



Local Workforce Innovation And Opportunity Act (WIOA) Policy No. 2017-PL-01

To: All LWIA 7 Board Members
All Delegate Agency, One-Stop and Sector Center Staff
All Partnership Staff

From:


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CEO, Chicago Cook Workforce Partnership

Subject: PROCUREMENT POLICY

Date: March 30, 2017

Purpose: To provide guidance to staff and service providers on the competitive purchase of goods and services from vendors. Procurement rules are prescriptive and include situational methods based on dollar thresholds and can be applied to the award of grants and sub-grants to and by service providers.

References:

OMB Uniform Guidance 2 CFR 200

Workforce Innovation and Opportunity Act of 2014, Sec. 184 (a)(3)(A)

Background:

The OMB Uniform Guidance consolidates eight (8) previous OMB Circulars (e.g. previous OMB Circular A110) into one Uniform Guidance document that was published as a final rule 2 CFR 200. Although there were incorporated grace periods (even further extended for nonprofit entities), these rules are in place and have been followed by LWIA 7 for all Federal awards beginning in calendar year 2016. It is DOL ETA policy to act consistently with OMB Uniform Guidance provisions as standards for use by recipients in establishing procedures for the procurement of supplies and other expendable property, equipment, real property and other services with Federal funds. These standards insure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal statutes.

WIOA Sec. 184(a)(3)(A) requires each State (including the Governor of the State), local area (including the chief elected official(s) for the area), and provider receiving funds under this title to comply with the appropriate uniform administrative requirements for grants and agreements applicable for the type of entity receiving the funds, as promulgated in circulars or rules of the Office of Management and Budget (OMB).

POLICY:

This Procurement Policy applies to the procurement of all goods and services purchased by Chicago Cook Workforce Partnership and The Chicago Cook Workforce Board has and been created to provide guidelines to staff and sub-recipients for:

- Determining the appropriate method of procurement to use, as well as the specific procedures to follow in different procurement situations in order to be in compliance with all Federal and State laws, rules and regulations.
- Ensuring that unnecessary or duplicative items or services are not purchased, to ensure that conflicts of interest have been avoided, and to ensure that positive efforts have been made to utilize small business and minority-owned business sources for procurement.

LWIA 7's Conflict of Interest Policy provides standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real, perceived or potential conflict of interest. Conflicts of interest must be disclosed in writing when known in advance or announced to the voting body. The party must excuse themselves from any further discussion and/or vote on the matter in question. Violations of such standards are subject to disciplinary actions provided in WFC's Code of Conduct and Conflict of Interest Policy.

This Policy and implementing procedures dictate that in LWIA 7, subject to exceptions as defined below, WIOA subrecipients are selected on a competitive basis, and as such follow the procurement rules at 2 CFR 200.318-326. Uniform Guidance does not prohibit (although does not require) the use of a competitive process to select subrecipients and DOL ETA encourages the use of a competitive process to select subrecipients.

LWIA 7 follows the OMB Uniform Guidance for the selection of subrecipients when a competitive process is not required (i.e., leveraged, privately funded and other time sensitive subawards). In these instances, LWIA 7 will be guided by:

- Service Provider's track record
 - Past record of performance
 - Cost principles: reasonable costs
 - Past record of compliance
 - Audit and monitoring results
- Internal Control System –
 - Written procedures
 - Conflict of interest provisions

As a Pass-through entity, LWIA 7 is as accountable for the subaward as if it was providing the services itself and thus will structure award to incorporate instruments to promote performance and conduct vigorous oversight and monitoring.

LWIA 7 will award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as:

- Contractor integrity
- Compliance with public policy
- Record of past performance
- Financial and technical resources

LWIA 7 will also maintain records sufficient to detail the history of procurement. These records will include, but are not limited to:

- Rationale for the method of procurement
- Selection of contract type
- Basis for contractor selection or rejection
- Basis for the contract price

Sample forms and documents used in the procurement process are included as attachments to this document and should be used by staff and sub-recipients during the procurement process.

Responsibility for Procurement Activities

It is the responsibility of the CAO to procure, and/or delegate procurement, of all supplies and other expendable property, and equipment. The responsibility includes assigning procurement-related duties to staff persons, assuring that all procedures established in this document are followed, and that all procurement activities are performed in compliance with applicable Federal and State laws, rules and regulations.

Key Terms:

Non-Federal entity –

- Any entity receiving Federal funds.
- Includes for-profits and foreign entities per DOL exceptions at 2900.2

Pass-Through entity –

- Any non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program
- Key distinction: pass-through subaward (subrecipient) vs. procurement action (contractor)

Subaward –

- Award provided by a pass-through entity to a subrecipient to carry out part of a Federal award received by the pass-through entity
- Does not include payments to contractor or to an individual as beneficiary of Federal program

Subrecipient –

- Non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program

Contract –

- Does not include subawards
- Often the purchase of goods and services for the non-Federal entity's own use

- Legal instrument used to purchase property or services to carry out the project or program
- Is competed

Contractor –

- Entity that receives a contract
- Replaces the term “vendor”

