

Everyday Purchases are Procurements

29 CFR 97.36
29 CFR 95.40-48
WIA Regulations

What are ordinary purchases?

- Reams of paper
- Office supplies: pencils, pens, paper clips, staples, etc.
- Magazines, newspapers, periodicals
- Tables, desks, chairs
- Tuition based training or OJT slot
- Cleaning supplies: cleanser, polish, mops, brooms, etc.
- Paper products: toilet paper, paper towels, napkins
- Bottled water, coffee, tea, soda

What are ordinary space costs?

- Rent
- Utilities: gas, electric, water
- Trash collection service
- Insurance
- Janitorial & maintenance services
- Smoke or carbon monoxide detectors
 - Batteries
- Security service: human or cameras or alarms
 - Film cassettes



How do procurement rules apply?

- What makes sense?
- What do we do without thinking about it?
- Does the acquisition qualify as a small purchase?
 - What simplified comparison shopping did we do?
- Is the purchase a sole source acquisition?
 - What was our sole source justification?

Procurement Principles

- Apply to ALL grantees, subgrantees, & sub-awards.
 - All must maintain a system for administration of contracts
- Apply to All acquisitions
- Full & Open Competition



Procurement Requirements

- Grantees MUST comply with:
 - OMB Circulars
 - DOL-ETA Federal regulations
 - If a pass through agency – grant recipient (i.e.. state) issued policy or guidance
 - Specific requirements and special clauses contained in the grant agreement

Procurement Requirements

- Minimum requirements
 - Written procurement/purchasing procedures
 - Written code of conduct & conflict of interest policies
 - Procedures to review procurements
 - Cost price analysis (determination of needs, costs, estimates, etc.)
 - Demonstrated ability to perform
 - Closeout & protest process for contracts (records, settlement, etc.)

Procurement Cycle

- Cost / Price Analysis
- Solicitation
- Evaluation
- Negotiation (Costs and/or Fixed Fee)
- Selection & Award
- Contract Administration
- Closeout

Procurement Methods

1. Sealed bids – FORMAL
 - technical specifications & price
2. Competitive proposals – FORMAL
 - request for proposals
3. Small purchase – INFORMAL
4. Non-competitive proposals – sole source or limited competition



Sealed Bids

- Publicly solicited bids [IFB] or quotes [RFQ]
- Awarded to lowest price bid (ONLY FACTOR)
- Technical specifications spelled out in solicitation
- At least two responsive bidders
- Procurement based SOLELY ON PRICE
- Publicly opened, evaluated, selected, awarded
- To reject bidders - must have documented reasons
- Maintain procurement file on each solicitation

Competitive Proposals

- Performance & delivery are critical factors
- Public request for proposals [RFP]
 - for services or goods needed
- Evaluation factors used to determine best proposal
 - Often includes weighting of factors
- Proposer describes how services will be delivered
- Requires a Cost & Price Analysis and/or Lease vs. Purchase Analysis
- Fixed price or cost reimbursement contract

Small Purchase

- Informal method for easily purchased items
 - Example: office supplies, equipment, etc.
- Price is the factor (ONLY FACTOR)
- Easily quoted, standardized product, no performance, etc.
- Threshold limit – commonly seen from \$500 to \$5,000 – establish a limit suitable for your agency
- Minimum of three (3) quotes DOCUMENTED

Non-Competitive Proposals

- SOLE SOURCE
- No responses from RFPs issued (more than once)
- Public emergency or delay
- Reason must be fully documented & approved by Directors/Board
- Cost/Price analysis is required
- Profit is negotiated separately
- Last resort for procurement of goods & services
 - Will be reviewed during monitoring by DOL
 - USE CAUTION – may need the awarding agency or state approval

Agreements

- Fixed Price
 - Should always be used when sole basis for award is price
 - Formal advertizing - IFB & RFQ
 - Small purchases
 - No budget
 - Agreement clauses??
 - Required for awards in excess of simplified acquisition amount
 - Required for awards involving construction
 - Most clauses not applicable for small purchases, except
 - Equal Employment Opportunity

Agreements

■ Cost Reimbursement

- Approved budget
- Billed based on acceptable actual costs incurred to date
- Must track performance closely
- Can still use Payment Points
- Can incur costs without performance
- WIA requires for awards between governmental entities (city to state, etc.)



