

Northwest Workforce Council

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POLICY AND PROCEDURES DIRECTIVE

DATE ISSUED: February 23, 2016
SUBJECT: Policies and Procedures, including Conflict of Interest, for the Procurement of Supplies, Equipment, and Services
REFERENCE: WIOA 01-23

SECTION I. POLICY

1.1 Purpose

These policies and procedures are enacted by the Northwest Workforce Council (NWC) for the procurement of supplies, equipment, and services to ensure that materials and services are obtained in an efficient and effective manner in compliance with applicable federal and state laws and regulations.

1.2 Compliance

The policies and procedures herein enacted are structured to comply with the Office of Management and Budget (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, as well as the Workforce Innovation and Opportunity Act (WIOA – Public Law 113-128).

1.3 Policy

It is the intent of these policies to establish an efficient system whereby procurement transactions are, when practicable, conducted in a manner which provides maximum open and free competition and eliminates organizational and personal conflicts of interest, in compliance with procurement standards specified in 2 CFR 200.318 and 200.319. The NWC shall insure that minority and women-owned businesses are provided the maximum practicable opportunity to compete for contracts.

SECTION 2. PROCUREMENT

- 2.1 **Procurement Mechanisms** (2 CFR 200.320) - Procurement of supplies, equipment, and services shall be made by one of the following methods:
- a. Micro purchases (aggregate dollar amount \$3,000 or less, or \$2,000 or less in the case of construction subject to Davis-Bacon Act)
 - b. Small purchase procedures (\$3,001 - \$150,000)
 - c. Formal Advertising (Sealed Bids) (\$150,001 and above)
 - d. Competitive Proposals (\$150,001 and above)
 - e. Non-competitive Proposals (Sole Source)

2.2 Mechanism Selection

It shall be the decision of the Northwest Workforce Council's Executive Director, in consultation with the Executive Committee, to select the appropriate procurement mechanism for goods and services with the exception of micro purchases or small purchases (a. and b. above). Such decision shall take into account the cost of the goods or services, the adequacy or precision with which the goods or services can be described, the availability of qualified bidders, the appropriateness of selection on the basis of price, and the urgency with which goods or services are needed. Due consideration shall be given to the cost efficiency of lease/rental versus purchase of equipment or supplies.

2.3 Definition of Procurement Mechanisms

a. **Micro Purchases** – Micro purchases are relatively simple and informal procurement of supplies or services below the aggregate amount identified above. To the extent practicable, NWC will distribute micro-purchases equitably among qualified suppliers. Micro purchases may be awarded without soliciting competitive quotations if NWC considers the price to be reasonable. Purchases will be considered adequately documented by purchase orders, vouchers or bills, sales slips, or memorandums of oral price quotations. Formal contracts will be required only for the purchase of personal or professional services.

b. **Small Purchase Procedures** - Like micro purchases, small purchase procedures are those relatively simple and informal procurement methods for the purchase of services, supplies or other property where the aggregate cost is above the Micro Purchase level, but does not exceed \$150,000. Price or rate quotations, including specification of the service, supply or other property, the unit price, and timeframe and manner of performance, shall ordinarily be obtained from an adequate number of qualified sources, generally at least three, to allow for a price analysis. The price analysis from vendors will be attached to the selected vendor's contact or procurement file. For these purposes, the acquisition cost of property, supplies or services means the net invoice unit cost of the item or service. Other charges such as installation or per diem shall not be included in the unit acquisition cost.

