



PROCUREMENT POLICY

PURPOSE

This policy communicates the Upper Shore Workforce Investment Board's (USWIB) policy and methods for the procurement of goods and services, including those procurements obtained with Workforce Innovation and Opportunity Act (WIOA) funds and all procurements shall comply with applicable federal, state, and local laws and regulations. This policy also sets forth the requirements provided by the Office of Management and Budget (OMB) 2 CFR 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

BACKGROUND

The USWIB and Chesapeake College are parties to an Administrative Agreement that establishes Chesapeake College as the USWIB Fiscal Agent. The USWIB will follow Chesapeake College's procurement policy.

WIOA Section 184(a) (3) (A) requires each State (including the Governor of the State), local area (including the chief elected official 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).

WIOA sets the general expectation that Local Workforce Development Boards (LWDBs) conduct open and competitive procurement processes to identify appropriate providers of one-stop operator and other services. Per WIOA Section 107(10) (E) and 20 CFR 679.370(m), LWDBs work with the State to ensure that the amount and quality of providers is sufficient to meet the needs of the community. WIOA sets the expectation that LWDBs will serve as strategic entities and the Department of Labor further clarified that expectation in 20 CFR 679.410 by citing "restrictions" on LWDBs (and LWDB staff) as one-stop operators and service providers and outlining the requirements of LWDBs that want to assume those

roles.

A. As a matter of policy, all USWIB procurement of goods and services will be through a competitive bidding or quotes process, including any contract modifications that increase the scope or amount of the contract. Additionally, although sole source procurement is an allowed method of procurement it should only be used as an exception.

B. Purchases over \$25,000 must be approved by the USWIB.

C. Cost-Reimbursement Only [(WIOA Sec. 184(a)(3)(B)]

Procurement transactions under this title between the USWIB as a grantor and any units of State or local governments as a grantee should be for cost reimbursement only.

D. General Procurement Standards

The USWIB will use documented procurement procedures that at a minimum conform to applicable Federal law and standards identified in 2 CFR Parts 200.318 through 200.326. However, if applicable State and local procurement laws and regulations impose requirements in excess of the applicable Federal standards, State and local requirements will be followed.

The USWIB will maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

USWIB's Code of Conduct and 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 to the President of the USWIB 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 USWIB's Code of Conduct and Conflict of Interest Policy.

The USWIB's procurement procedures will avoid acquisition of unnecessary or duplicative items and promote cost-effective use of shared services by entering into state and local intergovernmental agreements for procurement or use of common or shared goods and services where appropriate

USWIB 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

The USWIB will 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
- Review of independent panel, if required
- Basis for contractor selection or rejection
- Basis for the contract price

Time and materials contracts: The USWIB may use time and material type contracts [For major construction only; 2 CFR 200.318U)] only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk.

USWIB will be responsible for the settlement of all contractual and administrative issues arising out of procurement. These issues include, but are not limited to:

- Source evaluation
- Protests
- Disputes
- Claims

E. Competition

All procurement transactions must be conducted in a manner providing full and open competition consistent at a minimum with the standards provided in Section 200.319 of 2 CFR 200. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work or invitations for bids or requests for proposals must be excluded from competing for such procurements.

Except as may be required by State or local regulation, USWIB procurement transactions will contain no requirements that unduly restrict competition as specified in 200.319(a) and (b).

The USWIB procurement procedures will ensure that all solicitations:

- Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured
- Such description must not contain features which unduly restrict competition
- Identify all requirements which the offerers must fulfill and all other factors to be used in evaluating bids or proposals

The USWIB will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. The USWIB will not preclude potential bidders from qualifying during the solicitation period.

