

MASSACHUSETTS WORKFORCE DEVELOPMENT SYSTEM

# Mass Workforce Issuance

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**100 DCS 01.102**

☒ **Policy**

☐ **Information**

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**To:** Chief Elected Officials  
Workforce Board Chairs  
Workforce Board Directors  
Title I Administrators  
Career Center Directors  
Title I Fiscal Officers  
DCS Operations Managers

**cc:** WIOA State Partners

**From:** Alice Sweeney, Director  
Department of Career Services

**Date:** May 12, 2016

**Subject:** Procurement and Contracting

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**Purpose:** To provide policy guidance to Local Workforce Development Boards (LWDB), One-Stop Career Center Operators and other local workforce investment partners with respect to the Commonwealth's policy regarding procurement and contracting requirements.

**Background:** The federal government has established standards for procurement and contracting to ensure that federally funded programs obtain goods and services in the most cost effective manner. These standards also ensure open and fair competition for all prospective providers.

**Policy:** This Policy outlines the requirements for procurement and contracting for all funds provided through the Department of Career Services (DCS), including, but not limited to, Workforce Innovation and Opportunity Act (WIOA). Attachments provide guidelines for developing and conducting solicitations, contracting and monitoring of contracts, and checklists for procurement and contract files.

**Action**

**Required:** All LWDBs and Program Operators must develop a local policy in compliance with state policy (contained in pages 1 through 12). The Attachments to this policy are provided for guidance. LWDBs and Program Operators may choose to adopt these guidelines and incorporate them into their policies.

Those Governmental entities and other organizations subject to more restrictive state or local procurement thresholds and requirements, e.g., Massachusetts General Laws Chapter 30B, must comply with the more restrictive policy.

**Effective:** Effective immediately for all federally funded programs administered by DCS.

**Inquiries:** Please email all questions to [PolicyQA@detma.org](mailto:PolicyQA@detma.org). Also, indicate Issuance number and description.

**References:** 2 CFR Part 200.317-200.326  
MGL Chapter 30B  
MGL Chapter 268A Massachusetts Conflict of Interest Law  
Sections 8301-8303 of Title 41 (Buy American Act)  
Environmental Protection Agency (EPA at 40 CFR Part 247)  
6002 of the Solid Waste Act  
Federal Acquisition Regulation (FAR) at 48 CFR Subpart 2.1  
Wagner Peyser Act 29 U.S.C 49 et seq.

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# PROCUREMENT

## A. Introduction

When procuring property and services under a Federal award, a state must follow the same policies and procedures it uses for procurements from its non-Federal funds. The state will comply with §200.322 Procurement of recovered materials and ensure that every purchase order or other contract includes any clauses required by section §200.326 Contract provisions. All other non-Federal entities, including subrecipients of a state, must follow paragraphs (B) through (G) of this policy.

## B. Procurement standards

- (1) Grantees and subgrantees must use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.
- (2) Grantees and subgrantees must maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
- (3) Grantees and subgrantees must maintain a written code of standards of conduct governing the performance of their employees engaged in the selection, award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in any way (including discussion, review and/or voting) in the selection, or in the award or administration of a contract supported by Federal or State funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:
  - (i) The employee, officer or agent,
  - (ii) Any member of his immediate family,
  - (iii) His or her partner, or
  - (iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value, based on the Commonwealth's Ethics Rules. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantees and subgrantees, officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

In addition:

1. A State Board member or a Local Board member must neither cast a vote on, nor participate in any decision-making capacity, on the provision of services by such member (or any organization which that member directly represents), nor on any matter which would provide any direct financial benefit to that member or a member of his/her immediate family. Neither membership on the State Board, the Local Board nor the receipt of WIOA funds to provide training and related services, by itself, violates these conflict of interest provisions.
- (4) None of the funds made available under title I or II or under the Wagner-Peyser Act (29 U.S.C. 49 et seq.) may be expended by a grantee or subgrantee unless the grantee or subgrantee agrees that in expending the funds the grantee or subgrantee will comply with sections 8301 through 8303 of title 41, United States Code (commonly known as the "Buy American Act").

- (5) Grantee and subgrantee procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.
- (6) To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.
- (7) Grantees and subgrantees are encouraged to use Federal excess/surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.
- (8) Grantees and subgrantees are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.
- (9) Grantees and subgrantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.
- (10) Grantees and subgrantees will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to, the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.
- (11) Grantees and subgrantees will use time and material type contracts only--
  - (i) After a determination that no other contract is suitable, and
  - (ii) If the contract includes a ceiling price that the contractor exceeds at its own risk.
- (12) Grantees and subgrantees alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the grantee or subgrantee of any contractual responsibilities under its contracts. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.
- (13) Grantees and subgrantees will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency. A protestor must exhaust all administrative remedies with the grantee and subgrantee before pursuing a protest with the state or Federal agency. Reviews of protests by the Federal agency will be limited to:
  - (i) Violations of Federal law or regulations and the standards of 2CFR Part 200.317 (violations of State or local law will be under the jurisdiction of State or local authorities) and
  - (ii) Violations of the grantee's or subgrantee's protest procedures for failure to review a complaint or protest. Protests received by the Federal agency other than those specified above will be referred to the grantee or subgrantee.

### **C. Competition**

The Procuring Entity must establish procurement procedures which promote and maximize the competitive procurement process. At a minimum, the procurement process must:

- a. appropriately target resources based on approved job training plans;
  - b. be made impartially and at "arms-length";
  - c. be based upon demonstrated performance;
  - d. include a determination of cost/price reasonableness;
  - e. be in compliance with all related federal and state laws, regulations and policy.
- (1) All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of §200.319. Some of the situations considered to be restrictive of competition include but are not limited to:
  - i. Placing unreasonable requirements on firms in order for them to qualify to do business,
  - ii. Requiring unnecessary experience and excessive bonding,
  - iii. Noncompetitive pricing practices between firms or between affiliated companies,
  - iv. Noncompetitive awards to consultants that are on retainer contracts,
  - v. Organizational conflicts of interest,
  - vi. Specifying only a "brand name" product instead of allowing an "equal" product to be offered and describing the performance of other relevant requirements of the procurement, and
  - vii. Any arbitrary action in the procurement process.
- (2) Grantees and subgrantees will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference.
- (3) Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all formal solicitations:
  - (i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and
  - (ii) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.
- (4) Grantees and subgrantees will ensure that all pre-qualified lists of persons, firms, or products which are used in acquiring goods and services are current and include sufficient qualified sources to ensure maximum open and free competition. Also, grantees and subgrantees will not preclude potential bidders from qualifying during the solicitation period.

#### **D. Methods of procurement to be followed—**

The method of procurement to be followed is dependent on the threshold levels as listed below. The non-Federal entity must use one of the following methods of procurement.

