



Procurement Policy

I. Background

The Guilford County Local Workforce Area is under the authority of the City of Greensboro which serves as the Grant Recipient/Administrative Entity for the Workforce Innovation and Opportunity Act (WIOA) funds allocated for the operation of WIOA programs in Guilford County. As the Grant Recipient for the funding received under the Act, the local workforce area will be governed by this procurement policy as developed in accordance with Federal, State and local policies. Additional specific procurement policy requirements will be developed and implemented for the solicitation of WIOA service providers for the operations of programs in the Guilford County Local Workforce Area and as required by the Act.

II. Procurement Authority

The Guilford County Workforce Development Board (WDB), in conjunction with the Chief Elected Official(s) (CEOs), has oversight of all phases of the local workforce area's operations and has the responsibility to provide policy guidance for the local workforce area. The WDB has authority for the procurement of services using WIOA funds by the Grant Recipient/Administrative Entity. The WDB may at its discretion delegate certain functions within the procurement process to WDB staff and WDB Committees.

Responsibilities of the City of Greensboro/Office of Workforce Development

- A. In concert with the CEOs, the WDB and its committees, the development of the Local Area Plan as required by the NC Division of Workforce Development.
- B. Development of all procurement documents.
- C. In concert with the CEOs, the WDB and its committees, review and evaluate responses to Requests for Proposals (RFPs) and other forms of procurement.
- D. The implementation of all WDB procurement decisions.
- E. Negotiation of contracts and other procurement agreements and documentation of the process.
- F. Execution of contracts, contract modifications and other awards as approved by the WDB.
- G. Processing procurement appeals/protests/disputes/claims.
- H. Monitoring of all contract activities.

Responsibilities of the Guilford County Workforce Development Board

- A. Development and approval of the Local Area Plan.
- B. Approval and oversight of the procurement process.

- C. Approval of WIOA program activities and funding levels.
- D. Approval and issuance of Request for Proposals (RFP) and proposal evaluation criteria.
- E. Approval of contracts, contract modifications and other awards.
- F. Approval of termination of contracts and other awards for non-compliance.
- G. Involvement in procurement appeals or protests.

III. Procurement Planning and Standards

- A. **Planning** – Workforce development needs in the Guilford County Local Workforce Area shall be identified through strategic planning with the WDB and will be contained in the Local Area Plan. How these workforce needs will be met shall also be contained in the Local Area Plan and identified within the various types of programs and activities planned. Provisions shall be made to avoid the purchase of, or contracting for, unnecessary or duplicative services. Funds provided herein shall only be used for activities which are in addition to those which would otherwise be available in the area in the absence of such funds. The local WDB staff shall be responsible for establishing sufficient time for all phases of the procurement process in accordance with statutory and regulatory requirements to ensure program continuity and fair treatment of potential service providers.
- B. **Standards** – All procurements will be conducted in compliance with all applicable Federal, State and local laws, policies and regulations. To the degree possible, all procurement transactions shall be conducted in a manner providing full and open competition. Such transactions shall not, in competitive procurements, contain features which unduly restrict competition. No unreasonable qualifications or requirements will be stipulated that will qualify or disqualify a potential service provider.

All necessary affirmative action steps shall be taken to ensure that minority firms, women's business enterprises, and community-based organizations are used when possible. This includes but is not limited to compliance with the City of Greensboro's M/WBE policies effective August 1, 2019, requiring submission of all purchases and contracts under \$300,000 to the M/WBE office for either approval or recommendation of another vendor. The RFP is a request for entities to submit a proposal to operate a specific program or activity that has been planned by the WDB. More specifically, it is a package of program specifications with guidelines or directions for responding to these specifications. Proposals shall be solicited when procuring through the competitive or noncompetitive method. Amendments to solicitations will be accepted if submitted within the time frames of the original solicitation requirement. Procurements shall not permit excess profit for private for-profit entities.

The local WDB staff shall maintain sufficient records to detail the significant history of the procurement (i.e., rationale for method of procurement, selection of contract type, contractor selection or rejection and the basis for contract price). Such records shall consist of detailed WDB minutes, detailed committee reports/minutes, correspondence, proposal reviews, rating/evaluation documents and negotiation records.

IV. Procurement Methods

- A. Procurement by Competitive Proposals** – Competitive procurement shall be the method of procurement of workforce services, except as provided for in situations described under the noncompetitive procurement section.

