorial benefiting from its tax-exempt status as a Government Entity; (2) may only be for tangible personal property, supplies, and materials that will be installed, affixed, incorporated into, or that become a part of a Public Facility under a Public Works Project; (3) may not be prohibited by Applicable Law; and (4) shall contain all the proper documentation required under Applicable Law. To the extent the Owner-Direct Purchase Bid Waiver is used by Memorial, Memorial may deduct from the applicable awarded Contract the cost of the materials and supplies and the amount of sales and use tax that would have been incurred and owed if the contractor purchased the items or materials or the amount stipulated in the Contract for such materials or supplies. The Owner-Direct Purchase Bid Waiver may not be used to Procure any tangible personal property that is freestanding and can be relocated without tools, equipment, or need for adaptation. The CPO is responsible for deciding and approving Owner-Direct Purchases, and the CPO shall confirm that the foregoing requirements and the requirements of Applicable Law are followed.
- (f) Piggyback Contracts. When it is in the best interest of Memorial and consistent with Applicable Law, Memorial may Procure Commodities or Contractual Services without engaging in the Competitive Solicitation Process through a “Piggyback Contract,” which means utilizing an existing and competitively awarded Contract of a Government Entity to acquire the same Commodities or Contractual Services as the Government Entity at the same or lower price. The use of a Piggyback Contract is only permitted when: (1) the Competitive Solicitation Process or other competitive process consistent with the provisions of this Code were utilized by a Government Entity to Procure the original Contract; (2) one or more Government Entities is a party to the original Contract; and (3) the use and piggybacking of such Contract is consistent with § 189.053, Fla. Stat. and other Applicable Law. Notwithstanding the foregoing, Memorial may, at its sole and absolute discretion, negotiate the terms and pricing of any Piggyback Contract, provided such negotiation is in accordance with Applicable Law. The CPO shall review and approve all requests for a Bid Waiver to Procure through and enter into a Piggyback Contract. All items presented to the CPO seeking entry into Piggyback Contracts shall be validated and approved as conforming to generally accepted public procurement standards before further action may be taken.

2. **Bid Waivers Equal to or Above the Procurement Threshold Requiring Further Board Approval.** The Board hereby waives this Code’s Competitive Solicitation Process for Procurements equal to or above the Procurement Threshold following the Board’s determination that such Procurements meet the standards necessitating a Bid Waiver within one of the following categories. Following the Board’s Bid Waiver determination, such Bid Waiver shall be continuing in nature without needing further Board approval, provided the circumstances that necessitated or contributed to the Bid Waiver have not changed and the Procurement, Contract, system, or expenditure applicable to such Bid Waiver is specifically identified (as determined by the CPO) as a line item in the Budget. If the Procurement, Contract, system, or expenditure applicable to the Bid Waiver is not specifically identified as a line item in the Budget, then the approved Bid Waiver shall remain effective for a five-year period from the date such Bid Waiver was approved unless the Board expressly approves a greater time.

- (a) Impracticality Waiver. The Competitive Solicitation Process is waived for Procurements that meet the requirements of an Impracticality Waiver. An “Impracticality Waiver” means waiving the Competitive Solicitation Process for the Procurement of Commodities or Contractual Services when adhering to such competitive procedures for such Procurements would otherwise be impractical or impracticable. Prior to submitting an Impracticality Waiver for Board consideration and approval for Procurements equal to or more than the Procurement Threshold, the CPO shall determine and document the CPO’s findings and conclusions that (1) Procuring the Commodities or Contractual Services without

following the Competitive Solicitation Process is necessary for the continued business and operations of Memorial and is in the best interests of Memorial; (2) Procuring the Commodities or Contractual Services without following the Competitive Solicitation Process does not violate Applicable Law or any federal or state requirements regarding competitive procurements; and (3) that adherence to or following the Competitive Solicitation Process is otherwise impractical or impracticable because one or more of the following applies: (a) that the transitional costs of engaging in the Competitive Solicitation Process and moving to a new Vendor would be unreasonable or cost-prohibitive; (b) because of the particular circumstances, following the Competitive Solicitation Process for Procuring the Commodity or Contractual Service, or category thereof, would be redundant and unnecessary and not advance or foster the purposes and transparency of conducting public Competitive Solicitations (e.g., where purchases or rates are fixed by law or ordinance); (c) Applicable Law expressly permits waiving the Competitive Solicitation Process and it is in the best interests of Memorial to do so (e.g., unsolicited proposals for public-private partnership projects); (d) the need to waive the Competitive Solicitation Process is necessary to advance the competitive and non-public strategic initiatives of Memorial and following the Competitive Solicitation Process would otherwise undermine such initiatives; (e) waiving the Competitive Solicitation Process is reasonably necessary because no competition exists or the particular Commodity or Contractual Service, or category thereof, is needed to advance a particular operational need that can only be accomplished by one particular Vendor (e.g., utility services, patented items, unique professional or artistic services not governed under § 287.055, Fla. Stat., or only one Commodity or Contractual Service is compatible with Memorial's systems and equipment and only one Vendor provides such Commodity or Contractual Service, etc.); (f) only one Bidder responded to a Competitive Solicitation that was released but the Bidder's response contains material defects and Memorial still desires to enter into a Contract with such Bidder; or (g) any other reason that under the circumstances would render the Competitive Solicitation Process as unnecessary, superfluous, or redundant. Notwithstanding the satisfaction of the criteria for using the Impracticality Waiver, Memorial shall, where appropriate, pursue the maximum amount of competition available under the circumstances, which may include telephonic bids and informal price quotations.

- (b) Legacy Purchases. The Competitive Solicitation Process is waived for Procurements that meet the requirements of a Legacy Purchase. A "Legacy Purchase" shall mean the Procurement of Commodities and Contractual Services or the expansion of an existing and integrated system where competition is unavailable, impractical, or constrained as a result of the need to continue to operate an existing Memorial system which may not be replaced without substantial expenditure. Before submitting a Legacy Purchase for Board consideration and approval for Procurements equal to or more than the Procurement Threshold, the CPO shall make all preliminary determinations regarding the appropriateness of engaging in a Legacy Purchase.
- (c) Sole Source and Sole Brand Purchases. The Competitive Solicitation Process is waived for Procurements that meet the requirements of being a Sole Source and Sole Brand Purchase. A "Sole Source and Sole Brand Purchase" shall mean the Procurement of specific Commodities or Contractual Services where there is only one source or one reasonable source for the specific Commodities or Contractual Services or where there is only one known brand or only one brand reasonably capable of fulfilling a particular Procurement need of Memorial. Before submitting a Sole Source and Sole Brand Purchase for Board consideration and approval for Procurements equal to or more than the Procurement Threshold, the CPO shall make all preliminary determinations regarding a Procurement's status as a Sole Source and Sole Brand Purchase.
- (d) Standardization Purchases. The Competitive Solicitation Process is waived for Standardization Purchases. "Standardization Purchases" shall mean the establishment of the uniform use of a Commodity or Contractual Service throughout Memorial, or a department thereof, to support efficiency and cost reduction through economies of scale, quality control, risk mitigation, effective maintenance, or integration. Before submitting a Standardization Purchase for Board consideration and approval for Procurements equal to or more than the Procurement Threshold, the CPO shall make all preliminary determinations regarding the benefits of standardizing the Procurement of such Commodities and Contractual Services.

VII. GENERAL BUSINESS AND PURCHASING MATTERS

The following authority and guidelines shall govern all business at or with Memorial:

1. **Doing Business with Memorial.** The CPO may establish policies requiring Bidders and Vendors to register with Memorial as a condition of Bidding on Competitive Solicitations or as a condition of doing business with or otherwise providing Commodities or Services to Memorial.
2. **Prohibition Against Contingent Fees.** The payment of any compensation to any individual, corporation, partnership, firm, or company, other than the Vendor or a bona fide employee of the Vendor made contingent on the award of a Competitive Solicitation, issuance of a Purchase Order, or made to solicit or secure Contracts with Memorial is strictly prohibited.
3. **Authority to Debar or Suspend Vendors.** In addition to those Vendors not authorized to do business with Memorial under Applicable Law, the CPO is authorized to establish written criteria consistent with Applicable Law for the temporary or permanent suspension or debarment of Vendors whose conduct is detrimental to Memorial. Such detrimental behavior includes but is not limited to, the failure to fulfill the terms and conditions of a Contract, negative interactions with Memorial's staff and employees, or providing inferior or inadequate Commodities or Services. The written criteria for suspension or debarment shall include reasonable notice to the affected Vendor; the causes, allegations, and conduct leading to the potential suspension or debarment; a reasonable opportunity to respond in writing to the claims; any relevant timelines to respond; an appellate procedure to appeal adverse decisions of the CPO in writing or person; and the process to request reinstatement for temporary suspensions and temporary debarments following the completion of the temporary suspension or temporary debarment period. During the period of debarment or suspension, the Vendor and its affiliates, or other companies with any of the same officers or principals as the debarred or suspended Vendor, may not do business with Memorial or Bid on any Competitive Solicitations issued by Memorial, and such suspended or debarred Vendor may not be approved as a subcontractor on any Contract or project associated with Memorial.
4. **Contract Administration and Execution Authority.** Unless otherwise stated in a Board policy, resolution, or Applicable Law, all rights, powers, duties, and authority vested in the Board pursuant to the District's Charter or other Applicable Law relating to Contracting for Commodities or Services of any kind for and on behalf of Memorial, or any other Contracts that bind Memorial are governed by and are delegated to and vested in the Memorial officers and employees designated in Memorial's Authorized Official, Contract Execution, and Delegation of Authority Policy in the Business and Procurement Code Policy Appendix.
5. **Designated Officers and Officials.** Unless otherwise stated in a Board policy, resolution, the District's Charter, or other Applicable Law, those Memorial officials designated in Memorial's Authorized Official, Contract Execution, and Delegation of Authority Policy, as well as their authorized delegees, are hereby delegated and shall possess all the rights, powers, duties, and authority to represent and act for and on behalf of Memorial in the making, execution, and delivery of any filings, applications, grants, certifications, notices, or instruments, as well as the furnishing of information, data, and documents as deemed appropriate and in the best interest of Memorial.
6. **Direct Payments by Checks or Purchase Orders.** The CPO may establish a policy governing routine expenditures and Procurements under the Procurement Threshold where maintaining Competitive Conditions is not practicable ("Routine Expenditures"). Such policy may authorize direct payments of Routine Expenditures by electronic funds transfer, check, P-Card, issuance of Purchase Orders, and any other payment method without engaging in Competitive Conditions and without a formal Contract. Such Routine Expenditures include, but are not limited to, magazine and periodical subscriptions; membership dues; patient transportation services; temporary or permanent housing payments; utility and telephone services payments; payments for permits; payments for vehicle registrations; postage and shipping payments; seminars and training events; purchases of educational books, supplies, and other educational and training materials; events conducted to boost employee morale; bond payments; payments pursuant to court orders; the purchase of court and hearing transcripts; and any other Routine Expenditures needed for the continued operations of Memorial.
7. **Procurement Purchasing Cards.** Procurement Purchasing Cards ("P-Cards") may be issued to officers and employees of Memorial authorized to make the Procurements needed for Memorial's operations where the general acquisition process or maintaining Competitive Conditions is not efficient or cost-effective. The CPO is authorized to establish and administer a P-Card program for the efficient expenditure of Memorial funds using a P-Card within the guidelines of this Code. Such P-Card program shall provide proper safeguards to ensure the responsible and appropriate use of P-Cards and shall establish standards pertaining to the continued usage of P-Cards, officers and employees eligible to use and possess P-Cards, the process to request temporary or one-time use of a P-Card, and the services or supplies that P-Cards may be used for. The CPO may revoke, reinstate, or modify an officer's or employee's access to use a P-Card at any time when such revocation, reinstatement, or modification is in the best interests of Memorial. In no event may a Commissioner of the Board be granted authority to possess or use a P-Card, but a P-Card may be used by a Memorial officer or employee to Procure supplies or to pay expenses on

behalf of a Commissioner who will incur such expenses when conducting official Memorial business (e.g., hotel and airline reservations, subsistence during Memorial business travel, etc.). In addition to any other disciplinary action appropriate under the circumstances, any officer or employee who is not authorized to use a P-Card or who otherwise misuses a P-Card shall be subject to payroll deductions for repayment expenses charged on the P-Card during the individual's misuse or unauthorized use of the P-Card.

8. **Procurements and Expenditures for Grants and Other Funding Sources.** Procurements and expenditures from Government Entities or other funding sources under the conditions of a grant, award, or Contract may require special processing because of specific legal terms and conditions set by the funding agency. All federal grants and awards shall comply with, as applicable, 45 C.F.R. Part 75, other Applicable Law, the specific terms of the grant or award, and the Purchasing and Procurement Requirements of Federal Awards from the U.S. Department of Health and Human Services Policy in the Business and Procurement Code Policy Appendix. Any other Procurements and expenditures under grants, awards, or other funding sources shall conform to any special conditions, provisions, or purchasing requirements placed on the funding. It is the responsibility of the Project Custodian to identify any special purchasing requirements or provisions, to notify Supply Chain Services of any requirements or conditions relating to such funding sources, and to ensure that all requirements are followed.
9. **Unsolicited and Solicited Proposals for Public-Private Partnership Projects.** Memorial may receive unsolicited proposals or solicit proposals for a public-private partnership Qualifying Project. It may thereafter enter into a comprehensive agreement with a private entity or a consortium of private entities to build, upgrade, operate, own, or finance facilities. Vendors submitting unsolicited proposals shall concurrently pay an initial application fee as determined by the CPO, and such payment shall be made using cash, cashier's check, or other non-cancelable instruments. If the initial application fee does not cover the costs to evaluate the unsolicited proposal, additional amounts required to cover such costs shall be communicated to the Vendor in writing, and the Vendor shall remit such fees for the additional amounts. The selection of Vendors and the conduct of all unsolicited and solicited public-private partnership Qualifying Projects shall always be consistent with any required and applicable provisions of § 255.065, Fla. Stat., and other Applicable Law.
10. **Surplus Property.** Personal property of Memorial that is deemed Surplus Property shall be disposed of pursuant to Applicable Law, and the disposition of such Surplus Property shall always be consistent with the provisions of ch. 274, Fla. Stat., Fla. Admin. Code R. 69I-73.001, *et seq.*, and the District's Charter.

VIII. INTERPRETATION AND CONSTRUCTION OF THIS CODE

The terms and provisions of this Code shall be deemed by operation of law to be a part of the terms and conditions of every Procurement, Contract, purchase order, and change order involving Memorial's Procurements except to the extent that the CPO or other authorized official of Memorial has expressly provided for an exception to one or more of the requirements provided for in this Code and such exception is consistent with Applicable Law, this Code, and Memorial's Policies and Procedures. The headings contained in this Code are for reference purposes only and shall not affect in any way the meaning or interpretation of the Code. The use of the term "including" and other words of similar import mean "including, without limitation," and where specific language is used to clarify by example a general statement contained herein, such specific language shall not be deemed to modify, limit, or restrict in any manner the construction of the general statement to which it relates. The word "or" is not exclusive, and the words "herein," "hereof," "hereunder," and other words of similar import refer to this Code as a whole and not to any particular section, subsection, paragraph, subparagraph, or clause contained in this Code. The term "shall" is mandatory and "may" is optional. The reference to a policy, instrument, or other document means such policy, instrument, or other document as amended, supplemented, and modified from time to time to the extent permitted by the provisions thereof, and the reference to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. If any provision of this Code is held to be unconstitutional, invalid, or unenforceable, such offending provision shall be stricken as though the offending provision has not been included herein, and the remainder of this Code shall remain valid, enforceable, and not be affected thereby, and if any provision of this Code is held to be unconstitutional, invalid, or unenforceable as applied to any particular person, group, entity, property, or circumstance, such provision shall be modified to the minimum extent necessary to make it or its application valid and enforceable and the application of the remaining provisions of this Code to any person, group, entity, property, or circumstance shall remain valid and enforceable and not affected thereby. Except as otherwise provided in this Code, all rights, powers, duties, and authorities relating to the Procurement of Commodities and Services, or the sale and disposal of supplies are vested in the CPO as the principal purchasing officer of Memorial. The CPO may delegate the rights, powers, and authority vested in such position to subordinate purchasing agents and other employees or departments as provided in this Code. No provision of this Code shall be construed as conflicting with or exceeding Applicable Law. In the event of a conflict between this Code and Applicable Law, Applicable Law shall govern and control as if fully set forth herein.

Memorial's Business and Procurement Code Policy Appendix

The Procurement of all Commodities and Services are subject to Memorial Healthcare System's Business and Procurement Code (the "Business and Procurement Code"), but certain categories of Commodities and Services may be exempt from the Competitive Solicitation Process established in the Business and Procurement Code. This Business and Procurement Code Policy Appendix (this "Appendix") contains supplemental policies and procedures governing the business affairs of Memorial and the Procurement of certain Commodities and Services that are otherwise exempt from the Business and Procurement Code. If a particular category of Commodities or Services is exempt from the Business and Procurement Code's Competitive Solicitation Process, but a policy in this Appendix covers the Procurement of such Commodities and Services, then the process delineated in such policy shall govern the Procurement of the Commodities and Services. If a category of Commodities or Services is exempt from the Business and Procurement Code's Competitive Solicitation Process, but there is no policy governing the Procurement of such Commodities and Services, then such Commodities and Services shall be governed by internal policy or procedure established by the CPO. In the event that any policy in this Appendix conflicts with any provision of the Business and Procurement Code, the policy shall control unless explicitly stated otherwise in the policy or the Business and Procurement Code. No policy of this Appendix shall be construed as conflicting with or exceeding Applicable Law. In the case of a conflict between a policy in this Appendix and Applicable Law, Applicable Law shall govern and control as if fully set forth herein. Further, if any policy or provision of a policy in this Appendix is held to be unconstitutional, invalid, or unenforceable, such offending policy or provision shall be stricken as though the offending policy or provision has not been included therein, and the remainder of the non-offending policies and provisions of policies in this Appendix shall remain valid, enforceable, and not be affected thereby, and if any policy or provision of a policy in this Appendix is held to be unconstitutional, invalid, or unenforceable as applied to any particular person, group, entity, property, or circumstance, such policy or provision shall be modified to the minimum extent necessary to make it or its application valid and enforceable and the application of the remaining policies and provisions to any person, group, entity, property, or circumstance shall remain valid and enforceable and not affected thereby.

