

Area 14 Workforce Development Board

Area 14 Workforce Development Board

Procurement Policy

Area 14 Policy 14-16 &17

Effective: May 15, 2019



I. Purpose

This policy communicates the Workforce Area’s methods for the procurement of goods and services obtained by the Workforce Area with Workforce Investment Opportunity Act (“WIOA”) funds and sets forth the requirements provided by the Office of Management and Budget (“OMB”) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Final Rule Title 2 of the Code of Federal Regulations; 2 CFR 200.

II. Effective

Immediately

III. Background

WIOA Sec. 184(a)(3)(A) requires each State (including the Governor of the State), local area (including the chief elected official for the area), and provider receiving funds under this title, to comply with the appropriate uniform administrative requirements for grants and agreements applicable for the type of entity receiving the funds, as promulgated in circulars or rules of the Office of Management and Budget (OMB). OMB Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Final Rule Title 2 of the Code of Federal Regulations; 2 CFR 200, supersedes and streamlines requirements from OMB Circulars A-21, A-87, A-110, A-122, A-89, A-102, A-133 and the guidance in Circular A-50 on Single Audit Act follow-up. 2 CFR 200, also referred to as the “Super Circular”, consolidates the guidance previously contained in the aforementioned citations into a streamlined format that aims to improve both the clarity and accessibility of the guidance. The effective date of 2 CFR 200 is December 26, 2014. Fiscal policies and OMB Circulars A-87, A-110, A-122 and A-133 requirement are still in effect for funding distributed prior to December 26, 2014. Funding awarded after December 26, 2014 must be in compliance with 2 CFR 200. Procurement standards referenced in 2 CFR 200.110 and 200.317 - 200.326, allow for nonfederal entities to continue to comply with procurement standards in previous OMB guidance for one additional fiscal year after this part goes into effect (June 30, 2016).

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IV. Requirements

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

Procurement transactions under this title between local boards and units of state or local governments shall be conducted on a cost-reimbursement basis only.

B. **General Procurement Standards (2 CFR 200.318).**

The Workforce Area will use documented procurement procedures that reflect federal regulation, the Ohio Administrative Code (“OAC”), and Ohio Department of Job and Family Services (“ODJFS”) Policies, provided that the procurements are required to conform to applicable Federal law and standards identified in 2 CFR Parts 200.317 through 200.326, and OAC 5101:9-4-07.1

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

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

The Workforce Area will award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters, including but not limited to:

- Contractor integrity,
- Compliance with public policy,
- Record of past performance, and
- Financial and technical resources.

The Workforce Area will maintain records sufficient to detail the history of procurement. These records will include, but are not limited to:

- Rationale for the method of procurement,
- Selection of contract type,
- Basis for contractor selection or rejection, and
- The basis for the contract price.

C. **Procurement Standards of Ethical Conduct.**

The Workforce Area shall adhere to the following ethical standards of conduct throughout the procurement process.

- Prior to engaging in any procurement, including the drafting of procurement documentation, all potential conflicts of interest in the procurement, management, and oversight of the use of goods or services must be identified and addressed.

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- Until any solicitation is released to the public, it must be kept confidential to ensure that no individual or entity that will compete has an unfair advantage.
- No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal or State award if he or she has a real, perceived or potential conflict of interest.
- Conflicts of interest must be disclosed in writing when known in advance or announced to the voting body. The party must excuse themselves from any further discussion and/or vote on the matter in question.
- Current and former public officials and employees are prohibited from disclosing or using confidential information acquired in the course of official duties as public officials or employees.

D. Competition (2 CFR 200.319).

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

The Workforce Area procurement transactions will contain no requirements that unduly restrict competition as specified in 200.319(a) and (b).

The Workforce Area procurement procedures will ensure that all solicitations:

- Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured in a manner that does not unduly restrict competition; &
- Identify all requirements which the proposing entities must fulfill and all other factors to be used in evaluating bids or proposals.

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

E. Methods of Procurement (2 CFR 200.320).

The Workforce Area shall use one of the following methods of procurement, depending upon the nature of the goods and services to be secured, and the terms and conditions contained within this policy.

- Micro Purchases.
- Small Purchases where the price is the overriding factor and involving standard products and/or services.
- Small Purchases where the price is not the overriding factor but is relatively simple and straight forward.
- Large Purchases where Requests for Proposals seeking unsealed bids are issued.

