Youth Service Procurement Requirements under WIOA

California Workforce Association
Youth Conference – January 2019
WIOA Overview - Key Changes

- Expanded focus on Out of School Youth (OSY)
- Expanded focus on Work Experience
- Adds 5 New Program Elements
- Eliminates the Youth Council requirement
WIOA Current Youth Guidance

- Training Employment Guidance Letter (TEGL) 23-14 (March 26, 2015)
  - OSY Expenditure requirement
  - Youth Committees
  - Transitioning ISY
  - Additional WIOA Youth Changes

- Transitioning Youth Service Provider Contracts

- TEGL 21-16 (March 2, 2016) - Procurement Requirements under WIOA Youth
WIOA Provisions for Out of School Youth

- WIOA requires 75% of State & Local Youth funding be used for OSY
  - For Statewide: Only Direct Expenditures on Youth Services
  - Administrative costs not subject to 75% requirement
  - Exception for minimum allotment states
  - Funds are tracked by program year

- Approved Waivers of OSY% requirement tracked will be applied to each program year separately at the end of the POP.
WIOA YOUTH PROGRAM ELEMENTS

- Tutoring, Study Skills training, Instruction & evidence based dropout prevention and recovery strategies that lead to...
  - Alternative Secondary School Services or dropout recovery services...
  - Paid & Unpaid work experience that have as a component academic & occupational education, which may included:
    - Summer employment...and other throughout the year
    - Pre-apprenticeship programs
    - Internships & job shadowing
    - On the Job training
- Occupational skills training, which shall include priority consideration for..
  - Education offered concurrently with and in the same context as workforce preparation;
Leadership Development Opportunities
Supportive Services
Adult Mentoring
Follow-up Services
Comprehensive Guidance & Counseling;
  - Financial Literacy Education
  - Entrepreneurial Skills Training
  - Services that provide LMI & employment information
  - Activities that help young people to prepare for post secondary education & training.
WORK EXPERIENCE

- Paid and Unpaid Work Experiences is one of the 14 program elements authorized under WIOA.
- Work Experience must have academic and occupational education as a component;
- Summer Employment Opportunities was its own element under WIA - Now it is a sub element under work experiences under WIOA;
Priority on Work Experience

- At least **20%** of local Youth formula funds must be used for work experience including:
  - Summer and Year round employment opportunities
  - Pre-apprenticeship
  - Internship & Job Shadowing
  - On-the-Job Training

- Administrative costs not subject to the 20% requirement;
- States & local areas must track expenditures on work experience since 2015.
Tracking Work Experience

- Local WIOA youth programs must track program funds spent on paid and unpaid work experiences, including wages and staff costs for the development and management of work experiences, and report these on the quarterly ETA-9130.

- The requirement is based on the total local area youth funds expended on work experience;

- Local area administrative costs are not subject to the requirement.
The grant recipient/fiscal agent has the option to provide directly some or all of the youth workforce investment activities;

**HOWEVER:**

- If a Local WDB chooses to award grants or contracts to youth service providers to carry out some or all of the youth workforce activities, the Local WDB MUST award such grants & contracts on a competitive basis; and
- If the Local WDB determines there are an insufficient number of eligible youth providers, such as a rural area, the Local WDB may award grants or contracts on a sole source basis.
Youth Service Providers
20 CFR 681.400

- The Local WDB must identify youth service providers based on criteria established in the State’s Plan, and take into account the ability of the provider to meet performance accountability measures based on the primary indicators of performance for youth programs;

- Uniform Guidance requires the Pass Through Entity (PTE) to complete a risk assessment of every provider selected;
  - Providers prior experience;
  - Results of previous monitoring or audit results;
  - Personnel capabilities (new, experienced, changeover);
  - Takes timely action to correct deficiencies;
  - Review financial and performance reports;
During the transition between WIA to WIOA, it was imperative to incorporate the major changes under WIOA into Requests for Proposals (RFPs) and youth provider contracts immediately.

Youth Service Provider grant agreements or contracts should have been amended for option years. During transition, the DOL recommended using one-year agreements with option years, in order to allow for other modifications, etc.
Youth Service Providers
20 CFR 681.470

- Under WIOA, while a local area must continue to competitively procure youth service providers and make all program elements available, they are not required to provide all program elements using WIOA Youth funds.