The following policies of this Appendix are hereby established by the Board:

1. Memorial's Administration of Contracts Policy;
2. Memorial's Authorized Official, Contract Execution, and Delegation of Authority Policy;
3. Memorial's Design and Construction Code;
4. Memorial's Economic and Small Business Development Initiative Policy; and
5. Purchasing and Procurement Requirements of Federal Awards from the U.S. Department of Health and Human Services Policy.

Memorial's Administration of Contracts Policy

I. Purpose and Scope

Entering into Contracts are legally binding obligations that expose Memorial to certain statutory and legal risks. Accordingly, it is imperative that all Contracts adhere to established procedures to protect Memorial from unnecessary legal risk and exposure. The purpose of this Policy is to set forth such procedures and to provide guidance to Memorial regarding the approval and administration of Contracts. The procedures set forth herein shall apply to all Memorial's Contracts and those seeking to bind Memorial to a Contract.

II. Policy Statement

All of Memorial's Contracts, unless otherwise stated in the Business and Procurement Code, shall be Procured in accordance with the provisions of the Business and Procurement Code, the policies of the Business and Procurement Code Policy Appendix, and/or any applicable policy or procedure established by the CPO governing the Procurement of Commodities or Services. Unless otherwise exempt under this Policy, the entry into Contracts shall be governed by the procedures of this Policy and such further procedures established by Memorial's Office of the General Counsel.

III. Definitions

The following words shall have the meaning ascribed to them wherever they appear in this Policy, regardless of whether they are capitalized, unless (a) the context in which they are used clearly requires a different meaning, or (b) a different definition is prescribed for a particular section of this Policy. Words capitalized but not defined in this Policy shall have the meaning ascribed to such term in the Business and Procurement Code. All other words shall be given their common and ordinary meaning unless the context in which they are used requires otherwise. When the context requires, the gender of all words includes the masculine, feminine, and neuter, the number of all words includes the singular and plural, and, when appropriate, the form of a word includes the past tense, present participle, or gerund.

1. "**Authorized Signatories**" means those authorized officials in Memorial's Authorized Official, Contract Execution, and Delegation of Authority Policy and any of their respective designees authorized to bind Memorial to Contracts.
2. "**Business and Procurement Code**" means Memorial Healthcare System's Business and Procurement Code.
3. "**Contract**" shall have the meaning ascribed to such term in Article II (Definitions) of the Business and Procurement Code.
4. "**Contract Initiator**" means an authorized officer, employee, or agent of Memorial who initiates the Contracting Process.
5. "**Contract Administration**" means the division of Memorial's Office of the General Counsel responsible for the oversight, review, and administration of Memorial's Contracts.
6. "**Contracts Management System**" means Memorial's electronic contracting system that serves as the centralized repository for all of Memorial's Contracts and that contains all Contract reviews, approvals, and supporting documentation.
7. "**Contracting Process**" means the process followed for the oversight, review, and administration of Contracts in the Contracts Management System.
8. "**CPO**" shall have the meaning ascribed to such term in Article II (Definitions) of the Business and Procurement Code.
9. "**Department Authority**" means the relevant individual in Memorial's Corporate Officers who, as provided within Memorial's Organizational Chart, (a) possesses authority over Memorial or over a particular Memorial hospital, facility, department, or division, and (b) reports directly to the President/Chief Executive Officer or directly to the Board.
10. "**Memorial**" means Memorial Healthcare System, the fictitious name of the South Broward Hospital District, a special tax district established by the Florida legislature, and all of its departments, divisions, units, wholly owned entities, and other fictitious names now established and as further established from time to time by the Board. The term "Memorial" shall expressly exclude all joint ventures, cooperatives, or interlocal arrangements of the South Broward Hospital District unless the governing documents or articles of such ventures, cooperatives, or interlocal arrangements indicate otherwise or unless the Board of Commissioners establishes a policy to subject such joint venture, cooperative, or interlocal arrangement to the provisions of this Policy.

11. **“Physician”** means a doctor of medicine or osteopathy, a doctor of dental surgery or dental medicine, a doctor of podiatric medicine, a doctor of optometry, and a chiropractor.
12. **“Physician’s Immediate Family Member”** a Physician’s spouse; birth or adoptive parent, child, or sibling; stepparent, stepchild, or stepsibling; father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law; grandparent or grandchild; and spouse of a grandparent or grandchild.
13. **“Referral Source”** means a Physician, a Physician’s Immediate Family Member, and any other person or legal entity that is an actual source or recipient of healthcare business or referrals to or from Memorial.

IV. Procedure

1. Every Memorial Contract shall be Procured consistent with the applicable provisions of the Business and Procurement Code, Design and Construction Code, or such other applicable policy governing the particular Procurement.
2. Before entering into and binding Memorial to a Contract, every Contract shall be reviewed to determine whether the counterparty is a Referral Source. To the extent the counterparty to a Contract is a Referral Source, such Contract shall comply with Applicable Law and any other applicable Board policy or resolution or administrative policy governing the entry into and administration of Contracts with Referral Sources.
3. Unless an exception to this Policy applies to a particular Contract, Contract Initiators shall submit all requests to enter into Contracts in the Contracts Management System, and all requested Contracts shall be routed through the Contracts Management System for review and approval prior to the Contract’s execution.
4. Memorial’s Office of the General Counsel shall supervise and oversee the Contracting Process to ensure that all Contracts receive the proper reviews and approvals before the Contracts’ execution.
5. The Office of the General Counsel, as deemed necessary, may establish other policies and standard operating procedures to administer, implement, and interpret this Policy and that govern the oversight, administration, and review of Memorial’s Contracts.
6. Unless otherwise excepted by this Policy, after the Contracting Process, all Contracts shall be executed by an Authorized Signatory, and a copy of the fully executed Contract shall be stored within the proper arrangement of the Contracts Management System.

V. Exceptions

A Contract may be excepted from strictly adhering to the Contracting Process under the following circumstances provided such exception is consistent with and not contrary to Applicable Law:

1. An actual or perceived threat or emergency exists or will exist whereby strictly adhering to the Contracting Process may result in (a) a negative effect on patient care; (b) a threat to the life, health, welfare, or safety of patients, employees, or the public; (c) Memorial failing to comply with regulatory requirements; (d) severe financial consequences; or (e) adverse effects or negative consequences to the continued operations of any Memorial hospital, facility, department, or division. A Department Authority possesses the ultimate authority to decide whether or not an actual or perceived threat or emergency exists or will exist that necessitates proceeding with the execution of a Contract without following the Contracting Process. To the extent such a perceived or actual threat or emergency exists or will exist, it shall be communicated to the Office of the General Counsel or other department or individual delegated authority by the General Counsel before proceeding forward without adhering to the Contracting Process. In such circumstances, Memorial shall endeavor to conduct necessary reviews contemporaneously with the execution of such a Contract that is executed outside of the Contracting Process, and following the Contract’s execution, such Contract shall be stored in the Contracts Management System.
2. Contracts of a strategic nature; Contracts that possess characteristics or features that are confidential and it would be detrimental to Memorial or another person or entity to have the details of such Contract viewable by those with access to the Contracts Management System; and other Contracts with unique qualities or attributes that either the President/Chief Executive Officer or the Office of the General Counsel deem appropriate may be excepted from both the Contracting Process and being stored in the Contracts Management System; provided, however, that legal review shall be performed before Memorial executes such Contract. To the extent this exception is applicable, such Contract and all supporting documentation shall be appropriately filed in a secure environment and maintained consistent with Applicable Law.
3. The Office of the General Counsel may draft, negotiate, and review Contracts and legal terms outside the Contracts Management System to ensure that all relevant reviews are done effectively and timely.

4. Unless otherwise prohibited under Applicable Law, Memorial's President/Chief Executive Officer or designee, following consultation with Memorial's Office of the General Counsel, may establish written categories of Contracts that may be permanently excepted from being filed in the Contracts Management System; provided, however, that the proper legal and/or other reviews deemed appropriate by the Office of the General Counsel shall be performed before Memorial enters into the Contracts. To the extent a category of Contracts is excepted, such Contracts and all supporting documentation shall be appropriately filed in a secure environment and maintained consistent with state and federal law.

VI. Interpretation and Administration

Administration and Interpretation of this Policy is the responsibility of the Office of the General Counsel.

Memorial's Authorized Official, Contract Execution, and Delegation of Authority Policy

I. Purpose and Scope

The District's Charter grants the Board the powers of a body corporate, including the right to contract and transact other business in the name of Memorial. Because the day-to-day operational management of Memorial falls within the authority of Memorial's Chief Executive Officer and such other officers, employees, and agents appointed by the Board and the Chief Executive Officer, such individuals must be delegated the power and authority to conduct business for, in the name, and on the behalf of Memorial to ensure the continuity of Memorial's business affairs and to promote its operational efficiency. The purpose of this Policy is to designate those officers, employees, and agents of Memorial who are authorized to conduct business on behalf of and commit Memorial to binding obligations. This Policy applies to all Contracts, business, and transactions of Memorial.

II. Policy Statement

Only those Authorized Officials and their Permitted Delegees, as delineated in this Policy, may transact business for Memorial and commit Memorial to Contracts and binding obligations.

III. Definitions

The following words shall have the meaning ascribed to them wherever they appear in this Policy, regardless of whether they are capitalized, unless (a) the context in which they are used clearly requires a different meaning, or (b) a different definition is prescribed for a particular section of this Policy. Words capitalized but not defined in this Policy shall have the meaning ascribed to such term in the Business and Procurement Code. All other words shall be given their common and ordinary meaning unless the context in which they are used requires otherwise. When the context requires, the gender of all words includes the masculine, feminine, and neuter, the number of all words includes the singular and plural, and, when appropriate, the form of a word includes the past tense, present participle, or gerund.

1. "**Authorized Officials**" means Memorial's Chief Executive Officer, Chief Operating Officer, and Chief Financial Officer.
2. "**Board**" means the Board of Commissioners of the South Broward Hospital District.
3. "**Budget**" means the annual capital and operating budget approved by the Board under the process delineated in § 200.065, Fla. Stat., and includes any amendments to such annual budget as adopted by the Board from time to time.
4. "**Business and Procurement Code**" means Memorial Healthcare System's Business and Procurement Code, which governs Memorial's business activities and Memorial's Procurement of Commodities and Services.
5. "**Contract**" means all contractual arrangements and other obligating transactions, including, without limitation, all agreements, licenses, leases, promissory notes, instruments, assignments, powers of attorney, terms and conditions, memoranda of understanding, letters of intent, settlements, releases, waivers, renewals, amendments, or modifications to existing contracts, claims, disputes, representations, and other similar documents and commitments.
6. "**Continuing Contracts**" shall have the meaning ascribed to such term in chapters 255 and 287, Florida Statutes, as applicable to a particular procurement or project.
7. "**Contract's Duration**" means the total effective period of a Contract from its original commencement date through its expiration date, inclusive of its Initial Term and any subsequent Renewal Terms.
8. "**Contracts Management System**" means Memorial's electronic contracting system that serves as the centralized repository for all of Memorial's Contracts and that contains all Contract reviews, approvals, and supporting documentation.
9. "**CPO**" shall have the meaning ascribed to such term in Article II (Definitions) of the Business and Procurement Code.
10. "**Design and Construction Code**" means Memorial's Design and Construction Code governing the procurement of contractors and professionals for projects subject to chapters 255 and 287, Florida Statutes.
11. "**District's Charter**" means South Broward Hospital District's enabling legislation, ch. 2004-397, Laws of Florida, as amended by ch. 2016-258, Laws of Florida, and any subsequent amendments or successor legislation thereof.

12. “**Five-Year Term Limit**” shall have the meaning ascribed to such term in Section IV.B.3. (Five-Year Term Limit) of this Policy.
13. “**Government Entity**” means any government entity including, but not limited to, (a) any state, regional, county, local, or municipal government entity of Florida or another state; (b) any department, division, bureau, commission, public authority, board, local government, single-purpose or multipurpose special district, or political subdivision of Florida or another state, or any public agency, separate legal entity, or administrative entity of any the foregoing, whether executive, judicial, or legislative; (c) any public school, community college, state university, educational institution or body of government in Florida or another state; (d) any and all federal or tribal agencies or entities, whether executive, judicial, or legislative; (e) any public agencies or entities of any state, federal, or tribal governments; and (f) any other units of Florida government, the federal government, other state governments, or tribal governments.
14. “**Initial Contract Term**” means the first effective period of a Contract’s Duration.
15. “**Labor-Hour Contract**” means a Contract that provides for direct labor at specified fixed hourly rates that include wages, overhead, general and administrative expenses, and profit.
16. “**Line-Item Budget Category**” means the aggregate and high-level classification category or grouping of similar expenditures allocated as part of the Budget.
17. “**Memorial**” means Memorial Healthcare System, the fictitious name of the South Broward Hospital District, a special tax district established by the Florida legislature, and all of its departments, divisions, units, wholly owned entities, and other fictitious names now established and as further established from time to time by the Board. The term “Memorial” shall expressly exclude all joint ventures, cooperatives, or interlocal arrangements of the South Broward Hospital District unless the governing documents or articles of such ventures, cooperatives, or interlocal arrangements indicate otherwise or unless the Board establishes a policy to subject such joint venture, cooperative, or interlocal arrangement to the provisions of this Policy.
18. “**Official Documents**” means those non-monetary, binding and non-binding agreements, documents, applications, certificates, attestations, records, forms, reports, instruments, notices, orders, and other official documents, undertakings, commitments, and written representations that are completed or that need to be completed for and on behalf of Memorial in the course and for Memorial’s day-to-day business and operations.
19. “**Permitted Delegees**” means those individuals delegated temporary or permanent authority by an Authorized Official.
20. “**Renewal Term**” means each and any subsequent period of a Contract’s Duration following the expiration of the Initial Contract Term.
21. “**Requirements Contract**” means a Contract that provides for filling all actual purchase requirements of Commodities or Services, with deliveries or performance to be scheduled by placing orders with the contractor.
22. “**Spending Threshold**” shall have the meaning ascribed to such term in Section IV.B.2. (Establishment and Limitations of the Spending Threshold) of this Policy.
23. “**Temporary Delegation Letter**” means a letter issued by an Authorized Official that temporarily delegates the authority to execute Contracts to Permitted Delegees in their absence.
24. “**Time-and-Materials Contract**” means a Contract that provides for acquiring supplies or services on the basis of direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, and profit; and actual cost for materials.
25. “**Unbudgeted**” means expenditures not appropriated as part of the Budget.

IV. Procedure

- A. **Official Documents of Memorial.** Memorial is frequently required to make, complete, and file Official Documents as part of its daily operations. In recognition of the necessity of completing and filing these Official Documents for Memorial’s day-to-day operations and affairs, the Board hereby establishes the following guidelines governing Official Documents made, filed, and completed for and on behalf of Memorial.
 1. **Official Documents Made or Completed by Authorized Officials.** Provided it is permissible under Applicable Law, in Memorial’s best interests, and deemed necessary, advisable, or appropriate in furtherance of Memorial’s operational and business affairs, each Authorized Official hereby is authorized and empowered in the name and on behalf of Memorial to make, prepare, execute, deliver, file, or cause to be made, prepared,

executed, delivered, and filed, Official Documents with any Government Entity, accreditation body, third-party payer, and all other non-governmental and non-accreditation entities that Memorial conducts business with or are necessary in the course of Memorial's operations.

2. **Official Documents Made or Completed by Permitted Delegees.** Permitted Delegees may, with the same authorization, power, and privileges of the Authorized Officials, make, prepare, execute, deliver, file, or cause to be made, prepared, executed, delivered, and filed Official Documents in the name and on behalf of Memorial with any Government Entity, accreditation body, third-party payer, and all other non-governmental and non-accreditation entities that Memorial conducts business with or are necessary in the course of Memorial's operations, provided all of the following conditions exist:
 - (a) The Permitted Delegee is authorized to exercise such functions either (i) via written policy that references the role, title, or position occupied by such individual, or (ii) through an express written delegation or directive specific to the individual from an Authorized Official granting and delegating such authority;
 - (b) The exercise of such functions is permissible under Applicable Law, in Memorial's best interests, and deemed necessary, advisable, or appropriate in furtherance of Memorial's operational and business affairs; and
 - (c) The exercise of such functions is consistent with the roles and duties of such Permitted Delegee.

