



**Area 20/21 Workforce Development Board
Procurement Policy**

Purpose

All procurement transactions of the Area 20/21 Workforce Development Board (WDB) shall be conducted in a manner that provides, to the maximum extent possible, opportunity for free and open competition. Policies and procedures governing procurement shall ensure that all goods and services are obtained in an effective and efficient manner, which is consistent with the provisions of applicable federal, state, and local laws, rules, and regulations.

Background

All items purchased with WIOA funds will use the State and local procurement procedures and abide by the procurement provisions included in the Office of Management and Budget (OMB) 2 CFR:200.318 General procurement standards; 200.319 Competition; 200.320 Methods of procurement to be followed; 200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms; 200.322 Procurement of recovered materials; 200.323 Contract cost and price; 200.324 Federal awarding agency or pass-through entity review; 200.325 Bonding requirements. Procurement activities will comply with Ohio Revised Code, Sections 307, 4115.34, 5705.41(D) and 5719.042 and Chapter 5101: 9-4 of the OAC issued by the Ohio Department of Job and Family Services or other state WIOA funding agencies. Workforce Development Agencies and Subcontractors will follow the OMB circulars governing their agency structure and the Ohio Revised Code, the more stringent of the applicable circulars or the ORC will prevail when more than one applies.

Action

Definitions

- A. Award – A contract, grant subcontract, subcontract, sub grant or other type of legal instrument.
- B. Awardees - Any of the entities receiving the award, such as contractors or grantees.
- C. Immediate Family Member - Includes a spouse, son, son-in-law, daughter, daughter-in-law, mother, mother-in-law, father, father-in-law, brother, brother-in-law, sister, sister-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent, and/or grandchild.
- D. Procurement - The process, which leads to any award of WIOA Title I funds.
- E. Request for Proposal (RFP)-Purchases for services for \$50,000 or more unless the local policy is more restrictive and can be awarded based not only on price but also to the firm whose proposal is most advantageous to the program.
- F. Request for Quote (RFQ) - Purchases for services less than \$50,000 usually requiring a minimum of three quotes and can be awarded primarily based on price and quality.

WDB Area 20 Staff

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- G. Service Provider - Any public agency, private nonprofit organization, or private-for-profit entity that delivers core and/or intensive and/or training services to WIOA participants with the exception of an ITA. Awards to service providers may be made by contract, subcontract, or other legal agreement.
- H. Sub grantee - Any county of Area 20/21.
- I. Sub-recipient - The legal entity to which an award is made and accountable for the use of the WIOA funds provided. For WIOA purposes, distinguishing characteristics of a sub-recipient include items such as determining eligibility of applicants, enrollment of participants, performance measured against meeting the objectives of the program, responsibility for programmatic decision-making, responsibility for compliance with program requirements, and use of the funds awarded to carry out a WIOA program or project. Service Providers are considered sub-recipients and not vendors.
- J. Vendor – An entity such as a training provider offering a standard published price for the general public.
- K. Youth Service Provider - An entity or individual identified by the Area 20/21 WDB and sub grantees in accordance with Section 123 of the Workforce Innovation and Opportunity Act to provide and/or deliver youth activities and/or services.

Minimum Standards**A. Code of Conduct****1. Area 20/21 Conflicts of Interest**

No member of the Area 20/21 Board or Committee designated to award services for payshall cast a vote, or participate in any decision-making capacity on the provision of WIOA Title I programs/services or Area 20/21 matters that provide a direct or apparent financial benefit to said member, business partner, an immediate family member or the member's agency or organization.

When said member abstains from voting due to a conflict of interest or potential conflict of interest, the Area 20/21 minutes shall both reflect the abstention and the rationale for the abstention.

2. Staff Conflicts of Interest

No individual in a decision-making capacity shall engage in any activity, including participation in the selection, award, or administration of a contract agreement supported by WIOA funds if a conflict of interest or the appearance of a conflict of interest exists. A conflict of interest would arise when said individual, an immediate family member or business partner(s) is employed or about to gain employment with an organization selected for the award of a contract agreement supported by WIOA Title I funds.



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B. Drug-Free Workplace

The Area 20/21 WDB will comply with the Drug-Free Workplace Act of 1988, codified at 29 CFR Part 98.

C. Competition

The Area 20/21 WDB shall conduct all procurement to ensure that free and open competition exists.

1. Free and Open Competition

To promote free and open competition, the Area 20/21 WDB shall ensure that all transactions will be free and open and shall not:

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

2. Solicitations

The Area 20/21 WDB will:

- a. Solicit offers by disseminating a Request for Proposal (RFP) or Request For Quote (RFQ) to an adequate number of qualified sources to ensure competition (generally, sources included on the sub grantees RFP/RFQ mailing list), and advertising in one or more newspapers designed to reach service providers;
- b. Ensure that each RFP/RFQ includes a Statement of Work or Specifications, including a description of the requirements for time, place, and methods for the performance of the service;
- c. Ensure that each RFP/RFQ includes the deadline date and time the proposal must be submitted and that all proposals received are stamped with the date and time the original proposal was received;
- d. Ensure that each RFP/RFQ requires a line item budget; Ensure that each RFP/RFQ describes the solicitation process, including provisions for protest or appeal of the final award;
- e. Ensure that changing the service provider cannot effect the current active clients from participating in the program, by ensuring the new service provider factors in this additional cost when submitting their proposal based on current client data;



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- f. Ensure that each RFP/RFQ identifies all significant evaluation or rating factors and the relative importance of each factor;
 - g. Ensure that the evaluation factors include minimum thresholds that, if not met, require disqualification;
 - h. Negotiate with any or all bidders determined through the rating process to be responsive and advantageous to the program, and to notify unsuccessful bidders in a reasonable amount of time; and
 - i. Award a contract to the bidder(s) who is (are) successful.
3. *RFP/RFQ Mailing List(s)*
The Area 20/21 WDB shall ensure that all qualified lists of persons, firms, or other organizations used in acquiring services are current and include sufficient numbers of qualified sources to ensure maximum open and free competition.

