

## Mountain Area Workforce Development Board Procurement Policy

### I. Background

The Mountain Local Workforce Area is under the authority of Land of Sky Regional Council (LOS) which serves as the Grant Recipient/Administrative Entity for the Workforce Innovation and Opportunity Act (WIOA) funds allocated for the operation of WIOA programs in Buncombe, Henderson, Madison, and Transylvania Counties. As the Grant Recipient for the funding received under the Act, the local workforce area will be governed by the procurement policy as developed in accordance with Federal, State and local policies and approved for LOS. Additional specific procurement policy requirements will be developed and implemented for the solicitation of WIOA service providers for the operations of programs in the Mountain Local Workforce Area and as required by the Act.

### II. Procurement Authority

The Mountain Area Workforce Development Board (WDB), in conjunction with the Chief Elected Official(s) (CEOs), has oversight of all phases of the local workforce area's operations and has the responsibility to provide policy guidance for the local workforce development area. The WDB has authority for the procurement of services using WIOA funds by the Grant Recipient/Administrative Entity. The WDB may at its discretion delegate certain functions within the procurement process to WDB staff and WDB Committees.

#### Responsibilities of Land of Sky

- A. In concert with the CEOs, the WDB and its committees, the development of the Local Area Plan as required by the NC Division of Workforce Solutions.
- B. Development of all procurement documents.
- C. In concert with the CEOs, the WDB and its committees review and evaluate responses to Requests for Proposals (RFP's) and other forms of procurement.
- D. The implementation of all WDB procurement decisions.
- E. Negotiation of contracts and other procurement agreements and document the process.
- F. Execution of contracts, contract modifications and other awards as approved by the WDB.
- G. Processing procurement appeals/protests/disputes/claims.
- H. Monitoring of all contract activities.

#### Responsibilities of the Mountain Area Workforce Development Board

- A. Development and approval of the Local Area Plan.
- B. Approval and oversight of the procurement process.
- C. Approval of WIOA program activities and funding levels.
- D. Approval and issue Request for Proposals (RFP) and proposal evaluation criteria.
- E. Approval of contracts, contract modifications and other awards.
- F. Approval of termination of contracts and other awards for non-compliance.

G. Involvement in procurement appeals or protests.

### III. Procurement Planning and Standards

- A. Planning – Workforce development needs in the Mountain Local Workforce Area shall be identified through strategic planning with the WDB and will be contained in the Local Area Plan. How these workforce needs will be met shall also be contained in the Local Area Plan and identified within the various types of programs and activities planned. Provisions shall be made to avoid the purchase of, or contracting for, unnecessary or duplicative services. Funds provided herein shall only be used for activities, which are in addition to those which would otherwise be available in the area in the absence of such funds. The local WDB staff shall be responsible for establishing sufficient time for all phases of the procurement process in accordance with statutory and regulatory requirements to ensure program continuity and fair treatment of potential service providers.
- B. Standards – All procurements will be conducted in compliance with all applicable Federal, State and local laws, policies and regulations. To the degree possible, all procurement transactions shall be conducted in a manner providing full and open competition. Such transactions shall not, in competitive procurements, contain features, which unduly restrict competition. No unreasonable qualifications or requirements will be stipulated that will qualify or disqualify a potential service provider.

All necessary affirmative action steps shall be taken to ensure that minority firms, women's business enterprises, and community-based organizations are used when possible. The RFP is a request for entities to submit a proposal to operate a specific program or activity that has been planned by the WDB. More specifically, it is a package of program specifications with guidelines or directions for responding to these specifications. Proposals shall be solicited when procuring through the competitive or noncompetitive method. Amendments to solicitations will be accepted if submitted within the time frames of the original solicitation requirement.

Procurements shall not permit excess profit for private for-profit entities.

Unsolicited proposals for workforce services may be accepted throughout the year. An unsolicited proposal is one for which no request for proposals are made, but the proposal may contain a unique set of services that are needed in the local workforce area. The proposal may be submitted directly to the WDB. The WDB will then determine: (1) if the purpose of the unsolicited proposal is appropriate, and (2) if so, the appropriate classification for inclusion into their workforce development plan as a competitive or noncompetitive proposal. The availability of funding resources will also be considered.

The local WDB staff shall maintain sufficient records to detail the significant history of the procurement (i.e., rationale for method of procurement, selection of contract type, contractor selection or rejection and the basis for contract price). Such records shall

consist of detailed WDB minutes, detailed committee reports/minutes, correspondence, proposal reviews, rating/evaluation documents and negotiation records.

#### IV. Procurement Methods

- A. Procurement by Competitive Proposals – Competitive procurement shall be the method of procurement of workforce services, except as provided for in situations described under the noncompetitive procurement section.

