

WORKFORCE DEVELOPMENT BOARD
Workforce Innovation and Opportunity Act Area 8

Policy number	100
Subject	Procurement
This policy obsoletes	None
May apply for waiver	NA
Board approved	2/8/2017
Effective date	2/8/2017
Revisions approved	3/3/17 2/22/18

Purpose

All procurement transactions of the Area 8 Workforce Development Board (WDB) and sub-grantees shall be conducted in a manner that provides, to the maximum extent possible, opportunity for free and open competition. Policies and procedures governing procurement shall ensure that all goods and services are obtained in an effective and efficient manner, which is consistent with the provisions of applicable federal, state, and local laws, rules, and regulations.

Background

WIOA Sec. 184(a)(3)(A) requires each State (including the Governor of the State), local area (including the chief elected official for the area), and provider receiving funds under this title, to comply with the appropriate uniform administrative requirements for grants and agreements applicable for the type of entity receiving the funds, as promulgated in circulars or rules of the Office of Management and Budget (OMB). OMB Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Final Rule Title 2 of the Code of Federal Regulations; 2 CFR 200, supersedes and streamlines requirements from OMB Circulars A-21, A-87, A-110, A-122, A-89, A-102, A-133 and the guidance in Circular A-50 on Single Audit Act follow-up. 2 CFR 200, also referred to as the “Super Circular”, consolidates the guidance previously contained in the aforementioned citations into a streamlined format that aims to improve both the clarity and accessibility of the guidance. The effective date of 2 CFR 200 is December 26, 2014. Fiscal policies and OMB Circulars A-87, A-110, A-122 and A-133 requirement are still in effect for funding distributed prior to December 26, 2014. Funding awarded after December 26, 2014 must be in compliance with 2 CFR 200. Procurement standards referenced in 2 CFR 200.110 and 200.317 -

200.326, allow for nonfederal entities to continue to comply with procurement standards in previous OMB guidance for one additional fiscal year after this part goes into effect (June 30, 2016).

The U.S. General Services Administration defines contracting techniques.

Action

DEFINITIONS

- A. Award** – A contract, grant sub-contract, sub-contract, sub-grant, or other type of legal instrument
- B. Awardees** - Any of the entities receiving the award, such as contractors or grantees
- C. Cost-Reimbursement Contracting** – A type of acquisition technique that provides for payment of allowable incurred costs, to the extent prescribed in the contract. These contracts establish an estimate of total cost for the purpose of obligating funds and establishing a ceiling that the contractor may not exceed (except at its own risk) without the approval of the contracting officer
- D. Firm-Fixed-Price Contracting** – A type of acquisition technique that provides for a price that is not subject to any adjustment on the basis of the contractor’s cost experience in performing the contract. This contract type places upon the contractor maximum risk and full responsibility for all costs and resulting profit or loss. It provides maximum incentive for the contractor to control costs and perform effectively and imposes a minimum administrative burden upon the contracting parties
- E. Immediate Family Member** - Includes a spouse, son, son-in-law, daughter, daughter-in-law, mother, mother-in-law, father, father-in-law, brother, brother-in-law, sister, sister-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent, and/or grandchild
- F. Performance-Based Acquisition** (formerly “Performance-Based Contracting”) - A technique for structuring all aspects of an acquisition around the purpose and outcome desired as opposed to the process by which the work is to be performed (i.e. results-driven)
- G. Procurement** - The process which leads to any award of WIOA Title I funds
- H. Request for Proposal (RFP) or Request for Quote (FRQ)**- Purchases for services for \$100,000 or more, can be awarded based not only on price, but also to the firm whose proposal is most advantageous to the program The Area 8 board reserves the right to complete RFP/RFQ for services less than \$100,000 as well.
- I. Service Provider** - Any public agency, private nonprofit organization, or private-for-profit entity that delivers core and/or intensive and/or training services to WIOA participants, with the exception of an ITA. Awards to service providers may be made by contract, sub-contract, or other legal agreement as approved by the WDB of Area 8.
- J. Sub-grantee** - Any member county of Area 8 -shall utilize the most restrictive Procurement standard their local county policy or as sighted in the policy.

