

# **WORKFORCE INVESTMENT ACT (WIA) PROCUREMENT**

**State Technical Assistance Guide (STAG) 10-03**

**New Mexico Department of Labor  
Job Training Division**

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## **State Technical Assistance Guide (STAG) 10-03**

**Prepared For:  
State of New Mexico  
Local Workforce Development Boards that  
deliver Workforce Investment Act (WIA) Programs**

**Submitted by:  
New Mexico Department of Labor  
Job Training Division**

# Procurement

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# Procurement

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# PART I

## OVERVIEW

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### INTRODUCTION

Getting the most bang for the buck. That is the objective of any procurement strategy.

In order to accomplish this task any governmental or public entity procurement system must:

1. Provide for fair and equal treatment of all individuals and organizations involved in a public procurement;
2. Maximize the purchasing power of public funds to obtain the best quality product or services at the best price;
3. Provide safeguards to prevent fraud and abuse of public funds by setting high standards of integrity and professionalism; and
4. Establish an efficient procurement system with the capability to procure goods and services in the most timely and cost-effective manner, and to maintain documentation and records of all procurement activities sufficient to ensure adequate oversight and regulatory compliance.

### PURPOSE OF THE STATE TECHNICAL ASSISTANCE GUIDE (STAG)

Trying to understand how to conduct a public procurement can often become very confusing and frustrating with so many federal and state laws, rules, regulations and procedures to be considered.

With this in mind, this manual is intended to guide the user through the maze of requirements and information provided in the WIA, federal regulations, Office of Management and Budget (OMB) Circulars, the State of New Mexico Procurement Code/Regulations and federal/state policies, etc. An objective in developing this manual is to provide the State Workforce Development Board (WDB), Local Workforce Development Boards (LWDBs), WIA subrecipients and state funded as well as applicable other potential bidders a reliable and user friendly guide to a complex administrative process.

Local boards, other recipient and subrecipients of WIA funds must develop purchasing procedures to ensure that only those goods and services of acceptable quality, are acquired at the lowest possible cost in compliance with all applicable federal, state and local procurement requirements and standards. A procurement system's internal controls and procedures must ensure that all goods and services paid for are actually received in accordance with the specifications set forth in the bid and the applicable procurement document (i.e., subgrant or contract). Thus, another objective of this manual is to provide guidance on the basic elements as

well as the requirements of a procurement system. Due to the particular nature of the procurement requirements of the WIA, emphasis is placed on the use of the Request for Proposal (RFP) process.

## **APPLICABLE REGULATORY REFERENCES**

Maintaining the integrity of procurement is crucial in preventing fraud and abuse of public funds. Liability for the misuse of WIA funds rests on the chief-elected officials in local workforce investment areas (WIA Section 117(d)(B)(I)).

An important issue pertains to which governmental or non-governmental entity must comply with any requirements imposed by federal, state and local law, regulations and the terms of Federally funded grant. In general, compliance with the standards promulgated in the WIA, OMB Circulars and the State Procurement Code that govern procurement will ensure that procurement practices are acceptable. All organizations receiving federal funds assume full responsibility for establishing and maintaining their own procurements and have no recourse to the federal granting agency (and the state) for the settlement of disputes, claims, protests of awards made, proposal evaluation and other contracting matters which result from an agency's procurement practices.

An essential part in planning any procurement transaction is consideration of the applicable rules and regulations within which the framework of any procurement must be developed. Understanding the rules and regulations that apply is the first step in planning a procurement. Multiple federal and state regulations and rules may apply to any given procurement transaction that involves federal funds. The WIA Regulations (20 CFR Part 652 et al) Subpart B-Administrative Rules, Costs and Limitations at Section 667.200, references the uniform fiscal and administrative requirements that are codified in OMB Circulars specific to the type entity that receives grants or cooperative agreements under Title I. Additionally the State Procurement Code, which is generally more restrictive than the federal code, must be adhered to except where federal law supersedes. The State Procurement Code stipulates that:

“When a procurement involves the expenditure of federal funds, the procurement shall be conducted in accordance with mandatory applicable federal law and regulations. When mandatory applicable federal laws or regulations are inconsistent with the provisions of the Procurement Code [13-1-28 NMSA 1987], compliance with federal law or regulations shall be compliance with the Procurement Code.”

Following is a listing of OMB Circulars and United States Department of Labor (USDOL) regulations pertaining to the administration of Federal grants. Not all of the following circulars or regulations apply in all cases. For example, OMB Circular A-87 “Cost Principles for State, Local and Indian Tribal Governments” would not apply to non-profit organizations which are covered under OMB Circular A-122.

The Workforce Investment Act (WIA) of 1998

20 CFR Part 652. et al. – (WIA, Final Rules, dated August 11, 2000)

29 CFR Part 95 and 29 CFR Part 97

## Applicable OMB Circulars

### *Cost Principles*

- [A-21 Educational Institutions](#)
- [A-87 State, Local and Indian Tribal Governments](#)
- [A-122 Non-Profit Organizations](#)

### *Administrative Requirements*

- [A-102 State, Local and Indian Tribal Governments](#)
  - [A-110 Institutions of Higher Education, Hospitals, and Other Non-profit Organizations](#)
  - [State Procurement Code](#), Chapter 13, Article I (2002 Replacement Pamphlet)
  - [State Procurement Regulations](#), 1.4.1 NMAC (effective 11/15/01)
- Applicable State and Local Rules

OMB Circulars are available at [www.whitehouse.gov/WH/EOP/OMB/html/circulars](http://www.whitehouse.gov/WH/EOP/OMB/html/circulars) or by calling (202) 395-7332. The Code of Federal Regulations (CFRs) are available at [www.access.gpo.gov/](http://www.access.gpo.gov/) or [www.dol/dol/public/regs/cfr/main.htm](http://www.dol/dol/public/regs/cfr/main.htm)

# PART II

## PROCUREMENT PROCESS

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### Basic Elements of Procurement

Understanding the difference between a Contract, Cooperative Agreement and a Grant is necessary to understand the governmental Procurement Process.

Title 31 of the United States Code, Chapter 63, clarifies that for procurement relationships contracts must be applied and for assistance relationships, grants or cooperative agreements are to be used.

#### Procurement Relationship

The Federal Grant and Cooperative Agreement Act defines “procurement relationship” as one for which the purpose is acquisition by purchase, lease or barter, of property or services for the direct benefit or use of the federal government...” A contract is the legal instrument that reflects the relationship. Thus, a “contractor” is any person, corporation, partnership, public agency, or other entity that enters into a contract with the USDOL, recipient, or subrecipient under the WIA. A “subcontract” is a second-tier procurement relationship between a contractor and another party.

#### Assistance Relationship

An “assistance relationship” is defined in the Code as one in which the purpose is to provide financial assistance, support or stimulation to accomplish a public purpose. Grants and cooperative agreements are the legal instruments that reflect this relationship between the Federal government, a State, local government or other recipient. While the purpose of both grants and cooperative agreements are the same (i.e. that of transferring money, property, services, or anything of value from one party to another party) their level of anticipated involvement differs.

A cooperative agreement anticipates substantial involvement between the parties concerned during the performance of the activity, while a grant agreement does not. The “grantee (prime recipient)” is responsible for the administration of the grant and is accountable for the use of funds provided, including the settlement of all contractual and administrative issues attendant to all procurements supported under a grant.

# Principles of Procurement

## Equal Treatment

The underlying principle of public procurement practices is that equal treatment must be provided to all bidders for WIA goods and services. This means that potential contractors or subgrantees may not be given special consideration in awarding contracts or subgrants or in administering these after they have been awarded. This is amply addressed in the WIA, State Procurement Code and in federal procurement regulations.

## Open and Free Competition

Procurement of goods and services must be conducted in a manner that provides maximum open and free competition for every purchase sought. Where no competition exists or it is not prudent to solicit competitive bids, a determination must be made and documented explaining why the lack of competition was necessary and reasonable. Situations that are restrictive to open and free competition include but are not limited to:

- Imposing unreasonable requirements on bidders to qualify;
- Imposing unnecessary requirements for experience;
- Imposing excessive bonding requirements;
- Non-competitive pricing practices between firms;
- Organizational conflicts of interests;
- Using “brand name” specifications; and
- Any arbitrary actions in the procurement process.

*Conflict of Interest.* Local boards and organizations involved in procurement must have in place policies and procedures that are sufficient to avoid both a conflict of interest **or** the appearance of conflict of interest. The WIA prohibits local board members from voting on matters in which they or their immediate family members have a personal or financial interest. The following are some minimum baseline requirements of an adequate conflict of interest policy recommended by the USDOL;

- A formal statement of the requirement that individuals disqualify themselves from participation in procurement decisions in which they have an interest;
- Procedures for defining, recognizing and verifying actions that lead to disqualification;
- A “self-examination” procedure to ensure that safeguards are in place;
- Written steps to characterize the procurement process and identify the areas of risk for conflict of interest;
- A periodic review of existing conflict of interest policies and procedures;
- To the extent possible, an identification of all instances in which a board member or board staff member has an economic interest, whether direct or indirect, in a procurement transaction;

- Assurance that requirements are in place to prohibit board members representing organizations that receive WIA funds from making funding recommendations and from discussing or voting on any funding decision;
- To the extent possible, an identification of any procurements between entities that are legally separate but interrelated in ownership, or that have common or similar board membership;
- To the extent possible, an identification of any relationships between separate offices or bureaus of the same agency or organization that report to the same person, and
- A policy prohibiting the practice of trading votes.

### Arms-Length Negotiations

An “arms length” relationship between the buyer and the bidders must be established in which the rights of all the parties are clearly stated to assure that the goods or services solicited are provided in accordance with the specifications of the solicitation and are deliverable for the cost offered. Additionally, a strict code of conduct that prohibits “under the table deals” or special treatment must be enforced. Organizational arms-length relationships must also be maintained.

Code of Conduct. The ethical issues involved in procurement are expected to be addressed in each LWDBs or agency’s “Code of Conduct.” Each LWDB or organization receiving WIA funds is required to adopt and maintain a Code of Conduct that prohibits persons involved in the procurement process from accepting gifts, favors, or anything of monetary value from contractors or potential contractors. The code must also address individual conflicts of interest that may occur when persons involved in the award and administration of contracts have a financial or personal interest in prospective contractors, subcontractors, or suppliers in compliance with Section 13.1.57 of the State Procurement Code. “Financial interest” means: (a) holding a position in a business as officer, director, trustee or partner or holding any position in management; (b) ownership of more than five percent interest in a business. Provisions of the code should also include penalties, sanctions, or disciplinary actions for violators to the extent provided by state and local laws, rules and regulations. Conflict of interest and the appearance or perceived conflict of interest must be equally addressed by the organizations’ code of conduct.

### Remedies

The buyer and the seller should have the right to address any situations connected with the procurement process that they deem to be unfair or unreasonable. The ability to correct such conditions is linked integrally to the “arms-length” principle as it provides a framework for maintaining the buyer-seller relationship even when disputes occur. The State Procurement Code Regulations at Section 1.4.1.81 provides that, “Any bidder or bidder who is aggrieved in connection with a solicitation or award of a contract may protest to the state purchasing agent or central purchasing office.” The provisions of 1.41.80 through 1.4.1.93 of the State Procurement Code Regulations for handling of protests apply to purchasing offices that have not adopted procedures for resolving protests where these are not superseded by federal law or regulations.

## Equal Opportunity Objectives

Federal and state procurement standards require that small and minority-owned business be given every opportunity to compete equally with other businesses, including making special efforts to solicit bids and proposals from such firms. However, favored treatment in authorizing contracts is not allowed.

Where reasonable and practical, contracting opportunities should be afforded to minority owned businesses and small organizations that are locally based and considered disadvantaged. Community-based organizations that have expertise in serving the needs of the economically disadvantaged and other disadvantaged groups should be considered. Preference for such otherwise qualified contractors may be given, for example, by selecting the disadvantaged organization in the case of tie bids and setting certain conditions under which such contractors will be encouraged to bid. These conditions may include:

- Ensuring that such businesses are solicited whenever they are potential sources,
- Including such businesses on solicitation listings, and
- Dividing total requirements (where feasible) into smaller tasks or quantities to permit participation by these bidders.

## **Written Procedures**

### Methods and Procedures

Local boards must have written procedures for conducting procurements beginning with the solicitation and contract process phase through to the close out of a contract or subgrant. The methods and procedures should be:

- Organized and structured;
- Reasonable and equitable;
- Documented and approved by appropriate authorities;
- Consistent with federal, state and other applicable procurement requirements;
- Uniformly applied; and
- Open for public review and scrutiny.

An essential part of an efficient procurement system is the development and periodic updating of written policies and procedures. The WIA at Section 122(b)(16) requires that the State Plan provide a description of the competitive process to be used by the state to award grants and contracts for State funded activities, and WIA Section 118(b)(9) requires that a description of the competitive process to be used to award grants and contracts in the local area for activities carried out under the Act be addressed in the Plan. Thus state and local boards must establish written policies and procedures regarding procurement consistent with the State Plan and applicable federal, state, local requirements. Other subrecipients are also required to maintain written procurement procedures. Under the provisions of Subpart G of the federal regulations, "Sanctions, Corrective Actions, and Waiver of Liability," certain sanctions can be taken against a recipient for violations of the Act included in the awarding and monitoring of contracts.

The following checklist is applicable to WIA procurements:

- Procurement authority, responsibility;
- Code of conduct;
- Conflict of interest;
- General requirement for full and open competition;
- “Sole-source” or noncompetitive procurement;
- “Small purchase” threshold;
- Selection of lease, lease-purchase, or purchase method of selection;
- Basis for award of selection;
- Selection-of-awardee procedure including criteria of demonstrated performance, effectiveness, nonduplication, etc.
- Standard clauses (“boiler plate”) to be included in the award document;
- Determination of cost/price reasonableness (e.g. cost/price analysis);
- Pre-award determination of contractor/grantee “Responsibility” (e.g. “Debarment and Suspension” certifications, pre-award survey, audit results, etc.);
- Contract/grant specifications (scope of work, budget, etc.);
- Contract/grant administration (including inspection and/or performance monitoring), and
- Contract/grant award protests, disputes, and claims process.

Local board procurement policies should clearly describe these procedures. Staff members who are responsible for conducting procurements should become familiar with this STAG.

### Historical Files

WIA Section 185(a)(1) requires that, “Recipients of funds under this title shall keep records that are sufficient to permit the preparation of reports required by this title and to permit the tracing of funds to a level of expenditures adequate to ensure that the funds have not been spent unlawfully.” These records must be retained for a period of three years as stipulated in 29 CFR 97.42. Some records may be required to be retained for a longer period pending the resolution of monitoring and/or audit findings. Hence, an historical file for each procurement must be maintained that provides documentation that adequately reflects a trail of events and actions leading to the procurement of the product or service. The file should be maintained in a manner sufficient for monitoring and audit purposes. Documentation contained in the file should include all information related to the procurement activity such as copies of newspaper advertisements, completed rating sheets, etc. A procurement file should contain:

<u>Step</u>	<u>File</u>
Determine service mix	Board Minutes
Select method of procurement	Selection rationale
Develop RFP package	Sample package
Solicit request for proposal in newspapers of general	Copy of advertisement

circulation in the area in which the service to be performed	
Bidders' list	Mailing list
Bidders' Conference	Attendees' list
Accept proposals	Submission list
Staff proposal review	Rating instruments & Report to the board
Board Committee Review	Minutes and rating or review instruments, if used
Negotiations	Negotiations summary
Pre-award determination	Survey results
Negotiated proposals submitted	Registered or handwritten receipts
Full board awards action	Minutes and letters to successful and unsuccessful proposors
Post-award conference	Summary report
Appropriate contract	Copy of contract

Procurement files should also include documentation relating to the complete history of the administration of a contract or subgrant. These documents should include:

- A signed copy of the contract or subgrant and all modifications;
- Signature authorities;
- Cost or pricing data;
- Payment processing;
- Authorization for equipment purchase or out-of-state travel;
- Property and equipment records;
- Copies of required insurance policies and certifications if not included in the contract or subgrant;
- General correspondence;
- Monitoring and audit reports;
- Financial reconciliations;
- Required reports;
- Contract closeout documents and records.

## Strategic Planning

Consideration of any contemplated major procurement action such as the procurement of One-Stop operators, local board administrative and fiscal agent, or providers of youth, adult and dislocated worker services, requires considerable forethought and planning. Planning a procurement action is necessary for obtaining positive results and avoiding a host of problems that can occur later on after the procurement has been made. Strategic planning involves making critical decisions about the goals, objectives and tangible results the procuring agency expects to achieve and about the courses of action most likely to lead to those results. For local boards, the Local Plan is the strategic plan that should address program administration and the job training needs of the local area. The WIA at 134(d)(4)(G) and the Regulations at Section 661.350(a)(10)

require that the Local Plan contain a description of the competitive process to be used to award grants and contracts carried out under Title I of WIA, including the process to be used to procure training services that are made as exceptions to the Individual Training Account (ITA) process. Additionally, the procurement planning process must take into consideration the requirements of the Local Plan as specified at Section 661.350 of the WIA Regulations including:

- An identification of the workforce needs of businesses, job seekers, and workers in the local area;
- An identification of current and projected employment opportunities and job skills necessary to obtain such opportunities;
- A description of the One-Stop system to be established or designated;
- A description and assessment of the type and availability of adult and dislocated worker employment and training program and training activities in the local area; and
- A description and assessment of the type and availability of youth activities in the local area, including an identification of successful providers of such activities.

Based on the local plan, local boards must make decisions regarding who will be targeted for service, what kind of occupations and industries are to be targeted to determine the type of employment and training activities to be implemented; how these services are to be delivered and how the local area will administer and oversee the whole service delivery system. Other critical issues that should be identified in the local plan and that need to be considered prior to conducting a procurement are: the budget and budget limitations, applicable measures of performance, coordination of services with One-Stop partners and other agencies and programs, and other related issues that may impact on the procurement process (Reference Section 661.350 of the WIA Regulations for the required contents of the local plan).

### Mission Statement

Decisions in each of these key areas should begin with a definition of the local board/agency's mission. A mission is the organization's reason for existence. The local board/agency's mission as it relates to procurement should be clearly formulated because it provides the general direction for the actions to be taken in the proposed procurement.

Some examples of mission statements related to procurement are:

To procure quality products/services at a reasonable cost by conducting procurement in a manner that provides for free and open competition.

