



TO: State Workforce Innovation Council Chairperson
Marion County Workforce Investment Board Chairperson & Director
Regional Workforce Board Chairpersons
Regional Operators
Directors of Operations for Northern and Southern Indiana
Schools, Universities and other Federally Funded Grantees

FROM: Andrew J. Penca
Commissioner, Indiana Department of Workforce Development

DATE: August 30, 2007 *ADP*

SUBJECT: DWD Policy 2007-15
Procurement and Prior Approval Policy for Federally Funded Grantees

Purpose

To provide policy regarding procurement of services and goods and prior approval requirements for all federal funds granted by the Indiana Department of Workforce Development (DWD). The policy is revised to include reference of the contracting authority for WIA funds granted through the State Workforce Innovation Council (SWIC). Regional Workforce Boards and other DWD grantees receiving federal funds from DWD are required to adhere to this policy.

Rescission

DWD Commissioner's Directive 2006-10, Procurement and Prior Approval for Federally Funded Grantees, dated October 5, 2006

Contents

I. Contracting Authority through the State Workforce Innovation Council (SWIC)

WIA funds are granted to Indiana's two workforce investment boards: the State Workforce Innovation Council (SWIC), acting as the workforce investment board for all counties in the State but Marion County, and the workforce investment board for Marion County, the Indianapolis Private Industry Council (IPIC.) The Balance of State WIB is the selecting and awarding authority for grants and contracts in accordance with Indiana as a Two-Workforce Service Area State, and federal statutory requirements which reserve this authority to the local board. The SWIC, acting as the Balance of State WIB, signs the grant documents between each regional workforce board and the State. By signing the grant, the SWIC, acting as the Balance of State WIB, provides approval for the workforce development activities conducted in the regional area.

Additionally, there is a single fiscal agent for the Balance of State Workforce Service Area in accordance with the provisions of WIA Section 117(d)(3)(B)(i)(II) which is the Indiana Department of Workforce Development. DWD competitively procured an entity to provide fiscal services to regional workforce boards across the State. However, DWD also allowed each regional workforce board to competitively procure their own fiscal entity in conjunction with their regional chief elected official to assist in the administration of grant funds allocated to the region.

If the regional workforce board chooses not to utilize the State procured fiscal agent, then the region's fiscal entity shall also be an independent contractor hired by the regional workforce board in a full and open competitive process.

II. Procurement of Goods and Services

All grantees of the Indiana Department of Workforce Development (DWD) and each provider receiving federal funds shall comply with this policy and the appropriate Office of Management and Budget (OMB) circulars and related regulations when procuring goods or services. All procurement transactions must be conducted in a manner that provides full and open competition consistent with these standards.

Applicable cost principles and administrative rules are listed below.

Cost Principles

- OMB Circular A-21: Cost Principles for Educational Institutions
- OMB Circular A-87: Cost Principles for State, Local and Indian Tribal Governments
- OMB Circular A-122: Cost Principles for Non-Profit Organizations
- 48 CFR Chapter 1, Part 31; Contract Cost Principles and Procedures (Commercial Organizations)

Administrative Requirements

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|----------------|--|
| 29 CFR Part 95 | Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, and with Commercial Organizations, Foreign Governments, Organizations under the Jurisdiction of Foreign Governments, and International Organizations |
| 29 CFR Part 97 | Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments |

Procurement Plans

Grantees must establish written procurement procedures and have a procurement plan. The procedures outlined in the procurement plan should conform to the standards of one of the following applicable regulations:

- 29 CFR 97.36(b-i) and 34 CFR 80.36 (b-i): States/local governments; or
- 29 CFR 95.40-48: Non- Profit organizations; or
- 34 CFR 74.40-48: Institutions of Higher Education

Definitions

29 CFR 99.210 provides a distinction between vendors and subrecipients. The U.S. Department of Labor's One-Stop Comprehensive Financial Management Technical Assistance Guide also provides the following guidance.

Subrecipient: A subrecipient is a legal entity to which a subaward of federal funds is made and that is accountable to the recipient for the use of the funds provided. When the organization performs the following activities, a federal award to a subrecipient is indicated:

- Determines eligibility for the federally funded program
- Has its performance measured against the objectives of the federal program
- Has responsibility for programmatic decision-making
- Has responsibility for adherence to applicable federal program compliance requirements (for example, the regulations)
- Uses the federal funds to carry out a program of the organization as opposed to providing goods or services for a program.

Vendor: A vendor is a dealer, distributor, merchant, or other seller providing goods or services that are required for the conduct of a federal program. The following activities are indicative of a vendor relationship with an organization:

- Provides the goods and services within normal business operations
- Provides similar goods or services to many different purchasers
- Operates in a competitive environment
- Provides goods or services that are ancillary to the operation of the federal program
- Is not subject to the federal compliance requirements of the program.

It is the stance of the Indiana Department of Workforce Development that all regional operators are viewed as subrecipients. Their responsibilities and duties as outlined in Indiana's Strategic Two-Year State Plan for Title I of the Workforce Investment Act of 1998 and the Wagner-Peyser Act, page 47, state that the Regional Operator will at the least provide staff functions to the Regional Workforce Board and serve as the one-stop operator for the **WorkOne Centers in their respective region.**

Workforce Investment Act

Adult Basic Education (ABE) and General Education Development (GED)

The purchase of an Adult Basic Education or General Education Development class for an individual is considered a small purchase. As such, price or rate quotations should be obtained from an adequate number of qualified sources. This type of purchase does not require a Request for Proposal or other formal solicitation. In order to make an informed choice, grantees should:

- Identify available providers of the desired training;
- Determine which of these providers meet the grantee's minimum standards for the desired training; and
- Obtain and record price or rate quotations from the qualified providers.

