

# Office of Job Training Programs Procurement System Guidelines

Effective October, 2020

Office of Job Training Programs' (OJTP) Procurement system shall include the following elements:

- I. Written Procedures- This agency and its subrecipients shall have written procedures for procurement transactions. These procedures shall ensure that all solicitations incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. The description for competitive procurement shall identify all requirements, which the offeror must fulfill, and all other factors to be used in evaluating bids or proposals. The description shall not contain features which unduly restrict competition. Written procedures shall contain the restriction that each agency and its subrecipients shall not use funds provided under WIOA to duplicate facilities or services available in the area (with or without reimbursement) from federal, state or local sources, unless it is demonstrated that the WIOA funded alternative services or facilities would be more effective or more likely to achieve performance goals. Procurement only applies when required by funder.
- II. Conflict of Interest - the agency and subrecipient shall maintain a written code of standards of conduct governing the performance of persons engaged in the award and administration of contracts and subgrants. To the extent permitted by state or local law or regulation, such standards of conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the awarding agency's officers, employees or agents, or by contractors or their agents.
  - A. Each agency and its subrecipients shall ensure that no individual in a decision making capacity, including WDB members (whether compensated or not), shall engage in any activity, including participation in the selection, award or administration of a subgrant or contract supported by WIOA funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:
    1. The individual,
    2. Any member of the individual's immediate family,
    3. The individual's partner, or

4. An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm or organization selected for award.
  - B. The offeror's, employees or agents of the agency making the award will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors or parties to subagreements. States and subrecipients may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value.
  - C. WDB conflict of interest:

A WDB member shall not cast a vote on, nor participate in, any decision making capacity on the provision of services by such member (or any organization which that member directly represents), nor on any matter which would provide any direct financial benefit to that member.
- III. Needs Assessment - A documented, written assessment shall be made to determine need. This could be as simple as a purchase order request from staff for small item purchase. The needs assessment document should indicate who prepared the assessment, when it was done, how it was prepared, and reach a logical conclusion. The approval process (if any) should also be supported by either written approval or initials affixed to the assessment.
- IV. Cost Estimate and Evaluation of Resources - A documented, written estimate of the cost shall be done to determine if resources are available to initiate the purchases and to determine which procurement options are appropriate. The written cost estimate should show who prepared it, when and what sources were used. The evaluation of resources should show who determined that the resources were available, date the evaluation was made and how it was made.
- V. Review and selections of procurement options - Based upon the estimated cost the agency shall determine, by written documentation, what procurement options are allowable and select the appropriate option. Procurement options are based on meeting the following minimum requirements. For purposes of these requirements, "purchase"

shall mean acquisition of any item(s) or services. Splitting purchases for the purpose of circumvention of this process is prohibited, although consideration shall be given to consolidating or breaking out procurements to obtain a more economical purchase. Contract extensions are not required to re-produce by procurement option if allowed by original request for proposal and contract agreement.

**A. Purchase Less Than or Equal to \$10,000.00**

This type of purchase may be made from any local vendor or subrecipient without solicitation of bids. The agency is required to utilize the best known price. The purchase order, needs assessment, cost estimate, and invoice are the only documentation required.

**B. Purchase Greater than \$10,000.00 but less than \$25,000.00**

This type of purchase requires three written bids from separate vendors or subrecipients if not exempted. The agency shall prepare a written description of the item(s) or service(s) and give it to all prospective bidders. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equivalent" description may be used as a means to define the performance or other salient requirements of procurement. Request for Bids shall be sent to an adequate number of offerors exceeding three to ensure receipt of at least three bids. Each written response shall be analyzed to ensure that it meets the description. Those that meet the descriptions are considered bids. "Lowest and Best" may be utilized for awarding service contracts. However, prior to award, all bidders must be aware of the analysis that will be used to establish this award. The person making the analysis shall prepare a written price analysis of each bidder to determine cost reasonableness and the methodology for selection.

