



Accountability and Grants Management: Connecting the Dots



U.S. Department of Labor
*Employment and Training
Administration*

Procurement & Contracting

29 CFR 97.36

29 CFR 95.40-48

WIA Regulations

***U.S. Department of Labor, ETA, Region 4
Discretionary Grantee Training Conference
March 1st – 2nd, 2011***



Brian Johnston, DBA

Program Analyst

Division of Financial Management and
Administrative Services

Overview

- Procurement requirements
- Procurement methods
- Types of contracts
- Procurement cycle
- Contract administration
 - Leases & OJT contracts
- Grant/contract administration
- Post-award & closeout

Procurement Principles

- Applies to ALL grantees, subgrantees, & sub-awards.
- Must maintain a system for administration of contracts
- Full & open competition

Procurement Requirements

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

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

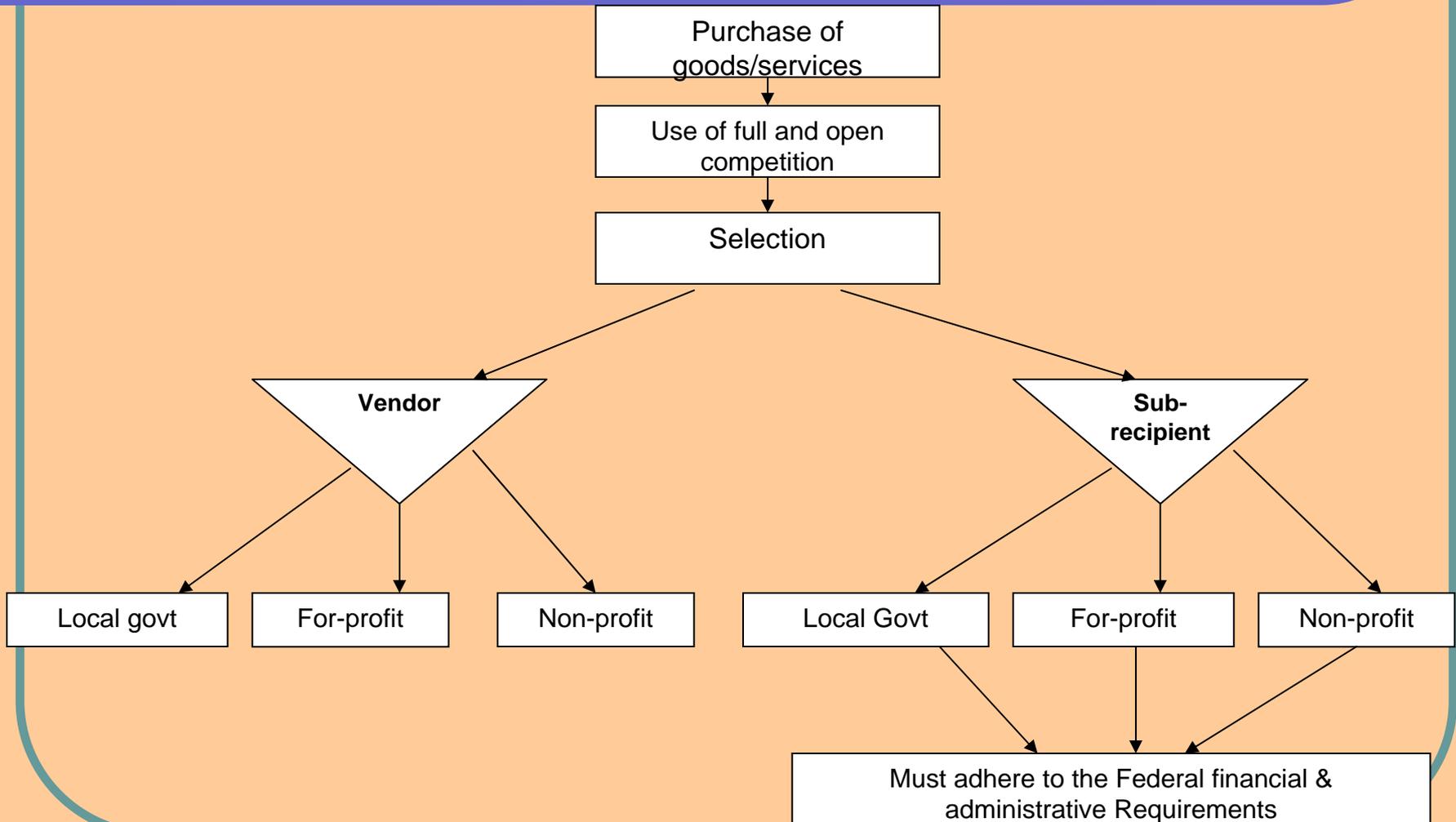
Vendor

- 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 and procurement requirements

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

Sub-Recipient vs. Vendor



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
 - Close-out & protest process of contracts (records, settlement, etc.)

Procurement Methods

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

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

Sealed Bids

- Publicly solicited bids
- 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, evaluation, selection, award
- Rejected bidders have documented reasons
- Maintain procurement file on each solicitation
- IF YOU DO NOT HAVE A SMALL PURCHASE LIMIT
– ALL PROCUREMENTS UNDER \$100,000 MUST
BE DONE BY SEALED BIDS!!!!

Competitive Proposals

- Performance & delivery are critical factors;
- Public request for services or goods being needed;
- Evaluation factors determine best proposal (weighting);
- Tell us how services will be delivered;