#### **Threshold Levels**

NOTE: Governmental entities and other organizations subject to more restrictive state or local procurement thresholds and requirements, e.g., MGL Chapter 30B, must comply with the more restrictive policy.

**a. Goods and services \$3,500 or less (Micro-purchase)**

Procurement within this threshold is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (\$3,500). To the extent practicable, the non-Federal entity must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.

**b. Goods and services \$3,501 to \$150,000 (Small Purchase)**

For Procurements within this threshold, small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold (\$150,000). The Procuring Entity's written procedural guidance must ensure documentation of **price or rate quotes**, procurement method and justification for the selection from among an adequate number of competitive providers.

**c. Goods and services above \$150,000 (Simplified Acquisition Threshold)**

Procurements at this threshold level are subject to **formal bid/proposal solicitation** requirements.

#### **I. Competitive Procurement**

Procurement transactions should be conducted to ensure adequate competition and reasonable price. Non-competitive procurement should be used only in the circumstances outlined below in Section II, Non-Competitive Procurement.

- (1) Procurement by Micro-purchase procedures. Micro-purchase procedures is the purchase of supplies or services using simplified acquisition procedures, the aggregate amount of which does not exceed the micro-purchase threshold (\$3,500). Micro-purchase procedures comprise a subset of a grantee's and subgrantee's small purchase procedures. The grantee and subgrantee uses such procedures in order to expedite the completion of its lowest-dollar small purchase transactions and minimize the associated administrative burden and cost. The micro-purchase threshold is set by the Federal Acquisition Regulation (FAR) at 48 CFR Subpart 2.1. It is \$3,500 except as otherwise discussed in Subpart 2.1 of that regulation, but this threshold is periodically adjusted for inflation.
- (2) Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the simplified acquisition threshold set by the Federal acquisition Regulation (FAR) at 48 CFR Subpart 2.1 (currently set at \$150,000). If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.

- (3) Procurement by sealed bids (formal advertising). Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in paragraph (i) of this section apply.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

- (A) A complete, adequate, and realistic specification or purchase description is available;
- (B) Two or more responsible bidders are willing and able to compete effectively and for the business; and
- (C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

- (A) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;
- (B) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;
- (C) All bids will be publicly opened at the time and place prescribed in the invitation for bids;
- (D) A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
- (E) Any or all bids may be rejected if there is a sound documented reason.

- (4) Procurement by competitive proposals (e.g., Request for Proposals). The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

- (i) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;
- (ii) Proposals will be solicited from an adequate number of qualified sources;
- (iii) Grantees and subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;
- (iv) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and
- (v) Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

- (5) Request for Qualifications. The process of a Request for Qualifications is a two part. First, a formal solicitation is issued to obtain submissions from contractors. These submissions are then reviewed and a list of contractors qualified to provide the goods or services required is developed. The second stage of the process is the comparison of two or more qualified providers to determine which will be chosen to provide the goods or services.



Individual Training Accounts. The process of choosing a provider to train a participant through an Individual Training Account is an exception to the RFQ process. Please refer to Policy 100 DCS 14.100 Massachusetts Eligible Training Provider List (MA ETPL) Initial and Subsequent Eligibility Process” located on MassWorkforce.org: <http://www.mass.gov/massworkforce/issuances/wioa-policy/14-training/>

## **II. Non-Competitive Procurement**

Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

(i) Procurement by noncompetitive proposals may be used **only** when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals **and** one of the following circumstances applies:

- (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 awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request; or
- (D) After solicitation of a number of sources, competition is determined to be inadequate or a failed competition, where the solicitation has resulted in fewer than two responsive and responsible bids.

When a Procuring Entity conducts a formal solicitation process and receives only one qualified proposal, the award process must be justified and documented. A Failed Competition Analysis must be performed.

### Failed Competition Analysis

Program Operators/Service Providers should address the following questions:

1. Was there a weakness in the solicitation specifications?
  - a. Was the statement of work clear?
  - b. Was the statement of work too narrowly defined?
  - c. Were the administrative requirements too cumbersome?
  - d. Was there an excessive amount of experience required?
  - e. Was the cost the entity was willing to pay too low?
  - f. Was there adequate time to prepare proposals?
2. Was the solicitation advertised in an adequate number of locations?
3. Are the services/training being sought really only available from one offeror?

Prior to awarding the contract, the procuring entity must address these issues and document that the process was not flawed and that in fact only one vendor can provide the services being sought, a cost/price benefit analysis must be completed prior to awarding the contract.

**Prior written approval** by DCS must be obtained for any actual sole source or emergency/exigency award which is in excess of \$150,000. All such awards must be justified and documented. Requests for approval must include the following information:

- a. copy of the offerors proposal
- b. copy of the cost/price analysis
- c. copy of related WDB meeting discussion minutes
- d. copy of the non-competitive/award justification
- e. cover letter requesting approval

- f. failed competition analysis

**Such awards will not be approved retroactively.**

Although such awards in an amount below \$150,000 need not be submitted to DCS for approval, procuring entity must internally document and justify these awards below this level.

Such procurements which initially do not require DCS approval, but which are to be modified to an amount which exceeds \$150,000, must be submitted for DCS approval prior to the execution of the modification.

Failure to obtain required **prior** approvals may result in questioned costs.

#### Frequency of Solicitations

Solicitation shall occur at a minimum every two years to promote and encourage competition. Solicitation of Audit services shall occur at a minimum of every five years. **Multi-year funding** of contractors must be consistent with the conditions of the approved RFP and award. In addition, subsequent year funding is to be retained as the option of the procuring entity only and must be subject to successful performance and formal, documented contract negotiations.

#### **E. Authority to Take Procurement Actions**

The procurement policy and procedural guidance must identify the positions of individuals in the organization that have the authority to:

1. Allocate funds to procure services
2. Approve procurement plans
3. Approve non-competitive and sole-source procurements
4. Approve the issuance of the solicitation package
5. Approve the selection of contractors or service providers
6. Sign contracts (the policy must include appropriate certification by the municipality or Board of Directors that this individual has legal authority to sign contracts and must be consistent with the signatory on file at DCS)
7. Approve and sign contract modifications
8. Issue notices of contract termination

Where individuals of the procuring entity have joint responsibility to approve contract actions, the procurement policy must delineate and describe respective roles and authority. Authorizations should be reviewed on an annual basis and revised, if necessary.

#### **F. Procurement Documentation**

Procuring Entity Procuring entity policy and written procedural guidance shall require the maintenance of organized and centralized procurement files. Procedures shall require files to contain sufficient documentation to track the significant history of each procurement. Files shall contain all documentation related to that procurement including, but not limited to: procurement planning records, the solicitation, notices of public advertisement, bidder's conference minutes, all proposals submitted with records of their receipt, all proposal evaluation documentation (including sign-off and certifications), all proposal negotiation documentation, and all related meeting/committee minutes to document the contract(s) review, evaluation and award. A Sample Procurement File Checklist is contained in Attachment A.