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- Large Purchases where Requests for Proposals seeking sealed bids are issued.
- Noncompetitive Procurement.

Each method of procurement has listed below it a threshold. That threshold indicates the price range of goods and/or services to be purchased for which that method of procurement is allowed to be used, and at what amount or range that method of procurement must be used. The Workforce Area shall have the sole discretion to choose whatever procurement method is applicable.

1. Micro Purchases:

Threshold: Allowable for purchases of \$0.01 up to, but not in excess of \$3,000.00.

Micro purchases may be awarded without soliciting quotes for acquisitions of supplies or services when:

1. The price of the good or service is considered reasonable; and
2. To the extent practical, micro-purchases are distributed equitably among qualified suppliers.

The Workforce Area may elect to use another method of procurement for purchases of under \$3,000.00, and if it does shall adhere to the requirements pursuant to that method.

The Workforce Area shall not consider it practical to distribute its micro-purchases among qualified suppliers where following circumstances are met:

If during the previous (6) month period the Local Workforce Area has obtained quotes from three (3) or more sources for the general type of goods or services to be procured (i.e. office supplies, electronic equipment).

1. The difference between the lowest quote and the next lowest quote is five percent (5%) or more.
2. The Local Workforce Area then proceeds to purchase from that lowest quoted provider.

2. Small Purchases:

Threshold: Allowable for Purchases of \$0.01 - \$3,000.00.

Required for purchases of \$3,001.00 - \$150,000.00.

- a. Small purchases where price is the overriding factor and involve standardized products or Services.

For purchases where price is the overriding factor and which involve standardized products or services (e.g., office equipment and supplies), and where the aggregate acquisition costs are greater than the micro-purchase threshold (\$3,000.00) but do not exceed the small purchase threshold (\$150,000.00) the Workforce Area may use relatively simple and informal procurement methods by obtaining price or rate quotations from an adequate number of qualified sources but not less than three sources, if three sources are available. See OAC 5101:9-4-07.01. Where the Workforce Area contacts all of those on the Area's Qualified Source List, and the Area's Bidder's List, and provided an opportunity to submit a proposal, bid, or quote, and only a sole entity provides a proposal, bid, or quote, the Workforce Area may declare that competition is inadequate and award the proposal, bid, or quote to the sole proposing entity.

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The Workforce Area shall maintain a list of qualified sources from which to solicit proposals (Area's Qualified Source List"), and the list shall include qualified sources that have expressed an interest in providing products or services to the Workforce Area (Area's Bidder's List). The Workforce Area must identify and document the evaluation factors and their relative importance. Awards will be made to the responsible source whose proposal is most advantageous to the program, with price being the primary, if not sole consideration.

- b. Small purchases where price is not the overriding factor but are relatively simple and straight forward purchases.

For purchases where price is not the overriding factor but are relatively simple and straight forward purchases that are greater than the micro-purchase threshold per applicable federal and state guidelines but do not cost more than the small purchase threshold (\$150,000.00), and where relative quality and performance must be evaluated (e.g., consultant services), CFSAs and local WIOA areas shall seek proposals from an adequate number of qualified sources, but not less than three (3) sources, if they are available. See OAC 5101:9-4-07.01 Where the Workforce Area contacts all of those on the Area's Qualified Source List, and the Area's Bidder's List, and provided an opportunity to submit a proposal, bid, or quote, and only a sole entity provides a proposal, bid, or quote, the Workforce Area may declare that competition is inadequate and award the proposal, bid, or quote to the sole proposing entity.

The Workforce Area shall maintain a list of qualified sources from which to solicit proposals, and the list shall include qualified sources that have expressed an interest in providing products or services to the Workforce Area. The Workforce Area must identify and document the evaluation factors and their relative importance. Awards will be made to the responsible source whose proposal is most advantageous to the program, with price and other factors considered.

3. Large Purchase Competitive Proposals:

Threshold: Allowable for Purchases of \$0.01 - \$150,000.00.

Required for purchases of \$150,001.00 and above.

- a. General Requirements Regarding Requests for Proposals that do not Require the Provision of a Sealed Bid.