F. Methods of Procurement

As a matter of policy, and to the extent consistent with applicable State or Chesapeake College procurement policies, the USWIB will use any of the following procurement methods:

1. **Purchases of \$1 up to \$5,000:** These are Micro Purchase procurements. The acquisition of supplies or services, the aggregate dollar amount of which does not exceed \$5,000 may be made without soliciting competitive quotations if the USWIB considers the price to be fair and reasonable. To the extent practicable, the USWIB will distribute such purchases equitably among qualified suppliers.
2. **Purchases of \$5,001 - \$25,000:** These are "Small Purchase" procurements to secure services, supplies, or other property that do not cost more than \$25,000. Such purchases can be made by soliciting three written quotations from qualified sources unless the funding source dictates otherwise.
3. **Purchases of \$25,001 -** Purchases over \$25,001 must be made through a formal competitive solicitation process where price or rate quotations are obtained. For these purchases, the USWIB will use a formal Request for Qualifications and Quotations (RFQQ) method or other formal competitive procurement method as deemed appropriate unless the funding source dictates otherwise. The technique of RFQQs is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. If this method is used, the following requirements apply:
 - (a) Requests for Qualifications and Quotations (RFQQ) must be publicized on through social media, newspaper, and any other electronic or print media available to the USWIB. Any response to publicized RFQQs must be considered

to the maximum extent practical.

- (b) Proposals must be solicited from an adequate number of qualified sources. A timeline must be developed for each RFQQ posting.
- (c) The USWIB will follow its written method for conducting evaluations of the proposals received and for selecting recipient.
- (d) The USWIB must form an internal review panel to review and score each proposal in accordance with the criteria outlined in the RFQQ.
- (e) Contracts will be awarded to the responsible firm or individual whose proposal is most advantageous to the program, with price and other factors considered.
- (f) Firms or individuals submitting written proposals will be notified in writing of the approval or denial of their proposal.
- (g) The USWIB may use RFQQ 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.

4. **Purchases of \$25,001 and above by Sealed Bid:** When sealed bids are required, such 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 (c) (1) of 2 CFR 200.320 apply.

Note: The sealed bids method of procurement is usually conducted for construction-type projects. By the nature of its business, The USWIB does not procure for construction projects and will not use this method of procurement.

5. **Noncompetitive Proposals (Sole Source):** Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:

- (a) The item is available only from a single source.

(b) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation.

(c) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity.

(d) After solicitation of a number of sources, competition is determined inadequate.

G. Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms (2 CFR 200.321)

The USWIB will take necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

H. Contract Cost and Price (2 CFR 200.323)

1. The USWIB will 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, The USWIB will make independent estimates before receiving bids or proposals.
2. Where applicable, the USWIB 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.
3. Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that incurred costs or cost estimates included in negotiated prices would be allowable for the USWIB under Subpart E - Cost Principles of the Uniform Administrative Guidance 2 CFR Part 200. The USWIB may reference its own cost principles that comply with the Federal cost principles.
4. The cost plus a percentage of cost and percentage of construction cost methods of contracting are not allowable.

I. Procurement Review (2 CFR 200.324)

1. The USWIB will make available, upon request by the Federal awarding agency or

pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition.

2. The USWIB will make available, upon request for the Federal awarding agency or pass-through entity, pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates when the circumstances detailed in 200.324(b) apply.
3. The USWIB is exempt from the pre-procurement review if the Federal awarding agency or pass-through entity determines that its procurement systems comply with this part.
 - (a) The USWIB may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity 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 USWIB 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 USWIB that it is complying with these standards. The USWIB must cite specific policies, regulations, or standards as being in compliance with these requirements and have its system available for review.

J. Bonding Requirements (2 CFR 200.325)

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the requirements of 2 CFR 200.325(a) - (c) must be followed.

K. Contract Provisions (2 CFR 200.326)

The USWIB's contracts must contain the applicable provisions described in Appendix II of 2 CFR 200 "Contract Provisions for non-Federal Entity Contracts under Federal Awards".

L. Sub recipient and Contractor Determinations (2 CFR 200.330)

The USWIB 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 sub recipient or a contractor (see Sub recipient and Contractor in the Definitions section of this policy).

In determining whether an agreement between the USWIB and another non-Federal entity casts the latter as a sub recipient or a contractor, the substance of the relationship is more important than the form of agreement. The USWIB will use judgment in classifying each agreement as a sub award of a procurement contract.