## **G. Federal Awarding Agency or DCS Review**

- a) The grantee must make available, upon request of the Federal awarding agency or DCS, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the grantee desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or DCS may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.
- b) The grantee must make available upon request, for the Federal awarding agency or DCS pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:
  - 1) The grantee's procurement procedures or operation fails to comply with the procurement standards in this part;
  - 2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;
  - 3) The procurement, which is expected to exceed the Simplified Acquisition threshold specifies a "brand name" product;
  - 4) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or
  - 5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.
- c) The grantee is exempt from the pre-procurement review in paragraph (b) of this section if the Federal awarding agency or DCS determines that its procurement systems comply with the standards of this part.
  - 1) The grantee may request that its procurement system be reviewed by the Federal awarding agency or DCS to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third party contracts are awarded on a regular basis.
  - 2) The grantee may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the grantee that it is complying with these standards. The grantee must cite specific policies, procedures, regulations or standards as being in compliance with these requirements and have its system available for review.

## CONTRACTING

### A. Contracting with small and minority firms, women's business enterprises and labor surplus area firms

- 1) The grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.
- 2) Affirmative steps shall include:
  - (i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
  - (ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
  - (iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
  - (iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;
  - (v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and
  - (vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in this section.

### B. Procurement of recovered materials

The grantee and subgrantee that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

### C. Contract cost and price

- 1) Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition threshold, including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees **must** make independent estimates **before** receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of its estimated cost, e.g., under professional, consulting, and architectural engineering services contracts, or whenever a line item budget is submitted. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.
- 2) Grantees and subgrantees will negotiate profit 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 performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality

of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

- 3) Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles.
- 4) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.
- 5) All procurement contracts between Local Boards and units of State or local governments must be conducted on a cost reimbursement basis. No provision for profit is allowed.

#### **D. Awarding agency review**

DCS will review each WDB/Program Operator's procurement system during the annual monitoring and at other times as it deems necessary to determine whether the system meets these standards in order for the system to be certified. For construction or facility improvements, DCS prior approval must be obtained.

**ATTACHMENT A**  
**PROCUREMENT FILE CHECKLIST**

Solicitation Name/Type: \_\_\_\_\_ Total Funding: \$ \_\_\_\_\_

Funding Source: \_\_\_\_\_ Funding Period: \_\_\_\_\_

- \_\_\_\_\_ Procurement Planning Records (meeting minutes, etc.)
- \_\_\_\_\_ Copy of Solicitation Document (RFP, RFQ, IFB)
- \_\_\_\_\_ Original Public Notice(s)/Ad(s) (tear sheets)
- \_\_\_\_\_ Copy of Solicitation Mailing List(s)
- \_\_\_\_\_ List of Entities which requested a proposal
- \_\_\_\_\_ Records of Bidders Conference Attendance
- \_\_\_\_\_ Minutes from Bidders Conference
- \_\_\_\_\_ Copy(s) of Q & A's sent to proposers
- \_\_\_\_\_ Copy(s) of amendments to solicitation
- \_\_\_\_\_ Log of proposals submitted
- \_\_\_\_\_ Copies of proposals submitted (with date stamp & time)
- \_\_\_\_\_ Minutes of Review team/committee meeting(s)
- \_\_\_\_\_ Signed proposal rating sheets
- \_\_\_\_\_ Cost/Price analysis documentation
- \_\_\_\_\_ Signed review team non-conflict statements
- \_\_\_\_\_ Written recommendations of review team/committee
- \_\_\_\_\_ Documentation of proposal/contract negotiation(s)
- \_\_\_\_\_ Amended/Last and Final Proposals
- \_\_\_\_\_ Misc. proposal clarification documents/correspondence
- \_\_\_\_\_ Minutes of Award/Selection meetings and votes
- \_\_\_\_\_ Copies of Approval/Award/Rejection letters
- \_\_\_\_\_ Required certifications (debarment & suspension, etc.)

**ATTACHMENT B**  
**CONTRACT FILE CHECKLIST**

Contract Name: \_\_\_\_\_

Contractor: \_\_\_\_\_

Contract Number: \_\_\_\_\_ Contract Amount: \$ \_\_\_\_\_

Contract Period: \_\_\_\_\_

Funding Source: \_\_\_\_\_

- \_\_\_\_\_ Signed/Executed copy of the contract
- \_\_\_\_\_ Signed copy(s) of subsequent contract modifications
- \_\_\_\_\_ Contract/Mod. cost/price analysis & justification
- \_\_\_\_\_ Proposal or other documents incorporated by reference
- \_\_\_\_\_ Required certifications (debarment & suspension, etc.)
- \_\_\_\_\_ Pre-award surveys or other review data
- \_\_\_\_\_ Copy(s) of contract negotiation data
- \_\_\_\_\_ Subcontract/sub-agreement approval documentation
- \_\_\_\_\_ Copy(s) of required insurance/bonds
- \_\_\_\_\_ Copy(s) of Agency/Contractor correspondence
- \_\_\_\_\_ Monitoring Reports/Corrective Actions/Follow-up documents
- \_\_\_\_\_ Invoice/billing records of payment
- \_\_\_\_\_ Records of cash advances/on-hand and liquidation of funds
- \_\_\_\_\_ Property/Equipment acquisition and disposition records
- \_\_\_\_\_ Documentation of Termination actions
- \_\_\_\_\_ Contractor report(s) of deliverables provided
- \_\_\_\_\_ Contract Close-out/Cash settlement/Program Income Reports
- \_\_\_\_\_ Copies of required audit reports/review & resolution

## **ATTACHMENT C**

### **GUIDANCE ON DEVELOPMENT OF FORMAL SOLICITATIONS AND THE STATEMENT OF WORK (SOW)**

This Attachment contains information on the development of formal solicitations and the statement of work. WDBs/Program Operators may utilize this in lieu of developing their own procedures.

#### **A. SOLICITATIONS**

The solicitation is the document that the Procuring Entity issues to elicit offers from proposers or bidders. The formal solicitation (RFQ, IFB, RFP) is the document that invites offers from potential service providers.

##### **I. Request For Qualifications (RFQ)**

In an RFQ process, proposals are solicited from qualified sources by formally advertising in local newspapers and sending out the RFQ to the potential contractors/service providers selected from the inventory of providers. Proposals are received, evaluated and those potential providers who qualify are placed on the approved providers' list. To be accepted as a viable procurement vehicle, all provider lists must be current and include a sufficient number of qualified sources. Services are then selected utilizing a specific rationale (price comparison, demonstrated performance, etc.) established for final selection from the approved contractor list (see Competitive Procurement). This is an acceptable method for the procurement of Individual Training Services.

If the Procuring Entity finds that it did not necessarily reach all potential offerors, it may send out the RFQ specifications to other potential providers after the providers' list has been established and augment the list if subsequent providers meet the same evaluation criteria.