To procure products/services of the highest quality possible, define and describe the products or services to be procured, and determine documented effectiveness and ability to meet performance standards.

Ensure cost reasonableness by competitive solicitation, and price/cost analysis.

Provide for free and open competition by developing policies and procedures that maximize free and open competition, and developing procurement training for local board members and board staff.

### Goals

The implementation of strategies occurs through the setting of “meaningful” goals. A goal is more specific and concrete than the mission statement, but may be broader than an objective. Goals of the procuring agency should be specific to the WIA, both formal and informal. The goals should be clearly articulated and shared throughout the organization. Goals should be translated through the operational planning system and structure into organization-wide activities. An example given of a procurement goal related to the mission of ensuring cost reasonableness might be:

“Develop a cost analysis procedure consistent with federal/state/local regulations.”

### Objectives

Objectives are more specific as they serve as the base of the plan and define “what is to be achieved.” Objectives define the end results expected (i.e. time line, cost, performance outcome, etc.) In developing “meaningful” objectives the following questions should be addressed:

- Is the objective consistent with existing policies? Have all the potential legal/regulatory issues and problems related to the objective been considered?
- Is the objective realistic? All objectives should be written in terms of what the agency can reasonably expect to accomplish.
- Is the objective appropriate to the needs? Objectives should be centered around the actual/concrete needs, problems and issues not around theoretical or vague ideas.
- Will the objective make a significant impact on the problem, need, or issue to be addressed? An objective should reflect the greatest change or impact, which can be made within the limits of existing and potential resources. An objective needs to be sufficiently challenging to require “seeking out” to attain it. An example of a procurement objective reflecting the goal of developing a cost analysis procedure might be:

“Train staff to implement a cost analysis procedure by the beginning of Program Year 2003.”

The following are criteria for writing objectives:

- Use strong verbs that clearly describe observable and/or measurable behavior that shall occur (i.e., “to write,” “to conduct,” “to meet,” etc);
- Specify only one purpose or aim to accomplish;
- State the end result expected to be achieved; and
- Specify the time frame in which to accomplish the objective.

## **Procurement Design**

After developing the mission and setting the goals and objectives for the proposed procurement, a corresponding plan of action should be designed. If the procuring agency is a local board, the procurement plan must mirror or be consistent with the Local Workforce Development Plan since the plan of action must be developed within the framework of applicable WIA regulations and policies. The design process should be flexible and as varied as necessary to meet the requirements of the procuring agency but within the limitations established by the Act, federal/state and local regulations.

As an example: a local board decides to seek qualified providers of youth services in the local area that can provide quality services to in-school and out-of-school youth at a reasonable cost. In doing so, the board needs to consider the needs of the youth in the area as identified in the youth portion of the Local Plan and survey similar programs to determine which are the best for quality and the price. In selecting a qualified service provider, primary consideration should be given to the effectiveness of the organization based on demonstrated performance. The determination of effectiveness should take into account the likelihood of meeting the required measures of performance, the characteristics of customers to be served and the quality and cost of the training and related services to be provided. This is not to preclude the selection of new qualified service providers. The WIA Regulations at Subpart D - "Youth Program Design, Elements, and Parameters," also provides guidance for youth program designs that must be considered in tailoring the procurement for youth service.

# PART III

## PROCUREMENT STRATEGIES

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### Types of Procurement

The two types of procurements under WIA are administrative and program.

#### Administrative

Section 667.220(a) of the WIA Regulations defines administrative costs as those that are associated with administrative functions related to the direct provision of workforce investment services, including services to participants and employers. Administrative costs can be both direct or indirect. **Note that** local area expenditures for administrative purposes under WIA formula grants are limited to no more than ten percent (10%) of the amount allocated to the local area under WIA Sections 128(b) and 133(b). The administrative cost limit must be identified in all contracts and subgrants awarded.

Administrative procurements involve the purchase of “standard” products and services. These include small purchases, audit services, property leases, major equipment acquisitions, computer purchases, purchase of leases of automobiles, legal services, consultant services and related goods and services used for administration of a program. Refer to 20 CFR 667.200(b) for a more comprehensive listing of allowable administrative functions. Local boards and other procuring agencies should have written policies and procedures for conducting administrative procurement that address the following:

- Procurement authority, responsibility and delegation;
- Code of conduct;
- Conflict of interest;
- General requirements for free and open competition;
- “Sole-source” or non-competitive procurement;
- “Small purchase” threshold;
- Selection of lease, lease-purchase, or purchase method of procurement;
- Basis for award selection;
- Pre-award determination of awardee “responsibility” (e.g. “debarment and suspension” certifications, pre-award survey, audit results, etc.);
- Standard clauses for inclusion in award document;
- Contract administration, including monitoring and oversight;
- Provision for protest of award, disputes, and claims;
- Prior approval requirements:
  - For specified procurements;
  - At specified threshold(s); and
  - With specified approval authority based on need, source/brand, and price.

## Program

Program procurements involve those goods and services to be used to directly benefit the program customers (those services that directly “touch” an individual, i.e., participants and employers).

As with administrative procurements, written policies should be established for the procurement of goods and services to be used for direct program functions. These are similar to the above but should include other procedures applicable to “program” procurements.

- Procurement authority, responsibility, and delegation;
- Code of conduct;
- Conflict of interest;
- General requirements for free and open competition;
- “Sole-source” or non-competitive procurement;
- Selection of type of agreement (including cost reimbursement, fixed-unit price, etc.);
- Selection-of-awardee procedure (including criteria for demonstrated effectiveness, non-duplication, etc.);
- Determination of cost/price reasonableness (e.g. cost/price analysis);
- Pre-award determination of contractor/grantee “responsibility” (e.g. “debarment and suspension” certifications, pre-award survey, audit results, etc.);
- Contract/grant standard clauses and provisions;
- Contract/grant specifications (scope of work, budget, etc.);
- Contract/grant administration (including monitoring and oversight); and
- Contract/grant award protests, disputes, and claims process.

## **Methods of Procurement**

The method of procurement to be used will depend on the kind of procurement to be conducted. Any of the following procurement methods authorized in the State Procurement Code may be used as appropriate for each procurement situation.

### Small Purchase Procedures

These types of procurements are generally applied to such small purchases where open bidding would not be economical. Small purchase procurement procedures are used for purchase of goods and services that do not exceed a certain dollar level. This method of procurement involves solicitations that are usually for standard products. Specifications can be made in advance and awards are made on a lowest price basis. The scope of competition and documentation required is usually to a dollar threshold and/or type of cost. For example, the State Procurement Code requires price quotations from a number of qualified sources. Written procedures should prohibit the splitting of purchases that exceed the small purchase limit into several small purchases merely to be able to use the small purchase method. Such split purchases should be considered unauthorized and disallowed. The procedures should describe the step-by-step process to be followed for all categories of small purchase transactions and

should address exceptions, such as emergency situations and unforeseen types of small purchases. Sections 1.4.1.48 through 1.4.1.52 of the State Procurement Code Regulations apply to the procurement of nonprofessional services, construction or items of tangible personal property having a value not exceeding \$10,000 and the procurement of professional services having a value not exceeding \$20,000. Further:

Section 1.4.1.49 stipulates that procurements may not be artificially divided so as to constitute a small purchase.

Section 1.4.1.50 authorizes purchases not exceeding \$1,500 by issuing a direct purchase order based upon the best obtainable price.

Section 1.4.1.51 small purchases of items of tangible personal property, construction and nonprofessional services of \$1,500 to \$5,000 requires written or oral quotations from at least three businesses. Such quotations must be documented in the procurement file. Prior to award, the contents of any response to a quotation shall not be disclosed to any other business from which the same request for quotation is also being solicited. Requirements for making copies of the quotations available to the public, award provisions and records maintenance are specified in this section.

Section 1.4.1.52 pertains to small purchases of professional services having a value exceeding five hundred dollars (\$500.00) but not exceeding \$20,000 except for the services of architects, engineers, landscape architects or surveyors for state public works projects. At least three (3) written or oral offers should be obtained before selecting a provider or contractor. A contract for the required services at a fair and reasonable price shall be negotiated. The contents of the written or oral offer of one business shall not be disclosed to another business during the negotiation process.

The State Procurement Code Regulations at Section 1.4.1.48 states that where the procurement methods set forth in Section 1.4.1.50 through 1.4.1.52 are not used, then the competitive sealed bid or competitive sealed proposals methods shall apply.

### Competitive proposals

These are normally conducted with more than one source submitting an offer and when either a fixed-price or cost-reimbursement type of award is made. The State Procurement Code sets standards for competitive proposals which include requirements for the establishment of a documented methodology for technical evaluations and award to the responsible bidder whose proposals are most advantageous to the program with price, technical, and other factors considered. These include sealed bid proposals, invitations for bid (IFBs) and request for proposals (RFPs).

(a) Sealed bids (formal advertising)

Under this type of formal solicitation, bids are publicly solicited procurements for which a firm-fixed-price award (lump sum or unit price)

or other fixed-price arrangement is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest price. The State Procurement Code establishes standards for sealed bids that include requirements that invitations for bids be publicly advertised and that bids be solicited from an adequate number of organizations. The requirements for competitive sealed bids are found in the State Procurement Code Regulations Sections 1.4.1.29 through 1.4.1.47.

#### Invitation for Bid (IFB)

The IFB sets forth the requirements for the competitive federal bids. Potential contractors are required to make their best and final offer for an award. The sealed bid method is generally used when a “fixed price” bid is solicited for the purchase of certain goods or services. This type of procurement is used when price and terms are of primary consideration. It is for a dollar level at which costs of full formal competition are justified by potential savings in cost and values of equity in open access to interested vendors. Procurements are for standard products that can be described precisely enough to allow a selection to be made on the basis of lowest price alone. While the agency may determine to reject all offers, it is legally required to select only the lowest bid made among responsive and responsible offers. Responsive offers are those in which the offer meets the specifications contained the IFB. Responsibility is determined by past performance as defined in the IFB. This type of solicitation is made through formal advertising that precisely describes what the agency intends to procure, the terms and conditions that must be met and specifies the date and place where the sealed bids will be publicly opened. A firm, fixed-price award is generally made to the lowest bidder whose bid is responsive to the requirements and who is determined to have the capacity to perform the work required. The State Procurement Code Regulations applicable to IFBs are found at Sections 1.4.1.16 through 1.4.1.25.

#### (b) Request for Proposal (RFP)

Under this method of solicitation, potential contractors are invited to submit proposals via formal advertisement. The solicitation must describe the means by which the procuring agency will conduct negotiations that lead to the best and final offer. The best and final offer is obtained through negotiation of technical, price and other contract specifications. Since the emphasis of this WIA Procurement Guide is on the RFP process, the basic elements of the RFP are described in greater detail in the following sections. Applicable State Procurement Code Regulations applicable to the RFP are found starting at Section 1.4.1.31.

### Noncompetitive proposals (sole source)

A sole source procurement is the solicitation of a proposal from only one source, the funding of an unsolicited proposal, or when, after solicitation of a number of sources, competition is determined inadequate. Included in this type of procurement are contracts awarded in the second year of a two-year RFP cycle or contracts that are part of an open or rolling RFP. The use of sole source procurements should be minimized to the extent possible, but in every case the use of sole source procurements must be justified and documented as specified in the State Procurement Code. On-the-Job Training (OJT) awards (except for OJT brokered awards, are exempted from this requirement). Non-competitive awards to state/local government entities and educational institutions may be made as long as a cost analysis is performed, and the bidder is in agreement with the action. With the exception of extending an existing contract, the local board must approve all sole source procurements. For all other awards, procurement by noncompetitive proposals may be used only when the award is not feasible under any of the other procurement process mentioned herein and one of the following circumstances applies:

- (a) The item or service is available only from a single source;
- (b) The public exigency or emergency need for the item or service does not permit a delayed result through competitive selection (as authorized under the State Procurement Code);
- (c) The awarding agency authorizes noncompetitive proposals following the state's normal sole source approval process; and
- (d) After solicitation of a number of sources, competition is determined inadequate.

To emphasize: This method of procurement requires a documented justification of each purchase. These require prior approval from the highest level of the agency. Purchase cost must be negotiated and payment should be made on cost reimbursement basis. The contract file should contain sufficient documentation to demonstrate a reasonableness of costs. State Procurement Code Regulations applicable to sole source procurements are found at Sections 1.4.1.53 through 1.4.1.57.

# PART IV

## BASIC PROCUREMENT REQUIREMENTS

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Each type of procurement is unique and therefore imposes specific procedures and requirements mandated in the federal procurement regulations or the State Procurement Code that must be followed. It is of prime importance that the requirements specified in the RFP be very clear and concise. This helps to ensure the effectiveness of the procurement process and ensures the achievement of stated objectives.

The purpose of the RFP is to articulate the agency's goals and objectives, to solicit proposals with concise outcomes, to provide equal opportunity and identical information to all bidders, to provide a basis for comparing and evaluating responses, to provide documentation to justify selections, and to provide a basis for contract negotiations and framework for contract provisions. Clear statements of requirements are essential to achieving this purpose.

### Cost Price Analysis

Each recipient of federal funds is required, in accordance with the criteria established in the federal regulations and the State Procurement Code, to establish standards on the performance of cost or price analysis. Each recipient and subrecipient is required to perform a cost or price analysis in connection with every procurement action, including modifications (except for modifications where a determination has been made that they do not have a monetary impact).

“Cost Analysis” as defined at 13-1-45 of the State Procurement Code means the evaluation of cost data and profit for the purpose of arriving at costs actually incurred by a contractor including a profit allowed to a contractor. “Price Analysis” refers to the evaluation of pricing data without analysis of the separate cost components and profit (Section 13.1.72).

The method and degree of analysis will depend on the facts surrounding the particular procurement and pricing situation. At a minimum, the awarding agency must make independent estimates before receiving bids or proposals. A cost analysis is necessary when the bidder is required to submit the elements of the estimated cost (e.g., as in the case of subrecipient relationships), when adequate price competition is lacking, and for sole source procurements, including modifications or change orders.

A price analysis is used when price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation (including situations involving inadequate price competition and sole source procurements where a price analysis may be used in lieu of cost analysis).

When a cost analysis is necessary and there is inadequate price competition, the bidder must certify that to the best of its knowledge and belief, the cost data are accurate, complete, and current at the time of agreement on price. Awards or modifications negotiated in reliance on such data should provide the awarding agency a right to a price adjustment to exclude any significant sum by which the price was increased because the awardee had knowingly submitted data that were not accurate, complete, or current as certified.

## **Program Income**

WIA procurements shall not permit excess program income (for nonprofit and governmental entities) or excess profit (for private for-profit entities). If profit or program income is included in the price, the awarding agency must negotiate profit or program income as a separate element of the price for each procurement in which there is no price competition (in accordance with the provisions and limitations established at Section 667.200 (a)(5) of the federal regulations) and in all cases where cost analysis is performed. To establish a fair and reasonable profit or program income, consideration shall be given to:

- (a) The complexity of the work to be performed;
- (b) The risk borne by the awardee;
- (c) The bidder's investment;
- (d) The amount of subcontracting/subgranting;
- (e) The quality of the bidder's record of past performance;
- (f) Industry profit rates in the surrounding geographical area for similar work;
- (g) Market conditions in the surrounding geographical area;
- (h) The requirement that each recipient and subrecipient will be required to 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; and
- (i) The requirement that each recipient and subrecipient will be required to maintain an administration system which ensures that vendors and subrecipients perform in accordance with the terms, conditions and specifications of their awards.

## Matching/Cost Sharing

Where possible, procurements should provide for matching or cost-sharing. The basic requirements and acceptable costs and contributions that can be used for matching or cost-sharing purposes are contained and taken from CFR 29 part 97 as follows:

- A. Basic rule. Costs and contributions acceptable. With the qualifications and exceptions listed in paragraph (B) of this section, a matching or cost sharing requirement may be satisfied by either or both of the following:
- (1) Allowable costs incurred by the grantee, subgrantee, or a cost-type contractor under the assistance agreement. This includes allowable costs borne by non-Federal grants or by other cash donations from non-Federal third parties.
  - (2) The value of third party in-kind contributions applicable to the period to which the cost-sharing or matching requirements applies.
- B. Qualifications and exceptions
- (1) Costs borne by other Federal grant awards. Except as provided by Federal statute, a cost-sharing or matching requirement may not be met by costs borne by another Federal grant. This prohibition does not apply to income earned by a grantee or subgrantee from a contract awarded under another Federal grant.
  - (2) General revenue sharing. For the purpose of this section, general revenue sharing funds distributed under 31 U.S.C. 6702 are not considered Federal grant funds.
  - (3) Costs or contributions counted towards other Federal cost-sharing requirements. Neither costs nor the value of third party in-kind contributions may count towards satisfying a cost-sharing or matching requirement of a grant agreement if they have been or will be counted towards satisfying a cost-sharing or matching requirement of another Federal grant agreement, a Federal procurement contract, or any other award of Federal funds.
  - (4) Costs financed by program income. Costs financed by program income, as defined in CFR 97.25, shall not count towards satisfying a cost-sharing or matching requirement unless they are expressly permitted in the terms of the assistance agreement. (This use of general program income is described in CFR 97.25(g)).

- (5) Services or property financed by income earned by contractors. Contractors under a grant may earn income from the activities carried out under the contract in addition to the amounts earned from the party awarding the contract. No costs of services or property supported by this income may count toward satisfying a cost-sharing or matching requirement unless other provisions of the grant award expressly permit this kind of income to be used to meet the requirement.
- (6) Records. Costs and third party in-kind contributions counting towards satisfying a cost-sharing or matching requirement must be verifiable from the records of grantees and subgrantees or cost-type contractors. These records must show how the value placed on third party in-kind contributions was derived. To the extent feasible, volunteer services must be supported by the same methods that the organization uses to support the allocability of regular personnel costs.
- (7) Special standards for third party in-kind contributions.
- (i) Third party in-kind contributions count towards satisfying a cost-sharing or matching requirements only where, if the party receiving the contributions were to pay for them, the payments would be allowable costs.
  - (ii) Some third party in-kind contributions are goods and services that, if the grantee, subgrantee, or contractor receiving the contribution had to pay for them, the payments would have been an indirect cost. Costs sharing or matching credit for such contributions shall be given only if the grantee, subgrantee or contractor has established, along with its regular indirect cost rate, a special rate for allocating to individual projects or programs the value of the contributions.
  - (iii) A third party in-kind contribution to a fixed-price contract may count towards satisfying a cost-sharing or matching requirement only if it results in:
    - (a) An increase in the services or property provided under the contract (without additional cost to the grantee or subgrantee); or
    - (b) A cost savings to the grantee or subgrantee.
  - (iv) The values placed on third party in-kind contributions for cost-sharing or matching purposes must conform to the rules in the succeeding sections of this part. If a third party

in-kind contribution is a type not treated in those sections, the value placed upon it shall be fair and reasonable.

