



SUBJECT: WFC PROCUREMENT

Policy # WFC-29CFR-1212

Effective Date: December 1, 2012

Grantees, sub-recipients and contractors funded under the Workforce Investment Act (WIA), whether in whole or in part, must abide by the Workforce Investment Act of 1998, the WIA Regulations, all applicable Office of Management and Budget (OMB) Circulars, state requirements in laws and rules (Revised Code of Washington and the Washington Administrative Code), Office of Financial Management (OFM) policies, and the Washington State WIA Policies.

PURPOSE: This policy outlines WorkForce Central’s methods for the procurement of goods and services obtained with Workforce Investment Act (WIA) funds as per the Law and Regulations for selection of One-Stop Operators, awarding of contracts under WIA Title I-B Adult and Dislocated Worker funding provisions, awarding of contracts for Youth Service provision under Title I-B and other procurements.

BACKGROUND: The Workforce Investment Act (WIA) Title I-B Final Rules and Regulations at 20 CFR Section 667.200, Title 29, CFR 97 uniform administrative requirements for grants and cooperative agreements to state and local governments and the U.S. Department of Labor (DOL) “One-stop Comprehensive Financial Management and Technical Assistance Guide” (TAG) provide federal direction for administration of state and local agreements. Applicable cost principles are at 2 CFR Part 225 (OMB Circular A-87).

The WDC’s local plan includes a description of the competitive process used to award grants and contracts for activities under Subtitle I of WIA (20 CFR 661.350).

2 CFR Part 230 (OMB Circular A-122) provides allowable cost principles for non-profit organizations and 2 CFR Part 220 (OMB Circular A-21) provides allowable cost principles for educational institutions. Uniform administrative requirements can be found at 29 CFR 95.

The Tacoma-Pierce County Workforce Development Council (dba WorkForce Central) will select One-Stop Operators (20 CFR 662.410) through designation or certification through a competitive bid process, or under agreement between the local council and a consortium of entities that include at least three or more of the required One-Stop partners identified at 20 CFR 662.200 (WIA Section 121(d)(2)(A)).

Contract awards to provide core and intensive services authorized under WIA Title I-B are determined between partners and the Workforce Development Council (WIA Section 121(c)(1) and (2)).

Workforce Investment Act (WIA) training services for Adults and Dislocated Workers are provided through Individual Training Accounts (ITAs) except under three conditions described in WIA Section 134 (d)(4)(G)(ii) and 20 CFR 663.430 (a). The WDCs may only provide training services under 20 CFR 663.430 if they request and receive a waiver from the Governor and meet requirements of 20 CFR 661.310 and WIA Section 117 (f)(1) or WIA Section 134 (d)(4)(G).

From funds allocated under WIA Section 128 (b) paragraph 1(a)(A) or (3) to a local area, the local board will identify eligible providers of youth activities and shall award grants or contracts on a competitive basis, based on the recommendations of the Youth Council and on the criteria contained in the state plan, to providers to carry out the activities, and shall conduct oversight with respect to the providers, in the local area (WIA Section 123).

The WDA establishes limitation on the use of funds under Title I-B. No funds available under this title shall be used for employment generating activities, economic development activities, investment in revolving loan funds, capitalization of businesses, investment in contract bidding resource centers, and similar activities that are not directly related to training for eligible individuals under this title. No funds available under Subtitle B shall be used for foreign travel (WIA Section 181 (e)).

Purchase of the following items are specifically excluded from this procurement policy: (1) On-the-Job Training (OJT), (2) Individual Training Accounts (ITAs) with Eligible Training Providers, (3) expenses covered by WorkForce Central Travel Reimbursement procedure, and (4) awards where specific service providers or vendors have been approved as part of the agreement with the funding organization.

POLICY: All procurement will be conducted in a fair and open manner consistent with standards of 29 CFR 97.36 and OFM SAAM 15.20. WorkForce Central procurement will contain no requirements that unduly restrict competition. Solicitations for Bids will identify all requirements and factors to be used in evaluating bids or proposals.

WorkForce Central will use procurement procedures that reflect state law and regulations (Revised Code of Washington-RCW and the Washington Administrative Code-WAC), where applicable, as well as local laws and regulations provided that the procurement actions conform to applicable Federal law and standards identified in 29 CFR 97.36 – Procurement.

To the extent possible small and minority, disabled and women-owned businesses will be provided the maximum opportunity to complete for all goods and services.