The written description and all responses shall be retained. Each shall be noted as bids or not bids and the person making that determination shall sign or initial each response. The written analysis of each bidder and the methodology for selection shall be signed and retained.

**C. Purchase of \$25,000.00 or more**

This type of purchase requires a formal advertise Competitive Bid Process unless exempted. The following items must be included in that process:

1. Advertisements - The need for an item or service will be presented to the public on the agency's website (www.jeff-frankjobs.com). Additionally, written notifications of request for bids shall be made to an adequate number of offerors exceeding three to ensure receipt of three bids.
2. Preparation of RFP - Either a Request for Proposal (RFP) or an Invitation for bid (IFB) must be prepared to tell prospective bidders what they must know to submit their bid. An RFP is a solicitation procedure and a document that indicates what is to be accomplished and requests the bidder to indicate how it will be accomplished and the cost. A copy of the original RFP or IFB and any amendment thereto shall be retained. A list shall be maintained of who received RFP(s) or IFB(s). The RFP is not used when there is a "standard " associated with the requirement. In using an RFP, the contracting agency may elect to award the contract by using one of several proposal evaluation methods. Evaluation on a point system (40 points cost, 20 points experience, 20 points plan) or on a priority system (proposals that meet the minimum requirements are ranked "best to worst" and funded until all funds obligated). This permits consideration of other factors in addition to price.

An IFB is a type of procurement and a document used in a formal competitive bidding process. The document contains a precise statement and complete specifications of what will be purchased. Because it allows no choice in how the work will be performed, it essentially requests only a cost from the bidder. The IFB is appropriate for use in purchasing services for which there is a known industry/professional or other mandated standard governing the quality and tests for acceptability for the work to be performed. The IFB states contractor qualifications, allowing only one interpretation. Therefore, each bidder is bidding

on exactly the same thing. It is this characteristic that permits bid comparison and contractor selection solely on the basis of price.

3. Distribute the RFP/IFB - The RFP or IFB shall be sent to anyone responding to the advertisement. Additionally, the agency shall also send it to known vendors exceeding three in an attempt to get as many bids as possible. Necessary steps will be taken to assure that minority businesses, women's business enterprises and labor surplus area firms as outlined in 2CFR 200.321.
4. Form Evaluation Committee - An evaluation committee must be formed with at least three members. The number of members and the makeup of the committee should be such that there is no appearance of impropriety. The appointment of the evaluation committee shall be done in writing and retained.
5. Hold a Pre-bid Conference - It is advisable to hold a meeting with the prospective bidders to answer questions and clarify issues. This conference may disclose the need for written amendments to correct or clarify the original RFP or IFB. A list should be maintained of those attending the pre-bid conference.
6. Receive and Log Bids - Bids received shall be time stamped, logged, and placed under lock until the bid opening. Bids received after the closing time should be returned unopened to the bidder and a note shall be made for any bids returned to be filed with the log. One copy of each bid, including the envelope it was sent in, should be retained with the log of bids received.
7. Open Bids - Bids shall not be opened prior to the stated closing time and date. The bids should be opened by at least two people and a note shall be made of those attending the bid opening. The bids are then forwarded to the members of the evaluation committee.
8. Evaluate the Bids - Committee members evaluating the bids must first determine if each bid is responsive. Responsive bids are those that conform to the essential elements of the solicitation. Non-responsive bids may be omitted from further analysis. A written report deeming each bidder either responsive or non-

responsive must be prepared with adequate documentation of the reasoning for any bid deemed non-responsive.

Second, the responsive proposals should be analyzed in accordance with the evaluation criterion.

Third, the committee must make the contract award(s) decision based upon their evaluation. The committee will make a recommendation to the appropriate authority for award. The committee may also recommend that no award be made, if there are reasons why the award is not in the best interest on the program.

Fourth, the committees shall prepare a formal report on the award, recommendation or lack thereof.

