



Policy Memorandum 2020-11

Procurement and Contracting – Effective February 1, 2020

INTENDED AUDIENCE: AAWDC fiscal staff and other staff members with procurement and contracting responsibilities

SUBJECT: Procurement Practices and Contract Requirements

RESPONSIBLE OFFICE: Finance Office

POLICY CONTACT: Procurement and Contracting Specialist

CANCELLATIONS

2017-08 – Procurement and Contracting Procedures

STANDARD OPERATING PROCEDURES

FORMS

All SOPs and Forms will be included in the AAWDC Procurement Manual.

Approvals

President and CEO, AAWDC *Kirkland J. Murray*
Kirkland J. Murray (Jan 29, 2020)

Introduction

Anne Arundel Workforce Development Corporation (AAWDC) serves as a fiduciary for workforce development funds. These funds include grants from federal, state and local government entities, as well as charitable foundations and other private entities. As such, AAWDC has a responsibility to ensure grant funds (and frequently by extension taxpayer money) is spent in the best interest of the program and consistent with the grantor's mission. That creates a requirement for fair, frugal, astute, and discerning judgement in selecting vendors, contractors and sub-grantees. This policy was created to balance the need to procure effective, high-quality goods and services with best-value efficiency and specifically published goals of the grantor, such as Buy-American, Minority Business Enterprise (MBE), and local preferences.

Policy Statement

The procurement of services, including WIOA Title I services and training, and all purchases of fixed assets and supplies acquired shall comply with this policy and all applicable local, state, and federal statutes. This policy will control all purchases to appropriately utilize available funding in the local workforce development area. This policy also requires that purchasing is in accordance with any respective funding stream. All procurements will be subject to requirements of the Uniform Guidance found at 2 CFR 200, unless the grant specifically requires the use of more restrictive rules. In such case, specific guidance will be provided by the Office of Compliance and the Office of Finance.

Procurement under the Uniform Guidance

Cost Reimbursement

Procurement transactions must be conducted on a cost-reimbursement basis, unless other specified in the grant documentation covering the procurement. In all cases, transactions between the Local Board and units of state or local government must be conducted on a cost-reimbursement basis.

General Procurement Standards

AAWDC will use documented procurement procedures that reflect State and local laws, so long as those laws also conform the Uniform Guidance found at 2 CFR 200.317 to 326.

AAWDC will maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

AAWDC's *Conflict of Interest* policy governs the actions of employees and board members engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award or administration of a contract supported by a Federal, state or local award if he/she has a real, perceived, or potential conflict of interest. Conflicts must be disclosed in writing when known in advance or announced to the voting body. The conflicted party must excuse themselves from any further discussion and cannot vote on the matter in question. Violations of the conflict of interest policy are subject to disciplinary action as defined in the *AAWDC Employee Handbook* and the *Conflict of Interest* policy.

In keeping with the principles of good stewardship and cooperation, AAWDC seeks to avoid the acquisition of unnecessary or duplicative items. Where possible, AAWDC will promote the use of common or shared goods and services by entering into cost-shared agreements with other agencies or units of government. The use of Federal, state, or local excess and surplus property in lieu of purchasing new equipment and property is encouraged (but not required) when such acquisition is in the best interest of AAWDC. When possible, AAWDC will take positive steps to ensure that minority businesses, women-owned, and labor surplus firms are used.

AAWDC will award contracts only to responsible contractors possessing the ability to perform successfully under terms and conditions of a proposed procurement. Consideration will be given to such matters as:

- Contractor integrity;
- Contractor's ability to comply with and knowledge of public policy;
- Record of past performance; and/or

- Sufficient financial and technical resources to complete the project.

AAWDC will maintain records sufficient to detail the history of procurement. These records will include, but are not limited to:

- Rationale for the method of procurement;
- Selection of contract type;
- Basis for acceptance or rejection of contractor bid/proposal; and
- Basis for the contract price.

AAWDC will be responsible for the settlement of all contractual and administrative issues arising out of procurement, to include:

- Evaluation of source;
- Protests;
- Disputes; and
- Claims

Competition

All procurement transactions must comply with the competition requirements of 2 CFR 200.319. This means that all procurements must be conducted in a manner that ensures a full and open competition. Any contractors that assist in the drafting or development of any portion of the procurement, including specifications, requirements, statements of work, or requests for quotes or proposals, are excluded from competing for such procurements.

