

Cape Fear Local Policy No. P-WDB-013-2018

Subject: CFWDB Purchase and Procurement Policy

Purpose: Local Workforce Development Boards are required to establish and maintain procurement and contracting policies and procedures to ensure full and open competition. This policy provides guidance to the Cape Fear Workforce Development Board (CFWDB) to ensure compliance with the state and federal regulations for the proper procurement and contracting for services.

Policy: It is the intent of the CFWDB to ensure fair and lawful awarding of contracts to qualified, eligible service providers. The CFWDB currently awards cost reimbursement contracts; however, the Board reserves the right to use fixed-unit or performance-based contracting. Purchasing is subject to all the stipulations expressed by NC General Statutes as well as any grant agreements.

Action: The CFWDB shall have overall authority for procuring service under the Workforce Innovation and Opportunity Act (WIOA). The CFWDB may, at their own discretion, delegate certain functions within the procurement and purchasing process. Procedures for Purchasing and Procurement are identified in CFWDB Procedure PR-WDB-011-2018 and in the Division of Workforce Solutions Policy Statement PS-21-2017 attached to this policy.

Effective Date: April 20, 2018

Expiration Date: Indefinite

Contact: Cape Fear Workforce Development Board Director

Distribution: CFWDB WIOA Providers
CFWDB Staff
NC Division of Workforce Solutions

Attachments: **Attachment A** – PR-WDB-011-2018 Purchasing and Procurement Procedures
Attachment B - DWS Policy Statement PS 21-2017

CAPE FEAR LOCAL AREA PROCEDURE NO. PR-CFWDB-011-2018

Subject: Purchasing and Procurement Procedures of the Cape Fear Workforce Development Board

The Cape Fear Workforce Development Board (CFWDB) serves the Cape Fear Local Area as the sub-recipient of Workforce Innovation and Opportunity Act (WIOA) funds. The Local Area consists of the following North Carolina counties: Brunswick, Columbus, New Hanover, and Pender. The CFWDB has the responsibility to provide policy guidelines for the purchasing, procurement, and contracting of goods and services for the Local Area WIOA programs.

A. COMPETITIVE PROCUREMENT OPTIONS

1. Micro-Purchase Option: \$0 - \$2,500. An acquisition of products or services where the aggregate amount does not exceed \$2,500. Purchases below this threshold may be made without soliciting competitive price or rate quotations if the price is considered to be reasonable. A reasonable price may be by comparing to a previous purchase, personal knowledge of the item being purchased, or by comparing to similar items being purchased. Records still need to be kept for all purchases regardless of the procurement method used, including micro-purchases. Also, to the extent practicable, micro-purchases must be distributed equitably among qualified suppliers.
2. Small Purchase Option: \$2,501 - \$5,000. A simple and informal competitive process for securing services, supplies and other property that do not cost more than \$5,000 in the aggregate on an annual basis is allowable. For purposes of economy, responsiveness to needs and administrative efficiency, the CFWDB may consolidate procurements for similar needs (e.g., yearly requirements for office consumables or instructional materials), or break out project requirements into more than one procurement (e.g., separating computer hardware, and software) in order to procure the best and most effective items in each category. This option may **not** be used to purchase training services.

The CFWDB must not break out purchase requirements for the sole purpose of staying under the aggregate limit of \$5,000 or the administrative entity's limit, if lower. The following requirements must be met and documented:

- a) Price Quotes. A minimum of three price quotes is required, which are supported by documentation consisting of product or service catalogues, current price lists, or telephone quotes substantiated by a written record of the price and source providing the quote, which is signed and dated by the staff person who obtained the quotes. When a minimum of three quotes cannot be obtained, the justification for sole source procurement must be met.

- b) Basis for Selection. For most commodity goods/services, the basis for selection would be the lowest price. If the basis is something other than price, the criteria for selection must be documented (e.g., the need and benefit of the purchase and the relative advantage of the offering from the provider selected).
- c) Formal Document. A purchase order, letter of agreement, or contract must be issued. Unless specified, a bilateral contract is not required. Purchase orders, vouchers, bills, sales slips or similar records can provide documentation. **NOTE:** For the purchase of consumable materials under \$5,000 per transaction, non- competitive procurement is an option.
3. Aggregate Purchase. A purchase of multiple items of the same product. The aggregate purchase costing **\$5,000** and over, **must** have review and written approval by the DWS before the purchase is completed. The filing is to be submitted to the assigned DWS Financial Monitor a minimum of ten (10) business days prior to purchase. During the onsite monitoring, the DWS Financial Monitor will review the purchase documentation against the filing submitted to DWS.
4. Requests for Proposals (RFP). Competitive proposals shall be the method of procurement of program activity type services except as provided for under noncompetitive proposals. An RFP is commonly used in procuring training or services for participants when potentially more than one entity would be submitting offers and program specifications are too broad to compare responses solely on the basis of cost. The solicitation must clearly specify deliverables and the basis for payment and incorporate a clear and accurate description of the technical requirements for the material, product, or services being procured (including quantities).
- a) Contents of RFP. Requests for Proposals must include the following elements:
- Name and address of the CFCOG as the administrative entity.
 - Name, address and phone number of person(s) to contact regarding the solicitation.
 - General description of the sub-grant program, including identification of the applicable federal and state laws and regulations with which the selected contractor must comply. **[NOTE:** At a minimum, the CFWDB should reference the Workforce Innovation and Opportunity Act; USDOL Regulations; and any appropriate NC Division on Workforce Solutions policy statement(s).]
 - The population to be served and minimum levels of services to specific target groups.
 - An estimate of the number/range of individuals to be served and expected results in each activity.
 - Applicable coordination requirements.
 - Funding parameters by activity must include a reasonable amount. An RFP with no funding or nominal funding will restrict competition and would violate

the prohibition on noncompetitive pricing practices under 2 CFR 200.319(a) and 29 CFR 97.36(c)(1)(iii).

