



- i. Providing the goods and services within normal business operations;
  - ii. Providing similar goods or services to many different purchasers;
  - iii. Operating in a competitive environment; and
  - iv. Program compliance requirements do not pertain to the goods or services provided.
- D. **Non-Federal Entity** – A state, local government, Indian tribe, institution of higher education (IHE), or nonprofit organization that carries out a federal award as a recipient or subrecipient.
- E. **Pass-through Entity** – A non-federal entity that provides a subaward to a subrecipient to carry out part of a federal program.
- F. **Subaward** – An award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.
- G. **Subrecipient** – An entity that receives federal assistance passed through from a prime recipient or another subrecipient to carry out or administer a WIOA program. Distinguishing characteristics of a subrecipient include:
- i. Determining eligibility for assistance;
  - ii. Performance measured against meeting the objectives of the program;
  - iii. Responsibility for programmatic decision making;
  - iv. Responsibility for applicable program compliance requirements;
  - v. Use of the funds passed through to carry out a program of the sub-entity as compared to providing goods or services for a program of the prime recipient.

#### 4. Policy

WDC policy is that all WIOA funded subrecipients must comply with all relevant policies and procedures that safeguard public assets and ensure competition is conducted in a fair and open manner. The competitive procurement process chosen by the WDC will be compliant with this policy and appropriate to the maximum funding level of the award.

All WDC contract procurement processes will be conducted in a fair and open manner. To the extent possible, small, minority-owned, disabled persons-owned, and women-owned businesses will be provided the maximum opportunity to compete for contracts to provide goods and services. To that end, all procurements will be conducted openly with the opportunity for the public to respond. All procurement decisions will be documented in accordance with internal WDC procedures.

The WDC does not discriminate against any bidder in any procurement and award process, and complies with all federal, state, and city laws governing nondiscrimination and equal opportunity, including the provisions of WIOA Final Rules.

##### A. General Requirements

- i. The WDC's local procurement procedures adhere to the applicable sections of federal law and regulations, and state policy, as referenced herein, in selecting one-stop operators and service providers and awarding WIOA subrecipient contracts.
- ii. The WDC's local procurement process is to document in writing efforts to identify the availability of one-stop operators and service providers, and how they were followed, including procurement processes (including selection criteria by which bids are scored), where applicable. The documentation is maintained and available to the state and the public as identified in this policy.
- iii. The WDC's written code of conduct applicable to procurement, award and administration of contracts is contained in WDC Policy 09-2002, Conflict of Interest. To the extent permitted by state or local law or regulation, the Conflict of Interest policy contains penalties, sanctions or other disciplinary action for violations of the policy. The policy ensures that no one in a decision-making capacity has any real or apparent conflict of interest in the selection, award, or administration of contracts or subrecipient grants. No procurement will occur that commits the WDC to amounts in excess of funds available. The WDC's procurement processes and applicable policies ensure fiscal accountability and prevent waste, fraud, and abuse in WIOA programs.
- iv. WDC officers, employees, and agents may not accept or solicit gratuities, favors, or anything of monetary value from any person or organization that intends to respond to a proposal, has responded to a proposal, or has received an award.
- v. WIOA funded recipients, including WDC officers, employees, and agents, may only accept gifts when a) the gift is unsolicited; b) the gift giver is unconnected to any person or organization that intends to respond to a proposal, has responded to a proposal, or has received an award; and c) the value of the gift is nominal (no greater than \$50).
- vi. The WDC uses two allowable forms of procurement:
  1. Competitive Proposals (e.g., Request for Proposals or Request for Interest/Qualifications); and
  2. Procurement by non-competitive proposals (sole source).
- vii. Sole source procurement may be exercised if it complies with federal procurement regulations at 2 CFR 200.320(f) and 20 CFR 678.610, and federal procurement regulations in TEGL 15-15, and one or more of the following circumstances apply:
  1. The item or service is only available from a single source;
  2. Public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;<sup>1</sup>
  3. The Federal awarding agency or pass-through entity expressly authorizes non-competitive proposals in response to a written request from the non-Federal entity; or

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

4. After soliciting a number of sources, competition is determined inadequate, whether for reasons of number or quality of proposals/bids.<sup>2</sup>