##### **1. Notice of Request for Qualifications**

The notice should, at a minimum, briefly summarize all important information regarding the RFQ including:

- ◆ Name and address of entity issuing the RFQ;
- ◆ Name, address, title and phone number of person to contact regarding questions;
- ◆ How to obtain the RFQ Specifications;
- ◆ Response due date and time deadlines;
- ◆ Number of copies of response;
- ◆ Period for which services are sought (could be Program Year);
- ◆ Specify location and method of delivery of response;
- ◆ Other stipulations and clarifications as required;
- ◆ Statement concerning Equal Opportunity Employer; and
- ◆ Description of provider's organization and type of services generally provided.

##### **2. RFQ Specifications**

###### **a. Introductory Information**

The RFQ package may include an introductory section covering general explanatory information to clarify any special points or items of interest. For example, this section could be used to discuss providers' conference meeting plans, procedures and general information on evaluation of proposals, how contractors will get on the approved providers' list, etc.



b. Nature of the Services Being Sought

This section should describe the services being requested. While a single provider may offer a range of courses, it is not likely to be equally competitive in each, particularly in terms of demonstrated performance. Each program offered by the provider should be evaluated separately.

c. Cost

Potential service providers/contractors should submit a cost which is non-rescindable. Potential service providers who do not have an "off-the-shelf" price must submit a line item cost basis for the training which includes training, any related costs in providing the training and overhead costs.

Potential contractors may submit an "off-the-shelf"/tuition based single unit charge for services if the services are sold to the general public in the course of normal business operations and the cost is a single charge for tuition. The price should be published in a catalog or price list describing the course.

d. Technical Proposal

Offerors who submit proposals which are not "off-the-shelf"/tuition based single unit charges should be required to provide the following information:

- 1) Their qualifications to provide the services,
- 2) A description of their background and experience with the services for which bids are being provided,
- 3) Information as to the size and structure of the offeror's organization,
- 4) Positive affirmations that offeror has all the required licenses to perform the services being sought,
- 5) Offerors should provide a statement of their understanding of the services to be provided, including time and cost, and
- 6) A statement of their refund policy.

e. Evaluation of Qualifying Proposals

WDBs/Program Operators/Service Providers must include criteria for offerors to be placed on the providers' list. Such criteria should include, but are not limited to the following:

- 1) Offeror's qualifications and experience in providing the services/training
- 2) Frequency of training/services offered
- 3) Demonstrated performance
- 4) Cost/Price

Additional Criteria Suggested:

- 5) Geographic Location(s), including a description of public transportation, if available
- 6) Size of firm/capacity

WDBs/Program Operators/Service Providers should describe the process of notification to successful and unsuccessful offerors, should also inform successful offerors that while they may have been placed on the providers' list, they will not automatically be awarded contracts when the need arises. The RFQ should contain the selection procedures of the Procuring Entity will be utilized prior to the final negotiation/award of contracts.

f. Rationale for Final Service Selection

Written procedures should include Procuring Entity rationale, justification and documentation of final selection. This rationale must be consistently applied in the selection of each service/good selected from

the list. At a minimum, each final individual selection must consider and document price comparison and demonstrated performance. Additional factors for consideration may be indicated. To the extent that any additional considerations enter into source selection, their application should be documented.

## **II. Invitation for Bids (IFB)**

Sealed bids (Formal Advertising) are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is lowest in price. When this method is used the solicitation is called an Invitation for Bids (IFB). In this method the contracting agency awards the contract to the responsible offeror whose bid is most advantageous considering only price and price-related factors.

### **Content of IFB**

#### **1. Notice of Proposal**

The Notice of Proposal should briefly summarize all important information regarding the IFB. It should include:

- a) Name and address of entity issuing the IFB
- b) Name, address, title and phone number of person to contact regarding questions
- c) Period for which services will be provided (Clarify if multi-year proposal)
- d) Other stipulations and clarifications as required
- e) Statement about equal opportunity employer
- f) How the entity is organized and what kind of services the entity generally provides
- g) Response due date and time deadlines with consequences of late responses
- h) Number of copies of response required
- i) Specific location and method of delivery of response
- j) Public opening of all bids at a published date and time

#### **2. Introductory Information**

The IFB package may include an introductory section covering general explanatory information to clarify any special points or items of interest. For example, this section could be used to discuss bidder's conference meeting plans and procedures and general information on the evaluation of proposals and the bid opening procedures.

#### **3. Nature of the Services Required/Statement of Work**

This section should describe the services being requested and how those services are to be provided (times and dates). This is explained in more detail in the section on the statement of work.

#### **4. Cost/Budget**

WDBs/Program Operators should include in the IFB a standard budget format with detailed support for each line item.

#### **5. Technical Proposal**

Offerors should be required to provide the following information:

1. Their qualifications to provide the services
2. A description of their background and experience with the services being sought
3. Resumes of those staff who will provide services
4. Information as to the size and organization of the offeror's firm
5. A statement of their financial capabilities
6. A copy of their most recently completed audit

7. Positive affirmations that offeror has all the required licenses to perform the services being sought
8. A statement of their understanding of the services to be provided, including time and cost.

#### 6. Evaluation of Proposals

WDBs/Program Operators should include information in the IFB concerning the factors to be used in evaluating proposals and the process for notifying offerors as to the final outcome.

WIBs/Program Operators have the option of including who will review the proposals and the actual weights of the review criteria, if desired.

### III. Request for Proposals (RFP)

The WDB/Program Operator should ensure that RFPs include:

1. **Statement of Work or Specifications.** The Statement of Work (SOW) is the document that clearly describes the services that are being acquired. (SOW requirements are addressed later in this document).
2. **A description of the requirements for time, place and methods or performance of services.** This will be included within the SOW, however, it is beneficial to state these requirements in a separate section to summarize the work to be completed with dates and places for delivery of services.
3. **Contract clauses that will be included in any resulting contract.** Standard "boilerplate" clauses should be made available to bidders. This may be accomplished by inclusion in the RFP or by information to the bidders that the boilerplate is available for review at the WDB/Program Operator.
4. **Assurances, certifications and representations.** Any assurances, certifications and representations that the bidder will be required to execute should be included in the RFP, and may require a statement from the offerors that they will comply with any regulatory requirement established by the funding source.
5. **Detailed information on how to prepare and submit the proposal.** The RFP should provide clear direction on the proposal format; the number of copies to submit; the location where the proposal should be submitted and the submission closure time and date. The RFP should also establish any minimum responsiveness requirements that must be met for a proposal to be considered.
6. **Description of how price or cost will be utilized as a factor affecting proposal awards decisions.**
7. **Criteria and evaluation developed to review proposals for award decisions.** The RFP should include a description of the criteria and evaluation to be utilized.
8. **Solicitation provisions.** The RFP should clearly state the provisions that govern the solicitation process and clearly describe how the procurement process will be managed. For example, this may include logging in of proposals, expected time frame for notification of award/non award and what appeals process is available to bidders, time frames and levels of in-house and WDB committee reviews; when the full WDB will review and vote on recommendations; etc. The RFP may also include a description of the process which will be followed if the RFP is amended, e.g., if the Bidder's conference results in clarification needed or if changes/decisions are made which affect the services being procured.
9. **Budget Instructions.** The RFP should request a full line item budget which identifies the basis for all costs by cost category, and should provide detailed instructions as to what constitutes a complete budget. A budget narrative should also be required.

