

# WIOA Area 15

## Ohio Valley Employment Resource Procurement Manual and Guidelines (See also the Financial Procedures Manual and Guidelines)

Revised for the 2 CFR 200 Updates effective 8/13/20, 11/12/20 & 2/22/2021



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## Overview

Ohio Valley Employment Resource (OVER) is the WIOA workforce area serving four Ohio counties: Monroe, Morgan, Noble and Washington. OVER is both the fiscal agent and staff to the Workforce Development Board for this area and is a governmental entity considered a Council of Governments organization under [Ohio Revised Code \(ORC\) §167](#).

It is the responsibility of OVER to provide oversight and guidance both internally and externally to OVER's subrecipients. OVER has two "Manual and Guidelines" for overall grant administration, the Financial Procedures Manual and Guidelines and the Procurement Manual and Guidelines, together these set up the financial and administrative framework, which is supplemented with policies on specific topics relative to WIOA. All these can be accessed on the OVER website at [www.omj15.com](http://www.omj15.com). This provides full transparency to the public and ease of access to the users as well as segmenting the guidance into relevant sections.

OVER as a non-Federal entity, administering primarily federal WIOA funding, follows: the Workforce Innovation and Opportunity Act (WIOA); WIOA Regulations; the Uniform Guidance 2 CFR § 200 [eCFR :: 2 CFR Part 200 -- Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards](#); as well as the DOL codification: 2 CFR § 2900 [eCFR :: 2 CFR Part 2900 -- Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards](#); State WIOA policy and guidance; and Ohio Revised Code.

Standards have been established to ensure fiscal accountability and prevent waste, fraud, and abuse in all programs administered by OVER under the Act. In addition, the Act introduced changes in the way services for youth workforce development activities are obtained.

The Uniform Guidance governing procurement for non-Federal entities guides us at § 200.318(a) that we are required to have documented procurement procedures for the acquisition of property or services required under a federal award or subaward. The non-Federal entity's documented procurement procedures must conform to the procurement standards identified in [§ 200.317](#) through [200.327](#).

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<sup>1</sup> <http://doleta.gov/grants/UniformGuidance.cfm>

<sup>2</sup> [Id.](#)

<sup>3</sup> WIOA Section 184(a)(3)(A)

## Definitions

“Non-Federal entity” means a State, local government, Indian tribe, institution of higher education, foreign public entity, foreign organization or non-profit organization that carries out a Federal award as a recipient or subrecipient.<sup>4</sup>

“Pass-through entity” means a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program.<sup>5</sup> [If the non-Federal entity for the local area provides a subaward to a subrecipient to carry out part of a Federal program, the subrecipient is considered a “pass-through entity.”](#)

“Subrecipient” means usually a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a federal program. A subrecipient may also be a recipient of other federal awards directly from a federal awarding agency.<sup>6</sup>

“Subaward” means 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.<sup>7</sup>

“Contractor” means an entity that receives a legal instrument (i.e., contract) 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 subaward.<sup>8</sup>

For more definitions, please review the Uniform Guidance.

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<sup>4</sup> 2 CFR § 200.69, 2 CFR § 2900.4

<sup>5</sup> 2 CFR § 200.74, A-133 §\_\_\_\_.105

<sup>6</sup> 2 CFR § 200.93

<sup>7</sup> 2 CFR § 200.92

<sup>8</sup> 2 CFR § 200.22 and 200.23

## **Internal Controls**

The non-Federal entity must maintain an effective internal control system that provides reasonable assurance that funds are managed in compliance with federal statutes, regulations, terms of the federal award, terms of the agreement between the WIOA local board and the subrecipient and the WIOA Area Handbooks, internal controls, including examples are more thoroughly covered in the WIOA financial handbook. See also the Segregation of Duties form on the [www.omj15.com](http://www.omj15.com) monitoring page when developing internal controls. Due to the size of agencies, segregation opportunities may be limited, but the form offers considerations for reducing the possibility of conclusion.

A critical part of internal controls is maintaining a written standards of conduct covering conflicts of interest and governing the actions of its employees and board members engaged in the selection, award and administration of contracts. The OVER conflict of interest policy is: Ohio Valley Employment Resource Policy Letter No. 2-15 Conflict of Interest on the [www.omj15.com](http://www.omj15.com) policy page and is reviewed annually by employees and board members. This review is acknowledged by annual signature.

## **Pre-Purchase Considerations**

The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

To foster greater economy and efficiency, the Federal Government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements when appropriate procurement has already occurred; to utilize federal excess and surplus property; and to use value engineering clauses in contracts.

Prior to procurement the nature of the procurement including, but not limited to: frequency of purchase, delivery methods-time/cost, independent cost estimate and allocability to the grant(s) should also be considered.

Upon evaluating and quantifying the proposed purchase, the next step is to decide if the acquisition is best made through a subrecipient or contractor relationship.

## Subrecipient/Contractor Determination

The non-Federal entity may concurrently receive Federal awards as a recipient, a subrecipient, and a contractor, depending on the substance of its agreements with Federal awarding agencies and pass-through entities. Payments received for goods or services provided as a contractor are not federal awards.<sup>9</sup> Therefore, a pass-through entity must make case-by-case determinations whether each agreement it makes for the disbursement of Federal program funds casts the party receiving the funds in the role of a subrecipient or a contractor. The Federal awarding agency may supply and require recipients to comply with additional guidance to support these determinations provided such guidance does not conflict with this section.<sup>10</sup>

See also form documenting the Subrecipient/Contractor Determination, found in on the [www.omj15.com](http://www.omj15.com) monitoring page

<b>Characteristics which support the classification of the non-Federal entity as a subrecipient include when the non-Federal entity:</b>	<b>Characteristics indicative of a procurement relationship between the non-Federal entity and a contractor are when the non-Federal entity receiving the Federal funds:</b>
Determines who is eligible to receive what Federal assistance	Provides the goods and services within normal business operations
Has its performance measured in relation to whether objectives of a Federal program were met	Provides similar goods or services to many different purchasers
Has responsibility for programmatic decision making	Normally operates in a competitive environment
Is responsible for adherence to applicable Federal program requirements specified in the Federal award	Provides goods or services that are ancillary to the operation of the Federal program
In accordance with its agreement, uses the Federal funds to carry out a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the pass-through entity. <sup>11</sup>	Is not subject to compliance requirements of the Federal program as a result of the agreement, though similar requirements may apply for other reasons. <sup>12</sup>

<sup>9</sup> 2 CFR § 200.331, 2 CFR § 200.501(f)

<sup>10</sup> 2 CFR § 200.331

<sup>11</sup> 2 CFR § 200.331(a)

<sup>12</sup> 2 CFR § 200.331(b)

In determining whether an agreement between a pass-through entity and another non-Federal entity casts the latter as a subrecipient or a contractor, the substance of the relationship is more important than the form of the agreement. All of the characteristics listed above may not be present in all cases, and the pass-through entity must use judgment in classifying each agreement as a subaward or a procurement contract.<sup>13</sup>

## General Administration

The contract procurement requirements for non-Federal entities (other than States), including subrecipients of a State, can be found in sections [§ 200.317](#) through [200.327](#) of the Uniform Guidance.<sup>14</sup> These provisions require that non-Federal entities use their own procurement procedures which must meet or exceed applicable State, local, and tribal laws and regulations applicable to the non-Federal entity, provided that the procurements conform to the applicable Federal laws and standards identified in the Uniform Guidance.<sup>15</sup>

In addition to the requirements found in sections 200.317 through 200.326 of the Uniform Guidance (as appropriate), all procurement contracts between local boards and units of state or local governments must be conducted only on a cost-reimbursement basis.<sup>16</sup>

WIOA funding in Ohio flows through the Ohio Department of Job and Family Services (ODJFS), the chart on the next page is provided by ODJFS to detail the additional Ohio specific guidance.