C. Valuation of donated services.

- (1) Volunteer services. Unpaid services provided to a grantee or subgrantee by individuals must be valued at rates consistent with those ordinarily paid for similar work in the grantee's or subgrantee's organization. If the grantee or subgrantee does not have employees performing similar work, the rates will be consistent with those ordinarily paid by other employers for similar work in the same labor market. In either case, a reasonable amount for fringe benefits may be included in the valuation.
- (2) Employees of other organizations. When an employer other than a grantee, subgrantee or cost-type contractor furnishes free of charge the services of an employee in the employee's normal line of work, the services will be valued at the employee's regular rate of pay exclusive of the employee's fringe benefits and overhead cost. If the services are in a different line of work, paragraph C.(1) of this section applies.

D. Valuation of third party donated supplies and loaned equipment or space.

- (1) If a third party donates supplies, the contribution must be valued at the market value of the supplies at the time of donation.
- (2) If a third party donates the use of equipment or space in a building but retains title, the contribution must be valued at the fair rental rate of the equipment or space.

E. Valuation of third party donated equipment, and land. If a third party donates equipment, buildings, or land, and title passes to a grantee or subgrantee, the treatment of the donated property depends upon the purpose of the grant or subgrant, as follows:

- (1) Awards for capital expenditures. If the purpose of the grant or subgrant is to assist the grantee or subgrantee in the acquisition of property, the market value of that property at the time of donation may be counted as cost-sharing or matching;
- (2) Other awards. If assisting in the acquisition of property is not the purpose of the grant or subgrant, the following paragraphs this section apply:
  - (i) If approval is obtained from the awarding agency, the market value at the time of donation of the donated equipment or buildings and the fair rental rate of the donated land may be counted as cost-sharing or matching.

In the case of a subgrant, the terms of the grant agreement may require that the approval be obtained from the Federal agency as well as the grantee. In all cases, the approval may be given only if a purchase of the equipment or rental of the land would be approved as an allowable direct cost. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost-sharing or matching;

- (ii) If approval is not obtained under paragraph E.(2)(i) of this section, no amount may be counted for donated land, and only depreciation or use allowances may be counted for donated equipment and buildings. The depreciation or use allowances for this property are not treated as third party in-kind contributions. Instead, they are treated as costs incurred by the grantee or subgrantee. They are computed and allocated (usually as indirect costs) in accordance with the applicable cost principles in the same way as depreciation or use allowances for purchased equipment and buildings. The amount of depreciation or use allowances for donated equipment and buildings is based on the property's market value at the time it was donated.

- F. Valuation of grantee or subgrantee donated real property for construction/acquisition. If a grantee or subgrantee donates real property for a construction or facilities acquisition project, the current market value of that property may be counted as cost-sharing or matching. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost-sharing or matching.
- G. Appraisal of real property. In some cases under paragraphs (D), (E) and (F) of this section, it will be necessary to establish the market value of land or a building or the fair rental rate of land or of space in a building. In these cases, the Federal agency may require the market value or fair rental value be set by an independent appraiser, and that the value or rate be certified by the grantee. This requirement will also be imposed by the grantee on subgrantees.

Note: Basic rules and contributions acceptable (include pages 4 – 6 of the CFR)

## **Transactions Between Units of Government**

Except as provided under Subpart B (Administrative Rules, Costs and Limitations) at Section 667.200 of 20 CFR Part 625 et al., all procurement contracts and other transactions between local boards and units of state or local governments must be conducted only on a cost reimbursement basis. No provision for profit is allowed.

- (a) In the case of procurement transactions with schools that are part of these entities, such as state universities the following apply:
  - (i) The state and local boards are responsible for managing the eligible provider process as specified under Section 663.510 of 20 CFR Part 652, et al;
  - (ii) When tuition charges or entrance fees are not more than the educational institution's catalogue price necessary to receive specific training, charged to the general public to receive the same training, and for training participants, the tuition and/or entrance fee must be broken down by item of cost as specified under the state/local eligible provider process.

## **Award Provisions**

Each recipient and subrecipient agreement shall:

- (a) Clearly specify deliverables and basis for payment;
- (b) In the case of awards to subrecipients, contain clauses that provide for compliance with the WIA and attendant federal regulations;
- (c) Contain assurance of nondiscrimination and equal opportunity as required under Section 667.275 of 20 CFR Part 652, et al;
- (d) Contain the following government-wide certifications: debarment and suspension certification (as specified in OMB Circular A-13), government-wide drug-free workplace provisions, as well as provisions on the restrictions on lobbying (refer to EXHIBIT (II));
- (e) Duration of obligation and applicable covenants;
- (f) In the case of awards to vendors, contain clauses that provide for:
  - (i) Access by the recipient, the subrecipient, the U.S. Department of Labor, the Comptroller General of the United States or any of their duly authorized representatives to any books, documents, papers, and records (including computer records) of the contractor or subcontractor which are directly pertinent to charges to the program, in order to conduct audits and examinations and to make excerpts, transcripts, and photocopies; this right also includes timely and reasonable access to contractor's and subcontractor's personnel for the purpose of interviews and discussions related to such documents.

- (g) In the case of awards to both subrecipients and vendors, contain clauses that provide for:
  - (i) Administrative, contractual, or legal remedies in instances where contractors/subgrantees violate or breach agreement terms, which shall provide for such sanctions and penalties as may be appropriate;
  - (ii) Requirements pertaining to copyrights (agreements which involve the use of copyrighted materials or development of copyrightable materials);
  - (iii) Notice of requirements pertaining to rights to data. Specifically, the awarding entity and the New Mexico Department of Labor shall have unlimited rights to any data first produced or delivered under the agreement (agreements which involve the use/development of computer programs/applications, or the maintenance of databases or other computer data processing program, including the inputting of data);
  - (iv) Termination for cause and convenience by the awarding entity, including the manner by which the termination will be effected and the basis for settlement;
  - (v) Notice of awarding agency requirements and regulations pertaining to reporting;
  - (vi) Audit rights and requirements as specified under Section 667.200 (b) of the federal regulations;
  - (vii) Payment conditions and delivery terms;
  - (viii) Process and authority for agreement changes;
  - (ix) Provision against assignment; and
  - (x) Notice that all recipients and subrecipients must follow the federal allowable cost principles that apply to their kind of organizations as specified under Section 667.200 (c) of the federal regulations.

## **Additional Contract Clauses**

The SAE, local board, subrecipient or contractor may establish additional clauses, as deemed appropriate, for recipient and subrecipient procurements.

- (a) Disputes. Recipients and subrecipients are required to adhere to SAE established procedures to handle and resolve disputes relating to their procurements. A protester shall exhaust all administrative remedies with the subrecipient before pursuing a protest at a higher level.
- (b) Violations of the law must be handled in accordance with the requirements specified in the WIA and the federal regulations.

Each recipient and subrecipient must maintain 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.

## **Selection of One-Stop Operators and Service Providers**

- (a) One-Stop Operators - Local Boards are required to select One-Stop operators consistent with WIA Section 121(d)(2)(A) and (B).
  - (i) The local board, in conjunction with the local chief elected officials, designates and certifies the One-Stop operator in each local area;
  - (ii) The One-Stop operator must be designated or certified through a competitive process or in accordance with an agreement between the local WDB and a consortium of entities that includes at a minimum of three (3) or more of the one-stop partners identified at WIA Section 121(b)(1)(B) or by designation of the existing One-Stop center operator;
  - (iii) A local board may not be designated as a One-Stop operator except by agreement with the local chief elected official(s) and the Governor;
  - (iv) One-stop operators may consist of a single entity or a consortium of entities and may operate one or more one-stop centers. The agreement between the local board and the operator must specify the operator's role. That role may range from simply coordinating service providers within the center to being the primary provider of services within the center; and
  - (v) Adult and dislocated worker services to be provided through the One-Stop delivery system may include core and intensive services.
- (b) Core and intensive services providers – At a minimum, core services as described in WIA Section 134(d)(2) must be provided by the One-Stop operator(s), as described above. Intensive services as described in WIA

Section 134(d)(3) may be provided by the One-Stop operator(s), or eligible providers of intensive services may be solicited through a competitive bid process.

- (c) Training Services Providers - Service providers of training services selected under Title I of the WIA must be selected in accordance with the provisions of Section 122 of the Act. The local boards shall follow procedures established in 11.2.12 NMAC and any amendments thereto.
- (d) Youth Activity Providers – Pursuant to Section 123 of the Act, local boards are responsible for identifying eligible providers of youth activities by awarding contracts on a competitive basis, based on recommendations of the youth council. Youth activities must be conducted in accordance with applicable SAE rules.
- (e) Recipients and subrecipients shall adhere to performance criteria established by SAE or the local board, as applicable, in evaluating program performance for the purpose of making awards of WIA funds or conducting other procurements. Determinations of demonstrated performance shall be in writing and available prior to the award of an agreement.
- (f) For all other procurement transactions, each recipient and subrecipient, to the extent practicable, must select service providers/vendors on a competitive basis, in accordance with the standards established in the State Procurement Code and applicable federal regulations.
- (g) Awards are to be made to organizations possessing the demonstrated ability to perform successfully under the terms and conditions of a proposed subgrant or contract. Where comparable proposals have been received from an bidder which has demonstrated performance of or as a high risk recipient/subrecipient, and a determination has been made that both proposals are fundable, the award should be made to the bidder which has demonstrated performance, unless other factors dictate a contrary result.

Determinations of demonstrated performance shall be in writing and take into consideration such matters as whether the organization has:

- (i) Adequate financial resources or the ability to obtain them;
- (ii) The ability to meet the program design specifications at a reasonable cost, as well as the ability to meet performance goals;
  - A satisfactory record of past performance (in job training, basic skills training, or related activities) including

demonstrated quality of training; reasonable dropout rates from past programs; where applicable, the ability to provide or arrange for appropriate supportive services as specified in the IDP/EDP or ISS, including child care; retention in employment; and earning rates of participants;

- A satisfactory record of integrity, business ethics, and fiscal accountability;
- The necessary organization, experience, accounting and operational controls; and
- The technical skills to perform the work.

Other Provisions and Requirements Applicable to WIA.

The local boards, and other recipients/subrecipients must also comply with any other applicable regulations, procedures and requirements pertaining to the request for proposal/procurement process, as promulgated under the State Procurement Code, the Act, federal regulations and SAE policies.

# PART V

## REQUEST FOR PROPOSAL (RFP) PROCESS

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The RFP process provides the opportunity for negotiation of both technical and cost elements with responsive and responsible bidders whose proposals are judged to be within the competitive range. In addition to cost, values such as experience and apparent understanding of the quality/effectiveness of the services must be considered. To assess these values equitably, a point system should be used to rate the proposals received. The following is the SAE's RFP process that may be adapted or modified by local boards. NMWDAs/LWDBs may utilize their own RFP process as long such process conforms to the requirements of the WIA, the federal regulations, the State Procurement Code, and applicable OMB circulars and SAE policies.

### Request for Proposal (RFP) Requirements

All requests for offers for the provisions of services must be in writing. At a minimum, an RFP process shall include the following elements:

- (a) The RFP process should prevent giving inappropriate hints of what would be an acceptable price;
- (b) Bidders should submit a line item budget;
- (c) The RFP process should require that proposals be separately rated by staff and/or other qualified objective third parties using a rating method that sets criteria for valuing and judging cost reasonableness and past performance in a quantifiable and criteria-referenced manner. Rating sheets, dated and signed by designated reviewers, must be maintained and include minimum qualification thresholds that if not met, require disqualifications;
- (d) The RFP process should provide that individual scores are aggregated;
- (e) Final awards must be consistent in dollar value and category with the RFP's stated intentions and with numerical ratings. Any inconsistencies must be documented. Awards for training must be in board approved demand occupations; and
- (f) Awarded contracts must be consistent in cost, scope and deliverables approved by the board and any inconsistencies must be documented.

This method of solicitation requires step-by-step written procedures that address the ways in which the proposals will be developed as well as how they will be processed. The process begins with some basic decisions.

## **Basic Decisions Regarding RFPs**

Because the RFP document is an extension of the local planning process, there are as many variables to its development as there are contractors. The procuring agency needs to be aware that each method has its own vulnerability.

(a) Yearly/Multi-Year

In using the multi-year choice, the procuring agency needs to establish additional year continuation requirements, such as whether or not an updated proposal will be required and that performance and availability of funds are factors. The agency must fully document the renewal evaluation process from start to finish.

(b) Single/Multiple RFPs

The procuring agency needs to decide on the most effective system for issuing RFPs - whether one RFP cycle should be utilized for all procurement transactions or whether it would be more appropriate to establish varying cycles for different transactions. Additionally, an important consideration shall focus on the length and timing of the cycles within the previously established frameworks.

(c) Type of RFPs

The agency must decide whether one RFP could be used for all procurement transactions or whether it would be more appropriate to issue different types of RFPs for different forms of procurement transactions.

(d) Program Dollar Allocations/Single Figure/No Dollar Figure

In publishing the RFP, the contractor must decide whether to include the overall program allocation, the amount of the allocation set-aside for the RFP process, or omit any inclusion of available funding. It is generally preferable to not give out the amount of the set-aside allocation, as bidders may simply back into the amount available.

(e) Open/Rolling RFP

The procuring agency needs to decide on the acceptability of open/rolling RFPs. Continually funding a contractor/subgrantee through non-competitive rollover awards creates a risk of unreasonable pricing and inadequate quality, especially in situations where the activity being sought

is a tailored rather than an off-the-shelf procurement. The market should be tested at least periodically to signal a readiness for acceptance of change and to demonstrate that no one has a 'lock' on the procurement action.

## **RFP Development**

An acceptable RFP must reflect decisions concerning funding sources, labor market conditions, program mix, and federal/state/local requirements. An internal review of the agency's RFP development materials and procedures should be conducted to assure that all of the required elements have been included in the document and are described in detail, leaving nothing to assumption. If an area is to be reviewed separately (during negotiation or after selection), the RFP should make this clear. While the procuring agency is not required to publish the point scale assigned to each criterion as a part of the RFP package, the scales must be developed and established prior to the solicitation. Any requirement noted in the RFP instructions must be included in the evaluation criteria. The agency needs to decide, and state in the RFP, whether proposing entities will be afforded an opportunity to submit information or documentation that was initially omitted. It is of the utmost importance to the integrity of the agency's RFP process that all proposing entities be afforded fair and equitable treatment.

The RFP package should include general information such as the purpose, due dates, information about the bidder's conference, available funds, proposed grant period, and proposed type of contract to be awarded. The package should also contain solicitation instructions including a requirement for information concerning the bidder's background and experience, accounting system, audit/monitoring results, the bidder's program proposal, budget, back up documents and participant service schedule/performance. The RFP must include applicable federal/local/state policies, procedures, assurances and certifications (i.e., the contract boilerplate).

### Modifications to the RFP

During the procurement process, if changes occur regarding service delivery requirements, funding, or the scope of work to be procured, the RFP package may be amended. All bidders of record shall be notified of the modification(s) in writing. If modifications are substantial and may affect each bidder's right to equal and non-biased treatment, the RFP package must be withdrawn and another package shall be prepared. Section 1.4.1.35 of the State Procurement Regulations provides that proposals may be modified or withdrawn prior to the due date only under certain conditions specified at Section 1.4.1.20.

### Mistakes in Proposals

When mistakes in proposals are discovered they may be modified or withdrawn in accordance with Section 1.4.1.35 of the State Procurement Regulations.

## RFP Elements and Related Items

A strong RFP process reflects the goals and objectives of the procuring agency. The RFP documents must be comprehensive and detailed in order to secure responsive proposals. If an element is not included in the RFP, it cannot be considered during the rating process. At a minimum, the RFP must include the elements listed at Section 1.4.1.31 of the State Procurement Code Regulations. The following is a listing of those and additional elements/items that should be included or considered, as appropriate, in developing the RFP:

(a) Statement of Work

The RFP must include a statement of work. One of the most crucial parts of the RFP package, the statement of work must provide a clear, concise description of the services to be provided as this will influence the bidders' actions and indicates the contractor's expectations. A sufficient statement of work summarizes the key features of the proposed program design in terms of mandatory, optional and supplemental components, program results, and the type of payment to be sought (cost reimbursements, fixed unit price, etc.). A statement of work is comprehensive and includes definitions and specifications (such as units of service, standards, performance goals, objectives, activities) of the workforce development services to be purchased. (Refer to Section 1.4.1.31A(1) of the State Procurement Code Regulations "specifications for the services or items of tangible personal property to be procured.")

Both the RFP and the contract or subgrant have statements of work. They could be identical but, most often, are not. Changes resulting from negotiations with the contractor or subgrantee may require that the statement of work be modified but these changes should be minimal.

(b) Time/date

This element includes statements regarding the period of time during which services are to be performed and due dates established for responses to be considered. When proposed contracts are to be multi-year, the RFP should include requirements for continuing the second year. (Reference Section 1.4.1.31 D, State Procurement Code Regulations.)

(c) Protest Rights

This element establishes the recourse for applicants who feel their rights were violated in the solicitation or selection process, and whose proposals were rejected. The RFP shall identify the process to be followed when protesting or inquiring. It shall include the name and address of the person to whom inquiries may be submitted, as well as the time frame for submittals. Methods to be undertaken by the agency upon receipt of the inquiry, should be addressed, including who will respond and the time frame for the response. Applicable State Procurement Code Regulations provisions pertaining to protest rights are found at Sections 1.4.1.80 through 1.4.1.93.

(d) Right to Make No Awards or Cancel the Solicitation

This element includes statements regarding the soliciting agency's right to accept or reject any and all proposals received. It also addresses the contractor's right to cancel all or portions of the RFP, and to reject any contract or not to pay any of the application's cost in preparing or submitting a response to the RFP. The conditions for rejecting bids or proposals are specified at Section 1.4.1.71 of the State Procurement Code Regulations. The RFP should also contain a provision for the cancellation of solicitations when it is in the best interest of the procuring agency to do so (Section 1.4.1.31A.(8) in the State Procurement Code Regulations). Situations where solicitations may be cancelled are defined in State Procurement Code Regulations Section 1.4.1.70.