Agreements

- Fixed Unit Price
 - Approved budget
 - Approved no. of units easily measured
 - Per unit payment based on completion of activity
 - Can use Payment Points (% of payment per type of activity). For example:
 - 5% at enrollment
 - 35% upon completion
 - 35% upon placement
 - 25% upon 90 day retention
 - Must report & verify earned program income

OJT Contracts

WIA 663.700 & 663.720

- Written agreement (training, skills, etc.)
- Up to 50% of wage rate reimbursed
- Employers that routinely hire participants
 - If not, OJT should not continue
- Displaced or current employees
- New skills or skills upgrade
- No duration limit

Documentation

- Grantees/Sub-recipients **MUST** maintain the following documents:
 - RFP & evidence of advertisement
 - Signed rating sheets/evaluation factors & scores
 - Documents negotiating incentive fee, if applicable
 - Cost/Price analysis estimates, worksheets, etc.
 - **Justification & approval for sole source**
 - Selection recommendations & approval
 - A signed & dated agreement by both parties

Agreements

(should include the following)

- Federal/state employers tax identification number & nature of company (non-profit, profit, local govt.)
- Certifications, assurances, clauses and conditions
 - Required by DOL, state, or local policies
- Required budget & forms (draws, performance, etc)
- Statement of financial capability – Certified Financial Statements or copies of audit provided
- Required performance measures

Mandatory Agreement Clauses

29 CFR 97.36(i) and 29 CFR 95.48

- EEO requirements – all awards
- Copeland Anti-Kickback Act – construction or repair awards in excess of \$2000
- Davis-Bacon Act – same as above + required by program
- Sections 103/107 of Contract Work Hours (CWH) & Safety Standards Act (SSA) – same as Copeland + awards in excess of \$2500 that employ mechanics or laborers
- Rights to Inventions – all awards for experimental, developmental, or research work

Mandatory Agreement Clauses

29 CFR 97.36(i) and 29 CFR 95.48 (continued)

- Clean Air Act, Clean Water Act, & EPA regulations – all awards in excess of \$100,000
- Energy Conservation Act – in accord with policies & standards in State energy conservation plan
- Byrd Anti-Lobbying Amendment (Part 93) – all bids or applications for awards of \$100,000 or more
- Debarment & Suspension requirements (Part 98) – applies to all awards – certification for awards in excess of small purchase threshold

More Agreement Clauses

- Breach, default, & other legal remedies – over SAT
- Patent rights, copyrights, rights in data – as applicable
- Termination for cause or convenience – over \$10,000
- Ownership & access to records & retention requirements – all subrecipients
- Reporting requirements – all with reporting requirement
- Applicability of regulations – all to which regs apply
- Audit requirements – all subs to which A-133 may apply
- Modification – all subrecipients

Post Award Administration

- Adhere to the terms & conditions
 - Monitor budget and payments against invoices and performance results
 - Perform onsite monitoring and inspect client files and records
 - Verify that deliverables were achieved
 - Formal modification of agreement if necessary (material change in the scope of work or performance)

Non-Compliance

- Reimbursement basis
- Withhold funds until performance is acceptable (stop work or terminate)
- Additional documentation, reports, etc.
- Additional monitoring
- Provide technical assistance
- Establish prior approvals
- Special conditions, restrictions, etc.

Modifications

- Unilateral modifications – by G.O.
- Bilateral modifications – both parties agree
 - Termination – unilateral
 - SOW changes – bilateral
 - Funding changes (option yr. funding)
 - Additional performance, etc.
- Modification clause – spell out process.
- Cannot change quantity (material SOW change)

Option Years

- MUST BE specified in solicitation;
- Should not exceed 3 total years;
- Must meet or exceed performance;
- Must negotiate each budget year;
- Must negotiate each performance year;
- REDUCES COMPETITION.....

Grantee's Checklist

- When reviewing sub-grantee's system:
 - Procurement policies & procedures
 - Copies of RFP/IFB
- Procurement history file
 - Submitted proposals
 - Completed rating/evaluation sheets
 - Cost and/or price analysis
 - Persons on procurement panel
 - Contract modifications & approvals
 - Including contract extensions – should be warranted and specified in the contract
- Protest/Appeals process
- Closeout procedures

How do you make ordinary day to day purchases?

- Office supplies: paper, pencils, pens, paper clips, staples, etc.
- Cleaning supplies: cleanser, polish, mops, brooms, etc.
- Paper products: toilet paper, paper towels, napkins
- Beverages: bottled water, coffee, tea, soda, etc.
 - Small purchases? – Within your limit?
 - What comparison shopping do you do?
 - What justification/support do you have?
 - 3 catalogues, 3 advertisements, notations of 3 prices

Buying Pencils or Pens?