In addition to the federal and state guidance identified, each county and each entity may add additional purchasing requirements. However, no lower level of government may require procurement less restrictive than that set by the higher levels of government for that funding source.

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<sup>13</sup> 2 CFR § 200.331(c)

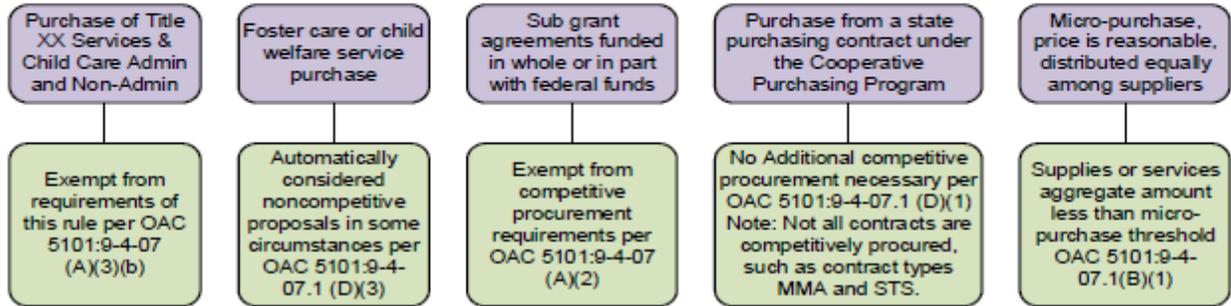
<sup>14</sup> 2 CFR § 200.317

<sup>15</sup> 2 CFR § 200.318(a)

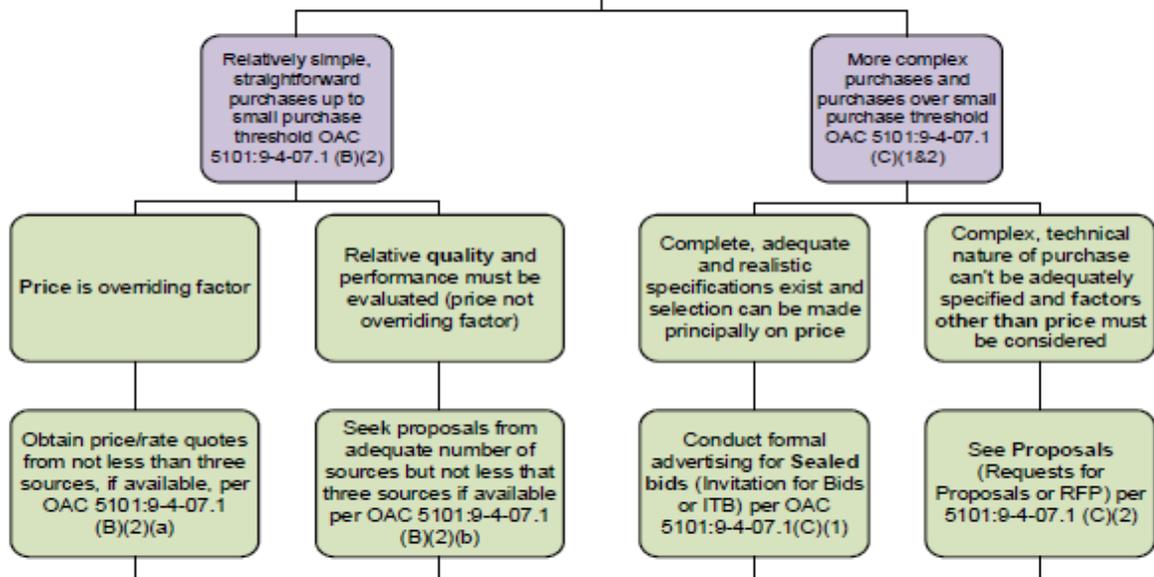
<sup>16</sup> 20 CFR § 683.200(c)(4)

# ODJFS Procurement Requirements Summary

CDJFS, PCSA, CSEA, and WOA Area Procurement Requirement Summary  
 OAC 5101:9-4-07&07.1 (incorporates requirements of the federal grants management common rule), most recent effective dates 7/6/15 & 4/25/16. Note: Local requirements must also be followed, as long as they are at least as restrictive as and do not conflict with state and federal requirements.



All other purchases



As an alternative, the local agency may do noncompetitive procurement in the following circumstances:

- Item available from single source per OAC 5101:9-4-07.1 (C)(3)(a)(i)
- Emergency situations per OAC 5101:9-4-07.1 (C)(3)(a)(ii)
- Awarding agency authorizes noncompetitive procurement per OAC 5101:9-4-07.1 (C)(3)(a)(iii) and FAPL 36
- Prices established by law for equipment requiring standardization/interchangeability per OAC 5101:9-4-07.1 (C)(3)(a)(iv)
- Failed formal competitive procurement per OAC 5101:9-4-07.1 (C)(3)(a)(v)

Additional requirements apply.

## Comprehensive Case Management Employment Plan

Section 305.190 of the Amended Substitute Ohio House Bill 64 of the 131st General Assembly, the state's biennial budget, created the Comprehensive Case Management Employment Program (CCMEP), combining Workforce Innovation Opportunity Act (WIOA) Youth and Temporary Assistance for Needy Families (TANF) funds to provide employment, training, and other supportive services to low-income and out-of-school youth ages 14 to 24. Within this legislation, it is required each county commissioner board designate a lead agency.<sup>17</sup>

Within the workforce area, each County Department of Job and Family Services agency was designated as the lead agency. This lead agency has been and can continue to be ratified by the Workforce Development Board and amended into existing WIOA agreements. However, OVER, the WIOA area fiscal agent and workforce development board staff to the board, only operates and oversees the WIOA side of CCMEP.

The state of Ohio maintains a website specifically detailing CCMEP at:  
<https://jfs.ohio.gov/owd/CCMEP/>.<sup>18</sup>

Each County in conjunction with their WDB is responsible for a bi-annual CCMEP plan, these plans can be referenced at: <https://jfs.ohio.gov/owd/CCMEP/ProgramPlans.stm>.<sup>19</sup>

## Contracts and Agreements

### Administration System

Non-Federal entities shall maintain oversight which ensures that contractors perform in accordance with the terms, conditions, and specification of their contracts or purchase orders.<sup>20</sup>

Awards shall be made only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.<sup>21</sup> The regulations in [2 CFR part 180](#) also restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance.

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<sup>17</sup> Section 305.190 of the Amended Substitute Ohio House Bill 64

<sup>18</sup> <https://jfs.ohio.gov/owd/CCMEP/>

<sup>19</sup> <https://jfs.ohio.gov/owd/CCMEP/ProgramPlans.stm>

<sup>20</sup> 2 CFR § 200.318(b)

<sup>21</sup> 2 CFR § 200.318(h) & § 200.214.