- A description of the training and/or services to be provided.
- The period of performance.
- Applicable monitoring and reporting requirements, including, but not limited to, data entry, performance, and financial reporting.
- Other services or requirements (e.g., responsibility for eligibility determination, CFWDB policy on support payments, audit requirements and work statement requirements) that will affect proper budgeting by the offeror.
- Prohibition against subcontracting without CFWDB approval.
- Line item budget of proposed costs, including any profit to be realized and/or funds to be contributed.
- Documentation to be supplied by the offeror to establish its programmatic and financial capability to perform the work.
- Requirements for preparation and submission of the proposal, due date and time, content and format, number of copies and location/person where the bid should be submitted.
- Process and procedures by which proposals will be evaluated for competitiveness, including identification of specific criteria which will be used.
- Description of the procedures for responding to bidder inquiries and a schedule for the receipt of proposals including approximate dates for review and award.
- Grievance procedures for contesting the procurement process.
- Affirmative action assurance that the offeror will comply fully with the nondiscrimination and equal opportunity provisions of the Workforce Innovation and Opportunity Act, the Non-traditional Employment for Women Act of 1991; Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975, as amended; Title IX of the Education Amendments of 1972, as amended; and with all applicable requirements imposed by or pursuant to regulations implementing those laws, including but not limited to 29 CFR Part 34. The United States has the right to seek judicial enforcement of this assurance.

The CFWDB may choose to include other background and reference information in the solicitation. In organizing the solicitation package, the CFWDB shall clearly distinguish information which is general background from that which is directly applicable to preparing and submitting a competitive proposal.

- b) Publication Requirements and Clarifying Information. The CFWDB must provide adequate public notice of the solicitation prior to the date established for submission. Such notice must include written notification to all organizations on the current, applicable bidders' list and written publication in newspaper(s) of general (i.e., the CFWDB's service area) circulation or posting to an accessible website.

A second public notice does not have to be completed if the RFP is being

distributed in conjunction with an intention to bid process. In this case, the RFP must be distributed to the providers responding to the intention to bid, as well as to any party requesting it.

To provide the opportunity for a maximum number of qualified organizations to prepare bids, it is strongly recommended that the public notice be issued a minimum of 30 days prior to the submission date for proposals.

If inquiries are to be accepted, the solicitation should describe the process for receiving/responding to the inquiries. Any comments provided in response to inquiries must be provided to all recipients of the RFP.

- c) Amendments to Solicitations. If a determination is made to amend (expand or restrict) the solicitation, distribution of this information to each person or organization who received an RFP is required.
- d) Evaluating for Competitiveness/Demonstrated Performance. Criteria has been established for evaluating competitiveness and demonstrated performance of the proposals. Local Area staff will review all proposals received to verify compliance with the requirements of the RFP. Local Area staff will then provide copies of all eligible proposals to a committee consisting of Board members and/or CFWDB staff for evaluating. Committee members evaluate the proposals independently in order to ensure that the evaluator is not influenced by opinions of other members. The RFP shall contain weighted evaluation criteria for scoring the competitiveness of the proposals.
- e) Submission of Bids. Only those proposals that are received on or prior to the deadline specified in the RFP will be eligible for consideration. Upon receipt, proposals will be marked received with the time and date as displayed on the atomic clock in the lobby of the Cape Fear Council of Governments office.
- f) Selection and Award Procedures. Based on the scoring of the Committee, contractor(s) are recommended by the Committee to the full Board for the awarding of a contract or contracts. The board will make the final decision on the awarding of contracts unless authorization is given to Local Area staff to do so. Contracts are not to be signed until board approval is received. Upon CFWDB approval, staff is authorized to negotiate and award contracts.
- g) Use of Contingency Lists. If the CFWDB chooses to use a contingency list for proposals which were not selected for immediate award, but to whom contracts may be awarded if additional funds become available, the list must:
 - Include only proposals that have an evaluation score which meets or exceeds the minimum level defined for competitiveness.
 - Be developed, maintained and used in accordance with established procedures regarding the priority order for using bidders on the list.

5. Intention to Bid. This competitive method maintains the integrity of a competitive procurement process by identifying, through public notice, potential bidders to determine the feasibility of procurement.
- a) Criteria for Use. This procedure is appropriate when there is a high level of uncertainty regarding the number of bids which will be received and whether there will be a sufficient number of bids to justify the development of a solicitation.
- b) Procedural Requirements. To use this method, the CFWDB must complete the steps described below.
- Develop a set of preliminary service specifications for which the CFWDB intends to request bids. The specifications must include the following parameters:
 - i. date the proposed solicitation will be issued
 - ii. specific type of services to be performed
 - iii. estimated number of participants and/or available funds or ranges, if preferred
 - iv. expected period of performance
 - v. geographic area to be served
 - vi. specific target groups to be served, if applicable
 - vii. type of contract to be awarded
 - viii. expected performance
 - Issue a public notification in the same manner as that used for the issuances of RFPs. In addition, issue letters or e-mail notifications to all applicable organizations on the bidders' list, requesting an indication of whether the organization intends to bid on specific training/services which are described in the letter, consistent with the specifications developed in the preceding step. The letter must indicate the date by which a response is to be received. The Intent to Bid forms are to be made a part of the RFP packet and are required to be submitted to the CFWDB on or before a date identified in the RFP. If a Bidder's Conference is held, the Intent to Bid form may be submitted to the CFWDB at that conference.
 - Only those entities, organizations, or persons who submit an Intent to Bid before the due date are eligible to submit a proposal in response to the RFP. Proposals received without an Intent to Bid being previously submitted will not be considered.
 - If the intention to bid process is used and no interest is received, noncompetitive sole source procurement may be used. When one intention to bid response is received, every effort must be made to negotiate desired