- Do you buy them with your organization's name?
 - What is your justification?
 - Is there a significant price difference?
 - Is price reasonable?
 - What is the intended use?
 - Staff writing instrument
 - Participant completion of application, assessment, test
 - Job Fair give away



Buying Shirts?

What is the purpose or intended use?
Office Uniform?

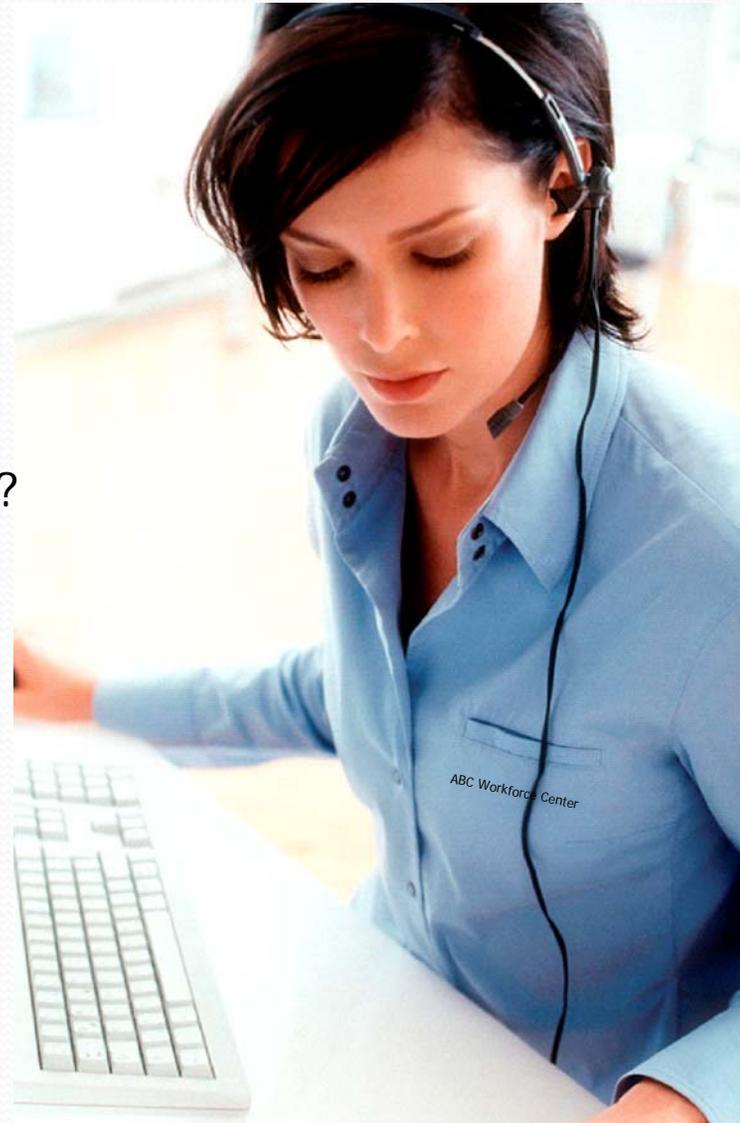
Job Fair give away?

What justification have you maintained?

How did you select provider?

Did you get price quotes?

Is the purchase reasonable?



Training providers

- Eligible Training Provider list
 - Is not established through procurement process
 - Must comply with statute and regulatory provisions
 - Provides participants [not entity] with choice
 - Still requires contractual award document
- On-the-Job-Training [OJT] employers
 - Not selected through procurement process
 - Must have job slots for successful completers
 - Requires contractual award document

Required or Preferred Providers

- Prequalified provider lists should be established through full and open competition
 - Should be kept current
 - Should not preclude inclusion of potential suppliers
 - Do not have to do an additional competition to award
 - If list includes multiple providers for same item, compare prices and availability
 - Document that you used prequalified provider & why

Partner, Vendor, Subrecipient & Subgrantee

- Regardless of the name, it is the relationship between the two parties that matters
- Definitions
 - OMB Circular A-133, Item 210 and/or 29 CFR 99.210
 - Can anyone buy their product or service (off the shelf)?
Or
 - Is the product or service customized to fit your program needs?
Or
 - Are DOL funds passed on to this agency from a direct grant recipient?

