

## Policy Notice-11-02: Clarification of Legislative Language Regarding Contracting with For Profit Entities

**History:** First issued March 6, 1997, to Parts A and B of the Ryan White HIV/AIDS Program Grantees as a “Dear Colleague” letter; reissued on June 1, 2000.

Parts A, B and C of the Ryan White HIV/AIDS Program permit Grantees to contract with for-profit entities under certain limited circumstances. Specifically, Parts A, B and C funds may be used to *“provide direct financial assistance”* through contracts with *“private for-profit entities if such entities are the only available provider of quality HIV care in the area.”*<sup>1</sup> This Program policy provides formal clarification of this legislative language.

1. Based on the Ryan White HIV/AIDS Program legislative limitations, Parts A, B, and C Grantees and other contracting agents including Part B Consortia must observe the following conditions when developing and implementing Requests for Proposals (RFP) and other local procurement procedures.
  - a. *“Only available provider”* means that there are no non-profit organizations able and willing to provide a particular *“quality HIV/AIDS care”* (core medical or support service), and the Grantee or the contracting agent has documented this fact.
  - b. *“Quality HIV/AIDS care”* must be defined in a reasonable manner and take into account clinical performance measures issued by the Health Resources and Services Administration’s HIV/AIDS Bureau. Quality HIV/AIDS care **may not** be defined exclusively as a numerical score in a RFP process (i.e., all funds go to the highest scored proposal, regardless of corporate status). An entity may only be deemed incapable of providing quality HIV/AIDS care if written documentation of substantive deficiencies of quality care exists.
  - c. Cost of service **may not** be the sole determinant in the vendor selection processes, whether internal or external (i.e., all funds go to the lowest bidder regardless of corporate status). However, Grantees and contracting agents should not overlook cost considerations in developing and implementing RFP processes and are in fact expected to seek maximum productivity for each Ryan White HIV/AIDS Program dollar.
  - d. Grantees and contracting agents must prohibit non-profit contractors from serving as conduits who pass on their awards to for-profit corporations, and may find it necessary to monitor membership of corporate boards to enforce this prohibition. Federal Grants Management Policy is clear that eligibility requirements that apply to first-level entities cannot be evaded by passing awards through to second- or subsequent-level entities that could not have received awards in the original competition. Ultimately, the primary Grantee remains the responsible fiscal agent for the federal funds.

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<sup>1</sup> Sections 2604(b), 2613(a)(1), 2651(e)(3), and 2652(b)(1)(B) of the Public Health Service Act.

- e. Proof of non-profit status (local and/or state registration and approved articles of incorporation) should be required of all provider/contractor applicants claiming such status. Grantees and contracting agents are also strongly advised to require copies of letters of determination from the Internal Revenue Service.
  - f. Parts A, B and C Grantees and their contracting agents **may not** contract with non-profit and for-profit entities for the same service in the same geographic area unless qualified non-profit providers do not have the capacity to meet identified need.
  - g. Failure to comply with the above requirements may result in required return of Parts A, B or C funds to the federal government, suspension of grant awards, or other remedies deemed necessary.
2. When developing and publishing RFP materials, Parts A, B and C Grantees and/or their contracting agents are strongly encouraged to include disclaimers advising private for-profit organizations of the significant legislative barriers to receiving contracts. Alternatively, and if local/state regulations and laws allow it, Grantees may seek to define "qualified applicants" at the beginning of the process in a way which would save private for-profit organizations the time and effort needed to develop applications, which could not be considered for funding.

Questions about this program policy should be directed to the Grantee's Project Officer.