- Local programs may leverage partner resources to provide some of the readily available program elements, however, the local area must ensure that if a program element is not funded with WIOA title I youth funds, the local program has an agreement in place with a partner organization to ensure that the program element is offered.
The Local WDBs may implement a WIOA Pay for Performance contract strategy for program elements described at 681.460, for which the Local WDB may reserve and use not more than 10% of the total funds allocated to the local area under WIOA sec. 128(b).

Pay for Performance contract strategies is discussed at 683.500
- ETA has not issued any policy guidance regarding the use of these contract strategies.
General Procurement Standards

Maintain records sufficient to detail the history of the procurement, including:

- Rationale for method of procurement
- Selection of contract type
- Basis for contractor selection or rejection
- Basis for contract price
## Sub-recipient and Contractor Distinctions (200.330)

<table>
<thead>
<tr>
<th>Subrecipient</th>
<th>Contractor</th>
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<tbody>
<tr>
<td>Determines who is eligible to receive what Federal assistance</td>
<td>Provides similar goods or services to many different purchasers</td>
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<tr>
<td>Performance is measured by whether objectives of Federal program are met</td>
<td>Provides the goods and services within normal business operations</td>
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<tr>
<td>Has responsibility for programmatic decision making</td>
<td>Provides goods or services that are ancillary to the operation of the Federal program</td>
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<td>Responsible for adhering to applicable Federal program requirements</td>
<td>Not subject to the compliance requirements of the Federal program</td>
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<tr>
<td>Uses Federal funds to carry out a program for a public purpose</td>
<td>Provides goods and services for the non-Federal entity’s own use, creating a procurement relationship</td>
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<tr>
<td>Funded by a Subaward</td>
<td>Funded by a Procurement Contract</td>
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Sub-Recipient vs. Vendor

- Sub-recipients & vendors can:
  - Receive funds directly from a Federal agency
  - Receive funds through a sub-award or pass-thru from a grantee

- Difference between sub-recipients & vendors is:
  - Critical in determination of applicable Federal grant management requirements and rules
    - Sub-recipients are subjected to Federal requirement and rules & vendors are not
Sub-Recipient

- Determines program eligibility of federally funded programs
- Measures performance of Federal program
- Responsible for programmatic decision making
- Adheres to applicable program goals & compliance requirements
Vendor

- Vendor is a dealer, distributor, merchant, or seller of goods and services which are required for conduct of a Federal Program
  - Not subject to Federal financial & administrative requirements
  - Provides the goods and services within normal business operations
  - Similar goods/services to different purchasers
  - Goods/services are ancillary to operation of Federal program
  - Program eligibility cannot be performed by vendors
Procurement Requirements
2 CFR 200.318

- WDBs must have and use their own procurement policies and procedures provided that they conform to applicable Federal law and the UG;
- Must maintain oversight to ensure contractors perform in accordance with the terms, conditions and specifications of contract;
- Must have written standard on conduct covering conflicts of interest and staff involved in the selection, award, and administration of the contract;
- REAL OR APPARENT CONFLICTS OF INTEREST (financial interest, other interest, tangible benefit, gratuities, favors, anything of monetary value, etc.)
- Disciplinary action can be taken.
Procurement Requirements
2 CFR 200.318

- Conflicts of Interests also includes:
  - Parent entities
  - Affiliates
  - Subsidiary organizations

- Organizational conflicts must also be mitigated; unable to appear impartial to conducting a open and competitive procurement action.
Procurement Requirements
2 CFR 200.318

- Must award contracts ONLY to responsible contractors possessing the ability to perform successfully under the terms of the agreements;
  - WDB should review contractor performance each year before invoking the option year;
  - If performance isn’t achieved by contractor, WDB should modify and amend the contract to reflect performance issues;
  - WDB is responsible for good administrative practices, sound business judgement during the settlement of all contractual obligations which arise out of the procurement.
Competition Requirements
2 CFR 200.319

