

North Carolina
Department of Commerce
Division of Workforce Development

Beverly Eaves Perdue, Governor
J. Keith Crisco, Secretary

Roger Shackelford, Executive Director

April 24, 2009

LOCAL AREA ISSUANCE NO. 2009-10

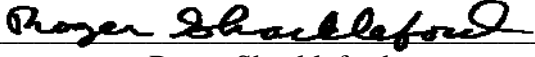
Subject: Procurement and Contracting Policy

Purpose: To provide local Workforce Development Boards (WDBs) and other subrecipients minimum standards and procedures designed to ensure the proper procurement of and contracting for services.

Background: Local WDBs and other subrecipients are required to establish and maintain procurement and contracting policies and procedures to ensure full and open competition. The attached procedures are designed pursuant to: the Division of Workforce Development Subgrant Agreement Section 3.4; North Carolina Administrative Code Title 4, Chapter 20 Section .0304(a) and (b); 20 CFR Part 652, et al., Section 667.200; Workforce Investment Act Chapter 3; 29 CFR Part 97.36 Uniform Administrative Requirement; and 29 CFR Part 95 Sections 95.40 through 95.48; OMB Circulars A-102 and A-87.

Action: Local WDBs and other subrecipients are required to incorporate these minimum standards into their procurement and contracting policies and procedures. These minimum standards apply to all funding received through the Division of Workforce Development. These minimum standards also apply to the procurement of property, consultants or personal services contracts. **This issuance supersedes SDA Issuance Number 99-1.**

Effective Date: Immediately
Expiration Date: Indefinite
Contact: Grants Management Staff
Attachment: Procurement and Contracting Policy



Roger Shackleford

Attachment

PROCUREMENT AND CONTRACTING

Procurement and contracting is the primary management system for ensuring accountability in the proper use of grant funds and integrity regarding the legitimacy of results being accomplished, in terms of both program objectives and cost effectiveness.

The nature of job training programs requires that flexibility be allowed to effectively respond to circumstances that will vary widely among local workforce board services areas and among the target populations to be served. Procurement and contracting is a major management tool for ensuring that the required flexibility does not result in unnecessary or inappropriate “looseness” in the administration of funds for program activities.

This document is based on the assumption that there is a standard set of actions and steps that need to be completed in any procurement and contracting process in order to create an opportunity for accountability and integrity to be accomplished. As Workforce Development Boards (WDBs) and staff are aware, real accountability and integrity results from the willingness to establish strong and clear performance expectations and objectives that relate to local needs and to carry these expectations and objectives throughout the series of steps that comprise the procurement and contracting process.

This document defines the requirements and minimum standards for the policies and procedures which must be in place regarding the solicitation and acquisition of goods and services from outside and internal sources. The requirements are based on the procurement and sub-grant management principles defined in OMB Circular A-102, 29 CFR 95.44 and CFR 97.36.

Procurement

Introduction. Accountability and integrity issues revolve around the procurement of goods and services. The government is interested in assuring that procurements are done in an environment that is free of undue influence and gives the taxpayer the best buy for their tax dollars. To ensure that these objectives are met, a heavy emphasis is placed on the integrity of the procurement process. This section addresses the major components of the process which are:

- Determining what goods and services are necessary to carry out the program objectives.
- Determining which procurement method will be utilized to obtain those goods and/or services.
- Clearly defining the goods and/or services desired.
- Defining criteria and minimum qualifications for evaluating and selecting providers to provide the goods and services.

Procurement systems must be consistent with the principles described in this section.

A. General Requirements. The grant subrecipient must have written procurement policies and procedures consistent with the requirements described in this section which are also consistent with applicable State and local laws and regulations.

Responsible Contractors. The grant subrecipient shall make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement at a reasonable cost.

Code of Conduct. The grant subrecipient must maintain a written code of conduct governing the performance of their employees, officers and agents engaged in the award and administration of contracts.

Arm's Length Negotiations. All negotiations of a contract for or with potential contractors/service providers must be arm's length negotiations. The definition of an arm's length negotiation is a negotiation where the parties to the negotiation have an opposing economic interest to that of the organization with which they are negotiating.

Restricting Competition. The grant subrecipient must prohibit noncompetitive pricing practices between firms, organizations or affiliated companies or organizations.

Consideration to Small, Minority and Women's (SMW) Businesses and Labor Surplus Suppliers. The WDB must provide an opportunity to SMW business organizations and labor surplus suppliers to participate in its procurement process.

Occupational Skills Training. The grant subrecipient must identify occupations for which there is a demand for training.

Bidders' List. The grant subrecipient must ensure that a list of persons, firms or other organizations which are used in acquiring goods and services are current and include sufficient numbers of qualified sources to ensure maximum open and free competition.

Avoidance of Unnecessary or Duplicative Purchases. Procedures must provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items and to facilitate the acquisition of goods/services in the most economical manner.

Adequate Administrative and Support Funds. The grant subrecipient must ensure that subrecipient contracts include adequate funds necessary for administration and supportive services. The level of administrative funding to be covered by the agreement should be determined through negotiations. If administrative funds are to be donated, the agreement must so stipulate.