(e) Negotiation Requirement

This element establishes the soliciting agency's negotiation rights to clarify, explain, or verify any aspect of a submitted proposal in response to an RFP. It also establishes the agency's right to require the submission of any price, technical, or other revision to the proposal that results from negotiations conducted. The State Procurement Code Regulations at Section 1.4.1.39 permits discussions with bidders whose proposals are acceptable/responsive or potentially acceptable or responsive under certain conditions that are detailed therein.

(f) Signature Authorization Certificate

This element includes signed statements from the responding organization to assure that the individual signing on behalf of the organization has the authority to submit the proposal and carry out services solicited in the RFP.

(g) Proposal Outline

This element identifies the exact format and sequence for submitting responses. This can be accomplished by including a table of contents in the RFP that defines both the contents expected and the outline in which it is to be submitted. Reference State Procurement Code Regulations Section 1.4.1.31 A.(5).

(h) Defined Cost Data Requirements

This element identifies fiscal compliance requirements of WIA cost categories, allowable costs and references to cost limitations, where applicable, by specific program legislation or regulation. This element also specifies the use of standard forms, if applicable, such as use of a standard budget form to be used in responding to the RFP.

(i) Line Item Budget by Cost Category

This element includes an outline of the budget to be completed by the submitting organization. It must have sufficient detail of costs to enable an analysis of cost/price reasonableness. Planned expenditures, within each cost category, should be sufficiently detailed on a form to be completed by the bidder.

(j) Responsiveness Thresholds

This element identifies minimum standards for considering a response, as well as any component that would cause an applicant to be disqualified. These components may include administrative and organizational qualifications, fiscal system standards, performance and outcome expectations, expected completeness and compliance with RFP requirements in the proposal submitted, adherence to RFP time frames, pre-award survey results, and other provisions.

(k) Assessment Ranking Criteria

The entire review and selection process for assessing and considering responses should be identified in the RFP. It should describe how the proposals will be reviewed and include the ranking or rating criteria to be used and the way in which points will be assigned, as well as any considerations relating to competition, reasonableness of cost, organizational issues, and scope of work activity. (Reference State Procurement Code Regulations Section 1.4.1.31 A. (6)).

(l) Performance Standards

This element defines the clearly established goals and outcomes expected in the solicitation. Any written procedures regarding performance standards (i.e., competency system) that are to be met through services solicited and methods of reporting must be included in the solicitation package.

(m) Participation Targets

This element identifies the specific populations to be served through the services solicited. Characteristics, barriers or other conditions that are applicable to the targeted population must be clearly defined and detailed.

(n) Participant Selection

This element identifies the approach to be used and the process to be followed to select participants, negotiated service levels for target groups, clear delineation of responsibility for participant recruitment, and a provision for the contingency of low enrollments.

(o) Policy Priorities

This element identifies policies or statements of intent regarding program-specific priorities and identifies applicable regulatory requirements established by the soliciting agency as a result of its review of local employment and training needs.

(p) Required Certifications

A certification/statement of compliance with the Drug-Free Workplace Act and the prohibitions on lobbying, suspension, and debarment and other certifications and assurances as required by federal regulations must be required in the RFP.

(q) Conflict of Interest

This element defines the soliciting agency's code of conduct and conflict of interest policies. Such policies must include confidentiality of the proposal process, arms-length negotiation expectations between bidders and the procuring agency, the objectivity and fairness bidders may expect in the RFP process, the provisions concerning the protection of WIA funds, and the expected standards of performance.

(r) Corporation Certification

This element requires submission of the applicant's state corporation certification, which includes articles of incorporation, organization chart, bylaws, and governing boards members. The element also requires submission of the applicant's certification of nonprofit status, if applicable.

(s) Terms and Conditions

All RFPs should include a copy of the general obligations (contract/subgrant special provisions i.e "boilerplate") that will be made part of the final contract (Reference State Procurement Regulations Section 1.4.1.31 A. (2)).

(t) Definition of Terms

All key terms contained in the RFP should be expressly defined in a section of the RFP.

(u) WIA Regulations

Potential respondents of the RFP are expected to be familiar with the applicable WIA regulations and appropriate directives of the local board and procuring agency that govern the program. All applicants selected for an award are expected to understand and comply with all applicable requirements in conducting services under the agreement awarded. Copies of all legislation and regulations must be made available for all applicants upon request.

(v) Program Income Requirements

This element describes the soliciting agency's requirements concerning profit/program income.

(w) Coordination with Pell Grants and Other Funding Sources

This element identifies funds that may directly or indirectly impact services solicited under the RFP. Provisions must require that there be no duplication of funds or activities which are otherwise available through other programs. The requirements concerning Pell Grant and other funding coordination found at WIA Section 134(d)(B) and the WIA regulations at Section 663.320(b) are clarified in SAE Rule 11.2.12

NMAC, “Workforce Investment Act (WIA) Identification of Eligible Providers of Training Services.”

(x) Demonstrated Performance

This element, applicable to current as well new vendors or service providers, requires the submission of information regarding a bidder's prior performance in providing the same or similar services solicited in the RFP.

(y) Key Staff Qualifications

This element requires information concerning the applicant's staff qualifications and licensing and/or certification necessary to provide services. This could include a request for resumes and job descriptions for personnel to be hired to carry out the activities specified in the solicitation.

(z) Training Definition, If Applicable

This element requires the following information regarding any training to be provided:

- Days/hours
- Sequence
- Duration
- Course curriculum
- Skills to be achieved
- Measurement of achievement
- Pre/post testing
- Entrance minimums/maximums
- Attendance
- Reporting

(aa) Notice of Legal Penalties

The State Procurement Code, Regulations Section 1.4.1.31 A. (10) requires that the following statement be included:

“The Procurement Code Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and misdemeanor criminal penalties for its violation. In addition, the New Mexico criminal statutes impose criminal penalties for bribes, gratuities and kick-backs.”

## **Additional RFP Considerations, Processes, Procedures and/or Requirements**

(a) Published Notice

A competitive procurement must be formally advertised by publishing a notice of the intent to contract. The type of service to be purchased, the geographic area to be served, the number of individuals to be served and the availability of resources (i.e., staff, time, funding) must be considered in order to determine the appropriate degree of advertisement. Section 1.4.1.32 of the State Procurement Code Regulations addresses the requirements for public notice.

The following information should be included in the published notice:

- Brief description of the issuing agency and the service to be provided;
- Description of the geographic area to be served;
- How to obtain a RFP package;
- Deadline for obtaining a RFP package and deadline for submittal of an offer;
- Date of bidder's conference, if applicable; and
- Name and phone number of the contact person.

(b) Bidders Conference

The entity conducting the procurement may hold a conference for potential bidders to acquaint them with procurement policies and procedures, the service(s) being procured, and the requirements of the RFP. The decision to hold a bidders conference is based on the extent of competition, the complexity of the RFP material, and the resources available (i.e., staff, time, funding, etc.). If a bidders conference is to be held, the information concerning the date, time and place of the conference is stated in the procurement package and in the advertisement of the procurement. Bidders conference attendance may be mandatory.

Ideally, the conference is held shortly after the procurement package is released and after potential bidders have had time to review the RFP. The conference can be conducted in one or more of the following ways.

- Deliver a presentation on the procurement package, then accept written questions from those in attendance;
- Accept written questions only and respond to bidders only in writing; and

- Accept written and oral questions and respond orally and in writing with copies of the questions and answers provided to all potential contractors of record. Only written answers to questions and answers should be provided to all potential contractors of record. Only written answers will be considered official and binding.

Following the bidders conference, all written responses should be maintained in the procurement file. In any event, all bidders must be treated equally and be given access to the same information. Bidders conferences may be recorded by video or audio for future reference and clarification.

Capacity-building conferences may be held by entities that procure services. At these conferences, staff may complete an example or model package that gives potential bidders an understanding of the procurement process. Capacity building conferences must be held prior to a procurement activity. (Reference Section 1.4.1.33 of the State Procurement Code Regulations regarding pre-proposal conferences.)

(c) Receipt of Late Offers

Unless the procuring agency has an approved procurement policy that addresses how receipt of late proposals will be handled, the provisions at Section 1.4.1.36 of the State Procurement Code Regulations will apply. Receipt of late withdrawals and late modifications must also be handled in accordance with this section.

(d) Unsolicited Proposals

Written procedures must address the process to be followed when unsolicited proposals are submitted. If the procuring agency receives an unsolicited proposal and considers the proposal for funding, the contractor must document a determination of need and initiate a full procurement process. If an RFP or other solicitation is developed, the contractor must take special care to ensure that the language contained in the specifications is unbiased, clear and unambiguous. Every effort shall be taken to ensure that the principle of maximum full and open competition is maintained.

## **Proposal Processing**

The method by which the RFP is processed is equally as important as the contents of its package. The availability of the RFP should be announced through a legal notice in general circulation newspapers and bidders list notices (if bidders lists are maintained), which should be updated at least annually. A bidders conference is beneficial in providing information regarding the RFP.

(a) Receipt of Proposals

An official proposal receipt list should be maintained. The proposals should be date-and time-stamped upon receipt. Receipt signatures should be required for any hand delivered proposals.

(b) Review of Proposals

All proposals accepted should be thoroughly reviewed. Initially, proposals must be reviewed for completeness. If a proposal is incomplete, the procuring agency may either contact the bidders to obtain additional information or declare the proposal unresponsive, thereby eliminating it from further consideration. In all cases, the contractor's procurement procedures shall identify which practice will be used for incomplete information and such information should be shared with potential bidders. Responsive offers are those offers that conform to all the requirements of the solicitation request. In addition, the procuring agency must ensure that bidders are not:

- (i) Listed on the federal debarment list; nor
- (ii) Delinquent in state taxes including UI taxes.

**Note:** Contracting or subgranting with entities delinquent in a tax owed to the state is prohibited. WDBs and other procuring agencies may obtain the contractor tax status by contacting either:

New Mexico Taxation and Revenue Department  
1100 S. St. Francis Drive – P.O. Box 630  
Santa Fe, NM 87504-0630  
or by contacting any local Taxation and Revenue office.

(c) Changes in Proposals

Generally, the procuring agency selects the bidder that receives the most favorable evaluation when cost and other factors are considered. Where only one agreement is to be awarded and more than one bidder is being considered for an award, changes in proposals resulting from any negotiation performed with each bidder shall be re-evaluated in accordance with the same evaluation method used in the original review. Proposals received shall be rated in relation to other proposals received in the same solicitation.

(d) Contingencies

Proposals selected for an award, as a result of the review and evaluation method, should be contingent upon satisfactory results received from negotiations conducted and a pre-award survey of the organization. The procuring agency should also reserve the right to not award a contract should proposals received fail to meet established minimum standards. In all RFP procurements, documentation that justifies the selected bid is required.

(e) Written Notification

All bidders shall be notified in writing of the results of the selection process. Upon request a procuring agency may conduct a meeting with unsuccessful bidders. A copy of the successful proposal may be made available upon request.

In the review and decision process, it is important to follow the established RFP steps to the letter. Each decision step must be segregated; each step and outcome at all levels must be documented, and the roles of each decision making group (i.e., staff, committee staff, board staff) must be distinguished. All documents relating to the procurement process used must be maintained in the official files.

## **Evaluation Process**

The need to rigorously correlate the evaluation process to the technical criteria is very important. Therefore it is imperative that the RFP incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. The RFP should set forth all technical requirements and all other factors that bidders or bidders must fulfill in order to be responsive to the RFP. In order to maintain the integrity of the evaluation process, the evaluation and rating of proposals must be based solely upon the rating criteria included in the RFP. State Procurement Code Regulations Section 1.4.1.38 addresses the requirements and process for the evaluation of proposals including the disqualification of non-responsive proposals.

(a) Evaluation Strategy

Factors must be established and used to standardize and evaluate the proposal(s). In addition to the standard audit requirement and necessary debarment language, the following factors must be utilized to evaluate responses to solicitations:

- The way in which the statement of work was addressed in relation to what was requested in the RFP;
- Pre-award survey results that satisfy the related questions of soundness of fiscal and administrative ability. Existing

contractors should have a valid pre-award survey/-monitoring report that is not more than one (1) year old;

- Sufficient knowledge of federal/state/local policies to perform objectives of the RFP;
- Cost-reasonableness consideration for all aspects including cost per objective or payment sequence, administrative costs (including salaries), and building/rent costs;
- The way in which objectives are addressed;
- Programmatic structure and format;
- Conformance to the soliciting contractor's requirements;
- Budget reviews including payment schedule;
- Experience of those proposed to perform the training documented; and
- In case of ties on the rating scale, consideration might be given to those bidders who propose additional services to participants beyond the scope of work/core training/budget. Historically under-utilized businesses may also be given consideration in case of ties in the evaluation process.

(b) Review and Rating of Responses

The review and rating of responses to solicitations, through a consistently applied evaluation method, is of primary importance in the procurement process. Key to an adopted method is the assurance of equal treatment and arms-length consideration. Several methods may be used. However, the following offers some common considerations that should be addressed:

- (i) Each acquisition should include evaluation factors that are specific to that particular acquisition;
- (ii) A cost analysis must be performed by the procuring entity to arrive at the best offer. A cost reasonableness determination should be a part of the evaluation process and such determination made a part of the procurement file;
- (iii) While price is an important factor in selecting subcontractors for an award, other factors in the competitive proposal process need to be considered. Those factors may include: quality of service offered, operating characteristics, technical innovations, administrative capability, compatibility with ongoing programs of the bidder organizations, previous experience in providing the same or similar programs, and prior audit/monitoring report findings. Goal attainment and program outcomes must also be considered;

(iv) Review criteria must include, at a minimum, the following:

- Administrative and organizational capability – The demonstrated ability of the responding organization to successfully administer and operate a program of services of the kind and scope proposed including:

- Experience in providing services;
- Quality and staffing pattern of project personnel; and
- Capability for project administration and fiscal management;

(v) Scope of work activity – The demonstrated methods proposed to achieve the desired results through the adequacy of detailed work plans, activities, and outcomes identified in the proposal; and

(vi) Program budget - The demonstrated cost reasonableness of budgeted items with respect to the allowability, necessity, allocability, and relationship to the provision of services identified in the proposal and its anticipated outcomes.

(c) Technical Evaluations

The purpose of evaluating proposals is to arrive at a decision to which the proposal represents the best possible approach to meeting the need or problems specified in the solicitation. Some factors that must be considered in reviewing and evaluating proposals include:

- Quality of services offered;
- Operating characteristics;
- Technical innovations;
- Administrative capability;
- Compatibility with the applicant's other ongoing programs;
- Previous experience in providing the same or similar programs; and
- A review of monitoring reports, goal attainment, and program outcomes (if the applicant is a previous subcontractor).

It is very critical at this juncture that the evaluation process correlate to the technical specifications of the proposal. The RFP should provide a clear and accurate description of the technical requirements for the product or service to be procured. The evaluation process must be based on the technical criteria set forth in the RFP. Proposals cannot be rated on criteria that were not included in the solicitation.

Since price reasonableness is a major evaluation factor, specific rating criteria need to be developed to determine reasonableness of proposed costs. The following will be helpful in evaluating proposals:

- Consider prior experience [and] program effectiveness;
- Conduct a line item budget analysis;
- Determine the percentage of the total budget that is administrative;
- Determine if the project will make a profit and if so, is it consistent with the WIA regulations concerning the treatment and reporting of program income;
- Identify all cost items and salaries;
- Check if costs are properly allocated and classified;
- Review all cost items with respect to relevancy and appropriateness in accomplishing the services provided;
- Check for any high or questionable costs;
- Check that an organization-wide cost allocation plan is provided where the bidder has multiple sources of funding;
- Check for any questionable issue of purchase or lease;
- Verify that the cost of audit is covered;
- Compare staffing pattern to salaries and determine if costs have been properly allocated to administration or program and staffing is adequate to accomplish the program objectives;
- Check for staff qualifications;
- Check for questionable staff salaries and benefits;
- Review travel and per-diem reimbursement policies;
- Review cost per participant;
- Review cost per contract hour (total participants x hours of participation for completion = contract hour cost);
- Perform a comparative analysis when more than one organization responds to the solicitation for same or similar services. The analysis should include a comparison of activities and services to be offered, staffing patterns and costs proposed; and
- Perform a comparative analysis when an item or service is currently available in the local area. This should include comparisons with current market rates to establish the reasonableness of the proposed cost.

Documentation supporting and/or verifying the proposed program activities and costs should be maintained in the procurement file. All awards should be supported with this documentation. At a minimum each applicant should be required to submit with the proposal:

- A copy of the line item budget;
- Lease agreements and calculations of space and costs allocated for WIA purposes;
- Cost allocation plans where cost to be funded are prorated between different funding sources;
- Approved wage and benefit plans for positions to be funded;
- Current travel and per-diem policies;
- Calculations, bids, and/or documentation used to determine costs of equipment, supplies, and where appropriate, start up costs;
- Calculated costs for each training activity to be conducted; and
- Documentation of in-kind and other share costs from other funding sources received by the organization that impact directly on the WIA services proposed.

(d) Rating/Scoring Sheets

Once evaluation factors have been established, they must be the same ones used to evaluate/score all proposals received. Reviewers may hold discussions of the evaluation factors in advance of the actual rating. However, proposals shall not be rated by a group, but must be rated individually. Rating/scoring sheets are used to determine which bidder will be offered a contract or subgrant. In the event that a dispute or disagreement arises concerning the projects funded, the rating/scoring process will be subject to close scrutiny. Therefore, a clear and objective format is essential to this particular phase of the procurement process.

A rating/scoring system is only as sound as the rating criteria and evaluation procedures utilized. Different parts of the proposals have varying importance factors and shall be so reflected in the scoring of the proposal components. Usually each component has a number of points possible that become part of the overall score.

(e) Documentation of Proposal Review

After completion of the proposal review, a report or rating document should be prepared outlining the strengths and weaknesses of each proposal. The procurement document file should contain the rating sheets that certify the name(s) of the person(s) who performed the proposal review, the rating scores, the observations and comments of the reviewer and other related information as appropriate. Names of reviewers should not be disclosed.

(f) Assigning Scores and Weights

Weighting an evaluation factor can be accomplished by using numbers or qualitative description.