10. **Summary or cover sheet.** The RFP may request a summary or cover sheet.

11. **Other.** The RFP should also include:

- a. Reservation of the Procuring Entity's right to reject any or all proposals.
- b. Statement of the proposer's rights of protest and appeal.
- c. If a competitive range or other narrowing of offerors is to be used, the decision criteria, which may include a minimum threshold, should be described.
- d. Information regarding whether amended or "best and final" proposals will be requested and evaluated.

## **B. STATEMENT OF WORK**

The Statement of Work (SOW) is the section of the solicitation (RFQ, IFB, RFP) that specifically describes the scope of work; the materials necessary to complete the work and the services to be procured. A well-structured SOW will serve as the framework of the contract.

The SOW should include:

1. **Background Information.** The solicitation should include information on:

- a. the audience for which this solicitation is being prepared
- b. funding source and authorization
- c. Procuring Entity implementation and responsibilities
- d. information on previous WDB/Program Operator/Program Operator sponsored training programs
- e. definitions/terminology
- f. references to WDB plans; labor market surveys and any other relevant background.

2. **Purpose.** The solicitation should include information on the overall program objectives (and their relationship to this solicitation); the purpose of the contract (what services are being procured); and the target groups the program will serve. Focus should be on outcomes, allowing flexibility on how to achieve the goals.

3. **General Responsibilities.** The SOW should include requirements for information on management, staffing and the direction of programs; location and facilities; hours of operation; coordination with the WDB/Program Operator; administrative procedures; component budget; and, if applicable, minimum staff qualifications.

4. **Demonstrated Performance.** The solicitation should require the offeror to document its record of demonstrated performance in the past delivery of employment & training or related services.

5. **Services to be Performed.** The solicitation should be very specific in describing the services to be performed, carefully identifying what is to be accomplished as opposed to how it should be accomplished. When procuring for employment and training services, this section should identify which career services, and training services are being sought.

6. **Standards of Performance.** This section identifies how well the offeror must perform, including criteria to determine satisfactory performance. This section should reference: program outreach; recruitment goals (e.g., target groups); intake; program design standards; and program performance outcome standards.

7. **Administrative Requirements.** This section specifies what specific actions must be taken to comply with Federal, State and Local regulations, policies and procedures. At a minimum, this section should include: requirements for maintenance of applicant/participant records; fiscal management and reporting; program status records and reports; a list of any Procuring Entity furnished property or space; allowability of subcontracting; grievance procedures; and performance and submission of single audits by public/non-profit organizations awarded contracts within 9 months of the end of the program, if applicable. Financial risk assessment procedures for each applicant prior to award as required by Federal Regulations 2 CFR 200.205.

8. **Exhibits.** This section should include any materials to be provided to offeror as exhibits. These exhibits may include, but are not limited to: standard forms and reports; standardized procedures; maps and flow diagrams; proposal evaluation format; and organizational charts.

#### **D. REVIEW/EVALUATION OF SOLICITATIONS**

The WDB/Program Operator should have written procedures which:

1. Contain a description of the procedures used to review proposals and select contractors, including:
  - a) The application of the technical rating criteria and evaluation factors contained in the solicitation;
  - b) Identification of what type of staff or others who will review and score or rate technical proposals;
  - c) The roles of staff in the review of proposals, including how and when these roles are to be executed.
2. Describe the procedures for conducting and documenting cost and price analysis.
3. Specify that for all procurements, a procurement file be developed that documents all actions up to and including the awarding of contracts, including required file content.
4. Include a method for allowing and evaluating offerors' protests of contract awards and/or other aspects of the procurement process.
5. Describe the appeal/protest process, including the:
  - a) name of the individual with whom the protest must be filed
  - b) time limits for the filing of protests
  - c) procedure for the handling of protests
  - d) nature of offeror's appeal rights, including appeal of the WDB/Program Operator decision to the state funding agency.

#### **E. RECEIPT OF PROPOSALS**

A log of incoming proposals should be kept which contains the name of the offeror, and the date and time of receipt of proposals. The log should not be visible to offerors who hand-deliver their proposals. Names and the number of offerors submitting proposals is confidential until the solicitation process has been completed. Incoming proposals should also be dated stamped. If proposals are late and it has been specified in the solicitation that late submissions will not be accepted, the proposals should still be logged in and then returned to the offeror specifying that the requirements of the solicitation were not satisfied.

Proposals should be opened and the content of proposals reviewed at a specified time and place. If the solicitation specified that incomplete submissions will constitute a non-responsive proposal, then this procedure is critical. A checklist should be developed to review proposals for completeness, utilizing the solicitation specifications.

All proposers should be treated equally. If one proposal is rejected for incompleteness, then all other proposals which were not complete must be rejected.

## **F. TECHNICAL EVALUATION**

Consideration should be given based upon demonstrated performance in the delivery of comparable services, in terms of the likelihood of meeting performance goals, cost, quality of training, the characteristics of the clients, and consideration to demonstrated performance in making appropriate supportive services and child care available.

### **1. Minimal Evaluation Factors**

Criteria tailored to the specific solicitation requirements should be developed. Cost/price should be included. Other factors which can be included are:

- a) Cost Realism (Can the services and the performance goals be delivered for the budgeted cost?)
- b) Time Table (Can the services and performance goals be met in the projected time table?)
- c) Technical Content
- d) Management/Fiscal Capability
- e) Qualifications of staff assigned to the project
- f) Experience in delivering comparable services
- g) Demonstrated Performance
- h) Anything else the agency deems important in making its decision.

The solicitation must specify the criteria that will be used in evaluating proposals. While it does not have to specify the weight of each criteria, it should discuss their relative importance.

### **2. Rating the Proposals**

Factors for rating proposals, whether numerical or qualitative, must ultimately be weighted by total points. In general, the relative weight of criteria should be consistent with the goals of the annual plan or proposal. Rating sheets should direct the reviewer to the relevant sections of the solicitation which is the basis for assignment of points. Rating standards should be constructed in a graduated fashion to prevent an all or nothing decision for a particular criteria. Establishing pass/fail standards such as weeks of training, cost per participant, etc., weakens the impartiality, competitiveness, and cost reasonableness of the process.