The following situations must be avoided and will void a procurement:

- Unreasonably restrict requirements on contractors to qualify them to do business, require unnecessary experience, and/or requiring excessive insurance/bonding (i.e. cherry picking);
- Noncompetitive pricing practices between contractors or between affiliated companies (i.e., price fixing);
- Use of retainer contracts for consultants (unless they are competitively sourced);
- Organizational conflicts of interest;
- Specifying "brand name" product when a product of equal performance or similar requirements is available;
- Use of geographic preferences in the evaluation of proposals (even if such preferences are statutorily imposed by a state or local governmental entity) unless applicable Federal statutes expressly mandate or encourage such preference; and/or
- Any other arbitrary action in the procurement process.

AAWDC will do its best to ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum competition. Potential bidders may qualify during the solicitation period, so long as the bidder is fully qualified by the completion of the procurement process.

Methods of Procurements

The Uniform Guidance provides four methods of procurements based upon aggregate cost and other principles.

- *Micro-purchases* – A micro-purchase is the procurement of supplies or services whose aggregate cost does not exceed \$10,000. Micro-purchases do not require the solicitation of competitive proposals as long as AAWDC considers the cost to be reasonable. To the extent practicable, AAWDC will distribute micro-purchases equitably among qualified suppliers.
- *Small Purchases* – Small purchases are those relatively simple and informal procurements for services, supplies, or other property that do not exceed the Simplified Acquisition Threshold (currently \$250,000 in aggregate cost). Small purchases requires the use of price or rate quotations from an adequate number of qualified sources.
- *Competitive Proposals* – Competitive proposals are normally conducted when cost is **not** the overriding consideration. While required for any aggregate purchase exceeding \$250,000, AAWDC may also utilize the competitive proposal method in situations where such a proposal is determined to be advantageous to the

organization. Subawards must be solicited using either competitive proposals or sealed bids (as discussed below). Competitive proposals are guided by the following requirements:

- Requests for Proposals (RFPs) must be publicized as widely as possible, including in a local paper of record and the AAWDC website. Any response to publicized requests must be considered to the maximum extent practical;
 - Proposals must be solicited from an adequate number of qualified sources;
 - AAWDC will follow its written method for conducting technical evaluations of the proposals received and for selecting recipients; and
 - Contracts will be awarded to the responsible contractor whose proposal is most advantageous to AAWDC, with price and other factors considered.
- **Sealed Bids** – Sealed bids are used when price is the overriding consideration. Sealed bids are publicly solicited and a fixed price contract is awarded to the responsible bidder whose conforming bid is the lowest in cost. Sealed bids are preferred in construction procurement, but may be utilized elsewhere under the following conditions:
 - A complete, adequate, and realistic specification or purchase description is available;
 - Two or more bidders are willing and able to compete effectively for the business; and
 - The procurement lends itself to a firm fixed price contract and the selection of the bidder can be made principally on price.

Sealed bid competitions must follow the guidelines below:

- Bids must be solicited from an adequate number of known suppliers, providing sufficient response time prior to the date set for opening the bids. Invitations to bid should be publicized as widely as possible;
- The invitation for bids must define the items or services in order for the bidder to respond properly;
- All bids will be opened at the time and place prescribed in the invitation for bids and must be opened publicly;
- A firm fixed price contract will be awarded to the lowest responsive and responsible bidder. If discounts or other costs are included in the bid, use of such costs to determine lowest cost will only occur if AAWDC determines that such discount or cost is likely to happen; and
- Any or all bids may be rejected if there is a sound documented reason.

Under certain narrowly defined circumstances, AAWDC may utilize sole source procurement. The circumstances are as follows:

- The item being procured is only available from a single source; or
- The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation; or
- The Federal awarding agency or pass-through entity expressly authorizes sole-sourcing in response to a written request; or
- After solicitation of a number of sources, competition is determined inadequate.

Appeals

AAWDC reserves the right to accept or reject any or all proposals or bids in whole or in part for any reason if it is determined to be in the best interests of the organization. Any interested party may protest or appeal the decision of the organization. Appeals must be in writing, signed by an authorized official or agent of the party, and must be sent to:

Complaints Resolution
Office of Compliance
1131 Benfield Blvd., Ste. N
Millersville, MD 21108
complaints@aawdc.org

Appeals must be filed within 7 days of formal notice of contract award. The appeal must include the following information:

- Name and contact information for the protesting party
- Identification of the procurement
- Statement of specific reasons for protest

- Supporting documentation

A decision on the appeal shall be made in writing by the cognizant Vice President (for contracts of \$25,000 or less) or the President and CEO (for all other contracts). This decision shall be final.