- Requires a Cost & Price Analysis and/or Lease vs. Purchase Analysis
- Fixed price or cost reimbursement contract

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 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

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
 - Required between governmental entities (city to state, etc.)

Agreements - Hybrids

- Cost Plus Fixed Fee
 - Reimbursed For Actual Costs Incurred
 - Negotiate Fixed Fee Separately From Actual Costs Based On Performance
 - Based On Performance Or Results Achieved Rather Than Costs Incurred
 - Establish A Fixed Fee Amount (Cost + % Of Cost Is Not Allowed)
 - Received Once Specified Levels Of Performance Are Achieved

Agreements

- Fixed Price or Fixed Unit Price (Less RISK)
 - Pay specified price/amount for specified deliverables regardless of actual costs incurred
- Fixed Price/Performance Based (More RISK)
 - Payments are contingent on successful achievement of specified, measurable performance outcomes, not being paid on actual costs incurred but delivery of performance.
 - Contractor must adhere to the cost categories applicable to the program

Procurement Cycle

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

Cost / Price Analysis

- What's available? (providers, services, etc.)
- What are the estimated costs of services?
- How is it delivered?
- Estimated costs or prices?
- Local factors?
- How much is needed? (#s, FTE's, etc.)

Solicitation

- Write a *clear* Statement of Work
 - Define required deliverables
 - All technical specifications
 - Period & measures of performance
 - Evaluation factors (unresponsive & meets)
 - Contract amounts/limitations
 - Specify prohibitions e.g. subcontracting, etc.

Solicitation

- What is required from the offeror?
 - Demonstrated evidence of prior performance
 - Statement of financial capability?
 - Accountability? (Copies of their A-133 Audit or Certified Financial Statements)
 - Is bid/proposal responsive to the RFP/IFB?