training/services with that provider. However, if acceptable services cannot be negotiated, the CFWDB may use a sole source justification to obtain the service. A complete history of this process must be documented in the procurement file.

- c) Limitations. Sole source procurement may not be used if more than one organization indicated its intent to bid. In this case, a solicitation for the services advertised must be developed and transmitted to all who responded to the intention to bid.
6. Request for Quotation/Invitation for Bid (Formal Advertising for Sealed Bids.) Under this method, bids are publicly solicited and a contract is awarded to the responsible offeror whose bid, conforming to all material terms and conditions of the solicitation, is the lowest in price. A fixed-price contract is the preferred method to be used.

PROCUREMENT BY SEALED BIDS MAY NOT BE USED WHEN SECURING PROGRAM OR ACTIVITY TYPE SERVICES.

According to 29 CFR 95.48 and 29 CFR 97.36, all procurement contracts and other transactions between Local Boards and units of state or local government must be conducted only on a cost reimbursement basis. There is no provision for profit allowed. (WIOA Section 184(a)(3)(B).)

- a) Criteria for Use. This method is appropriate and effective when the CFWDB is capable of specifying and describing the desired goods or services to be provided at high level of precision and completeness. The best examples are commodity-type goods/services which are widely available in the marketplace; e.g., computer equipment and software, instructional and testing materials, furniture, or training available to the general public.
- b) Procedural Requirements. The minimum procedural requirements for this method are:
- Prepare a Request for Quotation (RFQ)/Invitation for Bid (IFB). The RFQ/IFB must include full and clear definitions and descriptions of the items to be procured, key performance dimensions or specifications, format for submission of bids, submission deadline and timeframes.
 - Distribute the RFQ/IFB to organizations on established bidders' list and publicly advertise the procurement in a local newspaper with CFWDB area-wide circulation or post to an accessible website, allowing sufficient time prior to the date of bid opening to permit adequate responses to the solicitation.
 - Open all bids publicly at the time and place stated in the RFQ/IFB.
 - Complete a cost or price analysis to determine the reasonableness of cost.

- Award a contract to the responsible offeror whose bid represents the lowest price and conforms to all of the specifications in the RFQ/IFB and meets the demonstrated performance criteria.
- Provide written notification to unsuccessful offerors promptly and file documentation accordingly.

NOTE: The CFWDB can reserve the right to reject any or all bids when there are sound reasons in the best interest of the program. However, the CFWDB must communicate this right in the solicitation.

B. NON-COMPETITIVE PROCUREMENT OPTIONS

Noncompetitive procurement may be necessary in selected situations when competition is not available. This method should be minimized to the extent practicable, but in every case must be justified and documented. This section describes the options and criteria to be used in considering noncompetitive procurement, depending on the specific situation. Although not required, consultation with DWS staff is encouraged when noncompetitive procurement is being considered and the appropriateness of the circumstances are uncertain.

1. Small Value Purchasing Authority (SVPA). To purchase consumable materials without a formal award or competitive bidding process, the small value purchasing authority may be used if all the following requirements are met:
 - a) Purchases are limited to consumable goods and/or supplies and may not exceed \$5,000 per transaction.
 - b) It is used for immediate over-the-counter purchases and/or to take advantage of cost- saving purchases such as advertised specials. Splitting of orders into multiple orders to avoid the dollar limitation is not allowable.
 - c) Documentation of each purchase is maintained, such as a purchase order or detailed sales receipt to show the items bought.
2. Emergency. An emergency situation is one that endangers lives, property, or causes the immediate discontinuation of a vital program and which can be rectified only by immediate on-the spot purchase (or rental) of equipment, supplies, materials, printing, or contractual services. In an occurrence of this nature, where the cost exceeds the micro-purchase limit (\$2,500) the CFWDB should contact the DWS Financial Monitor via email as soon as possible; noting the specific emergency and what measures are being taken to rectify the situation.

The CFWDB should negotiate with a potential vendor(s) in an effort to acquire the quality of good or service needed at the best possible price, delivery, terms and conditions. A solicitation document requesting or inviting an offer(s) shall be issued, including standard language terms and conditions unless circumstances prohibit their use.

Subsequently, whether or not such prior approval was possible, if the expenditure is over the CFWDB's micro-purchase limit, an explanation of the emergency purchase shall be reported in writing to the DWS Financial Monitor. If under the CFWDB's micro-purchase limit, documentation shall be included in the CFWDB's procurement file.

The use of sole sourcing for emergency situations should be infrequent and for limited time periods (i.e., reflecting the emergency). If the need generated by the emergency will continue over an extended period of time, a competitive procurement method must be used after the emergency has been resolved.