RFPs shall be publicized on Local Area maintained websites and other media (including minority publications where feasible) that will provide for a general circulation throughout the area served. This public notice will be made concurrent with the release of the RFP. This public notice shall also contain information on the bidders' conference. A bidder's list shall be maintained of all entities that have indicated in writing an interest in providing workforce services in the WDB's service area. A notice indicating the service or activity being procured, date, time, location of the RFP release, etc., shall be sent to all individuals on this list, all existing service providers, and others as applicable.

All RFPs shall be released with language which shall include:

- Name and address of the administrative entity.
- Name, address and phone number of person(s) to contact regarding the solicitation.
- General description of the sub-grant program, including identification of the applicable Federal and State laws and regulations with which the selected contractor must comply, including the Workforce Innovation and Opportunity Act; USDOL Regulations 20 CFR Parts 626-631; and any appropriate NC Division of Workforce Development policy issuances.
- The population to be served and minimum service levels to specific target groups.
- An estimate of the number/range of individuals to be served and expected performance results in each activity.
- Requirements for coordination with other workforce entities, as applicable.
- Funding parameters by activity must include a reasonable amount. An RFP with no funding or nominal funding will restrict competition and would violate the prohibition on noncompetitive pricing practices under 2 CFR 200.319(a) and 29 CFR 97.36(c)(1)(iii).
- A detailed description of the training and/or services to be provided.
- The period of performance.
- Applicable monitoring and reporting requirements, including, but not limited to, data entry, performance, and financial reporting.
- Other services or requirements (e.g., responsibility for eligibility determination, WDB policy on support payments, audit requirements and work statement requirements) that will affect proper budgeting by the bidder.
- Prohibition against subcontracting without WDB approval.
- Line item budget of proposed costs, including any profit to be realized and/or funds to be contributed.
- Documentation to be supplied by the bidder to establish its programmatic and financial capability to perform the work.
- Requirements for preparation and submission of the proposal, due date and time, content and format, number of copies and location/person where the bid should be submitted.

- Process and procedures by which proposals will be evaluated for competitiveness, including identification of specific criteria which will be used.
- Description of the procedures for responding to bidder inquiries and a schedule for the receipt of proposals, approximate dates for review and award.
- Conditions under which the completed contract may be modified and extended for additional years, if applicable.
- Grievance procedures for contesting the procurement process.
- Affirmative action assurance that the bidder will comply fully with the nondiscrimination and equal opportunity provisions of the Workforce Investment Act, the Non-traditional Employment for Women Act of 1991; 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 34.

At the WDB's discretion, procurement may be for either single or multi-year program proposals and contracts may be for a single year or multiple years. Multi-year contracts may not exceed a three (3) year period, with the exception of One-Stop Operator service contracts, which may not exceed a four (4) year period as authorized under WIOA. Such multi-year contracts shall include provisions for first year funding and activity levels and provisions and conditions for the negotiation of subsequent year funding and activity levels.

Bidders will be required to submit their qualifications to be a service provider. The provider, at a minimum, shall submit a brief description of the following: 1) organizational structure and experience; 2) personnel standards; 3) financial system; 4) latest audit; 5) bonding coverage; 6) procurement procedures; and, 7) monitoring procedures.

A log will be maintained of all bidders that have requested and been sent an RFP.

A potential bidders' conference shall be held after the RFP becomes publically available. To maintain fair and open competition, the answers to questions that arise from the bidders' conference shall be provided to all entities on the bidders' list and all entities that have requested an RFP.

Amendments to solicitations will be accepted if submitted within the time frames of the original solicitation requirement. The closing submission date must be clearly stated in the RFP. Where late proposals come in, these shall be accepted and the date and time recorded. A letter shall then be sent to the bidder returning its proposal package and explaining why it is not being considered. The WDB reserves the right to accept or reject any and all proposals received in response to the RFP. Obligation to the bidder is contingent upon the availability of grant funds. No legal liability on the part of the WDB for payment of any money shall arise unless and until funds are made available to the WDB for procurement. The bidders shall be responsible for all costs involved in the development of the proposal.

The intent of the evaluation process is to certify that each proposal received meets the basic submission requirements (Proposal Review Criteria) and to determine the quality of

each proposal.