B. Contractual Agreements

1. **Authority to Execute Contracts.** All rights, powers, duties, and authority of the Board relating to the Procurement and contracting of Commodities and Services for, in the name, and on behalf of Memorial, including the authority to approve purchases and approve, execute, acknowledge, and deliver Contracts, change orders, and purchase orders for the purchase of Commodities and Services governed under the Business and Procurement Code and the Design and Construction Code, provided they are in conformance with Applicable Law, the Business and Procurement Code, the Design and Construction Code, and all applicable Board policies, resolutions, and administrative policies, are hereby delegated to and vested in the Authorized Officials.
2. **Establishment and Limitations of the Spending Threshold.** The "Spending Threshold" is the fixed threshold amount set by the Board that dictates whether Board approval is required prior to executing Contracts, requisitions, and other binding commitments to purchase Commodities and Services for and on behalf of Memorial. When the expenditure of such Procurements or Contracts is Budgeted or are equal to or below the Spending Threshold, no Board authorization or approval is required to enter into such Contracts and commitments. If the expenditures of such Procurements or Contracts are both Unbudgeted and exceed the Spending Threshold, Board authorization and approval is required prior to committing Memorial to such expenditures. The current Spending Threshold created and set by the Board is \$1,000,000 for each Contract year.
 - (a) *Exceptions.* Notwithstanding the foregoing, if any of the following circumstances exist, Contracts that exceed the Spending Threshold may be entered into:
 - (i) *Bona Fide Emergencies.* Unbudgeted Contracts that exceed the Spending Threshold may be executed to make Emergency Purchases in bona fide emergencies as delineated in Section VI.B.1(c) (Emergency Purchases) of the Business and Procurement Code. All such Emergency Purchases shall be reported to and ratified by the Board as soon as practicable following the Emergency Purchase.
 - (ii) *Execution Contingent on Board Approval.* Unbudgeted Contracts that exceed the Spending Threshold may be negotiated, secured, and signed when such Contract is subject to and contingent upon Board approval before it becomes binding and enforceable against Memorial.
 - (iii) *Line-Item Budget Categories.* Once the Board approves the annual Budget, the expenditures for the Commodities, Services, Contracts, and Procurements up to the allocated and approved amount in the Line-Item Budget Category may be acquired without further Board approval, and Contracts and Procurements exceeding the Spending Threshold may be entered into or acquired without further Board approval, provided such Contracts or Procurements do not exceed the aggregate of the allocated and approved expenditures of a Line-Item Budget Category. Subject to the Five-Year Term Limit in Section IV.B.3. (Five-Year Term Limit) of this Policy, Contracts entered into that are in a Line-Item Budget Category may be multi-year Contracts even if the Spending Threshold is

exceeded, provided that such expenditures are included in each year's Budget in accordance with Applicable Law.

- (iv) Pass-Through Funds. Contracts and commitments for the Procurement of Commodities and Services that are Unbudgeted and exceed the Spending Threshold may be entered into without Board approval when the funds used to pay for such expenditures are not from Memorial's funds but are pass-through funds derived from other funding sources (including, without limitation, grantors, Government Entities, or private entities) and are used for a specified purpose, program, or service contingent on or related to the receipt of such funds.
 - (v) Receipt of Funds Unrelated to Procurements. Contracts that exceed the Spending Threshold may be entered into when Memorial is receiving funds under the Contract, regardless of its source, and no Memorial funds are being expended under the Contract. Such Contracts may include, but are not limited to, grants, donations, reimbursement or compensation for services rendered by Memorial, or other methods or means involving the receipt of funding.
 - (b) No Waiver of Competitive Procurements. None of the preceding exceptions to entering into Unbudgeted Contracts exceeding the Spending Threshold shall be interpreted as exceptions to following the Competitive Solicitation Process for Procurements equal to or more than the Procurement Threshold or any other required procedures in the Business and Procurement Code, the Design and Construction Code, or any other Board policies or administrative policies unless otherwise provided in the foregoing authority.
3. **Five-Year Term Limit**. In an effort to foster competition in Memorial's Procurements, each Procurement should be reviewed to determine whether Competitive Conditions should be maintained for Procurements below the Procurement Threshold or whether the Competitive Solicitation Process should be performed again for Procurements equal to or above the Procurement Threshold. Accordingly, the Initial Contract Term and each subsequent Renewal Term of a Contract may not exceed five years in length without Board approval ("Five-Year Term Limit").
- (a) Inapplicability. The Five-Year Term Limit does not apply to the following:
 - (i) Contract Duration. Because the Five-Year Term Limit of a Contract is to determine whether Competitive Conditions or the Competitive Solicitation Process, as applicable, should be performed again, the Five-Year Term Limit is not applicable to a Contract's Duration. Accordingly, a Contract's Duration (the total life of a Contract) may exceed five years so long as the Procurement is reviewed at least every five years (unless an exception to the Five-Year Term Limit applies).
 - (ii) Design and Construction Contracts. The Five-Year Term Limit is not applicable to Contracts entered into for projects governed by and subject to the Design and Construction Code.
 - (b) Exceptions. Notwithstanding the Five-Year Term Limit and as permitted under Applicable Law, the Initial Contract Term and/or any Renewal Term of Contracts may be entered into for periods longer than five years under the following circumstances:
 - (i) Bona Fide Emergencies. Contracts that exceed the Five-Year Term Limit may be executed when entering into such Contracts are required to make an Emergency Purchase in a bona fide emergency as delineated in Section VI.B.1(c) (Emergency Purchases) of the Business and Procurement Code. All such Emergency Purchases shall be reported to and ratified by the Board as soon as practicable following the Emergency Purchase.
 - (ii) Continuing Contracts. Continuing Contracts exceeding the Five-Year Term Limit may be entered into when such Continuing Contracts are procured pursuant to the Design and Construction Code and Applicable Law.
 - (iii) Contracts Required by Law, Funding Sources, or Accreditation Standards. Contracts that exceed the Five-Year Term Limit may be entered into when federal, state, or local laws applicable to Memorial require the entry into such Contract; other funding sources (including, without limitation, grantors, Government Entities, or private entities) require the entry into such Contract; or the entry into such Contract is necessary or required to maintain or acquire accreditation pursuant to the requirements of the respective accreditation body.
 - (iv) Contracts with Government Entities. Contracts that exceed the Five-Year Term Limit may be entered into when the Contract is with another Government Entity.

- (v) Equipment and Software Sole Sources. Contracts exceeding the Five-Year Term Limit may be entered into when Commodities or Services related to equipment or software are needed and the manufacturer only permits one source or only one source is available to provide such Commodities or Services.
 - (vi) Execution Contingent on Board Approval. Contracts that exceed the Five-Year Term Limit may be negotiated, secured, and signed when such Contract is subject to and contingent upon Board approval before it becomes binding and enforceable against Memorial.
 - (vii) Labor-Hour and Time-and-Materials Contracts. Contracts that exceed the Five-Year Term Limit may be entered into when such Contracts are Labor-Hour Contracts or Time-and-Materials Contracts that are not subject to Competitive Conditions or the Competitive Solicitation Process, and compensation is expended under the Contract on an as-needed and as-used basis.
 - (viii) Non-Monetary Contracts. Contracts exceeding the Five-Year Term Limit may be entered into when no compensation is being expended under the Contract.
 - (ix) Requirements Contracts. Contracts that exceed the Five-Year Term Limit may be entered into when such Contracts are Requirements Contracts that do not require the expenditure of funds except when Commodities are needed and orders are placed from the contractor.
 - (x) Special and Time-Sensitive Pricing. Contracts that exceed the Five-Year Term Limit may be entered into when exceeding the Five-Year Term Limit is required for the receipt of special and time-sensitive pricing, and the period where such pricing will remain firm expires before the next Board meeting. Contracts entered into under such circumstances shall be presented to the Board for informational purposes as soon as practicable following the entry into such Contract.
- (c) No Waiver of Competitive Procurements. None of the preceding exceptions to entering into Contracts exceeding the Five-Year Term Limit shall be interpreted as exceptions to following the Competitive Solicitation Process for Procurements equal to or over the Procurement Threshold or any other required procedures in the Business and Procurement Code, the Design and Construction Code, or any other Board policies or administrative policies unless otherwise provided in the foregoing authority.
4. **Delegations of Authority**. Unless otherwise prohibited by Applicable Law, Authorized Officials may delegate the rights, powers, duties, and authority to execute Contracts to Permitted Delegees under the following conditions.
- (a) Temporary Delegation. The Authorized Officials may, in their absence, temporarily delegate the authority to execute Contracts to Permitted Delegees. Any delegation of signing authority shall be evidenced by a Temporary Delegation Letter from the Authorized Official, temporarily delegating the authority to the Permitted Delegee. During any period of temporary delegation, and subject to any limitations placed on the Permitted Delegee by the Authorized Official as outlined in the Temporary Delegation Letter, the Permitted Delegee who is temporarily delegated the Authorized Official's signing authority shall have the same power as the Authorized Official to enter into Contracts and bind Memorial and such Temporary Delegee may execute Contracts that are Unbudgeted and exceed the Spending Threshold provided such Contracts were approved by the Board. To the extent a Contract signed by a Permitted Delegee under a temporary delegation is required to be housed in Memorial's Contracts Management System pursuant to Memorial's Administration of Contracts Policy, the Permitted Delegee's Temporary Delegation Letter shall be documented in the Contract's electronic file within the Contracts Management System. Any temporary authority delegated by the Authorized Official shall no longer be effective upon the Authorized Official's return or another date certain as delineated in the Temporary Delegation Letter unless and until the Authorized Official again delegates his or her signing authority under this Section. Nothing herein shall be construed as preventing an Authorized Official from delegating such temporary authority despite the presence and availability of other Authorized Officials.
 - (b) Permanent Delegation Under the Spending Threshold. To help further promote efficient business and operations of Memorial, the Chief Executive Officer may establish an administrative policy that permanently delegates the authority to Permitted Delegees to execute Contracts equal to or under the Spending Threshold. The policy may delegate such authority to Permitted Delegees by name or by the office, position, role, and/or title the Permitted Delegee holds. In the event of any permanent delegation of authority, the Permitted Delegee delegated such permanent authority shall have the same power as the Authorized Officials to bind Memorial to Contracts equal to or under the Spending Threshold, subject to any limitations placed on such individuals in the permanent delegation policy.

- C. **Responsibilities Applicable to all Delegations.** Any delegation of authority under this Policy, whether temporary or permanent or whether such delegation involves Official Documents or Contracts, carries responsibilities. Authorized Officials shall, and, if such Authorized Officials delegate authority to one or more Permitted Delegees, shall ensure that such Permitted Delegees:
1. Have a complete understanding and appreciation of the authority so delegated;
 2. Only exercise and not exceed the scope of authority delegated;
 3. Adhere to Applicable Law, including but not limited to, pt. III of ch. 112, Fla. Stat., the Code of Ethics for Public Officers and Employees, and adhere to Memorial's Code of Conduct and any other relevant Board resolutions, Board policies, or administrative policies; and
 4. Exercise the delegated authority with proper judgment and consideration and in the furtherance of and in Memorial's best interests.
- D. **Reserved Rights and Limitations.** The following reserved rights and limitations shall apply notwithstanding any delegation of authority under this Policy, whether temporary or permanent, or whether such delegation involves Official Documents or Contracts:
1. The Board retains the right to modify or revoke this Policy and any delegations at any time;
 2. Except in a bona fide emergency or if an Official Document or Contract is subject to and contingent upon Board approval before it becomes effective, any Official Document or Contract that under Applicable Law or the District's Charter requires Board approval shall be presented to the Board prior to committing Memorial;
 3. A delegation of authority does not revoke or suspend any power or authority of the delegator;
 4. Any authority conferred under this Policy shall not override any applicable safeguards currently in effect or which may be established from time to time via Board resolution, Board policy, or administrative policy, and all relevant policies, internal controls, and guidelines concerning the execution of Official Documents and Contracts shall be adhered to; and
 5. Any Official Documents or Contracts entered into by any individual without proper authority or without adhering to any relevant policies, internal controls, and guidelines concerning the execution of Official Documents and Contracts may be rejected and disavowed by the Board.
- E. **Use of Electronic Signatures.** To the extent consistent with Applicable Law, and in accordance with the Electronic Signature Act of 1996, § 668.001, *et seq.*, Fla. Stat. and the Uniform Electronic Transactions Act, § 668.50, *et seq.*, Fla. Stat., Authorized Officials and Permitted Delegees may use electronic and digital signatures to sign Contracts and Official Documents, and all such writings bearing an electronic or digital signature from an Authorized Official or Permitted Delegee shall have the same force, effect, and validity as a handwritten and manual signature thereof.

V. **Construction**

Nothing in this Policy modifies, supersedes, or prohibits any previous or future temporary or permanent delegations of authority by the Board. The headings contained in this Policy are for reference purposes only and shall not affect in any way the meaning or interpretation of this Policy. The use of the term "including" and other words of similar import mean "including, without limitation," and where specific language is used to clarify by example a general statement contained herein, such specific language shall not be deemed to modify, limit, or restrict in any manner the construction of the general statement to which it relates. The word "or" is not exclusive, and the words "herein," "hereof," "hereunder," and other words of similar import refer to this Policy as a whole and not to any particular section, subsection, paragraph, subparagraph, or clause contained in this Policy. The term "shall" is mandatory, and "may" is optional. The reference to the Business and Procurement Code, Design and Construction Code, or a policy, instrument, or other document means the Business and Procurement Code, Design and Construction Code, or such policy, instrument, or other document as amended, supplemented, and modified from time to time to the extent permitted by the provisions thereof, and the reference to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. If any provision of this Policy is held to be unconstitutional, invalid, or unenforceable, such offending provision shall be stricken as though the offending provision has not been included herein, and the remainder of this Policy shall remain valid, enforceable, and not be affected thereby, and if any provision of this Policy is held to be unconstitutional, invalid, or unenforceable as applied to any particular person, group, entity, property, or circumstance, such provision shall be modified to the minimum extent necessary to make it or its application valid and enforceable and the application of the remaining provisions of

this Policy to any person, group, entity, property, or circumstance shall remain valid and enforceable and not affected thereby. Except as otherwise provided in this Policy, all rights, powers, duties, and authorities relating to the Procurement of Commodities and Services, or the sale and disposal of supplies are vested in the CPO as the principal purchasing officer of Memorial. No provision of this Policy shall be construed as conflicting with or exceeding Applicable Law. In the event of a conflict between this Policy and Applicable Law, Applicable Law shall govern and control as if fully set forth herein. Contracts entered into that are inconsistent with this Policy or are not in accordance with any applicable Board resolution, Board policy, or the Business and Procurement Code's formalities, or which are otherwise entered into by an individual without authority or an individual who was not properly delegated such authority according to this Policy or by the Board, shall be ultra vires, not be deemed a binding obligation of Memorial, and may be disavowed.

VI. Interpretation and Administration

The administration and interpretation of this Policy is the responsibility of the CEO.

Memorial's Design and Construction Code

I. Purpose and Scope

Government projects for the design and construction or improvement of public buildings and the procurement and contracting of professionals for such work are regulated under Florida law. As a special district established by the Florida Legislature, Memorial is subject to such provisions when engaging in such work. Accordingly, all Contracts for Construction Services, Electrical Work, and Professional Design Services falling within the ambit of such laws may only be let after compliance with the prescribed procedures for competitive bidding as delineated further in this Design and Construction Code.

II. Policy Statement

Any and all Contracts for Construction Services, Electrical Work, and Professional Design Services of Memorial's hospitals, buildings, and facilities that are estimated to cost more than the statutory thresholds in §§ 255.20 and 287.055, Fla. Stat. may only be let following compliance with the competitive bidding procedures delineated in such statutes and this Design and Construction Code unless another procedure is required or permitted under Applicable Law or unless otherwise exempt under this Design and Construction Code.

III. Definitions

The following words shall have the meaning ascribed to them wherever they appear in this Design and Construction Code, regardless of whether they are capitalized, unless (a) the context in which they are used clearly requires a different meaning, or (b) a different definition is prescribed for a particular section of this Design and Construction Code or under Applicable Law that governs a particular procurement. Words capitalized but not defined in this Design and Construction Code shall have the meaning ascribed to such term in the Business and Procurement Code. All other words shall be given their common and ordinary meaning unless the context in which they are used requires otherwise. When the context requires, the gender of all words includes the masculine, feminine, and neuter, the number of all words consists of the singular and plural, and, when appropriate, the form of a word includes the past tense, present participle, or gerund.

1. “**Applicable Law**” means any federal or state law that governs the procurement of Contractors and Professionals for Design, Construction, and Electrical Services, including, without limitation, § 287.055, Fla. Stat., ch. 255, Fla. Stat., and the District's Charter.
2. “**Bid Bond**” means a financial or contractual instrument issued by a surety that guarantees the Bidder will not withdraw its bid, proposal, or reply.
3. “**Bid Documents**” means the plans, specifications, and/or estimates developed according to a Bid Solicitation that describes the elements or requested elements of a Project or Contract.
4. “**Bid Solicitation**” means an invitation that invites prospective Bidders to submit bids, proposals, or replies to a Project subject to the Bid Solicitation Process.
5. “**Bid Solicitation Process**” means the process through a Bid Solicitation of requesting and attempting to receive two or more competitive bids, proposals, or replies from Qualified and Responsive Bidders for the procurement of Contractors and Professionals that are required under Applicable Law and this Design and Construction Code to go through the Competitive Selection and Negotiation Process, Competitive Proposal Selection Process, or be Competitively Awarded.
6. “**Bidder**” means the Contractors and Professionals applicable to a particular Project submitting or wishing to submit a bid, proposal, or reply to a Bid Solicitation.
7. “**Board**” means the Board of Commissioners of the South Broward Hospital District.
8. “**Business and Procurement Code**” means Memorial Healthcare System's Business and Procurement Code, which governs Memorial's business activities and Memorial's Procurement of Commodities and Services.
9. “**CCFO**” means the Chief Construction and Facilities Officer, the individual delegated such authority by the CEO to serve as the principal officer responsible for the selection of Contractors and Professionals, and the oversight, management, maintenance, and strategic planning of Memorial's construction, infrastructure, and facilities projects and operations, irrespective of the individual's formal title, and who may be the same individual designated in the Business and Procurement Code as the CPO, as determined appropriate by the CEO at the CEO's discretion.