3. State Authorized Noncompetitive Procurement. CFWDBs may request authorization from the DWS to use noncompetitive procurement in circumstances when the competitive procurement is not feasible to meet special need and the noncompetitive criteria do not address the special circumstances. A written request must be transmitted to the DWS which includes the following information:
 - a) Purpose of the project
 - b) Agency(ies) involved and the collaboration to be improved
 - c) The circumstances which justify noncompetitive procurement.

The circumstances must involve a real collaborative effort to provide services which will benefit the clients of each agency's use of this criterion. It is not appropriate to procure a broker for services or a provider of services who has no client base to benefit from the project.

NOTE: The ability to use state authorized noncompetitive procurement may not be used if it violates local administrative entity procurement policy.

4. On-the-Job Employer Agreement. Agreements directly with employers for the provision of on-the-job training may be procured noncompetitively. If an intermediary "broker" is contracted to administer the OJT activity, the broker's services must be procured competitively.
5. One Service Provider. The CFWDB may use noncompetitive procurement if it has been determined that the item or service is available only from a single source. Efforts should be made during the next regular procurement cycle to determine if the particular item or service has become available from other sources.
6. Failed Competitive Procurement. The CFWDB may use noncompetitive procurement if it has conducted a competitive procurement process and only one or no competitive bid was received. When the CFWDB receives one competitive bid, every effort must be made to negotiate desired training/services. However, if acceptable services cannot be negotiated or no competitive bids were received, sole source may be

used to obtain the training/service. A complete history of this process must be documented in the procurement file.

7. Unsolicited Proposals for Services. Unsolicited proposals will not be accepted or considered for funding.

C. ADDITIONAL PROCUREMENT GUIDELINES

1. WDB Agreements. The CFWDB may enter into an agreement or contract with another WDB to pay or share the cost of education, training, placing, or providing supportive services to individuals participating in programs funded by the WIOA. Any agreement must be approved by the CFWDB and described in the CFWDB's workforce development plans.
2. Review Process. Noncompetitive procurements must be reviewed for competitiveness and demonstrated performance, just as competitive procurements. Because of the emergency nature of some noncompetitive procurements, the review process may be different since time may be a critical factor with such procurements.
3. Reasonableness of Cost. A determination of cost or price reasonableness must be completed for each procurement action for which an award is made, *both competitive and noncompetitive*, including contract modifications and renewals (unless there is no monetary impact). In making the determinations, the allowability, allocability, appropriateness, and necessity of the proposed levels of projected costs must be considered in relation to the level and scope of services to be provided.
4. Independent Cost/Price Estimates. Development of independent cost/price estimates is required prior to receiving bids or proposals for all procurements. The estimates should be used for internal guidance in determining cost or price reasonableness and should not be included in the solicitation or provided to outside parties.
5. Cost Analysis. Cost analysis is required in determining the reasonableness of a line item budget in a cost reimbursable contract, or through a fixed price contract for specified deliverables in which the price is based on the line item budget and not on market prices. The attached **Program Cost Analysis Guide** (Attachment 2) may be used in the determination of reasonableness of costs decisions.
6. Offeror Certification of Cost Data. When cost analysis is required and there is inadequate competition (e.g., when using a line item budget to establish a fixed price contract and the deliverables are not available on the open market for price comparison), the offeror must certify that to the best of its knowledge and belief the cost data are accurate, complete and current at the time of agreement on the fixed price.

Contracts or modifications negotiated in reliance on such data will provide the CFWDB a right to a price adjustment if it is later discovered that the contractor knowingly submitted data that were not accurate, complete or current as certified (as in discovering through monitoring that the contractor has not hired the staff or purchased materials as proposed in the line item budget on which the fixed price was based).

7. Price Analysis. A simplified price analysis may be used in lieu of a cost analysis when reasonableness can be established on the basis of comparison of catalog or market prices of commercially available products, services or training packages sold in substantial quantities to the general public or based on prices set by law or regulation (e.g., tuition prices).
8. Contract Negotiations. The CFWDB must negotiate with contractors/service providers prior to contract execution to agree on work statement elements and verify the necessity of proposed costs in relation to the elements of service. Written documentation of the negotiations and the final outcome must be maintained in the procurement file.

High-risk contractors/service providers should be determined prior to negotiations so that concerns can be discussed and potential sanctions established during the negotiation process.

9. Range of Negotiations. Negotiations must be structured around CFWDB established priorities, policies, definitions, and parameters included in the solicitation. Negotiation ranges are further defined by the criteria and weights used to evaluate the competitiveness of bids submitted. Negotiations cannot alter the structure of the competitive environment established in the procurement process.
10. Negotiating Profit/Fees. Profit is defined as the contractor's/service provider's return after meeting all WIOA-related operating expenses. It is allowable for for-profit contractors/service providers only. Profit may be paid as a lump sum after services are delivered, in the form of a fee as incremental performance benchmarks are achieved or as part of a fixed unit price. In all cases, the earning of profit must be tied to the reasonable and measurable delivery of the contract objectives.

CFWDBs must not permit excess profit. Profit must be negotiated as a separate cost item and cannot be paid as a percentage of the contract cost. To establish a fair and reasonable profit, consideration must be given to the following criteria, which are included as Attachment 3 to the DWS Policy Statement PS21-2017 "Determination of Reasonableness of Profit Worksheets":

- a) the complexity of the work to be performed
- b) the risk borne by the contractor

- c) the contractor's investment
- d) the amount of subcontracting
- e) the quality of the contractor's record of past performance
- f) industry profit rates in the surrounding geographical areas for similar work
- g) market conditions in the surrounding geographical area

To document that excess profit was not permitted, contractor's/service provider's audits must include a profit schedule and the CFWDB must determine that the profit earned was reasonable in consideration of the work performed.

