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**Workforce Development Agency, State of Michigan (WDASOM)**  
**Policy Issuance (PI): 15-12**

**Date:** July 17, 2015

**To:** Michigan Works! Agency (MWA) Directors

**From:** Mike Wurlinger, Director (**SIGNED**)  
Office of Audit and Finance

**Subject:** Procurement

**Programs Affected:** All programs and grants administered by the Workforce Development Agency (WDA)

**Rescissions:** WDA PI 12-29, issued March 5, 2013

**References:** Code of Federal Regulations (CFR), Title 2 – Grants and Agreements  
CFR, Title 48 – Federal Acquisition Regulations System  
Workforce Innovation and Opportunity Act (WIOA)  
U.S. Department of Labor, Employment and Training Administration, One-Stop Comprehensive Financial Management Technical Assistance Guide

**Background:** This policy establishes WDA requirements and highlights federal requirements for procurements. The information provided in this policy issuance is intended to aid grantees and subgrantees in administering WDA funded formula grants and, as applicable, other WDA grants. It is not intended to unduly supplant or replace federal or state regulations and requirements contained in applicable federal and state statutes. If in any instance the use of this policy issuance appears to be in conflict with the rights and authorities given to WDA under the regulations, such conflict must be resolved in favor of the applicable federal or state regulation.



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WDASOM is an equal opportunity employer/program.  
Auxiliary aids, services and other reasonable accommodations are available upon request to individuals with disabilities.

**Policy:** All procurements made in whole or in part with funds administered by WDA shall be conducted in a manner that provides full and open competition.

Grantees and subgrantees shall establish, maintain, and follow written procurement standards and procedures that are in compliance with all applicable local, state, and federal laws and regulations.

**I. Simplified Acquisition Threshold**

Unless otherwise prescribed by the specific grant or funding source, the WDA simplified acquisition threshold for procurements made in whole or in part with funds administered by WDA is set at \$150,000. Grantees and subgrantees may establish a lower simplified acquisition threshold.

**II. Capital Assets and Capital Improvements**

Procurement of capital assets (e.g., equipment, buildings, and land) and capital improvements (cost of improvements to capital assets that materially increase their value or useful life) require special treatment.

**A. Buildings and Land**

With limited exceptions, the purchase or construction of buildings and the purchase of land is prohibited under federal grants. Therefore, regardless of the amount, prior WDA approval is required for all procurements (including capital leases) for the construction or purchase of buildings and land that is to be made in whole or in part with funds administered by WDA.

**B. Equipment and Capital Improvements**

**1. Formula Grants**

Under formula grants awarded to the state and administered by WDA, the procurement of all equipment, capital improvements, and other capital expenditures in excess of the WDA simplified acquisition threshold require prior WDA approval.

**2. Discretionary Grants**

Discretionary grants and other non-formula grants administered by WDA may have lower thresholds for which prior WDA and/or federal awarding agency approval is required. Lacking specific guidance, approval from the federal awarding agency is required for capital expenditures, including equipment, of \$5,000 or more.

### C. Approval Requests

It is incumbent upon the grantee or subgrantee making the procurement to follow the applicable approval requirements under the grant in which the procurement is made. All necessary approvals must be obtained and documented prior to initiating the purchase.

1. WDA approval requests shall contain:
  - a. How the item benefits the program(s) for which it is being purchased.
  - b. An independent estimate of the expected cost/price of the item.
  - c. A copy of the solicitation that will be used for the procurement.
  - d. Bidder's list and how the solicitation will be publicized.
2. Submit WDA approval requests to:

Workforce Development Agency  
Executive Office  
Victor Office Center  
201 North Washington Square  
Lansing, Michigan 48913

### D. Bonding Requirements

Bonding requirements for construction or facility improvement contracts/subcontracts exceeding the WDA simplified acquisition threshold must be imposed to ensure the interests of the federal funds are protected. [2 CFR Part 200.325]

## **III. Procurement Methods**

- A. Before determining which procurement method is appropriate for the identified need, the Entity is to consider:
  1. The total value of the procurement. For example:
    - a. A two-year contract at \$80,000 per year with the option for a third year is a procurement valued at \$240,000.
    - b. An item's cost is \$140,000, but delivery, set-up, and other ancillary charges necessary for the purchase are another \$20,000. The total value of the procurement is \$160,000.

