

Northwest Workforce Council

POLICY AND PROCEDURES DIRECTIVE

DATE ISSUED: October 15, 2001 (Rev 4/01/07)

SUBJECT: Policies and Procedures, including Conflict of Interest, for the Procurement of Supplies, Equipment, and Services

REFERENCE: WIA 01-23

SECTION I. POLICY

1.1 Purpose

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

1.2 Compliance

The policies and procedures herein enacted are structured to comply with the Federal Acquisition Streamlining Act, P.L.103-355; P.L. 105-200; the Office of Management and Budget Circulars A-122 and 29 CFR Parts 95.42 & 97.36: and CFP 667.200(a)(1) and (4): Washington State WIA Policy 3420.

1.3 Policy

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

SECTION 2. PROCUREMENT

2.1 Procurement Mechanisms - Procurement of supplies, equipment, and services shall be made by either

- a) small purchase procedures,
- b) competitive sealed bids (formal advertising),
- c) competitive negotiations

- d) non-competitive negotiations.

2.2 Mechanism Selection

It shall be the decision of the Workforce Council's Executive Director, in consultation with the Executive Committee, to select the appropriate procurement mechanism for goods and services with the exception of small purchases which are addressed in Section 7.2. Such decision shall take into account the cost of the goods or services, the adequacy and precision with which goods or services can be described, the availability of qualified bidders, the appropriateness of selection on the basis of price, and the urgency with which goods or services are needed. Due consideration shall be given to the cost efficiency of lease/rental versus purchase of equipment or supplies.

2.3 Definition of Procurement Mechanisms

- a) Small purchase procedures are those relatively simple and informal procurement methods for the purchase of services, supplies or other property where the aggregate cost does not exceed \$100,000. Price or rate quotations, including specification of the service, supply or other property, the unit price, and timeframe and manner of performance, shall ordinarily be obtained from at least three qualified sources to allow for a price analysis. The price analysis from three vendors will be attached to the selected vendor's invoice with the payment stub. For these purposes, the acquisition cost of property, supplies or services means the net invoice unit cost of the item or service. Other charges such as transportation, taxes, installation or per diem shall not be included in the unit acquisition cost.

Non-expendable personal property shall mean tangible property with a useful life of more than one year and an acquisition price of \$1,000 or more per unit. Bilateral agreements will be required only for the purchase of personal or professional services. Other purchases will be considered adequately documented by purchase orders, vouchers or bills, sales slips, or memorandums of oral price quotations. Supplies and expendable personal property with a value of under \$10,000 may routinely be purchased from vendors without competitive bid or multiple price quotes using buyer's knowledge. Staff shall on an ongoing basis attempt to obtain the lowest practical price for goods purchase, e.g. maintaining "Premier Customer Status for Non-Profit Organizations."

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

in the Invitation for Bids. To be feasible, this type of solicitation must have two or more suppliers willing and able to compete, must lend itself to the development of a firm fixed price, and must be for goods or services which can appropriately be selected on the basis of price alone.

- c) Competitive Negotiation is a competitive procurement method which is used when the nature of the service or product precludes the development of sufficiently precise specifications to allow all prospective suppliers to have an identical understanding of the requirements. A Request for Proposal (RFP) is publicized, negotiations are conducted with more than one of the sources submitting offers and either a fixed price or cost reimbursement contract is awarded, as appropriate.
- d) Noncompetitive Negotiation is procurement through solicitation of a proposal from only one source, or after solicitation from a number of sources, competition is determined to be inadequate. This method of solicitation will be used only when other methods of solicitation are inappropriate and if one of the following circumstances applies:
 - i) The item or service is unique and available from a single source, or
 - ii) Public exigency or emergency does not permit the delay incident to competitive solicitation, or
 - iii) The Department of Labor grants prior approval for noncompetitive proposals, or
 - iv) Competitive solicitation has not resulted in adequate or acceptable proposals or bids.

SECTION 3. FINANCIAL DOCUMENTS

3.1 Contracting Mechanisms

The NWC's Executive Board shall instruct the Fiscal Agent to prepare agreements which shall be binding financial documents to secure goods and services. Agreements shall be either Contracts or Subgrants.

3.2 Definition of Types of binding Financial Documents

- a) Contract means a written agreement between the Fiscal Agent and another party (contractor) obligating the Fiscal Agent to pay for and the contractor to furnish goods or services needed to accomplish some aspect of the work plan which is not a substantive part of the grants.
- b) Subgrant means a written agreement between the Fiscal Agent and an eligible entity whereby the Fiscal Agent provides funds for the purpose of the subgrantee carrying out a part of the substantive programmatic work of the grant or for developing the agencies capacity to meet an identified need. Normally, an eligible entity is a unit of State or local government, a public or a private non-profit organization.