11. Determining Business Operation Capability. The CFWDB must verify the business operation capability of each potential service provider. Information required to make this determination may be required with submission of the proposal (if an evaluation factor) or obtained during a pre-award review, but the determination must be made prior to contract execution. Items for consideration include:

- a) staffing capabilities
- b) business licenses and/or registrations with appropriate oversight agencies
- c) adequate accounting systems
- d) sufficient bonding and insurance coverage
- e) determining Absence of Debarment and Suspension. The CFWDB must ensure that the organization is not on any current federal, state or local "debarment and suspension" list. The subrecipient must require each prospective bidder to certify that it is not on any federal, state or local debarment or suspension list. A "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions" form must be executed and included in all contracts of \$25,000 or more.

12. Procurement Records. The CFWDB must develop and maintain a record/file of each relevant procurement sufficient to detail the significant history of the procurement and support the procurement decisions made. The record should include the following information as appropriate for the type of procurement:

- a) Evidence of CFWDB involvement in the decision-making and planning process.
- b) A copy of the solicitation package (e.g., RFP/RFQ/IFB/ITB).
- c) A copy of the public notification.
- d) Bidders' list to which notices were mailed.
- e) List of all organizations/entities sent a solicitation package (i.e., RFP/RFQ/IFB/ITB)
- f) Agenda and minutes of the bidders' conference, if a conference is conducted.
- g) A copy of each question asked and the answer issued, if applicable.
- h) Log sheet of bid proposals received, including the date and time.
- i) A copy of each bid which was received.

- j) Rating and scoring sheets completed during the evaluation process.
- k) Business operation capability evaluations.
- l) Documentation of the rationale for selection and funding of any offeror which did not receive the highest score/ranking in the evaluation process.
- m) Evidence of CFWDB approval of the procurement.
- n) Completed Memo of Negotiations for each subrecipient contract.
- o) Completed cost analysis for each selected bidder.
- p) A copy of any submitted grievance(s) and the resolution of each.
- q) High risk determinations and special award/contract conditions, if appropriate.
- r) Completed profit analysis, if appropriate.

D. CONTRACTING

1. Vendor Contracts. Fixed price contracts must be used with vendors.

- a) Fixed Price Contracts. A fixed price contract is used to purchase generally required goods and services which are sold to the general public during normal business hours at an agreed upon price regardless of the contractor's cost incurred. The appropriate uses of fixed priced contracts are provided below:
 - For the purchases of equipment, supplies or materials when a purchase order is not appropriate.
 - For the purchases of personal services of consultants when the deliverables are specifically defined and priced. Consultants and personal services contracts, costing \$5,000 and over, must be filed with DWS Financial Monitor before the contract is finalized. The filing is to be submitted to DWS a minimum of ten (10) business days prior to execution of contract. During the onsite monitoring, the DWS Financial Monitor will review the contract documentation against the filing submitted to DWS. The filing submitted to the DWS must include:
 - i. the cost of the proposed contract;
 - ii. the starting and ending dates;
 - iii. the purpose of the contract;
 - iv. the list whether the procurement is Competitive or Noncompetitive; and,
 - v. the funding source to be used.

The contract must identify the specific deliverables and the related price for each deliverable for which payment will be made.

2. CFWDB Cost Reimbursable Contracts. The CFWDB may use a cost reimbursable contract for any form of procurement. In this type of contract, reimbursements are

made to the contractor for actual expenses incurred in the provision of goods/services. Under cost reimbursable contracts, the primary risk in achieving a reasonable relationship between expenditures and results fall to the CFWDB in negotiating line costs.

This type of contract is required for procurement transactions between units of state or local governments and any other entity organized principally as the administrative entity for the local workforce development board.

Each contract must contain a detailed line item budget specifying the expense items and estimated amounts for all costs. All costs in the approved budget must be allowable and properly allocated among the cost categories that will benefit. The contract must fully describe the services to be delivered and the invoicing and payment and procedures including signatory authority for the submission of invoices. Any provisions of flexibility in expenditures among the specific line items must also be described in the contract.

3. Cost Reimbursable Contracts with Profit. A cost reimbursable contract may include a profit element when an incentive is appropriate to induce a private for-profit contractor/service provider to provide WIOA training or services.
4. Fixed Price Contracts. The use of a fixed price contract is limited to specific circumstances in which a contractor/service provider agrees to deliver specified WIOA services at a negotiated price. These situations might include such services as eligibility determination, assessment, or case management with a detailed work statement, with a unit price established for each deliverable, e.g., number of enrollments, number of assessments, etc.

This type of contract differs from a fixed unit price, performance based contract only to the extent that it provides for delivery of a specific service, regardless of participant outcomes. Requirements for establishing and paying the fixed price are the same, except that payment conditions must be based on the delivery of measurable units of service, rather than on participant outcomes.

5. Hybrid Contracts (Cost Reimbursable with Fixed Price Element). Hybrid contracts incorporate a combination of cost-reimbursement and fixed price characteristics. In these contracts, some cost items will be separately identified to be reimbursed on actual costs incurred and other cost items will be units identified as a fixed price.