- c. The procurement value of computers, phone systems, network devices, etc. will include the cost of application and system software to make the items usable for the purpose in which it is being purchased.
2. Procurements cannot be separated into multiple processes or purchases unless it is documented that the multiple processes resulted in a more economical purchase.
3. Rebates, trade-in amounts, sale proceeds, etc. may be used to reduce the cost of the new purchase.

B. There are five approved methods of procurement:

1. Micro-Purchase

Procurement by micro-purchase is the acquisition of supplies or services when the aggregate dollar amount does not exceed \$3,000 (or \$2,000 in the case the acquisitions for construction subject to the Davis-Bacon Act). To the extent practical, micro-purchases are to be distributed equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotes if the price is considered to be reasonable. [2 CFR Part 200.320(a)]

The micro-purchase method can be an effective tool for procuring items, such as, participant supportive services and office supplies. However, caution is advised as this method is not appropriate for every situation in which the cost will not exceed \$3,000. Planned reoccurring services such as payroll, accounting, security, lawn care, janitorial, etc. are not viewed as separate purchases each time the service is rendered. Therefore, if the aggregate value of the individual purchased service exceeds \$3,000 in a 12-month period, the micro-purchase method cannot be used.

2. Small Purchase

This is a relatively informal method used primarily to procure standardized goods and services that do not cost more than the WDA simplified acquisition threshold. [2 CFR Part 200.320(b)]

The small purchase method is not appropriate for all procurements that do not cost more than the WDA simplified acquisition threshold. It is only appropriate when price is the overriding factor and may be easily quoted and compared, delivery is standardized,

and performance outcomes are not dependent upon the content of the goods or services being procured.

When small purchase procedures are used, price or rate quotations from a minimum of three qualified sources must be obtained; two quotes are sufficient if the value of the procurement does not exceed \$25,000. Quotes are to be dated and current for the purchase being made. Price quotes must also be viable, in that the Entity must be able to purchase the item for the quoted price.

Quotes in excess of the WDA simplified purchase threshold are not usable quotes in meeting the requirements of this method. If an adequate number of quotes cannot be obtained, this method cannot be used.

If this method is used to consolidate into a single process the procurement of frequently needed goods or services, the time period cannot exceed five years and the total costs during the time period cannot exceed the WDA simplified acquisition threshold. If actual costs exceed the dollar threshold originally procured, a new procurement process must be conducted. Example: \$30,000 procurement was done to cover legal services for two years. Sixteen-months into the procurement \$30,000 has been spent on legal services. Having reached the value of the original procurement, a new procurement process for legal services must be conducted at sixteen-months; rather than the two years originally planned.

### 3. Sealed Bids

Bids are publicly solicited and a firm fixed price contract (either 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 price. Sealed bid is the preferred method for procuring construction. [2 CFR Part 200.320(c)]

- a. In order for this process to be feasible, all of the following conditions must be met:
  - i. A complete, adequate, and realistic specification or purchase description is available and used in the solicitation. [2 CFR Part 200.320(c)(1)(i)]
  - ii. Two or more responsible bidders are willing and able to compete effectively for the business. [2 CFR Part 200.320(c)(1)(ii)]

- iii. 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. *[2 CFR Part 200.320(c)(1)(iii)]*
- b. If sealed bids are used, all of the following requirements apply:
  - i. An independent estimate of the cost/price is made prior to receiving bids. *[2 CFR Part 200.323(a)]*
  - ii. The Invitation for Bid (IFB) is publicly advertised and bids must be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids. *[2 CFR Part 200.320(c)(2)(i)]*
  - iii. The IFB contains all specifications and pertinent attachments and defines the items or services to be procured in sufficient detail for the bidders to properly respond. *[2 CFR Part 200.320(c)(2)(ii)]*
  - iv. All bids are publicly opened at the time and place prescribed in the IFB. *[2 CFR Part 200.320(c)(2)(iii)]*
  - v. 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 must 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. *[2 CFR Part 200.320(c)(2)(iv)]*
  - vi. Any or all bids may be rejected if there is a sound documented reason. *[2 CFR Part 200.320(c)(2)(v)]*