The evaluation process may be divided into the following major steps: 1) a general review of the proposals; 2) an evaluation of the vendor's qualifications; 3) an evaluation of the technical aspects of the proposal; 4) an evaluation of the cost aspects of each proposal; and, 5) an evaluation of demonstrated performance, effectiveness, potential for meeting performance goals, costs, and quality of training.

In concert with the WDB and its committees, the local WDB staff shall utilize a process for conducting technical evaluations and the review of the proposals received and for recommending contractors. Using the evaluation criteria contained in the RFP, the local WDB staff will review all proposals that meet the submission requirements and will submit summary reports of all proposals received to the WDB/WDB committee along with recommendations for contractors it deems best able to operate the program efficiently and effectively, with price and other factors considered. At its discretion the WDB/WDB committees may conduct additional reviews or direct WDB staff to obtain additional information.

After evaluation and recommendation of the proposals received by the WDB committee, the final selection of service providers will be made by the WDB. The WDB will have the final authority for selection of service providers.

Final selections will primarily be based on, yet not limited to, effectiveness, demonstrated performance, potential for meeting performance goals, costs, quality of training, participant characteristics, past workforce development experience and performance of the bidder and non-duplication of services.

Communication will be sent to each successful and unsuccessful bidder that contains the WDB decisions related to that procurement.

Intention to Bid Option. The WDB may use this option when there is a high level of uncertainty regarding the number of proposals which will be received for a workforce service or activity and whether there will be a sufficient number of bids to justify the development of a solicitation. This competitive method maintains the integrity of a competitive procurement process by identifying, through public notice, potential bidders to determine the feasibility of procurement.

Procedural Requirements. When using this option, the WDB will develop a set of preliminary training/service specifications for which the WDB intends to request bids. The specifications will include the following parameters:

- date the proposed solicitation will be issued
- specific type of training/services to be performed
- estimated number of participants and/or available funds or ranges, if preferred
- expected period of performance
- geographic area to be served

- specific target groups to be served
- type of contract to be awarded
- expected performance

A public notification will be issued in the same manner as that used for the issuances of RFPs. In addition, letters or e-mail notifications will be sent to all applicable organizations on the bidders' list, requesting an indication of whether the organization intends to bid on specific training/services which are described in the letter, consistent with the specifications developed. The letter will indicate the date by which a response is to be received.

If the intention to bid process is used and no interest is received, noncompetitive sole source procurement may be used. When one intention to bid response is received, every effort will be made to negotiate the desired training/services with that provider. However, if acceptable training/services cannot be negotiated, the WDB may use sole source procurement to obtain the training/service. A complete history of this process will be documented in the procurement file.

Limitations. Sole source procurement will not be used if more than one organization indicated its intent to bid. In this case, a RFP solicitation for the training/services advertised must be developed and transmitted to all who responded to the intention to bid.

B. Procurement by Noncompetitive Proposals

Noncompetitive procurement may be necessary in selected situations when competition not available. This method should be minimized to the extent practicable, but in every case must be justified and documented. This section describes the options and criteria to be used in considering noncompetitive procurement, depending on the specific situation. Although not required, WDBs are encouraged to consult with state staff when noncompetitive procurement is being considered and the appropriateness of the circumstances are uncertain.

1. Small Value Purchasing Authority (SVPA). To purchase consumable materials without a formal award or competitive bidding process, the small value purchasing authority may be used if all the following requirements are met:

- Purchases are limited to consumable goods and/or supplies and may not exceed \$5,000 per transaction.
- It is used for immediate over-the-counter purchases and/or to take advantage of cost-saving purchases such as advertised specials. Splitting of orders into multiple orders to avoid the dollar limitation is not allowable.
- Written guidelines governing the use of SVPA purchases must be developed by the WDB.
- Documentation of each purchase is maintained, such as a purchase order or detailed sales receipt to show the items bought.

2. Emergency. An emergency situation is one that endangers lives, property, or causes the immediate discontinuation of a vital program and which can be rectified only by immediate

on-the spot purchase (or rental) of equipment, supplies, materials, printing, or contractual services. In an occurrence of this nature, where the cost exceeds the micro-purchase limit (\$2,500) the WDB should contact the DWS Financial Monitor via email as soon as possible; noting the specific emergency and what measures are being taken to rectify the situation.