Maintenance of Records. The grant subrecipient shall maintain records sufficient to detail the significant history of procurement. These shall at a minimum include the following: rationale for method of procurement, selection of contract type, contractor selection or rejection, the basis for the contract price, and the contract development process.

B. Competitive Procurement Alternatives. Competitive procurement is the strongly preferred method for procuring goods and services. This section describes the various competitive methods to be considered and the requirements for each method.

1. Small Purchase Option. A simple and informal competitive process for securing services, supplies and other property that do not cost more than \$25,000 in the aggregate on an annual basis is allowable. For purposes of economy, responsiveness to needs and

administrative efficiency, the WDB may consolidate procurements for similar needs (e.g., yearly requirements for office consumables or instructional materials), or break out project requirements into more than one procurement (e.g., separating computer hardware and software) in order to get the best and most effective items in each category.

This option may **not** be used to purchase training services.

The WDB must not, however, break out purchase requirements for the sole purpose of staying under the aggregate limit of \$25,000 or the administrative entity's limit, if lower. The following requirements must be met and documented:

Price Quotes. A minimum of three price quotes is required, which are supported by documentation consisting of product or service catalogues, current price lists, or telephone quotes substantiated by a written record of the price and source providing the quote, which is signed and dated by the staff person who obtained the quotes. When minimum of three quotes cannot be obtained, justification for sole source procurement must be met.

Basis for Selection. For most commodity goods/services, the basis for selection would be the lowest price. If the basis is something other than price, the criteria for selection must be documented (e.g., the need and benefit of the purchase and the relative advantage of the offering from the provider selected).

Formal Document. A purchase order, letter of agreement, or contract must be issued. Unless required by local procedures, a bilateral contract is not required. Purchase orders, vouchers, bills, sales slips or similar records can provide documentation.

Note: For the purchase of consumable materials under \$25,000 per transaction, non-competitive procurement is an option.

2. Request for Proposal (RFP) Method. An RFP is commonly used in procuring training or services for participants, when more than one source will be submitting offers and program specifications are usually too broad to compare responses solely on the basis of cost. The solicitation must clearly specify deliverables and the basis for payment and incorporate a clear and accurate description of the technical requirements for the material, product, or services being procured (including quantities).

Contents of Request for Proposal. To ensure resulting proposals include the information needed to make sound award decisions, it is required that the RFP include the following elements, as appropriate to the services being solicited.

- Name and address of the WDB's administrative entity.
- Name, address and phone number of person(s) to contact regarding the solicitation.
- General description of the sub-grant program, including identification of the applicable Federal and State laws and regulations with which the selected contractor must comply. [Note: At a minimum, the WDB should reference the WIA; USDOL Regulations 20 CFR Parts 626-631; and any appropriate NC Division on Workforce Development policy issuances.]
- The population to be served and minimum service levels to specific target groups.
- An estimate of the number/range of individuals to be served and expected results in each activity.

- Applicable coordination requirements.
- Funding parameters by activity.
- A description of the training and/or services to be provided.
- The period of performance.
- Applicable monitoring and reporting requirements, including, but not limited to, data entry, performance, and financial reporting.
- Other services or requirements (e.g., responsibility for eligibility determination, WDB policy on support payments, audit requirements and work statement requirements) that will affect proper budgeting by the offeror.
- Prohibition against subcontracting without WDB approval.
- Line item budget of proposed costs, including any profit to be realized and/or funds to be contributed.
- Documentation to be supplied by the offeror to establish its programmatic and financial capability to perform the work.
- Requirements for preparation and submission of the proposal, due date and time, content and format, number of copies and location/person where the bid should be submitted.
- Process and procedures by which proposals will be evaluated for competitiveness, including identification of specific criteria which will be used.
- Description of the procedures for responding to bidder inquiries and a schedule for the receipt of proposals, approximate dates for review and award.
- Grievance procedures for contesting the procurement process.
- Affirmative action assurance that the offeror will comply fully with the nondiscrimination and equal opportunity provisions of the Workforce Investment Act, the Non-traditional Employment for Women Act of 1991; Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975, as amended; Title IX of the Education Amendments of 1972, as amended; and with all applicable requirements imposed by or pursuant to regulations implementing those laws, including but not limited to 29 CFR Part 34. The United States has the right to seek judicial enforcement of this assurance.

The WDB may choose to include other background and reference information in the solicitation. In organizing the solicitation package, the WDB should clearly distinguish information which is general background from that which is directly applicable to preparing and submitting a competitive proposal.

Publication Requirements and Clarifying Information. The WDB must provide adequate public notice of the solicitation prior to the date established for submission. Such notice must include written notification to all organizations on the current, applicable bidders' list and written publication in newspaper(s) of general (i.e., the WDB's service area) circulation or posting to an accessible website.

A second public notice does not have to be completed if the RFP is being distributed in conjunction with an intention to bid process. In this case, the RFP must be distributed to the providers responding to the intention to bid, as well as to any party requesting it.

To provide the opportunity for a maximum number of qualified organizations to prepare bids, it is strongly recommended that the subrecipient issue the public notice a minimum of 30 days prior to the submission date for proposals.