10. “**CEO**” means the President and Chief Executive Officer who oversees and is responsible for all of Memorial’s day-to-day business and operations.
11. “**Compensation**” means the amount paid for Professional Design Services, regardless of whether stated as compensation or as hourly rates, overhead rates, or other figures or formulas from which compensation can be calculated.
12. “**Competitive Negotiation**” means the competitive negotiation stage that is part of the Competitive Selection and Negotiation Process, as described in Section VI.D.3(b) (Competitive Negotiation) of this Design and Construction Code.
13. “**Competitive Proposal Selection Process**” means the selection process used to solicit proposals for Design-Build Contracts as delineated in Section VII.B.2. (Competitive Proposal Selection Process for Design-Build Services) of this Design and Construction Code.
14. “**Competitive Selection**” means the competitive selection stage that is part of the Competitive Selection and Negotiation Process, as described in Section VI.D.3(a) (Competitive Selection) of this Design and Construction Code.
15. “**Competitive Selection and Negotiation Process**” means the selection process used to solicit proposals for Professional Design Services as delineated in Section VI.D.3. (Competitive Selection and Negotiation Process) of this Design and Construction Code and § 287.055, Fla. Stat.
16. “**Competitively Award**” shall have the meaning ascribed to such term in Section VI.C.2. (Competitive Awards) of this Design and Construction Code.
17. “**Cone of Silence**” shall have the meaning ascribed to such term in Section II (Definitions) of the Business and Procurement Code.
18. “**Construction Contractor**” means a Firm that performs Construction Services.
19. “**Construction Management Entity**” means a licensed Firm responsible for Construction Project scheduling and coordination in both preconstruction and construction phases and generally responsible for the successful, timely, and economical completion of the Construction Project.
20. “**Construction Manager Method**” means a Project Delivery Method utilizing a Construction Management Entity.
21. “**Construction Project**” means the construction or improvement of any Memorial facility, building, structure, or other public works of Memorial.
22. “**Construction Services**” means all labor and services provided by a Construction Contractor in connection with the construction or improvement of real property owned by or under the control of Memorial and that is subject to the Competitive Award process under § 255.20, Fla. Stat.
23. “**Continuing Contract**” shall have the meaning ascribed to such term in chapters 255 and 287, Florida Statutes, as applicable to a particular procurement or Project.
24. “**Contract**” means any contractual and written agreement binding Memorial, regardless of what it may be called or referred to, for the procurement of Contractors and Professionals. The term “Contract” also includes any amendments, modifications, supplemental agreements, addendums, exhibits, and attachments concerning the foregoing.
25. “**Contractors and Professionals**” collectively means all Firms subject to this Design and Construction Code, including, without limitation, all Construction Contractors, Construction Management Entities, Program Management Entities, Design Professionals, Design-Build Firms, Design Criteria Professionals, and Electrical Contractors.
26. “**Cost-Plus Contract**” means a cost-reimbursement Contract that reimburses the contractor for all allowable costs and also provides for payment to the contractor of a negotiated fee that is a percentage of the actual cost, a Guaranteed Maximum Price, or a fixed Lump-Sum Price at the inception of the Contract.
27. “**CPO**” means the Chief Procurement Officer, the individual who is delegated such authority by the CEO to serve as the principal public purchasing agent for Memorial under this Design and Construction Code, irrespective of such individual’s formal title, and who may be the same individual designated in the Business and Procurement Code as the CPO and/or may be the CCFO, or both, as determined appropriate by the CEO at the CEO’s discretion.

28. “**Design and Construction Code**” means this Design and Construction Code governing the procurement of Contractors and Professionals for Projects subject to chapters 255 and 287, Florida Statutes.
29. “**Design and Construction Services**” collectively means Construction Services and Professional Design Services.
30. “**Design-Bid-Build Method**” means a Project Delivery Method where separate Contracts are sequentially awarded, the first for Professional Design Services to design the Project and the second for Construction of the Project according to the design.
31. “**Design-Build Contract**” means a single Contract with a Design-Build Firm for Design and Construction Services.
32. “**Design-Build-Finance-Operate-Maintain Method**” means a Project Delivery Method where a single Contract is entered into for a facility's design, finance, construction, maintenance, and operation over a contractually defined period.
33. “**Design-Build Firm**” means a Firm certified under Florida law to contract through a certified or registered general contractor or a certified or registered building contractor as the qualifying agent or to practice or offer to practice Professional Design Services.
34. “**Design-Build Method**” means a Project Delivery Method where a Design-Build Contract is entered into for Design and Construction Services.
35. “**Design-Build-Operate-Maintain Method**” means a Project Delivery Method where a single Contract is entered into for the design, construction, maintenance, and operation of a facility over a contractually defined period.
36. “**Design, Construction, and Electrical Services**” collectively means Construction Services, Electrical Work, and Professional Design Services.
37. “**Design Criteria Package**” means concise, performance-oriented drawings or specifications of a Project along with the necessary criteria required under § 287.055, Fla. Stat. designed to permit Design-Build Firms to prepare a proposal in response to a request for proposal.
38. “**Design Criteria Professional**” means a Design Professional hired or contracted with in connection with the preparation of the Design Criteria Package for a Project where the Design-Build Method will be used.
39. “**Design Professional**” means a Firm that performs Professional Design Services.
40. “**Design Project**” means that fixed capital outlay study or planning activity described in the public notice soliciting Design Professionals and that may include (a) a grouping of minor construction, rehabilitation, or renovation activities, or (b) a grouping of substantially similar construction, rehabilitation, or renovation activities.
41. “**District’s Charter**” means South Broward Hospital District’s enabling legislation, ch. 2004-397, Laws of Florida, as amended by ch. 2016-258, Laws of Florida, and any subsequent amendments or successor legislation thereof.
42. “**Electrical Contractor**” means a Firm that performs Electrical Work.
43. “**Electrical Project**” means a project to perform Electrical Work.
44. “**Electrical Work**” means the installation and design of electrical wiring, fixtures, appliances, apparatus, raceways, conduit, or any part thereof, which generates, transmits, transforms, or utilizes electrical energy in any form that is within the scope of practice of an Electrical Contractor.
45. “**Fast-Track Contracts**” means Contracts where the programming, design, and construction phases overlap rather than following a linear sequence so that one phase begins before the other is completed.
46. “**Firm**” means any individual, firm, partnership, corporation, company, association, or other legal or business entity permitted by Applicable Law to provide Design, Construction, and Electrical Services in the State of Florida.
47. “**Guaranteed Maximum Price**” means an agreed-to not-to-exceed price required to be paid to contractors to compensate the contractors for their direct costs and a fixed fee for overhead and profit.
48. “**Guaranteed Maximum Price Contract**” means a Contract that sets a fixed Guaranteed Maximum Price for the construction to be achieved.

49. “**Incentive Contract**” means a Contract designed to obtain acquisition objectives by establishing reasonable and attainable targets that are communicated to the contractor and include appropriate incentive arrangements designed to motivate contractor efforts that might not otherwise be emphasized and discourage contractor inefficiency and waste.
50. “**Integrated Project Delivery Method**” means a Project Delivery Method utilizing a Project delivery approach that integrates people, systems, business structures, and practices into a process that collaboratively harnesses the talents and insights of all participants to optimize Project results, increase value to the owner, reduce waste, and maximize efficiency through all phases of design, fabrication, and construction.
51. “**Job-Order Contracts**” means Contracts where contractors are competitively chosen to perform various and separate job orders during the duration of the Contract, typically based on prices established in a construction task catalog with an agreed-to fee or multiplier.
52. “**Lump-Sum Contract**” means a Contract where the contractor agrees to be responsible for the proper job execution at a Lump-Sum Price.
53. “**Lump-Sum Price**” means a stipulated fixed price for the costs of materials, labor, overhead, and profit that contractors will be paid to complete a Project regardless of the actual costs incurred by the contractor.
54. “**Memorial**” means Memorial Healthcare System, the fictitious name of the South Broward Hospital District, a special tax district established by the Florida legislature, and all of its departments, divisions, units, wholly owned entities, and other fictitious names now established and as further established from time to time by the Board. The term “**Memorial**” shall expressly exclude all joint ventures, cooperatives, or interlocal arrangements of the South Broward Hospital District unless the governing documents or articles of such ventures, cooperatives, or interlocal arrangements indicate otherwise or unless the Board establishes a policy to subject such joint venture, cooperative, or interlocal arrangement to the provisions of this Design and Construction Code.
55. “**Multi-Prime Contracts**” means holding separate Contracts with contractors of various disciplines, such as general construction, mechanical, electrical, and plumbing, and managing the overall schedule and budget during the entire construction phase.
56. “**Multiple Award Contracts**” means Contracts for the acquisition of an indefinite quantity, within stated limits, of materials or services during a fixed period, with deliveries or performance to be scheduled by placing orders with the contractor.
57. “**Negotiate**” means to conduct legitimate, arm’s length discussions and conferences to reach an agreement on a term or price and does not include the presentation of flat-fee schedules with no alternatives or discussion.
58. “**Opening Date**” means the date of the formal opening of sealed bids, proposals, or replies.
59. “**Owner-Direct Purchase**” means Memorial’s direct purchase of materials and supplies that will become part of or be incorporated into one of Memorial’s facilities, buildings, or structures pursuant to a Public Works Project.
60. “**Payment Bond**” means a financial or contractual instrument issued by a surety that guarantees that subcontractors will be paid for labor and materials expended on the Contract.
61. “**Performance Bond**” means a financial or contractual instrument issued by a surety that guarantees satisfactory completion of a Project or Contract.
62. “**Prequalification Requirements**” means the prequalification requirements for bidding and being awarded a Contract described in Section V.L.B. (Prequalification Requirements Applicable to all Design, Construction, and Electrical Services) of this Design and Construction Code.
63. “**Professional Design Services**” means those services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping, as defined by the laws of the State of Florida, or those performed by an architect, professional engineer, landscape architect, or registered surveyor and mapper in connection with their professional employment or practice.
64. “**Program Management Entity**” means a licensed Firm responsible for schedule control, cost control, and coordination in providing or procuring planning, Professional Design Services, and Construction Services.
65. “**Program Manager Method**” means a Project Delivery Method utilizing a Program Management Entity.
66. “**Progressive Design-Build Method**” means a Project Delivery Method that combines, and one contractor performs the services related to, the Construction Manager Method and Design-Build Method.

67. “**Project**” means, as applicable to the purchased service, a Construction Project, Design Project, or Electrical Project.
68. “**Project Custodian**” means the individual or individuals at Memorial requesting, and who is ultimately responsible for, the acquisition of Contractors and Professionals subject to the Bid Solicitation Process.
69. “**Project Delivery Method**” means the approach to Project planning, design, management, and construction.
70. “**Public-Private Partnerships**” means a partnership and agreement between a public entity and private sector entity for the plan, design, finance, lease, acquisition, installation, construction, or expansion of Memorial’s facilities or services consistent with the procedures in § 255.065, Fla. Stat.
71. “**Public Works Project**” shall have the same meaning ascribed to the term “public works” in Fla. Admin. Code R. 12A-1.094(1)(c).
72. “**Publicly Advertised**” means an advertisement that invites Bidders to submit bids, proposals, or replies pursuant to a Bid Solicitation and that is published in a newspaper of general circulation consistent with ch. 50, Fla. Stat., or on Broward County’s designated publicly accessible website consistent with the procedures of § 50.0311, Fla. Stat.
73. “**Qualified and Responsive Bidder**” means a Bidder that is both a Qualified Bidder and a Responsive Bidder.
74. “**Qualified Bidder**” means a Bidder possessing honesty, integrity, and reliability to assure good faith performance and the capability in all respects to perform fully the Contract requirements as described in further detail in Section VI.C.2(a)(i)b. (Qualified Bidder) of this Design and Construction Code.
75. “**Qualified Design Professional**” shall have the meaning ascribed to such term in Section VI.D.2. (Qualification Procedures) of this Design and Construction Code.
76. “**Responsive Bidder**” means a Bidder that has submitted a bid, proposal, or reply that conforms in all material respects to the Bid Solicitation.
77. “**Selection Committee**” means one or more persons appointed to a committee to evaluate bids, proposals, or replies submitted in response to a Bid Solicitation.
78. “**Single-Source Contract**” means a Contract for Construction Services that is available from only one responsible and qualified contractor.
79. “**Time-and-Materials Contract**” means a Contract that provides for acquiring materials and services based on actual cost for materials and direct labor hours at specified fixed hourly rates that includes wages, overhead, general and administrative expenses, and profit.
80. “**Turnkey Project**” means a type of Project Delivery Method where a contractor takes full responsibility for the Project’s design, construction, and delivery and provides Project management services, dictating things like schedule and budget allocation.
81. “**Unit Price Contracts**” means Contracts where Projects are broken down into and priced by units as opposed to a fixed cost.

IV. General Acquisition Guidelines and Conditions Applicable to all Procurements of Contractors and Professionals

The following guidelines and conditions shall apply to all procurements of Contractors and Professionals that are subject to this Design and Construction Code:

1. **Code Provisions Applicable to Design, Construction, and Electrical Services.** The following provisions of the Business and Procurement Code shall apply to this Design and Construction Code and the Bid Solicitation Process: Article IV. (Code of Ethics, Integrity, and Professional Conduct), Section V.C.4. (Ultra Vires Procurements), Section V.C.8. (Other Governing Policies and Procedures), Section V.D.2. (Cone of Silence), Section V.D.5. (Memorial’s Economic and Small Business Initiative), Section V.D.9. (Collusive Bidding), Section V.D.15. (Authority to Negotiate Changes and Modifications of the Awarded Price), Section V.D.16. (Public Records and Sunshine Law), Section V.D.17. (Bid Protests), Section VI.B.1(e) (Owner-Direct Purchases), Section VII.1. (Doing Business with Memorial), Section VII.3. (Authority to Debar or Suspend Vendors), Section VII.4. (Contract Administration and Execution Authority), Section VII.5. (Designated Officers and Officials), Section VII.9. (Unsolicited and Solicited Proposals for Public-Private Partnership Projects), and any other provision of the Business and Procurement Code or any other board policies and resolutions that do not conflict with Applicable

Law and this Design and Construction Code. The foregoing provisions are incorporated by reference as if fully set forth herein and apply to the procurement of all Design, Construction, and Electrical Services subject to this Design and Construction Code.

2. **Design, Construction, and Electrical Services Not Subject to this Design and Construction Code.** The CPO shall determine the most appropriate procurement method for Design, Construction, and Electrical Services that are not subject to the Business and Procurement Code or the provisions of this Design and Construction Code.
3. **CPO's and CCFO's Roles.** The administration of this Design and Construction Code shall be the joint responsibility of the CPO and the CCFO. The CPO shall oversee the procedural aspects of the Bid Solicitation Process, while the CCFO shall be responsible for the selection of Contractors and Professionals and the negotiation of Contract terms with the selected parties. Together, the CPO and CCFO shall act in the best interests of Memorial, ensuring consistency, compliance with Applicable Law, and equitable treatment of all Bidders. The CEO may, at the CEO's sole discretion, modify the CPO's and CCFO's duties, consolidate such roles in a single individual, or reassign such duties and roles as deemed appropriate. Accordingly, any reference to the CPO and/or CCFO in this Design and Construction Code includes both the CPO and CCFO and such modified roles or individuals as designated by the CEO.
4. **Delegations.** The CPO may delegate the rights, powers, and authority vested in such position to subordinate purchasing or procurement agents, Selection Committees, and other officers, employees, committees, or departments of Memorial. Any committees, departments, or individuals delegated authority by the CPO shall be authorized to exercise such delegated authority to the same extent as the authority vested in the CPO under this Design and Construction Code and any provision of this Design and Construction Code that references the CPO shall be deemed to include a reference to Memorial and any committees, departments, or individuals delegated such authority. Any purchasing and procurement decision by the CPO or any applicable committees, departments, or individuals delegated such authority shall be valid and binding on Memorial and its employees, departments, and all vendors wishing to do business with Memorial.
5. **Emergency Procurements.** During emergencies meeting the applicable requirements under chapters 255 and 287, Florida Statutes, the CPO may procure any Design, Construction, and Electrical Services needed without following the procedures of this Design and Construction Code, provided the CPO shall endeavor to use a reasonable method of competition as is practicable under the circumstances. In the event an official state of emergency has been declared, those Memorial officials designated in Memorial's Authorized Official, Contract Execution, and Delegation of Authority Policy are expressly authorized to execute Contracts with the State of Florida, Federal Emergency Management Agency (FEMA), and/or other applicable emergency relief entities on behalf of Memorial to accomplish all necessary relief efforts.
6. **Continuing Contracts.** The CPO is authorized to enter into Continuing Contracts with Contractors and Professionals consistent with Applicable Law and Memorial's Authorized Official, Contract Execution, and Delegation of Authority Policy in the Business and Procurement Code Policy Appendix. Continuing Contracts shall be procured consistent with the procedures delineated in Chapters 255 and 287, Florida Statutes. To the extent no such procedures exist, the CPO shall determine the proper method to procure Continuing Contracts. The use of Contractors and Professionals under Continuing Contracts may not exceed any statutory threshold amounts applicable to the use of Continuing Contracts for such Contractors and Professionals under chapters 255 and 287, Florida Statutes.
7. **Solicitations of Offers.** Bid Solicitations shall not be deemed an offer of a Contract by Memorial. Rather, such Bid Solicitations shall be deemed a solicitation of offers from prospective Bidders for the CPO's and Memorial's consideration.
8. **Firm Offers.** The CPO has the authority to determine whether bids, proposals, or replies submitted under a Bid Solicitation must remain open and are precluded from being withdrawn so that the CPO has sufficient time to consider submitted bids, proposals, or replies and issue an award. To the extent that any bids, proposals, or replies must remain firm, such requirement, along with the time that the bids, proposals, or replies remain firm, shall be designated in the Bid Documents.
9. **Bid Solicitation Procedures and Bid Documents.** The CPO has the ultimate authority to determine a Bid Solicitation's form, format, method, procedure, the terms and conditions for the particular Bid Solicitation, and what shall be included in the applicable Bid Documents. At a minimum, all Bid Documents used for Bid Solicitations shall contain (a) a reference to this Design and Construction Code to put Bidders on notice that they are subject to its conditions; (b) the deadline for the submission of the bids, proposals, or replies; (c) the time and date of the public opening; (d) pertinent terms and conditions applicable to the Bid Solicitation; (e) reference to

relevant Bidder preferences applicable to the bid, proposal, or reply under Florida law or Memorial's Policies and Procedures; (f) the requirement of form submittal for any forms or documents that are required to be submitted under Applicable Law; (g) the criteria that will be used to determine Qualified and Responsive Bidders and the acceptability and relative merit of a bid, proposal, or reply; (h) the criteria that will be used and considered to select the Bidder or Bidders that will be awarded Contracts; and (i) a reference to the Protest Procedures outlined in the Business and Procurement Code.