Non-Federal entities shall conduct and document oversight of contractor activity to ensure compliance with procurement standards. The issues identified in 2 CFR § 200.318(h) are documented as a part of Risk Assessment in monitoring. The Risk Assessment monitoring form is at: [www.omj15.com](http://www.omj15.com) on the monitoring page.

### Records Retention

The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to:

- Rationale for the method of procurement,
- Selection of contract type,
- Contractor selection or rejection, and
- The basis for the contract price.<sup>22</sup>

Financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a federal award must be retained for a period of three years<sup>23</sup> from the date of submission of the final expenditure report, per OAC 5101: 9-9-21 and the state sub agreement. The Uniform Guidance at § 200.334-7 further detail the records retention requirements. Federal awarding agencies and pass-through entities must not impose any other record retention requirements upon non-Federal entities. The only exceptions are:

- If any litigation, claim, or audit is started before the expiration of the period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken
- When the non-Federal entity is notified in writing by the Federal awarding agency, cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period.
- Records for equipment acquired with Federal funds must be retained for 3 years after final disposition.
- In some cases recipients must report program income after the period of performance. Where there is such a requirement, the retention period for the records pertaining to the earning of the program income starts from the end of the non-Federal entity's fiscal year in which the program income is earned.
- Indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

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<sup>22</sup> 2 CFR § 200.318(i)

<sup>23</sup> OAC 5101: 9-9-21; state sub agreement; & § 200.334-7

- *If submitted for negotiation.* The 3-year retention period for its supporting records starts from the date of such submission.
- *If not submitted for negotiation.* The 3-year retention period for it and its supporting records starts from the end of the fiscal year (or other accounting period) covered by it.

### Affirmative Steps

All necessary affirmative steps shall be taken to assure that small and minority firms, and women's business enterprises are used whenever possible.

Affirmative steps shall include:

- Placing them on solicitation lists;
- Assuring that they are solicited whenever they are potential sources;
- Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by them;
- Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses and women's business enterprises;
- Using the services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- Requiring the prime contractor, if subcontracts let, to take affirmative steps.<sup>24</sup>

### Domestic Preferences for Procurements

As appropriate and to the extent consistent with law, the non-Federal entity should provide a preference for the purchase of materials produced in the United States. The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.<sup>25</sup>

### Prohibition on Certain Telecommunications and Video Surveillance services or equipment.

Subrecipients are prohibited from obligating or expending loan or grant funds to:

- Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
- For the purpose of public safety, security of government facilities, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).<sup>26</sup>

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<sup>24</sup> 2 CFR § 200.321(a) & (b)

<sup>25</sup> 2 CFR § 200.322

<sup>26</sup> 2 CFR § 200.216

## Conflict of Interest / Code of Conduct

### *Issues Related to Employees*

The entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award, and administration of contracts. The OVER conflict of interest policy is: Ohio Valley Employment Resource Policy Letter No. 2-15 Conflict of Interest on the [www.omj15.com](http://www.omj15.com) policy page. No employee may participate in the selection, award, or administration of a contract if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The employees may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.<sup>27</sup>

### *Issues Related to Board and Council Members*

Every local Workforce Development Board and Council of Government member is also held to the local area conflict of interest policy and required to review and sign annually. Those circumstances that would constitute a conflict of interest for all members of local boards would include hiring of immediate family members, soliciting or accepting something of value, use of a public position for personal gain, use of public resources, and interests in contracts.

A local board member or committee member must neither cast a vote on, nor participate in any decision-making capacity, on the provision of services by such member (or any organization which that member directly represents), nor on any matter which would provide any direct financial benefit to that member or the member's immediate family.<sup>28</sup>

Neither membership on the state or local board, or standing committee, nor receipt of WIOA funds to provide training and related services, by itself, violates these conflict of interest provisions.<sup>29</sup>

### *Issues Related to Grant Recipients and Subrecipients*

In accordance with § 200.112 of the Uniform Guidance, everyone identified above must disclose in writing any potential conflict of interest to the recipient of grant funds.<sup>30</sup>

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<sup>27</sup> 2 CFR § 200.318(c)(1)(2)

<sup>28</sup> 20 CFR § 683.200(c)(5)(i)

<sup>29</sup> 20 CFR § 683.200(c)(5)(ii)

<sup>30</sup> 20 CFR § 683.200(c)(5)(iii)

## Competition

All procurement transactions shall be conducted in a manner providing full and open competition.<sup>31</sup> 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. Some of the situations considered to be restrictive of competition include but are not limited to:

- Placing unreasonable requirements on firms in order for them to qualify to do business.
- Requiring unnecessary experience and excessive bonding.
- Noncompetitive pricing practices between firms or between affiliated companies.
- Noncompetitive awards to consultants that are on retainer contracts.
- Organizational conflicts of interest.
- Specifying only a “brand name” product instead of allowing “an equal” product to be offered.
- Overly restrictive specifications.
- Any arbitrary action in the procurement process.<sup>32</sup>

The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed State, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section [§ 200.319 of the Uniform Guidance] preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.<sup>33</sup>

Written selection procedures shall be used for procurement transaction to ensure that all solicitations:

- Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product, or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specification should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equal” description may be used as a means to define the performance or other salient requirements of a

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<sup>31</sup> 2 CFR § 200.319(a)

<sup>32</sup> 2 CFR § 200.319(b)

<sup>33</sup> 2 CFR § 200.319(c)

procurement. The specified features of the named brand which must be met by offerors shall be clearly stated; and

- Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.<sup>34</sup>

The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.<sup>35</sup>

### Confidentiality and Non-Disclosure

The obtaining of confidential procurement information not made available to all offerors is strictly prohibited. In addition, improper communication with staff or board members to influence procurement decisions is not allowed.

### Construction

WIOA Title I funds must not be spent on construction, purchase of facilities or buildings, or other capital expenditures for improvements to land or buildings except with prior approval.<sup>36</sup> WIOA Title I funds can be used for construction only in limited situations, including meeting obligations to provide physical and programmatic accessibility and reasonable accommodation; funding disaster relief projects under Sec. 170(d) of WIOA; and funding other projects the Secretary of Labor determines necessary to carry out WIOA as described under Sec. 189(c) of WIOA.<sup>37</sup>

### Contract Provisions

Appendix II to Part 200 - Contract Provisions for Non-Federal Entity Contracts Under Federal Awards [https://www.law.cornell.edu/cfr/text/2/appendix-II\\_to\\_part\\_200](https://www.law.cornell.edu/cfr/text/2/appendix-II_to_part_200) details the required provisions. Each WIOA area has a subgrant agreement with appropriate provisions and authoritative cites. In order to ensure completeness, it is recommended that WIOA contracts include the WIOA area subgrant assurances and certifications which have additional Ohio provisions. Appendix II specifically includes:

In addition to other provisions required by the Federal agency or grantee or subgrantee/non-Federal entity, all contracts made by the non-Federal entity under WIOA must contain provisions covering the following, as applicable:

- Compliance with WIOA – contracts shall contain provisions requiring compliance with WIOA, its implementing regulations, and State WIOA policies including those pertaining to reporting.<sup>38 39</sup>

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<sup>34</sup> 2 CFR § 200.319(d)