If the subrecipient accepts inquiries, the solicitation should describe the process for receiving/responding to the inquiries.

Amendments to Solicitations. If a determination is made to amend (expand or restrict) the solicitation, distribution to each person or organization who received a copy is required.

Evaluating for Competitiveness/Demonstrated Performance. Criteria must be established for evaluating competitiveness and demonstrated performance. At a minimum, the procedures must include: (1) provisions for ensuring independence of ratings by those involved in the evaluation process; and (2) provisions for the use of weighted criteria and a standard evaluation worksheet. In establishing the scoring methodology to evaluate competitiveness, awarding additional points for specific organizations including minority enterprises, women-owned businesses, Community Based Organizations (CBOs) or publicly-funded educational institutions may only be given to the extent the WDB's agency-wide policy allows such additional points in procurements for funding sources other than WIA.

Selection and Award Procedures. The WDB must establish and follow procedures by which proposal evaluation results are prepared, reviewed by the WDB and the extent to which the staff is authorized to award and negotiate resulting contracts.

This process and specific WDB authority must be reflected in the WDB bylaws, the oversight section of the local Workforce Board Area plan or in the WDB's procurement procedures.

Use of Contingency Lists. If the WDB chooses to use a contingency list for proposals which were not selected for immediate award, but to whom contracts may be awarded if additional funds become available, the list must:

- Include only proposals that have an evaluation score which meets or exceeds the minimum level defined for competitiveness.
- Be developed, maintained and used in accordance with established procedures regarding the priority order for using bidders on the list.

3. Intention to Bid. This competitive method maintains the integrity of a competitive procurement process by identifying, through public notice, potential bidders to determine the feasibility of procurement.

Criteria for Use. This procedure is appropriate when there is a high level of uncertainty regarding the number of bids which will be received and whether there will be a sufficient number of bids to justify development of a solicitation.

Procedural Requirements. To use this method, the WDB must complete the steps described below.

Develop a set of preliminary training/service specifications for which the WDB intends to request bids. The specifications must include the following parameters:

- date the proposed solicitation will be issued
- specific type of training/services to be performed

- estimated number of participants and/or available funds or ranges, if preferred
- expected period of performance
- geographic area to be served
- specific target groups to be served, if applicable
- type of contract to be awarded
- expected performance

Issue a public notification in the same manner as that used for the issuances of RFPs. In addition, issue letters or e-mail notifications to all applicable organizations on the bidders' list, requesting an indication of whether the organization intends to bid on specific training/services which are described in the letter, consistent with the specifications developed in the preceding step. The letter must indicate the date by which a response is to be received.

If the intention to bid process is used and no interest is received, noncompetitive sole source procurement may be used. When one intention to bid response is received, every effort must be made to negotiate desired training/services with that provider. However, if acceptable training/services cannot be negotiated, the WDB may use sole source to obtain the training/service. A complete history of this process must be documented in the procurement file.

Limitations. Sole source procurement may not be used if more than one organization indicated its intent to bid. In this case, a solicitation for the training/services advertised must be transmitted to all who responded to the intention to bid.

4. Request for Quotation/Invitation for Bid (Formal Advertising for Sealed Bids.) Under this method, bids are publicly solicited and a contract is awarded to the responsible offeror whose bid, conforming with all material terms and conditions of the solicitation, is the lowest in price. A fixed-price contract is the preferred method to be used.

PROCUREMENT BY SEALED BIDS MAY NOT BE USED WHEN SECURING PROGRAM OR ACTIVITY TYPE SERVICES.

According to 29 CFR 95.48 or 29 CFR 97.36, all procurement contracts and other transactions between Local Boards and units of State or local government must be conducted only on a cost reimbursement basis. There is no provision for profit allowed. (WIA sec. 184(a) (3) (B).)

Criteria for Use. This method is appropriate and effective when the WDB is capable of specifying and describing the desired goods or services to be provided at high level of precision and completeness. The best examples are commodity-type goods/services which are widely available in the marketplace; e.g., computer equipment and software, instructional and testing materials, furniture, or training available to the general public.

Procedural Requirements. The minimum procedural requirements for this method are:

- Prepare a Request for Quotation (RFQ)/Invitation for Bid (IFB). The RFQ/IFB must include full and clear definitions and descriptions of the items to be procured, key performance dimensions or specifications, format for submission of bids, submission deadline and timeframes.

- Distribute the RFQ/IFB to organizations on established bidders' list and publicly advertise the procurement in a local newspaper with WDB area-wide circulation or post to an accessible website, allowing sufficient time prior to the date of bid opening to permit adequate responses to the solicitation.
- Open all bids publicly at the time and place stated in the RFQ/IFB.
- Complete a cost or price analysis to determine the reasonableness of cost.
- Award a contract to the responsible offeror whose bid represents the lowest price and conforms to all of the specifications in the RFQ/IFB and meets the demonstrated performance criteria.
- Provide written notification to unsuccessful offerors promptly and file documentation accordingly.

[Note: The WDB can reserve the right to reject any or all bids when there are sound reasons in the best interest of the program. However, the WDB must communicate this right in the solicitation.]

