

TITLE 11 LABOR AND WORKERS' COMPENSATION
CHAPTER 2 JOB TRAINING
PART 28 WORKFORCE INVESTMENT ACT (WIA) PROCUREMENT AND CONTRACTING
ACTIVITIES GUIDELINES

11.2.28.1 ISSUING AGENCY: New Mexico Department of Labor.
[11.2.28.1 NMAC – N, 8/29/03]

11.2.28.2 SCOPE: The state administrative entity (SAE), state workforce development board (WDB), New Mexico workforce development areas/local workforce development boards (NMWDAs/LWDBs), and other state funded and/or WIA subrecipients as applicable.
[11.2.28.2 NMAC – N, 8/29/03]

11.2.28.3 STATUTORY AUTHORITY: The Workforce Investment Act (Pub. L. 105-220; 20 U.S.C. 9276(c)), at Title I Sections 122 and 123; 20 CFR Part 652 et al. and any amendments thereto; Section 506(c), New Mexico Workforce Development Act, New Mexico House Bill 740, Chapter 260, Laws of 1999, Forty-fourth Legislature; NMSA 1978, 9-17-5, Laws of 1984, Chapter 65, Section. 1 (New Mexico statutes 1978, chapter 13, pamphlet 29).
[11.2.28.3 NMAC – N, 8/29/03]

11.2.28.4 DURATION: Permanent.
[11.2.28.4 NMAC – N, 8/29/03]

11.2.28.5 EFFECTIVE DATE: August 29, 2003 unless a later date is cited at the end of a section.
[11.2.28.5 NMAC – N, 8/29/03]

11.2.28.6 OBJECTIVE: To establish minimum state requirements for procurements and contracting conducted under the Workforce Investment Act (WIA). The purpose of the WIA procurement process is to provide for fair and equal treatment of all persons and organizations involved in a procurement, to maximize the purchasing power or value of WIA funds, and to provide safeguards to ensure the integrity of all WIA procurements through the maintenance of a quality procurement system.
[11.2.28.6 NMAC – N, 8/29/03]

11.2.28.7 DEFINITIONS: Refer to State Technical Assistance Guide (STAG) "Workforce Investment Act (WIA) Procurement" 10-03.
[11.2.28.7 NMAC – N, 8/29/03]

11.2.28.8 ACTION: The SAE, WDB, LWDBs, and others involved in procuring goods and services with WIA funds shall adhere to the WIA, attendant federal regulations, applicable office of management and budget (OMB) circulars and applicable state and local laws. All procurements shall be conducted in accordance with the requirements specified in this rule. The LWDBs have the option to use their own board approved procurement procedures provided that such procurement procedures comply with applicable OMB circulars and the State Procurement Code, and applicable local laws or to adopt the procedures established in applicable State Technical Assistance Guide (STAG) "Workforce Investment Act (WIA) Procurement", and any amendments thereto, incorporated herein by reference. This STAG provides additional guidelines, procedures, forms that are not part of this rule but may be adopted by LWDBs.

A. General provisions. All entities involved in procuring goods and services with WIA funds shall prescribe and implement procurement standards to ensure fiscal accountability and prevent waste, fraud, and abuse in WIA programs in accordance with applicable federal, state and local laws, regulations and policies. Local boards and other organizations using WIA funds opting to utilize their own locally established procurement policies and procedures must submit these for review by the New Mexico department of labor job training division for conformance with applicable laws, rules and regulations, prior to implementation.

B. Application of procurement law. When a procurement involves the expenditure of federal funds, the procurement shall be conducted in accordance with mandatory applicable federal and state regulations. When mandatory applicable federal law or regulations are inconsistent with the provisions of the State Procurement Code

[13-1-28 NMSA 1978], compliance with federal law or regulations shall be compliance with the State Procurement Code.

C. Funds provided under WIA may not be used to duplicate facilities or services available with or without reimbursement from federal, state, or local sources.

D. Awards are to be made to responsible entities/organizations possessing the demonstrated ability to perform successfully under the terms and conditions of the procurement. Demonstrated ability shall be determined in accordance with the requirements contained in the WIA, the federal regulations, applicable OMB circulars and the State Procurement Code.

(1) Competition. Procurements shall be conducted in a manner that provides full and open competition.

(2) Procedures. Each local workforce development area board/recipient shall have written procedures for all procurement transactions. The NMDOL SAE STAG on this subject provides guidance on establishing local procurement policy and procedures.

(3) Conflict of interest. A conflict of interest exists when an individual, a member of the individual's immediate family, the individual's partner, or an organization that employs, or is about to employ, any of the above, has financial or other interest in the firm or organization selected for award or engage in any other activity determined by the governor to constitute a conflict of interest or the appearance or perceived conflict of interest. Local boards shall develop or adopt the SAE's written code of conduct and standards governing the performance of persons engaged in the award and administration of WIA contracts and subgrants consistent with the federal regulations. Guidance regarding the development of a code of conduct is provided in the referenced STAG.

(4) Methods of procurement. LWDA/LWDBs shall use any one of the methods of procurement, appropriate for each procurement situation as specified in the State Procurement Code and attendant regulations [1.4.1 NMAC] to include but not be limited to request for proposals, other competitive bid procedures and sole source procurement.

(5) Procurement oversight. Each recipient and subrecipient shall conduct and document oversight to ensure compliance with the procurement standards established in the WIA, applicable federal regulations, OMB Circulars and the State Procurement Code.

