

FAPMTL 325**Effective Date: July 6, 2015****Most Current Prior Effective Date: January 30, 2012****(A) General purpose and applicability**

- (1) County family services agencies (CFSAs) and local workforce innovation and opportunity act (WIOA) areas may enter into procurement contracts to acquire goods and services for the administration of a federal program. Where applicable, local WIOA areas shall include workforce development agencies (WDAs). This rule establishes general procurement and contract requirements for CFSAs and local WIOA areas. Specific methods of procurement are outlined in rule 5101:9-4-07.1 of the Administrative Code.
- (2) Subgrant agreements funded in whole or in part with federal funds do not represent acquisitions and are not subject to the requirements contained in this rule providing that such relationships are documented between the entities. CFSAs and local WIOA areas shall inform sub-grantees of applicable procurement requirements in any contract or other applicable types of agreements used in awarding the contract or grant.
- (3) Unless applicable local requirements are more restrictive, acquisitions that are made in whole or in part with federal funds, including instances where state or county funds are used as match for state/federal funds, CFSAs and local WIOA areas shall procure pursuant to rule 5101:9-4-02 of the Administrative Code and the federal requirements set forth in this rule.
 - (a) Pursuant to section 307.86 (D) of the Revised Code, acquisitions made under section 329.04 of the Revised Code are exempt from state competitive bidding requirements. However, acquisitions made under section 307.86 of the Revised Code are not exempt from applicable federal requirements, including those referenced in this rule.
 - (b) Acquisitions listed that are procured with federal block grants authorized by the Omnibus Budget Reconciliation Act of 1981 and the Child Care and Development Block Grant of 1990, as amended, are excluded from the requirements of this rule. However, CFSAs and local WIOA areas shall adhere to state and local standards of acquisition.

(B) General procurement requirements

The following are general procedural requirements applicable to all procurements unless deemed exempt:

- (1) Contract cost and price analysis
 - (a) CFSAs and local WIOA areas shall perform a cost or price analysis in connection with every procurement action in excess of one hundred and fifty thousand dollars, including contract modification. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point the CFSA and local WIOA area must make independent estimates before receiving bids or proposals. The CFSA and local WIOA area must maintain written documentation to support any procurement action based on cost or price analysis.
 - (i) A cost analysis shall be performed when the bidder is required to submit elements of the estimated cost, (e.g., under professional consulting and architectural engineering services contracts.) A cost analysis is the verification of proposed cost data and projections of the data, and the evaluation of the specific elements of costs and profits. A cost analysis will be necessary when adequate price competition is lacking. A cost analysis will also be necessary for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of catalog or market price of

commercial product sold in substantial quantities to the general public; or based on prices set by law or regulation.

(ii) A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

(b) CFSAs and local WIOA areas shall 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. CFSA's and local WIOA areas may reference their own cost principles that comply with the applicable federal cost principles.

(d) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

(2) Competition

All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of 45 C.F.R. 75.327 to 75.335 (U.S. department of health and human services (HHS)), and 2 C.F.R. 200.319 (U.S. department of labor (DOL) and U.S. department of agriculture (USDA) food and nutrition service (FNS). In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

(a) Placing unreasonable requirements on firms in order for them to qualify to do business;

(b) Requiring unnecessary experience and excessive bonding;

(c) Non-competitive pricing practices between firms or between affiliated companies;

(d) Non-competitive awards to consultants that are on retainer contracts;

(e) Organizational conflicts of interest;

(f) Specifying only a "brand name" product instead of allowing an "equivalent" product to be offered and describing the performance of other relevant requirements of procurement; and

(g) Any arbitrary action in the procurement process.

(3) Selection procedures

All CFSAs and local WIOA areas shall have written selection procedures for all procurement transactions.

(a) Written procedures must ensure that all solicitations:

(i) Incorporate a clear and accurate description of the technical requirements for the materials, products or services to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of technical requirements, a "brand name or equivalent" description

may be used as a means to define the performance or other salient requirements of procurement. The specific features of the brand name which must be met by bidders must be clearly stated.

(ii) Identify all requirements that the bidder must fulfill and all other factors to be used in evaluating bids or proposals.

(b) CFSA and local WIOA areas shall ensure that all pre-qualified 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. CFSA and local WIOA areas must not preclude potential bidders from qualifying during the solicitation period.

(c) CFSA and local WIOA area procedures shall include a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, the CFSA and local WIOA area shall conduct an analysis of lease versus purchase alternatives and any other appropriate analysis to determine the most economical approach. Breaking out procurements should only be done to obtain a more economical price and shall not be done to avoid procedural requirements.