## **B. Programmatic Requirements**

### **i. Procurement of One-Stop Operators**

1. The WDC's one-stop operator of the WorkSource system is designated and certified through a competitive procurement process. The WDC will notify, in writing, its board members and the public of the competitive process to be used. The WDC will provide at least 30 calendar days of public notice through media where prospective local, state, and national bidders typically identify such opportunities (e.g. local print newspapers, on-line newspapers, the WDC website, other community websites, etc.). Solicitations will include the selection criteria to be used in the process and will be maintained as part of the documentation.
2. Per WIOA Final Rules, the WDC will conduct a competitive process to procure its one-stop operator at least once every 4 years, and will follow the principles of competitive procurement set forth in Uniform Administrative Guidance at 2 CFR 200.318-326.
3. If the WDC decides to procure the one-stop operator with a sole source procurement due to a compelling circumstance as described herein, the WDC will maintain sufficiently detailed records of the procurement history per Section 12 of TEGL 15-16 (citing Uniform Guidance at Section 200.318(i)), including careful documentation of the compelling circumstance and resulting decision. Such records are required to demonstrate that sufficient research and outreach was conducted, beyond publishing Requests for Interest/Qualifications, Requests for Proposals, or Invitations to Bid, and that the solicitation was publicized in a manner providing for full and open competition, including presentation of the decision at open board meetings to provide transparency and perhaps attract additional offerors/bidders for the next competition.

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

1. The WDC will competitively award subrecipient contracts for eligible providers of youth workforce investment activities, except in the case of sole-source awards/contracts, and only then if there is satisfactory and demonstrable evidence that there are an insufficient number of providers with the expertise required for serving in-school or out of school youth. Bid solicitations will include the selection criteria to be used in this process and will be maintained as documentation of the process.
2. The WDC will maintain records to document in writing that it made its board members and the public aware of the competitive process to be used to identify youth service providers. This includes providing at least 30 days of public notice through media where prospective local, state, and national bidders typically identify such opportunities (e.g. local print newspapers, on-line newspapers, the WDC website, other community websites, etc.).

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

3. The WDC will establish and use criteria, including the ability of service providers to meet performance accountability measures based on common measures, as well as full and open competition consistent with 2 CFR parts 200 and 290, in addition to applicable state and local procurement laws, to procure eligible providers of youth workforce investment activities.
  4. In accordance with DOL/ETA regulations, design framework services (intake, objective assessment, development of individual service strategies, case management, follow-up services) may be exempted from a competitive process if the WDC determines it can more appropriately and efficiently perform these activities, and if the WDC receives approval of the Chief Local Elected Officials and Governor to provide design framework services for youth program participants.
  5. The WDC has established local policies and procedures to assess the ability of youth program providers to meet performance accountability measures based on the primary federal indicators of performance for the youth program.
- iii. Procurement of Adult or Dislocated Worker Training Services  
The WDC will select providers of adult and dislocated worker training services through a competitive procurement process. The WDC will document in writing that it made its board members and the public aware of the competitive process to be used. This includes providing at least 30 days of public notice through media where prospective local, state, and national bidders typically identify such opportunities (e.g. local print newspapers, on-line newspapers, the WDC website, other community websites, etc.). Solicitations will include the selection criteria to be used in this process and be maintained as part of the documentation.
- iv. Procurement of Career Services  
The WDC will select providers of career services through a competitive procurement process, though WIOA law and proposed rules do not require this.

#### **C. Procurement Related Fiscal Requirements**

- i. Subawards are not procurement actions governed by this policy or other procurement laws, rules or policies unless:
  1. Required by statute;
  2. Required by WDC policies and procedures; or
  3. Awarded on a competitive basis, in which instance the subaward will be governed by procurement rules detailed in 2 CFR 200.318 - 326.
- ii. When a competitive procurement process is not used in the selection of a subrecipient for a subaward, it will be guided by:
  1. Documented internal controls, including written procedures for employee conduct and conflict of interest provisions;

2. The service provider's track record, considering past record of performance, cost principles, record of compliance, and audit and monitoring results.
- iii. Procurement standards will ensure fiscal accountability and prevent waste, fraud, and abuse in WIOA programs. Where applicable, standards support fair and competitive procurement of goods and services.
- iv. Wherever possible and where required, all agreements are performance-based, as defined in Federal Acquisition Regulations 37.6, and include the following minimum requirements:
  1. Performance requirements defined in measurable, mission-related terms;
  2. Performance standards (e.g., quality metrics, required quantities, and timeliness) tied to performance requirements;
  3. Quality assurance plan describing how the contractor's performance will be measured against performance standards; and,
  4. Appropriate positive and negative incentives for performance standards critical to accomplishing agreement objectives.
- v. The WDC will follow general procurement standards established through state law, rule and policy, as well as the regulations at 2 CFR 200.318 – 326.
- vi. The WDC will develop and document its procurement policies, procedures and standards that reflect applicable state law, rule and policy and conform to federal law and standards of OMB Uniform Guidance;
- vii. The WDC will ensure full and open competition, where necessary;
- viii. The WDC will use the most economical approach to the procurement of goods and services;
- ix. The WDC will award only to responsible contractors, and will maintain oversight in order to monitor contractor performance regarding contract terms, conditions and specifications; and,
- x. The WDC will maintain records detailing the history of the procurement, including the rationale for the selected method of procurement, selection of contract type, basis for contractor selection or rejection, and basis for contract price.