C. Non-competitive Procurement Alternatives. Noncompetitive procurement may be necessary in selected situations when competition is infeasible. This method should be minimized to the extent practicable, but in every case must be justified and documented. This section describes the options and criteria to be used in considering noncompetitive procurement, depending on the specific situation. Although not required, WDBs are encouraged to consult with State staff when noncompetitive procurement is being considered and the appropriateness of the circumstances is uncertain.

1. Small Value Purchasing Authority (SVPA). To purchase consumable materials without a formal award or competitive bidding process, the small value purchasing authority may be used if all the following requirements are met:
 - Purchases are limited to consumable goods and/or supplies and may not exceed \$25,000 per transaction.
 - It is used for immediate over-the-counter purchases and/or to take advantage of cost-saving purchases such as advertised specials. Splitting of orders into multiple orders to avoid the dollar limitation is not allowable.
 - Written guidelines governing the use of SVPA purchases must be developed by the WDB.
 - Documentation of each purchase is maintained, such as a purchase order or detailed sales receipt to show the items bought.
2. Emergency. The use of sole sourcing for emergency situations should be infrequent and for limited time periods (i.e., reflecting the emergency). If the need generated by the emergency will continue over an extended period of time, a competitive procurement method must be used after the emergency has been resolved.
3. State Authorized Noncompetitive Procurement. WDBs may request authorization from the State to use noncompetitive procurement in circumstances when the competitive procurement is not feasible to meet special need and the noncompetitive criteria do not address the special circumstances. A written request must be transmitted to the NC Division of Workforce Development which includes the following information:
 - Purpose of the project

- Agency(ies) involved and the collaboration to be effected
- The circumstances which justify noncompetitive procurement

The circumstances must involve a real collaborative effort to provide services which will benefit the clients of each agency's use of this criterion is not appropriate to procure a broker for services or a provider of services who has no client base to benefit from the project.

NOTE: The ability to use state authorized noncompetitive procurement may not be used if it violates local administrative entity procurement policy.

4. On-the-Job Employer Agreement. Agreements directly with employers for the provision of on-the-job training may be procured noncompetitively. If an intermediary "broker" is contracted to administer the OJT, the broker services must be procured competitively.
5. One Service Provider. The WDB may use noncompetitive procurement if it has been determined that the item or service is available only from a single source. Efforts should be made during the next regular procurement cycle to determine if the particular item or service has become available from other sources.
6. Failed Competitive Procurement. The WDB may use noncompetitive procurement if it has conducted a competitive procurement process and only one or no competitive bid was received. When the WDB received one competitive bid, every effort must be made to negotiate desired training/services. However, if acceptable services cannot be negotiated or no competitive bids were received, sole source may be used to obtain the training/service. A complete history of this process must be documented in the procurement file.
7. Unsolicited Proposals. This option is not intended to circumvent competitive procurement. It may be used to take advantage of worthy proposals that meet a need not addressed through the most recent solicitation process. Considerations in funding unsolicited proposals include but are not limited to:
 - These proposals must be reviewed and evaluated by the same criteria as those used to evaluate proposals received through competition.
 - The contract period for such awards should not be extended beyond the training cycle(s) proposed/funded so that the services may be included in the next competitive solicitation following the training.
 - Unsolicited proposals for customized training from an employer or group of employers, or an agency acting on their behalf, should describe what the training will include (e.g., skills/competencies, methods of instruction), how the employer will be involved, and include commitment by the employer(s) to hire successful completers of the training.

To guard against complaints from proposers not funded, it is strongly recommended that procurement procedures specify whether (or not) unsolicited proposals will be accepted and if so, that similar unfunded proposals on the contingency list (if used) will receive priority for funding if they meet the need being addressed.

D. Additional Procurement Guidelines

WDB Agreements. WDBs may enter into an agreement or contract with another WDB to pay or share the cost of education, training, placing or providing supportive services to individuals participating in programs funded by the WIA. Any agreement must be approved by the WDB and described in the WDB's workforce development plans.

Reasonableness of Cost. For any noncompetitive procurement, the WDB must also prepare a cost and/or price analysis verifying the reasonableness of proposed costs in relation to the scope of work.

Review Process. Noncompetitive procurements must be reviewed for competitiveness and demonstrated performance, just as competitive procurements. Because of the emergency nature of some noncompetitive procurements, the review process may be different since time may be a critical factor with such procurements.

Reasonableness of Cost. A determination of cost or price reasonableness must be completed for each procurement action for which an award is made; both competitive and noncompetitive, including contract modifications and renewals (unless there is no monetary impact). In making the determinations, the allowability, allocability, appropriateness and necessity of the proposed levels of projected costs must be considered in relation to the level and scope of services to be provided.

Independent Cost/Price Estimates. Development of independent cost/price estimates is required prior to receiving bids or proposals for all procurements. The estimates should be used for internal guidance in determining cost or price reasonableness and should not be included in the solicitation or provided to outside parties.

Cost Analysis. Cost analysis is required in determining the reasonableness of a line item budget in a cost reimbursable contract, or through a fixed price contract for specified deliverables in which the price is based on the line item budget and not on market prices.