10. **Selection Committees.** The CPO has the discretion to determine whether and when Selection Committees shall be utilized, as determined in the best interests of Memorial and consistent with Applicable Law, to evaluate bids, proposals, or replies subject to the Bid Solicitation Process. The CPO shall also be responsible for selecting and approving the number and composition of the members of such Selection Committees. If a Selection Committee is used for a particular Bid Solicitation, the CPO may modify or substitute members or increase or decrease membership of a Selection Committee for any reason and at any time during the Bid Solicitation Process. The number and composition of Selection Committees shall be determined in the best interests of Memorial, and the members of such Selection Committees shall be composed of an appropriate number of subject matter experts and interested stakeholders. All appointed Selection Committee members shall receive appropriate instructions and training regarding their respective roles and responsibilities and any other Applicable Law that may be relevant to such Selection Committees, such as § 286.011, Fla. Stat. Before serving on the Selection Committee, each appointed member shall execute a Conflict-of-Interest Certification Form and be reminded of the Cone of Silence.
11. **Prohibition of Audits or Inspections of Tax Returns.** Consistent with § 286.041, Fla. Stat., the CPO shall not require, directly or indirectly, an audit or inspection of any federal or state income tax returns of any Firm as a prior condition before entering into Contracts with said Firm to construct any public work or to supply any materials, labor, equipment or services, or any combination thereof.
12. **Waiver of Non-Material Bid Deviation.** The CPO may waive or require a Bidder to correct any minor irregularity, technicality, or omission of any bid, proposal, or reply if the CPO determines that, at the CPO's sole and absolute discretion, doing so will serve Memorial's best interests. Any waivers or requests for correction of minor technicalities, omissions, or irregularities shall be applied consistently to all Bidders in a particular Bid Solicitation, and under no circumstances may a waiver be granted if the granting of such waiver would restrict competition or adversely affect competition by providing one Bidder with an unfair competitive advantage over another Bidder.
13. **Sole Source.** To the extent permitted under Applicable Law, if any Design, Construction, and Electrical Services needed may only be procured from one sole source, a Single-Source Contract may be entered into for the Design, Construction, and Electrical Services without adhering to the procedures of this Design and Construction Code.
14. **Prohibition Against Contingent Fees.** Pursuant to § 287.055(6), Fla. Stat., Bidders and vendors may not employ or retain any company or person, other than a bona fide employee working solely for the Bidder or vendor, to solicit or secure Contracts with Memorial for Design, Construction, and Electrical Services, and such Bidders and vendors may not pay or agree to pay any person or Firm, other than a bona fide employee working solely for the Bidder or vendor any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of a Contract with Memorial for Design, Construction, and Electrical Services.
15. **Cancellations, Rejections, Awards, and Negotiations.** Consistent with Applicable Law, Memorial reserves the right to cancel any Bid Solicitation or reject any or all bids, proposals, or replies (or portions thereof). The CPO, as determined in the best interests of Memorial, may exercise this authority and may thereafter reissue the Bid Solicitation or elect not to proceed with the Project. In all Bid Solicitations subject to this Design and Construction Code, the CPO has the ultimate authority to determine the appropriateness of issuing an award to a Bidder as determined in the best interests of Memorial. After an award is issued, Memorial and the awarded Bidder shall enter into a Contract incorporating the requirements of the applicable Bid Solicitation with terms required under Applicable Law and other terms acceptable to Memorial. No award is final until a notice of award is sent to the successful Bidder, and the issuance of an award shall not be deemed to create a binding Contract of Memorial until a written Contract has been duly executed by both the selected Bidder and Memorial. The CPO retains the right to rescind an award if Memorial and the awarded Bidder do not agree upon the terms of the Contract and may rescind an award at any time before the effective date of a Contract if the CPO determines, at the CPO's discretion, that such rescission is in Memorial's best interests.
16. **Bid Protests.** Bid protests and challenges regarding the terms and conditions of Bid Solicitations and addenda and the issuance of awards shall conform to and be consistent with the procedures of Section V.D.17. (Bid Protests) of the Business and Procurement Code, and Protest Bond shall be required of all protesting Bidders.

17. **Contract Changes and Change Orders.** Consistent with Applicable Law, the CPO has the sole authority to approve changes to a Project and require the Project contractor to perform such changes in the work without any further Bid Solicitation being issued, provided the contractor's performance and capability remain satisfactory at the time of a proposed change order and the CPO determines it is in Memorial's best interests because (a) the change is within the general scope of the Project; (b) the change will reduce the scope or size of the Project or Contract price; or (c) the change is an integral part of the Project and is necessary to correct an unanticipated condition to permit the construction to continue. The CPO shall utilize the foregoing criteria for each proposed change in the work for a Project and determine whether such change order is appropriate as determined in the best interests of Memorial.
18. **Listing and Substituting Subcontractors.** To the extent that Bidders are required to list subcontractors when submitting a bid, proposal, or reply to a Bid Solicitation, such Bidders may not change or substitute the list of subcontractors unless the CPO agrees, at the CPO's sole discretion, to such modifications.
19. **Procurements and Expenditures for Grants and Other Funding Sources.** Procurements and expenditures from federal, state, grant-related, or other funding sources under the conditions of a grant, award, or Contract may require special processing because of specific legal terms and conditions set by the funding agency. To the extent any federal, state, grant-related, or other funding source providing funds for a Project prescribes alternate procurement and purchasing requirements than those stated herein or in any instance that compliance with this Design and Construction Code would result in a conflict with any terms of a grant or other funding source, the CPO shall adhere to the requirements set forth by the grant or funding source and any conflicting provisions of this Design and Construction Code shall not apply. All federal grants and awards shall comply with, as applicable, 45 C.F.R. Part 75, other Applicable Law, the specific terms of the grant or award, and the Purchasing and Procurement Requirements of Federal Awards from the U.S. Department of Health and Human Services Policy in the Business and Procurement Code Policy Appendix, and Projects funded by the state and/or with state-appropriated funds shall adhere to the contracting and preference requirements and limitations prescribed under §§ 255.099-255.0993, Fla. Stat. Any other procurements and expenditures under grants, awards, or other funding sources shall conform to any special conditions, provisions, or purchasing requirements placed on the funding. The CPO, or any other applicable Project Custodian, is responsible for identifying and communicating with the CPO any special purchasing requirements or provisions applicable to a Project or the procurement of Contractors and Professionals and ensuring that all requirements are adhered to.

V. Contracting and Project Delivery Methods

- A. **Contracting.** The CPO is expressly authorized, consistent with Applicable Law and Memorial's Authorized Official, Contract Execution, and Delegation of Authority Policy, to enter into Continuing Contracts, Lump-Sum Contracts, Time-and-Materials Contracts, Cost-Plus Contracts, Fast-Track Contracts, Guaranteed Maximum Price Contracts, Incentive Contracts, Job-Order Contracts, Multi-Prime Contracts, Multiple Award Contracts, Unit Price Contracts, and any other Contract arrangement with a private sector contractor and any combination of the foregoing consistent with Applicable Law, current trends, and best practices.
- B. **Project Delivery Methods.** The CPO is expressly authorized, consistent with Applicable Law and Memorial's Authorized Official, Contract Execution, and Delegation of Authority Policy, to enter into Contracts with Contractors and Professionals utilizing the following Project Delivery Methods: Construction Manager Method, Design-Bid-Build Method, Design-Build Method, Design-Build-Finance-Operate-Maintain Method, Design-Build-Operate-Maintain Method, Integrated Project Delivery Method, Program Manager Method, Progressive Design-Build Method, Public-Private Partnerships, Turnkey Projects, and any other Project Delivery Method with a private sector contractor and any combination of any of the foregoing consistent with Applicable Law, current trends, and best practices. The CPO shall select the most appropriate Project Delivery Method for a particular Project and supervise the procurement of the Contractors and Professionals to ensure that the procurement procedures adhere to Applicable Law. The following procurement procedures shall be followed when implementing such Project Delivery Methods:
 1. **Construction Manager Method.** When utilizing the Construction Manager Method, Construction Management Entities shall be procured as provided in Section VIII.A. (Construction Management Entities) of this Design and Construction Code.
 2. **Design-Bid-Build Method.** When utilizing a Design-Bid-Build Method, the Design Professionals shall be procured using the Competitive Selection and Negotiation Process procedures delineated in Section VI.D.3. (Competitive Selection and Negotiation Process) of this Design and Construction Code, and the Construction Contractors shall be Competitively Awarded as provided in Section VI.C.2. (Competitive Awards) of this Design and Construction Code.

3. **Design-Build Method.** Design-Build Contracts shall be procured as provided in Article VII. (Rules Governing the Design-Build Method) of this Design and Construction Code when utilizing the Design-Build Method.
4. **Program Manager Method.** When utilizing the Program Manager Method, Program Management Entities shall be procured as provided in Section VIII.B. (Program Management Entities) of this Design and Construction Code.
5. **Public-Private Partnerships.** When engaging in Public-Private Partnerships, the process delineated in Section VII.9. (Unsolicited and Solicited Proposals for Public-Private Partnership Projects) of the Business and Procurement Code and § 255.065, Fla. Stat. shall be adhered to.
6. **Other Project Delivery Methods.** When utilizing the Design-Build-Finance-Operate-Maintain Method, Design-Build-Operate-Maintain Method, Integrated Project Delivery Method, Progressive Design-Build Method, Turnkey Projects, or any other Project Delivery Method, the Contractors and Professionals shall be Competitively Awarded consistent with Applicable Law.

VI. Acquisition and Procurement of Design, Construction, and Electrical Services

- A. **Thresholds and Application of this Design and Construction Code for Design, Construction, and Electrical Services.** Pursuant to Florida law, Contracts shall be Competitively Awarded for Construction Services and Electrical Work when the Project is estimated, in accordance with generally accepted cost accounting principles, to cost more than the threshold amounts set forth in § 255.20, Fla. Stat. The procurement of Professional Design Services shall adhere to the Competitive Selection and Negotiation Process when the basic construction cost of a Project is estimated, in accordance with generally accepted cost accounting principles, to exceed the threshold amount set forth in § 287.055, Fla. Stat. Any Contracts for Design, Construction, and Electrical Services that are equal to or less than the foregoing threshold amounts do not need to be Competitively Awarded or follow the Competitive Selection and Negotiation Process, are not subject to this Design and Construction Code, and the CPO shall determine the most appropriate procurement procedures for such Contracts. The estimated cost of a Design Project, Construction Project, or Electrical Project shall be estimated in good faith and in accordance with generally accepted cost-accounting principles. No procurements subject to this Design and Construction Code may be divided into more than one purchase order, Project, or Contract solely for the purpose of avoiding the provisions of this Design and Construction Code.
- B. **Prequalification Requirements Applicable to all Design, Construction, and Electrical Services.** Bidders shall be prequalified before issuing an award to determine whether such Bidders are Qualified and Responsive Bidders. The criteria used to determine whether a Bidder is a Qualified Bidder fall into two categories: (a) Prequalification to submit a bid, proposal, or reply, which may occur prior to or after the Opening Date, and (b) Prequalification to be awarded a Contract, which shall occur only after the Opening Date. The prequalification of Bidders under each category may be conducted in two distinct stages or may be combined as determined appropriate by the CPO; provided, however, if such prequalification categories are combined, the prequalification of Bidders shall only occur following the Opening Date.
 1. **Prequalification to Submit a Bid, Proposal, or Reply.** The following Prequalification Requirements are conditions precedent to the CPO's consideration of bids, proposals, or replies submitted pursuant to a Bid Solicitation, and verification of the following requirements may be done before such Bidders participate in the Bid Solicitation Process.
 - (a) **Required Authorization and Licensure.** When the scope of a Project necessitates the use of Florida licensed professionals, those Bidders whose field or area of practice under Florida law require such licensure and/or authorization shall be prequalified for verification consistent with such legal requirements. Such prequalification includes the submission of proof evidencing the following:
 - (i) Current license certification or registration as required under Florida law; and
 - (ii) Proof of the Bidders' authorization to conduct business in Florida which includes one of the following:
 - a. For domestic business entities, the Bidders' current articles, charter, or certificate registration with the State of Florida; or
 - b. For foreign business entities, the Bidders' authority to transact business in the State of Florida, if required under Florida law.

- (b) Additional Requirements. In addition to the requirements above, additional Prequalification Requirements and factors may be stated in the Bid Documents. Consistent with Applicable Law, the CPO may require each potential Bidder to submit data, documentation, and records as deemed necessary to determine whether or not a Bidder is a Qualified Bidder.
 - (c) Bid Security. The CPO may require Bid Bond for Bid Solicitations as deemed appropriate in the best interests of Memorial, and such Bid Bond may be in any form and contain any content deemed appropriate to the CPO.
2. **Prequalification for the Award of a Contract**. The following Prequalification Requirements are conditions precedent to a Bidder being eligible for the award of a Contract pursuant to a Bid Solicitation, and such requirements shall be satisfied prior to the execution of the Contract. The prequalification criteria below are in addition to the prequalification criteria for submitting a bid, proposal, or reply, as provided in Section VI.B.1. (Prequalification to Submit a Bid, Proposal, or Reply) above.
- (a) Required Bonding for Construction Projects. For those Construction Projects requiring a Payment and Performance Bond under Applicable Law, the form, content, execution, and recordation of such Payment and Performance Bond shall be required as delineated in Section VI.C.4. (Payment and Performance Bonding for Construction Projects) of this Design and Construction Code.
 - (b) Evidence of Insurance Coverage. Prior to the entry into a Contract, the awarded Bidder shall provide evidence of insurance in effect, equal to or exceeding the limits required delineated under the Bid Documents.
 - (c) Additional Requirements. Additional requirements for the award of a Contract may be designated in the Bid Documents, and such prequalification criteria shall be met as a precondition to entering into a Contract with Memorial.

C. Selection of Construction and Electrical Contractors

1. **Public Advertisement Requirements**. The CPO shall be responsible for Public Advertisements applicable to solicitations of competitive bids or proposals for Construction Projects projected to cost more than the statutory thresholds in § 255.0525, Fla. Stat. Solicitations for such Construction Projects shall be Publicly Advertised in the manner and timeframes prescribed in § 255.0525, Fla. Stat. In cases of “emergency” (as defined in § 255.0525, Fla. Stat.), the procedures may be altered by the CPO in any reasonable manner under the emergency circumstances.
2. **Competitive Awards**. All Contracts for Construction Services and Electrical Work of Memorial’s hospitals, buildings, and facilities estimated to cost more than the statutory thresholds in § 255.20, Fla. Stat., shall be Competitively Awarded unless otherwise exempt under Applicable Law. As used in this Design and Construction Code, “Competitively Awarded” means to award Contracts based on the submission of sealed bids, proposals submitted in response to a request for proposal, proposals submitted in response to a request for qualifications, proposals submitted for Competitive Negotiation, or any other method of Competitive Awarding permitted under § 255.20, Fla. Stat. and Applicable Law. The CPO shall determine, at the CPO’s sole discretion, the most appropriate Bid Solicitation Process to utilize for a particular Construction Project or Electrical Project, and the method and procedures shall be outlined in the Bid Documents. Only Qualified and Responsive Bidders may be considered and/or awarded Contracts for Construction Services and Electrical Work.
- (a) Submission of Sealed Bids. If the selection of a Construction Contractor or an Electrical Contractor for a Project is Competitively Awarded based on price through the submission of sealed bids, the Contract shall be awarded to the lowest Qualified and Responsive Bidder based on the below criteria and consistent with Applicable Law.
 - (i) Determination of Lowest Qualified and Responsive Bidder. The determination of whether the lowest Bidder is a Qualified and Responsive Bidder shall be made prior to an award being issued, and at any time prior to the award, the CPO may find that a Bidder is non-Responsive and/or not Qualified to be awarded.
 - a. Responsive Bidder. Contracts pursuant to sealed bids may only be awarded to Responsive Bidders that have submitted a bid that conforms in all material respects to the Bid Solicitation.
 - b. Qualified Bidder. Contracts pursuant to sealed bids may only be awarded to the lowest Qualified Bidder that meets all the Prequalification Requirements in Section VI.B. (Prequalification

Requirements Applicable to all Design, Construction, and Electrical Services) of this Design and Construction Code. The CPO shall reject the low bid of any non-Qualified or non-Responsive Bidder and award the Contract to the next lowest Qualified and Responsive Bidder. When determining the lowest Qualified Bidder, in addition to price and in addition to the Prequalification Requirements, the CPO may consider and may accept or reject bids based on any one or more of the following factors, without limitation:

- i. The Bidder's ability, capacity, skill, experience, expertise, sufficiency of resources, personnel, facilities, and equipment to perform the Contract and provide the requested service for the Project, and the Bidder's demonstrated solvency;
- ii. The Bidder's ability to meet timelines and perform the Contract within the time specified;
- iii. The Bidder's character, honesty, integrity, reputation, judgment, experience, and efficiency;
- iv. The Bidder's past record of performance of similar Projects of equivalent size and complexity;
- v. The Bidder's quality of performance and conduct on previous Contracts with Memorial or with any other parties or references that the Bidder has performed work or services for;
- vi. The Bidder's reputation and previous interactions and ability to work with Memorial's staff and employees and with other government, public, or private entities;
- vii. The Bidder's debarment or removal from an entity's authorized vendors list or a final decree, declaration, or order by a court, administrative hearing officer, or tribunal of competent jurisdiction that the Bidder has breached, failed to perform a Contract, or abandoned a Project;
- viii. The Bidder's propensity to request change orders based on Bidder's conduct under previous Contracts with Memorial;
- ix. The Bidder's previous failure to meet specified substantial completion dates or other milestone dates on previous Contracts with Memorial;
- x. The Bidder's current workload and projected workload during the performance of the Contract;
- xi. The Bidder's claims history;
- xii. The Bidder's Small Business Vendor status, as recognized and certified pursuant to Memorial's Economic and Small Business Development Initiative Policy; and/or
- xiii. Any other circumstances, unresolved concerns, or factors deemed in the best interest of Memorial as determined by the CPO at the CPO's discretion.