- (i) The evaluation factors may be prioritized in ascending or descending order of importance such as:
- Allowability of proposed activities or services;
  - Conformance with regulations and policies;
  - Capability (experience) of bidder to deliver services (both programmatic and administrative); and
  - Cost (amount and reasonableness).
- (ii) Weights may be assigned as a percentage or as a point value (i.e., capability 25% or capability 150 points). Percentages should add up to 100%. Individual point values should add up to the total number of points in the scoring system.
- (iii) After evaluation of each proposal, a rating/scoring sheet should be completed and signed by the reviewer. All scores should be compiled and totaled. To help ensure objectivity, each member of the responsible committee must review every proposal. The proposals must be rated against standard criteria established by the procuring agency and included in the RFP. Rating results should be issued in writing and reported to the procuring agency. Under no circumstance should members of the review committee be directed or pressured to change their rating results by any other committee member, board member, or contractor staff member, chief-elected official or procuring agency head. Violations of this policy may result in disallowance of all subsequent contract expenditures and/or legal disputes.

## **Selection and Award Process**

Because of its importance to the contractor's procurement process, the system for selection and award must be well planned in advance of the receipt of proposals. The written plan should include dates on which the process will begin and end; roles assigned to staff and local board members; the reasonableness of cost (cost analysis); scoring approaches; and procedures to be used in technical evaluation of responses. Assurances of maximum use of full and open competition, including criteria to justify approval of any sole source procurements, should also be addressed. Proposal award procedures are described at State Procurement Code Regulations Sections 1.4.1.43 and 1.4.1.44.

## Protest/Dispute/Grievance Procedures

Sections 1.4.1.80 through 1.4.1.93 of the State Procurement Code Regulations apply to all protests filed with the procuring agency. Section 1.4.1.81 provides that any bidder or bidder who is aggrieved with a solicitation or award may file a protest with the procuring agency. To ensure equity both in the pre-award and post-award phases of the procurement, written procedures are required for protests and disputes. Once a selection is made, bidders must be notified in writing of the results. Failed bidders must be advised in writing that they may have the right to appeal the decision. Information on the procuring agency's procedures must be made available to all prospective contractors, subgrantees or vendors upon request including the name and address of a contact person.

(a) Settlement of Protests/Grievances

Local Workforce Development Boards or whomever the procuring agency is, 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 agency of any contractual responsibilities under its contracts.

(b) Protests

Protests occur when unsuccessful bidders or bidders believe that they were treated unfairly in the contract award process. Protesters generally believe that they, rather than the organization selected for the award, deserve the contract. Protests are made before or shortly after an award has been made. To handle protests, procurement procedures must include a provision for assessment of the complaint. Since award of contracts may depend on the disposition of protests, they should be handled as expeditiously as possible.

(c) Disputes - Disputes, unlike protests, occur after a contract is awarded and involve a disagreement between the procuring agency and the subcontractor over one or more of the contractual provisions. While work does not normally cease during a dispute, procurement procedures shall contain provisions to handle the dispute quickly to resolve misunderstandings and get the buyer-seller relationship back to normal. To ensure objectivity, parties other than those who are being charged with failure should handle disputes and protests.

(d) Appeal Review – Consistent with applicable policy or regulations, the board or procuring agency shall accept no protest or dispute appeal until all administrative remedies at the contractor level have been exhausted. The appeal review is limited to:

- (i) Violations of federal law and regulations. Violations of state or local law shall be under the jurisdiction of state or local authorities; and
  - (ii) Violations of contractor's protest/dispute procedures or failure to review a protest or dispute.
- (e) Contract/Subgrant Provisions

Contracts/subgrants shall include:

- (i) Provisions for the appropriate grievance procedures for complaints arising under the contract; and
- (ii) A provision, which states that in all instances, information will be disclosed regarding the protest/dispute to the commission.

## **Contract Negotiations**

Successful bidders should be invited, in writing, to enter into negotiations. This phase of the procurement process involves critical decisions. To accomplish it effectively, the soliciting agency must have written policies and procedures that clearly establish responsibilities and roles. Decisions, including what approvals are required before an agreement is executed, should be described in writing. (Reference State Procurement Code Regulations Section 1.4.1.39.)

(a) Pre-Negotiation

Following notification of selection, successful bidders are invited to attend a pre-negotiation session, if appropriate. The session is intended to advise each bidder of the parameters of the negotiations that will be followed;

Pre-negotiating discussions are conducted among monitoring, planning, operations, fiscal, management information system (MIS), contracting, and client service staff. These sessions usually reveal the previous year's deficiencies or future program and performance variations. These discussions result in a written listing of weaknesses, necessary, changes, and other items that should be addressed during negotiation discussions.

(b) Purpose of Negotiation

Negotiation procedures should establish that the initially proposed funding amount is a starting point rather than an entitlement, and that additional cost detail may be required of the bidder for the purpose of establishing a reasonable cost or price. Any increase in costs or reduction in services must be justified and documented to be in the best interest of the program

and must be consistent with the authority delegated by the governing body.

(c) Negotiation

During negotiation the focus should be to arrive at the best possible contract or subgrant. Attention must be given to cost analysis, clarifying the statement of work, developing appropriate performance standards and payment terms, assuring that reporting requirements actually measure performance, and verifying that the bidder is a responsible party. Additional issues to be discussed are audit requirements, appropriate insurance/bonding, and necessary legal fees.

(d) Documentation of Pre-award Survey

The purpose of conducting a pre-award survey is to assure that each organization being considered for funding meets all federal/state/local requirements for the provision of employment and training or other program services. For existing contractors, a valid pre-award survey or monitoring report, not more than two (2) years old, is adequate. The process should include an on-site visit to:

- Review and confirm organization practices with respect to documents and certifications submitted as part of the response to the request for proposal;
- Review internal monitoring procedures of the organization;
- Assess internal controls and accounting practices used by the organization in administering funds;
- Review overall procedures and practices of the organization meeting requirements of applicable regulations;
- Review the organization's ability to successfully perform services defined in the proposal submitted; and
- Assess the organization's practices with respect to meeting the conditions of the agreement to be awarded.

In addition to the on-site visit, any prior audits and monitoring reports should be reviewed.

The entire pre-award survey process, including name(s) and title(s) of individual(s) conducting the survey, should be documented. A report should be prepared noting the strengths and weaknesses identified during the survey. Suggestions should be made for improvements to current practices.

## Contract Policy

An agency's written procurement procedures must contain 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 format selected for a given procurement must 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.

(a) Type of Contracts

(i) Cost Reimbursement Agreement

These types of contracts, commonly used for federal funded programs such as WIA, are process oriented rather than output oriented. They are used when the work required cannot be so precisely detailed such as, research and program development or work experience training programs. Individual line items are established during negotiation and invoices, supported by documentation, are submitted for payment after costs have been incurred. The contract payments are "earned" based on costs incurred, and reporting of actual costs by the contractor is required. The primary risk under this type of contract is with the contracting agency rather than with the product/service provider. Brokered on-the-job training (OJT) contracts are also cost-reimbursable types of agreements.

(ii) Fixed-Unit Price Agreement

This type of contract is used when the output or deliverable is clearly definable such in the case with classroom training and on-the-job training (OJT) contracts. In these contracts, the provider of services generally provides no assurance of outcome: the participant may fail the tests, not complete the training activity, or get the job but the cost is earned (in contrast to performance-based contracts). Therefore the risk is principally with the buyer, not only with regard to benefits to be received by also in terms of achieving reasonable pricing.

(iii) Fixed Unit Price, Performance Based Agreement

This is a fixed-unit price arrangement that makes payment of some or all of the price contingent upon achievement of certain specified

results or outcomes such as completion of specific objectives or program, or placement. Unless there is satisfactory delivery of the specified outcome or result (performance), compensation is not earned, due or owing. Hence, the risk lies mostly with the Service Provider. When deciding on the use of a performance-based contract, there should exist sufficient risk in the work to justify performance as the basis for compensation, and price valuation should be reasonable.

(b) Contract Elements

The American Law Institute defines four key legal elements of a contract:

- Manifestation of mutual assent – the agreement between the parties that is enforced;
- Consideration – whatever is given in exchange for something else and is present only when the parties intend an exchange, whether it be a promise exchanged for a promise, a promise for an act, or a promise exchanged for a forbearance to act;
- Legality of object – the formation or performance of the contract must not be in violation of statute or contrary to public policy;
- Capacity of the parties – contract law recognizes that not all persons have the ability or capacity to enter into a valid contract. For various reasons such as minor age, insanity or intoxication, an individual may have only limited contractual capacity.

The validity of these four legal elements has been upheld in Supreme Court decisions. Thus for legal and practical purposes, contracts must be in writing, contain acceptable measures for ensuring accountability and establish clear goals and obligations in unambiguous terms. Contracts are the first line of defense for the protection of WIA funds and in ensuring the integrity of WIA funded programs. Because contracts may vary widely depending on the type/form, complexity of work involved and the amount of funds involved, certain elements should be included in all contracts. In addition to the standard common law contract elements (offer and acceptance, consideration, legal subject matter, competent parties, and essential terms and conditions), a contract format should include the following elements:

(c) General Elements

- (1) Signature/cover Page that includes:
  - (a) A purpose statement;
  - (b) Names and addresses of the responsible parties;
  - (c) Status of responsible parties;
  - (d) Beginning and end dates;
  - (e) Type of contract;
  - (f) Total obligated dollar amount;
  - (g) Funding source/WIA Title; and
  - (h) Signatures and typed names.
- (2) Table of content that outlines all contract sections and total number of pages.
- (3) Definition of key terms.
- (4) Boiler plate terms and conditions. Refer to Exhibit II for contract provisions that should be included.
- (5) Contract narrative to include:
  - (a) Statement of work – a general description of the work to be performed or product to be provided that covers, dates, key elements of the activity(ies) such as outreach, recruitment, enrollment assessment, counseling, case management, etc., type and length of activity(ies)/curriculum, skills to be acquired or expected outcomes, etc.
  - (b) Other contract narrative elements such as trainer qualifications, contractor administrative systems that describes how funds and program activities are managed, applicable measures of performance and reporting payment and delivery process, participant flow through, etc.
  - (c) Identification of any prior monitoring or audit findings and if resolved, information about any commendations, awards, received for outstanding services or performance relating to WIA or related programs, information on the process for monitoring contract activities and meeting the agency's reporting requirements, etc.
- (6) Budget summary and budget backups detailed budget break out that includes planned costs, how costs are allocated to particular cost objectives, how cost amounts were determined, etc.

(7) Participant summary (suggested) planned enrollments, termination and characteristics of participants to be served on a quarterly basis. This is useful for local planning and monitoring purposes.

(d) Internal Contract Review

Before any contract is executed, it should be reviewed internally by the agency to ensure its acceptability. The procuring agency should have written procedures and staff assigned from different units or sections within the agency (i.e. fiscal, legal, monitoring, planning, etc.) to be responsible for internal review and final processing of contracts or subgrants. The review process should be documented. The use of a standardized review checklist would be beneficial to this process. Sign-off of contract review staff should be required.

(e) Contract Administration

The administration of a contract or subgrant, from award through closeout, is a complex but essential aspect of the WIA procurement process. Contracts and other procurement documents must be developed and administered in a manner sufficient to safeguard WIA funds and ensure that the appropriate and necessary goods and services are delivered in accordance with all applicable provisions of law and policy.

An agency's procurement system must include written procedures and assigned responsibilities to ensure that contracts are properly administered. Current policies should be distributed to staff. Staff responsible for managing contracts and carrying out the agency's policies and procedures must be properly trained.

## **Contract Evaluation**

(a) Contract Monitoring

Local boards are responsible for monitoring of contracts and subgrants of contractors and subrecipients in accordance with WIA regulations at Section 667.410(a)(1),(2) and (3) in order to:

- Determine that expenditures have been made against the cost categories and within the cost limitations specified in the Act and the regulations;
- Determine whether or not there is compliance with other provisions of the Act and the WIA regulations and other applicable laws and regulations; and
- Provide technical assistance as necessary and appropriate.

Thus contract monitoring should include review and evaluation of:

- (i) Program areas to ensure that services are being delivered as specified in the contract or subgrant;
- (ii) Contractor/subgrantee performance to identify and address potential problems that occur during the term of the subgrant and ensure that service delivery is on schedule;
- (iii) Key clauses and provisions of the contract to ensure that terms and conditions of the contract are being met; and
- (iv) The contractor's financial system to ensure that the proper disbursement of, and accounting for, the contracted WIA funds.

Following the state monitoring procedures contained in 11.2.10 NMAC (and as revised), the contractor/subgrantee should be monitored on an ongoing basis sufficient to demonstrate that it has the administrative capacity to administer the contract. Auditable records must be maintained and reporting requirements must be met. The performance of contracts in meeting the required and specified elements (i.e., programmatic, fiscal, MIS, property, grievance procedures, record maintenance, etc.) must be reviewed. The special characteristics or demographics of the population to be served should be assessed including specific target groups. The service delivery strategy should be assessed to determine if services are equitable and proportional to the local area's population, geography and identified needs.

In addition to conducting administrative in-house reviews of contract/subgrant documents, the contractor should also be monitored on-site. The monitoring review should include interviews with contractor/subgrantee personnel and participants being served. Also feedback from employers and training institutions should be obtained as applicable to the program design. Prior to going on site, applicable procurement policies and procedures should be referenced and any available monitoring and audit reports (including for prior years) as well as any supplemental contract/subgrant data or documents should be researched. The checklist of areas to be reviewed contained in the state's monitoring policy should be used. The monitoring procedures including the identification of findings, the monitoring report contents, corrective action steps, follow-up and resolution process are contained in the state's policy referenced herein and must be followed.

(b) Contract Audit

The WIA requires audits of all programs funded under the Act. The WIA regulations at section 667.200(b)(1) identify the applicable audit requirements to be followed for the type of entity administering the funds. One of the contracts/subgrant provisions referenced herein is the right of

the agency to conduct, or have conducted, the appropriate audit coverage if the contractor fails to do so, or if the agency is not satisfied with the audit work performed. The agency must have written policies and procedures for securing the appropriate audit. For sound audit procedure:

- (i) Each agency must maintain and follow an audit plan of its contractors;
- (ii) Copies of all audits involving WIA funds must be sent to the procuring agency;
- (iii) The contractor/subgrantee should review audit findings;
- (iv) A corrective action plan detailing the necessary corrective actions to be taken as agreed to by the agency and contractor/subgrantee, including the repayment of funds where costs are determined to be unallowable; and
- (v) An appropriate follow-up plan must be developed by the agency to ensure that corrective action was implemented and findings are resolved.

(c) Contract Modification

There are situations in administering a contract/subgrant where a revision or change to the agreement may be required. Per section 13.1.42 of the State Procurement Code, a contract modification means “any written alteration in the provisions of a contract accomplished by mutual action of the parties to the contract.” Modifications can be a key tool for managing a contract or subgrant and can enhance the program planning process when properly used. If it becomes necessary to modify a contract, the following must be in place before a modification can be executed:

- (i) Written policies and procedures that identify the conditions under which a contract or subgrant can be modified;
- (ii) The contract must include a provision that allows a contract/subgrant to be modified and identifies who is authorized to execute the modification;
- (iii) The modification must be approved by the procuring agency authority;
- (iv) The modification must be in writing and be added to the contract; and
- (v) Local contract policy must provide authority for the procuring agency to effect unilateral modifications under certain conditions such as to deobligate unspent funds, include any additional new federal requirements and other related conditions, as necessary. The unilateral modification must not infringe on the contractual rights of the contractor.

(d) Contract Close-out

- (i) A procedure should be implemented to close out contracts when they are fully completed and final payments have been made. The contractor should be notified in writing (via return receipt requested) of actions that must be taken and documents that must be submitted by the date specified in the contract or the date otherwise established by the procuring agency.

# PART VI

## DEFINITIONS

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The definitions listed herein were obtained from the WIA, WIA regulations, OMB Circulars and the State Procurement Code. The definitions included herein are not all inclusive and those not listed herein may be found in the documents referenced.

- (1) “*Administrative requirements*” mean these matters common to grants in general, such as financial management, kinds and adequacy of reports, and retention of records. These are distinguished from “*programmatic requirements*” which concern matters that can be treated only on a program-by-program or grant-by-grant basis, such as kinds of activities that can be supported by grants under a particular program.
- (2) “*Adult*” means an individual who is age 18 or older, except as specified at WIA sections 127 and 132 that apply to allocations to states.
- (3) “*Adult education*” means adult education and literacy activities as defined at WIA Section 203.
- (4) “*Area Vocational School*” means a training institution as defined at Section 521 of the Carl Perkins Vocational and Applied Technology Act (20 U.S.C. 2471).
- (5) “*Award*” means financial assistance and federal cost-type contracts used to buy services or goods for the use of the federal government. It includes awards received directly from the federal agencies or indirectly through recipients. It does not include procurement contracts to vendors under grants or contracts used to buy goods or services.
- (6) “*Awarding agency*” means (1) with respect to a grant, the federal agency, (2) with respect to a subgrant, the party that awarded the subgrant.
- (7) “*Basic Skills deficient*” means an individual who has reading, writing or computing skills at or below the 8<sup>th</sup> grade level on a generally accepted standardized test or a comparable score on a criterion-referenced test.
- (8) “*Case management*” means the provision of client-centered approach in the delivery of services as defined at WIA Section 101(5).
- (9) “*Competitive award*” means a contract awarded following a public request for proposal offering, with the successful bidder selected through technical and price competition.

- (10) “*Core Services*” means services provided to adult and dislocated workers that include outreach, intake, worker profiling, orientation, job referrals and other services as specified at WIA Section 134(d)(2) that are available through the One-Stop delivery system
- (11) “*Cost*” means accrued expenditures.
- (12) “*Contract*” per section 13.1.41 of the State Procurement Code means any agreement for the procurement of items of tangible personal property, services or construction.
- (13) “*Contractor*” means any person, corporation, partnership, public agency, or other entity that is awarded a procurement contract under the recipient’s or subrecipient’s procurement system and procedures.
- (14) “*Cooperative agreement*” means a legal instrument reflecting a relationship between two legal entities whenever (1) the principal purpose of the relationship is the transfer of money, property, services, or anything of value to the entities in order to accomplish a public purpose of support or stimulation authorized by federal or state statute, rather than acquisition by purchase, lease, or barter of property or services for the direct benefit or use of the federal government, the state, or other public body; and (2) substantial involvement is anticipated between the entities during the performance of the proposed activity.
- (15) “*Cost-type contract*” means a contract or subgrant under a grant in which the contractor or subcontractor is paid on the basis of the costs it incurs, with or without a fee.
- (16) “*Customized Training*” means training that: (a) is designed to meet the special requirements of an employer (including a group of employers); (b) is conducted with the commitment by the employer to employ an individual on successful completion of training; and (c) for which the employer pays not less than 50 percent of the cost of the training (WIA Section 101(8)).
- (17) “*Dislocated Worker*” means an individual who had been terminated or laid off, or who has received a notice of termination or layoff from employment as defined at WIA Section 101(9).
- (18) “*Equipment*” means tangible nonexpendable, personal property having a useful life of more than one-year and an acquisition cost of \$5,000 or more per unit.
- (19) “*Fixed unit price*” means a total set price for contractually defined services, often made up of a series of single unit charges.
- (20) “*Government*” means a state or local government or a federally recognized Indian tribal government.