Offeror Certification of Cost Data. When cost analysis is required and there is inadequate competition (e.g., when using a line item budget to establish a fixed price contract and the deliverables are not available on the open market for price comparison), the offeror must certify that to the best of its knowledge and belief the cost data are accurate, complete and current at the time of agreement on the fixed price.

Contracts or modifications negotiated in reliance on such data will provide the WDB a right to a price adjustment if it is later discovered that the contractor knowingly submitted data that were not accurate, complete or current as certified (as in discovering through monitoring that the contractor has not hired the staff or purchased materials as proposed in the line item budget on which the fixed price was based).

Price Analysis. A simplified price analysis may be used in lieu of a cost analysis when reasonableness can be established on the basis of comparison of catalog or market prices of commercially available products, services or training packages sold in substantial quantities to the general public or based on prices set by law or regulation (e.g., tuition prices).

Contract Negotiations. The WDB must negotiate with contractors/service providers prior to contract execution to agree on work statement elements and verify the necessity of

proposed costs in relation to the elements of service. Written documentation of the negotiations and the final outcome must be maintained in the procurement file.

High-risk contractors/service providers should be determined prior to negotiations so that concerns can be discussed and potential sanctions established during the negotiation process.

Range of Negotiations. Negotiations must be structured around WDB established priorities, policies, definitions, and parameters included in the solicitation. Negotiation ranges are further defined by the criteria and weights used to evaluate the competitiveness of bids submitted. Negotiations cannot alter the structure of the competitive environment established in the procurement process.

Negotiating Profit/Fees. Profit is defined as the contractor's/service provider's return after meeting all WIA-related operating expenses. It is allowable for for-profit contractors/service providers only. Profit may be paid as a lump sum after all services are delivered, in the form of a fee as incremental performance benchmarks are achieved or as part of a fixed unit price. In any case, the earning of profit must be tied to the reasonable and measurable delivery of the contract objectives. WDBs must not permit excess profit. Profit must be negotiated as a separate cost item and cannot be paid as a percentage of the contract cost. To establish a fair and reasonable profit, consideration must be given to the following criteria:

- 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 the contractor's record of past performance
- industry profit rates in the surrounding geographical areas for similar work
- market conditions in the surrounding geographical area

To document that excess profit was not permitted, contractor's/service provider's audits must include a profit schedule and the WDB must determine that the profit earned was reasonable in consideration of the work performed.

Determining Business Operation Capability. The WDB must verify the business operation capability of each potential service provider. Information required to make this determination might be required with submission of the proposal (if an evaluation factor) or obtained during a pre-award review, but the determination must be made prior to contract execution. Items for consideration include:

- Staffing capabilities.
- Business licenses and/or registrations with appropriate oversight agencies.
- Adequate accounting systems.
- Sufficient bonding and insurance coverage.
- Determining Absence of Debarment and Suspension. The WDB must ensure that the organization is not on any current Federal, State or local "debarment and suspension" list. The subrecipient must require each prospective bidder to certify that it is not on any Federal, State or local debarment or suspension list. A "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered

Transactions” form must be executed and included in all contracts of \$25,000 or more.

Procurement Records. The WDB must develop and maintain a record/file of each relevant procurement sufficient to detail the significant history of the procurement and support the procurement decisions made. The record should include the following information as appropriate for the type of procurement:

- evidence of WDB involvement in the decision-making process
- a copy of the solicitation package (e.g., RFP/RFQ/IFB/ITB).
- a copy of the public notification.
- bidders’ list to which notices were mailed.
- list of all organizations/entities sent a solicitation.
- agenda and minutes of the bidders’ conference, if a conference is conducted.
- a copy of each question and answer issuance, if applicable.
- log sheet of receipt of bids.
- a copy of each bid which was received.
- rating and scoring sheets completed in the evaluation process.
- business operation capability evaluations.
- documentation of the rationale for selection and funding of any offeror which did not receive the highest score/ranking in the evaluation process.
- evidence of WDB approval of the procurement
- completed Memo of Negotiations for each subrecipient contract.
- completed cost analysis for each selected bidder.
- a copy of any submitted grievances and the resolution of each.
- high risk determinations and special award/contract conditions, if appropriate.

Contracting

A. Introduction. This section identifies the allowable contract instruments which can be used. Each instrument is described in terms of appropriate use and a description of general provisions and specific contract provisions which must be included in contracts.

One of the first considerations in developing a contract is the relationship the WDB expects to have with the organization delivering the services. Based on the complexity of the work to be performed, these relationships are two types:

- A vendor relationship exists when the WDB enters an agreement to purchase generally required goods and services which are available and sold to the general public during normal business operations.
- A subrecipient relationship exists when an award is made to provide specific WIA services that are not provided to the general public, based on negotiated specifications.

Both vendors and subrecipients are defined as service providers.