Competitive-Formal Advertised Competitive Bid Process does not have a minimum number of proposals required; however, should only one bid be received or deemed responsive, it is imperative that reasonableness of cost and price analysis is completed.

9. Cost and Price Analysis - The method and degree of cost or price analysis depend on the facts surrounding the particular procurement and processing situation and must be documented in writing prior to award. The following list of ways to justify reasonableness of cost is provided for informational purposes and is not all-inclusive.

- Comparison of previous local experience
- Comparison of similar proposals
- Comparison to national and/or state averages
- Analysis of projected budget for a new and unique program
- Comparison to experience by another similar AE

A. A price analysis to determine price reasonableness is not necessary when price reasonableness can be established on the basis of a documented catalog

- or market price of a commercial product sold in substantial quantities to the general public or based on process set by law or regulation.
- B. A cost or price analysis is required to determine price reasonableness: when the offeror is required to submit the detailed elements of the estimated cost; when adequate price competition is lacking; and for sole source procurements. Contracts or modifications negotiated in reliance on such data should provide the awarding agency a right to a price adjustment to exclude and significant sum by which the price was increased because the contractor had submitted data that was not accurate, complete, or current as certified.
- C. A price analysis shall be used in all other instances to determine the reasonableness of the proposed contract or bid award.
10. WIOA Procurements shall not permit excess program income (for nonprofit and governmental entities) or excess profit (for private-for-profit entities).
11. Debarred and Suspended Parties- No agency or its subrecipients shall make any subgrants or permit any contract or subcontract at any tier to any party that is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs.
12. Award - The appropriate authority shall issue an award notice to the successful bidder and non-award notice to unsuccessful bidders. The appropriate authority may take the committee's recommendation, reevaluate the bids based on all applicable requirements included in the procurement system guidelines or throw out all the bids. If the committee recommendation is not taken, the appropriate authority shall prepare a formal report on the award or lack thereof.
- D. Items exempt from Competitive Procurement: Sole Source Exemption  
-Exempt procurements must follow the requirements in this guides sections dealing with reasonableness of cost and price analysis, cost reimbursable basis, and debarred and suspended parties. Agencies are required to select the best-known price from known vendors.



1. The following items are exempt form competitive procurement:
  - a. Magazines.
  - b. Books
  - c. Periodicals.
  - d. Newspapers
  - e. Any form of direct advertising space and time
  - f. Conferences - The cost of attending or participation is exempted.  
The cost of putting together a conference is not exempted.
  - g. Training Sessions and Seminars - related to the individual's profession or program.
  - h. Copyrighted materials such as films, film strips, books, pamphlets, videotapes, or audio tapes (computer software is not included in this category).
  - i. Updates of computer software which the agency already owns.
  - j. Repair services and operational supplies and operational supplies from original manufacturer, if such repairs/parts/services/supplies must be performed or obtained by the original manufacturer or by the manufacturer's authorized service center, because; (1) the nature of the repair, service or supplies are available only from the original manufacturer as a result of a lawful patent; (2) the technical nature of the repair or service can only be performed by the original manufacturer due to a patented design or technical manufacturing process; (3) repairs of such equipment would violate the terms of or part of the equipment warranty or purchase agreement.
2. Agencies eligible to acquire equipment from either State or Federal surplus property may do so without any additional procurement practices.