The dollar value of the purchase determines the purchasing method employed. Awards will not be based on price alone; however, all efforts will be made to choose vendors and sub-recipients that guarantee the most effective and efficient use of Federal funds.

When procurement is complete and contractors have been selected the completed documents will be submitted to WorkForce Central's Fiscal Office for issuance of a purchase order or payment of invoices. WorkForce Central will maintain records sufficient to detail the history of the procurement. Such documentation includes, but is not limited to, rationale for the method of procurement, selection of agreement type, the selection or rejection of bidders (may be included with bid review materials where applicable), and the basis for determining the amount let for the agreements.

Code of Conduct

See Local WorkForce Central Conflict of Interest Policy #42-52-1212.

Cost or Price Analysis

In accordance with 29 CFR 97.36 (f), for every procurement action, including contract modifications, WorkForce Central staff will complete a cost or price analysis when:

- Estimated costs from the potential bidders are required; or
- Adequate price competition is lacking, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation; or
- Procurements are sole source, including contract modifications or change orders, again unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation; or
- In all other instances to determine the reasonableness of the proposed contract price.

Documentation of the Cost or Price Analysis will be filed with other procurement information for the solicitation.

WorkForce Central 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, the following must be considered:

- The complexity of the work to be performed;
- The risk borne by the contractor;
- The contractor's investment;
- The amount of subcontracting (if approved by the WFC);
- The quality of the contractor's record of past performance; and
- The industry profit rates in the surrounding geographical area for similar work.

Note: Costs or prices based on estimated costs for contracts under grants are allowable only to the extent that the cost estimates or costs incurred included in the negotiated prices are consistent with federal cost principles (Reference 29 CFR 97.22) or those applicable to federal cost principles. The cost plus a percentage of cost and percentage of construction cost methods are not allowable.

Documentation of the separate review and negotiation of profit will be with other procurement information for the solicitation.

Methods of Procurement:

Less Than \$5,000 – Purchases will be handled informally. **Buyers are responsible to ensure the purchase is made from a source most beneficial to WorkForce Central. See WFC Purchasing Guide on how to document these purchases.**

\$5,001 to \$25,000 – Small Purchases are those that are relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than \$25,000 in the aggregate. (29 CFR 36 (d) (1). If small purchase procurements are used, price or rate quotations will be obtained from an adequate number of qualified sources. For this level of procurement there must be “evidence of procurement.”

An informal written solicitation in the form of a letter, e-mail or other format requiring information in writing from prospective bidders. If fewer than three firms are contacted, explanation is to be included in the contract file as to why more firms were not invited to participate.

At a minimum the solicitation should include a description of the type of services required, the proposed project schedule, a request for the organization’s or firm’s qualifications and experience, a request for the costs or fees to be charged to perform the services and the due date and transmittal requirements for written responses.

Note the time and date responses were received. One or more individuals should evaluate the written responses for how well each meets the requirements in the solicitation. Document in writing the basis for the award decision. Documentation solicitation and process used to select the contractor should be retained and available for review.

\$25,000 or More - WorkForce Central will develop formal solicitation documents for personal services valued at \$25,000 or more describing the need for services. The solicitation should include enough information for organizations to understand what WorkForce Central needs, instructions for submitting proposals, and criteria for proposal evaluation. The two most commonly used documents for personal services are the Request for Proposals (RFP) and the Request for Qualifications and Quotations (RFQQ).

The RFP may be used when WorkForce Central has an identified need or problem and is seeking proposals from multiple firms that describe solutions or approaches to address the need or problem, qualifications and experience of the firm and costs or fees to provide the services.

An RFQQ may be used when WorkForce Central has identified the need and the services to resolve it and is looking only for a firm’s qualifications and costs or fees to provide the identified services.

Competitive solicitation is conducted with more than one bidder submitting a proposal where a fixed-price or cost reimbursement type contract will be awarded. Purchases over \$50,000 must be approved by the Executive Board. The following requirements apply for competitive solicitations::

- Requests for Proposals or Requests for Quotes and Qualifications will be publicized and identify all evaluation factors and their importance;
- Proposals will be solicited from an adequate number of qualified sources;
- WorkForce Central will have a method for conducting evaluations of the proposals received and for selecting the successful bidder(s);
- Awards will be made to the organization whose proposal is most advantageous to programs operated by WorkForce Central, with price and other factors considered.

WorkForce Central Procedures for Formal Competitive Solicitation:

- Solicitation materials must be completed by the requesting program prior to review by and funding citation from Fiscal. This would include information on specifications plus any other pertinent information needed to complete the solicitation;
- Fiscal must confirm availability of funds;
- Contracts awarded must be approved by the City Legal Department.

