



**Subject: Procurement and Selection of One-Stop Operators and Service Providers Policy**

**Policy No: 2015-34**

**Effective Date: 4/24/18, 7/16/19, 7/27/22**

**1. Purpose:**

To communicate the requirements for the procurement and selection of one-stop operators and service providers under the Workforce Innovation and Opportunity Act (WIOA). The Benton-Franklin Workforce Development Council's (BFWDC) procurement processes will conform to the requirements in this policy, whether through a competitively selected procurement process or as otherwise permitted.

**2. Background:**

WIOA changed the law and rules governing procurement and selection of one-stop operators and service providers. The Office of Management and Budget (OMB) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (commonly known as the OMB Super Circular) also changed procurement requirements, consolidated eight previous circulars into one Uniform Guidance document, and introduced new requirements for performance-based contracting.

WIOA sets the general expectations that Local Workforce Development Boards (LWDB) conduct open and competitive procurement processes to identify appropriate providers of one-stop operator and other services.

## Policy

It is the policy of the BFWDC that all contract procurement will be conducted in a fair and open process, available for the public to respond and all procurement decisions will be completely and thoroughly documented.

### A. Procurement of One-Stop Operator

1. One stop operators must be designated and certified through a competitive procurement process. The BFWDC will notify, in writing, its board members and the public of the competitive process to be used. This includes providing at least 30-day public notice through media where prospective local, state, and national bidders typically identify such opportunities (e.g., local print newspapers, on-line newspapers, BFWDC web sites, other community web sites, etc.). Solicitations will include the selection criteria to be used in the process and all documentation will be retained in compliance with local record retention policies.
2. The competitive process used by the BFWDC to procure the one-stop operator will be conducted at least once every four years and follow the principles of competitive procurement set forth in Uniform Administrative Guidance at 2 CFR 200.318-326.
3. The allowable forms of competitive procurement processes are as follows:
  - Sealed Bids
  - Competitive Proposals
  - Procurement by non-competitive proposals (Sole Source)
    - Sole source can be exercised as per local policies that comply with state and federal procurement laws and regulations and one or more of the following circumstances apply:
      - The item or service is only available from a single source
      - Public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation<sup>1</sup>
      - The Federal awarding agency or pass-through entity expressly authorizes non-competitive proposals in response to a written request from the non-Federal entity
      - After soliciting a number of source, competition is determined inadequate, whether for reasons of number of quality of proposals/bids<sup>2</sup>

<sup>1</sup> Examples of compelling circumstances that outweigh delays that would result from competitive solicitations include the need to avoid a break in services if an operator is terminated for cause or is unable to continue providing services through the end of the contract period.

<sup>2</sup> Inadequate responses are those judged by a panel of impartial reviewers to score below a pre-determined minimum level on scoring criteria published as part of the solicitation.

4. If the BFWDC decides to procure the one-stop operator with a sole source procurement due to a compelling circumstance, the BFWDC will maintain detailed records of the procurement history per Section 12 of TEGl 15-16 (citing Uniform Guidance at Section 200.318(1)), including careful documentation of the compelling circumstance and resulting decision. Such records are required to demonstrate that sufficient research and outreach was conducted, beyond publishing Request for Interest/Qualification, Requests for Proposals, or Invitations to Bid, and that the solicitation was publicized in a manner providing for full and open competition, including presentation of the decision at open board meetings to provide transparency and perhaps attract additional bidders for the next competition.
5. The BFWDC may be selected as one-stop operator under a sole source agreement only if demonstrated adherence to appropriate internal controls and established conflict of interest policies and procedures that identify appropriate internal controls and are approved by the Governor.

## **B. Procurement of Youth Service Providers**

1. The BFWDC will competitively award grants/contracts for eligible providers of youth workforce investment activities, except in the case of sole-source awards/contracts, and only then if there is satisfactory and demonstrable evidence that there are an insufficient number of providers with the expertise required for serving in-school or out of school youth. Bid solicitations will include the selection criteria to be used in this process and will be maintained as documentation of the process.
2. The BFWDC will maintain records to document, in writing, that board members and the public were made aware of the competitive process to be used to identify youth service providers. This includes providing at least 30-day public notice through media where prospective local, state, and national bidders typically identify such opportunities (e.g., local print newspapers, on-line newspapers, LWDB web sites, other community web sites, etc.).
3. The BFWDC will establish and use criteria, including the ability of service providers to meet performance accountability measures based on common measures, as well as full and open competition consistent with 2 CFR parts 200 and 2900 in addition to applicable state and local procurement laws to procure eligible providers of youth workforce investment activities.
4. In accordance with USDOL regulations, design framework services (intake, objective assessment, development of individual service strategies, case management, follow-up services) may be exempted from a competitive process if the BFWDC determines it can more appropriately and efficiently perform these activities and the BFWDC receives approval of the Local Elected Official(s) and Governor to provide design framework services for youth program participants.