The above factors may be determined by a Bidder's past performance with Memorial, information obtained from other entities and project owners, information submitted as part of the Bid Solicitation or in response to an inquiry by the CPO, and/or information otherwise known or discovered by Memorial from any reliable source. The CPO may conduct detailed inquiries and examinations of Bidders, including inquiries and examinations of Bidders' personnel, place of business and facilities, compliance with federal, state, and local laws, and all relevant licensing and permitting requirements, and other matters of responsibility germane to the Bid Solicitation Process. Failure to respond to or provide adequate information in response to the CPO's inquiry in this regard shall be grounds for disqualification as a Non-Qualified and/or Non-Responsive Bidder at the sole discretion of the CPO.

(ii) *Bid Opening*. In accordance with § 255.0518, Fla. Stat., notwithstanding § 119.071(1)(b), when opening sealed bids or the portion of any sealed bids that include the prices submitted that are received under a competitive solicitation for construction or repairs, the CPO shall:

- a. Open the sealed bids at a public meeting conducted in compliance with § 286.011, Fla. Stat.;
- b. Announce at that meeting the name of each Bidder and the price submitted in the bid; and
- c. Make available upon request the name of each Bidder and the price submitted in the bid.

- (b) Proposals Submitted in Response to a Request for Proposal or a Request for Qualifications. If the selection of a Construction Contractor or an Electrical Contractor for a Construction Project is Competitively Awarded through a request for proposal or a request for qualifications, the Bid Solicitation shall be Publicly Advertised as provided in Section VI.C.1. (Public Advertisement Requirements), and the Contract shall be awarded in accordance with the Competitive Solicitation Process delineated in the Business and Procurement Code.
 - (c) Proposals Submitted for Competitive Negotiation. If the selection of a Construction Contractor or an Electrical Contractor for a Project is Competitively Awarded through Competitive Negotiations, the Contract shall be awarded consistent with § 287.055, Fla. Stat., and the Competitive Selection and Negotiation Process requirements in Section VI.D.3. (Competitive Selection and Negotiation Process) of this Design and Construction Code.
3. **Exceptions to Competitively Awarding Contracts for Construction Services and Electrical Work.** The Competitive Awarding process is not applicable to (a) emergencies and unexpected events as delineated in § 255.20, Fla. Stat., (b) for Projects undertaken as the repair or maintenance of an existing facility (as defined under § 255.20, Fla. Stat.); (c) if the funding source of the Project will be diminished or lost because the time required to Competitively Award the Project after the funds become available exceeds the time within which the funding source must be spent; (d) if the private sector contractor was awarded a Contract under the Competitive Award process and the contractor abandoned the Project before completion or before the Contract was terminated; and (e) any other conditions or circumstances under § 255.20, Fla. Stat. exist that exempt the Project from the Competitive Award requirements.
4. **Payment and Performance Bonding for Construction Projects.** For the construction, prosecution, and repairs of a building pursuant to a Construction Project, awarded Bidders shall, before commencing or recommencing (in cases of default or abandonment) the work, execute and record in the public records of the county where the work will take place a Payment and Performance Bond in an amount equal to the Contract price with a surety insurer authorized to do business in Florida, and such Payment and Performance Bonds shall conform to the minimum standards and requirements of § 255.05, Fla. Stat., and contain any other terms required by the CPO consistent with Applicable Law. A certified copy evidencing the recordation shall be furnished to Memorial prior to entering into a Contract. For Contracts equal to or less than \$200,000 but more than \$100,000, the CPO may exempt a Firm from executing the Payment and Performance Bond for good cause (such as hardship or consistent with a Small Business Enhancement under Memorial's Economic and Small Business Development Initiative Policy). Contracts equal to or less than \$100,000 do not require a Payment or Performance Bond; provided, however, the CPO may require a Payment and/or Performance Bond on any Projects that the CPO deems appropriate in Memorial's best interests. In no event may a contractor be obligated to secure a surety bond required under § 255.05, Fla. Stat., from a specific agent or bonding company. When a bond is required, in lieu of the bond, a contractor may file an alternative form of security in the form of cash, a money order, a certified check, a cashier's check, or a domestic corporate bond, note, or debenture as authorized in § 625.317, Fla. Stat. Any such alternative form of security shall be for the same purpose and subject to the same conditions as those applicable to the Payment and Performance Bond required by § 255.05, Fla. Stat. The CPO shall determine the required value of an alternate form of security. For Contracts equal to or less than \$500,000, the provisions of § 287.0935, Fla. Stat., shall govern.

D. Selection of Design Professionals.

1. Public Announcement Requirements.

- (a) Advertisements. Except in cases of valid emergencies certified by the CEO, solicitations seeking Professional Design Services for Projects, the basic construction cost of which is estimated to cost more than the statutory thresholds in § 287.055, Fla. Stat., shall be publicly announced in a uniform and consistent manner, include the general description of the Project, and shall indicate how interested Contractors may apply for consideration. The CPO is responsible for ensuring the publication of the public announcement. At a minimum, such public announcement shall include publication on Memorial's public-facing website or a link accessible from Memorial's public-facing website.
- (b) Reuse of Existing Plans. If any plans are intended to be reused at some future time, the public announcement shall contain a statement that the plans are subject to reuse in accordance with the provisions of § 287.055(10), F.S. If such statement is contained in the public announcement, no further public notice is required, and the Bid Solicitation Process need not be repeated.

2. **Qualification Procedures.** Any Design Professional desiring to provide Professional Design Services shall first be certified as a Qualified Design Professional. Being a “Qualified Design Professional” means that the Design Professional is qualified to perform the Professional Design Services under Florida law, meets the Prequalification Requirements provided in Section VI.B. (Prequalification Requirements Applicable to all Design, Construction, and Electrical Services) of this Design and Construction Code, and is fully qualified based on the criteria below to render the required service. Design Professionals engaged in the lawful practice of their professions who desire to provide Professional Design Services to Memorial are encouraged to submit annual statements of qualifications and performance data. The CPO may consider the following factors when finding a Design Professional as fully qualified to provide the desired service:
- (a) The Design Professional’s ability, capacity, skill, experience, expertise, sufficiency of resources, personnel, facilities, and equipment to perform the Contract and provide the requested service for the Project, and the Design Professional’s demonstrated solvency;
 - (b) The Design Professional’s ability to meet timelines and perform the Contract within the time specified;
 - (c) The Design Professional’s character, honesty, integrity, reputation, judgment, experience, and efficiency;
 - (d) The Design Professional’s past record of performance of similar Projects of equivalent size and complexity;
 - (e) The Design Professional’s quality of performance and conduct on previous Contracts with Memorial or with any other parties or references that the Design Professional has performed work or services for;
 - (f) The Design Professional’s reputation, previous interactions, and ability to work with Memorial’s staff and employees and with other government, public, or private entities;
 - (g) The Design Professional’s debarment or removal from an entity’s authorized vendors list or a final decree, declaration, or order by a court, administrative hearing officer, or tribunal of competent jurisdiction that the Design Professional has breached, failed to perform a Contract, or abandoned a Project;
 - (h) The Design Professional’s previous failure to meet specified substantial completion dates or other milestone dates on previous Contracts with Memorial;
 - (i) The Design Professional’s current workload and projected workload during the performance of the Contract;
 - (j) The Design Professional’s claims history;
 - (k) The Design Professional’s Small Business Vendor status, as recognized and certified pursuant to Memorial’s Economic and Small Business Development Initiative Policy; and/or
 - (l) Any other circumstances, unresolved concerns, or factors deemed in the best interest of Memorial or applicable to the specific services requested as determined by the CPO at the CPO’s discretion.

The above factors may be determined by the Design Professional’s past performance with Memorial, information obtained from other entities and project owners, information submitted as part of the Bid Solicitation Process, in response to an inquiry by the CPO, and/or information otherwise known or discovered by Memorial from any reliable source. The CPO may conduct detailed inquiries and examinations of Design Professionals, including such Design Professionals’ personnel, place of business and facilities, compliance with federal, state, and local laws, and all relevant licensing and permitting requirements, and other matters of responsibility germane to the Bid Solicitation Process. Failure to respond or to provide adequate information in response to the CPO’s inquiry in this regard shall be grounds for disqualification as Non-Qualified and/or Non-Responsive at the sole discretion of the CPO.

3. **Competitive Selection and Negotiation Process.** Except in cases of valid public emergencies certified by the CEO, the procedures of the Competitive Selection and Negotiation Process delineated below shall be adhered to when Procuring Design Professionals for Projects, the basic construction cost of which is estimated to cost more than the statutory thresholds in § 287.055, Fla. Stat., or for a planning or study activity when the fee for the services exceeds the statutory thresholds in § 287.055, Fla. Stat. Notwithstanding, if the cost of the Project or activity is estimated to be below the foregoing thresholds and in the course of another procurement process the majority of Compensation proposed by the responding Design Professionals is in excess of such threshold amounts, the CPO shall reject all proposals and initiate the Competitive Selection and Negotiation Process below. The CPO shall determine whether a Selection Committee is appropriate for the Competitive

Selection and Negotiation Process and, if so, the process delineated in Section IV.10. (Selection Committees) shall be followed. Only Qualified Design Professionals who are Responsive Bidders may be considered and/or awarded Contracts for Professional Design Services.

(a) Competitive Selection. The current statements of qualifications and performance data on file with Memorial, together with those that may be submitted by other Design Professionals regarding the proposed Project, shall be evaluated by the CPO. The CPO shall conduct discussions with and may require public presentations by no fewer than three Design Professionals (unless fewer than three Design Professionals are available or respond to the Bid Solicitation) regarding their qualifications, approach to the Project, and ability to furnish the required services. The CPO shall select, in order of preference, no fewer than three Design Professionals (unless fewer are available or respond to the Bid Solicitation) deemed to be the most highly qualified to perform the required services. In no event may the CPO request, accept, or consider proposals for the Compensation to be paid under the Contract until after the most qualified Design Professional is selected and Competitive Negotiations are commenced. When determining whether a Design Professional is qualified, the CPO shall consider such factors as:

- (i) The ability of professional personnel;
- (ii) Whether a Firm is certified as a Small Business Vendor pursuant to Memorial's Economic and Small Business Development Initiative Policy;
- (iii) Past performance;
- (iv) Past interactions with Memorial's staff and employees and the ability to work with Memorial's staff and employees;
- (v) Willingness to meet time and budget requirements;
- (vi) Location;
- (vii) Recent, current, and projected workloads of the Design Professionals; and
- (viii) The volume of work previously awarded to each Design Professional by Memorial, with the object of effecting an equitable distribution of Contracts among Qualified Design Professionals, provided such distribution does not violate the principle of selection of the most highly qualified Design Professionals.

(b) Competitive Negotiation.

- (i) Negotiating Compensation. After the Design Professionals are ranked in order of preference as provided in the Competitive Selection process delineated above, the CPO shall Negotiate a Contract with the most qualified Design Professional at Compensation that the CPO determines is fair, competitive, and reasonable. In making such a determination, the CPO shall conduct a detailed analysis of the cost of the Professional Design Services required in addition to considering their scope and complexity.
- (ii) Truth-in-Negotiation Certificate. The CPO shall require the Design Professional receiving the award to execute a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the Compensation are accurate, complete, and current at the time of contracting for any Lump-Sum or Cost-Plus Professional Design Services Contract over the threshold amount referenced in § 287.055(5)(a), Fla. Stat. Any Professional Design Services Contract under which such a certificate is required must contain a provision that the original Contract price and any additions thereto will be adjusted to exclude any significant sums by which Memorial determines the Contract price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such Contract adjustments shall be made within one year following the end of the Contract.
- (iii) Failed Negotiations. Should the CPO be unable to Negotiate a satisfactory Contract with the Design Professional considered to be the most qualified at a price the CPO determines to be fair, competitive, and reasonable, Negotiations with that Design Professional must be formally terminated. The CPO shall then undertake Negotiations with the second most qualified Design Professional. Failing accord with the second most qualified Design Professional, the CPO must terminate Negotiations with that Design Professional and then undertake Negotiations with the third most qualified Design Professional. Should the CPO be unable to Negotiate a satisfactory Contract with any of the selected Design Professionals, the CPO shall select additional Design Professionals in the order of their

competence and qualification and continue Negotiations in accordance with the requirements herein until an agreement is reached. To the extent consistent with Applicable Law, nothing in this Section precludes the CPO from rejecting all bids, proposals, or replies or canceling the Bid Solicitation Process, and nothing precludes the CPO from reissuing or not reissuing or not reissuing solicitations for a Project.

VII. Rules Governing the Design-Build Method

The utilization of the Design-Build Method starts with the preparation of the Design Criteria Package. After the Design Criteria Package is developed, the solicitation procedures outlined in this Section for the procurement of Design-Build Contracts shall be adhered to.

A. Selection of the Design Criteria Professional and Preparation of the Design Criteria Package.

1. **Selection of the Design Criteria Professional.** A Design Criteria Professional shall prepare and seal a Design Criteria Package. The Design Criteria Professional, if not employed, shall be selected and contracted with under the Competitive Selection and Negotiation Process requirements specified in Section VI.D.3. (Competitive Selection and Negotiation Process) of this Design and Construction Code. The Design Criteria Professional selected to prepare the Design Criteria Package is not eligible to render services under a Design-Build Contract executed according to the Design Criteria Package.
2. **Design Criteria Package Preparation Requirements.** The Design Criteria Package shall be prepared and sealed only by a Design Criteria Professional. The Design Criteria Package shall possess concise, performance-oriented drawings or specifications of the public Construction Project to furnish sufficient information to permit Design-Build Firms to prepare a bid or a response to a request for proposal or to permit the entering into a Negotiated Design-Build Contract. At a minimum, the Design Criteria Package shall specify performance-based criteria for the Construction Project, including the legal description of the site, survey information concerning the site, interior space requirements, material quality standards, schematic layouts and conceptual design criteria of the Construction Project, cost or budget estimates, design and construction schedules, site development requirements, provisions for utilities, stormwater retention and disposal, and parking requirements applicable to the Construction Project.

B. Procurement of Design-Build Contracts. Except in cases of emergencies as declared by the CEO or unless otherwise exempt under Applicable Law, all Design-Build Contracts shall either be procured via the Competitive Proposal Selection Process described below or the Competitive Selection and Negotiation Process delineated in Section VI.D.3. (Competitive Selection and Negotiation Process) of this Design and Construction Code. The CPO shall determine, at the CPO's sole discretion, the most appropriate process to utilize for Procuring Design-Build Contracts.

1. **Prequalification Requirements for Firms Providing Design-Build Services.** Regardless of the use of the Competitive Proposal Selection Process or the Competitive Selection and Negotiation Process to procure Design-Build Contracts, all Firms bidding or responding to the Bid Solicitation shall meet the Prequalification Requirements provided in Section VI.B. (Prequalification Requirements Applicable to all Design, Construction, and Electrical Services) of this Design and Construction Code.
2. **Competitive Proposal Selection Process for Design-Build Services.**
 - (a) **Qualification and Selection Stage.** All Design-Build Firms shall possess the required authorization and licensure consistent with Section VI.B.1(a) (Required Authorization and Licensure) of this Design and Construction Code to perform the work. The CPO shall select no fewer than three Design-Build Firms as the most qualified, based on the Design-Build Firms' qualifications and experience, staff training and experience, location, availability, financial capacity, past performance, current and projected workload, and the Design-Build Firms' ability to provide services and commitment to meet time and budget requirements.
 - (b) **Solicitation and Award Requirements.** The CPO shall solicit competitive proposals from the Design-Build Firms (at least three) deemed the most qualified as provided in Section VII.B.2(a) (Qualification and Selection Stage) above. Prior to soliciting proposals, the CPO shall establish criteria and standards for evaluating the solicited proposals, pursuant to the Design Criteria Package, based on price, technical, and design aspects of the Project. The CPO shall establish weighting factors in the form of a percentage for each of the criteria and each proposed building system component of the Design Criteria Package, which shall total 100%. The conceptual designs proposed by each Design-Build Firm shall be reviewed, evaluated, scored, and awarded based on the evaluation criteria and procedures established prior to the

solicitation of competitive proposals. The Design Criteria Professional shall assist with or be consulted concerning the evaluation of the competitive proposals. Memorial shall supervise or approve the detailed working drawings of the Project, and the Design Criteria Professional shall assist with the evaluation of the compliance of the Project construction consistent with the Design Criteria Package.

3. **Competitive Selection and Negotiation Process for Design-Build Services.** If the CPO elects to proceed with the Competitive Selection and Negotiation Process to procure Design-Build Contracts, the Competitive Selection and Negotiation Process in Section VI.D.3. (Competitive Selection and Negotiation Process) of this Design and Construction Code shall be followed and solicitations for Design-Build Contracts, the basic construction cost of which is estimated to cost more than the statutory thresholds in § 287.055, Fla. Stat., shall be publicly noticed in a uniform and consistent manner, include a general description of the Project, and indicate how interested Design-Build Firms may apply for consideration. The CPO is responsible for ensuring the publication of the public notice. At a minimum, such public notice shall include publication on Memorial's public-facing website or a link accessible from Memorial's public-facing website. If the Competitive Selection and Negotiation Process is selected as the procurement method for the procurement of a Design-Build Contract, the Design Criteria Package shall be released with the Bid Solicitation, and an employed or retained licensed Design Professional appropriate to the Project shall serve as Memorial's representative during the Competitive Selection stage. Subsequent to the Competitive Negotiations and selection of the Design-Build Firm and as part of the Contract, a Guaranteed Maximum Price and guaranteed completion date shall be established.
4. **Emergencies.** In the case of an emergency, as declared by the President/CEO of Memorial, the CPO may select the best qualified Design-Build Firm available at the time to commence Negotiations without adhering to the Competitive Proposal Selection Process or the Competitive Selection and Negotiation Process delineated above.