These contracts must be negotiated and executed on the basis of detailed line item budget in which the cost items to be reimbursed are separately identified from the fixed price element(s). The requirements applicable to the cost reimbursable and fixed price contracts will apply to each separately identified set of expenses.

6. Fixed Unit Price/Performance Based Contracts. Fixed unit price/performance based

contracts are allowable for employment and training services as an incentive for contractors to perform efficiently and achieve high levels of participant outcomes. The following requirements apply in establishing a fixed unit price and the condition for payments:

- a) A cost analysis of all cost elements, i.e., line item costs, must be conducted and documented, and reasonableness of the unit price determined,
 - b) The fixed unit price must be allocated to benefitting cost categories based on the ratios established in the cost price analysis,
 - c) The offeror must certify in writing that cost data are accurate, complete and current at the time of agreement on price. The awarding agency must retain the right to a price adjustment if it is discovered that the subrecipient knowingly submitted data that were not accurate, complete and current,
 - d) Payment conditions must include measurable participant outcomes (e.g., quantifiable levels of skill attainment, placement in training-related position, a placement wage requirement, job retention).
7. General Contract Provisions for All Contracts. Except for small purchases for which a purchase order is appropriate, the CFWDB must award a bilaterally executed contract which includes at a minimum, the fixed price and/or estimated costs, a description of the scope and extent of work performed or specification of the goods/services to be provided and the period of performance. **(NOTE: There is no requirement that fixed unit price agreements establish minimum or maximum quantity or funding levels to require performance or limit obligations. However, it is strongly recommended that a maximum be included in the agreement to identify obligations and to manage risk.)**

The CFWDB must include in each vendor and subrecipient contract the following provisions and must require that the contractor include the provisions, or references to them, in any subcontracts:

- a) Remedies. A provision which will allow for administrative, contractual, or legal remedies if the contractor violates or breaches terms of the contract and which provides for appropriate sanctions and penalties.
- b) Termination. A provision for termination of the contract for cause and for convenience by the awarding agency and for termination because of circumstances beyond the control of the contractor. The provision must include an identification of the conditions under which termination actions will be taken, the manner in which actions will be taken and the basis for settlement.
- c) Modification. A provision defining the conditions under which the contract can be modified, including specification of the conditions by which the contract can be unilaterally modified by the CFWDB.
- d) Assignment. A provision prohibiting the assignment of the contract to another party.

- e) Funds Availability. A provision for withdrawal of funds from the contract as a result of discontinued or more limited funding to the CFWDB from its funding source.
- f) Coordination of Grant Funds. A provision for coordination, documenting and reporting funds from High Education Act grants (e.g., Pell, Supplemental Educational Opportunity Grant (SEOG)), and other sources that are used in conjunction with WIOA funds on behalf of participants.
- g) Payment Conditions and Delivery Terms. A provision which describes conditions under which payments will be made, the documentation required for invoicing and the timeframes for submission and payment of invoices. (Payment conditions depend on the type of contract used.)
- h) Contract Period. Subrecipients may, with sufficient justification, renew an annual-contract for two (2) additional years without benefit of competitive procurement, not to exceed a total of three (3) years. Each renewal shall be limited to a one (1) year period. Renewal of an annual contract shall not preclude the contract negotiation requirement or the cost or price analysis process. This requirement applies except in the case of noncompetitive procurement under the emergency criterion and unsolicited proposals. If establishing a contract period which crosses program years, contract provisions must address the longer period of performance.
- i) Audit Responsibilities. A provision describing contractor's/service provider's audit responsibilities. In the case of vendors, in lieu of an audit the right of access to vendor records of program charges and to staff for interviews must be included.
- j) Data/Copyrighting. A notice of WIOA requirements pertaining to rights to data or products developed with the use of WIOA funding. Specifically, the awarding agencies, the DWS and the US Department of Labor must have unlimited rights to any data first produced or delivered under the agreement including agreements which involve the use/development of computer programs/applications, or the maintenance of databases or other computer data processing programs, including the input of data. There must also be a notice of WIOA requirements pertaining to copyrighting only in contracts which involve the use or development of copyrighted materials.
- k) Reporting Requirements. A description of the CFWDB requirements for reporting data and other information.
- l) Complaints. Information for filing a complaint or grievance.

- m) Records and Retention. A description of the records which must be maintained and the applicable record retention period defined.
8. Additional Provisions for CFWDB Contracts. In addition to the general provisions required for all contracts described above, the following provisions are required for contractor/service provider contracts only:
- a) Adherence to Applicable Laws and Regulations. A provision that the contractor/service provider will adhere to all applicable federal, state and local regulations, laws and policies, including:
- Certification Regarding Lobbying (29 CFR Part 93)
 - Drug-Free Workplace Requirements Certification (29 CFR Part 98)
- b) Use of Program Income. A provision defining the procedures and criteria for the disposition and use of program income earned by the contractor, if applicable.
- c) Non-duplication of Services. An assurance that facilities and services are not duplicated through the contract unless it has been established that alternative services or facilities would be more effective or more likely to achieve performance goals.
- d) Equal Opportunity. The CFWDB must include the following equal opportunity provision verbatim; and must require that its contractors/service providers include the clause in any of their contracts which has, or is expected to have, an aggregate value exceeding \$25,000 within a 12-month period:

During the performance of this contract, the contractor agrees as follows:

- a. The contractor will comply fully with the nondiscrimination and equal opportunity provisions of the Workforce Innovation and Opportunity Act (WIOA); including the Nontraditional Employment for Women Act of 1991; Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Americans with Disabilities Act of 1990; as amended; the Age of Discrimination Act of 1975, as amended; Title IX of the Education Amendments of 1972, as amended; and with all applicable requirements imposed by or pursuant to regulations implementing those laws, including but not limited to 29 CFR Part 34. The United States has the right to seek judicial enforcement of this assurance.*
- b. The contractor will not discriminate against any employee or applicant for employment, or program applicant/participant because of race, color, age, religion, sex, disability, national origin or political affiliation or belief. The contractor will take affirmative action to ensure that applicants are*

employed/selected and that participants and employees are treated during their period of employment/participation without regard to their race, color, age, religion, sex, disability, national origin, political affiliation or belief. Such action must include, but not limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of the non-discrimination clause.