<sup>35</sup> 2 CFR § 200.319(e)

<sup>36</sup> 2 CFR § 200.439(b)(3), 20 CFR § 283.230

<sup>37</sup> WIOA NPRM p. 233

<sup>38</sup> WIOA Act: <https://www.gpo.gov/fdsys/pkg/FR-2016-08-19/pdf/2016-15977.pdf>

<sup>39</sup> WIOA Regulations: [https://www.doleta.gov/wioa/Final\\_Rules\\_Resources.cfm](https://www.doleta.gov/wioa/Final_Rules_Resources.cfm)

- Remedies for noncompliance – all contracts must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.<sup>40</sup>
- Termination for Cause and Convenience – all contracts shall contain suitable provisions for termination by the non-Federal entity including the manner by which it will be effected and the basis for settlement.
- Termination for Default – all contracts shall contain a suitable provision under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.<sup>41</sup>
- Equal Employment Opportunity – Except as otherwise provided, each contracting agency shall include the equal opportunity clause contained in section 202 of the order in each of its Government contracts:
  - Include the equal opportunity clause provided under 41 CFR 60-1.4(a);<sup>42</sup> and
  - Assure compliance with the nondiscrimination and equal opportunity provisions of WIOA, Section 188 and its implementing regulations.
- Copeland Anti-Kickback Clause – all contracts and subcontracts for construction or repair shall include a provision for compliance with the Copeland “Anti-Kickback” Act (18 USC 874) as supplemented in Department of Labor regulations (29 CFR, Part 3). This Act provides that each contractor and subcontractor shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which such person is otherwise entitled.<sup>43</sup>
- Labor Standard Provision – On-the-job training construction contractors and other construction contractors involving the use of WIOA funds shall have provisions requiring adherence with the Davis-Bacon Act and Sections 103 and 107 of the Contract Work Hours and Safety Standards Act as supplemented by the Department of Labor regulations.<sup>44</sup>

<sup>40</sup> 2 CFR § 200.339; Appendix II to 2 CFR Part 200

<sup>41</sup> 2 CFR § 200.340-1

<sup>42</sup> 41 CFR 60-1.4(a)

<sup>43</sup> <https://www.ecfr.gov/current/title-29/subtitle-A/part-3>

<sup>44</sup> <https://www.dol.gov/agencies/whd/government-contracts/construction>

- Contract Work Hours and Safety Standards Act (40 USC 3701-3708) - Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.<sup>45</sup>
- Rights to Inventions Made Under a Contract or Agreement - If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.<sup>46</sup>
  - The term “funding agreement” means any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.<sup>47</sup>
  - The Department of Labor requires intellectual property developed under a competitive Federal award process to be licensed under a Creative Commons Attribution license. This license allows subsequent users to copy, distribute, transmit and adapt the copyrighted work and requires such users to attribute the work in the manner specified by the grantee.<sup>48</sup>

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<sup>45</sup> Id.

<sup>46</sup> 37 CFR §401.2(a)

<sup>47</sup> Id.

<sup>48</sup> 2 CFR § 2900.13

- Copyrights – Contracts shall provide notice of the following:  
The non-Federal entity may copyright any work that is subject to copyright and was developed, or for which ownership was acquired, under a Federal award. The Federal awarding agency reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.<sup>50</sup>
- Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended – Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal entity to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).<sup>51</sup>
- Debarment and Suspension (Executive Orders 12549 and 12689) – A contract award (see 2 CFR § 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.<sup>52</sup>
- Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) – Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal entity. Such disclosures are forwarded from tier to tier up to the grantee or subgrantee/non-Federal entity.<sup>53</sup>
- Access to Contractor’s Records – all negotiated contracts awarded by the non-Federal entity shall include a provision to the effect that the non-Federal entity, State, local area, the Office of Inspector General of the United States, the U.S. Department of Labor, or any other duly authorized representatives, shall have access to any books, documents, papers, and records

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<sup>49</sup> Obsolete/removed

<sup>50</sup> 2 CFR § 200.315(b)

<sup>51</sup> Appendix II to 2 CFR Part 200 (the 2 CFR)

<sup>52</sup> Id.

<sup>53</sup> Id.

of the contractor which are directly pertinent to the specific contract for the purpose of making an audit, examination, excerpts, copies or transcriptions. Reasonable access to personnel for purposes of interviews and discussions related to such documents shall be permitted.<sup>54</sup>

- Recovered Materials – contracts between a State agency or agency of a political subdivision of a State and its contractors shall recognize mandatory standards and policies relating to section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.<sup>55</sup>
- Maintenance of Records – a provision shall be included in the contract which shall require the contractors to maintain all required records for three (3) years after the grantees or subgrantees/non-Federal entities make final payment and all other pending matters are closed.<sup>56</sup> The records shall be sufficient enough to detail the significant history of the procurement. These records will include, but are not necessarily limited to, the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.<sup>57</sup>

Damages – contracts for more than the Simplified Acquisition Threshold shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms and provide for such sanctions and penalties as may be appropriate.<sup>58</sup>

- Domestic Preferences for Procurements - As appropriate and to the extent consistent with law, the non-Federal entity should provide a preference for the purchase of materials produced in the United States. The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.<sup>59</sup>
- Prohibition on Certain Telecommunications and Video Surveillance services or equipment - Subrecipients are prohibited from obligating or expending loan or grant funds to: a) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by

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<sup>54</sup> 2 CFR § 200.336(a)

<sup>55</sup> 2 CFR § 200.322

<sup>56</sup> 2 CFR § 200.334

<sup>57</sup> 2 CFR § 200.318(i)

<sup>58</sup> 2 CFR § 200.326, Appendix II to 2 CFR Part 200

<sup>59</sup> 2 CFR § 200.322

Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities) or b) For the purpose of public safety, security of government facilities, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliates).<sup>60</sup>

#### Cost Analysis & Independent Estimate Requirement

The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make an independent estimate before receiving bids or proposals.<sup>61</sup>

The non-Federal entity must 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 must 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.<sup>62</sup>

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 non-Federal entity under Subpart E—Cost Principles of the Uniform Guidance. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.<sup>63</sup>

The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.<sup>64</sup>

#### Debarred and Suspended Parties

The non-Federal entity must 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 as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. 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

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<sup>60</sup> 2 CFR § 200.216

<sup>61</sup> 2 CFR § 200.324(a)

<sup>62</sup> 2 CFR § 200.324(b)

<sup>63</sup> 2 CFR § 200.324(c)

<sup>64</sup> 2 CFR § 200.324(d)

<sup>65</sup> Removed

participation in Federal assistance programs or activities.<sup>66</sup> No contracts or subcontracts shall be made at any time to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs.

#### Documentation and Awarding Agency Review

The non-Federal entity must make available, upon request of 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. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the non-Federal entity desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.<sup>67</sup>

The non-Federal entity must make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals (RFPs) or invitations for bids, or independent cost estimates, when:

- The non-Federal entity's procurement procedures or operation fails to comply with the procurement standards in the Uniform Guidance.
- The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation.
- The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product.
- The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or
- A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.<sup>68</sup>

The non-Federal entity is exempt from the pre-procurement review described above if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of the Uniform Guidance. The non-Federal entity 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 in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third-party contracts are awarded on a regular basis.