Formal contract will be required only for the purchase of personal or professional services. Other purchases will be considered adequately documented by purchase orders, vouchers or bills, sales slips, or memorandums of oral price quotations.

c. **Sealed Bids (Formal advertising)** (purchases of \$150,001 – and above): This is a competitive procurement process which will be used when the nature of the product or service permits development of precise specifications so that prospective suppliers have an identical understanding for the requirements. Bids are solicited publicly through advertising using an "Invitation for Bids" (IFB). In response to this type of solicitation, "formal" sealed bids are submitted which are not subject to negotiation or change. The sealed bids are opened publicly and a firm fixed-price contract is awarded to the lowest responsible bidder whose bid most closely conforms to the specifications in the Invitation for Bids. To be

feasible, this type of solicitation must have two or more suppliers willing and able to compete, must lend itself to the development of a firm fixed price, and must be for goods or services which can appropriately be selected on the basis of price alone. This is the preferred method for procuring construction on a scale requiring a competitive process.

d. Competitive Proposals (purchases of \$150,001 – and above): The competitive proposals process is used when the nature of the service or product precludes the development of sufficiently precise specifications to allow all prospective suppliers to have an identical understanding of the requirements. A Request for Proposals is publicized, negotiations are conducted with more than one of the sources submitting offers and either a fixed price or cost reimbursement is awarded as appropriate.

e. Noncompetitive Proposals (Sole Source): Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:

1. The item is available only from a single source; or
2. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation; or
3. The federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-federal entity; or
4. Competitive solicitation has not resulted in adequate or acceptable proposals or bids.
5. Purchases over \$150,000 must be approved by the Executive Committee.

SECTION 3. FINANCIAL DOCUMENTS

3.1 Contracting Mechanisms

For purchases over \$150,000, NWC staff shall determine whether the recipient of the funds awarded will perform as a contractor or subrecipient, and use the corresponding agreement format, contract or subaward, based on that classification, following guidance provided in 2 CFR 200.330 and Washington WorkSource System Policy 5250. Any agreement with a subrecipient shall take the form of a subaward, and include required elements identified in 2 CFR 200.331 and WorkSource System Policy 5250.

In compliance with 2 CFR 200.330, NWC will classify eligible providers of WIOA Adult, Dislocated Worker, and Youth services as subrecipients, and any corresponding agreements shall be in the form of a subaward.

SECTION 4. PAYMENTS

4.1 Methods of Payment

The two methods of payment which may be incorporated into financial agreements are:

- a) fixed-price
- b) cost reimbursement.

4.2 Definition of Methods of Payment

- a) Fixed-price agreements are contracts or subawards which specify an exact price to be paid for a specific amount of work. The price is not subject to adjustment by reason of cost experience of the contractor or subrecipient in performing under the award, unless a clause provides for equitable adjustment or other revision upon the occurrence of certain contingencies.
- b) Cost-reimbursement agreements are contracts or subawards which establish an estimate of total costs for the purpose of obligating funds and a ceiling which may not be exceeded. The agreement provides for payment of all allowable costs to the extent prescribed by the agreement.

SECTION 5. SOLICITATION

5.1 Procedures for Issuance of Invitations for Bids (IFB)

Where the Northwest Workforce Council's Executive Director has determined that Sealed Bids (formal advertising) is the appropriate method for the procurement of goods or services, public notices inviting bids shall be published in the newspaper of highest circulation in the area at least twice. Once during each of two consecutive weeks and not less than one week prior to the closing date for submittal.

Closing dates shall be established on the basis of administrative timelines developed for the particular procurement, while assuring sufficient response time is provided. Additionally, notice of Invitation for Bid (IFB) shall be posted in appropriate public locations within the area. Complete sets of bid specifications shall be available at the Office of the Fiscal Agent. IFB specifications will clearly set forth all requirements which the bidder must fulfill in order for the bid to be evaluated. The specifications shall at a minimum include:

- a) the deadline for submission;
- b) date, time and place that bids will be opened;
- c) start and end dates for the prospective contract;
- d) complete and precise description of goods or services;
- e) required documentation of potential contractors' integrity, record of past performance under similar contracts, and financial and technical resources indicating the ability to successfully perform;
- f) eligibility restrictions for bidders;
- g) a statement of compliance with applicable federal and state and local regulations including the specific assurances and certifications which will become part of the contract;

- h) the procedures which will be used to evaluate bids;
- i) required budget, planning, and signature pages;
- j) the date, time and place that selection will be announced.