The Workforce Area shall use competitive proposals when the conditions are not appropriate for the use of competitive sealed bidding, micro-purchases, small purchases, or non-competitive proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, either a fixed price or cost reimbursement type contract is awarded, and the following conditions are met:

1. The complex and technical nature of the procurement cannot be described in bid specifications;
and
2. It is logical to award a contract on factors other than price.

The Workforce Area, when choosing the Large Purchase Competitive Proposal procurement method, shall comply with the following procedural requirements in administering competitive proposal procurements, commensurate with the scope and complexity of the acquisition:

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1. Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical.
2. Proposals will be solicited from an adequate number of qualified sources.
3. The Workforce Area will have a method for conducting technical evaluations of the proposals received and for selecting awardees. A technical evaluation is a review to verify that the technical requirements contained in the request for proposals are met.
4. Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.
5. The Workforce Area may use competitive proposal procedures for qualification-based procurement of architectural/engineering (A/E) professional services whereby competitor's qualifications are evaluated, and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services through A/E firms that are a potential source to perform the proposed effort.
6. Evaluation factors other than price can only be used when they are clearly explained in the purchasing agency's request for proposal (RFP).
7. Purchases over \$150,000.00 must be approved by the Workforce Development Board.

Where the Workforce Area contacts all of those on the Area's Qualified Source List, and the Area's Bidder's List, and provided an opportunity to submit a proposal, bid, or quote, and only a sole entity provides a proposal, bid, or quote, the Workforce Area may declare that competition is inadequate and award the proposal, bid, or quote to the sole proposing entity.

- b. General Requirements Regarding Requests for Proposals that Require the Provision of a Sealed Bid.

Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price.

The Workforce Area shall use competitive sealed bidding, including the use of formal advertising under the following conditions:

- a. A complete, comprehensive, and realistic specification or purchase description is available;
- b. Two or more responsible bidders are willing and able to compete effectively for the business; and
- c. 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.

The Workforce Area shall adhere to the following procedural requirements in administering competitive sealed bidding (formal advertising):

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- a. The invitation to bid (“ITB”) or RFP will be publicly advertised, and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;
- b. The ITB or RFP which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;
- c. All bids will be publicly opened at the time and place prescribed in the ITB or RFP;
- d. 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 costs and life cycle costs shall 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 advantage of and any or all bids may be rejected if there is a sound documented reason; and
- e. Any or all bids may be rejected if there is a sound documented reason.
- f. Purchases over \$150,000.00 must be approved by the Workforce Development Board and/or the Northeast Ohio Consortium Board.

4. Noncompetitive Procurement:

Noncompetitive procurement refers to “sole source procurement.” A true sole source procurement involves a situation in which the Workforce Area can reasonably demonstrate that there is only one entity truly qualified to fulfill the provision of goods and/or services. Noncompetitive procurement or sole source procurement is to be distinguished from a method of competitive procurement that solicits bids, quotes, and/or proposals from multiple sources, but in the end, only one entity responds to the same.

- a. Sole Source Procurement.

The Workforce Area may use noncompetitive procurement methods only when the award of a contract is infeasible under the micro-purchasing threshold, small purchase procedure, competitive sealed bidding or competitive proposals, and one of the following conditions applies:

1. The item is available only from a sole source. This type of noncompetitive proposal means only one source exists for the goods or services being procured; an example being the procurement of proprietary products. Business justification or long-term relationships with a particular contractor does not constitute justification as sole source procurement. Sole source procurements do not require prior approval.
2. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation. This type of noncompetitive procurement is mainly reserved for emergencies caused by natural disasters. Public exigency or emergency procurements do not require prior approval.
3. The federal awarding agency or ODJFS authorizes noncompetitive procurements.
4. The purchases are for equipment or services where the prices are established by law for technical equipment requiring standardization and interchangeability of parts with existing equipment.

Noncompetitive proposals require the mutual discussion and arrangement of terms of a transaction or agreement for the purpose of arriving at a common understanding of contract essentials such as technical

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requirements, schedules, prices, and terms. For any noncompetitive proposal in excess of the small purchase threshold, written documentation must be included in the records to show why a noncompetitive proposal was used instead of competitive sealed bidding. Such justification must include the following items:

1. Copies of the public advertisements;
2. A list of providers contacted;
3. Copies of all letters received from prospective bidders or respondents, including those indicating a bidder's lack of interest in competing for the contract;
4. Any other materials which would justify the agency's use of noncompetitive procurement methods; and
5. Cost analysis, the projections of the data, and the evaluation of the specific elements of costs and profit. Independent estimates must be made before receiving bids or proposals.