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<sup>66</sup> 2 CFR § 200.214

<sup>67</sup> 2 CFR § 200.325(a)

<sup>68</sup> 2 CFR § 200.325(b)

The non-Federal entity 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 non-Federal entity that it is complying with these standards. The non-Federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.<sup>69</sup>

All steps of the procurement process must be documented including solicitations, selection process, contract negotiations and award.

In addition, all documents (e.g., proposal review forms, cost analysis work papers, etc.) developed during the procurement process must be maintained as required in the record keeping and maintenance provisions of the Uniform Guidance. If a procurement requires state approval, a copy of that approval must also be retained. For competitive procurement through RFPs the following must be documented:

- The name and title of the individual initiating the procurement process.
- The date the procurement process began (i.e., the date of decision to procure):
- Information relating to the amount and source(s) of available funds.
- The description of the supplies, property, or services to be procured.
- A list of service providers who received direct solicitations, and any publications which were made, or for Requests for Quotation where verbal solicitations were conducted, the name of the individual contacted and the name of the individual making the contact.
- The prices or proposals received.
- For RFPs, a copy of the request, which was released, a copy of all proposals received and the evaluations of proposals received;
- The name(s) of the offeror(s) selected for award.
- When the lowest offer is not accepted, additional justification for the selection; and
- The name, title, and signature of the individual with final approval authority.

### Bonding Requirements

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

- A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

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<sup>69</sup> 2 CFR § 200.325(c)

- A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” assures payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.<sup>70</sup>

### Economies and Efficiencies

Proposed procurement shall be reviewed to avoid acquisition of unnecessary or duplicative items. Consideration shall be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.<sup>71</sup>

To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the non-Federal entity is encouraged to enter into State and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common goods and services.<sup>72</sup> When feasible, Federal excess and surplus property shall be used in lieu of purchasing new equipment and property, when such use reduces project costs.<sup>73</sup>

When contracting for construction projects, value engineering clauses shall be considered for appropriateness in reducing costs. Value engineering is systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.<sup>74</sup>

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<sup>70</sup> 2 CFR § 200.326

<sup>71</sup> 2 CFR § 200.318(d)

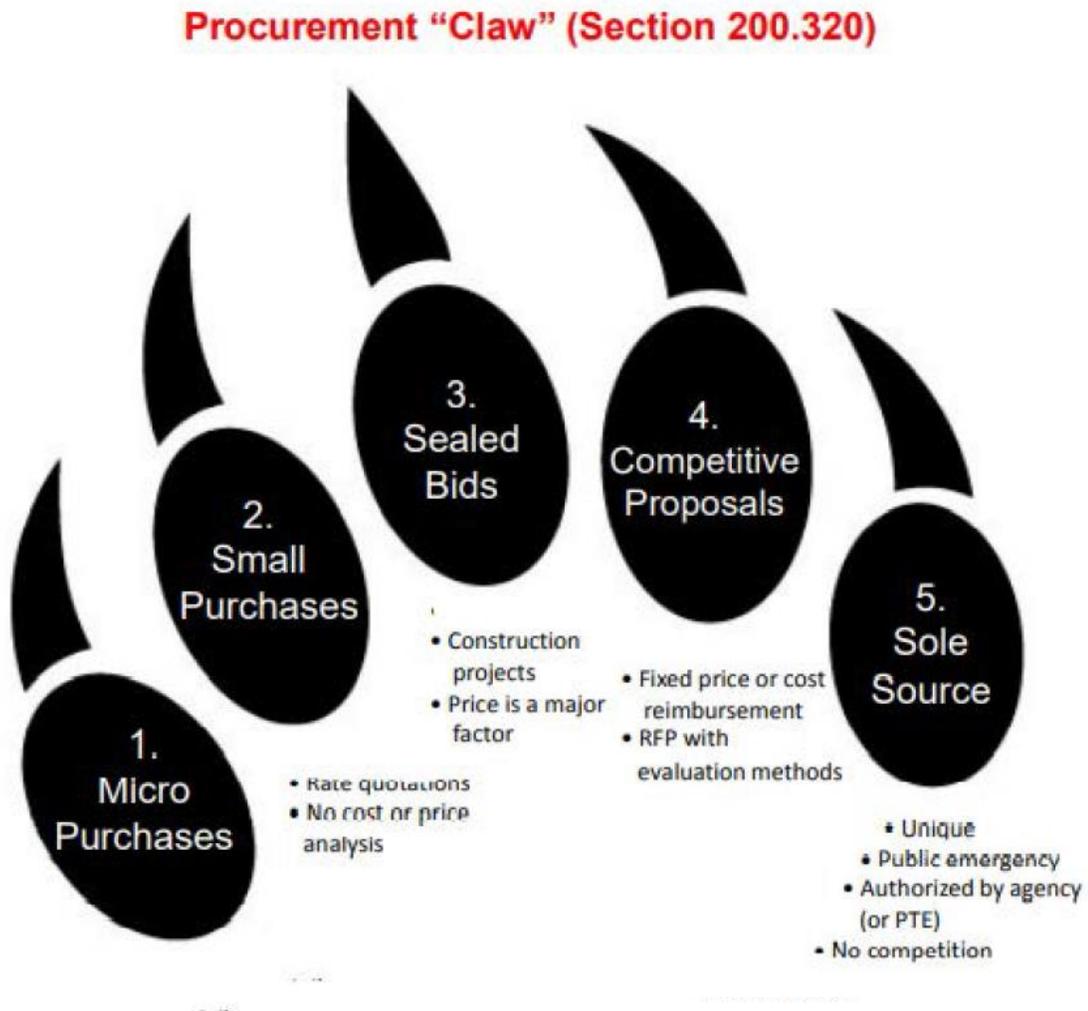
<sup>72</sup> 2 CFR § 200.318(e)

<sup>73</sup> 2 CFR § 200.318(f)

<sup>74</sup> 2 CFR § 200.318(g)

## Methods of Procurement

When explaining procurement methods, the Procurement “Claw” is often used to show the set of methods. Below is a frequently used illustration:



### ***Informal Procurement Methods – Micro and Small***

The non-Federal entity may use informal procurement methods to expedite the completion of transactions and minimize the associated administrative burden & cost as outlined below.

### ***Micro-Purchase Procedures – currently up to \$10,000 or self-selection to \$50,000***

Generally, the micro-purchase threshold for procurement activities administered under Federal awards is not to exceed the amount set by the FAR at [48 CFR part 2, subpart 2.1](#), unless a higher threshold is requested by the non-Federal entity and approved by the cognizant agency for indirect costs.