Specific Requirements for the Procurement of One-Stop System Operators, Youth Services Provider and Adult or Dislocated Worker Service Providers

M. Procurement of One-Stop Operators

1. One-stop operators must be designated and certified through a competitive procurement process. The USWIB must be able to document, in writing, that they made their board members and the public aware of the competitive process to be used. That includes providing at least 30-day public notice through media where prospective local, state, and national bidders typically identify such opportunities (e.g., local print newspapers, on-line newspapers, USWIB website, other community websites, etc.). Solicitations must include the selection criteria to be used in the process and must be maintained as part of the documentation.
2. The competitive process used by the USWIB to procure one-stop operators must be conducted at least once every four years and at a minimum follow the principles of competitive procurement set forth in Uniform Administrative Guidance at 2 CFR 200.318-326.
3. The allowable forms of competitive procurement processes are as follows:
 - Sealed Bids
 - Competitive Proposals
 - Procurement by non-competitive proposals (sole source)
 - I. Sole source can be exercised as per local policies if it complies with federal procurement regulations at 2 CFR 200.320(f) and 20 CFR 678.610 and federal guidance in TEGE 15-16 and one or more of the following circumstances apply:
 - (a) The item or service is only available from a single source
 - (b) Public exigency or emergency for the requirement will not permit a delay

resulting from competitive solicitation¹

- (c) The Federal awarding agency or pass-through entity expressly authorizes non-competitive proposals in response to a written request from the non-Federal entity
- (d) After soliciting several sources, competition is determined inadequate, whether for reasons of number or quality of proposals/bids²

¹Examples of compelling circumstances that outweigh delays that would result from competitive solicitations include the need to avoid a break in services if an operator is terminated for cause or is unable to continue providing services through the end of the contract period.

²Inadequate responses are those judged by a panel of impartial reviewers to score below a pre-determined minimum level on scoring criteria published as part of the solicitation.

Note: Section 12 of TEG 15-16 cites Uniform Guidance at Section 200.318(i) requires maintaining records that sufficiently detail the procurement history, which includes careful documentation of LWDB decisions to sole source one-stop operators. LWDBs must be able to demonstrate that they conducted enough research and outreach to justify using sole source procurement. Evidence of publishing Requests for Interest, Requests for Proposals, and Invitations for Bidding does not, by itself, sufficiently document the justification for sole source procurement. LWDBs must also document that the solicitation was publicized in a manner providing for full and open competition. DOL interprets WIOA sunshine provisions at Sections 101(g) and 107(e) as requiring LWDBs to present documentation and justification of their decisions to use sole source procurement at open LWDB meetings to provide transparency and perhaps attract additional offerors/bidders for the next competition.

- 11. The USWIB may be selected as one-stop operators under a sole source agreement only if they demonstrate adherence to appropriate internal controls and establish conflict of interest policies and procedures that identify appropriate internal controls and are approved by the Governor. The USWIB must complete a "Request for Waiver to Serve as a One-Stop Operator" and submit it to the Governor's Workforce Development Board.
- 4. The USWIB may serve as one-stop operators in the Upper Shore workforce development area if they are determined to be the successful bidder in a solicitation that conforms to the principles of competitive procurement set forth

in Uniform Administrative Guidance at 2 CFR 200.318-326, and only if approved internal control and conflict of interest policies are followed. Internal controls include the requirement that the solicitation and scoring process be managed by a fair and impartial third party free of conflicts of interest and that USWIB staff and the agency that employs such staff cannot develop the solicitation for proposals, facilitate the scoring process, or score proposals. The Governor's Workforce Development Board and the USWIB may work together to establish a list of pre-qualified bidders for this role.