#### 4. Competitive Proposals

Competitive proposals are used when there is more than one prospective bidder, the lowest price is not necessarily the determining factor for award, and either a fixed price or cost reimbursement agreement will be awarded. The competitive proposal is appropriate when evaluation factors focus on approach, program design and outcomes; innovation; coordination and experience, in addition to price. *[2 CFR Part 200.320(d)]*

The following requirements apply to competitive proposals:

- a. An independent estimate of the cost/price prior to receiving proposals. *[2 CFR Part 200.323(a)]*
- b. Request for Proposals (RFP) must be publicized. RFPs must contain the specifications that provide a common understanding for the proposed goods or services and identify all the evaluation factors and their relative importance or weight in selection of successful bidders. Any response to publicized RFPs must be considered to the maximum extent practical. *[2 CFR Part 200.320(d)(1)]*
- c. Proposals will be solicited from an adequate number of qualified sources. *[2 CFR Part 200.320(d)(2)]*
- d. A written method for conducting technical evaluations of proposals received and for selecting recipients. *[2 CFR Part 200.320(d)(3)]*
- e. Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program based on price and other evaluation factors. *[2 CFR Part 200.320(d)(4)]*
- f. Competitive proposal procedures may be used for qualifications-based procurement of architectural/engineering professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. *[2 CFR Part 200.320(d)(5)]*

## 5. Noncompetitive Proposals

Procurement by noncompetitive proposals is the solicitation of a proposal from only a single source, or the solicitation of a proposal from more than one source and competition is determined to be inadequate to fulfill the requirements of the funding agency. *[2 CFR Part 200.320(f)]*

This method may only be used when the procurement is not practical using one of the four other methods discussed above, and one of the following conditions apply:

- a. The item is available from only one source. *[2 CFR Part 200.320(f)(1)]*

- b. A public emergency for the requirement will not permit a delay resulting from a competitive solicitation. *[2 CFR Part 200.320(f)(2)]*

A public emergency must meet one of the following criteria:

- i. Necessary for the imminent protection of public health.
  - ii. Emergency repairs to protect life or property.
  - iii. Unforeseen crisis requiring immediate procurement.
- c. The federal awarding agency or WDA expressly authorizes noncompetitive proposals in response to a written request from the Entity. *[2 CFR Part 200.320(f)(3)]*
  - d. After solicitation of a number of sources competition is determined inadequate. This usually occurs after a competitive process has been used and there are insufficient bidders. *[2 CFR Part 200.320(f)(4)]*

A cost analysis is required for all noncompetitive procurement actions. This entails verification of the proposed cost data and evaluation of the specific elements of costs and profits; including comparison with the independent price estimate.

Noncompetitive procurements are considered a last resort option and used only when there is a documented reason for sole-source selection. Grantees and subgrantees are required to ensure the procurement process is open and fair; therefore, caution is advised when using noncompetitive procurements.

Prior approval is required for all sole-source awards in excess of the WDA simplified acquisition threshold when Sealed Bids or Competitive Proposals were not used. *[2 CFR Part 200.324(b)(2)]*

Approval requests are to include a description or specifications of the item to be purchased, the independent cost estimate, purpose of the proposed purchase, cost and/or price analysis, an explanation on why another procurement method is not viable, and supporting documentation as to how the purchase meets one of the conditions described above. Submit requests to:

Workforce Development Agency  
Executive Office  
Victor Office Center  
201 North Washington Square  
Lansing, Michigan 48913

#### **IV. Partner Organizations**

If two or more organizations plan to share responsibility for carrying out the main work of the grant, then those organizations may partner as co-grantees or co-subgrantees with one organization being designated as the “lead.” However, each organization will be equally responsible for performance and financial obligations. This relationship need not result in a new legal entity being formed, but some form of a contractual relationship must be documented and submitted that reflects the roles and responsibilities of the parties.