Publicize & Notice

- Public Announcement (30 days minimum)
 - In local business publications
 - Website
- Notice should contain:
 - Statement of Work
 - Required due dates and address of where bids are to be submitted
 - Optional: date/location of a pre-bidders conference

Evaluation

- Establish an evaluation panel
 - Sign a Conflict of Interest and Code of Conduct policy statement.
- Evaluation criteria instructions
- Establish the following ranges:
 - unresponsive, meets, fundable ranges
- Assignment of proposals (individual or group)
- Signed evaluation scoring forms

Factors

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

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

OJT Contracts

Actual Monitoring Examples/Issues

- No documentation to support or confirm the employer's history in retaining OJT clients as employees once the contract has been fulfilled
- No evidence of skills competencies to be achieved or progress reports in achieving such skills
- No evidence that OJT clients are WIA eligible
- Payment of 100% of wages

Leasing/Rental Agreements

(OMB Cost Circulars & 29 CFR 95 & 97 Applies)

- Requirements:
 - Examine lease vs. purchase (best value)
 - Comparable market survey/price
 - Less-than arms length (related parties)
 - Capital lease (prior approval of GO)
 - Operating lease (termination clause)
 - Depreciation (50 yr SL) or use allowance (2%)
 - Idle space (not allocable)

Documentation

- Grantees/Subrecipients 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
- Copeland Anti-Kickback Act
- Davis-Bacon Act
- Sections 103/107 of Contract Work Hours (CWH) & Safety Standards Act (SSA)
- Clean Air Act, Clean Water Act, & EPA regulations
- Energy Conservation Act
- Byrd Anti-Lobbying Amendment (Part 93)
- Debarment & Suspension requirements (Part 98)

More Agreement Clauses

- Breach, default, & other legal remedies
- Patent rights, copyrights, rights in data
- Termination for cause or convenience
- Ownership & access to records & retention requirements
- Reporting requirements
- Applicability of regulations
- Audit requirements
- Modification

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.

Protests & Appeals Process

- Grantees/Subrecipients MUST have a protest and appeals process
- Protest/Appeals – any written objection by an interested party
 - Unduly restrictive clauses
 - Bid was late or non-responsive
 - Improperly excluded from bidding
 - Award improperly made
 - Changes in evaluation factors
 - Not complying with solicitation criteria

Closeout

- MAINTAIN a closeout contract file...
- Send an official notice of closeout
 - Specify last invoice date and payment date
 - Obtain all necessary records
- Obtain the appropriate releases of liabilities, records, or payments
- Transfer of financial and participant records (RECORD RETENTION)

Grantee's Checklist

- When reviewing subgrantee'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

The slide features a solid orange background. At the top, there is a white rectangular box with a thin teal border. Below this box is a large, dark blue horizontal bar with rounded ends on the right side. The text "Review Questions" is written in white, italicized font within this blue bar. A thin white horizontal line is positioned just below the blue bar. At the bottom of the slide, there is a large, empty rounded rectangular shape with a teal border, resembling a placeholder for content or a large question mark.

Review Questions

Question #1

A competitive procurement of case management services is not needed since a local partner agency identified in the grant proposal has agreed to perform such services.

True or False

Question #1: Answer

FALSE: All procurements must be conducted in full and open competition including those with partners or agencies identified in the grant proposal.

Question #2

On June 29, 2006, an agency entered into a a \$40,000 contract with a local drug testing company as part of its ex-offender program.

This contract:

- A. Meets the definition of a sole source procurement since the funds were set to expire on June 30, 2006.
- B. Meets the definition of a sole source procurement since the purchasing specialist looked through the yellow pages at 3:30 pm and found only one listing under ‘Drug Testing’.
- C. Is part of the procurement process and should include evidence that the agency used competitive means whether informal method such as obtaining price quotes, proposals, or formal methods such as IVB or FRP before entering into an legal arrangement with this company.

Question 2: Answer

C. Is part of the procurement process and should include evidence that the agency used competitive means whether informal method such as obtaining price quotes, proposals, or formal methods such as IVB or FRP before entering into an legal arrangement with this company.

Questions?

- **Contact your FPO for T.A.**
- **Brian Johnston**
 - **(972) 850-4666**
 - **Johnston.brian@dol.gov**



Accountability & Grants Management: Connecting the Dots



THANKS!

***U.S. Department of Labor, ETA, Region 4
Discretionary Grantee Training Conference
March 1st – 2nd 2011***