5. Special Circumstances:

The following special circumstances apply to State Purchasing Contracts:

1. Purchases may be made by the Workforce Area under state purchasing contracts. Because the state completes competitive procurement, purchases made through state purchasing contracts that meet all of the requirements contained in section 125.04 of the Revised Code are not subject to the requirements contained in paragraphs (B)(1) to (B)(4) of OAC 5101:9-4-07.1.
2. An agency cannot access state purchasing contracts when competitive bidding by the county has already occurred unless the state purchasing contract has the same terms, conditions, and specifications at a lower price.
3. To participate in state purchasing contracts, a certified copy of a resolution by the board of county commissioners must be filed with the department of administrative services (DAS) office of state purchasing. The resolution must request that the agency be authorized to participate in the purchasing contracts, agree that the agency is bound by terms and conditions set by DAS, and agree that the agency will directly pay the contractor under each purchase contract.
4. A Workforce Area may also use the price contained in a state purchasing contract in other competitive selection procedures performed pursuant to this rule.

State purchasing contracts are not to be confused with state term schedules, which are non-competitive schedules of products or services and shall be treated only as a pre-qualified vendor contractor list. State term schedules do not represent competitive procurement. Purchases made by a Workforce Area using the state term schedule to obtain a pre-qualified vendor list must follow the requirements contained in paragraphs (B)(1) to (B)(4) of OAC 5101:9-4-07.1.

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

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

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F. Contract Cost and Price (2 CFR 200.323)

1. The Workforce Area will perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold (\$150,000.00) 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 Workforce Area will make independent estimates before receiving bids or proposals.
2. Where applicable, the Workforce Area will negotiate profit as a separate element of the price for each contract in which there is no price competition and, in all cases, where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.
3. Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred, or cost estimates included in negotiated prices would be allowable for the Workforce Area under Subpart E – Cost Principles-of the Uniform Administrative Guidance 2 CFR Part 200. The Workforce Area may reference its own cost principles that comply with the Federal cost principles.
4. The cost, plus a percentage of cost and percentage of construction cost methods of contracting are not allowable.

G. Procurement Review (2 CFR 200.324)

1. The Workforce Area will make available, upon request by the Federal awarding agency or pass through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition.
2. The Workforce Area will make available upon request, for the Federal awarding agency or pass through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates when the circumstances detailed in 200.323(b) apply.
3. The Workforce Area is exempt from the pre-procurement review if the Federal awarding agency or pass-through entity determines that its procurement systems comply with this part.
 - a. The Workforce Area may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards for its system to be certified. Generally, these reviews must

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occur where there is continuous high-dollar funding, and third-party contracts are awarded on a regular basis.

- b. The Workforce Area may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the Workforce Area that it is complying with these standards. The Workforce Area must cite specific policies, regulations, or standards as being in compliance with these requirements and have its system available for review.

H. Contract Provisions (2 CFR 200.326).

The Workforce Area's contracts will contain the applicable provisions described in Appendix II to Part 200 – "Contract Provisions for non-Federal Entity Contracts Under Federal Awards".

I. Sub-recipient and Contractor Determinations (2 CFR 200.330).

The Workforce Area will make a case-by-case determination whether each agreement it makes for the disbursement of Federal program funds casts the party receiving the funds in the role of a sub-recipient or a contractor (see Sub-recipient and Contractor in the Definitions section of this policy). In determining whether an agreement between the Workforce Area and another non-Federal entity casts the latter as a sub-recipient or a contractor, the substance of the relationship is more important than the form of agreement. The Workforce Area will use judgment in classifying each agreement as a sub-award or a procurement contract.

J. Delivery of Career Services-Adult and Dislocated Workers [WIOA Sec. 134(c)(2)(C)] Career services described in WIOA Section 134(A) for eligible adult and dislocated workers shall be provided through the one-stop delivery system:

1. Through providers secured through either the competitive procurement of providers, and/or the One-Stop delivery system operator.
-Or-
2. Through contracts with service providers (sub-recipients), which may include contracts with public, private for-profit, and private nonprofit service providers, approved by the local board.