Advertising Solicitation - Invitation to Bid

- Invitation to Bid is posted on the Washington Electronic Business System (WEBS) for an appropriate period of time to allow industry adequate time to prepare and respond to the RFQQ/RFP, etc. This advertisement must be done not less than five (5) days before the deadline for submission of bids as a minimum. More detailed and complex procurements will require more time for industry to respond.
- Solicitation is also posted on WorkForce Central website at www.Workforce-central.org
- Names of firms receiving Invitation to Bid will be recorded.

Bidder’s Conference – A Bidder’s Conference is generally used for complex procurements. Interested parties can ask questions and get clarification about the competitive procurement. WorkForce Central may also use the Bidder’s Conference to share information on complicated issues or requirements.

Answers provided at the Bidder’s Conference are not binding on the solicitation. Questions submitted in writing will be answered and these responses will be considered a formal amendment to the solicitation. Amendments will be provided to all Bidder’s Conference attendees, if known and posted on any website used to announce available funds.

If attendance at the Bidder’s Conference is mandatory the solicitation must so state.

Intergovernmental Purchasing

WorkForce Central may select as providers of goods and services those on a list of vendors another public agency has available. This type of procurement results in pricing advantages

through greater volume and therefore is a more reasonable, effective and efficient use of Federal funds.

WorkForce Central also participates in the Washington State Purchasing Contracts system. The State of Washington Purchasing Department formally bids large commodities that are available to all political subdivisions. This allows for low cost, efficient purchasing without requiring additional solicitation. **WorkForce Central may take advantage of contracts from agencies other than the State of Washington only if formal competitive bidding procedures have taken place.**

Sole Source Procurement

It is WFC policy to avoid “sole source” procurements as much as possible. If there is no other choice the following must be complied with and thoroughly documented. Sole Source procurement through solicitation of a proposal from only one source, or after solicitation from a number of sources, competition is determined to be inadequate. Sole Source may be used only when the award of a contract is infeasible under small purchase procedures, or competitive proposals and one of the following circumstances applies. (Reference: CFR 97.36 (d) (4):

- The item or service is unique and available from a single source, or
- Public demand or emergency does not permit the delay resulting from competitive solicitation, or
- The awarding agency authorizes the use of noncompetitive negotiation; or
- Competitive solicitation has not resulted in adequate or acceptable proposals or bids
 - Cost analysis, i.e., verifying the proposed cost data, the projections of the data and the evaluation of the specific elements of costs and profits is required.
 - Grantees and subgrantees may be required to submit the proposed procurement action to the awarding agency for pre-award review in accordance with 29 Part 97.36(g).

Sole Source Advertisement

- Advertising Requirements
 - Sole Source contracts of \$20,000 must be advertised in accordance with the Washington State Office of Financial Management (OFM), State Administrative and Accounting Manual (SAAM) Policy Subsection 15.20.60. Posting and advertisement includes:
 - WorkForce Central’s name and solicitation name and contact information; ;
 - A description of the services contemplated for sole source award;
 - The proposed period of performance for the services; and
 - The deadline for an interested party to make such contact.
 - Include the RFQQ/RFP as announced on WEBS along with the suspense due for responses.
 - If no responses are received, so indicate.
 - If one or more responses are received, explain how the WFC concluded the contract is appropriate for a noncompetitive negotiated (sole source) award.

- Advertising Exceptions – OFM/SAAM Policy Subsection 15.20.60c.

Exemptions from requirements to post and advertise sole source agreements:

- Noncompetitive negotiated contracts under \$5,000;
- Contracts for services where selection of the contractor is based on an exceptional personal accomplishment or characteristic such as a national expert on a specialized topic or issue, authors of acclaimed books or articles, guest speakers, performers, and artists. This does not apply to contracts for services such as training, facilitation, etc.
- Contracts for services where the funding source mandates with whom WorkForce Central must contract. WorkForce Central does not have discretion in making the award decision. Examples include requirements set forth in Federal grant awards, Washington State Statute (Revised Code of Washington-RCW), legislative budget proviso, etc.
- Contracts for services that will be provided entirely outside Washington State.

NOTE: Advertising amendments to a noncompetitive negotiated agreement is not required.

Evaluation

Proposals will be evaluated based on requirements in the competitive solicitation. Competitive procurement involves evaluation of proposals based on multiple factors such as experience, qualifications, capacity, availability and cost. Cost is always a factor, but does not have to be the sole reason for awarding funds.