### **3. Proposal Evaluation Conduct**

In assigning review membership, it should be clear that **all members are expected to read all competing proposals**. Sections of proposals should not be subdivided among different committees. Rating sheets should be completely filled out, signed and certified (no conflicts) by the reviewers. The rating sheets should be retained in the procurement file as an audit trail supporting the reliability, objectivity and impartiality of the review process.

The ratings should be summarized and aggregated. The results of the evaluation should then be forwarded in writing by the chair of the committee to the next level of review. Documented minutes should be maintained.

If multiple levels of review occur, the results of each should be separately recorded and documented.

### **4. Contract Price and Cost Analysis, Independent Estimates, Cost Classification**

Contracts must be awarded to the offeror that presents the best services at the most favorable price. Price and cost analysis also demonstrate the offeror's understanding of the services to be provided and their commitment of the needed resources to get the work done. Such analysis is usually separate from program analysis.

A cost or price analysis must be performed in connection with every procurement action in excess of the Simplified Acquisition Threshold (\$150,000), including contract modifications. Each offeror should be required to certify that to the best of its knowledge and belief, the cost data is accurate, complete, and current at the time of agreement on price.

a. Price Analysis

Price analysis is the process of examining and evaluating a price without looking at the cost elements and the proposed profit of the offeror. This involves:

1. Comparison of competitive price quotations.
2. Appropriate comparison of historical or current prices for similar items which have been competitively procured or formally determined as reasonable based on price and/or cost analysis.
3. Appropriate use of measures to point out differences such as price per training hour, price per slot or price per placement among essentially similar services.
4. Appropriate comparisons of prices on published price lists with published market prices together with discount or rebate schedules.
5. Comparison of proposed prices with independent estimates (see above) developed by the contracting entity.

b. Cost Analysis

Cost analysis is the review and evaluation, element by element of the line item budget included in the proposals to establish the reasonableness of proposed costs. Cost analysis is not always necessary. It is used to establish the basis for negotiating a contract price where price comparison is not adequate or is lacking altogether or where price analysis does not ensure the reasonableness of prices.

*Elements of Cost Analysis*

All offerors should be required to submit a detailed line item budget. Offerors should be required to also submit a narrative describing the assumptions and rationale for arriving at these cost estimates.

Reviewers must then verify the cost and pricing data and evaluate them by:

1. Judging whether costs are reasonable.
2. Evaluating the cost trends on the basis of current or historical cost data.
3. Conducting an appraisal of the estimated labor, materials, etc.
4. Evaluating negotiated or federally audited rates, if indirect charges are included. In conducting such a review, reviewers may reference federal indirect cost rate circulars. Some universities have approved indirect cost rates which may be based upon research or other grant data and would not necessarily apply in the realm of employment and training grants. The rate basis should be clear.
5. Reviewers should also compare costs proposed with any other data available including what the offeror proposed in the past, has delivered or is delivering now, and other proposals.
6. Reviewers should also verify that the proposed costs are in accordance with applicable cost limitations. For instance, if the solicitation states that administration or indirect costs may not exceed 10 percent, then all proposals must be reviewed for compliance with this requirement.

c. Independent Estimates

The method and degree of analysis depends on the facts surrounding the particular procurement and pricing situation, but at a minimum, the awarding agency should make independent estimates before receiving bids or proposals. WDBs/Program Operators/Service Providers must develop independent estimates of the cost elements of the service(s) utilizing budget line item costs and prices developed from past experience, contractor financial reports, etc., to estimate what the likely costs and price of the

procurement will be. This provides a yardstick for the comparison of the costs and prices of an offeror. Estimates may be developed in the form of acceptable ranges for price and cost elements to be measured against the bases of cost/price data during proposal review.

d. Classification of Costs

WDBs/Program Operators/Service Providers should require offerors to submit proposals utilizing the appropriate cost categories so that a determination may be made whether costs comply with cost limitations and whether costs are properly classified, if necessary.

The reviewers must be certain that offerors do not include the same services as both direct and joint/indirect charges. If possible, costs should be budgeted as direct charges. If the offeror has budgeted indirect charges, the rate must be one approved by a cognizant federal agency or based upon a written cost allocation plan approved by the Procuring Entity. Further, the Procuring Entity is not required to allow the offeror an approved rate if sufficient funds are not available or if the administrative cost limitation would be exceeded.

Awards to subrecipients or contractors that are solely for the performance of administrative functions are classified as administrative costs. Personnel and related non-personnel costs of staff that perform both administrative functions as defined in the applicable and programmatic services or activities must be allocated as administrative or program costs to the benefiting cost objectives/categories based on documented distributions of actual time worked or other equitable cost allocation methods. Except for awards that are solely for the performance of administrative functions, all costs incurred for functions and activities of subrecipients and contractors are program costs.

e. Analyzing Proposed Costs

Reviewers need to know the basis for the estimated costs, whether historical data, quotes, catalogs or price data was used. Reviewers also need to determine if proposed resources are sufficient, though not excessive, to achieve objectives, including reasonableness of staffing patterns and salary rates. Finally, reviewers must verify that costs will not violate laws, regulations and policy and solicitation requirements and restrictions. Costs must be necessary and reasonable.

f. Documenting Conclusions and Concerns

Reviewers must document their conclusions and concerns, including the cost analysis, particularly if the Procuring Entity intends to negotiate with the offeror. Documentation is critical if offeror protests are filed and is helpful in the monitoring and administration of the contract.

g. Analysis Of Specific Costs

Each element of cost should be reviewed separately to determine whether it is reasonable and necessary. For example, staffing costs should be reviewed to determine if the staffing pattern and number of staff are appropriate, whether the compensation is appropriate, etc. For all items, reviewers must determine if the proposal is including a fair share of the costs, and whether there is a less costly way of providing the same services. For equipment, lease versus purchase should be considered. WDBs/Program Operators/Service Providers need not allow the purchase of equipment. The reviewer needs to analyze the client supportive services proposed to verify whether those costs are necessary to enable eligible clients to participate in the training.



### 1. Subcontracts

When an offeror includes a subcontract, it should be clearly identified, described and justified. The reviewer needs to perform price and cost analysis of subcontracts as well. The reviewer should analyze how the prime offeror will monitor subcontracts, review reports, etc.

### 2. Indirect costs

As stated above, in some cases, the RFP may permit offerors to include indirect costs. These costs must conform to state and local guidelines. The reviewer needs to analyze these costs to ensure that the charges included in the rate are not duplicated in the direct charges. If the indirect rate is not an audited or federally approved one, a cost allocation plan should be submitted by the offeror. The reviewer needs to ascertain whether this contract can support the rate and whether it is appropriate for the proposed services.

### 3. Profit, Program Income or Fee

In the federal procurement system, profit may only be earned by For-Profit organizations. Non-Profit organizations are required to treat any profit earned as Program Income, and are required to reprogram these funds according to state policy. Procurements shall not permit excess profit or program income. If profit or program income is included in the price, the Procuring Entity 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 performed.