K. Training Contracts [WIOA Sec. 134(c)(3)(G)(ii)].

1. The preference within the Workforce Area is for the provision of educational training services secured through Individual Training Accounts ("ITAs") with ODJFS approved educational and training providers, and/or with employers through on-the-job training ("OJT"), incumbent worker training ("IWT"), and/or transitional employment as set forth

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within Area Workforce policies on the same. However, the Workforce Area may arrange for training contracts when:

- a. The Consumer Choice Requirements [WIOA Sec. 134(c)(3)(F)] are met;
 - b. Such services are on-the-job training (OJT), customized training, incumbent worker training or transitional employment;
 - c. The Area Workforce determines there are an insufficient number of eligible providers of training services in the local area involved to accomplish the purposes of a system of individual training accounts;
 - d. The Area Workforce determines that there is a training services program of demonstrated effectiveness offered in the local area by a community-based organization or another private organization to serve individuals with barriers to employment;
 - e. The local board determines that-
 - i. It would be most appropriate to award a contract to an institution of higher education or other eligible provider of training services in order to facilitate the training of multiple individuals in in-demand industry sectors or occupations; and
 - ii. Such contract does not limit customer choice; or
 - f. The contract is a pay-for-performance contract.
2. Training services must be directly linked to an in-demand industry sector or occupation in the local area or the planning region, or in another area to which an adult or dislocated worker receiving such services is willing to relocate, except that a local board may approve training services for occupations determined by the local board to be in sectors of the economy that have a high potential for sustained demand or growth in the local area [WIOA Sec. 134(c)(3)(G)(iii)].
 3. Nothing in this paragraph shall be construed to preclude the combined use of individual training accounts (ITAs) and contracts in the provision of training services, including arrangements that allow individuals receiving ITAs or other types of training to obtain training services that are contracted this clause [WIOA Sec. 134(c)(3)(G)(iii)].

L. Selection of Eligible Providers of Comprehensive Case Management Employment Program/WIOA Youth Workforce Investment Activities (ODJFS WIOA Policy Letter No. 16-11 & WIOA Policy Letter 17-03)

1. The county board of commissioners choose the CDJFS to provide for those program elements not funded by the WIOA youth program by entering into an agreement/resolution with the local Job and Family services to provide these program elements under CCMEP.
2. The Workforce Area will ensure the program element is closely connected and coordinated with CCMEP and WIOA as defined thru the CCMEP plans.

M. Selection of the OhioMeansJobs Centers [WIOA Sec. 121(d)].

The Workforce Area, with the agreement of the chief elected official, is authorized to designate or certify OhioMeansJobs operators and to terminate for cause the eligibility of such operators. To be eligible to receive funds made available under this subtitle to operate an OhioMeansJobs center, an entity:

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1. Shall be designated or certified as an OhioMeansJobs Center operator through the competitive process as set forth within ODJFS WIOA Policy Letters No. 16-08, 16-09, and this policy: AND
2. Shall be an entity (public, private, or nonprofit), or consortium of entities (including a consortium of entities that, at a minimum, includes 3 or more of the OMJ partners described in subsection 121(b)(1)), of demonstrated effectiveness.

The Workforce Area will ensure that in carrying out activities under this title, OhioMeansJobs operators:

1. Disclose any potential conflicts of interest arising from the relationships of the operators with particular training service providers or other service providers;
2. Do not establish practices that create disincentives to providing services to individuals with barriers to employment who may require longer-term services, such as intensive employment, training and education services; and
3. Comply with Federal regulations, and procurement policies, relating to the calculation and use of profits.

N. Suspension and Debarment (2 CFR 2900).

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

V. Documentation and Recordkeeping

The Area Workforce will maintain all of the following documentation in according with its record retention policy:

- A written description of the procurement method chosen and the factors that were considered.
- Copies of local procurement policies and procedures.
- A copy of any conflict of interest policies and procedures.
- Copies of any multi-functional agreements.
- A copy of the local area code of conduct.
- Documentation of the roles and responsibilities to be assigned to the Operator and/or provider of career services, including a description of how the local WDB determined which roles to assign.
- Documentation of a cost and/or price analysis.
- A copy of the timeline.
- A copy of the solicitation (or if applicable, a copy of the documentation to support sole source selection).
- A copy of all questions and response from the Q&A process if there was one.
- Copies of all proposals submitted.
- Copies of the scoring or proposal review documents.