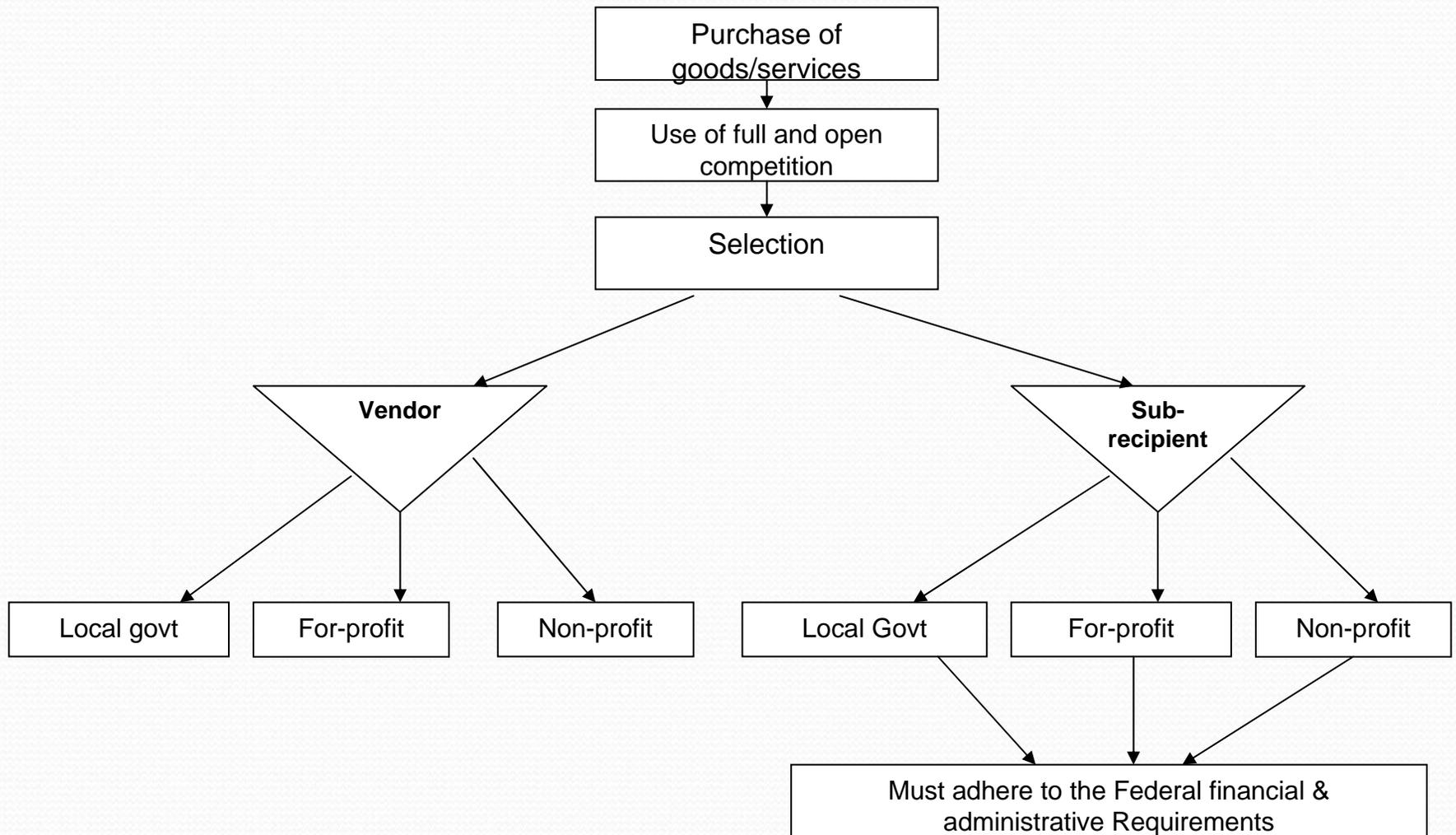
Grant Recipient, Partner, Subrecipient

- Direct award from Federal agency or pass-thru from state
- Legal entity receiving sub-award of Federal funds
- Provides a service/product that fulfills a program goal/need
- Customized to meet requirements mandated by the program
- Can be a non-profit entity, local govt, or a commercial entity in the business to make a profit
- **Subject** to Federal requirements

Purchases from a Vendor

- Are procurements
- Services or goods are purchased 'off the shelf'
- Vendor is a dealer, distributor, merchant, or seller of goods and services available to the general public within normal business operations; operates in a competitive environment
- May be a **commercial** entity in the business to **make a profit**
- **Not subject** to Federal financial management requirements

Sub-recipient vs. Vendor



Partners?

- Identifying partner organizations in your grant proposal and agreement DOES NOT PRECLUDE you from abiding by Federal procurement procedures
- All services and goods within your grant agreement ARE SUBJECT to procurement
- Grantees need to use FULL & OPEN COMPETITION when contracting with partners

Awards to Commercial Entities

- **FIXED OR INCENTIVE FEES PAID:**
 - Establish a set \$ amount for fee/incentive
 - **MUST** be exclusive of actual costs incurred
 - **MUST** be based on performance achieved
 - Subcontracted, pass-thru (ITA's) or routine costs such as rent & utilities should not be included in the negotiation of fees.