In the alternative, if one organization will be responsible for the overall work of the grant, with other organizations performing separate and distinct functions to serve or aid that principal effort, then such other organizations must be procured by the Entity as subcontractors or subgrantees.

Subcontractors and subgrantees cannot be identified in a bid or proposal unless they were competitively procured for the intended purpose prior to the submission of the bid/proposal. To do so would jeopardize full and open competition. If a bid or proposal is submitted that identifies subcontractors or subgrantees, the grantee must ensure that the identified parties were properly procured or the bid/proposal must be rejected.

#### **V. Third-Party Procurements**

The Michigan Legislature has authorized two programs in which eligible grantees and subgrantees may utilize third-party procurements:

##### **A. MiDEAL**

Authorized under Public Act 431 of 1984, Section 263, MiDEAL allows local units of government in Michigan to use state procured contracts to buy goods and services. For more information please refer to the MiDEAL website at <http://www.michigan.gov/localgov>.

##### **B. REMC Association of Michigan**

Authorized under Public Act 451 of 1976, Section 380.671, the REMC Statewide \$AVE (Schools Aggregated Volume in Education) Bid Project allows the following to purchase a variety of supplies, equipment, software, computer, and networking items through its procured vendors.

1. Public, non-public and private schools (K-12, preschools)

2. Community Colleges, Universities, and Colleges
3. Public Libraries and Museums (local, county, state)
4. State, County, and Local Government Agencies

For more information on the REMC \$AVE Bid Project please refer to its website at <http://remcbids.org/>.

Entities are cautioned against using other third-party procurements in place of their own procurement processes. To do so will require the Entity to ensure and document the procurement met their need and all federal, state, and local procurement standards were followed. This includes being able to document competition was not limited in the original procurement and subsequent purchases. Simply using the same vendor or product a third-party procured will not meet these requirements.

## **VI. Leases**

Leases are subject to all procurement standards and lease payments (i.e., rent) must be allowable under the applicable federal cost principles. Factors such as, location, parking, access to public transportation, maintenance, security, telecommunications, and other included services are normally considered when selecting office space or service center locations. Due to this unique and customizable nature, office and building leases typically do not qualify for procurement under the micro-purchase or small purchase methods.

A new lease must be procured when an existing lease expires and all of its options have been exhausted. It cannot be renewed, extended, or otherwise amended without the support of an appropriate procurement process. For example: A three-year lease with the option of two, one-year extensions. If both option years are sequentially picked-up, the lease will need to be procured again in five years. In addition, a cost/price analysis (i.e., market analysis) for each option year entered into is needed to ensure that the rental costs are still competitive.

At a minimum, leases shall contain:

- a. The agency or organization name and business address of the lessee and the lessor.
- b. The signatures of authorized representatives of both the lessee and the lessor.

- c. The effective dates of the agreement (beginning and ending dates).
- d. Specific items covered by the agreement, i.e., address of the facility, quantity and description of equipment items, quantity and type of motor vehicles, specific maintenance, insurance, and operating costs which are included or excluded.
- e. Conditions for termination of the lease without penalty costs or fees should federal funds become unavailable.

## **VII. Rent**

Rent must be reasonable in light of such factors as comparable property, market conditions in the area, alternatives available, as well as, type, life expectancy, condition, and value of the leased property. Rental arrangements should be reviewed periodically to determine if circumstances have changed and other options are available. In addition, if there is idle capacity or idle facilities, rent must be reassessed to ensure its allowability under federal programs. [2 CFR Part 200.465(a) and .446]

Use allowance is no longer identified by the federal regulations as an acceptable alternative to depreciation. The depreciation method must be followed when determining allowable rent charged to federal programs. [2 CFR Part 200.436(a),(d)(5) and .443(b)(4)]

The rental of any property owned by any individual or parties affiliated with the Entity, including commercial or residential real estate, for purposes such as home office workspace is unallowable. [2 CFR Part 200.465(c)(6)]

The amount of rent that can be charged to federal programs is further limited under “sale and lease back” arrangements, “less-than-arm’s-length” leases, and capital leases.