Lowest and Best Responsible Bidder – In addition to cost, the following may be considered in determining the lowest and best responsible bidder for solicitations issued by WorkForce Central:

- The ability, capacity and skill of the bidder to perform the contract or provide the services required;
- Whether the bidder can accomplish the contract goals or provide the services promptly or within the time specified without delay or interference;
- The character, integrity, reputation, judgment, experience and efficiency of the bidder;
- The quality of performance for previous contracts or service;
- The previous and existing compliance of the bidder with laws and regulations relating to contracts or services;
- The sufficiency of financial resources that will ensure the bidder will be available to perform the contract or services;
- The quality, availability and adaptability of the supplies or contracted services to the particular use required;
- The ability of the bidder to provide future maintenance and service for the use of the subject of the subject of the contract;
- The number and scope of conditions attached to the bid;
- Compliance with all affirmative action and minority or women-owned business enterprises contracting requirements;
- The ability to foster greater economic efficiency.

Protest

In the event an unsuccessful proposer protests a procurement WorkForce Central will follow the protest process and timelines outlined in the solicitation. Solicitations should note that unsuccessful bidders participate in a debriefing conference before submittal of a formal protest. When a protest is filed, no work under the contract may be done until the protest is resolved.

DEFINITIONS – OFM SAAM 15.20.15

Client Services - services provided directly to clients including, but not limited to, employment and training program..... Client Services contracts are awarded for professional or technical services to be provided by a contractor that will result in the delivery of direct services to clients. These contracts are exempt from guidelines at OFM SAAM 15.20.

Competitive Solicitation – A documented formal process for award of personal service contracts of \$20,000 or more that provides an equal and open opportunity to multiple qualified parties. The solicitation culminates in the selection of a contractor based on evaluation criteria set forth in the solicitation document that may include such factors as the consultant's fees or costs, ability, capacity, experience, reputation, responsiveness to time limitations, responsiveness to solicitation requirements, quality of previous performance, and compliance with statutes and rules relating to contracts or services.

Consultant – An independent individual or entity contracting with the WFC to perform personal services or purchased/vendor services by rendering an opinion or making a recommendation according to the consultant’s methods without being subject to the control of the WFC except as to the result of the work. The WFC monitors progress under the contract and authorizes payment. The term “contractor” is also used in this policy and can be used in personal service contracts and purchased/vendor service contracts.

Contractor – Any business entity whether a sole proprietor, partnership, or corporation, that is providing either personal services or purchased/vendor services to the WFC.

Evidence of Competition – Documentation demonstrating that WorkForce Central has solicited responses from multiple firms (minimum of three) in selecting a consultant for personal services in the amount of \$5,000 to \$19,999.

Performance-based Contract - A written document detailing an agreement between parties and identifying expected deliverables, performance measures or outcomes with payment contingent on their successful delivery. Performance-based contracts also use appropriate techniques, which may include, but are not limited to, consequences and/or incentives to ensure that agreed upon value to the state is received.

Personal Service – Professional or technical expertise provided by a consultant to accomplish a specific study, project, task, or other work statement. This term does not include purchased services as defined below.

Personal Service Contract – An agreement, or any amendment thereto, with a consultant (contractor) for the rendering of personal services. Personal service contracts may render services to businesses, providers, other contractors. If, however, services are provided **directly** to clients, the contracts are classified as client service contracts.

Proposal – A document submitted by a firm in response to an informal or formal competitive solicitation issued by an agency. Also called a “bid.”

Purchased Services – Services provided by a vendor to accomplish routine, continuing, and necessary functions. Generally, these services meet more ongoing needs for general activities.

Sole Source - Contract awarded without competition because the provider of professional or technical expertise has skills, knowledge or ability of such a unique nature that the consultant is clearly and justifiably the only practical source to provide the service. The sole source award may also be based on the uniqueness or highly specialized nature of the services, sole availability of a consultant at the location required or other special circumstances.

Definitions – One-Stop Comprehensive Financial Management Technical Assistance Guide (TAG)

Subrecipients – A subrecipient is a legal entity to which a subaward of Federal funds is made and that is accountable to the recipient for the use of the funds provided. When the organization performs the following activities, a Federal award to a subrecipient is indicated:

- Determines eligibility for the Federally funded program
- Has its performance measured against the objectives of the Federal program
- Has responsibility for programmatic decision-making
- Has responsibility for adherence to applicable Federal program compliance requirements (for example regulations)

Vendors – A vendor is a dealer, distributor, merchant, or other seller providing goods or services that are required for the conduct of a Federal program. The following activities are indicative of a vendor relationship with an organization:

- Provides the goods and services within normal business operations
- Provides similar goods or services to many different purchasers
- Operates in a competitive environment
- Provides goods or services that are ancillary to the operation of the Federal program
- Is not subject to the Federal compliance requirements of the program

Action

All Service Providers and contractors will adhere to the procurement practices outlined in this policy. Vendors will be apprised of applicable requirements during the review and selection process.