(4) **Non-profit agencies for persons with severe disabilities**

(a) If permissible under federal law for procurements involving federal funds, then before determining which method of procurement to use, CFSA and local WIOA areas shall determine whether a product or service is on the procurement list for products and services provided by persons with severe disabilities as described in section 4115.33 of the Revised Code. If the product or service is on the procurement list and is available within the period required by that agency, the agency must procure the product or service at the price established by the state use committee from a qualified nonprofit agency.
If the provision of the product or service cannot be made in either the time period required or in the amount specified by the agency, the CFSA and local WIOA areas may pursue a method of procurement outlined in rule 5101:9-4-07.1 of the Administrative Code.

This list can be found at the DAS Procurement Services web site under the title: "Community Rehabilitation Programs"

(5) Geographic preference

(a) For purchases made in whole or in part with federal funds, or with state or local funds required for match, CFSA and local WIOA areas shall conduct procurement in a manner that prohibits the use of statutorily or administratively imposed in-state or local geographical preferences in evaluation of bids or proposals, except in those cases where applicable federal statutes expressly mandate or encourage geographic preference. Nothing in paragraph (B) of this rule preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(b) When only state and/or local funds are used for a purchase, the board of county commissioners, by resolution, may adopt the model system of preferences for products mined or produced in Ohio and for Ohio-based contractors (formerly "Buy-Ohio"). The resolution shall specify the class or classes of contracts to which the system of preferences apply. While the system of preferences is in effect, no county officer or employee shall award a contract in violation of the preference system.

(6) **Debarment and suspension**

(a) CFSA and local WIOA area procedures shall include requirements to ensure that no contracts are entered into with or purchases made from a person or entity which is debarred or suspended or is otherwise ineligible for participation in federal assistance programs under executive orders 12549 and 12689, debarment and suspension, and

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other applicable regulations and statutes, including 2 C.F.R. parts 180, 200, and 417, 29 C.F.R. part 98, and 45 C.F.R. part 75.

- (b) CFSA and local WIOA area procedures shall also include provisions that purchases will be made in conformance with section 9.24 of the Revised Code which prohibits the awarding of contracts, paid for in whole or in part with state funds, to a person against whom a finding for recovery has been issued by the auditor of state on or after January 1, 2001, if the finding for recovery is unresolved.

(7) **Monitoring**

CFSAs and local WIOA areas shall maintain a contract administration system that ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(C) **General contract requirements**

CFSA and local WIOA area contracts shall contain the following provisions:

- (1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. This applies to all contracts for more than the simplified threshold of one hundred and fifty thousand dollars.
- (2) Termination for cause and for convenience by the CFSA and local WIOA area including the manner by which it will be effected and the basis for settlement. This applies to all contracts in excess of ten thousand dollars.
- (3) Compliance with executive order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by executive order 11375 of October 13, 1967, and as supplemented in DOL regulations (41 C.F.R. chapter 60). This applies to all federally assisted construction contracts awarded in excess of ten thousand dollars by CFSA and local WIOA areas and their contractors or sub-grantees.
- (4) Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 3145) as supplemented by DOL regulations (29 C.F.R. part 3).
- (5) Compliance with the Davis-Bacon Act as amended (40 U.S.C. 3141-3148) as supplemented by DOL regulations (29 C.F.R. part 5). This applies to all construction contracts in excess of two thousand dollars.
- (6) Compliance with sections 3702 and 3704 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708) as supplemented by DOL regulations (29 C.F.R. part 5).
- (7) Compliance with "Rights to Inventions" clause 37 C.F.R. part 401 pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.
- (8) Access by the Ohio department of job and family services (ODJFS), the CFSA and the local WIOA area, the federal grantor agency, the comptroller general of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.
- (9) Compliance with all applicable standards, orders, or requirements issued pursuant to the Clean Air Act as amended (42 U.S.C. 7401-7671) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). This is applicable with any contract in excess of one hundred and fifty thousand dollars).
- (10) Financial, programmatic, statistical, and recipient records and supporting documents must be retained for a minimum of three years after the submittal of the final expenditure report for the grant or as otherwise provided by any minimum retention requirements specified by applicable state or federal law. If any litigation, claim, negotiation, audit or other action involving the records

has started before the expiration of the three-year period, the records must be retained until the completion of the action and resolution of all issues that arise from it, or until the end of the regular three-year period, whichever is later.

- (11) Certification that a contractor has not and will not use federal funds to pay for any lobbying activities as defined in the Byrd Anti-lobbying Amendment (31 U.S.C. 1352). Certification is required for contractors that apply or bid for an award of \$100,000 or more.

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