



WORKFORCE INNOVATION AND OPPORTUNITY ACT (WIOA)

PROGRAM POLICY NOTICE NO. 6

EFFECTIVE DATE: 1/11/19

SUBJECT: PROCUREMENT AND CONTRACTING

PURPOSE.

To provide policy regarding procurement and contract requirements

BACKGROUND.

Section 184 of WIOA requires that each State (including the Governor of the State), local area (including the chief elected official for the area), and providers receiving funds under Title I of WIOA to comply with applicable uniform cost principles, and the appropriate uniform administrative requirements for grants and agreements applicable to the type of entity receiving WIOA Title I funds. In addition, all entities that receive federal funds are bound by the procurement requirements of 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards Final Rule (Uniform Grant Guidance). These procurement and contracting requirements establish standards to ensure open and fair competition exists for prospective providers, and federally funded programs obtain goods and services in the most cost effective manner. It is recommended that all local area boards utilize www.ecfr.gov to ensure current Uniform Grant Guidance is followed.

The Uniform Guidance, 2 CFR 200.318 requires general standards for procurement which include but are not limited to the items below:

- Every non-federal entity receiving federal awards must have documented procurement procedures that reflect federal law, Uniform Grant Guidance standards, and any state regulations.
- Entities should focus on the most economical solution during the procurement process, and must avoid using federal funds for the acquisition of unnecessary items. Organizations are encouraged to consider the use of shared services and intergovernmental agreements to foster greater economy and efficiency.
- Written conflict-of-interests policies are required. No employee or agent of the entity may participate in the selection, award or administration of a contract funded by federal grant dollars if he or she has an actual or apparent conflict of interest.

- The organization must document the procurement steps and activities required to be completed. This includes the basis for the type of procurement, contract type, and the basis for the contractor selection and price.
- Ultimately, the recipient of federal awards must maintain an appropriate level of oversight to ensure that contractors perform in accordance with the terms of their contract.

The Uniform Guidance outlines five methods of procurement:

- **Micro-purchase - Goods and services \$3,000 or less:** Procurement within this threshold is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold of \$3,000. To the extent practicable, the non-Federal entity must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.
- **Small purchase - Goods and services \$3,001 to \$149,999 -** For procurements within this threshold, small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold (\$150,000). The procuring entity's written procedural guidance must ensure documentation of **price or rate quotes**, procurement method and justification for the selection from among an adequate number of competitive providers.
- **Simplified Acquisition Threshold - Goods and services above \$150,000:** Procurements at this threshold level are subject to **formal bid/proposal solicitation** requirements such as sealed bids and competitive or non-competitive proposals.
- **Sealed bids:** Used for purchases over the Simplified Acquisition Threshold. Under this purchase method, formal solicitation is required, and the fixed price (lump sum or unit price) is awarded to the responsible bidder who conformed to all material terms and is the lowest in price. Bids must be solicited from an adequate number of known suppliers, providing sufficient response time prior to the date set for opening bids. Must be publically advertised. All bids must be opened at the time and place prescribed in the invitation for bids. A firm fixed price contract award will be made in writing to the lowest responsible and responsible bidder. This method is the most common procurement method for construction contracts.
- **Competitive proposals:** Used for purchases over the Simplified Acquisition Threshold. This procurement method requires formal solicitation, fixed-price or cost-reimbursement contracts, and is used when sealed bids are not appropriate. Request for proposals (RFP) must be publicized and identify all evaluation factors and their relative importance. Proposals must be solicited from an adequate number of qualified sources. The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and for selecting recipients. The contract should be awarded to the responsible firm whose proposal is most advantageous to the program, with price being one of the various factors.
- **Noncompetitive or Sole Source proposals:** Also known as sole-source procurement, this may be appropriate only when specific criteria are met. Examples include when an item is available only from one source, when a public emergency does not allow for the time of the competitive proposal process, when the federal awarding agency authorizes, or after a number of attempts at a competitive process, the competition is deemed inadequate.

The NALWDB, as a local workforce development board responsible for adult, dislocated worker, and youth funds, is required to have written procurement procedures in place to ensure all programs and services delivered are procured in accordance with these established federal, state and local guidelines. This policy outlines the requirements for procurement and contracting for all funds provided through the NALWDB. This policy includes attachments that provide additional information and examples for developing and conducting solicitations, contracting and monitoring of contracts, and checklists for procurement and contract files.

DEFINITIONS.