There is no fixed guideline for the identification of excess profit. The Procuring Entity is encouraged to establish a limit (for example, 5%) which may be based on the current market/industry standard/rate of profit for similar work. Any figure which exceeds a Procuring Entity's established limit must be clearly documented as justified, or reduced to that established limit. To establish a fair and reasonable profit or program income, consideration shall be given to the complexity of the work; the risk borne by the contractor; the contractor's investment; the amount of subcontracting; the quality of the contractor's record of past performance; industry profit rates in the surrounding geographical area for similar work; and, market conditions in the surrounding geographical area.

Procuring Entity contracts which provide for profit or program income should require that the provider submit a certification of revenue earned in excess of contract expenses through contract financial close-out reporting.

Contracts between governmental entities may not include profit or program income.

### 4. Second Year Costs

Solicitations which also seek services for a second year must be subjected to review and evaluation consistent with that of the original awarding year's review. Costs may be less in the second year in the absence of start-up costs. Other costs may rise due to inflation, salary or cost-of-living increases for staff assigned to the contract. All costs must be analyzed and documented as necessary and reasonable in the second/subsequent year.

## ATTACHMENT D

### GUIDANCE ON CONTRACTING

#### A. Contract Negotiation And Award

The Procuring Entity should include in their procurement and contracting policy the authority and responsibility for proposal negotiation, final contract negotiation and award, as well as the method and scope of elements subjected to negotiation for proposals and contracts.

##### 1. Competitive Range

A "competitive range" may be defined to establish a pool of negotiable proposals after the initial technical and cost/price evaluation has been completed. Procurement policies should clearly state the criteria for inclusion in the "competitive range", and should not exclude any proposal that may have a reasonable chance of being selected for award based on the initial proposal evaluation/review. Proposal negotiation discussions with offerors should be restricted to indications of proposal deficiencies and requests for additional technical or cost/price information. Upon completion of proposal negotiations, offerors must submit revised proposals which must be reviewed again for technical and cost/price evaluation prior to award.

##### 2. Final Contract Negotiation

Written procedures should determine the method and authority for final negotiation of contracts and should establish the scope/range of negotiable contract aspects. Contract negotiations should not significantly alter the technical or cost/price aspects of the proposals. If they do, they make it necessary for the proposal to be re-submitted for award consideration prior to contract execution.

##### 3. "High-Risk" Contractors

A contractor may be considered "high-risk" if a WDB/Program Operator determines that the contractor is otherwise responsible but:

- a. Has a history of unsatisfactory performance;
- b. Is not financially stable;
- c. Has a management system which does not meet required management standards; or
- d. Has not conformed to terms and conditions of a previously awarded contract or agreement.

When a contractor is considered "high-risk", special funding restrictions to address the "high-risk" status may be included in the agreement. Such restriction may include, but are not limited to:

- a. Making payment on a reimbursement basis;
- b. Requiring additional and/or more detailed financial or performance reports;
- c. Performing additional monitoring;
- d. Requiring the contractor to obtain specific technical or management assistance; and/or
- e. Establishing additional prior approvals.

Should the WDB/Program Operator impose such funding restrictions, the contractor must be notified in writing as early as possible, of:

- a. The nature of the funding restrictions;
- b. The reason(s) for imposing the restrictions;
- c. Any corrective actions which must be taken before the restrictions will be removed, and the time allowed for completing the corrective actions; and
- d. The method of requesting reconsideration of the restrictions imposed.

#### B. Selection of Contract Type

WDBs/Program Operators may choose from several types of contracts, depending on the circumstances. Examples are:

#### 1. Cost Reimbursement

WIOA Regulations require that agreements between governmental units must be on a cost-reimbursement basis, including agreements with community colleges and Vocational Technical schools. This contract type may be required for funding of "**high-risk**" contractors.

#### 2. Fixed Unit Price

Requires payment of a specified price for specified deliverables irrespective of actual costs incurred.

#### 3. Combination Cost Reimbursement And Fixed Unit Price

Utilized when some elements of performance are clear and definitive while other performance specifications are more uncertain. Provides shared risk.

#### 4. Letter Contracts/Limited Agreements

WDBs/Program Operators/Service Providers may use Letter Contracts/Limited Agreements to expedite entry into an agreement with a contractor only in emergency or unique situations. Letter/Agreements must include the specific time line of the agreement and the extent of WIB/Program Operator/Service Provider financial and other liability. The agreement must include the signatures of all parties required as authorized signature for the full contract document, and may not obligate the Procuring Entity to enter into the final/full contract, should contract negotiations fail. Such agreements should include the following minimum provisions:

- a. specific deliverables required by, and within the time frame of the limited agreement. This may be achieved through reference to the contract proposal.
- b. ceiling price of the limited agreement and the anticipated ceiling price of the final/full contract pending.
- c. limit of Procuring Entity liability pending finalization of full contract document, including a provision that the limited agreement does not imply obligation to enter into a final/full contract.
- d. incorporate the Procuring Entity standard terms and conditions boilerplate.
- e. agreement active time period and execution date with all required authorized signatures.

Such agreements should not be used as, or in place of, full contract documents. Justification or explanation of the nature of the emergency or unique situation requiring the use of Letter Contracts/Limited Agreements should be maintained in the contract file.

#### 5. Subcontracts/Sub-Agreements

The WDB/Program Operator/Service should have written policy and procedural guidance that addresses the provision of subcontracts/sub-agreements between primary and secondary service providers. Such agreements are allowable. They must be consistent and in compliance with all related Federal, State and Local procurement and contracting laws, regulations and policies.

6. Retroactive Contracting (after-the-fact) for new contracts or for active contract change/modifications is not allowed.

### **C. Contract Elements**

Contracts must include all elements necessary to fully delineate the Procuring Entity's and contractor's responsibilities. These should be clearly documented through a combination of standard boilerplate and specific contract provisions. Proposals may be incorporated, in part or whole, by reference in the contract document.

The development and inclusion of specific contract elements will be effected by the determination of the service provider's status as a subrecipient or a contractor. Aspects of the contract affected by this status may include, but are not limited to: cost classification, audit, and the general requirement to comply with WIOA and funding source regulation and policy. Although service providers may be considered subrecipients or contractors, all costs of contracts that are not exclusively for the provision of administrative functions are program costs.

**Subrecipient** is defined as a legal entity to which a subgrant/contract is awarded and which is accountable to the Procuring Entity (or higher tier subrecipient) for use of the funds provided. Distinguishing characteristics of a subrecipient include items such as: developing and operating programs specifically designed for a federal program which may include 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 program or project as compared to providing "end-line" goods or services for use by a program or project (contractor). Subrecipient contracts/agreements identify the source of funds (e.g., WIOA) and require compliance with all related regulations and policy, including but not limited to, appropriate identification and classification of all costs incurred and coverage under required audits.