RFPs shall be publicized for a minimum of three (3) consecutive days in a sufficient number of newspapers, public meetings, websites, etc. (including minority publications where feasible) that will provide for a general circulation throughout the area served. This public notice will be made at least three (3) days prior to the release of the RFP. This public notice shall also contain information on the bidders' conference. A bidder's list shall be maintained of all entities that have indicated in writing an interest in providing workforce services in the WDB's service area. This list shall be updated biannually. A notice indicating the service or activity being procured, date, time, location of the RFP release, etc., shall be sent to all individuals on this list, all existing service providers, and others as applicable.

All RFPs shall be released with language, which shall include:

- Name and address of the Mountain Area Workforce Development Board and Land-of-Sky Regional Council.
- Name, address and phone number of person(s) to contact regarding the solicitation.
- General description of the sub-grant program, including identification of the applicable Federal and State laws and regulations with which the selected contractor must comply. [Note: At a minimum, the WDB should include citations for authorizing statutes and regulations for the funding opportunity, i.e. reference the WIOA; USDOL Regulations 20 CFR Parts 626-631; and any appropriate NC Division of Workforce Solutions policy issuances.]
- The population to be served and minimum service levels to specific target groups.
- An estimate of the number/range of individuals to be served and expected performance results in each activity.
- Requirements for coordination with other workforce entities, as applicable.
- Funding parameters by activity.
- A detailed description of the training and/or services to be provided.
- The period of performance.
- Applicable monitoring and reporting requirements, including, but not limited to, data entry, performance, and financial reporting.
- Other services or requirements (e.g., responsibility for eligibility determination, WDB policy on support payments, audit requirements and work statement requirements) that will affect proper budgeting by the offeror.
- Prohibition against subcontracting without WDB approval.
- Line item budget of proposed costs, including any profit to be realized and/or funds to be contributed.

- Documentation to be supplied by the offeror to establish its programmatic and financial capability to perform the work.
- Requirements for preparation and submission of the proposal, due date and time, content and format, number of copies and location/person where the bid should be submitted.
- Process and procedures by which proposals will be evaluated for competitiveness, including identification of specific criteria which will be used.
- Description of the procedures for responding to bidder inquiries and a schedule for the receipt of proposals, approximate dates for review and award.
- Conditions under which the completed contract may be modified and extended for additional years, if applicable.
- Grievance procedures for contesting the procurement process.
- Affirmative action assurance that the offeror will comply fully with the nondiscrimination and equal opportunity provisions of the Workforce Innovation Opportunity Act, the Non-traditional Employment for Women Act of 1991; Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975, as amended; Title IX of the Education Amendments of 1972, as amended; and with all applicable requirements imposed by or pursuant to regulations implementing those laws, including but not limited to 29 CFR Part 34.

At the WDB's discretion, they may procure either single or multi-year program proposals and enter single or multi-year contracts. Multi-year contracts may not exceed a three (3) year period. Such multi-year contracts shall include provisions for first year funding and activity levels and provisions and conditions for the negotiation of subsequent year funding and activity levels.

Proposers will be required to submit their qualifications to be a service provider. The provider, at a minimum, shall submit a brief description of the following: 1) organizational structure and experience; 2) personnel standards; 3) financial system; 4) latest audit; 5) bonding coverage; 6) procurement procedures; and, 7) monitoring procedures.

A log will be maintained of all bidders that have requested and been sent an RFP.

A potential bidders' conference may be held after the RFP becomes publically available. To maintain fair and open competition, the answers to questions that arise from the bidders' conference will be provided to all entities on the bidders' list and all entities that have requested an RFP.

Amendments to solicitations will be accepted if submitted within the periods of the original solicitation requirement. The closing submission date must be clearly stated in the RFP. Where late proposals come in, these shall be accepted and the date and time recorded. A letter shall then be sent to the proposer returning its proposal package and explaining why it is not being considered. The WDB reserves the right to accept or reject any and all proposals received in response to the RFP. Obligation to the bidder is

contingent upon the availability of grant funds. No legal liability on the part of the WDB for payment of any money shall arise unless and until funds are made available to the WDB for procurement. The bidders shall be responsible for all costs involved in the development of the proposal.

#### Merit Review

The intent of the evaluation process is to certify that each proposal received meets the basic submission requirements (Proposal Review Criteria) and to determine the quality of each proposal. The Youth Council will evaluate eligible providers of youth activities and shall submit a recommendation to the full WDB for their review.

The evaluation process may be divided into the following major steps: 1) a general review of the proposals; 2) an evaluation of the vendor's qualifications; 3) an evaluation of the technical aspects of the proposal; 4) an evaluation of the cost aspects of each proposal; and, 5) an evaluation of risk assessment; 6) an evaluation of demonstrated performance, effectiveness, potential for meeting performance goals, costs, and quality of training.