- (21) “*Grant*” means an award of financial assistance, including cooperative agreements, in the form of money, or property in lieu of money, by the federal government to an eligible grantee. The term does not include technical assistance which provides services instead of money or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Also, the term does not include assistance such as a fellowship or other lump sum award for which the grantee is not required to account.
- (22) “*Grantee*” means recipient of grant funds from the federal government. A grantee may also be referred to as a recipient.
- (23) “*Individual employment plan (IEP) or employability Development Plan (EDP)*” means an ongoing strategy for adults and dislocated workers jointly developed by the participant and the case manager that identifies the participant’s employment goals, appropriate achievement objectives and the appropriate combination of services for the participant to achieve the employment goals (20 CFR 663.245). The IEP is sometimes referred to as Employment Development Plan (EDP).
- (24) “*Individual Service Strategy (ISS)*” means an on going plan for youth developed jointly by the participant and the case manager/youth provider that meets the requirements of WIA Section 129(c)(1)(B), including identifying an age-appropriate academic and career goal and consideration of the assessment results for each youth (20 CFR 664.405 (a)(2)).
- (25) “*Incumbent worker*” means an individual who is employed, but does not necessarily have to meet the eligibility requirements for intensive and training services for employed adults and dislocated workers. States may establish policies and definitions to determine which workers are eligible for incumbent worker services.
- (26) “*Intensive services*” means those services listed in WIA Section 134(d)(3)(C). The list in the Act is not all-inclusive and other intensive services, such out-of-area job search assistance, literacy activities related to basic workforce readiness, relocation assistance, internships, and work experience may be provided, based on an assessment or IEP/EDP.
- (27) “*Local Workforce Development Area/Local area*” means a local workforce investment area designated under WIA Section 116 (WIA Section 101(20)).
- (28) “*Local Board/Local Workforce Development Board (LWDB)*” means a local workforce investment board established in accordance with WIA Section 117, for the purpose of policy planning for a local area.
- (29) “*Local government*” means any unit of local government within a state, including a county, a borough, municipality, city, town, township, parish, local public authority, special district, school district, interstate district, council of governments (whether or not incorporated as a non-profit corporation under state law), and any other instrumentality of local government.

- (30) *“Negotiated award”* means a procurement procedure where qualified bidders are invited to negotiate proposals, in terms of cost or price, and in terms of specific services and activities to be provided.
- (31) *“Noncompetitive or Sole Source award”* means a procurement procedure that results when attempts at securing at least two responsive offers have failed.
- (32) *“Nonprofit institution”* means any corporation, trust, association, cooperative, or other organization which
- (a) is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;
  - (b) is not organized primarily for profit; and
  - (c) uses its net proceeds to maintain, improve, and/or expand its operations.
- (33) *“OMB”* means the United States Office of Management and Budget.
- (34) *“One-Stop Operator”* means one or more entities designated or certified by a local board with the agreement of the chief elected officials as specified under WIA Section 121(d) to operate a One-Stop center.
- (35) *“One-Stop partners”* means the entities that carry out a program or activities described at WIA Section 121(B) and make available to participants through the One-Stop delivery system, the services described in Section 134(d)(2) that are applicable to the partner entity and participate in the operation of the One-Stop center as specified in the Memorandum of Understanding of each partner entity.
- (36) *“Participant”* means an individual who has been determined to be eligible to participate in and who is receiving WIA services except follow up services.
- (37) *“Postsecondary educational institution”* means an institution of higher education, as defined in section 481 of the Higher Education Act of 1965 (20 U.S.C. 1088).
- (38) *“Public assistance”* means federal, state, or local government cash payments for which eligibility is determined by a needs or income test (WIA Section 101(37)).
- (39) *“Procurement”* means (a) purchasing, renting, leasing, lease purchasing or otherwise acquiring items of tangible personal property, services or construction; and (b) all procurement functions including but not limited to preparation of specifications, solicitation of sources, qualification or disqualification of sources, preparation and award of contract and contract administration (Section 13.7.74 State Procurement Code).
- (40) *“Professional Services”* means the services designated by the procuring agency that include but are not limited to consultants, adult/youth and dislocated worker program operators, lawyers, certified public accountants, etc.

- (41) *“Profit”* means revenues in excess of actual contractor expenditure under an agreement. Excess revenues accrued by public and private nonprofit agencies are to be treated as a form of program income that must be tracked and reported in accordance with applicable federal or state established procedures. Excess revenues are to be returned to the state or spent only for WIA purposes as specified in the Act and applicable OMB circulars.
- (42) *“Program Year (PY)”* means the twelve-month period beginning July 1<sup>st</sup> of the year indicated.
- (43) *“Rapid Response activity”* means an activity provided by a state, or by an entity designated by a state, with funds provided by the state under Section 134(a)(1)(A), in the case of permanent closure or mass layoff at a plant, facility, or enterprise or a natural disaster that results in mass job dislocation, in order to assist dislocated workers in obtaining reemployment as soon as possible, with services as defined at WIA Section 101(38)).
- (44) *“Real Property”* means land, including improvements, structures, and appurtenances thereto, excluding movable machinery and equipment.
- (45) *“Recipient”* means an entity to which a WIA grant is awarded directly from the U.S. Department of Labor to carry out a program under WIA Title I. The governor is the recipient of USDOL WIA funds.
- (46) *“State Board”* means a State Workforce Investment Board established under WIA Section 111.
- (47) *“Subgrant”* means an award of financial assistance made under a grant to an eligible subgrantee. The term does not include procurement purchases, nor does it include any form of assistance that is excluded from the definition of “grant.”
- (48) *“Subgrantee”* means any legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided.
- (49) *“Subrecipient”* means an entity that receives federal assistance passed down from the prime recipient. This includes any person or government, department, agency, establishment, or nonprofit organization that receives WIA funds to carry out a program through a state or local government, but does not include an individual that is the beneficiary of such a program. Depending on local circumstances, Local Workforce Development Boards (LWDBs), local elected officials or an administrative entity may be a subrecipient.
- (50) *“Supportive Services”* means services such as transportation, child care, dependent care, housing and needs-related payments that are necessary to enable an individual to participate in activities authorized under the WIA (WIA Section 134(e)(2) and (3)).
- (51) *“Supplies”* mean all tangible personal property other than “equipment” as defined above.

- (52) “*Suspension*” means an action taken by a suspending official that immediately excludes a person or entity from participating in covered transactions for a temporary period, pending completion of an investigation and such legal, debarment or Program Fraud Civil Remedies Act proceeding as may ensue. A person or entity so excluded is “suspended.”
- (53) “*Tangible personal property*” means tangible property other than real property having a physical existence including but not limited to supplies, equipment, materials and printed materials (Section 13.1.93 State Procurement Code).
- (54) “*Termination*” means permanent withdrawal of the authority to obligate and expend previously awarded grant funds before that authority would otherwise expire. It also means voluntary relinquishment of that authority by the grantee or subgrantee.
- (55) “*Terms of grant, subgrant or contract*” mean all the requirements of the grant, subgrant or contract, whether in statute, regulations or the award document. The specific contractual terms usually appended to an award document are also referred to as the “boiler plate.”
- (56) “*Third party in-kind contributions*” means property or services which benefit a federally assisted project or program and which are contributed by non-federal third parties without charge to the grantee or cost-type contractor under the grant agreement.
- (57) “*Training services*” means those services listed in WIA Section 134(d)(4)(D). The list in the Act is not all-inclusive and additional training services may be provided.
- (58) “*Vendor*” means a provider of goods or services. These goods or services may be for the recipient’s, subrecipients’s, or participant’s use. Distinguishing characteristics of a vendor include items such as: providing the goods and services within normal business operations; providing similar goods or services to many different purchasers, including purchasers outside the WIA program; and operating in a competitive environment. A vendor is not a subrecipient and does not exhibit the distinguishing characteristics attributable to subrecipient as defined above. Any entity directly involved in the delivery of program services not available to the general public, with the exception of an employer providing on-the-job training, shall be considered a subrecipient rather than a vendor.
- (59) “*Youth*” means an individual 14 through 21 years of age. To be eligible for WIA youth services a youth must also be a low income individual as defined in the WIA Section 101(25) and has one or more barriers as defined under the Act at 101(13).

# EXHIBIT I

## WIA CONTRACT FORMAT

WORKFORCE INVESTMENT ACT SUBGRANT COVER SHEET		1. CONTRACT/MODIFICATION NO.	EXPIRES:
<p>This Agreement is made and entered into by the _____ Workforce Development Board (WDB) hereinafter referred to as the RECIPIENT and the _____, hereinafter referred to as the SUBRECIPIENT. The Subrecipient agrees to operate a job-training program in the State of New Mexico pursuant to the provisions of the 1998 Workforce Investment Act (WIA), and in accordance with the provisions of this Agreement. This Agreement consists of this WIA Contract Cover Sheet; WIA General Provisions; Program Narrative; Budget Information Summaries; Budget Information Backups; Participant Demographics; Performance Standards; and other supporting documents.</p>			
2. NAME OF PROVIDER		3. NAME OF PROVIDER'S POINT OF CONTACT	
ADDRESS		TITLE OF POINT OF CONTACT	
CITY, STATE & ZIP		TELEPHONE/FAX NUMBER	
4. TITLE OF CONTRACT <i>(Check 1)</i> TITLE I <input type="checkbox"/> Adult <input type="checkbox"/> Dislocated Worker <input type="checkbox"/> Youth		5. TYPE OF CONTRACT ACTION <i>(Check 1)</i> <input type="checkbox"/> New Contract <input type="checkbox"/> Modification <input type="checkbox"/> Other (specify)	
<b>AMOUNT OF CONTRACT</b>			
ADMINISTRATION \$	PROGRAM \$	TOTAL \$	
<b>AMOUNT OF CONTRACT MODIFICATION</b>			
ADMINISTRATION \$	PROGRAM \$	TOTAL \$	
SIGNATURE OF SUBRECIPIENT		DATE	
TITLE OF SUBRECIPIENT			
SIGNATURE OF AWARDING WDB		DATE	
NAME & TITLE OF WDB MEMBER			

**WORKFORCE INVESTMENT ACT  
ADMINISTRATION  
STAFF COSTS**

<b>A-1 STAFF COSTS</b>				
<b>Position Title</b>	<b>Salary <input type="checkbox"/> Hourly or <input type="checkbox"/> Weekly</b>	<b>% of Time on Program</b>	<b>Number <input type="checkbox"/> Hourly or <input type="checkbox"/> Weekly</b>	<b>Total Amount</b>
				\$
				\$
				\$
				\$
				\$
				\$
				\$
<b>TOTAL Staff Salaries and Wages (Budget Item A-1) ▶</b>				\$

<b>A-2 COST OF FRINGE BENEFITS FOR STAFF</b>				
<b>TYPE OF BENEFIT</b>	<b>PERCENT %</b>		<b>AMOUNT (In Dollars)</b>	<b>TOTAL COST</b>
1. F.I.C.A.			\$	\$
2. Worker's Compensation		X	\$	\$
3. Health/Dental Insurance		X	\$	\$
a. Retirement		X	\$	\$
b. Pension		X	\$	\$
4. Other (specify)		X	\$	\$
a.		X	\$	\$
b.		X	\$	\$
<b>TOTAL Cost of fringe benefits for staff (Budget Item A-2) ▶</b>				\$

**WORKFORCE INVESTMENT ACT  
ADMINISTRATION  
IN/OUT-OF-STATE STAFF TRAVEL EXPENSES**

**A-3 IN-STATE STAFF TRAVEL EXPENSES**

**MILEAGE DATA**

No. of Miles Traveled	Cost Per Mile	No. of Weeks	Destination	TOTAL-In-State Staff Mileage Expenses
	\$			\$
	\$			\$
	\$			\$

**PER DIEM AND ACTUAL COST DATA**

No. of Days of Per Diem Used	Cost Per Day	Actual Cost (In Lieu of Per Diem)	Destination	TOTAL-In-State Per-Diem Expenses
	\$			\$
	\$			\$
	\$			\$

**TOTAL- In-State Mileage & Per-Diem Cost (Budget Item 3) ▶**

**\$**

**A-4 OUT-OF-STATE STAFF TRAVEL EXPENSES**

**MILEAGE DATA**

No. of Miles Traveled	Cost Per Mile	No. of Weeks	Destination	TOTAL-Out-of-State Staff Mileage Expenses
	\$			\$
	\$			\$
	\$			\$

**PER DIEM AND ACTUAL COST DATA**

No. of Days of Per Diem Used	Cost Per Day	Actual Cost (In Lieu of Per Diem)	Destination	TOTAL-Out-of-State Per-Diem Expenses
	\$			\$
	\$			\$
	\$			\$

**TOTAL-Out-of-State Mileage & Per-Diem Cost**

**(Budget Item A-4) ▶**

**\$**

**WORKFORCE INVESTMENT ACT  
ADMINISTRATION  
MATERIALS, SUPPLIES AND PROPERTY COSTS**

**A-5 MATERIALS AND SUPPLIES**

*List below all materials and supplies that are estimated as necessary for performance of this program:*

ITEM	QUANTITY	UNIT PRICE	TOTAL
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
<b>TOTAL-Material and Supplies (Budget Item A-5) ▶</b>			<b>\$</b>

*Comments:*

**A-6 PROPERTY REQUIREMENTS**

*List below all property that is estimated as necessary for performance of this program:*

DESCRIPTION OF ITEM	QTY.	UNIT	UNIT COST	TOTAL
			\$	\$
			\$	\$
			\$	\$
			\$	\$
			\$	\$
			\$	\$
<b>TOTAL-Property Requirements Cost (Budget Item A-6) ▶</b>				<b>\$</b>

*Comments:*

**WORKFORCE INVESTMENT ACT  
ADMINISTRATION  
FACILITY RENTAL AND MISCELLANEOUS COSTS**

<b>A-7 FACILITY RENTAL</b>						
<b>Type of Facility</b>	<b>Location</b>	<b>No. of Staff Housed</b>	<b>No. of Sq. Feet</b>	<b>Times</b>	<b>Rates/Sq. Ft./Yr.</b>	<b>Total Rent</b>
						\$
Utilities/Custodial Services (if not included in rent)						\$
<b>TOTAL-Facility Rental Cost (Budget Item A-7) ▶</b>						\$
<i>Comments:</i>						

<b>A-8 MISCELLANEOUS COSTS</b>				
<b>TYPE OF SERVICE</b>	<b>AMOUNT PER MO.</b>	<b>TIMES</b>	<b>NO. OF MONTHS</b>	<b>TOTAL</b>
Telephone	\$			\$
Telefax	\$	X		\$
Postage	\$	X		\$
Liability Bonding	\$	X		\$
Copying	\$	X		\$
Other (Specify)	\$	X		\$
Other (Specify)	\$	X		\$
<b>TOTAL-Miscellaneous Cost (Budget Item A-8) ▶</b>				\$
<i>Comments:</i>				

**WORKFORCE INVESTMENT ACT  
ADMINISTRATION  
PROFESSIONAL SERVICES AND INDIRECT COSTS**

**A-9 PROFESSIONAL SERVICES**

*List below professional services costs that are estimated as necessary for performance of this program (e.g., accounting, audit, other).*

TYPE OF SERVICE	JUSTIFICATION	COST
		\$
		\$
		\$
		\$
		\$
<b>TOTAL-Professional Services Cost (Budget Item A-9) ▶</b>		<b>\$</b>

*Comments:*

**A-10 INDIRECT COST**

*List below the indirect cost that is estimated as applicable for performance of this program. If indirect costs are included, the provider must attach an approved indirect cost negotiation agreement and an explanation of how the amount was derived.*

TOTAL DIRECT COSTS (e.g. staff salaries + fringe benefits)	TIMES	APPROVED INDIRECT COST RATE	TOTAL INDIRECT COST
\$	x		\$
<b>TOTAL-Indirect Cost (Budget Item A-10) ▶</b>			

*Comments:*

<b>TOTAL WIA ADMINISTRATION COSTS ▶</b> <i>WORKFORCE INVESTMENT AREA:</i> _____	<b>\$</b>
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**WORKFORCE INVESTMENT ACT  
PROGRAM**

Core Services    Intensive Services    Training Services   
**STAFF COSTS**

<b>P-1 STAFF COSTS</b>				
<b>Position Title</b>	<b>Salary</b> <input type="checkbox"/> Hourly <input type="checkbox"/> Weekly	<b>% of Time On Program</b>	<b>Number</b> <input type="checkbox"/> Hourly <input type="checkbox"/> Weekly	<b>Total Amount</b>
				\$
				\$
				\$
				\$
				\$
				\$
				\$
<b>TOTAL-Staff Salaries and Wages (Budget P-1) ▶</b>				\$

<b>P-2 COST OF FRINGE BENEFITS FOR STAFF</b>				
<b>TYPE OF BENEFIT</b>	<b>PERCENT %</b>		<b>AMOUNT (In Dollars)</b>	<b>TOTAL COST</b>
1. F.I.C.A.			\$	\$
2. Worker's Compensation		X	\$	\$
3. Health/Dental Insurance		X	\$	\$
a. Retirement		X	\$	\$
b. Pension		X	\$	\$
4. Other (specify)		X	\$	\$
a.		X	\$	\$
b.		X	\$	\$
<b>TOTAL Cost of fringe benefits for staff (Budget Item P-2) ▶</b>				\$