- c. The contractor will, in all solicitations or advertisements for employees or participants placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, age, religion, sex, disability, national origin, political affiliation or belief.*
- d. The contractor will permit access to any contract-related books, records and accounts by the contracting agency, the State and the US Secretary of Labor for purposes of investigation to ascertain compliance with applicable rules, regulations and orders.*
- e. In the event of the contractor's non-compliance with the non-discrimination clauses of this contract with any such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further government contracts and such other sanctions may be imposed and remedies invoked as provided by rules, regulations and orders of the Secretary of Labor, or as otherwise provided by law.*
- e) Compliance with Contract Work Hours and Safety Standards Act (40 U.S.C 327-332). Contracts for the construction and repair of any government building funded by WIOA and whose values exceeds \$2,500 must include a statement referencing compliance with (c)(3)(iii) of the Contract Work Hours Safety Standards Act. This requirement does not apply to contracts for the purchase of supplies or materials or articles ordinarily available on the open market, or to work where the USDOL assistance is in the form of a loan guarantee or insurance.
- f) Safety. The CFWDB must include in all construction contracts in excess of \$2,000 which involve the employment of laborers or mechanics provision requiring the contractor to comply with 29-70.21613 (c) (3); except if the contract is subject to the Davis-Bacon Act, the following provision must be included:

“The contractor shall not require a laborer or mechanic employed in the performance of the contract to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to health and safety.”

- g) Compliance with Copeland Anti-kickback Act (40 U.S.C 276c and 18 U.S.C. 874). Contracts in excess of \$2,000 for construction, completion, or repair of public buildings, public works, or building work financed in whole or in part by federal funds, must include the provision prescribed in 29 CFR 5.5 (a)(5), requiring compliance with the Copeland Act. The Copeland Act prohibits illegal deductions or kickbacks of wages to which employees are otherwise entitled. The CFWDB must report all suspected or reported violations to the State.
- h) Certification Regarding Lobbying. Executed contracts with value in excess of \$100,000, must include a provision which prohibits the use of federally appropriated funds for lobbying the Executive or Legislative branches of the Federal Government in connection with a specific contract, grant or loan. The CFWDB must ensure that the contractor completes and signs a “Certification Regarding Lobbying” form so indicating. The provision must also specify that the contractor must complete a “Disclosure of Lobbying Activities” form for any and all lobbying activities which are supported by other than federally appropriated funds.
- i) Buy American Notice Requirement. In the case of any equipment or product that may be authorized to be purchased with financial assistance provided using funds available under the Workforce Innovation and Opportunity Act, it is the sense of the Congress that entities receiving the assistance should, in expending the assistance, purchase only American-made equipment and products, as required by the Buy American Act (41 USC 10a et seq.). See WIOA Section 502—Buy American Requirements.
- j) Salary and Bonus Limitations. None of the funds appropriated under the heading ‘Employment and Training’ in the appropriation statute(s) may be used by a recipient or subrecipient of such funds to pay the salary and bonuses of an individual, either as direct costs or indirect costs, at a rate in excess of Executive Level II. This limitation shall not apply to vendors providing goods and services as defined in OMB Uniform Guidance. Where states are recipients of such funds, states may establish a lower limit for salaries and bonuses of those receiving salaries and bonuses from sub recipients of such funds, taking into account factors including the relative cost-of-living in the state, the compensation levels for comparable state or local government employees, and the size of the organizations that administer federal programs involved including Employment & Training Administration programs. See Public Law 113-76

(Division H, Title I, Section 105), and U S D O L Training and Employment Guidance Letter (TEGL) Number 05-06 for further clarification. TEGL No. 05-06 is available at: http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=2262.

- k) Intellectual Property Rights. The Federal Government reserves a paid-up, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use for federal purposes: i) the copyright in all products developed under the grant, including a subgrant or contract under the grant or sub-grant; and ii) any rights of copyright to which the grantee, subgrantee or a contractor purchases ownership under an award (including but not limited to curricula, training models, technical assistance products, and any related materials). Such uses include, but are not limited to, the right to modify and distribute such products worldwide by any means, electronically or otherwise. Federal funds may not be used to pay any royalty or license fee for use of a copyrighted work, or the cost of acquiring by purchase a copyright in a work, where the US Department of Labor has a license or rights of free use in such work. If revenues are generated through selling products developed with grant funds, including intellectual property, these revenues are program income. Program income is added to the grant and must be expended for allowable grant activities.