### **A. “Sale and Lease Back” Arrangements**

Rental costs under “sale and lease back” arrangements are allowable only up to the amount that would be allowed had the non-Federal entity continued to own the property. This amount would include expenses such as depreciation, maintenance, taxes, and insurance. [2 CFR Part 200.436 and .465(b)]

### **B. Less-Than-Arm’s-Length Leases**

As with “sale and lease back” arrangements, rental costs under “less-than-arm’s-length” leases are allowable only up to the amount that

would be allowed had the non-Federal entity continued to own the property. This amount would include expenses such as depreciation, maintenance, taxes, and insurance. [2 CFR Part 200.436 and .465(c)]

A “less-than-arm’s-length” lease is one under which one party to the lease agreement is able to control or substantially influence the actions of the other. Such leases include, but are not limited to those between:

1. Divisions of the Entity. [2 CFR Part 200.436 and .465(c)(1)]
2. The Entity under common control through common officers, directors, or members. [2 CFR Part 200.436 and .465(c)(2)]
3. The Entity and a director, trustee, officer, or key employee of the Entity or an immediate family member, either directly or through corporations, trusts, or similar arrangements in which they hold a controlling interest. For example, the Entity may establish a separate corporation for the sole purpose of owning property and leasing it back to the Entity. [2 CFR Part 200.436 and .465(c)(3)]
4. Family members include one party with any of the following relationships to another party: [2 CFR Part 200.436 and .465(c)(4)]
  - i. Spouse, and parents thereof;
  - ii. Children, and spouses thereof;
  - iii. Parents, and spouses thereof;
  - iv. Siblings, and spouses thereof;
  - v. Grandparents and grandchildren, and spouses thereof;
  - vi. Domestic partner and parents thereof, including domestic partners of any individual in 2 through 4 (ii-v) 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.

#### C. Capital Leases

Rental costs for leases that are required to be treated as capital leases under Generally Accepted Accounting Principles (GAAP) are allowable only up to the amount that would have been allowed had the

Entity purchased the property on the date the lease agreement was executed. This amount would include expenses such as depreciation, maintenance, taxes, and insurance. The provisions of GAAP must be used to determine whether a lease is a capital lease. Interest costs related to capital leases are allowable to the extent they meet the criteria in 2 CFR Part 200.449. Unallowable costs include amounts paid for profit, management fees, and taxes that would not have been incurred had the non-Federal entity purchased the property. *[2 CFR Part 200.436, .449, and .465(c)(5)]*

With limited exceptions, capital leases for land, buildings, and other real property are prohibited under federal programs administered by WDA. If permitted under the federal program, prior WDA approval is required.

### **VIII. Documentation**

Documentation must be maintained for each step in the procurement process to sufficiently detail the history of the procurement. This documentation includes, but is not limited to, the rationale for the method of procurement, independent estimates, cost/price analysis, solicitations, bids, proposals, justifications, profit, bidder lists, approvals, contracts, etc. *[2 CFR Part 200.318(i)]*

At a minimum, all procurement records must be retained for three years after final disposition of the item procured. If any litigation, audit, or claim is initiated involving the item procured during the three-year retention period, the procurement records must be retained until resolution of all issues and final action is taken or until the end of the three-year retention period; whichever is later. For example, the retention period for procurement documentation on a five-year lease starts at the end of the lease, not from the date the lease was procured. *[2 CFR Part 200.333]*

### **IX. Standards of Conduct**

- A. Written standards of conduct that are in compliance with the federal and state regulations are required for employees engaged in the selection, award and administration of contracts. At a minimum, the written standards of conduct will be disseminated to all appropriate parties engaged in the selection, award and administration of contracts and shall address: *[2 CFR Part 200.318(c); WIOA Section 101(f) and 107(h)]*
  - 1. No employee, officer or agent of the grantee or subgrantee (including, as applicable, Workforce Development Board members) shall participate in the selection, award or administration of a contract supported by a federal award if he or she has a real or apparent conflict of interest. Such a conflict would arise when the

employee, officer or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the stated parties, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.