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- Copies of the award/denial letters.
- A copy of all resulting contracts.

VI. Definitions

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

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

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

- 1) Provides the goods and services within normal business operations;
- 2) Provides similar goods or services to many different purchasers;
- 3) Normally operates in a competitive environment;
- 4) Provides goods or services that are ancillary to the operation of the Federal program; and
- 5) Is not subject to compliance requirements of the Federal program as a result of the agreement, though similar requirements may apply for other reasons.

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

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

Customized Training (WIOA Sec. 3(14): Training-

- A. That is designed to meet the specific requirements of an employer (or group of employers);
- B. That is conducted with a commitment by the employer to employ an individual upon successful completion of the training; and
- C. For which the employer pays a significant portion of the cost of training, as determined by the local board, taking into account the size of the employer and other factors determined by the board and further defined in this part.

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

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(a)(1): The Federal financial assistance that a non-Federal entity receives directly from a Federal awarding agency or indirectly from a pass-through entity.

(a)(2): The cost-reimbursement contract under the Federal Acquisition Regulations that a non-Federal entity receives directly from a Federal awarding agency or indirectly from a pass-through entity.

(b) The instrument setting forth the terms and conditions. The instrument is the grant agreement, cooperative agreement, other agreement for assistance in paragraph (b) of 200.40 Federal financial assistance, or the cost-reimbursement contract awarded under the Federal Acquisition Regulations.

(c) Federal award does not include other contracts that a Federal agency uses to buy goods or services from a contractor or a contract to operate Federal government owned contractor operated facilities (GOCOs).

(d) See also definitions of Federal financial assistance, grant agreement, and cooperative agreement.

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

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

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

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

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

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

Incumbent Worker Training (proposed CFR 20 680.780): WIOA funded training for incumbent workers is designed to meet the specific requirements of an employer (including a group of employers) to retain a skilled workforce or avert the need to lay off employees by assisting the workers in obtaining the skills necessary to retain employment and conducted with a commitment by the employer to retain or avert the layoff of the incumbent worker. An ideal incumbent worker training would be one where a participant acquires new skills allowing him or her to move into a higher skilled and higher paid job with the company, thus allowing the company to hire a job seeker to backfill the incumbent worker's position. Incumbent worker training must increase both the participant's **and** the company's competitiveness. **An incumbent worker does not necessarily**

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have to meet the eligibility requirement for career and training services for adults and dislocated workers under WIOA.

Individual with Barrier to Employment [WIOA Sec. 3(24)]: A member of one or more of the following populations:

- Displaced homemakers;
- Low-income individuals; Indians, Alaska Natives, and Native Hawaiians; o Individuals with disabilities; o Older individuals;
- Ex-offenders;
- Homeless individuals (see definition of Homeless Individuals], or homeless children and youth (see definition of Homeless Children and Youth);
- Youth who are in or have aged out of the foster care system;
- Individuals who are English language learners, individuals who have low levels of literacy, and individuals facing substantial cultural barriers;
- Eligible migrant and seasonal farm workers;
- Individuals within two (2) years of exhausting lifetime TANF eligibility under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.);
- Single parents (including single pregnant women);
- Long-term unemployed individuals;
- Such other groups as the Governor involved determines to have barriers to employment.

Local Board (WIOA Sec. 3(33)): A local workforce development board established under WIOA section 107, subject to section 107(c)(4)(B)(i).

Local Plan (WIOA Sec. 3(35)): A plan submitted under WIOA section 108, subject to WIOA section 106(c)(3)(B).

Micro-Purchase (2 CFR 200.67): A purchase of supplies or services using the simplified acquisition procedures, the aggregate amount of which does not exceed the micro-purchase threshold. Micro purchase procedures comprise a subset of a non-Federal entity's small purchase procedures. The non- Procurement Policy Page 11 of 12 Effective October 15, 2015 Federal entity uses such procedures in order to expedite the completion of its lowest-dollar small purchase transactions and minimize the associated administrative burden and costs. The micro-purchase threshold is set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions). It is \$3,000 except as otherwise discussed in Subpart 2.1 of that regulation, but this threshold is periodically adjusted for inflation.

