

**FULTON, MONTGOMERY, AND SCHOHARIE COUNTIES  
WORKFORCE DEVELOPMENT BOARD, INC.**

**PROCUREMENT POLICIES**

Approved by Board of Directors: **2/1/17**

Effective Date(s) of Procurement Policies. The effective date of all procurement policies described in this manual is the date approved by the Board of Directors. If a policy is added or modified subsequent to this date, the effective date of the new/revised policy will be indicated parenthetically immediately following the policy heading.

November 2006 - Resolution BY-2006-21  
January 2009 – Revision – BY-2008-24  
March 2012 – Revision – BY 2011 -14  
August 2013 – Revision – BY-2013-08 Approved 8/7/13  
BY-2016-10 – Revised & Approved – 2/1/17

## **General Policy**

All procurement transactions of the Fulton, Montgomery, and Schoharie County Workforce Development Board, Inc., (FMS WDB) shall be conducted in a manner which provides, to the maximum extent possible, for open and free competition. Policies and procedures governing procurement shall ensure that goods and services are obtained in an effective and efficient manner, consistent with the provisions of applicable federal, state and local laws, rules, and regulations. These policies and procedures follow the requirements of the Workforce Innovation and Opportunity Act of 2014 and Uniform Guidance Section 200.320

## **Code of Conduct**

This code of conduct is intended to set forth certain standards governing the performance of members of the FMS WDB and officers, employees, or authorized agents of the FMS WDB engaged in the award and administration of contracts supported by federal funds. These standards are designed to protect these individuals from accusations and/or implications of official misconduct, unethical behavior and conflict of interest, either real or perceived.

Except as otherwise permitted or provided by federal, state, or local laws, rules and regulations, the following provisions shall apply:

Members of the FMS WDB and officers, employees, or authorized agents of the FMS WDB engaged in the award and administration of contracts supported by federal funds, may not vote on any matter that would provide direct financial benefit to the member or the member's immediate family, nor on matters of the provision of services by the member or the entity the member represents.

- Immediate Family: Any person related within the first degree of affinity (marriage) or consanguinity (blood) to the person involved.

No member of the FMS WDB and officers, employees, or authorized agents of the FMS WDB engaged in the award and administration of contracts supported by federal funds, may participate in a decision in which the person has a direct or indirect interest, particularly a financial interest, which is in substantial conflict with the discharge of the duties of the Board.

Substantial interest: A person owns 10% or more of the voting stock, owns 10% or more or owns \$5,000 or more, of the fair market value of a business; or funds received by the person from the business exceed 10% of the person's gross income for the previous year; or if the Board member is related to a person in the first degree of affinity or consanguinity who has a substantial interest as defined previously.

Neither membership on the FMS WDB nor being an officer, employee, or authorized agent of the FMS WDB nor the receipt of WIOA funds to provide training and related services, by itself, violates these conflict of interest provisions.

Prospective Board members are required to provide to the Board Chair a written declaration of all substantial business interests or relationships they, or their immediate families, have with all businesses or organizations which have received, currently receive, or are likely to receive contracts or funding from the Board.

Prior to a discussion, vote, or decision on any matter before a Board, if a member, or a person in the immediate family of such member, has a substantial interest in or relationship to a business entity, organization or property that would be pecuniarily affected by any official Board action, that member shall disclose the nature and extent of the interest or relationship and shall abstain from voting on or in any other way participating in the decision on the matter. All such abstentions shall be recorded in the minutes of the Board meeting.

Violations of the Conflicts of Interest Policy

- 1) If the Board or committee has reasonable cause to believe that a member has failed to disclose actual or possible conflicts of interest, it shall inform the member of the basis for such belief and afford the member an opportunity to explain the alleged failure to disclose.
- 2) If, after hearing the response of the member and making such further investigation as may be warranted in the circumstances, the Board or committee determines that the member has in fact failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action, including removal from the Board.

**Procurement Authority/Delegation of Responsibility**

The responsibility for all procurement transactions (e.g. technical requirements, requests for proposals, solicitations, negotiations, contracts, etc.) has been delegated to the FMS WDB’s Executive Director. He/She is authorized to sign on all contract transactions, unless otherwise required by federal or state authority.

**Maintenance of Bidders List**

A “bidder’s list,” containing the names and addresses of potential service providers who have made a written request to be placed on such a list, shall be maintained.

Solicitation invitations and Request for Proposal packages shall be sent to all potential service providers on the bidders list, as appropriate, according to the type of goods and services being sought.

Service providers located in the Local Workforce Development, Area of Fulton, Montgomery, and Schoharie Counties will be given priority as appropriate.

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Additionally, efforts will be made to utilize small business and women and minority-owned business sources of goods and services.

### **Methods of Procurement**

Procurement shall be made by one of the following methods as described below:

Competitive Negotiation: Invitations for the solicitation of proposals, with information on accessing complete Request for Proposal (RFP) packages shall be sent to potential service providers contained on the established bidder's list, as appropriate according to the type of goods and services to be procured. Notice of solicitation of RFP's may also be published in local newspapers, distributed through FMS WDB mailing lists, and posted on the FMS WDB website. The Workforce Innovation and Opportunity Act of 2014 Section 123 "If a Local WDB chooses to award grants or contracts to youth service providers to carry out some or all of the youth workforce investment activities, the Local WDB must award such grants or contracts on a competitive basis."

RFP's shall contain a clear and adequate description of the goods and services to be procured; technical requirements, outcomes, and specifications which bidders must fulfill; and factors to be used in evaluating/scoring bids or proposals, including the relative importance of each of the factors.