SECTION 4. PAYMENTS

4.1 Methods of Payment

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

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

4.2 Definition of Methods of Payment

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

SECTION 5. SOLICITATION

5.1 Procedures for Issuance of Invitations for Bids (IFB)

Where the Workforce Council's Executive Board has determined that formal advertising is the appropriate method for the procurement of goods or services, public notices inviting bids shall be published in the newspaper of highest circulation in the Area at least twice, once during each of two consecutive weeks and not less than one week prior to the closing date for submittal. Closing dates shall be established on the basis of administrative timelines developed for the particular procurement. Additionally, notice of Invitation for Bid (IFB) shall be posted in appropriate public locations within the Area. Complete sets of bid specifications shall be available at the Office of the Fiscal Agent. IFB specifications will clearly set forth all requirements which the bidder must fulfill in order for the bid to be evaluated. The specifications shall at a minimum include:

- a) the deadline for submission;
- b) date, time and place that bids will be opened;
- c) start and end dates for the prospective contract;
- d) complete and precise description of goods or services;

- e) required documentation of potential contractors' integrity, record of past performance under similar contracts, and financial and technical resources indicating the ability to successfully perform;
- f) eligibility restrictions for bidders;
- g) a statement of compliance with applicable Federal and state and local regulations including the specific assurances and certifications which will become part of the contract;
- h) the procedures which will be used to evaluate bids;
- i) required budget, planning, and signature pages;
- j) the date, time and place that selection will be announced.

5.2. Procedures for Issuance of Requests for Proposals

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

Potential sources for proposals shall include former contractors and subgrantees with satisfactory performance records, a list of potential bidders established annually by response to RFPs, IFBs and unsolicited inquiries, and public advertising in the newspaper of highest circulation once during each of two consecutive weeks and not less than one week preceding the closing date. Notice of Request for Proposals may be posted in appropriate public locations within the Service Delivery Area. Closing dates shall be established on the basis of administrative timelines developed for the particular procurement. Complete set of RFP specifications shall be available at the office of the Grant Recipient/Administrative Entity. A bidder's conference shall be held prior to the closing date to clarify instructions in the RFP and answer potential contractors' questions. At a minimum, RFP specifications shall include:

- a) the deadline for submission;
- b) the date(s) on which review and notification will be completed;
- c) start and end dates of the prospective contract;
- d) identification of the factors and process used in evaluation of proposals including their relative importance;
- e) dates for negotiation with prospective contractors;
- f) required documentation of potential contractors' integrity, record of past performance and financial and technical resources indicating the ability to successfully perform;
- g) the proposed contracting instrument;
- h) the maximum amount of available funds;
- i) eligibility restrictions for bidders;

- j) a statement of compliance with the applicable Federal and state and local regulations including the specific assurances and certifications which will become part of the contract;
- k) a complete description of the goods or services which are sought;
- l) budget, plan and report forms and pertinent technical definitions;
- m) requisite signature pages.

SECTION 6. EVALUATION

6.1 Evaluation of Formal (Sealed) Bids

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

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

6.2 Evaluation of Request for Proposal Responses

Where competitive negotiation is the selected procurement method, proposals shall be received by the Fiscal Agent no later than the date and time specified in the RFP. Evaluation of Proposals shall adhere to criteria specified in the RFP. This evaluation shall be used to select offers for consideration which will then be negotiated into final form. The evaluation of written proposals shall result in a written rating which, though tailored to the specific requirements of the RFP, will follow the general guidelines herein established:

- a) Technical Proposal Rating 35%
 - i) Quality and completeness of Work Statement/Program Design
 - ii) Appropriateness of Services and Targeted Clients
 - iii) Participant Planning Summary/Performance Indicators
 - iv) Response to Special Conditions
- b) Budget and Cost Factors 35%
 - i) Adequate and Reasonable Budget and Cost Distribution
 - ii) Cost/Price Analysis and Performance Indicators
- c) Organizational Capability 30%
 - i) Organizational Structure and Personnel System

- ii) Background/Experience of Staff
- iii) Fiscal System and Audit Experience
- iv) Prior Employment and Training Program Performance
- d) Special Consideration Bonus 5%
 - i) Community Based Organization of Demonstrated Effectiveness
 - ii) Women or Minority Owned Business

6.3 Evaluation Process

The evaluation of all bids and proposals, other than those falling under the small purchase procedure, will be conducted in two stages. First, staff will receive and review all bids and proposals for compliance with the Workforce Investment Act and other applicable federal, state, and local laws and regulations, conduct a cost analysis, and will prepare tabulation sheets and recommendations. Second, all bids and proposals which meet or exceed the minimum requirements as established by the solicitation shall be forwarded to the NWC's Executive Board or designated standing Committee, along with staff recommendations, for formal review. This committee shall be charged with finalizing proposal ratings, insuring that program specifications comply with the governing Plans and grants, ascertaining that there is not duplication of services and making recommendations to the full NWC.