If applicable, the following needs to be on all products developed in whole or in part with grant funds:

“This workforce product was funded by a grant awarded by the U.S. Department of Labor’s Employment and Training Administration. The product was created by the grantee and does not necessarily reflect the official position of the U.S. Department of Labor. The Department of Labor makes no guarantees, warranties, or assurances of any kind, express or implied, with respect to such information, including any information on linked sites and including, but not limited to, accuracy of the information or its completeness, timeliness, usefulness, adequacy, continued availability, or ownership. This product is copyrighted by the institution that created it. Internal use by an organization and/or personal use by an individual for non- commercial purposes is permissible. All other uses require the prior authorization of the copyright owner.”

- l) Veterans’ Priority Provisions This program, funded by the U.S. Department of Labor, is subject to the priority of service requirements of 38 USC 4215 and 20 CFR Part 1010. Section 4215 of Title 38 requires that priority of service be provided to veterans and spouses of certain service members and veterans for the receipt of employment, training, and placement services. TEGL No. 10-09 is available at http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=2816
9. Subrecipient Work Statement Requirements. The following elements are required in contract work statements with contractors/service providers who will provide

participant training, and in other contract work statements as appropriate to the services to be provided or the work to be performed. Other contract requirements may be added at the discretion of the CFWDB.

- a) Training Activities. A description of the type and duration of the training activity including, if applicable, length of training cycles and the approximate number of participants per cycle.
- b) Other Training and Support Activities. A description of other specific services and activities to be provided such as assessment, the administration of specific test instruments, individual service strategy completion, counseling, job development, placement, work experience, support payments, follow-up and their relationship to the training activities.
- c) Placement Targets/Wages. Occupational targets considered as training related placements, as well as the related placement wage for each target. Wages should reflect the prevailing local wage for the occupation, based on local or regional surveys.
- d) Participant Completion Definition. A description of the skill levels to be acquired and the method(s) for measuring attainment.
- e) Program Entry Requirements. A description of the minimum skill levels required for entry into the program. Any educational requirement should reflect the minimum skills needed to successfully complete training. Occupational skill requirements should reflect an absence of skills necessary for entry employment in the occupation of training. The method to be used to assess the skills must be included.
- f) Target Population. A description of the participants to be served in the program by number, key demographic or target group characteristics.
- g) Staffing/Management Plan. A description of each job title and primary responsibilities, number of staff per job title and percent of time committed for each position to the contract. This breakout may be included in the work statement or as backup to the line item budget. It is recommended that an organizational chart and related job descriptions/qualifications of the individuals in the WIOA funded positions be attached to the contract to verify the adequacy and abilities of the staff to deliver quality services and provide effective monitoring/oversight of performance.
- h) Program Performance. The planned number of eligible individuals must be identified (by group, if applicable) who are to be enrolled, complete training and meet performance outcome/retention criteria.

- i) Facilities. A description of the facilities and location to be used during training/contract period.
- j) Equipment. An itemized listing of the equipment (e.g., computers, etc.) to be used in the program in accordance with the requirements of the training.
- k) Training Supplies and Materials. An itemized listing of training supplies and materials (e.g., work tools, work books, supplies) to be used in class-sized programs, in accordance with the requirements of the curriculum and the number of participant slots.
- l) Implementation Schedule. The period of performance and any requirements related to minimum start-up and completion dates for individual training cycles.
- m) Subcontracts. Any third parties to whom any part of the contract will be subcontracted must be identified and their responsibilities defined. All applicable work statement items will flow to the subcontract contract, with the sole exemption being the on-the- job training employers.
- n) Coordination. A description of coordination arrangements with other organizations which will contribute funds or provide services on behalf of program participants. This description should correlate to a statement of shared/contributed costs in the budget section.

NOTE: When payments are tied to performance, the work statement elements must be consistent with payment conditions stated in the contract.

10. Timely Contract Execution/Use of Preagreement Letters. As a standard operating procedure, subgrant funds are to be obligated and disbursed to contractors in accordance with a fully-executed contract and/or subcontract. When the risks associated with having a fully-executed contract are outweighed by the need to provide services, the use of a pre- agreement letter should be used to clarify expectations until a fully executed contract is finalized. Such costs are allowable only to the extent that they will be incurred after beginning of the contract period. The letter should be executed by the CFWDB prior to program start-up. At a minimum, the letter should contain the following information:
- a) A general description of the service to be provided.
 - b) The negotiated line item budget for the project.
 - c) The period of the proposed contract.
 - d) A statement indicating that a fully-executed contract will be in place within a specified period, e.g., 60 days.
 - e) A statement indicating that no money will be exchanged between the parties until the contract is executed.

- f) Names, titles and signatures of the individuals for both entities planning to enter the proposed contract and agreeing to terms outlined regarding negotiated contract costs.
11. Contract Administration and Records. CFWDBs must maintain a system for contract administration to ensure that service providers and other suppliers comply with the terms, conditions and applicable performance requirements of contracts or purchase orders and to ensure adequate and timely completion of all transactions.
12. Monitoring. All CFWDBs must maintain a system for contract monitoring (both programmatic and fiscal) to ensure that contractors/service providers comply with the performance requirements and provisions of the contracts.
13. Contract Files. All CFWDBs must maintain a file on each executed contract sufficient to document the record of the contract, performance against the contract and payments made. The file should include the following elements:
- a) Executed contract and modifications.
 - b) Cost/price analysis for each modification or documentation as to why it was not required.
 - c) Official correspondence.
 - d) Memos to file.

E. PROPERTY CONTROL

All CFWDBs must develop procedures and maintain controls for property acquisition, utilization, maintenance, and disposition. A physical inventory of all property costing \$500 or more per unit and having a useful life of one year or more must be performed at least once a year.