- K. Sub-recipient** - The legal entity to which an award is made and accountable for the use of the WIOA funds. For WIOA purposes, distinguishing characteristics of a sub-recipient include items such as determining eligibility of applicants, enrollment of participants, performance measured against meeting the objectives of the program, responsibility for programmatic decision-making, responsibility for compliance with program requirements, and use of the funds awarded to carry out a WIOA program or project. Service Providers are considered sub-recipients and not vendors
- L. Vendor** – An entity, such as a training provider, offering a standard published price for the general public
- M. Youth Service Provider** - An entity or individual identified by the Area 8 WIB and sub-grantees in accordance with Section 123 of WIOA to provide and/or deliver youth activities and/or services

MINIMUM STANDARDS

A. Code of Conduct

1. Area 8 Conflicts of Interest

No member of the Area 8 Board or Youth Committee shall cast a vote on, or participate in, any decision-making capacity on the provision of WIOA Title I programs/services or Area 8 matters that provide a direct or apparent financial benefit to said member, business partner, or an immediate family member or the member's agency or organization.

When said member abstains from voting due to a conflict of interest or potential conflict of interest, the Area 8 minutes shall both reflect the abstention and the rationale for the abstention.

2. Staff Conflicts of Interest

No individual in a decision-making capacity shall engage in any activity, including participation in the selection, award, or administration of a contract agreement supported by WIOA funds if a conflict of interest or the appearance of a conflict of interest exists.

A conflict of interest would arise when said individual, an immediate family member or business partner(s) is employed or about to gain employment with an organization selected for the award of a contract agreement supported by WIOA Title I funds.

B. Drug-Free Workplace

The Area 8 WIB and sub-grantees will comply with the Drug-Free Workplace Act of 1988, codified at 29 CFR Part 98.

C. Competition

The Area 8 WIB and sub-grantees shall conduct all procurement to ensure that free and open competition exists.

1. Free and Open Competition

All contracts must be performance-based, firm-fixed-price, or cost reimbursement-based. To promote free and open competition, the Area 8 WIB and sub-grantees shall ensure that all transactions will be free and open, and shall not:

- a. Place unreasonable requirements on firms and organizations in order for them to qualify to do business and/or provide services
- b. Require unnecessary experience or excessive bonding
- c. Engage in noncompetitive pricing practices between firms or organizations or between affiliated companies or organizations
- d. Engage in noncompetitive awards to consultants that are on retainer contracts
- e. Participate in organizational conflicts of interest
- f. Specify only a “brand name” product instead of allowing “an equal” product to be offered;
- g. Create overly restrictive specifications
- h. Include any arbitrary action in the procurement process

2. RFP/RFQ Solicitations

The Area 8 WIB and sub-grantees will:

- a. Solicit offers by disseminating a Request for Proposals or Quote (RFP/RFQ) or to an adequate number of qualified sources to ensure competition (generally, sources included on the sub-grantees RFP/RFQ mailing list) and advertising in one or more newspapers designed to reach service providers
- b. Ensure that each RFP/RFQ includes a Statement of Work or Specifications, including a description of the requirements for time, place, and methods for the performance of the service
- c. Ensure that each RFP/RFQ includes the deadline date and time the proposal must be submitted and that all proposals received are stamped with the date and time the original proposal was received
- d. Ensure that each RFP/RFQ requires a line item budget
- e. Ensure that each RFP/RFQ describes the solicitation process, including provisions for protest or appeal of the final award
- f. Ensure that changing the service provider cannot effect the current active clients from participating in the program, by ensuring the new service provider factors in the additional cost of transferring and serving the incumbent provider’s customers when submitting their proposal
- g. Ensure that each RFP/RFQ identifies all significant evaluation or rating factors and the relative importance of each factor
- h. Ensure that the evaluation factors include minimum thresholds that, if not met, require disqualification

- i. Negotiate with any or all bidders determined through the rating process to be responsive and advantageous to the program, and to notify unsuccessful bidders in a reasonable amount of time
- j. Pending successful contract negotiation and available funding, award a contract to the bidder(s) who is/are successful

3. RFP/RFQ Mailing List(s)

The Area 8 WIB and sub-grantees shall ensure that all qualified lists of persons, firms, or other organizations used in acquiring services are current and include sufficient numbers of qualified sources to ensure maximum open and free competition.

REASONABLENESS OF COST

A. Determination Required

Documentation of cost reasonableness is required for every procurement action, including contract modifications (except for modifications where a determination has been made that planned modifications do not have a monetary effect). Acceptable methods of documenting cost reasonableness are price analysis and cost analysis. In addition to other evaluation factors used for price or cost analysis, where applicable, the Area 8 WIB and sub-grantees shall obtain independent estimates prior to soliciting for goods and/or services.