B. Types of Contracts-Vendors. Fixed price contracts must be used with vendors.

1. Fixed Price Contracts. A fixed price contract is used to purchase generally required goods and services which are sold to the general public during normal business hours at an agreed upon price regardless of the contractor's cost incurred. The appropriate uses of fixed priced contracts are provided below:

- For the purchases of equipment, supplies or materials when a purchase order is not appropriate.
- For the purchases of **personal services** of consultants when the deliverables are specifically defined and priced. Consultants and personal services contracts, costing **\$5,000** and over, **must** have review and written approval by the Division of Workforce Development before the contract is finalized. The request for review by the Division must include:
 - The purpose of the contract;
 - The cost of the proposed contract;
 - The starting and ending dates;
 - An assurance of adherence to State and local procurement policies; and
 - The funding source to be used.

The contract must identify the specific deliverables and the related price for each, for which payment will be made.

C. Types of Contracts-Subrecipients.

1. Cost Reimbursable Contracts. WDBs may use a cost reimbursable contract for any form of procurement. In this type of contract, reimbursements are made to the contractor for actual expenses incurred in the provision of goods/services. Under cost reimbursable contracts, the primary risk in achieving a reasonable relationship between expenditures and results fall to the WDB in negotiating line costs.

This type of contract is required for procurement transactions between units of State or local governments or any other entities organized principally as the administrative entity for the local workforce development board.

Each contract must contain a detailed line item budget specifying the expense items and estimated amounts for all costs. All costs in the approved budget must be allowable and properly allocated among the cost categories that will benefit. The contract must fully describe the services to be delivered and the invoicing and payment and procedures including signatory authority for the submission of invoices. Any provisions of flexibility in expenditures among the specific line items must also be described in the contract.

2. Cost Reimbursable Contracts with Profit. A cost reimbursable contract may include a profit element when an incentive is appropriate to induce a private for-profit contractor/service provider to provide WIA training or services.

3. Fixed Price Contracts. The use of a fixed price contract is limited to specific circumstances in which a contractor/service provider agrees to deliver specified WIA services at a negotiated price. These situations might include such services as eligibility determination, assessment, or case management with a detailed work statement, with a unit price established for each deliverable, e.g., number of enrollments, number of assessments, etc.

This type of contract differs from a fixed unit price, performance based contract only to the extent that it provides for delivery of a specific service, regardless of participant outcomes. Requirements for establishing and paying the fixed price are the same, except that payment conditions must be based on the delivery of measurable units of service, rather than on participant outcomes.

4. Hybrid Contracts (Cost Reimbursable with Fixed Price Element). Hybrid contracts incorporate a combination of cost-reimbursement and fixed price characteristics. In these contracts, some cost items will be separately identified to be reimbursed on actual costs incurred and other cost items will be a unit identified as a fixed price.

This type of contract may be used when contracting with a subrecipient on a cost reimbursable basis, but some costs would be paid as a fixed price. These contracts must be negotiated and executed on the basis of detailed line item budget in which the cost items to be reimbursed are separately identified from the fixed price element(s). The requirements applicable to the cost reimbursable and fixed price contracts will apply to each separately identified set of expenses.

5. Fixed Unit Price, Performance Based Contracts. Fixed unit price, performance based contracts are allowable for employment and training services as an incentive for contractors to perform efficiently and achieve high levels of participant outcomes. The following requirements apply in establishing a fixed unit price and the condition for payments:

- A cost analysis of all cost elements, i.e., line item costs, must be conducted and documented, and reasonableness of the unit price determined.
- The fixed unit price must be allocated to benefitting cost categories based on the ratios established in the cost price analysis.
- The offeror must certify in writing that cost data are accurate, complete and current at the time of agreement on price. The awarding agency must retain the right to a price adjustment if it is discovered that the subrecipient knowingly submitted data that were not accurate, complete and current.
- Payment conditions must include measurable participant outcomes (e.g., quantifiable levels of skill attainment, placement in training-related position, a placement wage requirement, retention).

D. General Contract Provisions for All Contracts. Except for small purchases for which a purchase order is appropriate, the WDB must award a bilaterally executed contract which includes at a minimum, the fixed price and/or estimated costs, a description of the scope and extent of work performed or specification of the goods/services to be provided and the period of performance. (NOTE: There is no requirement that fixed unit price agreements establish minimum or maximum quantity or funding levels to require performance or limit obligations. However it is strongly recommended that a maximum be included in the agreement to identify obligations and manage risk.)

The WDB must include in each vendor and subrecipient contract the following provisions and must require that the contractor include the provisions, or references to them, in any subcontracts.