The WDB should negotiate with a potential vendor(s) in an effort to acquire the quality of good or service needed at the best possible price, delivery, terms and conditions. A solicitation document requesting or inviting an offer(s) shall be issued, including standard language terms and conditions unless circumstances prohibit their use.

Subsequently, whether or not such prior approval was possible, if the expenditure is over the WDB's micro-purchase limit, an explanation of the emergency purchase shall be reported in writing to the DWS Financial Monitor. If under the WDB's micro-purchase limit, documentation shall be included in the WDB's procurement file.

The use of sole sourcing for emergency situations should be infrequent and for limited time periods (i.e., reflecting the emergency). If the need generated by the emergency will continue over an extended period of time, a competitive procurement method must be used after the emergency has been resolved.

3. State Authorized Noncompetitive Procurement. WDBs may request authorization from the DWS to use noncompetitive procurement in circumstances when the competitive procurement is not feasible to meet special need and the noncompetitive criteria do not address the special circumstances. A written request must be transmitted to the DWS which includes the following information:

- Purpose of the project
- Agency(ies) involved and the collaboration to be improved
- The circumstances which justify noncompetitive procurement.

The circumstances must involve a real collaborative effort to provide services which will benefit the clients of each agency's use of this criterion. It is not appropriate to procure a broker for services or a provider of services who has no client base to benefit from the project.

NOTE: The ability to use state authorized noncompetitive procurement may not be used if it violates local administrative entity procurement policy.

4. On-the-Job Employer Agreement. Agreements directly with employers for the provision of on-the-job training may be procured noncompetitively. If an intermediary "broker" is contracted to administer the OJT activity, the broker's services must be procured competitively.

5. One Service Provider. The WDB may use noncompetitive procurement if it has been determined that the item or service is available only from a single source. Efforts should be made during the next regular procurement cycle to determine if the particular item or service has become available from other sources.

6. Failed Competitive Procurement. The WDB may use noncompetitive procurement if it has conducted a competitive procurement process and only one or no competitive bid was received. When the WDB receives one competitive bid, every effort must be made to negotiate the desired training/services. However, if acceptable services cannot be negotiated or

competitive bids were received, sole source may be used to obtain the training/service. A complete history of this process must be documented in the procurement file.

7. Unsolicited Proposals for Services. This option is not intended to circumvent competitive procurement. It may be used to take advantage of worthy proposals that meet a need not addressed through the most recent solicitation process. Considerations in funding unsolicited proposals include but are not limited to:

- These proposals must be reviewed and evaluated by the same criteria as those used to evaluate proposals received through competition.
- The contract period for such awards should not be extended beyond the training cycle(s) proposed/funded so that the services may be included in the next competitive solicitation following the training.
- Unsolicited proposals for customized training from an employer or group of employers, or an agency acting on their behalf, should describe what the training will include (e.g., skills/competencies, methods of instruction), how the employer will be involved, and include commitment by the employer(s) to hire successful completers of the training.

To guard against complaints from proposers not funded, it is strongly recommended that procurement procedures specify whether or not unsolicited proposals will be accepted and if so, that similar unfunded proposals on the contingency list, if used, will receive priority for funding if they meet the need being addressed.

C. Procurement by Small Purchase Procedures

1. Micro-Purchase Option – Threshold: \$0 - \$2,500. An acquisition of products or services where the aggregate amount does not exceed \$2,500. An exception to the formal procurement method is the case of purchases less than or equal to \$2,500 (i.e., micro purchases) or other lower threshold set by WDBs as they deem appropriate for purchases in their policies.

Purchases below that threshold may be made without soliciting competitive price or rate quotations if the price is considered to be reasonable. A reasonable price may be by comparing to a previous purchase, personal knowledge of the item being purchased, or by comparing to similar items being purchased. Records still need to be kept for all purchases regardless of the procurement method used, including micro-purchases. Also, to the extent practicable, micro-purchases must be distributed equitably among qualified suppliers.

2. Small Purchase Option \$2,501 - \$5,000. A simple and informal competitive process for securing services, supplies and other property that do not cost more than \$5,000 in the aggregate on an annual basis is allowable. For purposes of economy, responsiveness to needs and administrative efficiency, the WDB may consolidate procurements for similar needs (e.g., yearly requirements for office consumables or instructional materials), or break out project requirements into more than one procurement (e.g., separating computer hardware, and software) in order to procure the best and most effective items in each category. This option may not be used to purchase training services.

