

**Purpose.**

The Southwest Wisconsin Workforce Development Board (SWWDB) is committed to the primary principles of free and open competition in all procurement transactions. SWWDB shall honor this commitment to be fair and impartial in all its relations with vendors, contractors, and suppliers providing goods and services. This policy communicates SWWDB's methods for the procurement of goods and services obtained with Workforce Innovation and Opportunity Act (WIOA) funds and sets forth the requirements provided by the Office of Management and Budget (OMB) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Final Rule Title 2 of the Code of Federal Regulations; 2 CFR 200.

Background.

WIOA Sec. 184(a)(3)(A) requires each State (including the Governor of the State), local area (including the chief elected official for the area), and provider receiving funds under this title to comply with the appropriate uniform administrative requirements for grants and agreements applicable for the type of entity receiving the funds, as promulgated in circulars or rules of the Office of Management and Budget (OMB).

OMB Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Final Rule Title 2 of the Code of Federal Regulations; 2 CFR 200 supersedes and streamlines requirements from OMB Circulars A-21, A-87, A-110, A-122, A-89, A-102, A-133 and the guidance in Circular A-50 on Single Audit Act follow-up. 2 CFR 200, also referred to as the "Super Circular" and "Uniform Guidance," consolidates the guidance previously contained in the aforementioned citations into a streamlined format that aims to improve both the clarity and accessibility of the guidance.

Policy.

It is the policy of the SWWDB to obtain goods and services through the procurement process that is most advantageous to SWWDB while providing for open, free and unrestricted competition. In conforming to this policy, the capability, capacity and historical performance of the supplier will be considered and weighed in the decision-making process. Supplier diversity, "Buy USA" recommendations and environmental impact, will also be considered in the procurement process. Competitive bids will be solicited whenever possible and practical and in compliance with applicable federal and state regulations and local policy.

Procurement is defined as buying, purchasing, renting, leasing, or otherwise acquiring any product, supplies, professional services (including consultants), rental, equipment, construction, remodeling, or any other transaction that involves an expenditure of Board funds including program-specific services of program operators. This policy applies to all types of agreements including grants, contracts, and purchases of services, memos of understandings, and other legally-binding procurement documents. Any procurement transaction must be formally processed and approved by proper authority to be a valid claim against SWWDB.

A. General Procurement Standards (2 CFR 200.318)



All purchases must comply with the following:

1. SWWDB will use documented procurement procedures that reflect State and local laws and regulations, provided that the procurements conform to applicable Federal law and standards identified in 2 CFR Parts 200.317 through 200.326.
2. SWWDB will maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
3. The purchase does not violate the local Conflict of Interest Policy (SWWDB Policy B.510). SWWDB's Conflict of Interest Policy provides standards of conduct covering conflicts of interest and governing the actions of its employees 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 award if he or she has a real, perceived or potential conflict of interest. Conflicts of interest must be disclosed in writing when known in advance or announced to the voting body. The party must excuse themselves from any further discussion and/or vote on the matter in question. Violations of such standards are subject to disciplinary actions provided in SWWDB's Conflict of Interest Policy.
4. SWWDB's procurement procedures will avoid acquisition of unnecessary or duplicative items. SWWDB may consolidate or break out procurements to obtain the most economical purchase/price. Where appropriate, SWWDB will analyze leasing versus purchasing options or other options to determine the most economical approach.
5. To promote economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services, SWWDB may enter into inter-entity agreements where appropriate for procurement or use of common or shared foods and services.
6. SWWDB may use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.
7. SWWDB will award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.
8. SWWDB will maintain records sufficient to detail the history of procurement that include: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.
9. SWWDB may use time and material type contracts only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk.
10. SWWDB will be responsible for the settlement of all contractual and administrative issues arising out of procurement. These issues include, but are not limited to: source evaluation, protests, disputes and claims. The process for settling claims of this type can be found in SWWDB procedure C.401.1.



11. Procurement transactions over \$25,000 require the approval of the SWWDB Board whenever feasible. When prior approval of the full Board is not possible, the SWWDB Chair may approve the purchase subject to confirmation by the full Board at its next regularly-scheduled meeting.
12. Real estate, regardless of the amount, shall not be purchased without approval of Wisconsin Department of Workforce Development (DWD).

B. Competition (2 CFR 200.319)

1. All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards provided in section 200.319 of 2 CFR 200. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work or invitations for bids or requests for proposals must be excluded from competing for such procurements.
2. SWWDB procurement transactions will contain no requirements that unduly restrict competition as specified in 200.319(a) and (b).
3. SWWDB procurement procedures will ensure that all solicitations:
 - a. Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured in a manner that does not unduly restrict competition; and
 - b. Identify all requirements which responders must fulfill and all other factors to be used in evaluating bids or proposals.
4. SWWDB does not maintain pre-qualified lists; however, if ever established, such lists of persons, firms, or products which are used in acquiring goods and services will be current and include enough qualified sources to ensure maximum open and free competition. Potential bidders will be allowed to qualify during the solicitation period.