2. The grantee's or subgrantee's officers, employees and agents must neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to sub-agreements. The grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal value.
3. Disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the grantee and subgrantee.
4. If the Entity has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, it must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the Entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

## **X. General Procurement Standards**

The Entity must use its own documented (i.e., written) procurement procedures which reflect applicable state and local laws and regulations, provided that the procurements conform to applicable federal law and the following standards: *[2 CFR Part 200.318(a)]*

- A. Entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. *[2 CFR Part 200.318(b)]*
- B. A review of proposed procurements to avoid purchase of unnecessary or duplicative items. *[2 CFR Part 200.318(d)]*
- C. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. *[2 CFR Part 200.318(d)]*
- D. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other analysis to determine the most economical approach. *[2 CFR Part 200.318(d)]*

- E. To foster greater economy and efficiency, the Entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services. *[2 CFR Part 200.318(e)]*
- F. The Entity is encouraged to use federal or state excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs. *[2 CFR Part 200.318(f)]*
- G. The Entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. *[2 CFR Part 200.318(g)]*
- H. A documented process to ensure that awards are made to only 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, and financial and technical resources. *[2 CFR Part 200.318(h)]*
- I. A documented process to maintain records sufficient to detail the significant history of all procurements. At a minimum, these records will include rationale for the method of procurement, selection of contract type, contractor selection or rejection criteria, and the basis for the contract price, including the independent estimate of price. *[2 CFR Part 200.318(i)]*
- J. The Entity may use time and material type contracts 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. *[2 CFR Part 200.318(j)]*
- K. A documented settlement process. The Entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the Entity of any contractual responsibilities under its contracts. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction. *[2 CFR Part 200.318(k)]*
- L. Compliance with the “Buy American Act” (41 U.S.C. 8301-8303). Only American-made equipment or products should be purchased with funds made available under WIOA Title I or II or under the Wagner-Peyser Act (29 U.S.C. 49 et seq.). *[WIOA Section 502]*

## **XI. Competition**

### **A. Full and Open Competition**

All procurement transactions are to be conducted in a manner that will provide full and open competition. 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. *[2 CFR Part 200.319(a)]*

The following are a few examples that would restrict competition.

1. Placing unreasonable or overly restrictive requirements on firms in order for them to qualify to do business. *[2 CFR Part 200.319(a)(1)]*
2. Requiring unnecessary experience and excessive bonding. *[2 CFR Part 200.319(a)(2)]*
3. Noncompetitive pricing practices between firms or between affiliated companies. *[2 CFR Part 200.319(a)(3)]*
4. Noncompetitive awards to consultants that are on retainer contracts. *[2 CFR Part 200.319(a)(4)]*
5. Awards that would create organizational conflicts of interest. *[2 CFR Part 200.319(a)(5)]*
6. 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. *[2 CFR Part 200.319(a)(6)]*
7. Any arbitrary action in the procurement process. *[2 CFR Part 200.319(a)(7)]*

### **B. State or Local Geographical Preference**

The Entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed 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. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract. *[2 CFR Part 200.319(b)]*

### C. Solicitations

The Entity must have written procedures that ensures all solicitations:

1. Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must 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, must 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 the 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 named brand which must be met by offers must be clearly stated. [2 CFR Part 200.319(c)(1)]
2. Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals. [2 CFR Part 200.319(c)(2)]

### D. Prequalified Bidders Lists

The Entity must 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 Entity must also not preclude potential bidders from qualifying during the solicitation period. [2 CFR Part 200.319(d)]