3. Agencies eligible to buy from state contract awarded by the Division of Purchasing may do so without any additional procurement practices.
  4. Agencies may contract with DWD to provide statewide coordinated services
  5. Agencies may contract with the State of Missouri, Department of Elementary and Secondary Education (DESE) to provide services provided DESE does so at no additional administrative cost.
  6. On-the-Job Training (OJT) contracts with employers, except OJT brokering contracts, which shall be competitively selected.
  7. Enrollment of individual participants in classroom training.
- E. Emergency purchases - Emergency purchases for a situation that creates a serious and obvious threat to public health, safety or operation of the agency in executing its legal responsibilities to public, or property in its legal care or control, as may arise by reason of flood, epidemic, illness, riot, natural disaster, accident, equipment failure, or similar cases will require strict documentation of the existing emergency condition to be filed with the purchase order and invoice.
- An emergency purchase can only be allowed when immediate action is necessary to resolve an extraordinary situation and the resolution of the condition receives priority over routine operations and duties of the agency.
- The director of the agency, or someone acting in the director's capacity, must declare an emergency.
- F. Intergovernmental Cooperation - Unit of government is defined as any of the following agencies: agencies of the federal government; departments or divisions of; state government, counties, cities, towns, townships or villages, state universities or colleges; junior/community college districts, tax-based schools and school districts, and regional planning commissions (RPCs). An agency which is a unit of government may contract with any other unit of government on a noncompetitive process, but it must be on a cost reimbursable basis. A

reasonableness of cost and price analysis must be performed. The additional requirements for service provider selection must be completed if applicable.

IV. Elements of an RFP or IFB

- A. A Work Statement (referred to as specifications in an IFB) which identifies the desired quality of work, applicable performance standards, quality control measures, and all record and reporting requirements;
- B. Clear definitions of important terms relating to work to be performed and for which there could be more than one meaning;
- C. The objectives to be achieved or outcomes expected to result from the purchase of the particular services or goods;
- D. A work schedule for the contract period which identifies time frames, benchmarks, and review and approval points ( including contract completion);
- E. Any limitations or requirements concerning equipment to be purchased or used by the contractor, or if equipment may be made available by the contractor, or if equipment may be made available by the awarding agency;
- F. Any practical, legal limitations, or sanctions which should be expected or may be imposed upon the performance of work under a contract, including the manner of payment and acceptance of performance.
- G. Instructions concerning use of formats, attachments, or additional documents to be submitted (e.g., licenses, tax exemption, articles of incorporation), specific elements to be addressed when responding, and instructions on submitting cost/price information;
- H. Identification of all laws, licensing, certification, or assurances with which a contractor is expected to comply;
- I. Include a statement of Nondiscrimination and Equal Opportunity Requirements.
- J. A statement that the offeror shall have written procedures for procurement transactions that include or comply with the procurement procedures in 2 CFR

200, and/or any additional procurement instructions issued by the agency issuing the RFP;

- K. A statement that the offeror or its subrecipients shall not use funds provided through the RFP under WIOA to duplicate facilities or services.
- L. The offeror shall certify that, to the best of its knowledge and belief, the cost data are accurate, complete, and current as submitted in their response. Should there be an extended lapse of time between the offeror's RFP response and bid award, the offeror shall recertify price to award. The offeror shall be made aware that contracts or modifications negotiated in reliance on such data should provide the awarding agency a right to a price adjustment to exclude any significant sum by which the price was increased because the contractor had submitted data that were not accurate, complete or current as certified;
- M. Instructions that each offeror conduct and document oversight to ensure compliance with procurement standards;
- N. A precise statement of when, where, and how bids/ proposals are to be submitted; (time frames must be reasonable to allow for an informed bid);
- O. A contact person to whom questions may be directed, and identification of any special procedures to be used in requesting information. Responses to questions which clarify, change, or interpret the IFB or RFP require a written amendment to be prepared and distributed to anyone who received the original RFP. Responses which only lead the bidder to the correct location in the IFB or RFP do not require formal amendment;
- P. A precise statement of the evaluation criterion to be used to evaluate the bids;
- Q. The right to reject all bids, if it is in the best interest of the program;
- R. The right to extend or renew for the same services for a specified period of time. The maximum contract period shall be one-year with two, one-year renewal options. Additionally, the right to include additional funds for the same service as, or if, funds are made available; and

S. Any item intended for inclusion in the contract that is not listed above.

VI. Additional Policies Applicable to Equipment

A. Generic Description - specifications shall be described with generic or functional terminology whenever reasonably possible. However, specifications may be based upon brand name descriptions if generic or functional specifications ("or equal") are added as an inherent part of the bid solicitation.