5.2. Procedures for Issuance of Requests for Proposals

When the Council's Executive Director has determined that the Competitive Proposals process is the appropriate method for the procurement of goods or services, proposals shall be solicited from an adequate number of qualified sources to ensure reasonable competition.

Potential sources for proposals shall include former contractors and subrecipients with satisfactory performance records, a list of potential bidders established annually by response to RFPs, IFBs and unsolicited inquiries, and public advertising in the newspaper of highest circulation once during each of two consecutive weeks and not less than one week preceding the closing date.

Notice of Request for Proposals may be posted in appropriate public locations within the Workforce Development Area. Closing dates shall be established on the basis of administrative timelines developed for the particular procurement. A complete set of RFP specifications shall be available at the office of the Grant Recipient/Administrative Entity. A bidder's conference shall be held prior to the closing date to clarify instructions in the RFP and answer potential contractors' questions. At a minimum, RFP specifications shall include:

- a) the deadline for submission;
- b) the date(s) on which review and notification will be completed;
- c) start and end dates of the prospective contract;
- d) identification of the factors and process used in evaluation of proposals including their relative importance;
- e) dates for negotiation with prospective contractors;
- f) required documentation of potential contractors' integrity, record of past performance and financial and technical resources indicating the ability to successfully perform;
- g) the proposed contracting instrument;
- h) the maximum amount of available funds;
- i) eligibility restrictions for bidders;
- j) a statement of compliance with the applicable federal and state and local regulations including the specific assurances and certifications which will become part of the contract;
- k) a complete description of the goods or services which are sought;
- l) budget, plan and report forms and pertinent technical definitions;
- m) requisite signature pages.

SECTION 6. EVALUATION

6.1 Evaluation of Formal (Sealed) Bids

Where Sealed Bids (Formal Advertising) is the selected procurement method, sealed bids shall be received by the Grant Recipient/Administrative entity and opened in public at the place and time specified in the IFB. Evaluation of bids shall consist of three stages:

- a) Comparison of the specifications of the submitted bids to the specifications set forth in the Invitation for Bids to determine whether minimum requirements have been met.
- b) Determination of whether bidders qualify as responsible and capable, taking into account integrity, record of past performance, and financial and technical resources.
- c) Comparison of bid prices of qualified bidders.

6.2 Evaluation of Request for Proposal Responses

Where a competitive proposal process is the selected procurement method, proposals shall be received by the Fiscal Agent no later than the date and time specified in the RFP. Evaluation of Proposals shall adhere to criteria specified in the RFP. This evaluation shall be used to select offers for consideration which will then be negotiated into final form. The evaluation of written proposals shall result in a written rating which, though tailored to the specific requirements of the RFP will follow the general guidelines below. While a useful guide for many procurement processes, additional or different criteria may be established and identified in advance and specified in the RFP for particular procurements.

- a) Technical Proposal Rating 35%
 - i) Quality and completeness of Work Statement/Program Design
 - ii) Appropriateness of Services and Targeted Clients
 - iii) Participant Planning Summary / Performance Indicators
 - iv) Response to Special Conditions
- b) Budget and Cost Factors 35%
 - i) Adequate and Reasonable Budget and Cost Distribution
 - ii) Cost/Price Analysis and Performance Indicators
- c) Organizational Capability 30%
 - i) Organizational Structure and Personnel System
 - ii) Background/Experience of Staff
 - iii) Fiscal System and Audit Experience
 - iv) Prior Employment and Training Program Performance
- d) Special Consideration Bonus 5%
 - i) Community Based Organization of Demonstrated Effectiveness
 - ii) Women or Minority Owned Business

6.3 Evaluation Process

The evaluation of all bids and proposals, other than those falling under the micro purchase or small purchase procedures, will be conducted in two stages.

First, staff will receive and review all bids and proposals for compliance with the Workforce Innovation and Opportunity Act and other applicable federal, state, and

local laws and regulations, conduct a cost analysis, and will prepare tabulation sheets and recommendations.