**D. Methods of Procurement**

- i. Up to \$5,000 – Purchases may be made upon buyer experience and knowledge of the market. Purchase prices may be determined based upon catalogs or telephone quotes to obtain the best quality and price.
- ii. \$5,001 to \$25,000 – Documented telephone quotes or written price quotations will be solicited and received from at least three sources.

- iii. \$25,001 to \$50,000 – A written solicitation will be used to receive responses from at least three sources, which may be a Purchase Order, a Request for Proposal (RFP), or Request for Qualifications/Interest (RFQ/RFI) document. The solicitation will describe the goods/services sought, the volume or amount required, the time lines for responding (must be reasonable), performance expectations, and the cost or fees anticipated. At a minimum, all appropriate individuals and/or companies on the Bidders list must be notified in writing. Complete documentation will be maintained for at least three years.
- iv. \$50,001 or more – A written solicitation will be issued to all appropriate individuals and/or companies on the Bidders list, and any other individuals or organizations identified as potentially interested parties. A RFP or RFQ/RFI must be issued and published with at least 30 days of public notice, through media where prospective local, state, and national bidders typically identify such opportunities. Complete documentation will be maintained for at least three years.
- v. Contracts may not be “broken” into smaller components to avoid the requirements of these methods of procurement.

#### **E. Informal and Formal Written Solicitations**

- i. Unless waived by the funding source, an individual who develops the specifications and statement of work for a RFP or RFQ/RFI is not be eligible to compete in the procurement.
- ii. RFPs, RFQ/RFIs, and Purchase Orders will include a clear and accurate description of the technical requirements for services. Contracts will only be awarded to contractors that demonstrate the technical expertise to successfully perform contract requirements.
- iii. Consideration will be given to small, minority, disabled, and women-owned businesses in the procurement process by identifying potentially interested parties and placing notices in appropriate media outlets..
- iv. The procurement document will specify the format and method by which responses from prospective bidders may be received.
- v. Fixed-price contracts, cost-reimbursable contracts, or performance contracts will be used, as appropriate, offering the most economically advantageous balance of quality and cost.
- vi. The Chief Executive Officer, or designee, may enter into a contract agreement for the WDC.
- vii. All work performed as part of a contract will be monitored periodically by the WDC to determine compliance with the contract requirements.
- viii. Contracts with successful bidders will contain at minimum the following general terms and conditions:
  - 1. Price or estimated cost;

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

**F. Issuance of Procurement Documents**

All RFPs and RFQ/RFIs shall be reviewed, approved, and issued by the Chief Operations Officer.

**G. Bidders List**

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

**H. Vendors List**

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

**I. Waivers**

The Chief Executive Officer of the WDC, or his/her designee, may waive the procedural requirements for a specific RFP, RFQ/RFI, or contract if the Chief Executive Officer or designee finds that compliance with these procurement requirements would create an undue burden and/or risk on the WDC.

**J. Access to Procurement Processes and Contracts**

- i. From the date of publication of a competitive procurement solicitation and up to the due date and receipt of responses, the RFP or RFQ/RFI procurement instrument will be available for review and inspection.

- ii. During the procurement process, from publication of a competitive procurement solicitation and continuing after the award of a contract, all information concerning the identity of individuals tasked with evaluating or rating of prospective bidders, and the comparative scores between the prospective bidders, is confidential.
- iii. Contracts to provide core and intensive services are authorized under WIOA Title I(B), as specified in the Memorandum of Understanding and Infrastructure Funding Agreement between the WDC and system partners.
- iv. After a contract is awarded, all proposals from prospective bidders contained therein, including anonymized scores and rankings by evaluation panels, will be available for public review and inspection upon request.