Allocation - The process of assigning a cost, or a group of costs, to one or more cost objective (s), in reasonable proportion to the benefit provided or other equitable relationship.

Award - A contract, grant, sub-contract, sub-grant, or other type of legal instrument that conveys funds.

Awardee Types –

- **Grantee** – The direct recipient of grant funds from the Department of Labor under a grant or grant agreement. The State with NMDWS designated by the Governor as the State Administrative Entity for the administration of WIOA funds.
- **Sub-grantees** – An award provided by a pass-through entity to carry out part of a Federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program. The legal entity to which an award is made and which is accountable to the recipient for the use of the funds provided. For WIOA purposes, characteristics of a sub-grantee include items such as: determining eligibility of applicants, enrollment of participants, performance measured against meeting the objectives of the program, responsibility for programmatic decision making, responsibility for compliance with program requirements, and use of the funds awarded to carry out a WIOA program or project. Local Workforce Development Boards (LWDBs) are considered sub-grantees, not contractors.
- **Sub-recipient** - Any public agency, private nonprofit organization, or private-for-profit entity that delivers services to participants, also known as a service provider. Sub-recipients determine eligibility, has performance measured in relation to objectives of program, has responsibility for programmatic decision making and uses Federal funds to carry out a program for a public purpose. Awards to service providers may be made by contract, sub-contract, or other legal agreement.
- **Contractor** - An entity responsible for providing generally required goods or services. These goods or services may be for the sub-recipient's use or for the use of program participants. Characteristics of a vendor contractor include items such as: providing goods and services within normal business operation, providing similar goods or services to many different purchasers, and operating in a competitive environment. Service providers are considered sub-recipients, not contractors.

Chief Procurement Officer (CPO) - Person within a local public entity's Central Purchasing Office who is responsible for the control of procurement of items of tangible personal property, services or construction and is registered as such on the New Mexico General Services Department CPO List.

Contract - Legal instrument by which an entity purchases property or services needed to carry out the project or program under a Federal award.

Contracting Officer – Authorized individual to procure goods and services for a non-Federal entity.

Cost Analysis - The examination of the estimated or actual cost of contract performance to determine the probable cost to the contractor.

Cost Types –

- **Administrative Costs** – Personnel and non-personnel, direct and indirect costs that are associated with the administrative functions of WIOA, *as incurred by the local board, fiscal agent, and/or one-stop operator*. Examples: accounting, budgeting, financial, and cash management functions. Payroll functions, personnel management functions, and development of systems and procedures required for administrative functions. Travel cost to carry out administrative activities or the overall management of the WIOA system.
- **Direct Participant Training Cost** - Tuition or instruction payments for participants. Examples: Individual Training Accounts (ITA's), On-the-Job Training (OJT), or contracted services for customized training.
- **Program Costs** – Local board personnel and non-personnel, direct and indirect costs that are associated with the programmatic functions of WIOA, as incurred by the local board. Examples: Program personnel and related non-personnel cost, tracking or monitoring of participant and performance information, performance and program cost information on eligible providers of training services, youth activities, and appropriate education activities.
- **Service Provision Costs** - Service Provider personnel and non-personnel, direct and indirect, costs associated with the provision of services to participants. Examples include: Case management of participants in career services and training services.
- **Supportive Services Costs** - Costs for services that are necessary to enable an individual to participate in activities authorized under the WIOA. Examples include: transportation, child care, dependent care, housing, and needs related payments.
- **System Costs** - Costs necessary for the functioning of the workforce system. Examples include: office supplies, rental and maintenance of office space, rental or purchase of equipment, and utilities, and other maintenance services.

Disallowed Costs - Charges to a Federal award that the Federal awarding or pass-through entity determines to be unallowable, in accordance with the applicable Federal statutes, regulations, or the terms and conditions of the Federal award.

Disbursement - The transfer of cash from the grantee to a sub-grantee or other payee, either by check, voucher or an electronic transfer issued to the entity often through an electronic payment system.

Equipment - Tangible personal property (including information technology systems) having useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the non-Federal entity for financial statement purposes, or \$5,000.00.

Expenditures - Charges made by a non-Federal entity to a project or program for which a Federal award was given.

Immediate Family Member - Includes one party with any of the following relationship to another party: (i) Spouse and parents, (ii) Children, and spouses, (iii) Parents, and spouses, (iv) Siblings and spouses, (v) Grandparents and grandchildren, and spouses, (vi) Domestic partner and parents including domestic partners of any individual in 2 through 5 of this definition, and (vii) Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

Local Administrative Entity – The entity designated by the local workforce development board (LWDB) for the administration of WIOA in the local area.