This proposal review will be conducted by WDB staff and the members of a WDB committee created for that purpose. The committee will be familiar with the programs/activities being solicited and understand what is being requested of the bidders. WDB staff shall provide training, guidance, and/or technical assistance on an as-needed basis to the review committee.

After evaluation and recommendation of the proposals received by the WDB staff and WDB committee or the Youth Council, the final selection of service providers will be made by the WDB. The WDB will have the final authority for selection of service providers.

Final selections will primarily be based on, yet not limited to, effectiveness, demonstrated performance, potential for meeting performance goals, costs, quality of training, participant characteristics, past workforce development experience and performance of the bidder and non-duplication of services.

A letter will be sent to each successful and unsuccessful bidder that contains the WDB decisions related to that procurement.

Intention to Bid Option. The WDB may use this option when there is a high level of uncertainty regarding the number of proposals which will be received for a workforce service or activity and whether there will be a sufficient number of bids to justify the development of a solicitation. This competitive method maintains the integrity of a competitive procurement process by identifying, through public notice, potential bidders to determine the feasibility of procurement.

Procedural Requirements. When using this option, the WDB will develop a set of preliminary training/service specifications for which the WDB intends to request bids. The specifications will include the following parameters:

- date the proposed solicitation will be issued
- specific type of training/services to be performed
- estimated number of participants and/or available funds or ranges, if preferred
- expected period of performance
- geographic area to be served
- specific target groups to be served
- type of contract to be awarded
- expected performance

A public notification will be issued in the same manner as that used for the issuances of RFPs. In addition, letters or e-mail notifications will be sent to all applicable organizations on the bidders' list, requesting an indication of whether the organization intends to bid on specific training/services, which are described in the letter, consistent with the specifications developed. The letter will indicate the date by which a response is to be received.

If the intention to bid process is used and no interest is received, noncompetitive sole source procurement may be used. When one intention to bid response is received, every effort will be made to negotiate the desired training/services with that provider. However, if acceptable training/services cannot be negotiated, the WDB may use sole source procurement to obtain the training/service. A complete history of this process will be documented in the procurement file.

Limitations. Sole source procurement will not be used if more than one organization indicated its intent to bid. In this case, a RFP solicitation for the training/services advertised must be developed and transmitted to all who responded to the intention to bid.

**B. Procurement by Noncompetitive Proposals** – Noncompetitive procurement (solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate) shall be used only when the award of a contract is not feasible under small purchase procedures, sealed bids or competitive proposals, and one of the following circumstances applies:

- The service is available only from a single source.
- The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation.
- The awarding agency authorizes noncompetitive proposals.
- After the solicitation of a number of sources, including the current bidders' list, competition is determined inadequate.

The WDB staff will conduct a cost analysis and contract negotiation process for all noncompetitive procurements. The termination or suspension of a current contractor shall be considered as an emergency under certain conditions; however, termination of an existing contract should not be used to circumvent competitive solicitation. Final approval will be made by the WDB. The WDB staff is responsible for fully documenting this method of procurement. Special attention shall be given to code of standards of conduct, conflict of interest, and safeguarding values normally achieved through competition.

C. Procurement by Micro Purchase

For purchases of supplies or services that the aggregate dollar amount does not exceed \$3,000, procurement by micro purchases will be awarded without soliciting competitive quotations if the price is considered to be reasonable. To the extent possible, micro purchases will be distributed equitably among qualified suppliers

D. Procurement by Small Purchase Procedures

Informal quotes for purchases greater than \$3,000 may be obtained by written bid, telephone quote, or faxed quote. If small purchase procurements are used, price or rate quotations shall be obtained from a minimum of three qualified sources. When small purchase procurements are used, the purchase shall not be broken down into several purchases merely to be able to use small purchase procedures, and to avoid competitive procurement. Procurement by small purchase procedures may not be used when securing program/activity services.

The purchases of the personal services of consultants are allowed when the deliverables are specifically defined and priced. Consultants and personal services contracts, costing \$5,000 and over, must have review and written approval by the Division of Workforce Solutions before the contract is finalized. The request for review by the Division must include:

- The purpose of the contract;
- The cost of the proposed contract;
- The starting and ending dates;
- An assurance of adherence to State and local procurement policies; and
- The funding source to be used.