References:

Workforce Investment Act (WIA) - Public Law 105-220
Workforce Investment Act Final Rules - 20 CFR Part 652 et al
Workforce Investment Act – Section 134(d)(4)(G), 121(c)(1) and (2), 121(d)(2)(A), 181(e), 117(1), 128(b)(1) and 123.
Workforce Investment Act Administrative Rules, Costs and Limitations – 20 CFR 667.200
Public Law 97-300 and its amendments, Sections 104(b) (11), 107, 108(b) (5), 141(h), 164(a), and 313(b) (6)
2 CFR Part 225 (OMB Circular A-87) – Allowable Costs for State, local, and Indian Tribal Government
OMB Circular A-133 – Audit of State and Local Government
Title 29 CFR Part 26 – Audit Requirements for Governmental Organizations
Uniform Administration of State and Local Agreements – Title 29 Part 97.36 Procurement
One-Stop Comprehensive Financial Management Technical Assistance Guide (TAG)
Office of Financial Management (OFM) State Administrative and Accounting Manual (SAAM) 15.10 and 15.20

DIRECT INQUIRIES TO:

WorkForce Central
3650 South Cedar Street
Tacoma, Washington 98409-5714
(253) 472-8094 or 1-800-999-8168

EQUAL OPPORTUNITY - EQUAL ACCESS

WorkForce Central and WorkSource Washington are equal opportunity employers and providers of employment and training services. Auxiliary aids and services are available upon request for individuals with disabilities. Language services for clients are provided free of charge. WA Relay Services: 1-800-833-6384.

WORKFORCE CENTRAL NONNEGOTIATED (SOLE SOURCE) CONTRACT WORKSHEET – OFM SAAM 15.30.25c

In cases where WorkForce Central determines a need to let an agreement that has not been competitively procured, the following information must be completed and retained as documentation.

- 1. Specific Problem or Need:** Identify and describe the specific problem, requirement, or need that the contract is intended to address and what makes the services necessary.

Include information as to how the services in this sole source procurement are critical or essential to the vision, mission and objectives. Are these services mandated or authorized by the Workforce Investment Act Law and Regulations, State Law or the Washington State Legislature, and if so how?

- 2. Other Public Resources:** Explain how the WFC concluded:
 - Staffing expertise is not available within WFC to perform the service; and
 - Other partner resources or governmental resources external to WFC are not available to perform the service more efficiently or cost effectively.
- 3. Noncompetitive Negotiation Criteria:** Include a detailed explanation of the items below that are relevant to the noncompetitive negotiation decision.
 - Unique Characteristics – Describe the unique qualifications, abilities, or expertise of the contractor to meet WorkForce Central’s needs or the unique nature of the services. Unique qualifications or services would be those that are highly specialized or one-of-a-kind. Other factors that may be considered include past performance, cost-effectiveness (learning curve), or follow-up nature of the required services. Past performance alone does not provide adequate justification for a sole source contract.
 - Special Circumstances - Provide a description of any other special circumstances that may be relevant such as confidential investigations, copyright restrictions, time constraints, or sole availability at the location.
 - Time Constraints – If time constraints are applicable, identify the following:
 - When WorkForce Central was notified or became aware of the need for services;
 - The organization that imposed the constraints;
 - Explain the authority (if not obvious) of the organization that imposed the time constraints; and
 - Provide timelines for work to be accomplished.

- Geographic Limitation – If the proposed contractor is the only source available in the geographical area, provide an explanation of the basis for this conclusion and the rationale for limiting the size of the geographical area selected.
4. **Reasonableness of Costs:** Since competition was not used as the means for procurement, explain how WorkForce Central concluded that the costs, fees, or rates negotiated are fair and reasonable. Either compare like contracts, use results of a market survey, or employ some other appropriate means calculated to make such a determination.
 5. **Sole Source Advertisement:** Based on the Advertising Requirements and Advertising Exceptions noted in the WorkForce Central Procurement Policy, explain how this solicitation was advertised or how it meets the exceptions.