Local WDB – A Local Workforce Development Board (LWDB) established under WIOA section 107, to set policy for the local workforce development system.

Obligation - The amount of orders placed, contracts and sub-grants awarded, goods and services received, and similar transactions during a given period that will require payment by the grantee during the same or a future period. Obligation is a term that references actions where a legal commitment to pay exists. An obligation may occur at the time the services are rendered, or before services are rendered when a binding agreement has been entered into. Obligations are legal requirements, not plans, budgets, or encumbrances.

Procurement - The process that leads to the purchase of goods and services as determined under Uniform Guidance 2 CFR 200.318-327. This includes the formal and informal process. The formal process is required when the procurement value is more than \$150,000 and is solicited through a competitive Request for Proposal (RFP) process or Invitation to Bid (IFB). The informal process is used when the value of purchase is less than \$150,000 and is called the “small purchase threshold” and requires a competitive minimum of three price quotes. A non- competitive procurement is a “single source” or “sole source” procurement and is only awarded under strict circumstances.

COMPETITION

(1) According to (2 CFR §200.319), the procuring entity must establish

procurement procedures which promote and maximize the competitive procurement process.

- (2) At a minimum, the procurement process must:
 - (a) appropriately target resources based on approved job training plans;
 - (b) be made impartially;
 - (c) be based upon demonstrated performance;
 - (d) include a determination of cost/price reasonableness;
 - (e) be in compliance with all related federal and state laws, regulations and policy.

- (3) All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of §200.319. Some of the situations considered to be restrictive of competition include but are not limited to:
 - (a) placing unreasonable requirements on entities in order for them to qualify to do business,
 - (b) requiring unnecessary experience and excessive bonding,
 - (c) noncompetitive pricing practices between entities or affiliated companies,
 - (d) noncompetitive awards to consultants that are on retainer contracts,
 - (e) organizational conflicts of interest,
 - (f) specifying only a "brand name" product instead of allowing an "equal" product to be offered and describing the performance of other relevant requirements of the procurement, and
 - (g) any arbitrary action in the procurement process.

- (4) Grantees and subgrantees must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference.

- (5) Grantees and subgrantees will ensure that all pre-qualified lists of persons, firms, or products which are used in acquiring goods and services are current and include sufficient qualified sources to ensure maximum open and free competition. Also, grantees and subgrantees will not preclude potential bidders from qualifying during the solicitation period.

PROCUREMENT STANDARDS

The NALWDB procurement standards will follow the requirements identified in 2 CFR 200.317 through 2 CFR 200.326. Purchases must be for goods or services which are both necessary and reasonable.

It is the policy of NALWDB to comply with the provisions applicable in Federal law and regulations, including applicable procurement provisions of the Workforce Innovation and Opportunity Act (WIOA). NALWDB policy is to conduct procurement in a professional manner, without conflict of interest, or appearance of inappropriate business relationships.

General Principles:

The NALWDB will follow the following general principles:

- Ensure that all solicitations include a clear and accurate description of the technical requirements for the material, product, or service to be procured;
- Avoid overly restrictive specifications;
- Observe strict truthfulness in all transactions;
- Insure that competition is open and fair;
- Identify all requirements which offerors must fulfill and all other factors to be used in evaluating bids or proposals;
- Require or request samples only when necessary for testing or examining a product for which there is a bid. Free samples should never be obtained and retained for the personal use of NALWDB employees or Board members;
- Under no circumstances should an NALWDB employee or Board member solicit or accept any gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub-agreements: All gifts shall be returned to the donors; in some instances, this may be impossible and these gifts shall be transferred to the Executive Director for proper disposal. Awards and memorial plaques with nominal intrinsic value for distinguished services rendered are acceptable; and
- Under no circumstances is it permissible to allow a potential, present, or past bidder/offeror to pay for the meals of NALWDB employees or Board members who are involved directly or indirectly with the procurement process (Having lunch during the bidding process with bidders/offerors can result in the unfavorable perception of wrong doing).