E. Procurement by Sealed Bids

Sealed bids procurement are publicly solicited and a firm-fixed price contract (lump sum or unit price) or other fixed-priced arrangement is awarded to the responsible bidder whose bid, conforming with all the terms and conditions of the invitation for bids, is the lowest in price. In order for sealed bids to be feasible, the following conditions should be present: 1) a complete, adequate, and realistic specification or purchase description is available; 2) two or more responsible bidders are willing and able to compete effectively for the business; and 3) 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. If sealed bids are used, the following requirements shall apply: 1) the invitation for bids shall be publicly advertised and bids shall be solicited from a minimum of two known suppliers, providing them sufficient time prior to the date set for opening the bids. The advertisement must be published for two (2) consecutive days in a sufficient number of newspapers or other media (including minority publications where feasible that will provide for a general circulation throughout the area; 2) the invitation for bids including any specifications and pertinent attachments shall define the services in order for the bidder to properly respond; 3) all bids shall be publicly opened at the time and place prescribed in the invitation for bids; 4) a firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder; and 5) any or all bids may be rejected if there is a sound documented reason. Procurement b) sealed bids may not be used when securing program/activity type services, e.g., on-the-job training.

#### V. Procurement Records

The Local Area staff shall maintain records sufficient to detail the significant history of procurement, i.e., rationale for method of procurement, selection of contract type and contractor selection and/or rejection. Such record will include:

- Evidence of WDB involvement in the decision-making process.
- A copy of the solicitation package.
- A copy of the public notification.
- Bidders' list to which notices were mailed.
- List of all organizations/entities sent a solicitation.
- Agenda and minutes of the bidders' conference, if a conference is conducted.
- A copy of each question and answer issuance, if applicable.
- Log sheet of bids received.
- A copy of each bid which was received.
- Rating and scoring sheets completed in the evaluation process.
- Business operation capability evaluations.
- Documentation of the rationale for selection and funding of any offeror which did not receive the highest score/ranking in the evaluation process.
- Evidence of WDB approval of the procurement.
- Completed cost analysis for each selected bidder.
- Copies of letters sent to both the successful and unsuccessful bidders.
- Completed Memo of Negotiations for each subrecipient contract.
- A copy of any submitted grievance and the resolution of each.
- High risk determinations and special award/contract conditions, if appropriate.

#### VI. Contracting Standards

The administrative entity shall maintain a contract administration system, which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts. The primary method of contracting in the local workforce area shall be the cost reimbursement method of contracting. Contracts with for-profit entities may be considered. The administrative entity will conduct a cost or price analysis in connection with every procurement action including contract modification and renewals. Contracts shall be for a period not to exceed three (3) years. The contract document used by the WDB will contain, or by reference address, the elements contained to the appropriate official policies issued by the NC Division of Workforce Solutions.



## Procurement Appeals Policy

### BACKGROUND

The federal Workforce Innovation Opportunity Act (WIOA) mandates the establishment and maintenance of a procedure for grievances for complaints about its services and activities from participants, subgrantees, sub-contractors, and other interested persons.

This policy applies to the Requests for Proposal (RFP) process only and provides a procedure to handle complaints by services providers or prospective service providers. For purposes of this document, any use of the words "complaints" or "grievance" refer to the appeals process relating to the procurement of WIA services.

### POLICY

Written notification of service provider selection is provided to each entity submitting a proposal. A service provider, potential service provider, or any entity adversely affected in the selection of the service provider may file a complaint. The following steps outline the procedure, which these entities may follow to make an appeal of the service provider selection.

- A. The service provider, potential service provider, or any entity adversely affected in the operator selection process may file a formal complaint with the Mountain Area Workforce Development Board.
- B. The written complaint must specifically state the decision, the basis for the complaint, and the remedy sought by the complainant. All matters not raised in the complaint will be deemed waived.
- C. The written complaint must be made to the Chairman of the WDB within ten (10) working days of the date of written notification to all bidders following the selection of service providers. To be considered valid, a copy shall also be sent to the Workforce Development Director within the same period.
- D. In making a determination, the WDB Chair may call a hearing, at his or her discretion, at which time the Chair may take oral or written evidence and may entertain oral or written argument. Any entity that could be affected by the complaint shall be notified and permitted the opportunity to be present and/or submit evidence. Any such hearing will be held within ten (10) working days of receipt of the written complaint.

- E. The decision of the WDB shall be reached by majority vote. The determination and basis for the determination shall be rendered orally at the conclusion of the hearing and followed up in writing to the complainant and any affected party. The written response will be provided no more than ten (10) working days following the completion of the hearing.
- F. WDB staff will forward information regarding procurement protests to the NC Division of Workforce Development.
- G. Interim Determinations by the Workforce Development Board during the Appeals Process. While a procurement appeal is pending, the initial decision of the WDB regarding service providers shall be followed to avoid interruption in services to customers. The WDB may, however, by majority vote, determine that the initial decision shall be suspended until determination of the complaint and appeal and may by majority vote, determine that the situation is an emergency situation necessitating a change in the initial decision pending determination of the complaint and appeal. These interim determinations are not subject to appeal.