- Remedies. A provision which will allow for administrative, contractual, or legal remedies if the contractor violates or breaches terms of the contract; and which provides for appropriate sanctions and penalties.
- Termination. A provision for termination of the contract for cause and for convenience by the awarding agency and for termination because of circumstances beyond the control of the contractor. The provision must include an identification of the conditions under which termination actions will be taken, the manner in which actions will be taken and the basis for settlement.
- Modification. A provision defining the conditions under which the contract can be modified, including specification of the conditions by which the contract can be unilaterally modified by the WDB.
- Assignment. A provision prohibiting the assignment of the contract to another party.
- Funds Availability. A provision for withdrawal of funds from the contract as a result of discontinued or more limited funding to the WDB from the State.
- Coordination of Grant Funds. A provision for coordination, documenting and reporting funds from High Education Act grants (e.g., Pell, Supplemental Educational Opportunity Grant (SEOG)) and other sources that are used in conjunction with WIA funds on behalf of participants.
- Payment Conditions and Delivery Terms. A provision which describes conditions under which payments will be made, the documentation required for invoicing and the timeframes for submission and payment of invoices. (Payment conditions depend on the type of contract used.)
- Contract Period. Subrecipients may with sufficient justification, renew an annual-contract for two (2) additional years without benefit of competitive procurement not to exceed a total of three (3) years. Each renewal shall be limited to a one (1) year period. Renewal of an annual contract shall not preclude the contract negotiation requirement or the cost or price analysis process. This requirement applies except in the case of noncompetitive procurement under the emergency criterion and unsolicited proposals. If establishing a contract period which crosses program years, contract provisions must address the longer period of performance.
- Audit Responsibilities. A provision describing contractor's/service provider's audit responsibilities. In the case of vendors, in lieu of an audit the right of access to vendor records of program charges and to staff for interviews must be included.
- Data/Copyrighting. A notice of WIA requirements pertaining to rights to data or products developed with the use of WIA funding. Specifically, the awarding agencies, the NC Division of Workforce Development and the U.S. Department of Labor must have unlimited rights to any data first produced or delivered under the agreement including agreements which involve the use/development of computer programs/applications, or the maintenance of databases or other computer data processing programs, including the input of data. There must also be a notice of WIA

requirements pertaining to copyrighting only in contracts which involve the use or development of copyrighted materials.

- Reporting Requirements. A description of the WDB requirements for reporting data and other information.
- Complaints. Information for filing a complaint.
- Records and Retention. A description of the records which must be maintained and the applicable record retention period.

E. Additional Provisions for Subrecipient Contracts. In addition to the general provisions required for all contracts described above, the following provisions are required for contractors/service providers contracts only.

- Adherence to Applicable Laws and Regulations. A provision that the contractor/service provider will adhere to all applicable Federal, State and local regulations, laws and policies.
- Use of Program Income. A provision defining the procedures and criteria for the disposition and use of program income earned by the contractor, if applicable.
- Non-duplication of Services. An assurance that facilities and services are not duplicated through this contract unless it has been established that alternative services or facilities would be more effective or more likely to achieve performance goals.
- Equal Opportunity. The WDB must include the following equal opportunity provision verbatim; and must require that its contractors/service providers include the clause in any of their contracts which has, or is expected to have, an aggregate value exceeding \$10,000 within a 12-month period.

During the performance of this contract, the contractor agrees as follows:

- a. The contractor will comply fully with the nondiscrimination and equal opportunity provisions of the Workforce Investment Act (WIA); including the Nontraditional Employment for Women Act of 1991; Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Americans with Disabilities Act of 1990; as amended; the Age of Discrimination Act of 1975, as amended; Title IX of the Education Amendments of 1972, as amended; and with all applicable requirements imposed by or pursuant to regulations implementing those laws, including but not limited to 29 CFR Part 34. The United States has the right to seek judicial enforcement of this assurance.
- b. The contractor will not discriminate against any employee or applicant for employment, or program applicant/participant because of race, color, age, religion, sex, disability, national origin or political affiliation or belief. The contractor will take affirmative action to ensure that applicants are employed/selected and that participants and employees are treated during their period of employment/participation without regard to their race, color, age, religion, sex, disability, national origin, political affiliation or belief. Such action must include, but not limited to, the following: employment, upgrading, demotion or transfer;

- recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of the non-discrimination clause.
- c. The contractor will, in all solicitations or advertisements for employees or participants placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, age, religion, sex, disability, national origin, political affiliation or belief.
 - d. The contractor will permit access to any contract-related books, records and accounts by the contracting agency, the State and the US Secretary of Labor for purposes of investigation to ascertain compliance with applicable rules, regulations and orders.
 - e. In the event of the contractor's non-compliance with the non-discrimination clauses of this contract with any such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further government contracts and such other sanctions may be imposed and remedies invoked as provided by rules, regulations and orders of the Secretary of Labor, or as otherwise provided by law.
- Compliance with Contract Work Hours and Safety Standards Act (40 U.S.C 327-332). Contracts for the construction and repair of any government building funded by WIA and whose values exceeds \$2,500 must include a statement referencing compliance with (c)(3)(iii) of the Contract Work Hours Safety Standards Act. This requirement does not apply to contracts for the purchase of supplies or materials or articles ordinarily available on the open market, or to work where the USDOL assistance is in the form of a loan guarantee or insurance.
 - Safety. The WDB must include in all construction contracts in excess of \$2,000 which involve the employment of laborers or mechanics provision requiring the contractor to comply with 29-70.21613 (c) (3); except if the contract is subject to the Davis-Bacon Act, the following provision must be included:

“The contractor shall not require a laborer or mechanic employed in the performance of the contract to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to health and safety.”
 - Compliance with Copeland Anti-kickback Act (40 U.S.C 276c and 18 U.S.C. 874). Contracts in excess of \$2,000 for construction, completion, or repair of public buildings, public works, or building work financed in whole or in part by Federal funds, must include the provision prescribed in 29 CFR 5.5 (a)(5), requiring compliance with the Copeland Act. The Copeland Act prohibits illegal deductions or kickbacks of wages to which employees are otherwise entitled. The WDB must report all suspected or reported violations to the State.
 - Certification Regarding Lobbying. Executed contracts with value in excess of \$100,000, must include a provision which prohibits the use of federally appropriated funds for lobbying the Executive or Legislative branches of the Federal Government in connection with a specific contract, grant or loan. The WDB must ensure that the contractor completes and signs a “Certification Regarding Lobbying” form so indicating. The provision must also specify that the contractor must complete a

“Disclosure of Lobbying Activities” form for any and all lobbying activities which are supported by other than federally appropriated funds.