C. Methods of Procurement (2 CFR 200.320)

SWWDB recognizes five (5) approved methods of procurement:

1. (\$1 - \$3,500) Procurement by **micro-purchases**: Acquisition of supplies or services, the aggregate dollar amount of which does not exceed \$3,500. To the extent practicable, SWWDB will distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if SWWDB considers the price to be reasonable. The micro-purchase threshold is set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions) and is adjusted periodically for inflation.



2. (\$3,501 - \$150,000) Procurement by **small purchase** procedures: Relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold (currently \$150,000). If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources but do not require a price analysis. SWWDB defines "adequate number" as a least two (2) quotes for the same or like item (see SWWDB Procedure C-401.1). The simplified acquisition threshold is set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions) and in accordance with 41 U.S.C. 1908. It is adjusted periodically for inflation.
3. (\$150,001 and above) Procurement by **sealed bids** (formal advertising): Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is the lowest in price. In order for a sealed bid to be feasible, the following should be present:
 - a. A complete, adequate and realistic specification or purchase;
 - b. Two or more responsible bidders are willing and able to compete effectively for the business; and
 - c. The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

If sealed bids are used, the following is required:

- a. Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids. For local and tribal governments, the invitation for bids must be publically advertised;
 - b. The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;
 - c. All bids will be opened at the time and place prescribed in the invitation for bid and will be opened publicly;
 - d. A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
 - e. Any or all bids may be rejected if there is a sound, documented reason.
4. (\$150,001 and above) Procurement by **competitive proposals**: Normally conducted with more than one source submitting an offer where either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. The method for conducting technical evaluations of the proposals received and for selecting recipients can be found in SWWDB Procedure C-401-1. If this method is used, the following requirements apply:
 - a. Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;
 - b. Proposals must be solicited from an adequate number of qualified sources;



- c. SWWDB will utilize a written method for conducting technical evaluations of the proposals received and for selecting recipients as outlined in SWWDB procedure C-401-1. The technical evaluation criteria will be described in the proposal document.
 - d. Contracts must be awarded to the responsible firm whose proposal is most advantageous to SWWDB and the program, with price and other factors considered; and
5. Procurement by **non-competitive proposals**: Procurement by non-competitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:
- a. The item is available only from a single source;
 - b. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation. A public exigency is defined as the need to start a new program or service within four (4) months of a grant being awarded by proper authority. An emergency is any repair or purchase necessary to prevent some type of business disruption of more than 72 hours. The reason for non-competitive procurement must be fully documented and filed in the SWWDB Finance Department procurement files;
 - c. The Federal awarding agency or pass-through entity expressly authorizes non-competitive proposals in response to a written request from the non-Federal entity; or
 - d. After solicitation of a number of sources, competition is determined inadequate.

D. Contracting with Small and Minority Businesses, Women’s Business Enterprises, and Labor Surplus Area Firms (2 CFR 200.321)

SWWDB will take necessary affirmative steps to ensure that minority businesses, women’s business enterprises, and labor surplus firms are used when possible.

E. Equal Opportunity – Written Assurance (38 CFR 38.25)

1. SWWDB is a federal contractor, and this designation requires that subcontractors and vendors who work with SWWDB comply with Executive Order 11246, Section 503 of the Rehabilitation Act of 1973, Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212, or any other law requiring equal opportunity for disabled persons and other protected veterans. The obligations under this act are referenced in SWWDB’s Service Provider Contracts.
2. Contractors and subcontractors with SWWDB will provide written assurance that it has the ability to comply with the nondiscrimination and equal employment opportunity provisions cited in the laws indicated §38 CFR Part 38.25 and will remain in compliance for the duration of the contract.
 - In broad summary, contractors and subcontractors will not discriminate on the basis of race, color, religion, sex (including pregnancy, childbirth, related medical conditions, gender identity, and transgender status), national origin (including limited English proficiency), age (40 or older), disability, political affiliation or belief, genetic information, retaliation (against a person who files a complaint of discrimination), against beneficiaries on the basis of either citizenship status or participation in any WIOA Title I-financially assisted program or activity.



3. Contractors and subcontractors with SWWDB will comply with the stipulations listed in Uniform Guidance, Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts under Federal Awards.

F. Contract Cost and Price (2 CFR 200.323)

1. SWWDB will perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold (\$150,000) including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, SWWDB will make independent estimates before receiving bids or proposals.
2. Where applicable, SWWDB 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 will be given to 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 its record of past performance, and industry profit rates in the surrounding geographical area for similar work.
3. Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for SWWDB under Subpart E – Cost Principles-of the Uniform Administrative Guidance 2 CFR Part 200. SWWDB may reference its own cost principles that comply with the Federal cost principles.

G. Procurement Review (2 CFR 200.324)

1. SWWDB will make available, upon request by the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition.
2. SWWDB will make available, upon request for the Federal awarding agency or pass-through entity, pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates when the circumstances detailed in 200.323(b) apply.
3. SWWDB is exempt from the pre-procurement review if the Federal awarding agency or pass-through entity determines that its procurement systems comply with:
 - a. SWWDB may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding and third party contracts are awarded on a regular basis.