<sup>75</sup> 2 CFR §200.1 & [48 CFR part 2, subpart 2.1](#)

Micro-purchases may be awarded without soliciting competitive price or rate quotations if the non-Federal entity considers the price to be reasonable based on research, experience, purchase history or other information and documents it in files accordingly. Purchase cards can be used for micro-purchases if procedures are documented and approved by the non-Federal entity. To the maximum extent practicable, the non-Federal entity should distribute micro-purchases equitably among qualified suppliers.<sup>76</sup>

The non-Federal entity is responsible for determining and documenting an appropriate micro-purchase threshold based on internal controls, an evaluation of risk, and its documented procurement procedures. The micro-purchase threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations. Non-Federal entities may establish a threshold higher than the Federal threshold established in the Federal Acquisition Regulations (FAR) in accordance with below:

*Non-Federal entity may increase to the micro-purchase threshold up to \$50,000.*

Non-Federal entities may establish a threshold higher than the micro-purchase threshold identified in the FAR in accordance with the requirements of this section. The non-Federal entity may self-certify a threshold up to \$50,000 on an annual basis and must maintain documentation to be made available to the Federal awarding agency and auditors in accordance with § 200.334. The self-certification must include a justification, clear identification of the threshold, and supporting documentation of any of the following:

- (A) A qualification as a low-risk auditee, in accordance with the criteria in § 200.520 for the most recent audit.
- (B) An annual internal institutional risk assessment to identify, mitigate, and manage financial risks; or,
- (C) For public institutions, a higher threshold consistent with State law.<sup>77</sup>

*Non-Federal entity increase to the micro-purchase threshold over \$50,000.*

Micro-purchase thresholds higher than \$50,000 must be approved by the cognizant agency for indirect costs.<sup>78</sup>

**Ohio Administrative Code, Rule 5101:9-4-07.1 (B)(1): <https://codes.ohio.gov/ohio-administrative-code/rule-5101:9-4-07.1> is the Ohio guide to micro purchases and currently does not recognize either exception to exceed the micro-purchase threshold as set by the federal acquisition regulation at 48 C.F.R. subpart 2.1.**<sup>79</sup>

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<sup>76</sup> 2 CFR § 200.320(a)(1) (i and ii)

<sup>77</sup> 2 CFR § 200.320(a)(1) (iii and iv)

<sup>78</sup> 2 CFR § 200.320(a)(1) (v)

<sup>79</sup> Ohio Administrative Code, Rule 5101:9-4-07.1 (B)(1)

### ***Small Purchase Procedures up to \$250,000***

Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold (set at \$250,000). If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources but not less than three sources, if available.<sup>80</sup>

The non-Federal entity is responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk and its documented procurement procedures which must not exceed the threshold established in the FAR. When applicable, a lower simplified acquisition threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations.<sup>81</sup>

### ***Formal procurement methods***

#### ***Sealed Bids***

Bids are publicly solicited, and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is the lowest price.<sup>82</sup>

In order for sealed bidding to be feasible, the following conditions should be present:

- A complete, adequate, and realistic specification or purchase description is available;
- Two or more responsible bidders are willing and able to compete effectively and for the business; and
- 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.<sup>83</sup>

If sealed bids are used, the following requirements apply:

- Bids must be solicited from an adequate number of qualified sources, providing them sufficient response time prior to the date set for opening the bids, for local governments, the invitation for bids must be publicly advertised.
- The invitation for bids, which will include any specification and pertinent attachments, shall define items or services in order for the bidder to properly respond.
- All bids will be publicly opened at the time and place prescribed in the invitation for bids.

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<sup>80</sup> Ohio Administrative Code, Rule 5101:9-4-07.1 (B)(2)(a)

<sup>81</sup> 2 CFR § 200.320(a)(2)

<sup>82</sup> 2 CFR § 200.320(b)(1)

<sup>83</sup> 2 CFR § 200.320(b)(1)(i)

- A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs 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.<sup>84</sup>

### ***Competitive Proposals***

The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

- 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.
- Proposals will be solicited from an adequate number of qualified sources.
- The non-Federal entity will have a written method for conducting technical evaluations of the proposals received and for selecting recipients.
- Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and
- The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of A/E professional services whereby competitors' 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 though A/E firms are a potential source to perform the proposed effort.<sup>85</sup>

### ***Noncompetitive procurement method***

Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

Procurement by noncompetitive proposals may be used only when the award of contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and one of the following circumstances applies:

- The item 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; or
- After solicitation of a number of sources, competition is determined inadequate.<sup>86</sup>

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<sup>84</sup> 2 CFR § 200.320(b)(1)(ii)

<sup>85</sup> 2 CFR § 200.320(b)(2)

<sup>86</sup> 2 CFR § 200.320(c)

Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits, is required.

The awarding agency may require the proposed procurement be submitted for pre-award review.

#### Monitoring of Local Procurement Practices

Monitoring shall be conducted on an annual basis to ensure compliance with the Uniform Guidance requirements for grants and agreements. If problems are identified, corrective action will be required, see the Monitoring section of the WIOA financial handbook.

#### Protest Procedures

The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.<sup>87</sup>

### **Pay-for-Performance Contracts**

A pay-for-performance contract is a type of performance-based contract and may only be entered into when it is part of pay-for-performance contract strategy described below.<sup>88</sup> In accordance with 2 CFR § 200.323, the use of cost-plus percentage contracts is prohibited.<sup>89</sup>

Pay-for-performance contracts must be in compliance with this Procurement Standards Policy.<sup>90</sup>

#### Pay-For-Performance Contract Strategy

“Pay-for-performance contract strategy” means a procurement strategy that uses pay-for-performance contracts in the provision of training services described in sec.134(c)(3) or 129(c)(2) of WIOA and includes:

- i. Contracts, each of which shall specify a fixed amount that will be paid to an eligible service provider (which may include a local or national community-based organization or intermediary, community college, or other training provider, that is

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<sup>87</sup> 2 CFR § 200.318(k)

<sup>88</sup> 20 CFR § 683.510(a) and (b)

<sup>89</sup> 20 CFR § 683.510(c)

<sup>90</sup> 20 CFR § 683.540(c)(3)

an eligible provider of training services or of youth workforce development activities, as appropriate) based on the achievement of specified levels of performance described in 116(b)(2)(A) for target populations as identified by the local board (including individuals with barriers to employment), within a defined timetable, and which may provide for bonus and/or incentive payments to such service provider.

1. Bonus payments for achieving outcomes above and beyond those specified in the contract may be used by the service provider to expand capacity to provide effective training.
  2. Incentive payments must be consistent with incentive payments for performance-based contracting as described in the Federal Acquisition Regulations (FAR).
- ii. A strategy for independently validating the achievement of performance described above; and
  - iii. A description of how the state or local area will reallocate funds not paid to a provider because the achievement of performance did not occur, for further activities related to such a procurement strategy, subject to Sec. 189(g)(2)(D) of WIOA, which states that funds used to carry out pay-for-performance contract strategies by local areas shall remain available until expended.<sup>91</sup>

A pay-for-performance contract strategy has four distinct characteristics:

- i. It is a strategy to use WIOA pay-for-performance contracts.
- ii. It must include the identification of the problem space and target populations for which the local area will pursue a WIOA pay-for-performance contract strategy; the outcome the local area would hope to achieve through a pay-for-performance contract relative to baseline performance; the acceptable cost to government associated with implementing such a strategy; and a feasibility study to determine whether the intervention is suitable for a WIOA pay-for-performance contracting strategy.
- iii. It must include a strategy for independently validating the performance outcomes achieved under each contract within the strategy prior to the payment occurring; and
- iv. It must include a description of how the state or local area will reallocate funds to other activities under the contract strategy in the event a service provider does not achieve performance benchmarks under a WIOA pay-for-performance contract.<sup>92</sup>

#### Funding to Support Pay-For-Performance Contract Strategies

For pay-for-performance contract strategies providing adult and dislocated worker training services, funds allocated under Sec. 133(b)(2)-(3) of WIOA can be used. For pay-for-performance contract strategies providing youth activities, funds allocated under Sec. 128(b) of WIOA can be used.<sup>93</sup>