## XII. Small and Minority Businesses

The Entity must take all necessary affirmative steps to assure that small and minority businesses, women’s business enterprises, and labor surplus area firms are used when possible. [2 CFR Part 200.321(a)]

Affirmative steps must include:

- A. Placing qualified small and minority businesses and women’s business enterprises on solicitation lists. [2 CFR Part 200.321(b)(1)]
- B. Assuring that small and minority businesses, and women’s business enterprises are solicited whenever they are potential sources. [2 CFR Part 200.321(b)(2)]

- C. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises. [2 CFR Part 200.321(b)(3)]
- D. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises. [2 CFR Part 200.321(b)(4)]
- E. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce. [2 CFR Part 200.321(b)(5)]
- F. Requiring the prime contractor, if subcontracts are to be let, to take these same affirmative steps. [2 CFR Part 200.321(b)(6)]

### **XIII. Recovered Materials**

When the value of the item being purchased exceeds \$10,000 (or the aggregate value in a fiscal year exceeds \$10,000), entities are required to establish an affirmative procurement program to procure items that contain the highest percentage practical of Environmental Protection Agency identified recovered materials. A satisfactory level of competition must be maintained. [2 CFR 200.322]

### **XIV. Contract Cost and Price**

- A. The Entity must perform a cost or price analysis in connection with every procurement action in excess of the WDA 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 Entity must make independent estimates before receiving bids or proposals. [2 CFR Part 200.323(a)]
  - 1. Cost Analysis – is the element-by-element review and evaluation of each item of cost and related information presented in the bidder's proposal. Cost analysis is necessary when the bidder is required to submit the elements of the estimated costs, or when adequate price competition is lacking.

A certification should be submitted by the bidder stating that the cost data is accurate, complete, and current at the time of agreement. Awards or modifications negotiated in reliance on such data should provide a right to a price adjustment in cases

where the awardee submitted data that was not accurate, complete, or current as certified. The price adjustment shall at a minimum exclude any significant sum by which the price was increased by the suspect data.

2. Price Analysis – is the process of examining and evaluating a price without looking at individual elements of cost. The focus is the “bottom-line” price. The method and degree of the analysis depends on the particular procurement and pricing situation. Price analysis shall be used when price reasonableness can be established on the basis of the catalog or market price of a product or is based on prices set by law or regulation.
- B. Cost reimbursement is the preferred method of contracting and is the only method allowable for contracts with state and local governments (e.g., cities, counties, school districts) when reimbursements are made in whole or in part with Workforce Investment Act (WIA) or WIOA funding. *[WIA and WIOA Section 184(a)(3)(B)]*
  - C. Costs or prices based on estimated costs for contracts under the federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the Entity under 2 CFR Part 200 Subpart E—Cost Principles. *[2 CFR Part 200.323(c)]*
  - D. Cost plus a percentage of cost contracts and percentage of construction cost methods of contracting must not be used. *[2 CFR Part 200.323(d)]*
  - E. Under fixed-price and performance-based contracts, governmental and non-profit agencies must treat and report any revenue in excess of its actual costs as program income. Therefore, it is recommended that a provision is included in this type of contract that limits the recovery of costs to the lesser of actual costs incurred or the cumulative increments earned for less than full performance. *[2 CFR Part 200.307]*

## **XV. Profit**

- A. Profit is an allowable cost payable only to commercial organizations. The profit must be separately negotiated from the contract’s price and cannot be based on a percentage of costs budgeted or expended in the agreement. Profit must be tied to performance and cannot be paid as a guaranteed fixed fee. Profit is only earned when performance outcomes are attained and can only be disbursed when those outcomes are validated. Profit cannot be paid in addition to performance payments or incentive payments. *[2 CFR Part 200.323(b); 48 CFR Part 15.404-4]*

- B. Factors to consider when negotiating profit are 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. *[2 CFR Part 200.323(b);48 CFR Part 15.404-4(d)]*
- C. Profit rates can be negotiated up to a maximum of ten percent. Profit rates can only be applied against the commercial organization's personnel-related costs (i.e., salaries, wages, and benefits) for the staff that contributed to the organization's unique capacity to manage and achieve the performance of the contract. *[48 CFR Part 15.404-4(c)(4)(i)]*
- D. Under cost reimbursement contracts there is little to no risk to the commercial organization. Therefore, profit is usually not warranted.