Contracts and Contracting Authority

Actions Taken Prior to Contracting

Prior to finalizing a contract, AAWDC will do the following:

1. AAWDC will perform a cost or price analysis in connection with every procurement conducted as a competitive proposal or sealed bid, including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement. When possible, AAWDC will make an independent estimate before receiving bids or proposals.
2. Where applicable, AAWDC will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration shall be given to the complexity of the work, the risk borne by the contractor, the contractor's investment, and industry profit margins in the surrounding geographical area for similar work.
3. Costs or prices based on estimates are allowable only to the extent that such costs would be allowable under Subpart E of the Uniform Guidance.
4. Cost plus percentage methods of contracting are not allowable.

A pre-procurement review may be made by the awarding agency. Should such a review be requested, AAWDC will make available technical specifications and procurement documents.

Suspension and Debarment

Non-federal entities and contractors are subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 CFR part 180. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs or activities.

Agents must ensure that all contractors are in good standing with the State of Maryland (or their state of incorporation, for non-Maryland entities) and check the System for Award Management to ensure that AAWDC is able to award federal funds to contractors.

Contract Term

As AAWDC subsists primarily on government grant funding, it is often imprudent for contracts to extend beyond a single fiscal year. However, AAWDC must also be a good steward of the funds entrusted to it and recognizes that there is value in longer term agreements. These agreements typically provide better pricing and more convenient terms for AAWDC. Therefore, when prudent, AAWDC should negotiate contracts for three-year terms, including all extensions and option years.

Contract Provisions

All AAWDC contracts must contain the appropriate provisions described in Appendix II to Part 200. Those provisions are summarized in the table below:

	Contracts greater than \$2000	Contracts greater than \$10,000	Contracts greater than \$100,000	Contracts over the Simplified Acquisition Threshold
EEO Clause (41 CFR Part 60)	✓	✓	✓	✓
Davis-Bacon Act	✓	✓	✓	✓

Debarment and Suspension	✓	✓	✓	✓
Byrd Anti-Lobbying Act			✓	✓
Termination for Cause/Convenience		✓	✓	✓
Contract Work Hours/Safety Standards Act			✓	✓
Rights to Inventions (non-profits and small business only)	✓	✓	✓	✓
Clean Air Act/ Federal Water Pollution Control Act				✓
Solid Waste Disposal Act		✓	✓	✓

Types of Contracts

AAWDC shall utilize the contract or agreement type that is most appropriate to the procurement. In all cases, such agreements must be legally sufficient and properly formulated as those terms are defined here:

- *Legal sufficiency* – A contract is legally sufficient if the contracting parties have legal capacity to enter into such an agreement. Additionally, the contract must contain all material terms, be for a legal purpose (i.e., is an allowable cost), is in writing, is conscionable (i.e, is not patently unfair to either party), and has definitive terms.
- *Properly formulated* – A contract that is legible, logically formatted, written in plain English, tailored to the engagement, and anticipates and allocates foreseeable risks is considered properly formulated.³

Subrecipient and Contractor Determinations

AAWDC will make a case-by-case determination whether each agreement it makes for the disbursement of grant funds casts the receiving party in the role of a subrecipient or a contractor.

In determining whether an agreement makes a non-Federal entity a contractor or a subrecipient, the substance of the relationship is the deciding factor. AAWDC will use reasonable judgment in classifying each agreement as a subaward or a contract. Documentation of the determination will be kept with the contract file.

In compliance with 2 CFR 200.330, AAWDC will classify providers of Workforce Innovation and Opportunity Act (WIOA) Title I services as subrecipients. Additionally, under WIOA Section 121, the one-stop operator shall be a subrecipient.

Authority to Contract

AAWDC authorizes agents to make purchases and encumber funds on its behalf to ensure that the organization can provide services with little to no interruption. Agency is authorized as follows:

- *Individual Training Account (ITA), Work-and-Learn (WAL), and On-the-Job (OJT) Contracts* will be signed by the appropriate Program Manager.
- *Cohort Training Contracts and Other Participant-Based Contracts* will be signed by the appropriate Vice President.
- *For all other contracts and purchase orders under \$5,000* will be signed by the appropriate Manager.

- *For all other contracts and purchase orders over \$5,000* must first be obligated by the President and CEO who may authorize the appropriate employee to sign on behalf of AAWDC.
- The AAWDC Corporate Board of Directors must approve all contracts over \$250,000 for signature by the President and CEO. Approval of contracts shall be included in the minutes of the meeting at which the contract is approved and must be approved at a properly posted meeting in compliance with the Open Meetings Act. There may also be certain contracts which require the approval of the Local Workforce Development Board. Those contracts shall be approved in a like manner.

Revision History

<u>Policy Number</u>	<u>Date of Revision</u>	<u>Significant Change</u>
2017-08	6/29/2017	To implement the requirements of the Uniform Guidance (2 CFR 200)






AAWDC Procurement Policy

Final Audit Report

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