5. The BFWDC will establish local policies and procedures to assess the ability of youth program providers to meet performance accountability measures based on the primary federal indicators of performance for the youth program.
6. The BFWDC may serve as youth service providers if they are determined to be the successful bidder in a solicitation that conforms to the principles of competitive procurement set forth in Uniform Administrative Guidance at 2 CFR 200.318-326, and only if approved internal control and conflict of interest policies are followed. Internal controls include the requirement that the solicitation and scoring process be managed by an impartial third party free of conflicts of interest and that BFWDC staff and the agency that employs such staff cannot develop the solicitation for proposals, facilitate the scoring process, or score proposals.

### **C. Procurement of Adult or Dislocated Worker Training Services**

1. The BFWDC will select providers of adult and dislocated worker training services through a competitive procurement process. The BFWDC will document, in writing, board members and the public were made aware of the competitive process to be used. This includes providing at least 30-day public notice through media where prospective local, state, and national bidders typically identify such opportunities (e.g., local print newspapers, on-line newspapers, the BFWDC web sites, other community web sites, etc.). Solicitations must include the selection criteria to be used in this process and must be maintained as part of the documentation.
2. The BFWDC may serve as training service providers if they are determined to be the successful bidder in a solicitation that conforms to the principles of competitive procurement set forth in Uniform Administrative Guidance at 2 CFR 200.318-326, and only if approved internal control and conflict of interest policies are followed. Internal controls include the requirement that the solicitation and scoring process be managed by an impartial third party free of conflicts of interest and that BFWDC staff and the agency that employs such staff cannot develop the solicitation for proposals, facilitate the scoring process, or score proposals.
3. The BFWDC can provide Adult or Dislocated Worker training services if granted a written waiver by the Governor based on satisfactory and demonstrable evidence that:
  - The BFWDC determined that there were an insufficient number of eligible providers with expertise in serving Adults or Dislocated Workers to meet local demand. This determination was made after having either received no response to a Request for Qualifications (RFQ) or Request for Interest (RFI) or received no response to a Request for Proposal (RFP) or conducted a competitive procurement in which no bidders met the minimum criteria;

- The BFWDC meets the requirements of an eligible training provider under Section 122;
- The BFWDC's proposed training services prepare participants for in-demand industry sectors or occupations in the local area; and
- The BFWDC subjected its waiver determination and request to a minimum 30-day public comment period and included all comments received in the final waiver request.

#### **D. Procurement of Career Services**

The BFWDC can select providers of career services through a competitive procurement process, though WIOA law and proposed rules do not require this. Allowable forms of competitive procurement include sealed bid, competitive proposals, and sole source.

The BFWDC can provide basic and individualized career services if approval is received from the Local Elected Official(s) and Governor.

#### **E. Procurement Related Fiscal Requirements**

1. Subawards are not procurement actions governed by this policy or other procurement laws, rules or policies unless:
  - Required by statute;
  - Required by BFWDC policies and procedures; or
  - Awarded on a competitive basis, in which instance the subaward will be governed by procurement rules detailed in 2 CFR 200.318-326.
2. When a competitive procurement process is not used in the selection of a sub-recipient for a subaward, it must be guided by:
  - Documented internal controls, including written procedures for employee conduct and conflict of interest provisions;
  - The service provider's track record, considering past record of performance, cost principles, record of compliance and audit and monitoring results.
3. Procurement standards must ensure fiscal accountability and prevent waste, fraud, and abuse in WIOA programs. Where applicable, standards must support fair and competitive procurement of goods and services.
4. Wherever possible and where required, all agreements must be performance-based, as defined in Federal Acquisition Regulations (FAR) 37.6, and include the following minimum requirements:
  - Performance requirements defined in measurable, mission-related terms;
  - Performance standards (e.g., quality metrics, required quantities, and timeliness) tied to performance requirements;