VIII. Rules Governing the Procurement of Construction Management and Program Management Entities

The following solicitation procedures shall apply to the procurement of Construction Management Entities and Program Management Entities for Projects.

- A. **Construction Management Entities.** The CPO may elect to Competitively Award or use the Competitive Selection and Negotiation Process delineated in Section VI.D.3. (Competitive Selection and Negotiation Process) of this Design and Construction Code to procure a Construction Management Entity. The Construction Management Entity selected must consist of or contract with licensed or registered professionals for the specific fields or areas of construction to be performed as required by law. The Construction Management Entity may retain necessary Design Professionals selected pursuant to the Competitive Selection and Negotiation Process. The Construction Management Entity, after having been selected and after Competitive Negotiations, may be required to offer a Guaranteed Maximum Price and a guaranteed completion date or a Lump-Sum Price and a guaranteed completion date, in which case, the Construction Management Entity must secure an appropriate surety bond pursuant to § 255.05, Fla. Stat., and must hold construction subcontracts. If a Design Project solicited under the Competitive Selection and Negotiation Process includes a grouping of substantially similar construction, rehabilitation, or renovation activities as permitted under § 287.055(2)(f), Fla. Stat., after Competitive Negotiations, the Construction Management Entity may be required to provide for a separate Guaranteed Maximum Price or a separate Lump-Sum Price and separate guaranteed completion date for each grouping of substantially similar construction, rehabilitation, or renovation activities included within the Design Project.
- B. **Program Management Entities.** The CPO may elect to Competitively Award or use the Competitive Selection and Negotiation Process delineated in Section VI.D.3. (Competitive Selection and Negotiation Process) of this Design and Construction Code to procure a Program Management Entity. The Program Management Entity selected must consist of or contract with licensed or registered professionals for the specific areas of design or construction to be performed as required by law. The Program Management Entity may retain necessary Design Professionals selected pursuant to the Competitive Selection and Negotiation Process. The Program Management Entity, after having been selected and after Competitive Negotiations, may be required to offer a Guaranteed Maximum Price and a guaranteed completion date or a Lump-Sum Price and a guaranteed completion date, in which case the Program Management Entity must secure an appropriate surety bond pursuant to § 255.05, Fla. Stat., and must hold design and construction subcontracts. If a Design Project solicited under the Competitive Selection and Negotiation Process includes a grouping of substantially similar construction, rehabilitation, or renovation activities as permitted under § 287.055(2)(f), Fla. Stat., after Competitive Negotiations, the Program Management Entity may be required to provide for a separate Guaranteed Maximum Price or a Lump-Sum Price

and separate guaranteed completion date for each grouping of substantially similar construction, rehabilitation, or renovation activities included within the Design Project.

IX. Interpretation, Administration, and Construction of this Design and Construction Code

The Administration and interpretation of this Design and Construction Code is the responsibility of the CPO. The terms and provisions of this Design and Construction Code shall be deemed by operation of law to be a part of the terms and conditions of every procurement, Contract, and change order involving Memorial's purchase of Contractors and Professionals for Projects, except to the extent that the CPO or other authorized official of Memorial has expressly provided for an exception to one or more of the requirements provided for in this Design and Construction Code and such exception is consistent with Applicable Law, this Design and Construction Code, and Memorial's Policies and Procedures. This Design and Construction Code shall be deemed consistent and in harmony with Applicable Law, and no provision of this Design and Construction Code shall be interpreted as more restrictive than Applicable Law. No provision of this Design and Construction Code shall be construed as conflicting with or exceeding Applicable Law, and if any provision of Applicable Law authorizes a more permissible or alternate method of procuring Contractors and Professionals than what is provided for in this Design and Construction Code, this Design and Construction Code shall not be construed as restrictive or exclusive to such method and shall be interpreted as permitting such method. In the event of a conflict between this Design and Construction Code and Applicable Law, Applicable Law shall govern and control as if fully set forth herein. If any provision of this Design and Construction Code is held to be unconstitutional, invalid, or unenforceable, such offending provision shall be stricken as though the offending provision has not been included herein, and the remainder of this Design and Construction Code shall remain valid, enforceable, and not be affected thereby, and if any provision of this Design and Construction Code is held to be unconstitutional, invalid, or unenforceable as applied to any particular person, group, entity, property, or circumstance, such provision shall be modified to the minimum extent necessary to make it or its application valid and enforceable and the application of the remaining provisions of this Design and Construction Code to any person, group, entity, property, or circumstance shall remain valid and enforceable and not affected thereby. The headings contained in this Design and Construction Code are for reference purposes only and shall not affect in any way the meaning or interpretation of the Design and Construction Code. The use of the term "including" and other words of similar import mean "including, without limitation," and where specific language is used to clarify by example a general statement contained herein, such specific language shall not be deemed to modify, limit, or restrict in any manner the construction of the general statement to which it relates. The word "or" is not exclusive, and the words "herein," "hereof," "hereunder," and other words of similar import refer to this Design and Construction Code as a whole and not to any particular section, subsection, paragraph, subparagraph, or clause contained in this Design and Construction Code. The term "shall" is mandatory, and "may" is optional. The reference to the Business and Procurement Code, or a policy, instrument, or other document means the Business and Procurement Code, or such policy, instrument, or other document as amended, supplemented, and modified from time to time to the extent permitted by the provisions thereof, and the reference to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder.

Memorial's Economic and Small Business Development Initiative

I. Purpose and Scope

The Board of Commissioners of South Broward Hospital District (the "Board") is committed to increasing and encouraging the participation of and providing accessibility and opportunity to all local and small business enterprises in the Procurement of Commodities and Services for the South Broward Hospital District d/b/a Memorial Healthcare System ("Memorial"). Participation of such local and small business enterprises in Memorial's Procurements results in the economic well-being and growth of South Florida and enhances the competitive bidding processes of Memorial. To that end, the Board is establishing this Policy to foster Small Business participation and for the administration of Memorial's Economic and Small Business Development Initiative. The procedures set forth herein shall apply to all Procurements subject to the Competitive Solicitation Process in the Business and Procurement Code and other Procurements as the CPO may deem appropriate.

II. Policy Statement

In an effort to foster and further Memorial's commitment to encouraging the economic growth and development of local and small businesses, the CPO shall look for opportunities to promote and increase the participation of Small Business Vendors in Memorial's Procurement of Commodities and Services.

III. Definitions

The following words shall have the meaning ascribed to them wherever they appear in this Policy, regardless of whether they are capitalized, unless (a) the context in which they are used clearly requires a different meaning, or (b) a different definition is prescribed for a particular section of this Policy. Words capitalized but not defined in this Policy shall have the meaning ascribed to such term in the Business and Procurement Code. All other words shall be given their common and ordinary meaning unless the context in which they are used requires otherwise. When the context requires, the gender of all words includes the masculine, feminine, and neuter, the number of all words includes the singular and plural, and, when appropriate, the form of a word includes the past tense, present participle, or gerund.

1. "**Board**" means the Board of Commissioners of the South Broward Hospital District.
2. "**Business and Procurement Code**" means Memorial Healthcare System's Business and Procurement Code.
3. "**CEO**" means the President and Chief Executive Officer who oversees and is responsible for all of Memorial's day-to-day business and operations.
4. "**CPO**" shall have the meaning ascribed to such term in Article II (Definitions) of the Business and Procurement Code.
5. "**Good-Faith Effort**" means the process of documenting a Vendor's efforts of solicitation and utilization of Small Business Vendors during the Competitive Solicitation Process, a project, or under a Contract with Small Business Vendor subcontracting requirements.
6. "**Local Business Enterprise**" means a Vendor certified by Memorial or a Memorial Certification Partner as meeting the requirements of a small business with its principal place of business in Miami-Dade, Broward, or Palm Beach County.
7. "**Memorial**" means Memorial Healthcare System, the fictitious name of the South Broward Hospital District, a special tax district established by the Florida legislature, and all of its departments, divisions, units, wholly owned entities, and other fictitious names now established and as further established from time to time by the Board. The term "Memorial" shall expressly exclude all joint ventures, cooperatives, or interlocal arrangements of the South Broward Hospital District unless the governing documents or articles of such ventures, cooperatives, or interlocal arrangements indicate otherwise or unless the Board of Commissioners establishes a policy to subject such joint venture, cooperative, or interlocal arrangement to the provisions of this Policy.
8. "**Memorial Certification Partner**" means governmental agencies and non-governmental national and local organizations approved and recognized by the CPO for certifying vendors meeting the criteria of one or more categories of certification under Memorial's Economic and Small Business Development Initiative.
9. "**Memorial's Economic and Small Business Development Initiative**" means the program established by the Board of Commissioners of South Broward Hospital District to encourage economic growth and foster Small Business Vendor participation in Memorial's Procurements.
10. "**Small Business Enhancements**" means strategies designed by Memorial that are intended to increase procurement opportunities with Small Business Vendors.

11. “**Small Business Vendor**” means a Vendor recognized and certified by Memorial or a Memorial Certification Partner as meeting the requirements of one or more of the Small Business categories of Memorial’s Economic and Small Business Development Initiative.
12. “**Vendor**” shall have the meaning ascribed to such term in Article II (Definitions) of the Business and Procurement Code.

IV. Procedures for Enhancing and Fostering Small Business Vendor Participation

The Board hereby delegates the authority to the CPO to administer the provisions of Memorial’s Economic and Small Business Development Initiative.

- A. **Administration of Memorial’s Economic and Small Business Development Initiative.** The CPO shall be responsible for overseeing and administering Memorial’s Economic and Small Business Development Initiative, and, in so doing, shall perform the following roles and functions:
 1. Developing policies, standards, practices, and procedures to implement Memorial’s Economic and Small Business Development Initiative, including the application of Small Business Enhancements and other initiatives consistent with best practices to foster, encourage, and improve business opportunities for and participation of Small Business Vendors in Memorial’s Procurements;
 2. Serving as an advocate for the use of Small Business Vendors in Memorial’s Procurements and overseeing Memorial’s Procurements and processes to ensure that adequate opportunities are available for Small Business Vendor participation;
 3. Fostering and encouraging Small Business Vendor participation through outreach and vendor development opportunities, which may include, but not be limited to, educational endeavors, Small Business Vendor events, expos, and other initiatives, establishing a mentor-protégé program, and assisting Vendors meeting the criteria that wish to obtain certification as a Small Business Vendor;
 4. Advising Memorial’s facilities, departments, and divisions on methods and techniques for achieving Procurement objectives for Small Business Vendor participation;
 5. Disseminating information, responding to inquiries, and providing technical assistance concerning Memorial’s Economic and Small Business Development Initiative, including information and inquiries related to Procurement opportunities for and participation of Small Business Vendors;
 6. Determining categories of Small Business Vendors, establishing criteria for current and new categories of Small Business Vendors (such as criteria for qualifying as a Local Business Enterprise), and creating standards and rules for certifying Small Business Vendors, which fosters and encourages Memorial’s Economic and Small Business Development Initiative;
 7. Engaging in efforts such as outreach and Small Business Vendor development activities and encouraging Vendors who would qualify as Small Business Vendors to obtain status and certification as a Small Business Vendor;
 8. Verifying the veracity of a Small Business Vendor’s representations and claims that it possesses the status of a Small Business Vendor;
 9. Ensuring compliance with Competitive Solicitation and contractual requirements for Small Business Vendor participation;
 10. Determining whether a Vendor’s efforts of solicitation and utilization of Small Business Vendors constitute a Good-Faith Effort for purposes of complying with the utilization requirements established under the Small Business Subcontracting Program;
 11. Investigating complaints against Small Business Vendors or other Vendors alleged to have violated the policies or the objectives of Memorial’s Economic and Small Business Development Initiative or the utilization requirements of the Small Business Vendor subcontractors;
 12. Monitoring the degree to which Memorial Procures Commodities and Services from Small Business Vendors;
 13. Communicating and updating the Board, from time to time, regarding the participation of Small Business Vendors in Memorial’s Procurements; and
 14. Any other duties, responsibilities, and functions developed by the CPO to further the intent, spirit, and goals of Memorial’s Economic and Small Business Development Initiative.

- B. Procedures for Enhancing Small Business Vendor Participation.** The CPO shall review Procurements of Commodities and Services to determine whether such Procurements are eligible for Small Business Enhancements. To the extent Small Business Enhancements are assigned to a particular Procurement, only those qualifying Small Business Vendors are eligible to participate in such Small Business Enhancements.
1. **Procurements Less than the Procurement Threshold.** Procurements of Commodities and Services less than the Procurement Threshold or Exempt from the Business and Procurement Code's Competitive Solicitation Process may be subject to Small Business Enhancements as determined by the CPO in the best interests of Memorial.
 2. **Procurements Equal to or More than the Procurement Threshold.** Those Procurements of Commodities and Services that are estimated to be equal to or more than the Procurement Threshold and which are subject to the Business and Procurement Code's Competitive Solicitation Process shall be subject to Small Business Enhancements unless the CPO determines that such Small Business Enhancements are not in the best interests of Memorial.
 3. **Group Purchasing Organization and Cooperative Purchasing Program Procurements.** Procurements of Commodities and Services through Group Purchasing Organizations and Cooperative Purchasing Programs may be subject to Small Business Enhancements as determined by the CPO in the best interests of Memorial.
 4. **Approved Small Business Vendor Categories.** The CPO shall maintain a list of approved Small Business Vendor categories. The CPO shall update or modify such list of approved Small Business Vendor categories from time to time in the best interests of Memorial and based on best practices.
 5. **Responsible and Responsive Bidders.** Regardless of whether Small Business Enhancements are applied to a Competitive Solicitation, Contracts may only be awarded to Responsible and Responsive Bidders.
 6. **Small Business Preferences and Enhancements.** The CPO shall develop, design, and implement Small Business Enhancements for eligible Procurements to encourage and maximize Small Business Vendor participation. Such Small Business Enhancements shall be incorporated into a Competitive Solicitation's Bid Documents and any applicable awarded Contract. Such Small Business Enhancements include, but are not limited to:
 - a. **Reduction of Large Procurements.** If feasible, the CPO may reduce, modify, or separate Procurements in any form or format to create Contracts of manageable size to encourage and provide greater opportunities for and maximum participation of Small Business Vendors. Any reduction of such Procurements may only be for creating and improving opportunities for Small Business Vendor participation and may not be used to bypass or evade the Business and Procurement Code's provisions pertaining to the Competitive Solicitation Process.
 - b. **Bonding Waivers.** Because bonding requirements for Construction Services and Professional Design Services projects may be cost-prohibitive and present obstacles to Small Business Vendor participation, to boost Small Business Vendor participation, the CPO, to the extent permissible under Applicable Law, may waive any Payment Bond or Performance Bond requirement for Contracts equal to or less than \$200,000 or such other amount prescribed under § 255.05(1)(d), Fla. Stat. or Applicable Law. Further, where a prime contractor's Payment Bond and Performance Bond cover the work of the subcontractors, the CPO may waive any separate bonding required of subcontractors. Such bonding waivers may not be used for exceptionally risky projects or projects that, under Applicable Law, require bonding or other surety and do not permit the waiving of such bonding or other surety.
 - c. **Small Business Subcontracting Requirements.** The CPO may require that Contracts or projects contain subcontracting participation requirements for utilizing a certain percentage of Small Business Vendors as subcontractors. The CPO shall establish a procedure for determining the proper participation percentage of Small Business Vendor subcontractors that should be applied to a particular Contract or project. To the extent a Contract or project contains such a subcontracting requirement, the awarded Vendor's Contract shall include language ensuring the use of subcontractors, and the Contract may include a provision for liquidated damages.
 - d. **Quote-Price Tolerance.** Provided it is permissible under Applicable Law, the CPO may apply a Quote-Price Tolerance to certain Competitive Solicitations where the Contract is awarded to the lowest Bidder, such as Invitations to Bid. When a Quote-Price Tolerance is applied to a Competitive Solicitation, Responsible and Responsive Small Business Vendors shall have a predetermined percentage adjustment factor applied to their Bids. Under such conditions, a Small Business Vendor may be awarded a Contract even when the

Small Business Vendor's Bid is not the lowest when a non-Small Business Vendor has submitted the lowest Bid and, after applying the percentage adjustment factor to the Small Business Vendor's Bid, the Small Business Vendor's adjusted Bid recalculates to be equal to or lower than the non-Small Business Vendor's Bid. To the extent a Quote-Price Tolerance is applied to a Competitive Solicitation, it may not exceed 5 percent or a maximum price of \$25,000, whichever is lower (unless a different amount or percentage is required under Applicable Law). The CPO shall establish a procedure for determining the proper Quote-Price Tolerance percentage adjustment factor that should be applied to a particular Competitive Solicitation or project.