PROCUREMENT METHODS

The methods of procurement to be followed as provided in 2 CFR §200.320 and New Mexico Administrative Code (NMAC) 2.40.2 are as follows:

Threshold Levels

Small purchases as defined by New Mexico state procurement code are broken down into tangible goods, services, and professional services. (2.40.2 NMAC)

(1) Procurement levels for tangible goods:

- (a) Less than \$10,000 for small purchase (Best obtainable price)
 - (b) \$10,000 to \$20,000 for Informal Procurement (3 valid quotes)
 - (c) \$20,000 or greater for the Formal process
- (2) Procurement levels for services are:
- (a) Less than \$10,000 for Small Purchase (Best obtainable price)
 - (b) \$10,000 to \$20,000 for Informal Procurement (3 valid quotes)
 - (c) \$20,000 or greater for the Formal process
- (3) Procurement levels for professional services are:
- (a) Less than \$50,000 for Small Purchase
 - (b) \$50,000 or greater for the Formal Process

NOTE: Governmental entities and other organizations subject to more restrictive state or local procurement thresholds and requirements must comply with the more restrictive policy.

TYPES of COMPETITIVE PROCUREMENT

According to 2 CFR §200.319, procurement transactions should be conducted to ensure adequate competition and reasonable price. Non-competitive procurement should be used only in the circumstances outlined below in Section II, Non-Competitive Procurement. The types of competitive procurement include the following:

- (1) Procurement by Micro-purchase procedures. Micro-purchase procedures is the purchase of supplies or services using simplified acquisition procedures, the aggregate amount of which does not exceed the micro-purchase threshold (\$10,000). Micro-purchase procedures comprise a subset of a grantee's and subgrantee's small purchase procedures. The micro-purchase threshold is set by the Federal Acquisition Regulation (FAR) at 48 CFR Subpart 2.1. It is \$10,000 except as otherwise discussed in Subpart 2.1 of that regulation, but this threshold is periodically adjusted for inflation.
- (2) Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the simplified acquisition threshold set by the Federal acquisition Regulation (FAR) at 48 CFR Subpart 2.1 (currently set at \$250,000). If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.
- (3) Procurement by sealed bids (formal advertising). Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in paragraph (i) of this

section apply.

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

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

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

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

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

- (i) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests

for proposals shall be honored to the maximum extent practical;

(ii) Proposals will be solicited from an adequate number of qualified sources;

(iii) Grantees and subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;

(iv) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(v) Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

- (5) Individual Training Accounts. The process of choosing a provider to train a participant through an Individual Training Account is an exception to the RFP process.

NON-COMPETITIVE PROCUREMENT

Procurement by noncompetitive proposals is procurement through (1) solicitation of a proposal from only one source, or (2) after solicitation of a number of sources, competition is determined inadequate.

(1) Sole Source Procurements.

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

- (i) the item is available only from a single source;
- (ii) the public emergency for the requirement will not permit a delay resulting from competitive solicitation;
- (iii) the awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request; or
- (iv) after solicitation of a number of sources, competition is

determined to be inadequate or a failed competition, where the solicitation has resulted in fewer than two responsive and responsible bids.

- (b) According to NMAC 1.4.1.57, the procuring entity must retain the records for a minimum of three years. The record of each such procurement must be a public record and must contain:
- (i) the contractor's name and address;
 - (ii) the amount and term of the contract;
 - (iii) listing of the services, construction, or items of tangible personal property procured under the contract and
 - (iv) The justification for the procurement method which shall include any written determinations and written approvals required by any provision of 1.4.1.53 through 1.4.1.57 NMAC of this rule.
- (c) Prior written approval by the NM Department of Workforce Solutions must be obtained for any actual sole source or emergency award which is in excess of \$250,000. All such awards must be justified and documented, and will not be approved retroactively. Requests for approval must include the following information:
- (i) copy of the offerors proposal;
 - (ii) copy of the cost/price analysis;
 - (iii) copy of related local board meeting discussion minutes;
 - (iv) copy of the non-competitive/award justification;
 - (v) cover letter requesting approval; and
 - (vi) failed competition analysis

Such procurements which initially do not require NMDWS approval, but which are to be modified to an amount which exceeds \$150,000, must be submitted for NMDWS approval prior to the execution of the modification. Failure to obtain required prior approvals may result in questioned costs.

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

When a Procuring Entity conducts a formal solicitation process and

receives only one qualified proposal, the award process must be justified and documented. A Failed Competition Analysis *must* be performed.

Program Operators/Service Providers should address the following questions:

A. Was there a weakness in the solicitation specifications?

- Was the statement of work clear?
- Was the statement of work too narrowly defined?
- Were the administrative requirements too cumbersome?
- Was there an excessive amount of experience required?
- Was the cost the entity was willing to pay too low?
- Was there adequate time to prepare proposals?