B. Price Analysis

1. Price analysis is the process of examining and evaluating a price, without looking at the estimated cost elements and proposed profit of the offer or whose price is being evaluated.
2. Price analysis will be performed on every procurement action.
3. Price analysis techniques shall include:
 - a. Comparison of proposed prices with independent estimates of cost developed by the Area 8 sub-grantees;
 - b. Comparison of competitive price quotations;
 - c. Comparison of prior quotations and contracts with current quotations for the same or similar items;
 - d. Use of yardsticks or parametric relationships to point out apparent gross differences (e.g., dollars per placement, price per instruction hour, price per participant training hour, etc.)
 - e. Comparison of prices on published price lists with published market prices of commodities, including discount or rebate schedules.

C. Cost Analysis

1. Cost analysis is the review and evaluation, element by element, of the cost estimate supporting a company's proposal for the purpose of pricing a contract.

2. A cost analysis is necessary when the proposer is required to submit the elements of the estimated cost, when adequate price competition is lacking, and for sole-source procurements, including contract modifications (except for modifications where a determination has been made that proposed modifications do not have a monetary effect), unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. Cost analysis includes evaluation of:
 - a. The supporting data submitted by the proposer
 - b. The cost elements
 - c. The factors the proposer considered in developing the estimated cost of performing the specified work

D. Profit or Program Income

1. If profit or program income is included in the price, the Area 8 WIB and sub-grantees shall negotiate profit or program income as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is required.
2. To establish a fair and reasonable profit, consideration shall be given to:
 - a. The complexity of the work to be performed
 - b. The risk borne by the contractor
 - c. The contractor's investment
 - d. The amount of subcontracting
 - e. The quality of the contractor's past performance
 - f. Industry profit rates in the surrounding geographical area for similar work
 - g. Market conditions in the surrounding geographical area
3. Program income earned by the contractor must be reported to the agency issuing the contract along with a plan of how it will be expended for program activities. Program income must be spent for program activities only. The requirements governing the use of program income are found at 29 CFR 95.24 (non-governmental) and 29 CFR 98.25 (governmental). The WIOA regulations at 668.200(a) (5) require the "addition method" to be used to account for program income, as does Part 95.

SELECTION OF SERVICE PROVIDERS

A. Demonstrated Effectiveness

Service providers for services under WIOA Title I will be selected competitively on the basis of their demonstrated ability to effectively deliver the services required.

1. Determination of Program Effectiveness

A proposer's demonstrated ability to effectively deliver the services required in the RFP/RFQ will be in writing and completed prior to the award of a grant, sub-grant, contract, or subcontract. A copy of this determination will be placed in the procurement file.

2. Administrative Funds

The Area 8 WIB and sub-grantees will ensure that, for all services provided to participants through contracts, grants, or other agreements with a service provider, such contract, grant, or agreement shall include appropriate amounts necessary for administration. Administrative costs must be accurately identified in all contracts. Examples of administrative

- ◆ costs include:
- ◆ Accounting
- ◆ Some indirect costs (e.g. shared costs)
- ◆ Management Information Systems (MIS)
- ◆ Management or Director's time devoted to project
- ◆ Any other non-program personnel

3. Duplication of Services

WIOA Title I funds will not be used to duplicate facilities or services available (with or without reimbursement) from Federal, State, or local sources unless it is demonstrated in writing that alternative facilities or services would be more effective or more likely to achieve Local Workforce Area # 8's performance goals.

B. Youth Service Provider Selection

The competitive process outlined in this policy will be used to select all Youth service providers. Requests for proposals (RFP) or Request for Quote (RFQ) for youth programs must be conducted by Area 8 One-Stop systems, in accordance with the following steps. Area 8 Youth RFP/RFQs:

1. Select an Area 8 RFP/RFQ team
2. Develop the RFP/RFQ, which must include the required youth elements
3. Prepare a timeline of the RFP/RFQ process,
4. and offer applicants a question and answer period by email or in person through s bidders' conference/email questions
5. Publish public notices throughout the region
6. Conduct bidder conferences, if needed
7. Accept by email bids to a designated address and/or Date hard copy bids and open envelopes publicly. The format for submission will be outlined in each RFP/RFQ.
8. Select a rating team, which should exclude One-Stop staff members when possible
9. Conduct a training session for the rating team
10. Compile rating scores
11. RFP/RFQ team will recommend providers, based on results of the rating process
12. Conduct price and cost analysis
13. Forward recommendations to the Area 8 Executive Committee, Youth Committee or WDB for approval.
14. Area 8 One-Stop system will notify the approved providers; and Area 8 the fiscal agent will negotiate the contract with the provider/s.

All of the above steps must be documented and a file maintained by the WDB and the sub-grantee in the regional One-Stop system for auditing and monitoring purposes.