N. Procurement of Youth Service Providers

1. The USWIB must competitively award grants/contracts for eligible providers of youth workforce investment activities, except in the case of sole source awards/contracts, and only then if there is satisfactory and demonstrable evidence that there are an insufficient number of providers with the expertise required for serving in school or out of school youth. The insufficient number of providers will be detailed in the Local Plan for the Upper Shore. Bid solicitations must include the selection criteria to be used in this process and must be maintained as documentation of the process.
2. The USWIB must be able to document, in writing, that they made their board members and the public aware of the competitive process to be used to identify youth service providers. This includes providing at least 30-day public notice through media where prospective local, state, and national bidders typically identify such opportunities (e.g., local print newspapers, on-line newspapers, USWIB website, other community websites, etc.).
3. The USWIB must establish and use criteria, including the ability of service providers to meet performance accountability measures based on common measures, as well as full and open competition consistent with 2 CFR parts 200 and 2900 in addition to applicable state and local procurement laws to procure eligible providers of youth workforce investment activities.
4. In accordance with USDOL regulations, design framework services (intake, objective assessment, development of individual service strategies, case management, and follow up services) may be exempted from a competitive process if the USWIB determines that it can more appropriately and efficiently perform these activities. However, the USWIB must receive approval of the LWDB and Governor to provide design framework services for youth program participants.
5. The USWIB must establish local policies and procedures to assess the ability of

youth program providers to meet performance accountability measures based on the primary federal indicators of performance for the youth program.

6. The USWIB may serve as youth service providers if they are determined to be the successful bidder in a solicitation that conforms to the principles of competitive procurement set forth in Uniform Administrative Guidance at 2 CFR 200.318-326, and only if approved internal control and conflict of interest policies are followed. Internal controls include the requirement that the solicitation and scoring process be managed by an impartial third party free of conflicts of interest and that USWIB staff and the agency that employs such staff cannot develop the solicitation for proposals, facilitate the scoring process, or score proposals.

O. Suspension and Debarment (2 CFR 2900)

Non-federal entities and contractors are subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 CFR part 180. These regulations restrict awards, sub awards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs or activities.

DEFINITIONS

Contract (2 CFR 200.22): A legal instrument by which a non-Federal entity purchases property or services needed to carry out the project or program under a Federal award. The term as used in this part does not include a legal instrument, even if the non-Federal entity considers it a contract, when the substance of the transaction meets the definition of a Federal award or sub award.

Contractor (2 CFR 200.23): An entity that receives a contract as defined in "Contract", above.

2 CFR 200.330(b): A contract is for the purpose of obtaining goods and services for the non-Federal entity's own use and creates a procurement relationship with the contractor (see 200.22 Contract). Characteristics indicative of a procurement relationship between the non-Federal entity and a contractor are when the non-Federal entity receiving the Federal funds:

1. Provides the goods and services within normal business operations
2. Provides similar goods or services to many different purchasers
3. Normally operates in a competitive environment

4. Provides goods or services that are ancillary to the operation of the Federal program
5. Is not subject to compliance requirements of the Federal program as a result of the agreement, though similar requirements may apply for other reasons

Cooperative Agreement (2 CFR 200.24): A legal instrument of financial assistance between a Federal awarding agency or pass-through entity and a non-Federal entity that, consistent with 31 U.S.C. 6302-6305:

- (a) Is used to enter into a relationship the principal purpose of which is to transfer anything of value from the Federal awarding agency or pass-through entity to the non-Federal entity to carry out a public purpose authorized by a law of the United States and not to acquire property or services for the Federal government of pass-through entity's direct benefit or use
- (b) Is distinguished from a grant in that it provides for substantial involvement between the Federal awarding agency or pass-through entity and the non-Federal entity in carrying out the activity contemplated by the Federal award

Federal Award (2 CFR 200.38): Federal award has the meaning, depending on the context, in either paragraph (a) or (b) of this section:

- (a) {1} The Federal financial assistance that a non-Federal entity receives directly from a Federal awarding agency or indirectly from a pass-through entity
- (a) {2} The cost-reimbursement contract under the Federal Acquisition Regulations that a non-Federal entity receives directly from a Federal awarding agency or indirectly from a pass-through entity
- (b) The instrument setting forth the terms and conditions. The instrument is the grant agreement, cooperative agreement, other agreement for assistance in paragraph (b) of 200.40 Federal financial assistance, or the cost-reimbursement contract awarded under the Federal Acquisition Regulations
- (c) Federal award does not include other contracts that a Federal agency uses to buy goods or services from a contractor or a contract to operate Federal government-owned contractor operated facilities (GOCOs)
- (d) See also definitions of Federal financial assistance, grant agreement, and cooperative agreement

Federal Awarding Agency (2 CFR 200.37): The Federal agency that provides a Federal Award directly to a non-Federal entity.