**Contractor** is defined as an entity that receives a contract, is responsible for providing generally required "end-line" goods or services to be used by the program or project. These goods or services may be for the subrecipient's own use or for the use of participants in the program/project. Distinguishing characteristics of a contractor include items such as: providing the goods and services within normal business operation; providing similar goods or services to many different purchasers, including purchasers outside of the program; and operating in a competitive environment. Contractors are not subject to compliance requirements of the Federal program as a result of the agreement, though similar requirements may apply for other reasons.

#### Required Contract Elements

Contracts should contain the following elements, where applicable:

1. names of responsible parties and organizations
2. type of contracting organization
3. type of contract
4. amount of contract obligation
5. source of contract funds
6. training site(s)
7. contract effective time period
8. number of participants to be served
9. signature of authorized officials
10. document execution date(s)
11. statement of work/deliverables including goal statement/objectives, target group, justification for services products/outcomes/performance required outreach/intake and assessment program design/curriculum frequency of participant contact, activity time line, and follow-up
12. cost reimbursement line item budget data by cost category
13. payment and delivery terms/invoice forms and procedures
14. termination for cause/default/de-obligation/convenience
15. audit and record access and examination rights
16. record retention requirements
17. compliance with related federal state and local laws, regulations, and policies
18. conflict of interest and code of conduct requirements
19. debarment and suspension certification
20. anti-lobbying disclosure
21. provision against assignment/unauthorized subcontracting
22. procedures for changes/modifications
23. definitions of key terms
24. staff qualifications
25. reporting requirements - program and fiscal
26. table of contents
27. AA/EEO/non-discrimination
28. contractor insurance liability/bonding
29. grievance procedures for termination and non-payment
30. monitoring/corrective action/sanctions procedures
31. equipment and property allowance/disposition

32. severability provision
33. hold harmless clause
34. maintenance of effort clause
35. program income or work product requirements
36. individual authorized to sign invoices/request payment
37. operational plan - participant activity/expense schedule
38. protests/disputes/claims clause
39. subcontracting clause
40. Pell Grant/cost reduction clause
41. fund advance/reconciliation & recapture clause
42. contract close-out requirements
43. single audit or other audit requirement
44. program income or profit requirements

#### **D. Contract Administration**

The Procuring Entity should establish written policy and procedural guidance to address contract administration. The primary purpose of Contract Administration is to ensure subrecipient/contractor compliance with all contractual obligations; including, but not limited to, program performance and financial considerations. Policy and procedural guidance should include:

1. provisions to ensure payments consistent with contract terms,
2. provision for inspecting/monitoring work performed to ensure consistency with the contract terms,
3. procedures to provide technical assistance to contractors,
4. criteria and procedures for contract change/modification,
5. procedures for the review, approval and monitoring of sub-agreement procurements and contract documents,
6. procedures to execute termination provisions as stipulated in contract documents,
7. procedures to resolve contract protests/disputes/claims as stipulated in contract documents,
8. procedures to develop and monitor corrective actions as stipulated in contract documents,
9. required contract file documentation and retention procedures, and
10. procedures to close-out contracts and related reporting requirements.

Procuring Entity policy and written procedural guidance should provide for centralized contract files which include the following (See Attachment B for Contract File Checklist):

1. A copy of the contract with original signatures
2. Copies of any subsequent modifications with original signatures
3. Contract cost/pricing data
4. Contract proposal, if incorporated by reference
5. Pre-award surveys or review data
6. Subcontract/Sub-agreement approvals
7. Copies of required insurance policies and bonds
8. Copies of any SDA/SSA/Service Provider or Contractor correspondence
9. Monitoring reports/corrective actions/follow-up records
10. Invoice/Billing and records of payment documentation
11. Records of Cash advances and liquidation of funds
12. Equipment acquisition and property disposition records
13. Documentation related to termination actions
14. Contractor reports on deliverables provided
15. Contract close-out reports and related documentation

#### **E. Contract Monitoring**

Procuring Entity policy and procedural guidance should address contract monitoring, including systems for both program and financial monitoring to ensure contractor compliance with all elements of the contractual agreement. Monitoring documentation should include:

1. the method of identification of deficiencies
2. results of monitoring reviews
3. written notice to contractors regarding deficiencies
4. corrective action plans
5. follow-up and resolution of corrective actions.

Monitoring must be performed on-site at least once each program year. Financial monitoring must ensure that auditable records of financial activity are maintained and retained. Formal financial monitoring procedures should include the use of a monitoring tool and system sampling.

Fiscal Monitoring should include:

1. allowability of costs
2. cost classification and allocation
3. general ledger and records management
4. invoicing and cash receipts
5. cash disbursements
6. cash reconciliations
7. analysis of cash advances/cash on hand
8. subcontract/sub-agreement review
9. property/equipment management
10. purchasing/procurement systems
11. matching funds procedures and documentation
12. determination of program income/profit
13. compliance with all related Federal, State and Local laws, regulations, policies and contractual requirements
14. determination that financial performance is commensurate with program performance.

Program monitoring should address the following areas:

1. Provision of quality services.
2. Performance monitoring to ensure achievement of contract objectives/contractual obligation.
3. Compliance monitoring to ensure satisfaction of contractual and regulatory requirements.

Program performance monitoring should include:

1. quality of participant enrollment/intake
2. quality/quantity of participant counseling
3. quality of participant orientation
4. quality of training provision
5. quality of case management records and systems
6. quality of job development and placement activity
7. quality/allowability of participant support services
8. contractors personnel systems
9. termination and follow-up
10. level of outcome performance
11. subcontract/sub-agreement program/performance review
12. achievement of other specific contractual objectives
13. compliance with all related Federal, State and Local laws, regulations, policy and contractual requirements

#### **F. Contract Corrective Action**

WDBs/Program Operators/Service Providers should have systems to document and resolve contract corrective actions as stipulated in the contract document. Procedures should designate authority and responsibility for development, monitoring and follow-up of corrective action plans. The corrective action plan should define the deficiency, state all resolution actions required, provide a time line for resolution, and include follow-up verification.

#### **G. Contract Close-Out**

Procuring Entity should document contract close-out. Contractors should be required to close-out agreements in a timely manner (consistent with close-out reporting requirements). Close-out reports should include the following minimum items:

1. Statement of Subcontract/Sub-agreement termination.
2. Statement of Status of Cash accounts and liquidation of advances.
3. Statement of settlement of all contract related financial or other liabilities.
4. Statement releasing Procuring Entity from any further liability.
5. Assignment of any refunds, rebates, or credits due.
6. Statement of program income/profit and its disposition.
7. Final Invoice for payment.
8. Reason for termination (completion or other).
9. Any other reports required by the contract document.