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<sup>91</sup> WIOA Section 3(47), 20 CFR § 683.510

<sup>92</sup> 20 CFR § 683.500(a)

No more than 10 percent of the total adult and dislocated worker allotments can be expended on the implementation of pay-for-performance strategies for adult training services described in Sec. 134(c)(3) of WIOA. No more than 10 percent of the local youth allotment can be expended on the implementation of WIOA pay-for-performance contract strategies for youth training services and other activities described in Sec. 129(c)(1)-(2) of WIOA.<sup>93</sup>

### **Designation and Certification of One-Stop Operators**

WIOAPL 16-08 (Procurement of the OhioMeansJobs Center Operator and Provider of Career Services) is the Ohio Policy on One-Stop procurement that will be followed.<sup>94</sup>

An entity (which may be a consortium of entities) shall be designated or certified as a one-stop operator through:

- i. A competitive process; and
- ii. Shall be an entity (public, private, or nonprofit), or consortium of entities (including entities that, at a minimum, includes 3 or more of the required one-stop partners) of demonstrated effectiveness, located in the local area, which may include:
  1. An institution of higher education.
  2. An employment service agency established under the Wagner-Peyser Act on behalf of the local office of the agency.
  3. A community-based organization, nonprofit organization, or intermediary.
  4. A private for-profit entity.
  5. A government agency; and
  6. Another interested organization or entity, which may include a local chamber of commerce or other business organization.<sup>95</sup>

#### Exception

Elementary schools and secondary schools shall not be eligible for designation or certification as one-stop operators, except that nontraditional public secondary schools and area vocational education schools shall be eligible for such designation or certification.<sup>96</sup>

### **Youth Workforce Development Activities: Competitive Selection Requirements**

Section 305.190 of the Amended Substitute Ohio House Bill 64 of the 131st General Assembly, the state's biennial budget, created the Comprehensive Case Management Employment Program (CCMEP), combining Workforce Innovation Opportunity Act (WIOA) Youth and Temporary Assistance for Needy Families (TANF) funds to provide

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<sup>93</sup> 20 CFR § 683.520(b)

<sup>94</sup> <https://emanuals.jfs.ohio.gov/Workforce/WIOA/WIOAPL/WIOAPL-16-08.stm>

<sup>95</sup> WIOA Section 121(d)(2)(A)

<sup>96</sup> WIOA Section 121(d)(3)

employment, training, and other supportive services to low-income and out-of-school youth ages 14 to 24. Within this legislation, it is required each county commissioner board designate a lead agency.

Within the workforce area, each County Department of Job and Family Services agency was designated as the lead agency. This lead agency has been and can continue to be ratified by the Workforce Development Board and amended into existing WIOA agreements.

Ohio WIOAPL 17-03 (Procurement of the Comprehensive Case Management and Employment Program Provider for WIOA Youth-Funded Activities and Services) is the Ohio Policy on youth procurement that will be followed.<sup>97</sup>

### Competitive Selection Requirements

The local board shall award grants or contracts on a competitive basis to providers of youth workforce development activities taking into consideration the ability of the providers to meet performance accountability measures established in Sec. 116.<sup>98</sup>

### Exception

A local board may award grants or contracts on a sole-source basis (i.e., through a noncompetitive process) if it determines that there is an insufficient number of eligible providers in the local area involved (such as a rural area) to accommodate competitive selection requirements.<sup>99</sup>

### Criteria in the State Plan

The State will expect the local areas to include criteria to be used by the local boards in awarding grants for youth workforce development activities and describing how the local boards will take into consideration the ability of the providers to meet performance accountability measures as described in Sec. 116(b)(2)(A)(ii).<sup>100</sup> Such criteria will be determined by the local Workforce Development Board and standing committees, if appropriate, but should include, as well as any local additions:

- i. Success rates based on enrollments and completions.
- ii. Provisions of accommodations for special needs populations.
- iii. Involvement of local employers, business, and community resources.
- iv. Consideration of assessed needs.
- v. Attainment of employment and academic credentials.
- vi. Leading to credentials, diplomas, and equivalents.
- vii. Improving educational and skill competencies.
- viii. Ensuring youth of opportunities for positive mentoring experiences.
- ix. Providing training opportunities to eligible youth.
- x. Strengthening leadership, youth developments, decision-making, citizenship, and community service.

<sup>97</sup> <https://emanuals.ifs.ohio.gov/Workforce/WIOA/WIOAPL/WIOAPL-17-03.stm>

<sup>98</sup> WIOA Section 123(a)

<sup>98</sup> WIOA Section 123(b)

<sup>100</sup> WIOA Section 102(b)(2)(D)(i)(V)

In addition, the local Workforce Development Boards shall identify eligible providers of youth workforce development activities by awarding grants or contracts on a competitive basis (subject to the exceptions in state policy). The primary consideration in selecting agencies or organizations shall be the effectiveness of the agency or organization in delivering comparable or related services based on demonstrated performance. This determination shall be in writing and take into consideration such matters as whether the organization has:

- i. The ability to meet the program design specifications at a reasonable cost, as well as the ability to meet performance goals.
- ii. Adequate financial resources or the ability to obtain them.
- iii. A satisfactory record of past performance (in job training, basic skills training, youth activities), including demonstrated quality of training and reasonable dropout rates.
- iv. The ability to provide, or arrange for, appropriate supportive services as specified in the individual employment plan.
- v. The ability to provide services that can lead to the achievement of competency standards for participants with identified deficiencies.
- vi. A satisfactory record of integrity, business ethics, and fiscal accountability.
- vii. The necessary organization, experience, accounting, and operation controls, and
- viii. The technical skills to perform the work.

## **STATE OF OHIO FRAUD HOTLINE**

In compliance with the State of Ohio's Fraud Law (HB 66), the WIOA area is notifying all of its employees and subrecipients of the following: If you suspect fraud, waste, or misuse of taxpayer funds, call the Auditor of State's Fraud Hotline: 1-866-FRAUD OH (1-886-372-8364). Or send your tip by e-mail at <http://www.auditor.state.oh.us/fraudcenter/siu/complaint/complaint.aspx> or a letter addressed to:

Ohio Auditor of State's Office  
Special Investigations Unit  
88 E. Broad Street  
Columbus OH 43215

### **What to include when reporting fraud?**

- A detailed description of the suspected theft/fraud. Provide as much detail as possible, specify who, what, where, when, and how.
- The agency where suspected fraud is taking place.
- Copies of all available documentation.
- Identify any witnesses who may have knowledge of the suspected theft/fraud. Include their contact information whenever possible.
- Although anonymous complaints are welcome, we encourage you to leave your contact information in case additional information or explanation is required.

## Conclusion

Guidance evolves and the Uniform Guidance design illustrates this; for example, the micro-purchase threshold is not set but adjusted. Also changing is the DOL and state guidance, it is the responsibility of the local board to educate and administrate the area's employment and training programs, including the financial component. As guidance is developed at the state and federal level, the local area will comply. If state and federal differ, the strictest will be followed. The local area will adopt state and federal policy on the date recommended/required by the issuing agency. If flexibility in phase-in is offered, it will also be offered by the local area unless otherwise advised in writing.