**WORKFORCE INVESTMENT ACT  
PROGRAM**

Core Services  Intensive Services  Training Services

**IN/OUT-OF-STATE STAFF TRAVEL EXPENSES**

P-3 IN-STATE STAFF TRAVEL EXPENSES				
MILEAGE DATA				
No. of Miles Traveled	Cost Per Mile	No. of Weeks	Destination	TOTAL-In-State Staff Mileage Expenses
	\$			\$
	\$			\$
	\$			\$
PER DIEM AND ACTUAL COST DATA				
No. of Days of Per Diem Used	Cost Per Day	Actual Cost <i>(In Lieu of Per Diem)</i>	Destination	TOTAL-In-State Per-Diem Expenses
	\$			\$
	\$			\$
	\$			\$
<b>TOTAL-In-State Mileage &amp; Per-Diem Cost (Budget Item P3) ▶</b>				<b>\$</b>
P-4 OUT-OF-STATE STAFF TRAVEL EXPENSES				
MILEAGE DATA				
No. of Miles Traveled	Cost Per Mile	No. of Weeks	Destination	TOTAL-Out-of-State Staff Mileage Expenses
	\$			\$
	\$			\$
	\$			\$
PER DIEM AND ACTUAL COST DATA				
No. of Days of Per Diem Used	Cost Per Day	Actual Cost <i>(In Lieu of Per Diem)</i>	Destination	TOTAL-Out-of-State Per-Diem Expenses
	\$			\$
	\$			\$
	\$			\$
<b>TOTAL- Out-of-State Mileage &amp; Per-Diem Cost (Budget Item P-4) ▶</b>				<b>\$</b>

**WORKFORCE INVESTMENT ACT  
PROGRAM**

**Core Services  Intensive Services  Training Services**

**MATERIALS, SUPPLIES AND PROPERTY COSTS**

<b>P-5 MATERIALS AND SUPPLIES</b>			
<i>List below all materials and supplies that are estimated as necessary for performance of this program:</i>			
ITEM	QUANTITY	UNIT PRICE	TOTAL
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
<b>TOTAL-Material and Supplies (Budget Item P-5) ▶</b>			\$
<i>Comments:</i>			

<b>P-6 PROPERTY REQUIREMENTS</b>				
<i>List below all property that is estimated as necessary for performance of this program:</i>				
DESCRIPTION OF ITEM	QTY.	UNIT	UNIT COST	TOTAL
			\$	\$
			\$	\$
			\$	\$
			\$	\$
			\$	\$
			\$	\$
<b>TOTAL-Property Requirements Cost (Budget Item P-6) ▶</b>				\$
<i>Comments:</i>				

**WORKFORCE INVESTMENT ACT  
PROGRAM**

Core Services  Intensive Services  Training Services

**FACILITY RENTAL AND MISCELLANEOUS COSTS**

P-7 FACILITY RENTAL						
Type of Facility	Location	No. of Staff Housed	No. of Sq. Feet	Times	Rates/Sq. Ft./Yr.	Total Rent
						\$
Utilities/Custodial Services (if not included in rent)						\$
<b>TOTAL-Facility Rental Cost (Budget Item P-7) ▶</b>						\$
<i>Comments:</i>						

P-8 MISCELLANEOUS COSTS				
TYPE OF SERVICE	AMOUNT PER MO.	TIMES	NO. OF MONTHS	TOTAL
Telephone	\$			\$
Telefax	\$	X		\$
Postage	\$	X		\$
Liability Bonding	\$	X		\$
Copying	\$	X		\$
Other (Specify)	\$	X		\$
Other (Specify)	\$	X		\$
<b>TOTAL-Miscellaneous Cost (Budget Item P-8) ▶</b>				\$
<i>Comments:</i>				

**WORKFORCE INVESTMENT ACT  
PROGRAM**

Core Services  Intensive Services  Training Services   
**PROFESSIONAL SERVICES AND INDIRECT COSTS**

<b>P-9 PROFESSIONAL SERVICES</b>		
<i>List below professional services costs that are estimated as necessary for performance of this program (e.g., accounting, audit, other).</i>		
TYPE OF SERVICE	JUSTIFICATION	COST
		\$
		\$
		\$
		\$
		\$
<b>TOTAL-Professional Services Cost (Budget Item P-9) ▶</b>		\$
<i>Comments:</i>		

<b>P-10 INDIRECT COST</b>			
<i>List below the indirect cost that is estimated as applicable for performance of this program. If indirect costs are included, the provider must attach an approved indirect cost negotiation agreement and an explanation of how the amount was derived.</i>			
TOTAL DIRECT COSTS (e.g. staff salaries + fringe benefits)	TIMES	APPROVED INDIRECT COST RATE	TOTAL INDIRECT COST
\$	x		\$
<b>TOTAL-Indirect Cost (Budget Item P-10) ▶</b>			\$
<i>Comments:</i>			

<b>WORKFORCE INVESTMENT ACT</b> <b>PROGRAM</b> Core Services <input type="checkbox"/> Intensive Services <input type="checkbox"/> Training Services <input type="checkbox"/> <b>PARTICIPANT SERVICES</b>		
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<b>P-11 PARTICIPANT SERVICES</b>		
<i>List below participant services which are a cost to the program and show method of calculation. A description of these services are located on the next page.</i>		
TYPE OF SERVICE	CALCULATION (Number of participants x cost per participant)	TOTAL
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
<b>TOTAL-Participant Services (Budget Item P-11) ▾</b>		\$

<b>TOTAL WIA PROGRAM COSTS ▾</b> <b>WORKFORCE INVESTMENT AREA:</b> _____	\$
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## TYPES OF SERVICES

<u>CORE</u>	<u>INTENSIVE</u>	<u>TRAINING</u>
<i>Eligibility determination</i>	<i>Comprehensive and specialized assessments of skill levels</i>	<i>Individual Training Accounts (ITAs)</i>
<i>Outreach, intake, orientation &amp; other services available through the one-stop system</i>	<i>Diagnostic testing &amp; use of other assessment tools</i>	<i>On-the-Job Training (OJT)</i>
<i>Initial assessment of skill levels, aptitudes, abilities &amp; supportive service needs</i>	<i>In-depth interviewing and evaluation to identify the employment goals</i>	<i>Customized Training Supportive Services</i>
<i>Job search and placement assistance &amp; career counseling</i>	<i>Development of individual employment plan</i>	<i>Follow up Services</i>
<i>Employment statistics information</i>	<i>Group counseling</i>	
<i>Provision of performance information &amp; program cost information on eligible providers of training services</i>	<i>Individual counseling &amp; career planning</i>	
<i>Provision of information regarding how the local area is performing on the local performance measures</i>	<i>Case management for participants</i>	
<i>Provision of information relating to the availability of supportive services</i>	<i>Short-term prevocational services</i>	
<i>Provision of information regarding filing claims for unemployment compensation</i>	<i>Work Experience (WE)</i>	
<i>Assistance in establishing eligibility for, programs of financial aid assistance for training</i>	<i>Supportive Services</i>	
<i>Follow up services</i>	<i>Relocation Follow up Services</i>	

## WORKFORCE INVESTMENT ACT COST SUMMARY

Subgrant No.:		Name of Provider:			Title of Contract:	
<b>Administration Expense Category</b>		<b>Qtr. 1</b>	<b>Qtr. 2</b>	<b>Qtr. 3</b>	<b>Qtr. 4</b>	<b>Total</b>
A1	<b>Staff Salary</b>					\$
A2	<b>Fringe Benefits</b>					\$
A3	<b>In-State Travel</b>					\$
A4	<b>Out-of State Travel</b>					\$
A5	<b>Materials &amp; Supplies</b>					\$
A6	<b>Property</b>					\$
A7	<b>Facility Rental</b>					\$
A8	<b>Miscellaneous</b>					\$
A9	<b>Professional Services</b>					\$
A10	<b>Indirect Cost</b>					\$
<b>Program Expense Category</b>		<b>Qtr. 1</b>	<b>Qtr. 2</b>	<b>Qtr. 3</b>	<b>Qtr. 4</b>	<b>Total</b>
P1	<b>Staff Salary</b>					\$
P2	<b>Fringe Benefits</b>					\$
P3	<b>In-State Travel</b>					\$
P4	<b>Out-of State Travel</b>					\$
P5	<b>Materials &amp; Supplies</b>					\$
P6	<b>Property</b>					\$
P7	<b>Facility Rental</b>					\$
P8	<b>Miscellaneous</b>					\$

P9	<b>Professional Services</b>					\$
P10	<b>Indirect Cost</b>					\$
P11	<b>Participant Services</b>					\$

## Cost Sharing / Matching Summary

	SOURCE	AMOUNT
<b>1. Cash Contribution</b>		\$
<b>2. In-Kind Contribution</b>		\$
<b>3. TOTAL Cost Sharing/Match (Rate %)</b>		\$

### **SECTION B – Cost Sharing/Matching Summary**

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing-/matching requirement. Attach the cost sharing or match agreement to contract or subgrant. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

# EXHIBIT II

## SUBRECIPIENT AGREEMENT PROVISIONS (BOILER PLATE)

### Definitions

Throughout this agreement the term the New Mexico Department of Labor (NMDOL), State Administrative Entity shall be hereinafter referred to as the “SAE.” This agreement is used to describe a legal binding contractual relationship between the NMDOL SAE and the Local Workforce Development Board (LWDB) or the LWDB and any of their respective subrecipients and/or contractors.

Definitions of other applicable WIA terms in the agreement are found primarily in the Workforce Investment Act (WIA) Federal Rules and Regulations, SAE Rules and State Technical Assistance Guides, (STAGs), OMB circulars, and the State Procurement Code.

ACT (WIA)	The Workforce Investment Act of 1998, Public Law 105-220 and activities thereunder.
CONTRACT	Any agreement for the procurement of items of tangible personal property that meets the requirements of the WIA, applicable OMB circulars and the State Procurement Code.
FEDERAL REGULATIONS	The Code of Federal Regulations (20 CFR Part 652 and Parts 660 through 667 and any amendments thereto).
FUNDING AUTHORITY	The NMDOL AE or the Local Workforce Development Board authority to fund WIA programs and enter into contracts and agreements in accordance with the Act, the federal regulations and applicable state rules.
RULES	State level policies promulgated to provide policy guidance on WIA activities and program functions.
LOCAL BOARD	The term “local board” means a local workforce development board established under Section 116 of the Act.
SAE	Means the New Mexico Department of Labor State Administrative Entity. The entity designated by the Governor to provide oversight and technical assistance on WIA funded activities and programs conducted by the state and local workforce boards.

STATE TECHNICAL  
ASSISTANT GUIDES  
(STAGs)

Informational notices and materials disseminated by the SAE that pertain to the administration and operation of WIA activities and programs. STAGs provide guidance and information relevant to WIA programs only and do not create state rule or policy.

SUBGRANT

A procurement instrument which consists of a legally binding agreement between a WIA funded recipient/subrecipient and a WIA funds granting authority providing federal funds to an eligible recipient/subrecipient to conduct WIA program activities or provide services as specified therein.

SUBGRANTEE

Means the same as subrecipient.

SUBRECIPIENT

Any recipient of WIA funds from the governor via the NMDOL SAE or Local Board to carry out any part of the substantive programmatic work of the WIA as described in the WIA State Plan, Local Workforce Development Board Plan, or other authorization for which funding is provided to a subrecipient.

Legal Authority

- (a) The NMDOL SAE or the local board (as applicable) possesses the legal authority to enter into this agreement with a subrecipient, to contract or grant funds authorized by this agreement, and to perform the services which the Subrecipient has obligated itself to perform pursuant to this agreement.
- (b) The authorized signatory official(s) signing and executing this agreement on behalf of the subrecipient do hereby warrant and guarantee that they have been fully authorized by the subrecipient to execute this agreement and agree to all the terms, conditions, performance requirements and other provisions set forth herein.
- (c) The subrecipient shall adhere to NMDOL SAE or applicable funding authority policy direction, operational guidelines, reporting/forms requirements, etc., relating to programmatic and procedural requirements including administrative, fiscal, performance, other functions identified in the subgrant. Policy and informational materials shall be provided via the NMDOL SAE Rules and STAGs developed by the SAE through its Policy/Program Guideline Development System (as detailed in Rule 11.2.4 NMAC and any amendments thereto), and/or the local board established policies and procedures.

Modifications/Revisions

- (a) Contract/subgrant modification consists of any written alteration in the provisions of a contract accomplished by mutual action of the parties to the contract or subgrant.

Changes or amendments to a subgrant shall be made in accordance with policies, rules and guidelines promulgated by the SAE and/or the local board as applicable and referred to in this agreement.

## Termination Agreement

- (a) Termination for Cause: The NMDOL SAE or applicable grant funding authority reserves the right to terminate this agreement for non-compliance with any of the terms/provisions of the agreement, for unsatisfactory performance (as determined by the funding authority) or for violation of applicable laws, regulation or policy. In the event of non-compliance, in whole or in part, with any of the contract/subgrant terms and provisions, the subgrantee shall be notified in writing by the grant funding authority of the nature of non-compliance. The subgrantee shall have twenty (20) working days to respond with a written response to include identification of the problem/issue, corrective action measures to be taken, and the time period for problems/issues to be addressed.

Failure to respond within the 20-day period may result in unilateral termination of this subgrant agreement by the SAE or local board not more than thirty (30) days after the contractor/subrecipient has been notified in writing. The contractor/subrecipient shall be liable for any costs obligated or incurred prior to the effective date of termination.

The NMDOL SAE or applicable grant funding authority reserves the right to terminate this agreement immediately, without notice, in the event of gross mismanagement or misuse of funds by the contractor/subrecipient. Upon such termination, the NMDOL SAE or applicable funding authority shall deduct the amount owing to the contractor/subrecipient under this clause:

- (1) All unliquidated advances or other payments on accounts previously made to the contractor/subrecipient and applicable to the termination portion of this agreement; and
- (2) Any claim which the NMDOL SAE or applicable funding authority may have against the contractor/subrecipient in connection with the Agreement.

If the termination is partial, prior to the settlement of the termination portion of this agreement, the contractor/subrecipient may file a request in writing to the NMDOL SAE or applicable funding authority for an equitable adjustment of the price(s) specified in the Agreement relating to the continued portion of the agreement. In an alleged case of fraud or related unlawful activities, the NMDOL SAE or applicable Funding Authority reserves the right to seize bank accounts containing WIA funds until such time and manner such matter is resolved to the satisfaction of NMDOL SAE or applicable Funding Authority.

If the authorized funding authority is a Local Workforce Development Board, said board shall be responsible for reporting to the NMDOL SAE immediately any apparent misuse of funds or unlawful activity by any of its contractor/subrecipients.

Upon termination of this agreement for any reason, the contractor/subrecipient shall return to the NMDOL SAE or applicable funding authority, within thirty (30) days after receipt of a written request, any property furnished to the contractor/subrecipient by the NMDOL SAE or applicable funding authority and all records (paper and electronic) pertaining to this agreement.

The contractor/subrecipient shall return such property and records in the manner prescribed by the NMDOL SAE or applicable funding authority. Between the date of termination of the agreement until

such specified return date, the contractor/subrecipient shall protect such property and records from damage, loss or destruction.

- (b) Availability of Funds: It is understood and agreed to by the contractor/subrecipients hereto that the funds obligated under this agreement is contingent upon the availability of funding. The NMDOL SAE or applicable funding authority shall not be held liable for continued funding of this contract/subgrant agreement where federal/state funds are diminished, discontinued or otherwise not available.

Disputes, Appeals and Legal Remedies: Contractual and programmatic requirements imposed by the Act, the regulations, and applicable state/local laws cannot be waived or disposed of by the NMDOL SAE or the applicable funding authority.

- (a) Any dispute between the NMDOL SAE or applicable funding authority and the contractor/subrecipient concerning the terms and provisions of this agreement which constitutes a question of fact and which is not disposed of by mutual agreement shall be decided as follows:
  - (1) Disputes between a contractor/subrecipient and the funding authority **other than** the NMDOL SAE shall be decided by the funding authority, unless the contractor/subrecipient appeals the decision in writing within thirty (30) working days from the date of the decision to the NMDOL SAE. The NMDOL SAE shall then make an appropriate determination and notify the respective parties in writing within ten (10) working days. The decision of the NMDOL SAE shall be final unless reversed by a court of law as stipulated under subclause (2) of this part.
  - (2) Disputes between a contractor/subrecipient and the NMDOL SAE shall be decided by the NMDOL SAE who shall notify the contractor/subrecipient in writing. The NMDOL SAE's decision shall be final unless within thirty (30) days from the date of receipt of the written copy, the contractor/subrecipient appeals the decision to the NMDOL SAE. Unless determined by a court of law that the decision was fraudulent, arbitrary, capricious, so grossly erroneous as to imply bad faith, or is not supported by substantial evidence, the decision shall be final. In any appeal proceeding under this clause, the contractor/subrecipient shall be afforded the opportunity to rebut and offer evidence in support of the appeal. Pending final determination and disposition of the matter, the contractor/subrecipient shall be responsible for continued subgrant operation and performance.
- (b) The contractor/subrecipient shall notify the NMDOL SAE or applicable funding authority of any legal action taken against it and any other parties (subcontractors, vendors, etc.) involved under this agreement.

#### Other Stipulations Governing this Agreement

- (a) All powers not clearly expressed, vested in the contract/subgrant by the terms of this agreement, remain with the NMDOL SAE or applicable funding authority.

- (b) The NMDOL SAE or applicable funding authority has no obligation to any party other than the contractor/subrecipient.
- (c) Employees of the contractor/subrecipient and participants enrolled in programs or being provided services pursuant to this agreement shall not be considered employees of the state or of the applicable funding authority agency, unless employed by an agency/entity of the state or the applicable funding authority.
- (d) The United States Department of Labor (USDOL) is not a party to this agreement.
- (e) The NMDOL SAE or applicable funding authority shall provide technical assistance to the contractor/subrecipient as necessary on subgrant activities, terms, requirements and areas of program deficiencies as appropriate to ensure regulatory compliance and program performance. The contractor/subrecipient may request technical assistance in writing from the NMDOL SAE or the applicable funding authority as appropriate.

## **PREVENTION OF FRAUD AND ABUSE**

Fraud under this part refers to the intentional misrepresentation or distortion of factual data or other information in order to obtain an illicit benefit and/or to attempt to conceal such illegal activity. Abuse under this part, refers to the intentional misuse of program funds and services.