- b. SWWDB may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from SWWDB that it is complying with these standards. SWWDB must cite specific policies, regulations, or standards as being in compliance with these requirements and have its system available for review.

H. Bonding Requirements (2 CFR 200.325)

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold (currently \$150,000), the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the requirements of 200.325(a) – (c) must be followed.

I. Contract Provisions (2 CFR 200.326)

SWWDB contracts must contain the applicable provisions described in Appendix II to Part 200 – “**Contract Provisions for non-Federal Entity Contracts Under Federal Awards.**”

J. Monitoring / Oversight

1. SWWDB is responsible for the oversight of the operations of contracted activities to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders and are operating in compliance to applicable federal and state requirements and performance expectations.
2. Program and fiscal monitoring of program operators/service providers will be conducted at least annually.
3. Services providers will report and explain activity and accomplishments on a quarterly basis.

K. Sub-recipient and Contractor Determinations (2 CFR 200.330)

1. SWWDB will make a case-by-case determination whether each agreement it makes for the disbursement of Federal program funds casts the party receiving the funds in the role of a sub-recipient or a contractor.
 - a. **Sub-recipient:** A non-Federal entity that receives a sub-award from a pass-through entity to carry out part of a Federal program, but does not include an individual that is a beneficiary of such program. A sub-recipient may also be a recipient of other Federal awards directly from a Federal awarding agency.



- i. *Sub-award*: An award provided by a pass-through entity to a sub-recipient for the sub-recipient to carry out part of a Federal award received by the pass-through entity. It does **not** include payments to a contractor or payments to an individual that is a beneficiary of a Federal program. A sub-award may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.
 - ii. *Pass-through entity*: A non-Federal entity that provides a sub-award to a sub-recipient to carry out part of a Federal program.
 - iii. Characteristics which support the classification of the non-Federal entity as a sub-recipient include when the non-Federal entity:
 - (1) Determines who is eligible to receive what Federal assistance;
 - (2) Has its performance measured in relation to whether objectives of a Federal program were met;
 - (3) Has responsibility for programmatic decision-making;
 - (4) Is responsible for adherence to applicable Federal program requirements specified in the Federal award; and
 - (5) In accordance with its agreement, uses the Federal funds to carry out a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the pass-through entity.
 - b. **Contractor**: An entity that receives a contract as defined below:
 - i. *Contract*: A legal instrument by which a non-Federal entity purchases property or services needed to carry out the project or program under a Federal award. The term as used in this part does not include a legal instrument, even if the non-Federal entity considers it a contract, when the substance of the transaction meets the definition of a Federal award or sub-award.
 - ii. Characteristics indicative of a procurement relationship between the non-Federal entity and a contractor are when the contractor:
 - (1) Provides the goods and services within normal business operations;
 - (2) Provides similar goods or services to many different purchasers;
 - (3) Normally operates in a competitive environment;
 - (4) Provides goods or services that are ancillary to the operation of the Federal program; and
 - (5) Is not subject to compliance requirements of the Federal program as a result of the agreement, though similar requirements may apply for other reasons.
2. In determining whether an agreement between SWWDB and another non-Federal entity casts the latter as a sub-recipient or a contractor, the substance of the relationship is more important than the form of the agreement. As of the characteristics listed above may not be present in all cases, SWWDB will use judgment in classifying each agreement as a sub-award or a procurement contract.

**PROCUREMENT POLICY****C-401**

The Chief Executive Officer (CEO) shall ensure that procedures and systems are established and maintained to document and record all procurement transactions properly and accurately. The Finance Manager, under the direction of the CEO, is operationally responsible for monitoring all procurement transactions and managing procedures to ensure compliance with required regulations.

Any SWWDB staff that fails to follow the Board's procurement policies and procedures or does not obtain proper approval for a purchase may be personally liable for the cost of the item/service procured and could be disciplined in accordance with SWWDB personnel policies.

SWWDB shall require all grantees receiving funds from a grant or contract administered by SWWDB to comply with this policy and applicable procurement procedures. It is the responsibility of each grantee to become aware of all applicable regulations and to monitor fiscal activities to ensure compliance. SWWDB shall review grantee compliance with procurement policies and procedures during the annual monitoring process.

References:

Workforce Innovation and Opportunity Act, sections:

- 3-Definitions

2 CFR Part 200—Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, (200.318 to 200.326, 200.300, 200.330), 2 CFR Part 200, Subpart E, 2 CFR 200 Appendix II

48 CFR Subpart 2.1

41 U.S.C. 1908

SWWDB Procedure C-401.1, Procurement

To be used conjunction with SWWDB policies: C.510, Grantee Monitoring and Oversight

29 CFR Part 38 - Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Innovation and Opportunity Act (38.25)

Policy Adopted:

June 8, 2005

Policy Revised:

April 27, 2009; June 10, 2015; September 14, 2016; December 13, 2017