Second, all bids and proposals which meet or exceed the minimum requirements as established by the solicitation shall be forwarded to the NWC's Executive Committee or designated standing Committee, along with staff recommendations, for formal review. This committee shall be charged with finalizing proposal ratings, insuring that program specifications comply with the governing plans and grants, ascertaining that there is not duplication of services and making recommendations to the full NWC.

SECTION 7. SELECTION

7.1 Selection Mechanisms

Selection of contractors will be made in accordance with the evaluation process for each type of solicitation and guidelines established in this section. The full NWC or the NWC Executive Committee may, upon review of materials and recommendations of staff, reject any or all bids/proposals and issue a second IFB or RFP.

7.2 Micro Purchase and Small Purchase

Micro and Small Purchase selections shall be made informally on the basis of available information such as product specifications and cost, in accordance with 2.3(a) and (b) above. The Fiscal Agent shall select suppliers.

7.3 Formal Sealed Bids

Formal competitive bids shall be evaluated in accordance with 6.1 above. Selection shall be made on the basis of the lowest price submitted by responsible bidder where specifications most closely coincide with standards established by the IFB. Final contract recommendations for approval for other than Micro Purchase or Small Purchase shall normally be made to the full NWC or to the Executive Committee when time constraints or other conditions dictate.

7.4 Competitive Proposals

Competitive Proposals shall be the process for selection of contractors and subgrantees where RFPs have been issued. After formal rating of proposals under 6.2, above, individual negotiations will be conducted with recommended candidates to finalize program design, budget and contracting detail. Negotiation shall be conducted by the Fiscal Agent. Final contract recommendations for approval shall normally be made to the full NWC or to the Executive Committee when time constraints or other conditions dictate.

7.5 Noncompetitive Proposals (Sole Source)

Noncompetitive Proposals (Sole Source) shall be used in accordance with 2.3(d) above and shall be conducted by the Grant Recipient/Administrative Entity. Final contract recommendations for approval shall normally be made to the full NWC or to the Executive Committee when time constraints or other conditions dictate.

SECTION 8. AWARD OF CONTRACTS OR SUBGRANTS

8.1 Contracts or Subawards

Contracts or subawards shall be awarded on the basis of the appropriate selection criteria established in Section 7 above. The Binding Document and Method of Payment shall be in accordance with the specifications established for the chosen procurement method. Fixed-price, Cost Reimbursement, and Professional Services contracts, other than Micro Purchase and Small Purchase shall normally be prepared by the Fiscal Agent and shall be reviewed and approved by the full NWC or the Executive Board. Contracts are considered final only when signatures are affixed by the NWC's Executive Director or designee and authorized signatory of Contractor.

SECTION 9. ADMINISTRATIVE STANDARDS

9.1 Code of Conduct

Northwest Workforce Council Officers, members, employees and agents shall neither solicit nor accept gratuities, favors or anything of monetary value from subrecipients, contractors, or potential subrecipients or contractors.

The prior paragraph does not apply where the financial interest is not substantial (not more than \$50.00) or the gift is an unsolicited item of nominal intrinsic value (not more than \$50.00).

9.2 Conflict of Interest

All procurement transactions whether negotiated or advertised, without regard to dollar amounts, shall be conducted in a manner which avoids conflicts of interest or the appearance of conflict of interest, and fully complies with NWC policy #01-37, Conflict of Interest, Code of Ethics and Protected Disclosure policy. No Northwest Workforce Council member, officer, staff or agent shall participate in the selection (including any decision-making capacity), award or administration of a contract if a real, implied or apparent conflict of interest would be involved. Such a conflict would arise when the member, officer, employee or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award.

Neither membership on the NWC nor the receipt of WIOA funds to provide training and related services shall be construed, by itself, to violate provisions of the WIOA or its regulations.