(6) Procurement system. Each recipient and subrecipient shall maintain an administration system which ensures that contractors, subrecipients and vendors perform in accordance with the terms, conditions and specifications of their awards. Such system shall include the maintenance of records sufficient to detail the significant history of the procurement. These records shall include, but are not limited to, rationale for method of procurement, selection of agreement type, awardee selection or rejection, and the basis for the agreement price.

(7) Contract awards. Each recipient and subrecipient agreement shall adhere to WIA, applicable OMB Circulars and the State Procurement Code in selecting and awarding contracts, grants and subgrants.

(8) Selection of one-stop operators. Consistent with 20 CFR Part 652 et al. Section 662.410, One-Stop operators may be selected through a competitive process where the One-Stop operators are not designated and certified under an agreement between local boards and a consortium of entities that includes at least three or more of the required One-Stop partners identified at Section 662.200 or under conditions described in Section 662.420 or 662.430 (WIA Section 121(d), 121(e) and 117(f)(2)).

(9) Selection of administrative and fiscal agents. Selection of administrative and fiscal agents by the local boards shall be by a competitive bid process in accordance with the State Procurement Code. In the event where there is only one source for the required professional service(s) these may be procured via the sole source procurement process. Such instances shall be strictly limited to those conditions specified and in, accordance with, Sections 1.4.1.53 through 1.4.1.57 of the State Procurement Code regulations.

(10) Selection of intensive services providers. Adult and dislocated worker intensive services where not provided by the One-Stop operator shall be procured through a competitive process (20 CFR 663.210) in accordance with the applicable OMB Circular A-87 for grants and contracts with state and local governments and federally recognized Indian tribal governments and A-122 applicable to non-profit organizations.

(11) Selection of youth service providers. From funds allocated under WIA Section 128 to a local area, the LWDB shall identify and award grants or contracts to eligible providers of youth services on a competitive basis, based on the recommendations of the youth council and on the criteria contained in the state workforce development plan.

(12) Sole source procurements. The use of sole source procurements should be strictly limited to these conditions specified in, and in accordance with, Sections 1.4.1.53 through 1.4.1.57 of the State Procurement Code regulations. All sole source procurements must be unanimously approved by the local board and must receive

final approval from the SAE. Conditions for use of sole source procurement for items of tangible personal property and non-professional services are specified at Section 1.4.1.54 and for professional services at Section 1.4.1.55.

(13) Protests and disputes. Recipient and subrecipients shall adhere to the procedures established in the State Procurement Code regulations to handle and resolve protests and disputes relating to their procurements. A protester shall exhaust all administrative remedies with the subrecipient before pursuing a protest at a higher level. Local workforce boards will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, protests, disputes, and claims. These standards do not relieve the contractors of any contractual responsibilities under its contracts.

(14) Violations of procurement law shall be handled in accordance with applicable state and/or federal law.

(15) Contract policy. Entities that receive grants or cooperative agreements under WIA Title I must follow the common rule "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments" which is codified at 29 CFR part 97. All entities shall maintain contract policy that describes the types of agreements used in awards. The contract policy should also include the way in which cash advances, if allowed, will be handled. The type of contract used is determined in the negotiation process. The type of contract or agreement form selected for a given procurement shall reflect the characteristics of the products or services to be acquired. It should also provide suitable assurances that costs incurred are reasonable and necessary, given the value provided; the risk entailed in the contract's performance, and current market conditions. Contracts shall contain or have appended applicable contract provisions known as the boiler plate. LWDBs may utilize their own contract formats or adopt the contract format and subrecipient provisions contained in the referenced STAG.

(16) Nondiscrimination. WIA recipients, subrecipients, contractors and subcontractors shall comply with the nondiscrimination and equal opportunity provisions of the WIA of 1988, including Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975, as amended; Title IX of the Education Amendments of 1972, as amended; the Americans with Disabilities Act of 1990, and any amendments thereto; and all applicable requirements imposed pursuant to regulations implementing those laws. The United States department of labor and the SAE reserve the right to seek judicial enforcement of this assurance.

(17) Restrictions and certifications. WIA recipients, subrecipients, contractors and subcontractors shall comply with: the Drug-Free Workplace Act of 1998 (Pub L. 100-690, Title V, Sub Title D); Federal Restrictions on Lobbying (20 CFR 93.100); restrictions on the use of WIA funds involving sectarian activities (WIA Section 188(a)(3); and certification regarding debarment, suspension and voluntary exclusion-lower tier covered transactions (29 CFR 98, OMB Circular A-133, and Executive Order 12549).
[11.2.28.8 NMAC – N, 8/29/03]

11.2.28.9 RESCISSIONS: None. However, this rule supersedes State Information Notice (SIN) No. 39-00, dated June 5, 2000.
[11.2.28.9 NMAC – N, 8/29/03]

11.2.28.10 CONTACT ENTITY: Inquiries regarding this rule should be directed to the job training division in Santa Fe at (505) 827-6827.
[11.2.28.10 NMAC – N, 8/29/03]

11.2.28.11 DISTRIBUTION: NM state and local WDB chairpersons, SAE NMDOL legal counsel, SAE NMDOL EEO Officer, NMWDAs/LWDBs administrative staff, state WIA subrecipients, other state/WIA subrecipients, USDOL federal representative, and New Mexico records center and archives.
[11.2.28.11 NMAC – N, 8/29/03]

11.2.28.12 ATTACHMENTS: State Technical Assistance Guide (STAG) "Workforce Investment Act (WIA) Procurement" 10-03.
[11.2.28.12 NMAC – N, 8/29/03]

HISTORY OF 11.2.28 NMAC: [RESERVED]