All proposals received in response to the solicitation shall be reviewed by the FMS Executive Director and other staff as assigned. Copies of the proposals and recommendations shall also be given to the appropriate Committee of the FMS WDB for independent review, evaluation/scoring, and concurrence. The Committee and Executive Director will make a resolution to the full board for action.

All selected bidders will be required to participate in negotiations with the FMS WDB Executive Director and appropriate Committee members. The award of any contract or agreement shall be contingent upon the satisfactory completion of negotiations and the continued availability of funding.

Unsuccessful bidders shall be notified in writing within thirty (30) days of the final decision.

Non-Competitive Negotiation: Circumstances include:

- Goods or services to be procured are available only from a single source;
- Emergency need for the goods or services that will not permit an extended time frame necessary to the RFP process;
- After solicitation of bids through the RFP process, competition is determined to be inadequate. The Federal awarding agency (NYSDOL) expressly authorizes a noncompetitive proposal in response to a written request from FMS WDB.

Methods of Procurement: Relates to the procurement of services, supplies, or equipment (which are exempt from other procurement requirements) costing in the aggregate of \$50,000 or less as defined below.

- Out-of-Pocket: With prior permission of the Executive Director, and with presentation of a valid receipt, staff will be reimbursed for out-of-pocket expenses incurred for purchasing supplies of \$100.00 or less.
- **Micro-purchases: Less than \$10,000: The purchase must not exceed the Micro - purchase limit (section 200.67) of \$10,000 for the aggregate of the purchase. Procurement procedure is informal. Selection criteria include price, quality, quantity, service/repair, and delivery time. Purchase will be authorized by the Executive Director, but criteria may be determined and documented by FMS WDB staff, under the direction of the Executive Director.**
- **Small Purchases: More than \$10,000 and less than \$50,000. At least three written quotes should be obtained if possible. Items which are available as a result of state or local government bidding procedures can be purchased without the three quotes.**
- Unadvertised and noncompetitive negotiations may be used to award a contract of \$50,000 or less for personal or professional services when it can be determined to be necessary and in the best interest of the FMS WDB. *The Executive Director will consult with, and obtain concurrence from, the Accountability Committee prior to signing a contract.*

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### Methods of Procurement for Regional Grants

- Regional Grants Utilizing State, Federal, or Foundation Funds: FMS WDB approval is required for entering into all contracts except for those regional efforts funded directly from State, Federal, or Foundation Funds, excluding LWDA formula funds. In this case, when the FMS WDB is acting as the fiscal entity on behalf of a group of workforce boards, all bids are reviewed and scored by representatives of the regional partner WDBs. When the regional partner WDBs are involved in procurement of services FMS WDB Procurement Rules will apply, except that the Executive Director will consult with, and obtain concurrence from, the regional partner WDB Directors rather than the FMS WDB Accountability Committee.

### Contract Administration

All contractors shall be required to submit performance reports and invoices in accordance with the schedule outlined in the contract. Invoices shall be reviewed and authorized by the Executive Director. Performance reports will be reviewed by Board staff and appropriate Board committees.

### Complaints/Protests

Complaints and/or protests regarding contractor selection shall be limited to violations of federal, state, or local laws.

**Record Keeping**

Records of sufficient detail, including formal procurement transactions, shall be maintained. Records shall include mailing lists, responses, requests for proposals, contracts, communications including rejection notices, and any other pertinent information.

All records will be maintained for the period of time specified in TA #16-2.

**Provisions Included in all Contracts**

It is the policy of FMS WDB to include language from Uniform Guidance, Section 200.326, as applicable, in all contracts with vendors and sub-grants to grantees:

- For all contracts in excess of the small purchase threshold, administrative, contractual, or legal remedies where contractors violate or breach contract terms. The clause must also provide for sanctions or penalties, as appropriate
- Termination for cause and for convenience by the awarding agency, including the process for exercising the clause and any basis for settlement Part 97.44, Part 95.61, and Part 95.62.
- Access to records by the awarding agency, the grantee, the DOL, or the Comptroller General of the United States for the purposes of audit, examination, excerpts, and transcriptions (for other than small purchase transactions)
- Notice of awarding agency requirements and regulations related to reporting
- Notice of awarding agency requirements and/or regulations related to patent rights, copyrights, and rights in data
- Record retention requirements as specified in TA 316-2.
- Compliance with Equal Employment Opportunity provisions in Executive Order (E.O.) 11246, as amended by E.O 11375, and supplemented by the requirements of 41 CFR part 60. These are codified for DOL programs at 29 CFR Parts 33 and 37.
- Compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 328 and 333) (all contracts in excess of \$2,500 that involve employment of mechanics or laborers and all construction contracts in excess of \$2,000)
- Compliance with the applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act, Section 508 of the Clean Water Act, E.O.

11738, and Environmental Protection Agency regulations (40 CFR Part 15)  
(applies to contracts, subcontracts and sub grants in excess of \$100,000)

- Mandatory standards and policies related to energy efficiency, which are contained in the State energy conservation plan issued in compliance with the Energy Policy Conservation Act (Public Law 94-162)
- A provision requiring compliance with the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). This requirement is also found in 29 CFR Part 93.
- A provision requiring compliance with the debarment and suspension requirements (E.O 12549 and 12689). This requirement is also found in 29 CFR Part 98.
- Compliance with the provisions of the Davis-Bacon Act for construction contracts in excess of \$2,000
- A provision requiring compliance with the Copeland Anti-Kickback Act (construction and repair awards).
- Applicability of the appropriate ETA program and administrative regulations
- Audit requirements of 29 CFR Parts 96 and 99.
- Compliance with specific requirements for WIOA funding.
- All contracts awarded to government entities must be on a cost reimbursement basis.