9.3 Penalties

Violation of the above standards shall result in the removal of NWC membership or the dismissal of employees and staff. Additionally, criminal penalties may be imposed as described in the Revised Code of Washington 42.23. Potential contractors / subgrantees who offer favors or items of monetary value in exchange for special consideration shall have their proposals/bids deemed invalid and shall not be

considered as candidates for future awards for a period of five (5) years. Criminal prosecution may also be pursued.

9.4 Handling of Disputes, Claims and Protests of Awards

Disputes, claims and protests arising from the implementation of the procurement procedures shall be made in writing and mailed to the Chair of the Northwest Workforce Council within five (5) working days of the alleged occurrence. Response to filed disputes, claims and protests shall be made in writing within ten (10) working days of receipt of protests. A hearing shall be convened by the Executive Committee as soon as is practicable and within ten (10) days of the written response, if the Executive Committee determines that a procedural error was made in the selection process or that a violation of federal law or implementing regulations has occurred. Decisions made by the Executive Committee shall be issued in writing within five working days.

9.5 Procurement Records

Adequate procurement records shall be kept on file for all procurements and shall contain, for all procurements in excess of \$150,000, at least the following information:

- a) justification for the procurement mechanism selected;
- b) justification for selection of contractors or subgrantees;
- c) basis for the costs of price negotiated.

9.6 Contract Provisions

Contracts shall be administered to assure contractor conformance with sound administrative practices and with terms, conditions and specifications of the contract. All contracts in excess of \$150,000 shall at a minimum contain provisions for:

- a) administrative, contractual and legal remedies where contractors violate or breach contract terms, including in the case of service providers, the failure to meet, for a sustained period, the performance outcomes of the contract;
- b) termination of the contract specifying the conditions and manner in which termination will occur;
- c) compliance with federal Equal Employment Opportunity requirements;
- d) compliance with the Davis-Bacon Act (40USC 276a);
- e) compliance with the 2 CFR 200, and the State of Washington applicable provisions;
- f) access to books, documents, papers and records of the contractor which are pertinent to the contract, by the Fiscal Agent or its agent, the State of Washington or its representative, or the representative of the Comptroller General of the United States.
- g) conflict of interest
- h) trainer qualifications
- i) anti-lobbying
- j) Clean Air Act & Clean Water Act
- k) Copeland Anti-Kickback Act
- l) program income

- m) maintenance of effort
- n) funding restrictions for "high risk" subrecipients including additional reporting and monitoring requirements

9.7 Public Disclosure

All records and documents pertinent to any procurement including contracts, subgrants, RFPs, IFBs and proposal rating documents shall be available for public inspection as specified in the Revised Code of Washington.

SECTION 10. LEGALITY

In the event that any section, subsection, paragraph, sentence or phrase of this policy statement is for any reason held to be invalid, illegal or unconstitutional, the remaining portions shall not be affected.

Addendum A

Competitive Process for Procuring Youth Service Providers

1. NWC staff secures a procurement manager to independently conduct the youth services provider procurement process. This individual would utilize tools and processes approved by the NWC, seeking a single comprehensive contract to be awarded for the geographic area comprising all of Island, San Juan, Skagit, and Whatcom Counties in Washington State to include both in-school and out-of-school activities.
2. Once the Project Manager has conducted the process and received applications (proposals) from qualified providers, the qualified proposals would be reviewed and evaluated by an independent review panel using the Council's published policy #01-23 *Policies and Procedures, Including Conflict of Interest, for the Procurement of Supplies, Equipment and Service*. The panel would be constituted of several workforce professionals, plus one member of the NWC youth committee, who is not a seated member of the full NWC. The proposals as reviewed would be without identifying information as to the applicant, to assure no conflict of interest in reviewing a submission from NWC.
3. The review panel would present a recommendation to the Board through the committee structure with a review of the process and summary of the successful application features, maintaining confidentiality as to the identity of the recommended applicant.
4. Once the applicant has been approved through the Council process, final negotiations will be conducted as needed, leading to a contract for the provider to begin providing services.