The WDB must not break out purchase requirements for the sole purpose of staying under the aggregate limit of \$5,000 or the administrative entity's limit, if lower. The following requirements must be met and documented:

- a. Price Quotes. A minimum of three price quotes is required, which are supported by documentation consisting of product or service catalogues, current price lists, or telephone quotes substantiated by a written record of the price and source providing the quote, which is signed and dated by the staff person who obtained the quotes. When minimum of three quotes cannot be obtained, the justification for sole source procurement must be met (see Section C).
- b. Basis for Selection. For most commodity goods/services, the basis for selection would be the lowest price. If the basis is something other than price, the criteria for selection must be documented (e.g., the need and benefit of the purchase and the relative advantage of the offering from the provider selected).
- c. Formal Document. A purchase order, letter of agreement, or contract must be issued.

Unless required by local procedures, a bilateral contract is not required. Purchase orders, vouchers, bills, sales slips or similar records can provide documentation.

NOTE: For the purchase of consumable materials under \$5,000 per transaction, noncompetitive procurement is an option.

3. Aggregate Purchase. A purchase of multiple items of the same product. The aggregate purchase costing \$5,000 and over, must have review and written approval by the DWS before the purchase is completed. The filing is to be submitted to the assigned DWS Financial Monitor a minimum of ten (10) business days prior to purchase. During the onsite monitoring, the DWS Financial Monitor will review the purchase documentation against the filing submitted to DWS.

Informal quotes for purchases of up to \$25,000 may be obtained by written bid, telephone quote, or faxed quote. If small purchase procurements are used, price or rate quotations shall be obtained from a minimum of three qualified sources. When small purchase procurements are used, the purchase shall not be broken down into several purchases merely to be able to use small purchase procedures, and to avoid competitive procurement. Procurement by small purchase procedures may not be used when securing program/activity services.

The purchase of the personal services of consultants are allowed when the deliverables are specifically defined and priced. Consultants and personal services contracts, costing \$5,000 and over, must have review and written approval by the Division of Workforce Solutions before the contract is finalized. The request for review by the Division must include:

- The purpose of the contract;
- The cost of the proposed contract;
- The starting and ending dates;
- An assurance of adherence to State and local procurement policies; and

- The funding source to be used.

D. Procurement by Sealed Bids

Under this method, bids are publicly solicited and a contract is awarded to the responsible offeror whose bid, conforming to all material terms and conditions of the solicitation, is the lowest in price. A fixed-price contract is the preferred method to be used.

PROCUREMENT BY SEALED BIDS MAY NOT BE USED WHEN SECURING PROGRAM OR ACTIVITY TYPE SERVICES.

According to 29 CFR 95.48 and 29 CFR 97.36, all procurement contracts and other transactions between Local Boards and units of state or local government must be conducted only on a cost reimbursement basis. There is no provision for profit allowed. (WIOA Section 184(a)(3)(B).)

Criteria for Use. This method is appropriate and effective when the WDB is capable of specifying and describing the desired goods or services to be provided at high level of precision and completeness. The best examples are commodity-type goods/services which are widely available in the marketplace; e.g., computer equipment and software, instructional and testing materials, furniture, or training available to the general public.

Procedural Requirements. The minimum procedural requirements for this method are:

- Prepare a Request for Quotation (RFQ)/Invitation for Bid (IFB). The RFQ/IFB must include full and clear definitions and descriptions of the items to be procured, key performance dimensions or specifications, format for submission of bids, submission deadline and timeframes.
- Distribute the RFQ/IFB to organizations on established bidders' list and publicly advertise the procurement in a local newspaper with WDB area-wide circulation or post to an accessible website, allowing sufficient time prior to the date of bid opening to permit adequate responses to the solicitation.
- Open all bids publicly at the time and place stated in the RFQ/IFB.
- Complete a cost or price analysis to determine the reasonableness of cost.
- Award a contract to the responsible offeror whose bid represents the lowest price and conforms to all of the specifications in the RFQ/IFB and meets the demonstrated performance criteria.
- Provide written notification to unsuccessful offerors promptly and file documentation accordingly.

NOTE: The WDB can reserve the right to reject any or all bids when there are sound reasons in the best interest of the program. However, the WDB must communicate this right in the solicitation.