Intensive Services

Per the Workforce Investment Act 134(d)(3)(C)(vi), intensive services may include short-term prevocational services. Per Workforce Investment Act 134(d)(3)(B)(ii), intensive services may be provided by the one-stop delivery system through contracts with service providers, which may include contracts with public, private for-profit, and private nonprofit service providers, approved by the local board. Contracts for these services may be accomplished by competitive procurement or by individual referral agreement with its approved providers, as required by the local board.

Procurement of Workforce Investment Act Regional Operators, Fiscal Agents, and Service Providers

Workforce Investment Act-funded grantees should also refer to Indiana Department of Workforce Development Policy 2007-14, entitled "Regional Contracting," when procuring Regional Operators, Fiscal Agents, and Service Providers.

III. Prior Approval Requests

Sole Source Procurements

Per 29 CFR 95 and CFR 97, (2) Grantees and subgrantees must, on request by the U.S. Department of Labor, U.S. Department of Education, the State of Indiana, or the independent auditors, make available pre-award review procurement documents, such as requests for proposal or invitations for bids, independent cost estimates, etc. when:

- (i) A grantee's or subgrantee's procurement procedures or operation fail to comply with the procurement standards in this section; or
- (ii) 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, or
- (iii) The procurement, which is expected to exceed the simplified acquisition threshold, specifies a "brand name" product; or
- (iv) The proposed award 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
- (v) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold.

The Indiana Department of Workforce Development has determined that grantees must submit a prior approval request to the Indiana Department of Workforce Development whenever any of the above situations exists and as required in 29 CFR 95.40-48 and 34 CFR 80.36(b-1), 34 CFR 74.40-48, or 29 CFR 97.36(b-i). The current simplified acquisition (small purchase) threshold is \$100,000 as specified in 41 U.S. Code 403(11).

While noncompetitive procurements as stated above do not require prior approval when less than the simplified acquisition threshold, grantees must still keep documentation on file that explains why the services were procured without competition and includes items 1-4 listed below.

1. Purpose of the sole source agreement
2. Dollar amount of the procurement
3. Justification for the sole source procurement
4. Copy of the cost and/or price analysis

Prior approval from the Indiana Department of Workforce Development is not required if a particular subcontractor or specific equipment has already been identified in an existing grant agreement with the Indiana Department of Workforce Development. However, the Indiana Department of Workforce Development will examine the method of procurement prior to approval of the Indiana Department of Workforce Development grant award.

Prior Approval for all Other Items of Cost

The Office of Management and Budget circulars identified below require prior approval for certain items of cost; however, some of the items listed below may only require prior approval under unusual circumstances. Grantees and contractors are responsible to ensure, for all items requiring prior approval that the appropriate requests are submitted and approval granted prior to the procurement. See the applicable Office of Management and Budget circular for your organization for a detailed explanation of these items. Uniform Administrative Requirements and Office of Management and Budget circulars may be found on the Internet under <http://www.whitehouse.gov/OMB/circulars/>.

<u>OMB Circular</u>	<u>Section</u>	<u>Subject</u>
A-21	G 5.	Negotiated fixed rates
	J 2.	Advisory Councils
	5. b.	Other audit costs
	13. c. d.	Defense/Prosecution-criminal/civil actions
	18. b. (1)(2)(3)	Equipment/Capital expense
	19.	Fines/Penalties
	36.	Pre-agreement costs
	40.	Rearrangement/Alteration costs
	45. a.	Costs of scholarship
	47.	Specialized service facilities

<u>OMB Circular</u>	<u>Section</u>	<u>Subject</u>
A-87 Attachment B	4. b. 8. g. (3) 11. d. 15. b. (1)(2)(3)(4) 22. b. (2) 28. c. 31. 33. 35. 43 a.	Other audit costs Abnormal severance pay Depreciation method change Equipment/Capital expense Insurance/Indemnification Membership/Subscription/Professional Pre-award costs Proposal costs Rearrangement/Alteration costs Travel costs
A-110	23 (a) 6, 7, (g) 2 25 (b), (c), (c) 1, (c) 6, (e) 1, (e) 4	Cost sharing or matching Revision of budget and program plans
A-122 Attachment B	8. f. 8. h. 8. k. 2. (d), (e) 8. m. (1) 11. d. 15. b. (1)(2)(3)(4) 16. 20. 30. c. 31. 33. 36. 39. 45. 49. c., g. 51. e.	Compensation-Personal Services Organization provided automobiles Compensation-Personal Services Compensation-Personal Services Depreciation/Use allowance Equipment/Capital expense Fines/Penalties Housing and personal living expense Membership/Subscription/Professional Organization costs Participant support costs Pre-agreement costs Rearrangement and alteration costs Selling and marketing Training and cost of tuition Travel costs

Review Date

August 1, 2009

Ownership

Grant and Contract Support

Effective Date

Immediately

Action

Grantees are directed to implement the policy contained in this document. Prior approval requests and any questions regarding this policy should be addressed to Virginia Harrold, Supervisor of Grant and Contract Support, Indiana Department of Workforce Development, 10 North Senate Avenue, Indianapolis, IN 46204; telephone 317-232-7373 or by sending an e-mail to vharrold@dwd.in.us.