Note: The \$100,000 minimum is not applicable for youth procurement.

Discretion of the Local WDB

Per Training and Employment Guidance Letter (TEGL) No. 21-16, the State has the authority to establish a policy regarding the provision of youth activities the State determines are likely to enhance the performance of the program. With the implementation of CCMEP and the ongoing relationship between the local WDB and the CCMEP lead agency, the local WDB may determine that the CCMEP lead agency could most efficiently and cost-effectively provide specific youth services and activities. Therefore, the local WDB may allow the CCMEP lead agency to conduct any or all the following services and activities within the lead agency's county of designation:

- a. Outreach;
- b. WIOA youth program eligibility determinations;
- c. Completion of the CCMEP comprehensive assessment (WIOA objective assessment);
- d. Completion of the CCMEP individual opportunity plan (WIOA individual service strategy);
- e. Case management;
- f. Development and management of individual training accounts (ITA) and on-the-job training (OJT);
- g. Provision of labor market information and labor exchange activities, including but not limited to, resume development and job placement;
- h. Supportive services; and
- i. Follow-up services.

The provision of the remaining activities and program services and/or elements will either be competitively procured or provided through partner resources.

If the local WDB allows the CCMEP lead agency to conduct WIOA youth-funded services and activities, the local WDB must ensure there is a sub-recipient agreement in place with the CCMEP lead agency to demonstrate how these activities will be provided.

The local WDB must make sure the amount of WIOA youth program funds provided to the CCMEP lead agency for the delivery of such activities and services and/or elements are reasonable and do not infringe on the local area's ability to competitively procure and contract with a youth program provider(s) to deliver the remaining program elements/services. The local WDB must be mindful of all federal mandates regarding the use of WIOA youth program funds and any statutory requirements for spending levels on the program and certain program services and/or elements being procured, specifically the 75% spending requirements for out-of-school youth and the 20% spending requirements for work experience.

CCMEP, in conjunction with the WIOA youth program, serves youth and young adults possessing many barriers to employment and training, making these individuals harder to serve. Hard to serve individuals typically need more costly services and/or elements. Therefore, the local WDB must ensure sufficient funds are available for the program elements being procured as these program elements are designed to reduce these barriers.

Additionally, the local WDB must also make certain a fair and open competition is conducted for the procurement of the remaining youth program activities and services, including enough youth program funds available to solicit a competitive procurement.

The State holds the right to require that a percentage of WIOA youth program funds be available for procurement if it is determined that local WDBs did not allocate adequate funding for the delivery of procured services.

Within the board resolution that allows the lead agency to deliver one or more of the above services, the local WDB must also specify whether each CCMEP lead agency in the local area is permitted to bid on the request for proposal (RFP) for the remaining WIOA funded youth program services and activities. If this language is absent for any CCMEP lead agency, then by default, the CCMEP lead agency is not permitted to submit a proposal in response to the RFP for the remaining services. If a CCMEP lead agency is specifically permitted by the local WDB to participate in the competitive procurement, then the local WDB must ensure that the CCMEP lead agency is not part of the development of such RFP.

C. Adult and Dislocated Worker Services Provider Selection may include but not be limited to:

- a. OMJ Operators Contract
- b. Career Services contract
- c. Adult and Dislocated Worker Services Contract

The Area 8 WIB and sub-grantees will seek all Adult and Dislocated Worker service providers for core and intensive services through the competitive process outlined in this policy.

DOCUMENTATION

Procurement files shall be maintained for each procurement action. Procurement files shall contain, if applicable, the following general procurement items:

- a. Justification for the type of procurement method used
- b. The price and cost analysis performed, including the independent estimates made by the grant recipient prior to receiving bids or based on past state appropriations.
- c. Copies of each proposal solicitation issued, including all evaluation factors
- d. Copies of advertisements announcing procurement actions
- e. Copies of all proposals received
- f. Summary of any negotiations, including changes made to the curriculum, duration, technical requirements (such as instructor qualifications), or outcomes
- g. Summary of the negotiations establishing fair and reasonable profit or program income
- h. Copy of the evaluation results of the proposals received
- i. Justification of the sound business reasons for rejecting any proposals
- j. The original RFP and RFQ

- k. The demonstrated ability of service providers to effectively deliver the services required

Board Approved Disapproved _____

Date 3/3/17

Updated Board Executive Committee Action Item

Date: 2/22/18

Motion made by: Rob Radway

Motion seconded by: Carol Knapke

Vote 4 aye nay abstain motion carries motion rejected