B. Was the solicitation advertised in an adequate number of locations?

C. Are the services/training being sought really only available from one offeror?

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

SOLICITATIONS

Frequency of Solicitations. Solicitation must occur at a minimum of every two years to promote and encourage competition. Solicitation of audit services must occur at a minimum of every five years.

Multi-year Funding. Multi-year funding of contractors must be consistent with the conditions of the approved RFP and award. In addition, subsequent year funding is to be retained as the option of the procuring entity only and must be subject to successful performance and formal, documented contract negotiations.

PROCUREMENT AUTHORITY

The NALWDB has established the procurement authority to identify the positions of individuals in the organization that have the authority to take the following actions:

- (1) The NALWD Executive Director will be the designated state-certified Chief Procurement Officer (CPO).
- (2) The Finance Committee will have the authority to allocate funds to procure services. The proposed allocation will be presented to the Board through the committee structure to be approved at the Board level.

- (3) In the case where procurement is required the NALWDB Chair will appoint an ad hoc committee to assist in this procurement process. This committee will be responsible for the following:
- Approve procurement plans.
 - Determine if a non-competitive or sole-source procurement has to be pursued.
 - Approve the issuance of the solicitation package.
 - Approve the selection of contractors or service providers.
- (4) The NALWDB Executive Director has the signatory authority on all contracts, contract modifications, etc. as well as other board operational documents. The Lead CEO for the Northern Area will be the signatory authority for the grant agreements with the State Administrative Entity.
- (5) In the event of a contract termination the NALWDB Chair will issue notices of contract termination.

1. PROCUREMENT DOCUMENTATION

The NALWDB must maintain organized and centralized procurement files for any procurement that is completed. Files must contain all documentation related to each procurement including, but not limited to:

- (1) procurement planning records,
- (2) the solicitation,
- (3) notices of public advertisement,
- (4) bidder's conference minutes,
- (5) all proposals submitted with records of their receipt,
- (6) all proposal evaluation documentation (including sign-off and certifications),
- (7) all proposal negotiation documentation, and
- (8) all related meeting/committee minutes to document the contract(s) review, evaluation and award.

A Sample Procurement File Checklist is contained in Attachment A.

PROCUREMENT REVIEW – 2 CFR §200.324

- (1) The subgrantee must make available, upon request of the Federal awarding agency or NMDWS as the pass-through entity, any and all documents related to proposed procurements where the Federal awarding agency or NMDWS believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place

prior to the time the specification is incorporated into a solicitation document. However, if the grantee desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or NMDWS may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

- (2) The grantee must make available upon request, for the Federal awarding agency or NMDWS pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:
 - (a) the grantee's procurement procedures or operation fails to comply with the procurement standards in this policy;
 - (b) the procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;
 - (c) the procurement, which is expected to exceed the Simplified Acquisition threshold specifies a "brand name" product;
 - (d) the proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or
 - (e) a proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.

- (3) The grantee is exempt from pre-procurement review if the Federal awarding agency or NMDWS determines that its procurement systems comply with the standards of this policy.
 - (a) The grantee may request that its procurement system be reviewed by the Federal awarding agency or NMDWS to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third party contracts are awarded on a regular basis.
 - (b) The grantee may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the grantee that it is complying with these standards. The grantee must cite

specific policies, procedures, regulations or standards as being in compliance with these requirements and have its system available for review.

CONTRACTING PROVISION – 2 CFR §200.326

(1) ***Contracting with small and minority firms, women's business enterprises and labor surplus area firms.*** The grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps shall include:

- (a) placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (b) assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (c) dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
- (d) establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;
- (e) using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and,
- (f) requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in this section.


(2) Contract cost and price 2 CFR §200.323

- (a) Grantees and subgrantees *must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition threshold, including contract modifications.* The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates **before** receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of its estimated cost, e.g., under professional, consulting, and architectural engineering services contracts, or whenever a line item budget is submitted. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.


- (b) Grantees and subgrantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.
- (c) Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles.
- (d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.
- (e) All procurement contracts between local boards and units of State or local governments must be conducted on a cost reimbursement basis. No provision for profit is allowed.

This policy rescinds any previous NALWDB policy regarding subject.

INQUIRIES: Contact Deborah Wildenstein, WIOA Program Manager, at 505-986-0363.



NALWDB Chairman



Date