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

On-the-Job Training (OJT) (WIOA Sec. 3(44): Training by an employer that is provided to a paid participant while engaged in productive work in a job that-

- A. Provides knowledge or skills essential to the full and adequate performance of the job;

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- B. Is made available through a program that provides reimbursement to the employer of up to 50% of the wage rate of the participant, except as provided in WIOA section 134(c)(3)(H), for the extraordinary costs of providing the training and additional supervision related to the training; and
- C. Is limited in duration as appropriate to the occupation for which the participant is being trained, taking into account the content of the training, the prior work experience of the participant, and the service strategy of the participant, as appropriate.

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

Proposal Costs (CFR 200.460): The costs of preparing bids, proposals, or applications on potential Federal and non-Federal awards or projects, including the development of data necessary to support the non-Federal entity's bids or proposals.

Simplified Acquisition Threshold (2 CFR 200.88): The dollar amount below which a non-Federal entity may purchase property or services using small purchase methods. Non-Federal entities adopt small purchase procedures in order to expedite the purchase of items costing less than the simplified acquisition threshold. The simplified acquisition threshold is set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions) and in accordance with 41 U.S.C. 1908. As of the publication of this part, the simplified acquisition threshold is \$150,000, but this threshold is periodically adjusted for inflation.

State Plan (WIOA Sec. 3(58)): A unified State plan under WIOA section 102 or a combined State plan under WIOA section 103.

Subaward (2 CFR 200.92): An award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.

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

2 CFR 200.330(a): A subaward is for the purpose of carrying out a portion of a Federal award and creates a Federal assistance relationship with the subrecipient, characteristics of which support the classification of the non-Federal entity as a subrecipient and include when the non-Federal entity:

- 1) Determines who is eligible to receive what Federal assistance;
- 2) Has its performance measured in relation to whether objectives of a Federal program are met;
- 3) Has responsibility for programmatic decision making;
- 4) Is responsible for adherence to applicable Federal program requirements specified in the Federal award; and
- 5) In accordance with its agreement, uses the Federal funds to carry out program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the pass-through entity. Procurement Policy Page 12 of 12 Effective October 15, 2015

Transitional Employment (WIOA Sec. 134(5) and proposed 20 CFR 680.830): A transitional job is one that provides a limited work experience (WEX), that is subsidized in the public, private, or non-profit sectors for those

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individuals with barriers to employment because of chronic unemployment or inconsistent work history; these jobs are designed to enable an individual to establish a work history, demonstrate work success, and develop the skills that lead to unsubsidized employment.

Youth Standing Committee [WIOA Sec. 107(b)(4)(A)]: The local board may designate (but does not have to designate) a Youth Standing Committee to direct the activities of standing committees to provide information and to assist the local board in carrying out activities under WIOA.

[WIOA Sec. 107(b)(4)(A)(ii)]: The Youth Standing Committee provides information to the local board for the purpose of assisting with planning, operational, and other issues relating to the provision of services to youth. The Youth Standing Committee shall include community-based organizations with a demonstrated record of success in serving eligible youth.

VII. References

The following WIOA sections were considered in drafting this policy:

- 3-Definitions o 107(d)(10)(B)-Selection of Youth Providers
- 107(h) - Conflict of Interest
- 108(16)-Competitive Process in the Local Plan o 108(19) – Training Services in the Local Plan
- 134(c)(3)-Training Services Adults and Dislocated Workers
- 134(c)(3)(G)(ii)-Training Contracts

The following additional documentation was considered in drafting this policy:

- OMB Uniform Guidance 2 CFR Part 200 o Parts 200.318-200.326;
- Final Guidance: Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Office of Management and Budget (OMB); Federal Register Vol. 79, No. 244 o 2 CFR part 2900, Department of Labor;
- TEGL 15-14-Implementation of the New Uniform Guidance Regulations;
- WIN 0064, Change 1 – Federal Awarding Agency Regulatory Implementation of OMB’s Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Final Rule, 2 CFR 200
- Ohio Administrative Cod 5101:9-4-07.1
- ODJFS Workforce Innovation and Opportunity Act Policy Letter No. 16-08, 16-09, 16-11, & 17-03