



State Policy

Workforce Innovation and Opportunity Act (WIOA)

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	Effective date February 23, 2018
	Supersedes Interim Policy on Procurement (Rev. 6/15/2015)

Procurement

REFERENCE

Federal and state laws, regulations, rules, and other guidance and documentation relied upon for the development of this policy are cited in footnotes.

BACKGROUND

WIOA¹ and the Uniform Guidance² establish administrative requirements, procurement standards, and methods of procurement for WIOA Title I programs (youth, adult, and dislocated worker).

ACTION

This policy supersedes and cancels the State's³ Interim Policy on Procurement Standards (Rev. 7/6/2015).

Questions and comments on this policy may be submitted in writing to the WIOA policy mailbox at ndol.wioa_policy@nebraska.gov.

Each local board must establish local procurement policies and procedures for procurement of property and services required to carry out WIOA Title I programs (youth, adult, and dislocated

¹ WIOA refers to the Workforce Innovation and Opportunity Act of 2014.

² *Uniform Guidance* refers to 2 CFR Parts 200 and 2900, which are accessible at www.ecfr.gov and on the WIOA Resources page (<https://dol.nebraska.gov/EmploymentAndTraining/LCRWP/WIOA/Resources>).

³ *State* refers to the Nebraska Workforce Development Board and the Nebraska Department of Labor (acting on the Governor's behalf pursuant to the Governor's Executive Order No. 15-03).

worker). The policies and procedures must adhere to state and local procurement laws and the following laws, regulations, and guidance:⁴

- 2 CFR Parts 200 and 2900 (the Uniform Guidance);
- 2 CFR Part 180, guidelines on debarment and suspension;⁵ and
- other applicable Federal laws, regulations, and guidance, including requirements for procurement established under WIOA and its implementing rules.

POLICY

This policy establishes requirements that apply to administrative entities⁶ regarding procurement of property and services required to carry out WIOA Title I programs, except for the procurement of one-stop operators. (Procurement of one-stop operators is addressed in the State's policy on one-stop operator competitive selection.⁷)

Please note, this policy focuses on key provisions of the Uniform Guidance and must be used as a supplement to the Uniform Guidance, not a replacement.

This policy has three sections and one appendix.

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Section I. Administrative requirements

The provisions of this policy apply to administrative entities in their role as pass-through entities that award:

- subawards to subrecipients to carry out part of the local WIOA Title I program; and
- contracts to contractors for purchasing property or other services needed to carry out WIOA Title I programs.

⁴ 2 CFR § 200.318; 20 CFR § 681.400

⁵ 2 CFR § 200.213

⁶ The CEO, local board, administrative representatives, and fiscal agent(s) for a local area are collectively referred to as *administrative entity* throughout this policy to improve readability and are individually identified when necessary.

⁷ The State's policies are accessible at <https://dol.nebraska.gov/EmploymentAndTraining/LCRWP/WIOA/Policies>.

Section II. Procurement standards

Administrative entities must follow the procurement standards established in the Uniform Guidance, key provisions of which are summarized below to stress their importance.

Each administrative entity must:

1. use its own documented procurement policies and procedures, provided they conform to the standards identified in the Uniform Guidance;⁸
2. maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award, and administration of subawards and contracts;⁹
3. maintain written standards of conduct covering organizational conflicts of interest if the administrative entity has a parent, affiliate, or subsidiary organization that is not a state or local government;¹⁰
4. maintain, retain, and provide access records detailing the history of procurement;¹¹
5. make case-by-case determinations on:
 - a. whether the third party qualifies as a subrecipient or a contractor based on the substance of the administrative entity's relationship with that party;¹² and
 - b. the appropriate legal instrument for procurement (grant agreement, pay-for-performance contract, cooperative agreement, contract) and ensure that the provisions required under the Uniform Guidance are included;¹³
6. conduct all procurement transactions in a manner providing full and open competition;¹⁴
7. take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and firms in labor surplus areas¹⁵ are used when possible;¹⁶
8. ensure that subawards and contracts are not awarded to third parties that are debarred, suspended, or excluded from or ineligible for participation in Federal programs;¹⁷

⁸ 2 CFR § 200.318

⁹ Refer to 2 CFR § 200.318(c) and the State's policy on workforce development boards and CEOs for additional information on conflict of interest requirements.

¹⁰ Ibid.

¹¹ Refer to 2 CFR §§ 200.318(c)(1), 200.333, 200.336, 200.337, and the State's policy on records management for information on requirements regarding records maintenance, retention, and access.

¹² 2 CFR § 200.330

¹³ Refer to the Uniform Guidance, including 2 CFR §§ 200.331 and 200.326, and Appendix II to Part 200 for information on required provisions. In addition, refer to 20 CFR Parts 680, 681, and 683 for regulations on pay-for-performance contracts contract strategies.

¹⁴ Refer to 2 CFR § 200.319 for standards on competition.

¹⁵ For information on *labor surplus areas*, refer to the US Department of Labor "Labor Surplus Area: Frequent Asked Questions" webpage at https://www.doleta.gov/programs/lssa_faq.cfm.

¹⁶ 2 CFR § 200.321

¹⁷ 2 CFR § 200.213

9. award subawards and contracts only to third parties capable of successful performance under the provisions of their respective agreement or contract;¹⁸
10. maintain oversight to ensure that subrecipients perform according to the provisions of their respective grant agreement, pay-for-performance contract, or cooperative agreement;¹⁹ and
11. be responsible for the settlement of all contractual and administrative issues arising out of agreements and contracts.²⁰

Section III. Procurement methods

Table 1 provides an overview of permitted procurement methods, which are described in detail in 2 CFR § 200.320. Local boards must use one of these methods or the leveraged-resources method described in [Section III\(a\)](#).