- Quality assurance plan describing how the contractor's performance will be measured against performance standards; and
  - Appropriate positive and negative incentives for performance standards critical to accomplishing agreement objectives.
5. The BFWDC will follow general procurement standards established through state law, rule and policy, as well as through 2 CFR 200.318-326.
  6. The BFWDC will develop and document their own procurement policies, procedures and standards that reflect applicable state law, rule and policy and conform to federal law and standards of OMB Uniform Guidance.
  7. The BFWDC will ensure full and open competition, where necessary.
  8. The BFWDC will use the most economical approach to the procurement of goods and services.
  9. The BFWDC will award only to responsible contractor and maintain oversight in order to monitor contractor performance regarding contract terms, conditions and specifications; and,
  10. The BFWDC will maintain records detailing the history of the procurement, including the rationale for the selected method of procurement, selection of contract type, basis for contractor selection or rejection, and basis for contract price.

## **F. Written Solicitations**

1. Unless waived by the funding source, an individual who develops the specifications and statement of work for a RFP or RFQ/RFI is not eligible to compete in the procurement.
2. RFPs, RFQ/RFIs, and Purchase Orders will include a clear and accurate description of the technical requirements for services. Contracts will only be awarded to contractors that demonstrate the technical expertise to successfully perform contract requirements.
3. Consideration will be given to small, minority, disabled, veterans and women-owned businesses in the procurement process by identifying potentially interested parties and placing notices in appropriate media outlets.
4. The procurement document will specify the format and method by which responses from prospective bidders may be received.
5. Fixed-price contracts, cost-reimbursable contracts, or performance contracts will be used. As appropriate, offering the most economically advantageous balance of quality and cost.
6. The Chief Executive Officer (CEO), or designee, may enter into a contract agreement for the BFWDC.
7. All work performed as part of a contract will be monitored periodically by the BFWDC to determine compliance with the contract requirements.

8. Contracts with successful bidders will contain at minimum the following general terms and conditions:

- Price or estimated cost;
- Method of payment;
- Scope of services, performance expectations, and reporting requirements;
- Period of performance;
- Execution by authorized signatories of the parties;
- Provisions that allow for administrative, contractual, or legal remedies if either party violates or breaches terms of the contract;'
- A provision for termination because of circumstances beyond the control of the BFWDC (the provision shall include conditions under which termination actions will be taken, the manner of taking such actions, and the basis for settlement);
- A provision that the contractor shall maintain adequate participant, financial, and administrative records under the contract and make those records available to the BFWDC or any duly authorized representative, as specified by the BFWDC general terms and conditions;
- A provision that subcontracts must contain selected paragraphs of 29 CFR parts 31 and 32 implementing the nondiscrimination and equal opportunity provisions of Title VI of the Civil Rights Act of 1964, as amended;
- A provision that qualified small minority and women's businesses have the maximum practicable opportunity to participate in the subcontract performance; and
- Include the appropriate provisions as specified by the funding source.

## **G. Issuance of Procurement Documents**

All RFPs and RFQ/RFIs shall be reviewed, approved, and issued by the CEO.

## **H. Bidders List**

The BFWDC will maintain a Bidder's list. This list will be continually open for prospective bidders who will be added as received. The list will be by type of goods and/or services identified by the Bidder as its area of interest or expertise. If mail sent to a Bidder is returned undeliverable, they will be removed from the list. The BFWDC may periodically purge its list and request bidders to reapply. To the extent possible, small, minority, disabled and women-owned businesses will be included in bidder's lists, and will be targeted for mailings and advertised procurement.

## **I. Vendors List**

Based upon responses received from procurement actions, the BFWDC may establish pre-approved vendor lists for staff use. The vendor lists may detail several pre-approved vendors/consultants that may be used.

## **J. Debarment and Suspension**

Prior to making an award to a subrecipient or contractor, staff providing selection oversight shall search and save the results from the Excluded Parties Listing System (EPLS) at <https://www.sam.gov> to the discovery folder to verify that the individuals and/or organizations are not debarred, suspended or excluded from or ineligible for participation in Federal Assistance Programs.

## **K. Waivers**

The CEO, or designee, may waive the procedural requirements for a specific RFP, RFQ/RFI, or contract if the CEO, or designee, finds that compliance with these procurement requirements would create an undue burden and risk on the BFWDC.