SECTION 7. SELECTION

7.1 Selection Mechanisms

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

7.2 Small Purchase

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

7.3 Formal Competitive Bids

Formal competitive bids shall be evaluated in accordance with 6.1 above and selected for award by the full Workforce Council. Selection shall be made on the basis of the lowest price submitted by responsible bidder where specifications most closely coincide with standards established by the IFB.

7.4 Competitive Negotiation

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

7.5 Noncompetitive Negotiation

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

SECTION 8. AWARD OF CONTRACTS OR SUBGRANTS

8.1 Contracts or Subgrants

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

SECTION 9. ADMINISTRATIVE STANDARDS

9.1 Code of Conduct

Workforce Council Officers, members, employees and agents shall neither solicit nor accept gratuities, favors or anything of monetary value from subgrantees, contractors, or potential subgrantees or contractors. The prior paragraph does not apply where the financial interest is not substantial (not more than \$50.00) or the gift is an unsolicited item of nominal intrinsic value (not more than \$50.00).

9.2 Conflict of Interest

All procurement transactions whether negotiated or advertised, without regard to dollar amounts, shall be conducted in a manner which avoids conflicts of interest or the appearance of conflict of interest. No Workforce Council member, officer, staff or agent shall participate in the selection (including any decision-making capacity),

award or administration of a contract if a real, implied or apparent conflict of interest would be involved. Such a conflict would arise when the member, officer, employee or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award.

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

9.3 Penalties

Violation of the above standards shall result in the removal of NWC membership or the dismissal of employees and staff. Additionally, criminal penalties may be imposed as described in the Revised Code of Washington 42.23. Potential contractors/subgrantees who offer favors or items of monetary value in exchange for special consideration shall have their proposals/bids deemed invalid and shall not be considered as candidates for future awards for a period of five (5) years. Criminal prosecution may also be pursued.

9.4 Handling of Disputes, Claims and Protests of Awards

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

9.5 Procurement Records

Adequate procurement records shall be kept on file for all procurements and shall contain, for all procurements in excess of \$100,000, at least the following information:

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

9.6 Contract Provisions

Contracts shall be administered to assure contractor conformance with sound administrative practices and with terms, conditions and specifications of the contract. All contracts in excess of \$100,000 shall at a minimum contain provisions for:

- a) administrative, contractual and legal remedies where contractors violate or breach contract terms, including in the case of service providers, the failure to meet, for a sustained period, the performance outcomes of the contract;
- b) termination of the contract specifying the conditions and manner in which termination will occur;
- c) compliance with federal Equal Opportunity Employment requirements;
- d) compliance with the Davis-Bacon Act (40USC 276a);
- e) compliance with the OMB Circulars A-110, WIA(PL105-220), DOL Implementing Regulations (20CFR part 652 & Parts 660 through 671) and the State of Washington applicable provisions;
- f) rights of invention, patent and copyright remaining within public domain;
- g) access to books, documents, papers and records of the contractor which are pertinent to the contract, by the Fiscal Agent or its agent, the State of Washington or its representative, or the representative of the Comptroller General of the United States.
- h) conflict of interest
- i) trainer qualifications
- j) anti-lobbying
- k) Clean Air Act & Clean Water Act
- l) Copeland Anti-Kickback Act
- m) program income
- n) maintenance of effort
- o) funding restrictions for "high risk" subrecipients including additional reporting and monitoring requirements

9.7 Public Disclosure

All records and documents pertinent to any procurement including contracts, subgrants, RFPs, IFBs and proposal rating documents shall be available for public inspection as specified in the Revised Code of Washington 42.17.

SECTION 10. LEGALITY

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

Competitive Process for Procuring Youth Service Providers

Youth funds are competitively bid and based on the recommendations of the Youth Council. The Workforce Council in its capacity as the one-stop operator may submit proposals through this competitive process. To avoid a conflict of interest, the following procurement policies will be followed.

This policy may be amended by the Youth Council for reasons such as efficiency or clarity provided the revised process does not create a conflict of interest.

The Youth Council will establish, as needed a Youth Procurement Subcommittee to competitively bid the Youth funds and select an outside consultant to prepare a competitive bid and staff the Subcommittee.

A minimum of four (4) members must serve on the Subcommittee, of which no more than one may be from the Northwest Workforce Development Council.

The Request for Proposal will be released by the Procurement Subcommittee and all responses will be submitted directly to the Subcommittee. The Subcommittee will be responsible for managing the procurement process and will make its recommendations to the Youth Council.

The Youth Council will be responsible for maintaining a current youth bidders list and will seek potential bidders through a published or mailed notice to bid.

The bids prepared will require that the name and identification of the bidders are not known at the time of rating the proposals.

Any recommendations, major coordination or planning between the Youth Council and the Workforce Council regarding a youth competitive bid will be subject to prior public notice of the meeting and the intent of the recommendation or the discussion and will occur in an open meeting.

A written record of the rating process and the completed rating sheets will be maintained and available for public review.