- All procurement transactions must be conducted in a manner providing FULL & OPEN competition consistent with standards of the UG;
  - Unreasonable requirements;
  - Unnecessary experiences;
  - Conflicts of Interest - Firewalls;
  - Must have written procedures for procurement transactions;
  - Identify all factors used in evaluation & award;
Procurement Methods
2 CFR 200.320

- Must use one of the following methods:

1. Micro Purchase (NTE $10,000) can award without soliciting competitive quotes if prices is reasonable;

2. Small Purchase (NTE $250,000) Price quotations are solicited & obtained from adequate number of qualified sources;

3. Sealed Bids - bids solicited and firm fixed price contracts are awarded to the responsible bidder whose bid conformed to all the material terms of the invitation;
   - Very specific description of specifications;
   - Two or more responsible bidders;
   - Successful bidder can be made principally on the basis of PRICE;
Procurement Methods
2 CFR 200.320

- Bids must be solicited from an adequate number of known suppliers
- Must define terms or services, specifications, evaluation criteria;
- All opened at time and place publicly;
- Firm Fixed Price Contract awarded in writing to lowest responsive and responsible bidder;
- Any and all bids may be rejected if sound documented reasons;

4. Competitive Proposals:
- Normally conducted with more than one source submitting an offer
- Fixed Price or Cost Reimbursement agreement
Procurement Methods
2 CFR 200.320

- RFPs are publicized and identify all evaluation factors & their importance;
- Solicited from an adequate number of qualified sources;
- Must have written method to conduct technical evaluations received & selecting;
- Responsible firm whose proposal is most ADVANTAGEOUS to the program;

5. Non-Competitive (Sole Source) - solicitation of a proposal from only ONE SOURCE and may be used only when:
   - Available from only ONE SOURCE (Rural areas, unique services, etc.)
   - Public Exigency or Emergency
   - Authorized by the Federal Awarding entity or PTE authorizes in a written request from the NFE;
   - After solicitation of number of sources; competition is deemed inadequate;
Cost Price Analysis
2 CFR 200.323

- NFE must perform Cost Price Analysis on all procurement actions in excess of the SAT ($250,000)
  - Independent Estimates of costs, etc.
  - Must negotiate Profit as a separate element of price, when no competition and when cost analysis is required;
    - Complexity;
    - Risk born by the vendor;
    - Contractors investment;
    - Amount of subcontracting;
    - Past Performance;
  - Cost plus a Percentage of Cost must not be used;
Procurement Requirements
2 CFR 200.324

- NFE must make available, upon request, all procurement records and documents;
- Maintain records for 3 years after POP or Single Audit completion;
- Federal Awarding entity, OIG, Comptroller General, & Pass Through Entity;
Requirements for Pass Through Entities
2 CFR 200.331

- Stevens Amendment
  - Every sub award must identify federal funds, CFDA; eleven attributes;
  - Must verify or negotiate Indirect Cost (NICRA, CAP, or Di Minimis Rate)
  - Additional requirements imposed by the PTE to meet requirements of Federal award;
  - Permit access to records by auditor;
  - Evaluate Recipients risk of non-compliance - develop a plan
    - Monitoring reports, prior audits, financial statements
    - Prior documented performance;
    - New or experienced personnel
Pass Through Entity (PTE’s) Requirements

2 CFR 200.324

- TEGL 23-15 Risk Mitigation
  - Risk Assessment of Subrecipients
  - Pre-award, Award, and Post Award
  - Capabilities to manage Federal funds
  - Internal Control system in place
  - Safeguard Assets & Federal funds
  - Management capabilities

- YOU ARE RESPONSIBLE FOR YOUR SUBS($$)
Some Pre-Qualifications to Consider

- Qualified and sufficient number of staff
- Policies and Procedures established for programs
- Adequate accounting system to track funds
- Statement of Work with measurable performance outcomes and goals
- Budget Controls in place to ensure allowability of costs and analysis of results
Subaward Terms and Conditions
2 CFR 200.331

- Identify agreement as subaward or subrecipient;
- Approve Indirect Cost rate or plan;
- Include required Elements in SOW
- Establish a monitoring plan
- Include specific clauses and conditions of award
- Reporting Requirements
- Closeout Requirements
- Access to Records
- Remedies for Non-compliance (200.338)
QUESTIONS???

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