Federal Financial Assistance (2 CFR 200.40): For grants and cooperative agreements, assistance that non-Federal entities receive or administer in the form of:

- (a) Grants
- (b) Cooperative agreements
- (c) Non-cash contributions or donations of property (including donated surplus property)
- (d) Direct appropriations
- (e) Other financial assistance

Fixed Amount Awards (2 CFR 200.45): A type of grant agreement under which the Federal awarding agency or pass-through entity provides a specific level of support without regard to actual costs incurred under the Federal award.

Grant Agreement (2 CFR 200.51): A legal instrument of financial assistance between a Federal awarding agency or pass-through entity and a non-Federal entity that, consistent with 31 U.S.C. 6302, 6304:

- (a) Is used to enter into a relationship the principal purpose of which is to transfer anything of value from the Federal awarding agency or pass-through entity to the non-Federal entity to carry out a public purpose authorized by a law of the United States and not to acquire property or services for the Federal awarding agency or pass-through entity's direct benefit or use
- (b) Is distinguished from a cooperative agreement in that it does not provide for substantial involvement between the Federal awarding agency or pass-through entity and the non-Federal entity in carrying out the activity contemplated by the Federal award

Non-Federal Entity (2 CFR 2900): A state, local government, Indian tribe, institution of higher education (IHE), for-profit entity, foreign public entity, foreign organization or nonprofit organization that carries out a Federal award as a recipient or sub recipient.

Pass-through Entity (2 CFR 200.74): A Non-Federal entity that provides a sub award to a sub recipient to carry out part of a Federal program.

Simplified Acquisition Threshold (2 CFR 200.88): The dollar amount below which a non-Federal entity may purchase property or services using informal purchase methods. Non-Federal entities adopt small purchase procedures in order to expedite the purchase of items costing less than the simplified acquisition threshold. The simplified acquisition threshold is set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions) and in accordance with 41 U.S.C. 1908. As of the publication of this part, the simplified acquisition threshold is \$250,000, but this threshold is periodically adjusted for inflation.

Sub award (2 CFR 200.92): An award provided by a pass-through entity to a sub recipient for the sub recipient 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. A sub award may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.

Sub recipient (2CFR 200.93): A Non-Federal entity that receives a sub award from a pass-through entity to carry out part of a Federal program; but does not include an individual that is a beneficiary of such program. A sub recipient may also be a recipient of other Federal awards directly from a Federal awarding agency.

2 CFR 200.330(a): A sub award is for the purpose of carrying out a portion of a Federal award and creates a Federal assistance relationship with the sub recipient (see 2 CFR.92 - Sub award). Characteristics which support the classification of the non-Federal entity as a sub recipient include when the non-Federal entity:

1. Determines who is eligible to receive what Federal assistance
2. Has its performance measured in relation to whether objectives of a Federal program are met
3. Has responsibility for programmatic decision making
4. Is responsible for adherence to applicable Federal program requirements specified in the Federal award
5. In accordance with its agreement, uses the Federal funds to carry out program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the pass-through entity

REFERENCES

- Public Law 113-128, Workforce Innovation and Opportunity Act of 2014, Sections 107(d)(10), 107(g)(1), 121(d)(1-2), 123, 134(c)(2)(C)
- OMB Uniform Guidance 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirement for Federal Awards, Office of Management and Budget (OMB)
 - o Parts 200.318-200.326 Final Guidance: Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Office of Management and Budget (OMB); Federal Register Vol. 79, No. 244
 - o 2 CFR part 2900, Department of Labor
- Training and Employment Guidance Letter (TEGL) 15-16
- Training and Employment Guidance Letter (TEGL) 23-14, Section 8

INQUIRIES

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The Upper Shore Workforce Investment Board is an equal opportunity employer/program
Auxiliary aids are available upon request to individuals with disabilities.