Therefore, this guidance is a local tool that should be used in conjunction with the WIOA Financial Handbook, but the final authority is the most-recent, strictest state or federal legislation.

Suggestions for improvement, can be sent to [Rebecca@omj15.com](mailto:Rebecca@omj15.com).

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## **Reference:**

The Workforce Innovation and Opportunity Act (WIOA); WIOA Regulations; Uniform Guidance 2 CFR § 200 [eCFR :: 2 CFR Part 200 -- Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards](#);

DOL codification: 2 CFR § 2900 [eCFR :: 2 CFR Part 2900 -- Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards](#);

State WIOA policy and guidance [https://jfs.ohio.gov/owd/WorkforceProf/policy\\_info.stm](https://jfs.ohio.gov/owd/WorkforceProf/policy_info.stm) ;

Ohio Revised Code: <https://codes.ohio.gov/ohio-revised-code>

Ohio Administrative Code: <https://codes.ohio.gov/ohio-administrative-code>

# Procurement Handbook Summary

## Preface

This summary is **not meant** to replace review of the Handbook, just to be a quick guide to the applicable sections often used.

## **Subrecipient/Contractor Determination – page 4**

The determination of the contract relationship is one of the first steps in deciding the relationship. It is recommended that you use the monitoring form (in monitoring section of website) to decide and document the level of responsibility that the contractor will have as a basis for contract construction. Keep and start your monitoring file now.

## **Cost Analysis & Independent Estimate Requirement, page 17**

You must perform a cost or price analysis for every procurement over the Simplified Acquisition Threshold (set at \$250,000) including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement. As a starting point, you must make an independent estimate before receiving bids or proposals.<sup>61</sup>

## **Useful illustrations to determine the level of procurement for contractors**

ODJFS Procurement Requirements Summary, page 6  
Procurement “Claw,” page 21

## Levels of Procurement

### **Micro-Purchase – currently up to \$10,000 or self-selection to \$50,000, page 21**

Generally, the micro-purchase threshold is not to exceed the amount set by the FAR at [48 CFR part 2, subpart 2.1](#), unless a higher threshold is requested by the non-Federal entity and approved by the cognizant agency for indirect costs. Ohio’s guidance is at OAC, Rule 5101:9-4-07.1 (B)(1): <https://codes.ohio.gov/ohio-administrative-code/rule-5101:9-4-07.1> and currently does **not** recognize an exception to exceed.

Micro-purchases may be awarded without soliciting competitive price or quotations if you consider the price to be reasonable based on research, experience, purchase history or other information and documents it and files accordingly. Purchase cards can be used for micro-purchases if procedures are documented and approved by the non-Federal entity. To the maximum extent practicable, the non-Federal entity should distribute micro-purchases equitably among qualified suppliers.

### **Small Purchase Procedures up to \$250,000, page 23**

Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold (set at \$250,000). If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources but not less than three sources, if available.<sup>80</sup> (3 in OAC, not Uniform Guidance)

## **Sealed Bids, page 23**

Cost is the main factor. Bids are publicly solicited,... award is the lowest price.<sup>82</sup>

In order for sealed bidding to be feasible, the following conditions should be present:  
A complete, adequate, and realistic specification or purchase description is available;  
Two or more responsible bidders compete effectively and for the business; and  
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.**<sup>83</sup>

## **Competitive Proposals, page 24**

The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used for quality over price. The following requirements apply:

Must be publicized (once a wk, for 2 consecutive weeks, minimum Ohio)

Proposals will be solicited from an adequate number of qualified sources.

Written evaluations required.

Awards to most advantageous to the program, with price and other factors considered.

## **Noncompetitive procurement method, page 24**

Procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate (or failed).

Procurement by noncompetitive proposals may be used only when the award of contract is infeasible under other methods and one of the following circumstances applies:

The item is available only from a single source.

A public exigency or emergency will not permit a delay for competitive solicitation.

The awarding agency authorizes noncompetitive proposals; or

After solicitation of a number of sources, competition is determined inadequate.<sup>86</sup>

## **Records Retention, page 8**

Financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a federal award must be retained for a period of three years<sup>23</sup> from the date of submission of the final expenditure report, per OAC 5101: 9-9-21 and the state sub agreement. The Uniform Guidance at § 200.334-7 further detail the records retention requirements.

## **Conclusion**

This is a summary, read the Handbook and the links for complete guidance.

Stay current-\$ limits change and may be more restrictive for your county/agency.

Contact [Rebecca@omj15.com](mailto:Rebecca@omj15.com) if you are aware of a change/error/suggestion for improvement. Thank you!

## Independent Estimate

Required for any purchase over the FAR simplified acquisition threshold=\$250,000 (ie Small purchases or greater)

[Part 2 - Definitions of Words and Terms | Acquisition.GOV](#)

If small purchase procedures are used, price or rate quotations must be obtained from at least three sources.

Ohio Administrative Code, Rule 5101:9-4-07.1 (B)(2)(a)

Purchase:

Date:

Need for purchase:

Independent Estimate: \$ \_\_\_\_\_

Basis for estimate (can use historic data adjusted for inflation):

My independent estimate is... Enlarge box and complete

Signature:

Date:

### If Small Purchase - Complete this section

Then do Price or rate quotes from at least 3 sources per Ohio OAC

1)Price or rate quote:

2)Price or rate quote:

3)Price or rate quote:

Attach documentation, as appropriate

Chosen:

Reason:... Enlarge box and complete

Signature:

Date:

Purchase:

0 Date

0

**If Competitive Purchase - Complete this section - Else go to next page  
Cost/Price Analysis**

**Part I-General**

1. Proposer's computations checked and verified	Yes	No
Problems/Comments :		
2. All necessary cost elements are included.	Yes	No
Problems/Comments:		
3. Supporting documentation & justification complete (budget narrative).	Yes	No
Problems/Comments: The budget is detailed and clear. Line items are explained fully and costs seem		
4. Categorization (Salaries, Operating, Support Services, Indirect Costs):	Yes	No
Costs correctly categorized?	Yes	No
Need more information?	Yes	No
Problems/Comments:		

**Part II-Specific Costs**

Cost Element (Budget Line Item)	Necessary / Reasonable	Basis for Judgment Independent Agency Estimate Compared to Other Current Offers Compared to Other Past Offers Verified Market Price or Quote Other
A. Salaries/Benefits		
Problems/Comments:		
B. Operating Costs/Supplies/Materials		
Problems/Comments :		
C. Supportive Services		
Problems/Comments:		
D. Indirect Costs		
Problems/Comments :		
E. Consumable Supplies		
Problems/Comments :		
F. Occupancy		
Problems/Comments :		
G. Insurance		
Problems/Comments :		
H. Travel/Mileage		
Problems/Comments :		
I. Miscellaneous		
Problems/Comments :		

Purchase:

0 Date

0

**Part III-Profit**

What is the amount of profit:	
a) If profit is deemed reasonable, describe the basis for judgment:	
b) If profit is deemed excessive, list profit objective (% or dollar amount) to be negotiated:	

**Part IV-Conduision**

Prepare a brief narrative citing:	
1. Specific additional cost justification needed	
2. Recommended adjustments to specific costs elements; and	
3. Any other comments about cost/price.	
Signature:	
Date:	