Procurement

Procurement

- Process to obtain goods and services
- 29 CFR 97.36
  - States & other governmental grantees
- 29 CFR 95.40-48
  - Nonprofits, commercials, higher education, & hospitals
- Applies to grantees and subgrantees
- Full & open competition

System Requirements

- States
  - State procedures for non-Federal procurements
- Other Governments
  - Own system if it conforms to Part 97 requirements
  - Maintain system for administration of contracts
- Part 95 grantees
  - Conform to standards

Procurement Standards

- Written procedures
- System to ensure performance
- Written code of conduct
- Procedures to review procurements
- Process to promote use of intergovernmental agreements/common goods & services

Procurement Standards

- Cost or price analysis
- Awards only to responsible parties
- Documentation of award
- Settlement process and protest procedures
- Use of small businesses, minority- & woman-owned businesses (Part 95 only)

Procurement Methods

- Fair and open competition
  - 29 CFR 97.36(c) & 95.43
- Methods – 29 CFR 97.36(d)
- No methods specified in Part 95
  - Follow methods of Part 97
  - No prior approval for small purchase procurements

Small Purchase Method

- Federal threshold – $100,000
- Informal method – primarily goods
- Rate comparisons
- Price is primary consideration

Sealed Bids Method

- Complete specification of goods & services
- Usually requested through an Invitation for Bid (IFB)
- At least two bidders
- Award based primarily on price

Competitive Proposals

- More than one bidder
- Price is not primary consideration
- Use of a Request for Proposal (RFP)
  - Publicized
  - Method to conduct technical evaluation
  - Awards based on price and program factors
  - Bids solicited from a number of providers
- Fixed-price or cost reimbursement

Non-Competitive (Sole Source) Proposals

- Only if other methods infeasible
- Available from one source
- Public emergency precludes competition
- Awarding agency authorized
- Competition determined inadequate

Non-Competitive Proposals

- Cost analysis required
  - Verification of cost data
  - Evaluation of costs & profit
- Profit separately negotiated
- Fixed-price or cost reimbursement

WIA Requirements

- LWIA plan
  - Must describe competitive process
  - All Title IB funded programs
- Title IB Youth services
  - Competitively procured
  - WIA Section 123
- Eligible training providers
  - 20 CFR 663, Subpart E

How to Develop Solicitations

- Clear description of goods/services
- Factors used in evaluating bids/proposals
- Technical requirements of procurement
- Specific features of "brand-name or equal"
- Acceptability of metric measurements
- Preference for ecologically & energy efficient products

State Grantee's Solicitation Process

- States should follow their own procurement process (usually State Procurement Office)

Other Grantees' Solicitations

- Determine to type of solicitation
  - RFP, Sealed Bid, etc.
- Establish a due date for proposals to be received
- Develop the scope of work
- Develop the Criteria plus assign a range of points for each criteria

Other Grantees' Solicitations

- Publish specified criteria (specific weighting/range of points) for each criteria, including past history and cost reasonableness along with instructions including the requirement to develop budgets, deadlines, other specific instructions, e.g., where to send responses, to whom, address…

Other Grantees' Solicitations

- Publish in Business Commerce Daily or other newspapers as determined and written into the procurement policy (keep newspaper articles)
- Select a Panel to read the responses/identify a Panel Chair
  - Need to sign conflict of interest statements indicating there is no conflict

Other Grantees' Solicitations

- Develop technical requirements that must be met (from the published criteria) – instructions to the respondents (use to weed out entities that did not comply with instructions)
- Determine who will make the final selection when the panel recommends potential awardees

Other Grantees' Solicitation

- Written procedure can allow for a pre-proposal conference
- Written procedure can allow for proposals to be withdrawn
- Written procedure should provide for proposals to be stamped in with time, receipt date, and secured until closing date and time for receipt of all proposals

Other Grantees' Solicitation

- Proposals shall be opened publicly at the time and place designated in the solicitation.
- Name each respondent shall be read and recorded
- If only one respondent, can award if reasonable and responsive to the published criteria (may need some technical assistance)

Other Grantees Proposals

- Best and Final Offers (after technical evaluation)
  - Respondents shall be given fair treatment for any opportunity for discussion and revision of proposals (need written procedures)
- Mistakes in Proposals
  - Prior to the time and date set for best and final proposals any respondent may withdraw the proposal or correct any mistakes by modifying the proposal

Other Grantees' Solicitation

- Can notify that awards will be based upon most advantageous to the entity considering factors in the solicitation
- Can announce that pre-award reviews will be done (can establish $ threshold as to when this will be done)
  - Looking for financially stability
  - Can impose special conditions/restrictions
  - Can designate as high risk