V. Procurement Records

The Local Area staff shall maintain records sufficient to detail the significant history of procurement, i.e., rationale for method of procurement, selection of contract type and contractor selection and/or rejection. Such records will include:

- Evidence of WDB involvement in the decision-making process.
- A copy of the solicitation package.
- A copy of the public notification.
- Bidders' list to which notices were mailed.
- List of all organizations/entities sent a solicitation.
- Agenda and minutes of the bidders' conference, if a conference is conducted.
- A copy of each question and answer issuance, if applicable.
- Log sheet of bids received.
- A copy of each bid which was received.
- Rating and scoring sheets completed in the evaluation process.
- Business operation capability evaluations.
- Documentation of the rationale for selection and funding of any offeror which did not receive the highest score/ranking in the evaluation process.
- Evidence of WDB approval of the procurement.
- Completed cost analysis for each selected bidder.
- Copies of letters sent to both the successful and unsuccessful bidders.
- Completed Memo of Negotiations for each subrecipient contract.
- A copy of any submitted grievance and the resolution of each.
- High risk determinations and special award/contract conditions, if appropriate.

VI. Contracting Standards

The administrative entity shall maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts. The primary method of contracting in the local workforce area shall be the cost reimbursement method of contracting. Contracts with for-profit entities will be considered. The administrative entity will conduct a cost or price analysis in connection with every procurement action including contract modification and renewals. Contracts shall be for a period not to exceed three (3) years. The contract document used by the WDB will contain, or by reference address the elements contained in policy statement 11-2017, Attachment 1 issued by the NC Division of Workforce Development.

VII. Additional Guidelines

WDB Agreements. A WDB may enter into an agreement or contract with another WDB to pay or share the cost of education, training, placing, or providing supportive services to individuals participating in programs funded by the WIOA. Any agreement must be approved by the WDB and described in the WDB's workforce development plans.

Review Process. Noncompetitive procurements must be reviewed for competitiveness and demonstrated performance, just as competitive procurements. Because of the emergency nature of some noncompetitive procurements, the review process may be different since time may be a critical factor with such procurements.

Reasonableness of Cost. A determination of cost or price reasonableness must be completed for each procurement action for which an award is made, both competitive and noncompetitive, including contract modifications and renewals (unless there is no monetary impact). In making the determinations, the allowability, allocability, appropriateness, and necessity of the proposed levels of projected costs must be considered in relation to the level and scope of services to be provided.

Independent Cost/Price Estimates. Development of independent cost/price estimates is required prior to receiving bids or proposals for all procurements. The estimates should be used for internal guidance in determining cost or price reasonableness and should not be included in the solicitation or provided to outside parties.

Cost Analysis. Cost analysis is required in determining the reasonableness of a line item budget in a cost reimbursable contract, or through a fixed price contract for specified deliverables in which the price is based on the line item budget and not on market prices. The attached Program Cost Analysis Guide (Attachment 2) may be used in the determination of reasonableness of costs decisions.

Offeror Certification of Cost Data. When cost analysis is required and there is inadequate competition (e.g., when using a line item budget to establish a fixed price contract and the deliverables are not available on the open market for price comparison), the offeror must certify that to the best of its knowledge and belief the cost data are accurate, complete and current at the time of agreement on the fixed price.

Contracts or modifications negotiated in reliance on such data will provide the WDB a right to a price adjustment if it is later discovered that the contractor knowingly submitted data that were not accurate, complete or current as certified (as in discovering through monitoring that the contractor has not hired the staff or purchased materials as proposed in the line item budget on which the fixed price was based).

Price Analysis. A simplified price analysis may be used in lieu of a cost analysis when reasonableness can be established on the basis of comparison of catalog or market prices of commercially available products, services or training packages sold in substantial quantities to the general public or based on prices set by law or regulation (e.g., tuition prices).

Contract Negotiations. The WDB must negotiate with contractors/service providers prior to contract execution to agree on work statement elements and verify the necessity of proposed costs in relation to the elements of service. Written documentation of the negotiations and the final outcome must be maintained in the procurement file.

High-risk contractors/service providers should be determined prior to negotiations so that concerns can be discussed and potential sanctions established during the negotiation.

process.