## **XVI. Debarment and Suspension**

- A. Entities must verify that procurements of \$25,000 or more do not result in an award to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs. *[2 CFR Part 180; 2 CFR Part 200.205(d)]*
- B. Verification can be accomplished by: *[2 CFR Part 180.300]*
  - 1. Checking if the party is excluded. This is the preferred method as it does not rely on self-certification by the party. Excluded parties are listed on the federal System for Award Management (SAM) website at [www.sam.gov](http://www.sam.gov).
  - 2. Collecting a certification from the party. (See 48 CFR Part 52.209-5 for an example)
  - 3. Adding a clause to the contract or grant.

## **XVII. Contract Provisions**

- A. There must be sufficient language in the contract to protect the federal funds and the interests of the Entity. Provisions should ensure compliance with all applicable federal, state, and local laws.
- B. At a minimum, contract clauses must be sufficient to address the following, as applicable to the contract: *[2 CFR Part 200.326]*
  - 1. Contracts for more than the WDA simplified acquisition threshold must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and

provide for such sanctions and penalties as appropriate. [2 CFR Part 200 Appendix II (A)]

2. All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement. [2 CFR Part 200 Appendix II (B)]
3. Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR Part 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR Part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.” [2 CFR Part 200 Appendix II (C)]
4. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up

any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. [2 CFR Part 200 Appendix II (D)]

5. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence. [2 CFR Part 200 Appendix II (E)]
6. Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR Part 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency. [2 CFR Part 200 Appendix II (F)]
7. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended— Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency

and the Regional Office of the Environmental Protection Agency (EPA). [2 CFR Part 200 Appendix II (G)]

8. Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR Part 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR Part 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. [2 CFR Part 200 Appendix II (H)]
9. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier, up to the non-Federal award. [2 CFR Part 200 Appendix II (I)]
10. A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the EPA at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines. [2 CFR Part 200 Appendix II (J); 2 CFR Part 200.322]

11. Other requirements as defined by the federal awarding agency. These include provisions related to program and administrative regulations, such as:
- a. Compliance with the “Buy American Act.” None of the funds made available under WIOA Title I or II or under the Wagner-Peyser Act (29 U.S.C. 49 et seq.) may be expended by an entity unless the entity agrees that in expending the funds the entity will comply with sections 8301 through 8303 of Title 41, United States Code (commonly known as the “Buy American Act”). [WIOA Section 502]
  - b. The awardee agrees to comply with the required financial and compliance audits in accordance with the Single Audit Act of 1984.
  - c. Notice of awarding agency requirements and regulations pertaining to reporting.
  - d. Access by the grantee, the subgrantee, 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.
  - e. Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.
  - f. Salary and Bonus Limitations: Under Public Law 109-234 and Public Law 111-8, Section 111, none of the funds appropriated in Public Law 111-5 or prior Acts under the heading “Employment and Training” that are available for expenditure on or after June 15, 2006, shall be used by a recipient or sub-recipient of such funds to pay the salary and bonuses of an individual, either as direct costs or indirect costs, at a rate in excess of Executive Level II. The salary and bonus limitation does not apply to vendors providing goods and services.

**Action:** Grantees and subgrantees shall establish, maintain, and follow written procurement standards and procedures that are in compliance with all applicable local, state, and federal laws and regulations.

**Inquiries:** Questions regarding this policy issuance should be directed to the Office of Audit and Finance at (517) 373-8293.

The information contained in this policy issuance will be made available in alternative format (large type, audio tape, etc.) upon request to this office.

**Expiration**

**Date:**

Continuing.

MW:cjb