Other Grantee's Solicitations

- Can Specify that All Service respondents should have
  - Proposed timeframes
  - Clearly defined scope of work and deliverables
  - Identify contact person
  - Signed assurances that the respondents will comply with Appropriate Federal, state, local law, regulations, provisions, and clauses
  - Documentation to support indirect or shared cost
  - Documentation to support space cost, equipment cost, insurance including the basis for these payments
  - Line item budgets and narrative budgets

History of Procurement

- Record retention
  - All minutes, notes, instructions, processes must be kept in accordance with the DOL record retention requirements
    - 3 years after submission of the final expenditure report or settlement of all issues
    - (the later of the two)
    - Property – three years after disposition
    - Cost allocation plans

History of Procurement

- Records shall include names of individual panelist who rated the proposals
- The rating sheets
- Recommendations and ultimate selection
- All proposals
- Conflict of interest statements

Other Grantees Solicitation Process

- Must have written protest procedures
- Must have a process for notifying successful and unsuccessful respondents
  - Can include letting unsuccessful bidders know why they were not considered
- Develop bilateral grant/award documents

Other Grantee's Solicitations

- Select Panelist
- Read and score proposals (using the range of criteria
- Panel chair should reconcile with the readers any scores that have a wide range difference
- Make recommendations to the selection committee or individual

Other Grantee's Solicitations

- Committee can fund any proposals in the funding range
- Consideration can be given to saturation
- Some respondents may need additional technical assistance

Other Grantees

- Independent cost estimates

High-Risk Grantee

- Consequence of a failure to comply
- Awarding agency criteria
  - A history of unsatisfactory performance,
  - Is not financially stable,
  - Management system does not meet the financial management standards
  - Has not conformed to terms and conditions of previous awards, or
  - Is otherwise not responsible

Contract Clauses

- Agreements
  - Fixed-price or cost reimbursement
- Every agreement must contain clauses
- 29 CFR 97.36(i)
- 29 CFR 95.48
- 29 CFR Part 95, Appendix A

Contract Clauses

- Breach of contract
- Termination for cause or convenience
- Access to records
- Reporting requirements

More Contract Clauses

- Record retention requirements
- Applicability of regulations
- Audit requirements
- Patent rights, copyrights, rights in data

The Rest of Contract Clauses

- Provisions requiring adherence to
  - EEO requirements of CFR 33 & 37
  - Sections 103/107 of CWH/SSA
  - Clean Air Act, Clean Water Act, & EPA regulations
  - Energy Conservation Act
  - Byrd Anti-Lobbying Amendment (Part 93)
  - Debarment & Suspension requirements (Part 98)

WIA Requirements

- LWIBs and governmental organizations
  - Agreements – cost reimbursement only
- Agreements with nonprofits
  - Excess revenues = program income
- Contract clauses
  - Conflict of interest provisions

Sub-recipient or Vendor

Sub-recipient:

- Has responsibility for programmatic decision making
- Determines Eligibility
- Has performance measured against objectives of the program

Sub-recipient Continued

- Has responsibility for adherence to applicable Federal program compliance requirements (regulations, statue, other issuances

Vendor

- A dealer, distributor, merchant, or other seller who provides goods or services required for the program
- Provides goods and services within normal business operations
- Provides similar goods or services to many different purchasers

Vendor Continued

- Operates in a competitive environment
- Provides foods or services to the operation of the program
- Is not subject to the Federal compliance requirements of the program

Making the Determination

- Take into account all of the characteristics related to the type of provider
- It is not the label on the award document, e.g., contract, sub-grant or sub-contract
- No one factor should be taken in isolation

Making the Decision Continued

- Under no circumstances should a designation of vendor be made if the following conditions are met:
  - There is a financial or performance requirement related to eligibility or selection of participants
  - The designation must relate to the type of product or service provided

Indicators of Sub vs. Vendor Relationships

Factor	Vendor	Sub-recipient
Activity	Sell Deliverables (goods or services)	Provides services
Assistance arrangement	Buyer-seller	Financial Assistance to operate a program

Indicators of Sub vs. Vendor Relationships

Factor	Vendor	Sub-recipient
Control	Control is outcome focused	Control is in process
Development Costs	Absorbed	Controlled
Closeout Package	Final Invoice	Comprehensive

Indicators of Sub vs. Vendor Relationships

Factor	Vendor	Sub-recipient
Purpose of award	To provide specific goods and services	To carry out a program goal
Receipt of funds	Number of items delivered	Cost incurred
Type of market	Sale within normal business operation; existing product tailored to the program	Customized to meet specific program purposes