B. Purchase of \$5,000 or More - Any purchase of personal or real property of \$5,000 or more requires written approval by the WDB Chair or designee.

VI. Procurement Protest/Dispute Procedures - The agency and its subrecipients shall have protest procedures to handle and resolve disputes relating to their procurements. Such procedures shall be consistent with the complaint and grievance procedures issued by DED and any additional required procedures of the awarding entity. A protestor shall exhaust all administrative remedies with the subrecipient before pursuing the protest at a higher level. Violation of law will be referred for action to the Department of Labor, Office of the Inspector General, and other appropriate local and state authorities having proper jurisdiction.

VII. Contract/Annual Agreement - A contract/annual agreement can be defined as: mutually binding promises exchanged between two parties which the law will uphold, or a legally binding agreement between two parties for goods or services.

A signed copy of every contract, and every contract modification or amendment, shall be maintained. In addition, a copy of all correspondence related to the contract shall be maintained. When it is not possible for any reason to have a fully signed contract in place prior to the start date, the agency shall prepare a memorandum to file which explains why. It shall be retained in the contract file and be subject to audit and/or monitoring.

The agency may either develop a contract separate from the procurement documents or incorporate the RFP or IFB with the proposal and the award to form a contract.

- A. RFP/Proposal/Award - The RFP or IFB is joined with the proposal and a written award to form the contract. If this method is used there must be clear statements about which supersedes in the event of conflicting language. Also, the method of award must be in the RFP or IFB.
- B. Separate Contract - If a separate contract is developed, this contract cannot waiver form the intent of the RFP or IFB, and would require signatures of all parties. This method should also be indicated in the RFP or IFB to minimize problems in developing the contract. The following are the minimum provisions for this type of contract:
1. Name - Names of all parties entering into contract agreement.
  2. Assurances - Assurances and certifications that require compliance with applicable laws and regulations.
  3. Issuance's - Contractor issuance's are a means of passing on interpretations of issuance's of USDOL and DWD policy decisions.
  4. Specified Time Period - the beginning and ending dates of the contract.
  5. Option to Renew - Option to renew or extend contract should: be for reasonable fiscal accountable periods of time, be stated in the original RFP or IFB, and be based on a written determination of satisfactory performance. The maximum contract period shall be one year with two one-year renewals.
  6. Statement of Work - Description of the services to be provided or work to be performed by the contraction agency. The description should contain a precise description of the work to be performed, any pertinent quantifiable measures and clearly specified deliverables.
  7. Amount - total dollar amount of the contract.
  8. Budget - Shows the estimated allowable expenditures by line item and funding source.

9. Changes - Describes the method to modify any provisions of the contract, which should be written and signed by all parties. Exceptions to the method must be noted (such as issuances). If an RFP or IFB process was utilized, the ability to modify the scope of work is very limited.
10. Reporting - List of reports required by contractor stating applicable time frame (payment or invoicing, expenditure, income, etc.), with an option to add additional reporting as necessary.
11. Liability-Repayment - Contracting agency assumes full liability and agrees to repay all unallowable expenditures.
12. Termination - Termination or cancellation of contract for: non-compliance with applicable laws, nonperformance or failure to make a sufficient contract progress, or contract /contracting agency convenience. Cancellations should: be in writing, state reasons/conditions, and provide best protection to either contractor to contracting agency. A time frame should be established for each termination or cancellation provision (i.e., 30 days).
13. Compliant - Explain the complaint/dispute procedures applicable to the contract agreement.
14. Access to Records and Audit Rights - Reserves the rights of the U.S. Department of Labor, the General Accounting office, Comptroller General of the United States, the State Auditor's Office, the Department of Economic Development, the Division of Workforce Development , and local agency providing funds, as well as any local authorities or their duly authorized representatives to have access to records during normal business hours to audit, monitor, examine, or otherwise evaluate all activities, documentation and records as often as the auditors, monitors, or reviewers deem necessary. Access includes any books, documents,

papers, or records (including computer records), of any contractor or subcontractor which are directly pertinent to charges to the program. Excerpts, transcripts, and photocopies may be made. Rights shall also include timely and reasonable access to personnel for purposes of interviews and discussions related to such documents.