Range of Negotiations. Negotiations must be structured around WDB established priorities, policies, definitions, and parameters included in the solicitation. Negotiation ranges are further defined by the criteria and weights used to evaluate the competitiveness of bids submitted. Negotiations cannot alter the structure of the competitive environment established in the procurement process.

Negotiating Profit/Fees. Profit is defined as the contractor's/service provider's return after meeting all WIOA-related operating expenses. It is allowable for for-profit contractors/service providers only. Profit may be paid as a lump sum after services are delivered, in the form of a fee as incremental performance benchmarks are achieved or as part of a fixed unit price. In all cases, the earning of profit must be tied to the reasonable and measurable delivery of the contract objectives.

WDBs must not permit excess profit. Profit must be negotiated as a separate cost item and cannot be paid as a percentage of the contract cost. To establish a fair and reasonable profit, consideration must be given to the following criteria, which are included in the attached Determination of Reasonableness of Profit Worksheets (Attachment 3):

- the complexity of the work to be performed
- the risk borne by the contractor
- the contractor's investment
- the amount of subcontracting
- the quality of the contractor's record of past performance
- industry profit rates in the surrounding geographical areas for similar work
- market conditions in the surrounding geographical area

To document that excess profit was not permitted, contractor's/service provider's audits must include a profit schedule and the WDB must determine that the profit earned was reasonable in consideration of the work performed.

Determining Business Operation Capability. The WDB must verify the business operation capability of each potential service provider. Information required to make this determination may be required with submission of the proposal (if an evaluation factor) or obtained during a pre-award review, but the determination must be made prior to contract execution. Items for consideration include:

- staffing capabilities
- business licenses and/or registrations with appropriate oversight agencies
- adequate accounting systems
- sufficient bonding and insurance coverage
- determining Absence of Debarment and Suspension. The WDB must ensure that the organization is not on any current federal, state or local "debarment and suspension" list. The subrecipient must require each prospective bidder to certify that it is not on any federal, state or local debarment or suspension list. A "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions" form must be executed and included in all contracts of \$25,000 o

more.

GuilfordWorks Workforce Development Board Procurement Appeals Policy

BACKGROUND

The federal Workforce Innovation and Opportunity Act (WIOA) mandates the establishment and maintenance of a procedure for grievances or complaints about its services and activities from participants, subgrantees, sub-contractors, and other interested persons.

This policy applies to the Requests for Proposal (RFP) process only and provides a procedure to handle complaints by service providers or prospective service providers. For purposes of this document, any use of the words “complaints” or “grievance” refer to the appeals process relating to the procurement of WIOA services.

POLICY

Written notification of service provider selection is provided to each entity submitting a proposal. A service provider, potential service provider, or any entity adversely affected in the selection of the service provider may file a complaint. The following steps outline the procedure which these entities may follow to make an appeal of the service provider selection.

- A. The service provider, potential service provider, or any entity adversely affected in the operator selection process may file a formal complaint with the Guilford County Workforce Development Board.
- B. The written complaint must specifically state the decision, the basis for the complaint, and the remedy sought by the complainant. All matters not raised in the complaint will be deemed waived.
- C. The written complaint must be made to the Chairman of the WDB within seven (7) working days of the date of written notification to all bidders following the selection of service providers. To be considered valid, a copy shall also be sent to the Workforce Development Director within the same time frame.
- D. In making a determination, the WDB Chair may call a hearing, at his or her discretion, at which time the Chair may take oral or written evidence and may entertain oral or written argument. Any entity that could be affected by the complaint shall be notified and permitted the opportunity to be present and/or submit evidence. Any such hearing will be held within seven (7) days of receipt of the written complaint.
- E. The decision of the WDB shall be reached by majority vote. The determination and basis for the determination shall be rendered orally at the conclusion of the hearing and followed up in writing to the complainant and any affected party. The written

response will be provided no more than two (2) days following the completion of the hearing.

- F. WDB staff will forward information regarding procurement protests to the NC Division of Workforce Solutions.
- G. Interim Determinations by the Workforce Development Board during the Appeals Process.

While a procurement appeal is pending, the initial decision of the WDB regarding service providers shall be followed to avoid interruption in services to customers. The WDB may, however, by majority vote, determine that the initial decision shall be suspended until determination of the complaint and appeal, and may, by majority vote, determine that the situation is an emergency situation necessitating a change in the initial decision pending determination of the complaint and appeal. These interim determinations are not subject to appeal.