D. Dispute Resolution

All bidders will be notified, in writing, of the results of the technical evaluation. Failed bidders will be advised during the dissemination of each RFP that they have the right to protest the decision.

Reasonableness of Cost

A. Determination Required

Documentation of cost reasonableness is required for every procurement action, including contract modifications (except for modifications where a determination has been made that there is no monetary impact). Acceptable methods of documenting cost reasonableness are price analysis and cost analysis. In addition to other evaluation factors used for price or cost analysis, where applicable, the Area 20/21 WDB shall obtain independent estimates prior to soliciting for goods and/or services.

B. Price Analysis

1. Price analysis is the process of examining and evaluating a price without looking at the estimated cost elements and proposed profit of the offer or whose price is being evaluated.
2. Price analysis will be performed on every procurement action.
3. Price analysis techniques shall include:
 - a. Comparison of proposed prices with independent estimates of cost developed by Area 20/21 sub grantees;
 - b. Comparison of competitive price quotations;
 - c. Comparison of prior quotations and contracts with current quotations for the same or similar items;
 - d. Use of yardsticks or parametric relationships to point out apparent gross differences (e.g., dollars per placement, price per instruction hour, price per participant training hour, etc.); and



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- e. Comparison of prices on published price lists with published market prices of commodities, together with discount or rebate schedules.

C. Cost Analysis

1. Cost analysis is the review and evaluation, element by element, of the cost estimate supporting a company's proposal for the purpose of pricing a contract.
2. A cost analysis is necessary when the proposer is required to submit the elements of the estimated cost, when adequate price competition is lacking, and for sole source procurements, including contract modifications (except for modifications where a determination has been made that there is no monetary impact), unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation.

Cost analysis includes evaluating:

- a. The supporting data submitted by the proposer;
- b. The cost elements; and
- c. The factors the proposer considered in developing the estimated cost of performing the specified work.

D. Profit or Program Income

1. If profit or program income is included in the price, the Area 20/21 WDB shall negotiate profit or program income as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is required.
2. To establish a fair and reasonable profit, consideration shall be given to:
 - a. The complexity of the work to be performed;
 - b. The risk borne by the contractor;
 - c. The contractor's investment;
 - d. The amount of subcontracting;
 - e. The quality of the contractor's past performance;
 - f. Industry profit rates in the surrounding geographical area for similar work; and
 - g. Market conditions in the surrounding geographical area.
3. Program income earned by the contractor must be reported to the agency issuing the contract along with a plan of how it will be expended for program activities. Program income must be spent for program activities only. (The requirements governing the use of program income are found at 29 CFR 95.24 (non-governmental) and 29 CFR 97.25 (governmental). The WIOA regulations at 667.200(a) (5) require the addition method to be used to account for program income, as does Part 95.



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Selection of Service Providers

A. Definitions

The definitions of service provider and sub-recipient at the beginning of this Policy are extremely important in understanding the requirements of this section.

B. Demonstrated Effectiveness

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

1. Determination of Program Effectiveness

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

2. Administrative Funds

The Area 20/21 WDB will ensure that, for all services provided to participants through contracts, grants, or other agreements with a service provider, such contract, grant, or agreement shall include appropriate amounts necessary for administration.

Administrative costs must be accurately identified in all contracts.

Examples of administrative costs include:

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

3. Duplication of Services

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

C. Service Provider Selection

1. Procedure

The competitive process outlined in this policy will be used to select all service providers. Requests for proposals (RFP) must be conducted by regional One-Stop Systems in accordance with the following steps:

- a. Select a regional RFP team.
- b. Develop RFP, which must include the required elements.

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- c. Prepare a timeline of the RFP process, which provides advertising at least 21 days prior to the bid deadline and offers time for questions and answers.
- d. Publish public notices throughout the region.
- e. Date stamp bids and open publicly.
- f. Select a rating team which is comprised of Board members and other community members. May include One-Stop staff members at the administrative staff's discretion. Compile rating scores.
- g. RFP team will recommend providers based on results of the rating process.
- h. Conduct price and cost analysis.
- i. Forward recommendations to the Area 20/21 WDB.
- j. Area 20/21 Administrative staff will notify the approved providers and negotiate contracts. If the contract will be between the one-stop operators and the approved providers, the one-stop system will negotiate the contract.

All of the above steps must be documented and a file maintained by the administrative staff for auditing and monitoring purposes.

2. Exception

At the conclusion of the procedure, the grantee or sub grantee within the system is unable to secure a provider for specific elements, than the grantee or sub grantee must be approved by the Area 20/21 Workforce Development Board to provide these elements in-house.

Documentation

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

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

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