15. Record Retention - Generally, three -years retention from final charges to the contract or until any audits or disputes are fully settled, Retention may be expanded if local laws are more stringent. Payment and Delivery Terms - The conditions to be met before payment is made should be outlined. The conditions can supplement the termination provisions by specifying the conditions which would be considered lack of performance. Payment should be tied to the deliverables outlined in the Statement of Work.
16. Conflict of Interest - Specify what conditions the contractor feels could result in a conflict of interest and therefor, should be avoided or prohibited.
17. Documentation of Evaluations and Progress in training - In contracts involving training a method of documenting to the contractor that its subcontractor is making appropriate progress toward the completion of training.
18. Compliance with WIOA - A specific clause that requires compliance with the Workforce Innovation and Opportunity Act and the Federal Regulation on WIOA. If the contract is not using WIOA funds, it shall be tailored to the applicable federal law and regulations and /or applicable state law and state regulations. Additional reference may be contained in the statement of work.



19. Provision Against Assignment - A clause should prohibit the subcontractor from assigning any interest in the contract to another agency or individual without contractor approval.
20. Trainer Qualifications or Project Personnel - If key personnel are extremely important for technical managerial skills or training ability, their name and/or qualifications should be listed and the contractor should require approval for substitution or replacement.
21. Sanctions and Penalties - A clause providing for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, including sanctions and penalties as appropriate.
22. Patent Rights, Data Rights, and Copyrights - A statement that the federal government and/or the state, as applicable, retains full rights, ownership, and privileges of free use of any products (inventories, patents, copyrights, data, reports, studies, and other real or tangible property) of funds provided under the contract agreement.
23. Audit Requirements - A clause stating audit requirements.
24. Nondiscrimination and Equal Opportunity - A clause requiring the assurance of equal opportunity and nondiscrimination, as found in WIOA Section 188 and 29 Code of Federal Regulations (CFR) 37, Assurance required; duration of obligation, covenants.
25. Americans with Disabilities Act Compliance - A clause requiring compliance by the agency and its subrecipients with provisions for accessibility, conditions, hiring practices, etc., as contained in the Americans with Disabilities Act of 1990, or as amended.
26. Nondiscrimination and Equal Opportunity Requirements - A clause as required by 29 CFR Part 7 as follows: As a condition to the award of financial assistance under WIOA from the Department of Labor, the grant applicant assures, with respect to operation of the WIOA - funded

program or activity and all agreements or arrangements to carry out the WIOA funded program or activity, that it will comply fully with nondiscrimination and equal opportunity provisions of the Workforce Innovation and Opportunity Act, including the 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 37. The United States has the right to seek judicial enforcement of this assurance.

27. Inaccurate Cost Data - Where contracts are negotiated or modified in reliance of cost data supplied through the procurement process, a clause providing the awarding agency the right to a price adjustment, to exclude any significant sum by which the price was increased because the contractor had submitted data that was not accurate, complete, or current as certified.
28. Acceptance - Acceptance of product or performance (should state terms, who, and how).
29. Subcontracting - States if subcontracting is allowable and if the contractor's permission is required.
30. Bonding - Requires Bonding to meet WIOA financial standards of \$50,000 for contractors of less than \$500,000 (not to exceed the total contract), or \$100,000 for contracts of \$500,000 or more.
31. Property Management - Outlines property management and inventory control policies and procedures; must meet DWD minimum requirements.

32. Definition of Key Terms - If technical language is used in the contract, it should be clearly defined. Technical language includes any language which is not easily interpreted, which has multiple meanings or has a specific meaning within a profession or industry. This may be a separate section.
33. Table of Contents - A table of contents allows contracts to be well organized, clearly understood, and easily accessible.