F. **Subrecipient Work Statement Requirements.** The following elements are required in contract work statements with contractors/service providers who will provide participant training, and in other contract work statements as appropriate to the services to be provided or the work to be performed.

- **Training Activities.** A description of the type and duration of the training activity including, if applicable, length of training cycles and the approximate number of participants per cycle.
- **Other Training and Support Activities.** A description of other specific services and activities to be provided such as assessment, the administration of specific test instruments, individual service strategy completion, counseling, job development, placement, work experience, support payments, follow-up and their relationship to the training activities.
- **Placement Targets/Wages.** Occupational targets considered as training related placements, as well as the related placement wage for each target. Wages should reflect the prevailing local wage for the occupation, based on local or regional surveys.
- **Completion Definition.** A description of the skill levels to be acquired and the method(s) for measuring attainment.
- **Program Entry Requirements.** A description of the minimum skill levels required for entry into the program. Any educational requirement should reflect the minimum skills needed to successfully complete training. Occupational skill requirements should reflect an absence of skills necessary for entry employment in the occupation of training. The method to be used to assess the skills must be included.
- **Target Population.** A description of the participants to be served in the program by number, key demographic or target group characteristics (percent of total) for youth and adult.
- **Staffing/Management Plan.** A description of each job title and primary responsibilities, number of staff per job title and percent of time committed for each position to the contract. This breakout may be included in the work statement or as backup to the line item budget. It is recommended that an organizational chart and related job descriptions/qualifications of the individuals in the WIA positions be attached to the contract to verify the adequacy and abilities of the staff to deliver quality services and provide effective monitoring/oversight of performance.
- **Program Performance.** The planned number of eligible individuals must be identified (by group, if applicable) who are enrolled, complete training and meet performance outcome/retention criteria.
- **Facilities.** A description of the facilities and location to be used during training/contract period.

- Equipment. An itemized listing of the equipment (e.g., computers, etc.) to be used in the program in accordance with the requirements of the training.
- Training Supplies and Materials. An itemized listing of training supplies and materials (e.g., work tools, work books, stationery items) to be used in class-sized programs, in accordance with the requirements of the curriculum and the number of participant slots.
- Implementation Schedule. The period of performance and any requirements related to minimum start-up and completion dates for individual training cycles.
- Subcontracts. Any third parties to whom any part of the contract will be subcontracted must be identified and their responsibilities defined. All applicable work statement items will flow to the subcontract contract, with the sole exemption being the on-the-job training employers.
- Coordination. A description of coordination arrangements with other organizations which will contribute funds or provide services on behalf of program participants. This description should correlate to a statement of shared/contributed costs in the budget section.
NOTE: When payments are tied to performance, the work statement elements must be consistent with payment conditions stated in the contract.

G. **Timely Contract Execution/Use of Preagreement Letters**. As a standard operating procedure, subgrant funds are to be obligated and disbursed to contractors in accordance with a fully-executed contract and/or subcontract. When the risks associated with having a fully-executed contract are outweighed by the need to provide services, the use of a pre-agreement letter should be used to clarify expectations until a fully executed contract is finalized. Such costs are allowable only to the extent that they will be incurred after beginning of the contact period. The letter should be executed by the WDB prior to program start-up. At a minimum, the letter should contain the following information:

- a general description of the service to be provided,
- the negotiated line item budget for the project,
- the period of the proposed contract,
- a statement indicating that a fully-executed contract will be in place within a specified period, e.g., 60 days,
- a statement indicating that no money will be exchanged between the parties until the contract is executed, and
- names, titles and signatures of the individuals for both entities planning to enter the proposed contract and agreeing to terms outlined regarding negotiated contract costs.

H. **Contract Administration and Records**. WDBs must maintain a system for contract administration to ensure that service providers and other suppliers comply with the terms, conditions and applicable performance requirements of contracts or purchase orders and to ensure adequate and timely completion of all transactions.

I. **Monitoring.** All WDBs must maintain a system for contract monitoring to ensure that contractors/service providers comply with the performance requirements and provisions of the contracts.

J. **Contract Files.** All WDBs must maintain a file on each executed contract sufficient to document the record of the contract, performance against the contract and payments made. The file should include the following elements:

- executed contract and modifications
- cost/price analysis for each modification or documentation as to why it was not required
- official correspondence
- memos to file

K. **Property Control:** All WDBs must develop procedures and maintain controls for property acquisition, utilization, maintenance, and disposition. A physical inventory of all property must be performed at least once a year.