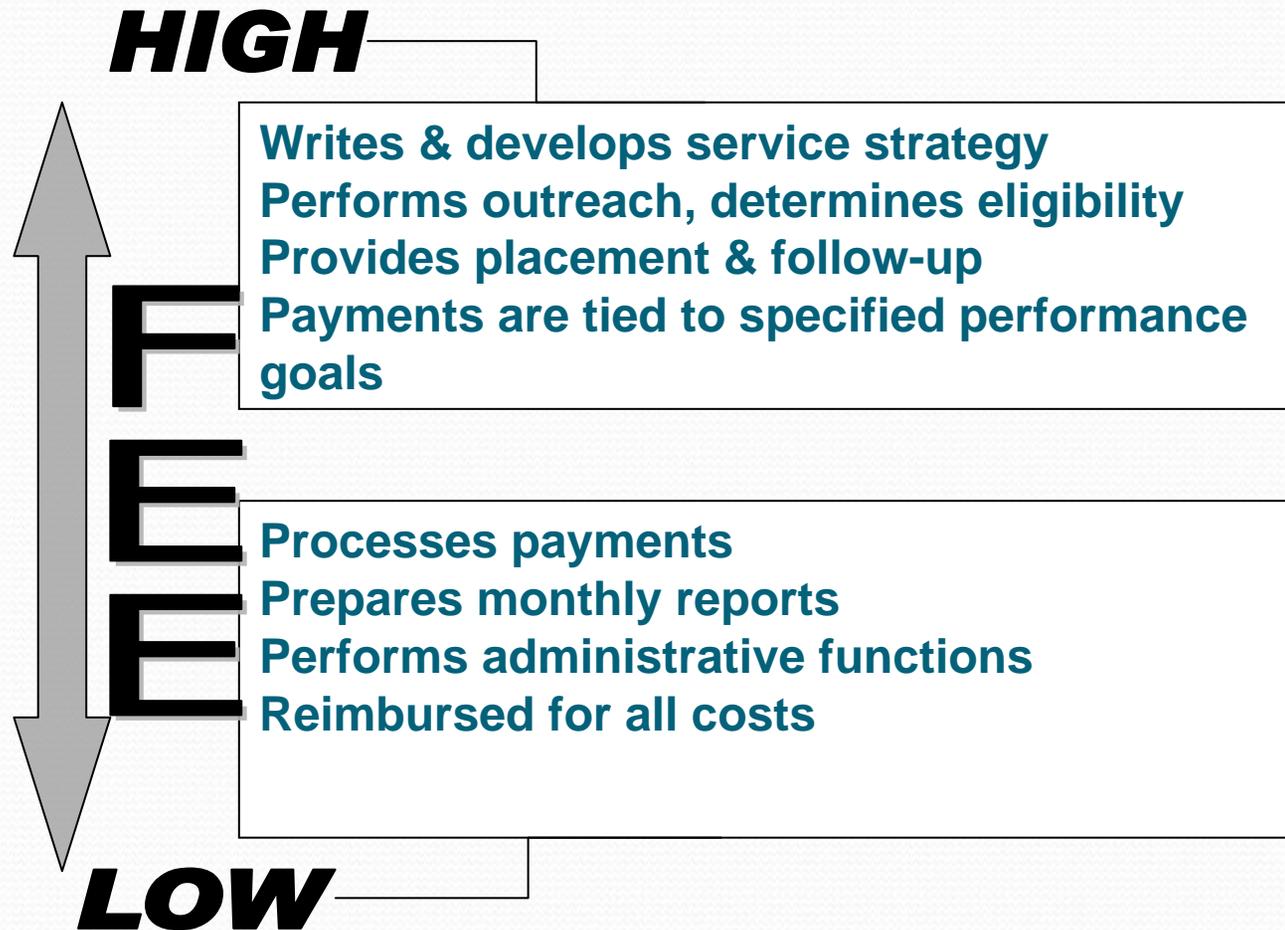
Factors

- Look at:
 - Effort & Risk
 - Past Performance
 - Industry Standards
 - Complexity of Work
 - Materials or Labor Intensive

Factors

- Negotiate INCENTIVE 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.
- FAR - 48 CFR 15.404-4 - suggests that it be less than 10%

Incentive Fee Contractor Effort/Risk



Questions?



Ed Donahue

571-436-8196

eddonahuejr@hotmail.com