#### **K. Procurement Award Debriefs and Appeals**

- i. Debriefs may be requested by bidders who were not recommended to or selected by the WDC board for an award in a competitive procurement. Debriefs are informal and intended to provide a bidder with feedback for continual improvement of future proposals. Debriefs may be requested up to 30 calendar days after the Notice of Award. Debriefs will not be provided before the period to appeal an award has passed (7 calendar days from Notice of Award) and the period for the WDC to respond to the appeal has passed (10 business days from appeal). General information related to evaluation of the bidder's proposal will be discussed in the debrief; no rating scores or confidential information, including identity of the other bidders, will be disclosed.
- ii. An appeal process is available to bidders who had a proposal evaluated that was not recommended to or selected by the WDC board in a competitive procurement. The appeal process will be detailed in the procurement document and is as follows:
  - 1. Any entity who submitted a proposal that was evaluated may appeal an award decision. To be accepted, appeals must:
    - a. Be made in writing;
    - b. Be delivered to [operations@seakingwdc.org](mailto:operations@seakingwdc.org) within 7 calendar days from the date the Notice of Award decision is issued to the bidder by the WDC; and
    - c. State the procedural reason(s) for the appeal, and the desired remedy.
  - 2. Appeals will only be accepted for the following procedural matters:
    - a. Alleged bias, discrimination, or conflict of interest on the part of the rater(s); or
    - b. Non-compliance with procedures described in the procurement document or WDC procurement policy.
  - 3. Appeal requests that are not based on procedural matters will not be considered. Appeals will be rejected "without merit" if based on issues such as:
    - a. The rating and/or interview panel's assessment of the bidder's qualifications, the quality or completeness of a proposal;
    - b. The rating and/or interview panel's assessment of overall system needs or requirements addressed in the bidder's proposal; or
    - c. Funding availability and allocation decisions made by the WDC board.

4. The WDC, at its sole discretion, may choose to go forward with contracting for approved awards during the period of appeal, or chose the hold the awards in abeyance until the appeal is resolved.
5. The WDC will designate an evaluator who was not involved in the procurement process or evaluation who will review the issues requested for appeal and the procurement documents, including the evaluation scores and result, and will prepare a “Notice of Final Action.”
  - a. If the evaluator does not discover facts of procedural issues supporting the bidder’s stated reason(s) for appeal, the appeal will be resolved with a recommendation of “no findings and closed” and outlined in a Notice of Final Action.
  - b. If the evaluator discovers facts of procedural issues with the procurement that support the bidder’s appeal, the appeal will be resolved with a recommendation of “findings and actions” and a final solution, taking into consideration the bidders requested resolution, and will be outlined in the Notice of Final Action.
  - c. The recommended Notice of Final Action will be forwarded to the WDC’s Chief Executive Officer and the WDC Board of Directors officers for approval.
  - d. If approved, the Notice of Final Action will be sent to the bidder within 10 days from receipt of the bidder’s request for an appeal review.
6. Any subsequent challenge to WDC’s findings and action on the appeal of a competitive procurement award will follow the local grievance procedure, as outlined in WDC Policy 05-2002, Program Complaint and Grievance Policy, Attachment A – Complaint Handbook, which provides the local procedure for grievances or complaints by participants and other interested or affected parties alleging violations of WIOA requirements.

## 5. References

AUTHORITY	RULE OR REGULATION TITLE	REFERENCE AND LINK
Workforce Development Council of Seattle-King	Conflict of Interest Policy	<a href="#">WDC Policy 09-2002</a>
Workforce Development Council of Seattle-King	Program Complaint and Grievance Policy, Attachment A – Complaint Handbook	<a href="#">WDC Policy Handbook 05-2002</a>
Washington Employment Security Department	Procurement and Selection of One-Stop Operators and Service Providers	<a href="#">Admin Policy No. 5404, Rev. 1, effective 8/19/2016 (released 10/2/2017)</a>
US Department of Labor, Employment and Training Administration	Competitive Selection of One-Stop Operators	<a href="#">TEGL No. 15-16, 1/17/2017</a>
US Department of Labor, Employment and Training Administration	WIOA Youth Program Transition	<a href="#">TEGL No. 23-14, 3/26/2015</a>
United States Congress	Workforce Innovation and Opportunity Act of 2014, Public Law 113-128	<a href="#">Sections 107(d)(10), 107(g)(1), 121(d)(1-2), 123, 134(c)(2)(C)</a>

AUTHORITY	RULE OR REGULATION TITLE	REFERENCE AND LINK
Code of Federal Regulations	Workforce Innovation and Opportunity Act – Final Rules	<a href="#">20 CFR 678.600-635, 679.370(l), 679.410, 679.430, 680.160, 680.300, and 681.400</a>
Code of Federal Regulations	Chapter II – Office of Management and Budget Guidance, Part 200 – Uniform Administrative Requirements, Cost Principles, And Audit Requirements For Federal Awards	<a href="#">11 CFR 200.317 - 326</a>

## 6. History

VER.	DATE	ACTION AND APPROVALS
V.3	2/04/2008	Policy revision issued
V.4	1/17/2017	Policy revision issued
V.5	(tbd)	Revised to align with ESD Admin Policy 5404, Rev. 1, 10/02/2017; released for public comment by Industry and Employment Committee