- e. **Scoring and Evaluation Points.** Provided it is permissible under Applicable Law, the CPO may provide certain scoring criteria and evaluation points to be applied and awarded to Small Business Vendors submitting Bids under a Competitive Solicitation where the Contract is awarded to the Bidder most advantageous to Memorial based on several criteria other than just price, such as a Request for Proposals. When utilizing these Small Business Enhancements, if, after applying the scoring criteria and evaluation points to a Small Business Vendor's Bid, the Small Business Vendor's score is equal to or greater than a non-Small Business Vendor's score, the Small Business Vendor may be awarded the Contract. Scoring or evaluation points awarded to Small Business Vendors under a Competitive Solicitation may not exceed 20 percent of the Competitive Solicitation's total evaluation points unless a different amount is required under Applicable Law. The CPO shall establish a procedure for determining the proper scoring criteria and evaluation points for Small Business Vendors that should be applied to a particular Competitive Solicitation or project.
 - f. **Small Business Vendor Set-Asides and Sheltered Markets.** Provided it is permissible under Applicable Law, the CPO may create categories of set-aside Contracts to be sheltered and reserved for Small Business Vendors. Such set-aside Contracts may consist of total set-asides, such as sheltering and restricting a Competitive Solicitation to only Small Business Vendors, or partial set-asides, such as sheltering and reserving a designated number of awards in a multi-award Competitive Solicitation to Small Business Vendors. Notwithstanding the foregoing, and unless required or permissible under Applicable Law, total set-asides restricting Competitive Solicitations or any Competitive Conditions to only Small Business Vendors may not be used for any Construction Services Contracts utilizing state-appropriate funds in violation of §§ 255.0991-0992, Fla. Stat.
 - g. **Additional Small Business Enhancements.** The CPO may require or apply any combination of the above Small Business Enhancements or other Small Business Enhancements not prescribed herein, provided such Enhancements are consistent with best practices, Applicable Law, and the Business and Procurement Code.
7. **Good-Faith Efforts.** To the extent an awarded Vendor does not or cannot meet a Small Business Vendor requirement applied to a Competitive Solicitation (such as the use of a predetermined percentage of Small Business Vendor subcontractors) or otherwise requests a waiver of a particular Small Business Vendor utilization requirement, the CPO shall review and determine whether the awarded Vendor's efforts of solicitation and utilization of Small Business Vendors constituted a Good-Faith Effort for purposes of complying with the Small Business Vendor requirements established for a particular project or Contract.
8. **Priorities for Award.** From time to time, Vendors may receive equal scores for submitted Bids pursuant to a Competitive Solicitation. To the extent this occurs—whether between a Small Business and non-Small Business Vendor or two Small Business Vendors—preference for the award shall be given in the following sequence:
- a. Small Business Vendors headquartered or principally located in Broward County;
 - b. Non-Small Business Vendors headquartered or principally located in Broward County;
 - c. Small Business Vendors headquartered or principally located in Miami-Dade County or Palm Beach County;
 - d. Non-Small Business Vendors headquartered or principally located in Miami-Dade County or Palm Beach County;
 - e. Small Business Vendors headquartered or principally located in the State of Florida but outside of Broward County, Miami-Dade County, and Palm Beach County;
 - f. Non-Small Business Vendors headquartered or principally located in the State of Florida but outside of Broward County, Miami-Dade County, and Palm Beach County; and
 - g. Small Business Vendors headquartered or principally located outside of the State of Florida.

9. Data Management.

- a. Small Business Vendor Database. The CPO shall establish and maintain a comprehensive database of registered and certified and non-certified Small Business Vendors to serve as a vendor resource pool. The CPO may create applicable procedures within this database to verify and validate the validity of a Small Business Vendor's certification and notify Small Business Vendors of opportunities for Small Business Vendor participation.
- b. Statistical Reporting. The CPO shall maintain statistical data on the participation of certified and non-certified Small Business Vendors, which data shall be utilized by the CPO for analysis and recommending any modifications or improvements to Memorial's Economic and Small Business Development Initiative and to update, from time to time, the Board regarding the participation of Small Business Vendors in Memorial's Procurements.

V. Interpretation and Administration

Administration and Interpretation of this Policy is the responsibility of the CPO.

Purchasing and Procurement Requirements of Federal Awards from the U.S. Department of Health and Human Services

I. Purpose and Scope

Certain purchasing and procurement standards apply to recipients of Federal Awards and Memorial is subject to such standards as a recipient of Federal Awards from the U.S. Department of Health and Human Services. Accordingly, this Policy delineates the written procurement and audit procedures for the use of Federal Awards from the U.S. Department of Health and Human Services consistent with federal procurement standards, including a process for ensuring that all procurement costs directly attributable to Federal Awards are allowable, consistent with Federal Cost Principles. All Commodities and Services procured for, under, or that pertain or are related to any Federal Awards or programs are subject to the provisions of this Policy.

II. Policy Statement

This Policy delineates (a) the procurement procedures for the purchase of goods, supplies and other expendable property, equipment, real property, and other services using funds from Federal Awards to ensure that such goods and services are obtained in an effective manner and in compliance with the provisions of Federal Programs and other applicable federal law; and (b) the audit procedures required when Federal Award funds are used for procuring Commodities and/or Services, and monitoring of Subawards provided to Subrecipients. This Policy shall control over the provisions of Memorial Healthcare System's Business and Procurement Code (the "Business and Procurement Code"), Memorial's Design and Construction Code, and any Board or Memorial Policy unless Applicable Law provides otherwise and the circumstances and make it apparent that any of the foregoing control.

III. Definitions

The following words and acronyms shall have the meaning ascribed to them wherever they appear in this Policy, regardless of whether they are capitalized, unless (a) the context in which they are used clearly requires a different meaning, or (b) a different definition is prescribed for a particular section of this Policy. Words capitalized but not defined in this Policy shall have the meaning ascribed to such term in the Business and Procurement Code. All other words shall be given their common and ordinary meaning unless the context in which they are used requires otherwise. When the context requires, the gender of all words includes the masculine, feminine, and neuter, the number of all words includes the singular and plural, and, when appropriate, the form of a word includes the past tense, present participle, or gerund.

1. "**Board of Commissioners**" means the Board of Commissioners of the South Broward Hospital District.
2. "**Business and Procurement Code**" means Memorial Healthcare System's Business and Procurement Code, which governs Memorial's business activities and Memorial's procurement of Commodities and Services.
3. "**Contract**" means a written agreement used to obtain Commodities and Services needed to carry out a project or program under a Federal Award. It does not include a legal instrument when the substance of the transaction meets the definition of a Federal Award or Subaward. Contract characteristics include:
 - a. The provision of goods and services within normal business operations;
 - b. The provision of similar goods or services to many different purchasers;
 - c. Normally operating within a competitive environment;
 - d. The provision of goods or services that are ancillary to the operation of the Federal Program; and
 - e. Not being subject to compliance requirements of the Federal Program as a result of the relationship with Memorial, although similar requirements may apply for other reasons, including as a result of contractual provisions.
4. "**Compliance Manual**" means the HRSA Health Center Program Compliance Manual that applies to all entities and Subrecipients that apply for or receive Federal Awards under the Health Center Program authorized under section 330 of the PHS Act (codified at 42 U.S.C. § 254b).
5. "**CPO**" shall have the meaning ascribed to such term in Article II (Definitions) of the Business and Procurement Code.
6. "**Disputes**" shall have the meaning ascribed to such term in Section IV.10 of this Policy.

7. “**Federal Agency**” means any executive department, federal government corporation, federal government controlled corporation, or other establishment within HHS that provides Federal Awards, including, but not limited to, HRSA, Centers for Disease Control and Prevention (CDC), Food and Drug Administration (FDA), National Institutes of Health (NIH), and Substance Abuse and Mental Health Services Administration (SAMHSA).
8. “**Federal Award**” means, depending on the context, either (a) the federal financial assistance or the cost-reimbursement Contract under the Federal Acquisition Regulations that a non-federal entity receives directly from a Federal Agency or indirectly from a Pass-Through Entity, as described in 45 C.F.R. § 75.101; or (b) an instrument setting forth the terms and conditions which can be a grant agreement, cooperative agreement, other agreement for assistance, or the cost-reimbursement Contract awarded under the Federal Acquisition Regulations.
9. “**Federal Program**” means (a) all Federal Awards that are assigned a single number in the Catalog of Federal Domestic Assistance (CFDA); (b) all Federal Awards to non-federal entities from the same Federal Agency made for the same purpose; or (c) a cluster of programs as defined in 45 C.F.R. § 75.2.
10. “**HHS**” means the U.S. Department of Health and Human Services.
11. “**HRSA**” means the Health Resources and Services Administration, a Federal Agency of HHS.
12. “**Memorial**” means Memorial Healthcare System, the fictitious name of the South Broward Hospital District, a special tax district established by the Florida legislature, and all of its departments, divisions, units, wholly owned entities, and other fictitious names now established and as further established from time to time by the Board. The term “Memorial” shall expressly exclude all joint ventures, cooperatives, or interlocal arrangements of the South Broward Hospital District unless the governing documents or articles of such ventures, cooperatives, or interlocal arrangements indicate otherwise or unless the Board of Commissioners establishes a policy to subject such joint venture, cooperative, or interlocal arrangement to the provisions of this Policy.
13. “**Pass-Through Entity**” means a non-federal entity that provides a Subaward to a Subrecipient to carry out part of a Federal Program.
14. “**PHS Act**” means the Public Health Service Act, ch. 373, 58 Stat. 682 (1944), codified as amended at 42 U.S.C. §§ 201-300mm-62.
15. “**Records**” shall have the meaning ascribed to such term in Article VI. (Document Retention) of this Policy.
16. “**Subaward**” means an award provided by a Pass-Through Entity to a Subrecipient for the Subrecipient to carry out part of a Federal Award received by the Pass-Through Entity. A Subaward does not include payments to a contractor or payments to an individual who is a beneficiary of a Federal Program.
17. “**Subrecipient**” means a non-federal entity that receives a Subaward from a Pass-Through Entity to carry out part of a Federal Program.
18. “**UDS**” means the Uniform Data System, the standardized reporting system whereby entities receiving Federal Awards under the Health Center Program authorized under section 330 of the PHS Act are required to input certain information, including patient demographics, services provided, clinical processes and health outcomes, patients’ use of services, costs, and revenues.

IV. Procurement Procedure

1. Before procuring any materials and services using Federal Award funds, Memorial shall determine, on a case-by-case basis, consistent with the characteristics outlined in 45 C.F.R. § 75.351, whether an individual agreement will be carried out through a Contract or Subaward and the agreement shall be structured accordingly.
2. Before beginning the procurement process, Memorial shall request and receive approval from the relevant Federal Agency to contract for work and/or substantive programmatic work, as defined within the Compliance Manual, under its Federal Award by either an approved competing continuation/renewal of designation application or other competitive application; or by an approved post-award request for such arrangements submitted within the project period (for example, change in scope).
3. Any and all procurements of supplies or services paid in whole or part with a Federal Award shall conform with 45 C.F.R. Part 75. Such procurement transactions shall be conducted in a manner that provides full and open competition consistent with the standards of 45 C.F.R. § 75.328.
4. All procurements of goods and services directly attributable to a Federal Award shall be allowable consistent with Federal Cost Principles.

5. Non-competitive proposals may only be used when:
 - a. The item is available only from a single source;
 - b. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
 - c. The Federal Agency expressly authorizes the non-competitive proposal in response to a written request from Memorial; or
 - d. Competition is determined to be inadequate after soliciting a number of sources.
6. A cost or price analysis shall be performed in connection with every procurement action paid for in whole or in part by the Federal Award in excess of the Simplified Acquisition Threshold as set by the Federal Acquisition Regulation at 48 C.F.R. subpart 2.1 and in accordance with 41 U.S.C. § 1908.
7. All Subrecipient agreements that provide Subawards that support the federal-approved scope of project must include provisions that address the following:
 - a. The specific portion of the approved scope of project to be performed by the Subrecipient;
 - b. The applicability of all Memorial's Federal Program requirements to the Subrecipient;
 - c. The applicability to the Subrecipient of any distinct statutory, regulatory, and policy requirements of other Federal Programs associated with their federal-approved scope of project;
 - d. Mechanisms for Memorial to monitor Subrecipient compliance and performance;
 - e. Requirements for the Subrecipient to provide data to Memorial necessary to meet Memorial's applicable federal financial and programmatic reporting requirements;
 - f. Provisions addressing record retention and access, audit, and property management; and
 - g. Requirements that all costs paid for by the federal Subaward are allowable consistent with Federal Cost Principles.
8. All Contracts with other providers for the provision of health services within the Federal Agency-approved scope of project must include the following:
 - a. The specific activities or services to be performed or goods to be provided;
 - b. Mechanisms to monitor contractor performance;
 - c. Requirements for the contractor to provide data necessary to meet Memorial's applicable federal financial and programmatic reporting requirements;
 - d. Provisions addressing record retention and access, audit, and property management; and
 - e. A schedule of rates and method of payment for such services.
9. Records must be maintained for all procurements—whether competitive or non-competitive—paid for in whole or in part under a Federal Award, and such records must include the rationale for the method of procurement, selection of Contract type, contractor selection or rejection, and the basis for the Contract price.
10. Any contractual or administrative issues arising out of procurements concerning Contracts (protests, disputes, claims, etc.) or how to take enforcement actions in the case of Subawards (collectively, “Disputes”) shall be initially resolved through reasonable methods established by Memorial in conjunction with Memorial's Chief Operating Officer or authorized designee. To the extent necessary, if such Disputes cannot appropriately be resolved or cured, Memorial, the contractor, or the Subrecipient may appeal to Memorial's Chief Executive Officer or authorized designee to take appropriate action. To the extent necessary, Memorial's Chief Executive Officer, Chief Operating Officer, or any of their authorized designees may work with Memorial's Office of the General Counsel, other legal counsel, and/or Memorial's Corporate Compliance Department to resolve the Disputes in a matter consistent with federal guidelines.

V. Monitoring of Subawards and Contracts

1. All contractors and Subrecipients shall be overseen and monitored to ensure their performance are in accordance with the terms, conditions, and specifications of their agreements and Contracts and to assure compliance with applicable federal requirements.

2. To accomplish the purposes of audit and oversight of contractors and Subrecipients, Memorial must have access to records and reports related to Federal Program activities to ensure that all activities and reporting requirements are being carried out in accordance with the provisions and timelines of their Contracts and agreements, including, but not limited to, making sure performance goals are achieved, UDS data is submitted by appropriate deadlines, and funds are used only for authorized purposes.
3. When monitoring contractors, Memorial shall:
 - a. Conduct periodic evaluations of contractor performance that are shared with the Board of Commissioners and management staff; and/or
 - b. Receive and review appropriate documentation at the time of Contract completion or renewal that the contractor has met the Contract's terms, conditions, and specifications.
4. Memorial shall utilize accepted methods of monitoring Subrecipients to ensure compliance with their agreements and federal guidelines governing receipt of the Subaward. Such accepted methods may include any of the following or a combination thereof:
 - a. Receiving/reviewing copies of the Subrecipient's governing board's meeting minutes;
 - b. Performing site visits;
 - c. Conducting regular check-in calls and updates regarding Federal Program requirements or new Federal Program policies;
 - d. Receiving/reviewing the Subrecipient's annual audit;
 - e. Conducting periodic joint meetings between the two entities' governing boards or between Memorial's key management staff and the Subrecipient's governing board;
 - f. Receiving/reviewing periodic written reports from the Subrecipient; and/or
 - g. Sharing data and creating systems for the sharing of financial and medical records for the purpose of Memorial's Federal Program data reporting.
5. When monitoring Subrecipients, Memorial shall:
 - a. Make documented, case-by-case determinations whether the agreement for the disbursement of Federal Program funds casts the party receiving the funds in the role of a Subrecipient, consistent with the characteristics outlined in 45 C.F.R. § 75.351;
 - b. Identify Subawards as such to the Subrecipient, and provide all applicable information to the Subrecipient as described in 45 CFR § 75.352(a)(1), including the total amount of the Federal Award committed to the Subrecipient;
 - c. If any of the data elements contained in 45 C.F.R. § 75.352(a)(1) change, the change(s) shall be included in a subsequent Subaward modification or amendment;
 - d. Ensure that such funds are only used for authorized purposes;
 - e. Ensure, by monitoring the ongoing activities of the Subrecipient, that the Subaward is used only for authorized purposes and that the Subrecipient maintains compliance with all applicable requirements specified in the Federal Award, including, but not limited to, those found in section 330 of the PHS Act, implementing program regulations, and grants regulations in 45 C.F.R. Part 75;
 - f. Review financial and performance reports required by Memorial to ensure performance goals are achieved, UDS data is submitted by appropriate deadlines, and funds are used only for authorized purposes;
 - g. Ensure that the Subrecipient takes timely and appropriate action on all deficiencies pertaining to the Subaward that may be identified through audits, on-site reviews, and other means;
 - h. Issue a management decision for audit findings pertaining to the Subaward; and
 - i. Consider whether the results of the Subrecipient's audits, on-site reviews, or other monitoring indicate conditions that necessitate adjustments to Memorial's records and whether Memorial must consider taking enforcement action against noncompliant Subrecipients as described in 45 C.F.R. § 75.371.

VI. Document Retention

Final Contracts, Subrecipient agreements, and related procurement records, financial records, supporting documents, statistical records, and all other records pertinent to the Federal Program (collectively, “Records”) carried out under Contracts and agreements consistent with federal document maintenance requirements must be retained for procurements paid for in whole or part under a Federal Award. As such, Memorial shall maintain Records for procurement actions paid for in whole or in part under the Federal Award that includes the rationale for the method of procurement, selection of Contract or agreement type, contractor selection or rejection, and the basis for the Contract price. This includes documentation related to non-competitive procurements. Such Records shall be retained for the longer of (a) a period of three years from the date of the submission of the final expenditures report to HHS, or (b) the minimum period required by Schedule Numbers GS1-SL and GS4 of the General Records Schedules promulgated by the Florida Department of State Division of Library and Information Services.

VII. Regulatory Standards and References

Section 330(k)(3)(I) and Section 330(q) of the PHS Act; 42 C.F.R. § 51c.113, 42 C.F.R. § 56.114, 42 C.F.R. § 51c.303(t), and 42 C.F.R. § 56.303(t); 45 C.F.R. Part 75, Subpart D; 45 C.F.R. Part 75, Subpart E: Cost Principles; and Section 1861(aa)(4)(A)(ii) and Section 1905(l)(2)(B)(ii) of the Social Security Act.

VIII. Interpretation and Administration

Administration and Interpretation of this Policy is the responsibility of the CPO.