Table 1. Methods of procurement²¹

Method	Description
1. Micro-purchase	Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold. ²² To the extent possible, local boards <u>must</u> distribute micro-purchases equitably among qualified third parties. Micro-purchases may be awarded without soliciting competitive quotations if the local board considers the price to be reasonable.
2. Small purchase procedure	The small purchase procedure is the relatively simple and informal procurement method for securing services that do not cost more than the Simplified Acquisition Threshold. ²³ If small purchase procedure is used, price or rate quotations <u>must</u> be obtained from an adequate number of qualified third parties.
3. Sealed bid (formal advertising)	Under the sealed bid procedure, bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the third party whose bid, conforming to all the material terms and conditions of the invitation for bids, is the lowest in price.
4. Competitive proposal	The technique of the competitive proposal is normally conducted with more than one provider submitting an offer, and 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.
5. Noncompetitive (sole-source) proposal	The noncompetitive (sole-source) proposal method is procurement through solicitation of a proposal from only one third party. Noncompetitive procurement may be used <u>only</u> when:

¹⁸ 2 CFR § 200.318

¹⁹ 2 CFR § 200.318

²⁰ Ibid.

²¹ 2 CFR § 200.320; 20 CFR § 681.400(b)(4); TEGL 21-16

²² As of the effective date of this policy, the micro-purchase threshold is \$3,000. This threshold is periodically adjusted for inflation. [2 CFR § 200.67]

²³ As of the effective date of this policy, the simplified acquisition threshold is \$150,000. This threshold is periodically adjusted for inflation. [2 CFR § 200.88]

Method	Description
	<ul style="list-style-type: none"> ▪ the item is available only from a single source; ▪ public exigency or emergency will not permit a delay resulting from competitive solicitation; ▪ the US Department of Labor Employment and Training Administration <i>or</i> NDOL expressly authorizes noncompetitive proposals in response to a written request from the administrative entity; ▪ after solicitation of a number of sources, competition is determined inadequate; or ▪ there are an insufficient number of eligible youth providers or Eligible Training Providers in the local area, which is determined according to local procurement policies and procedures.²⁴

(a) Leveraged resources²⁵

Local WIOA Title I programs are not required to use program funds for procurement of program services and may leverage partner resources to provide some or all services. If a program service is not funded with program funds, the local board or applicable Title I program provider must:

- have a written agreement with the partner to ensure that the service will be offered; and
- ensure that the service is closely connected to and coordinated with the program.

DISCLAIMER

This policy is based on NDOL’s reading of the applicable statutes, regulations, rules, and guidance released by the US Government and the State of Nebraska. This policy is subject to change as revised or additional statutes, regulations, rules and guidance are issued.

²⁴ 20 CFR §§ 679.370(1)(1), 680.320(a)(2), and 681.400(b)(4)

²⁵ 20 CFR § 681.470

APPENDIX I. Definitions

PURPOSE. Definitions in this appendix are provided as supplemental information that supports the provisions of the policy. The terms and phrases defined in this appendix should be read and understood in the context in which they are used in the policy and not as stand-alone information independent of that context.²⁶

1. contract²⁷

Contract means a legal instrument by which an administrative entity purchases property or services needed to carry out WIOA Title I programs. The term *contract* does not apply to transactions that meet the definition of a Federal award or subaward, even if the administrative entity considers it a contract.

2. contractor

Contractor means an entity that receives a contract (defined above).²⁸

3. cooperative agreement

Cooperative agreement means a legal instrument of financial assistance between a pass-through entity and a non-Federal entity that is:²⁹

- used to enter into a relationship, the principal purpose of which is to transfer anything of value (typically money) from the pass-through entity to the non-Federal entity to carry out a public purpose authorized by a law of the United States (*i.e.*, WIOA);
- not used to acquire property or services for the pass-through entity's direct benefit or use;
- distinguished from a grant in that it provides for substantial involvement between the pass-through entity and the non-Federal entity in carrying out the activity contemplated by the Federal award.

4. grant agreement

Grant agreement means a legal instrument of financial assistance between a pass-through entity and a non-Federal entity that is:³⁰

- used to enter into a relationship, the principal purpose of which is to transfer anything of value (typically money) from the pass-through entity to the non-Federal entity to carry out a public purpose authorized by a law of the United States (*i.e.*, WIOA);

²⁶ Definitions for terms used in this policy that are not included in this appendix are provided in 2 CFR Part 200 Subpart A. Also, different definitions may be found in Federal statutes, regulations, and TEGLs that apply more specifically to particular WIOA Title I programs or activities.

²⁷ 2 CFR § 200.22

²⁸ 2 CFR § 200.23

²⁹ 2 CFR § 200.24

³⁰ 2 CFR § 200.51

- not used to acquire property or services for the pass-through entity's direct benefit or use;
- distinguished from a cooperative agreement in that it does not provide for substantial involvement between the pass-through entity and the non-Federal entity in carrying out the activity contemplated by the Federal award.

5. pass-through entity

Pass-through entity means a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program (*i.e.*, WIOA Title I).³¹

6. pay-for-performance contract

A *pay-for-performance* contract is a type of performance-based contract that are entered into only when they are part of a WIOA pay-for-performance contract strategy.³²

7. subaward³³

Subaward means an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Federal award received by the pass-through entity (*i.e.*, WIOA Title I Federal award). It does not include contracts with contractors or payments or benefits provided to WIOA Title I program participants.

8. subrecipient³⁴

Subrecipient means a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program (*i.e.*, WIOA Title I programs). The term does not include WIOA Title I program participants.

³¹ 2 CFR § 200.74

³² 2 CFR §§ 683.510 and 683.520

³³ 2 CFR § 200.92

³⁴ 2 CFR § 200.93