## **L. Access to Procurement Processes & Contracts**

1. From the date of publication of a competitive procurement solicitation and up to the due date/time for receipt of proposals, all information concerning the RFP or RFQ is available for review and inspection.
2. During the procurement process from receipt of a proposal to award of a contract, all information concerning the rating of individual bidders and the names of individuals who rated the prospective bidders is confidential.
3. After a contract is awarded, all proposals from prospective bidders and the ratings by the evaluation panel, will be available for public review and inspection.

## **M. Award Appeals**

An appeal process is available to bidders who had a proposal evaluated that was not recommended to or selected by the BFWDC board in a competitive procurement. The appeal process will be detailed in the procurement document and is as follows:

1. Any entity who submitted a proposal that was evaluated may appeal an award decision. To be excepted, appeals must:
  - Be made in writing;
  - Be delivered to [tscott@bf-wdc.org](mailto:tscott@bf-wdc.org) within 7 calendar days from the date the notice of Award decision is issued to the bidder by the BFWDC; and
  - State the procedural reason(s) for the appeal, and the desired remedy.
2. Appeals requests will only be accepted for the following procedural matters;
  - Alleged bias, discrimination, or conflict of interest on the part of the rater(s); or
  - Non-compliance with procedures described in the procurement document or BFWDC procurement policy.
3. Appeal requests that are not based on procedural matters will not be considered. Appeals will be rejected “without merit” if based on issues such as:
  - The rating and/or interview panel’s assessment of the bidder’s qualifications, the quality or completeness of a proposal;



- The rating and/or interview panel's assessment of overall system needs or requirement addressed in the bidder's proposal; or
  - Funding availability and allocation decisions made by the BFWDC board.
4. The BFWDC, at its sole discretion, may choose to go forward with contracting for approved awards during the period of appeal, or choose to hold the awards until the appeal is resolved.
  5. The BFWDC will designate an evaluator who was not involved in the procurement process or evaluation who will review the issues requested for appeal and the procurement documents, including the evaluation scores and result, and will prepare a "Notice of Final Action".
    - If the evaluator does not discover facts of procedural issues supporting the bidder's stated reason(s) for appeal, the appeal will be resolved with a recommendation of "no findings and closed" and outlined in a Notice of Final Action.
    - The recommended Notice of Final Action will be forwarded to the BFWDC's CEO and the BFWDC Board of Directors officers for approval.
    - If approved, the Notice of Final Action will be sent to the bidder within 10 days from receipt of the bidder's request for an appeal review.
  6. Any subsequent challenge to the BFWDC's findings and action on the appeal of a competitive procurement award will follow the WorkSource Complaint Handbook, which provides the local procedure for grievances or complaints by participants and other interested or affected parties alleging violations of WIOA requirement.

## N. Definitions

**Conflict of interest** – Conflict between the official responsibilities and the private interests of a person or entity that is in a position of trust. A conflict of interest would arise when an individual or organization has a financial or other interest in or participates in the selection or award of funding for an organization. Financial or other interest can be established either through ownership or employment.

**Contract** - A legal instrument by which the fiscal agent, service provider, or subrecipient is committed to pay for goods, property, or services needed to accomplish the purposes of the contract/agreement. The term as used in this policy 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 subaward (see 2 CFR 200.92 - Subaward).

**Contractor** - An entity responsible for providing generally required goods or services related to the administrative support of the Federal award. These goods or services may be for the recipient's or subrecipient's own use or for the use of participants in the program. Distinguishing characteristics of a contractor include:

- Providing the goods and services within normal business operations;
- Providing similar goods or services to many different purchasers;
- Operating in a competitive environment; and;
- Program compliance requirements do not pertain to the goods or services provided.

**Non-Federal Entity** - a state, local government, Indian tribe, institution of higher education (IHE), or nonprofit organization that carries out a federal award as a recipient or subrecipient.

**Pass-through Entity** - a non-federal entity that provides a subaward to a subrecipient to carry out part of a federal program.

**Subaward** - 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** – An entity that receives federal assistance passed through from a prime recipient or another subrecipient to carry out or administer a WIOA program.

Distinguishing characteristics of a subrecipient include:

- Determining eligibility for assistance;
- Performance measured against meeting the objectives of the program;
- Responsibility for programmatic decision making;
- Responsibility for applicable program compliance requirements;
- Use of the funds passed through to carry out a program of the sub-entity as compared to providing goods or services for a program of the prime recipient.

Benton-Franklin Workforce Development Council is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Washington Relay Service: 711