Procurement “actions” – As distinguished from a **pass through subaward** to carry out part of a Federal program, a procurement action is needed for the purchase of a specific product or service that is ancillary to the Federal program, e.g.:

- Equipment and supplies
- Audit services
- Consulting services
- Leases
- Training
- Purchase of goods and services for the non-Federal entity’s own use

All non-Federal entities are pass-through entities when making subawards to subrecipients to carry out part of a Federal program (including Partner and Cooperative Agreements). **These subawards are not procurement actions, but they will follow the procurement rules when:**

- Required by statute (e.g. WIOA Operators and Youth subawards)
- Required by own policies and procedures
- Awarded on competitive basis and/or when required by the Funding Opportunity Announcement (FOA) and/or grant terms and conditions

Subrecipient and Contractor Determinations (2 CFR 200.330)

WFC will make a case-by-case determination whether each agreement it makes for the disbursement of Federal program funds casts the party receiving the funds in the role of a subrecipient or a contractor (see Subrecipient and Contractor in the Definitions section of this policy). In determining whether an agreement between WFC and another non-Federal entity casts the latter as a subrecipient or a contractor, the substance of the relationship is more important than the form of agreement. WFC will use judgment in classifying each agreement as a subaward or a procurement contract. In compliance with 2 CFR 200.330, WFC will classify eligible providers of WIOA Adult, Dislocated Worker and Youth services as subrecipients.

Profit considerations–

2 CFR 200.400 (g) & 200.323 (b) of the Uniform Guidance Requirements on profit provide that a Non-Federal entity may not earn or keep profit unless expressly authorized by the Federal award. However, WIOA does authorize profit for nonprofits and for-profits under certain circumstances:

- Non-profits: Treated as program income
- Prohibited for Governmental entities
- Negotiate as a separate element from price
 - When there is no price competition
 - In all cases where cost analysis is performed
 - Exceeds simplified acquisition threshold

Other considerations regarding Profit –

- Risk borne by the subrecipient
- FAR suggests that it be less than 10%
- Quality of past performance
- Industry profit rate in surrounding area for similar work

Procurement Methods

Methods of Procurement to be Followed per 2 CFR 200.320:

- Micro Purchase
- Small Purchase
- Sealed Bids
- Competitive Proposals
- Non-Competitive Proposals

Micro Purchase 200.320 (a)

- Acquisition of supplies or services not exceeding \$3,000 in aggregate
- May be awarded without soliciting competitive quotations if price is reasonable
- Distribute equitably among qualified suppliers to extent practicable

Small purchase procedures 200.320 (b)

- Informal procurement methods for securing services, supplies, or other property
- Cost is less than the Simplified Acquisition Threshold (SAT)
- SAT set by the FAR at 48 CFR 2.1 (Future changes in FAR threshold will apply)
- Increased from \$100,000 to \$150,000 in 2010
- Price or rate quotations must be obtained from an adequate number of qualified sources

Sealed Bids (formal advertising) 200.320 (c)

- Bids publicly solicited
- Firm fixed price contract is awarded
- Successful bid conforms to all material items and conditions of the invitation for bids—and is lowest in price
- Preferred method for procuring construction

Competitive Proposals 2 CFR 200.320(d)

- Publicize RFP and identify all evaluation factors
- Solicit from an adequate number of qualified sources
- Written method for evaluating and selecting proposals
- Contract awarded to responsible firm
- Most advantageous proposal
- Price and other factors considered

Qualifications based Procurement 2 CFR 200.320 (e)

- Architectural/engineering (A/E) professional services
- Qualifications evaluated and most qualified selected
- Subject to negotiation of fair and reasonable compensation

Non-Competitive Proposals 2 CFR 200.320 (f) - Solicitation from only one source (sole source)

- Allowable only when one or more circumstances apply:
 - Item available only from a single source
 - Public exigency or emergency will not permit a delay
 - Awarding agency authorizes non-competitive proposals in response to a written request
 - After solicitation from a number of sources, competition is determined inadequate

Contracting with Small, Minority, Women’s, Labor Surplus Area Businesses 2 CFR 200.321

LWIA 7 shall take all necessary affirmative steps to assure that small, minority, women’s, and labor surplus area firms are used whenever possible, to include:

- Placing qualified businesses on solicitation lists
- Soliciting them whenever they are potential sources
- Dividing total requirements into smaller tasks or quantities when economically feasible
- Establishing delivery schedules to encourage participation
- Using services of SBA and MBDA of Dept. of Commerce
- Requiring prime contractors to take these same steps

Conclusion:

It is the subrecipient’s responsibility as a non-Federal pass through entity to ensure that the appropriate procurement mechanism is used in its own procurements. It is important to note that the procurement methods outlined in this policy letter are to be understood as the minimum requirements as determined by The Partnership. In addition, this letter should not be understood to limit any additional required procedures as stated by the U.S. Department of Labor (USDOL) or the State of Illinois. If either USDOL or the State adds any required procurement requirements, those additional requirements will be understood to be added to The Partnership’s minimum requirements.

Action Required:

This information should be disseminated to subrecipient staff with signature authority.

Inquiries:

All inquiries should be directed to the assigned Regional Manager.

Effective Date: Immediately upon Board approval.