- (a) The contractor/subrecipient shall establish, maintain, and use internal management procedures for activities funded in whole or in part under this agreement.
- (b) In addition to the requirements imposed elsewhere in this agreement, the contractor/subrecipient shall insure that sufficient, auditable, and otherwise adequate records be maintained to support the expenditures of all funds received through this agreement. Such records shall be sufficient to allow the USDOL, NMDOL SAE and the local funding authority to audit and monitor the contractor/subrecipient, and shall include the maintenance of financial and participant data systems in accordance with WIA and applicable federal regulations attendant to procurement, audit record keeping, reporting and related requirements.
- (c) The contractor/subrecipient shall establish and conduct its own monitoring and control systems sufficient to insure compliance with the Act, federal regulations, applicable state and local laws, NMDOL SAE rules and applicable funding authority policies (and any changes thereto) pertaining to financial and participant records management, procurement and reporting requirements.
- (d) The NMDOL SAE or applicable funding authority shall periodically (as appropriate) monitor the contractor/subrecipient activities funded under this contract/subgrant. Monitoring activities may include review of management (data) and on-site reviews of all program activities. The NMDOL SAE or applicable funding authority reserves the right to access and review all pertinent records/data, observe program activities, interview contractor/subrecipient staff,

program participants, review training and worksites, and conduct related monitoring functions to ensure compliance with all subgrant provisions and program requirements.

- (e) The contractor/subrecipient shall notify the NMDOL SAE or applicable funding authority in writing of any suspected fraud, abuse, and/or misapplication of WIA funds upon discovery of such.

Conflict of Interest: For the purpose of this part, a conflict of interest refers to the act of an individual person (employed through WIA funds or serving on a WIA board/council) exercising personal pecuniary interest into decisions relating to policy, agreements, contracts, or subgrants in which that individual, a business associate, family member or other personal acquaintance will personally or financially benefit or which has the appearance or perception of a conflict of interest.

- (a) The contractor/subrecipient shall assure that organizational conflict of interest and/or the appearance of a conflict of interest shall not occur in awarding financial assistance and in the conduct of any procurement activities under this agreement.
- (b) Employees of the contractor/subrecipient, members of the contractor/subrecipient's governing board or body, or any person exercising any function or responsibility in the review or approval of the implementation or carrying out of this agreement, shall not participate in any decision relating to the agreement, which affects their personal pecuniary interest. Violation of this provision shall be cause for termination of this agreement.
- (c) The contractor/subrecipient shall assure that funds received under this agreement shall not be used for hiring/paying any nongovernmental individual, institution or organization to conduct an evaluation of any program under this agreement if such individual, institution, or organization is associated with that program as a consultant or technical advisor.
- (d) The contractor/subrecipient agrees that none of its employees or officers have an interest and shall not acquire any interest, direct or indirect, that might conflict in any manner or degree with the performance of any activities/functions required under this agreement. The contractor/subrecipient further agrees that in such performance under this agreement, no person having such interest shall be employed. The contractor/subrecipient shall establish safeguards to prevent its staff members, subcontractors, or employees from using their positions for purposes that appear to be motivated by desire for private gain for themselves or others, particularly those with whom they have family, business or other ties. The contractor/subrecipient shall assure all of its' staff and other subrecipients/subcontractors comply with this section.

Nepotism: For purposes of this agreement, nepotism refers to the bestowing of special favors or showing of favoritism to a relative (wife, father, husband, mother, son, daughter, grandparent, brother, sister, aunt, uncle, niece, nephew, step child and in-law) by providing benefits or giving an appointive position on the basis of such relationship.

The subrecipient assures that it will adhere to applicable funding authority rules or policies prohibiting nepotism or appearance of nepotism in the awarding of WIA funds, and in its subgranting or contracting practices.

Child Labor: The contractor/subrecipient shall comply with applicable federal, state and local Child Labor Laws. Non-compliance with applicable Child Labor requirements shall be grounds for termination of this agreement.

Kickbacks: Officials, employees, or agents of the contractor/subrecipient are prohibited from soliciting or accepting gratuities, favors, or anything of monetary value from any actual or potential recipient or supplier. Non-compliance with this clause shall be grounds for termination of this agreement.

**The State Procurement Code, Sections 13.1.28 through 13.1.199 NMSA 1978, imposes civil and misdemeanor criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kickbacks.**

Political Activity: The contractor/subrecipient shall comply with all prohibitions on political activity as specified under 5 USC 15 (referred to as the Hatch Act), and any applicable NMDOL SAE and local funding authority policies.

- (a) The practice of selecting or advancing employees as a reward for political service or patronage, or advancing/selecting in employment based on a person's political affiliation or beliefs is discriminatory and is prohibited. This prohibition also applies to the selection and referral of WIA applicants and participants for employment and training activities or services.
  - (1) This prohibition is extended but not limited to the following situations:
    - (i) Participant or employee participation in partisan or nonpartisan political activities during work hours;
    - (ii) Participant or employee participation in partisan or nonpartisan political activities in which such participant or employee represents himself/herself as a spokesperson for a WIA program;
    - (iii) Employing or outstationing participants in offices of political officials including the offices of Congresspersons, state legislators, legislative committees or staffs for the purpose of conducting political activities including campaigning on behalf of such officials; and
    - (iv) Employing or outstationing participant(s) in the offices of any elected executive officers, chief elected officers, or officers of a state or unit of general local government, for the purpose of conducting political activities including campaigning on behalf of such officials.
    - (v) Officers, council members or personnel employed in the administration of a WIA funded program shall not engage, in any manner, in the conduct of any political activities prohibited

under the Hatch Act, nor shall WIA funds be used for such purposes.

- (vi) Funds provided under this agreement shall not be used to attempt to influence in any manner, a member of Congress to favor or oppose any legislation or appropriation by Congress, or for lobbying with a state or local legislature. The contractor/subrecipient must provide to the NMDOL SAE, or applicable funding authority, a USDOL Lobbying Disclosure Certification.
- (vii) Non-compliance with these provisions shall be grounds for termination of this contract/subgrant.

Unionization/Anti-Unionization Activities: The contractor/subrecipient is prohibited from any promotion of, or involvement in, unionization or anti-unionization activities. Specifically:

- (a) Funds administered under this agreement may not be used in any way to either promote or oppose unionization;
- (b) Individuals will not be required to join a union as a condition for enrollment in a program funded under this agreement; and
- (c) Participants may not be placed or remain working in any position affected in labor disputes involving a work stoppage.

Criminal Provision: This provision pertains to the theft, embezzlement from WIA funds, improper inducement and obstruction of investigations. The subrecipient shall be aware of and held accountable for complying with the criminal provisions of Section 665 of Title 18 USC as amended, and any applicable state statutes. Violations of this provision constitute grounds for termination of this agreement.

Maintenance of Effort: The contractor/subrecipient assures that participants under this agreement will not be employed in any job opening when any other individual is on layoff from the same or any substantially equivalent job, or when the employer has terminated the employment of any regular employee or otherwise reduced its workforce with intention of filling the vacancy so created by hiring a participant whose wages are subsidized under this agreement.

Fees/Charges to Participants: The subrecipient assures that no fees will be assessed to participants as a condition of their enrollment into WIA programs, or for receipt of services provided under this agreement, unless provided for in this agreement and the assessment of such fees are in accordance with the WIA regulations.

Hold Harmless Provision: The NMDOL, or applicable funding authority, or its officers, agents, or employees are held "harmless" against any and all claims, losses, or expenditures of any kind including court costs and expenses, occurring/resulting from any suits/damages of any character resulting from injuries and/or damages sustained by any person/persons, firm or corporation/property by virtue of this agreement.

The contractor/subrecipient shall during the term of this agreement, identify and hold harmless the recipient, officers, agents, or employees, against any and all claims, losses, liabilities, or expenditures of any kind including court costs and expenses, accruing or resulting from any suits or damages of any

character resulting from injuries or damages sustained by any person or persons, firm, corporation, or property, by virtue of the performance of this agreement.

Bonding Requirements: The contractor/subrecipient shall obtain sufficient insurance/surety coverage to cover financial losses.

The contractor/subrecipient shall ensure that every officer, director, agent or employee authorized to act on its behalf in receiving or depositing funds into program accounts, or issuing financial documents, checks, other instruments of payment for program costs, shall be bonded to prove protection against loss. The amount of coverage shall be \$100,000 or to the amount required by applicable loan. A copy of the bond premium or policy shall be included as an attachment to this contract/subgrant.

Insurance: The NMDOL SAE or applicable funding authority assumes no liability with respect to bodily injury, illness or any activities undertaken in this agreement, concerning persons or property in the contractor/subrecipient's organization or third party. The contractor/subrecipient shall insure or otherwise protect itself with respect to bodily injury, illness or any other damages or losses with respect to any claims arising out of any activities undertaken under this agreement.

If motor vehicles are used in conducting activities under this agreement, the contractor/subrecipient shall ensure that it is protected, and that the NMDOL SAE or applicable funding authority is held harmless against claims arising from the ownership, maintenance, or use of motor vehicles, covering bodily injury and property damage. The contractor/subrecipient shall secure liability insurance through a commercial insurance policy at minimum coverage rates of \$100,000 per person, \$300,000 per accident for bodily injury and \$25,000 per accident for property damage, or to the amount required by applicable law.

The contractor/subrecipient shall further assure that all USDOL, NMDOL or applicable funding authority property held by, in possession of, or assigned to the contractor/subrecipient is protected from loss, damage, or destruction by any means. The contractor/subrecipient shall secure insurance coverage through a commercial insurance policy at rates to cover the value of such property or any loss thereto. The NMDOL SAE or applicable funding authority retains the right to recover from the contractor/subrecipient any payments made to it by an insurer as a result of any claim filed due to loss or damage to USDOL, NMDOL, or applicable funding authority property. The NMDOL SAE or applicable funding authority also retains the right to recover any such property regardless of receipt of payment to cover any loss or damage.

Copies of auto and other required liability insurance shall be included as attachments to all financial agreements.

#### Compliance with the WIA and Regulations

- (a) The contractor/subrecipient shall comply with requirements of the Workforce Investment Act, and any amendments thereto, with the regulations promulgated thereunder, and to the extent consistent with the WIA and attendant regulations, ensure compliance with applicable state rules, local policies and collective bargaining agreements.
- (b) The contractor/subrecipient shall provide its services in such a manner as to comply with the terms of this agreement and to prevent breach of this agreement.

## Reporting Requirements

- (a) The contractor/subrecipient assures it will adhere to NMDOL SAE procedures regarding the WIA participant reporting requirements required by the NMDOL SAE and the applicable funding authority.
- (b) Late and/or inaccurate reporting by the contractor/subrecipient shall constitute non-compliance with the terms of this agreement and shall be cause for the NMDOL SAE or applicable funding authority to require corrective action as outlined in this agreement.

Assigning Interest: The contractor/subrecipient shall obtain prior written consent from the NMDOL SAE or applicable funding authority prior to subcontracting any portion of this agreement.

Subrecipient Subcontractual Agreements: Subcontracts or other agreements entered into by the subrecipient shall comply with all requirements of this contract/subgrant.

For any additional subcontracts or other agreements entered into under this contract/subgrant the contractor or subrecipient shall be solely responsible to the SAE or applicable Funding Authority for the actions and the compliance with all applicable provisions of this agreement. The NMDOL SAE or applicable funding authority is not responsible for performance of, or payments to subcontractors.

Nondiscrimination: The contractor/subrecipient shall adhere to policy prohibiting discrimination in any WIA program.

- (a) The contractor/subrecipient assures, with respect to the operation of WIA-funded program or activity and all agreements or arrangements to carry out the WIA funded program or activity, that it will comply fully with the nondiscrimination and equal opportunity provisions of the Workforce Investment Act (WIA) of 1988; 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, including but not limited to 29 CFR part 34. The USDOL and the SAE reserve the right to seek judicial enforcement of this assurance.

The subrecipient assures that it will adhere to SAE rules promulgated regarding Equal Opportunity, Equal Opportunity (EO) complaints and Non-EO-Non-Criminal complaints, and any amendments thereto.

Drug-Free Workplace Certifications. The contractor/subrecipient shall assure compliance with the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D) in providing a drug-free workplace as a condition for receiving a contract or grant from a federal agency. The drug-free workplace certification shall be made part of this agreement.

Subrecipient Accomplishments: When any part of a program is publicized, recognition should be afforded on behalf of the NMDOL SAE and the applicable funding authority as the source for providing training and employment services. Contractor/subrecipient accomplishments will be properly documented and made available to the NMDOL SAE and applicable funding authority for monitoring purposes.

Bureau of Apprenticeship and Training (BAT) Coordination: The BAT is the state agency responsible for the establishment of requirements for apprenticeable trades programs and requirements thereto.

- (a) The contractor/subrecipient shall consult and/or coordinate with the local BAT when referring to or implementing an apprenticeable trade program.

Inventions, Patents and Copyrights: The contractor/subrecipient shall promptly notify the NMDOL SAE or applicable funding authority of any discoveries, inventions, publications made or produced under a WIA funded program for which patent or copyright protection is sought. The NMDOL, or applicable funding authority shall notify and seek a determination from the USDOL as to the disposition of patent or copyright request on such invention or publication.

## **FISCAL STANDARDS AND MANAGEMENT**

### Fiscal Reporting

The contractor/subrecipient shall keep records that are sufficient to permit the preparation of fiscal reports and to permit the tracing of funds to a level of expenditure adequate to ensure that the funds have not been spent unlawfully as mandated under Section 185 of the Act.

The contractor/subrecipient assures that it will adhere to all reporting requirements relating to all financial transactions under this agreement.

### Method of Payment

- (a) It is understood and agreed by the parties hereto that payments are conditional upon the payment terms of this agreement and contractor/subrecipient's full and satisfactory performance of its obligations under this agreement;
- (b) It is understood and agreed to by the parties hereto that if the subrecipient fails to submit to the NMDOL SAE or applicable funding authority, in a timely and satisfactory manner, any data, report or other information as required under this agreement, the NMDOL SAE or applicable funding authority, may at its option and discretion, withhold any or all payments. The NMDOL SAE or applicable funding authority shall notify the contractor/subrecipient in writing of such intent. The NMDOL SAE or applicable funding authority reserves the right to withhold payments until such time as appropriate corrective measures are taken by the subrecipient as stipulated therein; and
- (c) Notwithstanding any other provision of the agreement, it is understood and agreed by the parties hereto that the NMDOL SAE or applicable funding authority may, at its option and discretion, offset any amount withheld or owing to the contractor/subrecipient under this and other contract entered into between the NMDOL SAE or applicable funding authority and the contractor/subrecipient.

### Cash Management

- (a) The contractor/subrecipient shall assure that it will adhere to NMDOL SAE or applicable funding authority procedures (as approved by the NMDOL SAE) regarding cash management practices/procedures; and
- (b) The contractor/subrecipient request for cash draw downs from WIA funds account shall be limited to the cash needed for effective daily program operations and shall be kept at all times within the required cash draw down limitations. The contractor/subrecipient shall keep all WIA funds identifiable and provide accurate accounting records of funds received by the subrecipient for each title or subpart. Funds may be withdrawn by the contractor/subrecipient only for the purpose of making direct payments for allowable costs to be borne by the NMDOL SAE or applicable funding authority within the terms of this agreement, or to reimburse the contractor/subrecipient for such allowable costs.

### Financial Management

- (a) The contractor/subrecipient agrees to maintain records that will provide accurate, current, complete and separate disclosure of all funds received under this agreement and the applicable cost category, (i.e. administration, program) such cost is as required by the SAE or applicable funding authority;

The contractor/subrecipient shall comply with all applicable federal regulations establishing financial management standards for WIA/federally funded programs to the extent that such standards apply to this agreement as determined by the NMDOL SAE or applicable funding authority;

- (b) The contractor/subrecipient shall not deposit funds received under this agreement in any bank accounts if the balance of that account after such deposit would exceed the account's insured or collateralized limit, as specified in 12 USC 1821. Additionally, funds shall be deposited only in institutions that are covered by FSLIC or FDIC;
- (c) The NMDOL SAE or applicable funding authority may make an initial advance to the contractor/subrecipient prior to such insured or collateralized bank account(s) being established subject to this section. No additional advances shall be made until the NMDOL SAE or authorized funding authority has received proof from the subrecipient that such bank account(s) have been insured or collateralized in accordance with this section;
- (d) The contractor/subrecipient shall set up and maintain books of account in accord with procedures established by the NMDOL SAE or applicable funding authority. Exceptions to this clause as appropriate may be granted if the contractor/subrecipient requests such exception in writing justifying/supporting such request. Justification shall include a statement of the methodology the contractor/subrecipient proposes to use to provide a clear audit trail of each financial transaction involving the expenditure of funds received under this agreement. The NMDOL SAE or applicable funding authority will issue such approval in writing;

- (e) The contractor/subrecipient shall maintain accounts in such a way that they are traceable to source documentation of unit transactions, and shall maintain source documentation for all transactions;
- (f) The contractor/subrecipient ensures that the USDOL, NMDOL, and applicable funding authority have the right to access for examination and reproduction of any books and accounts, fiscal reports required by the NMDOL SAE or applicable funding authority, and records of the contractor/subrecipient (and any of its subrecipients), and shall maintain such right of access as a condition for the award of funds;
- (g) The contractor/subrecipient shall establish and maintain systems sufficient to monitor its own records to insure the maintenance of adequate financial and managerial controls conform to federal and state requirements and applicable provisions of this agreement; and
- (h) All financial books of account, ledgers, supporting records, documents and worksheets pertaining to this agreement shall be retained for a period of three (3) years from the date of final payment under the contract/subgrant unless a shorter period is otherwise authorized in writing. Records shall be retained beyond the three year period if audit findings have not been resolved, an independent audit is pending completion, or if requested by the NMDOL SAE or applicable funding authority.

#### Purchase and Maintenance of Property

The contractor/subrecipient shall adhere to all procedures for the purchase and maintenance of property as specified in applicable NMDOL SAE or applicable funding authority property/purchase policy and inventory procedures manuals.

#### Leases

The contractor/subrecipient shall assure that it will adhere to General Services Department (GSD) Rule No. 85-502, and amendments thereto.

Program Income: The subrecipient shall adhere to SAE restrictions pertaining to the generation of income under this agreement. This includes, but is not limited to, income from fees, sales of commodities, rental fees and related sources of income.

- (a) The subrecipient shall not charge a fee for the placement or referral of an individual in or to a training program under this agreement;
- (b) Any income generated/realized in an activity conducted pursuant to this agreement is subject to restrictions imposed in the Act, WIA Regulations or applicable OMB Circular. A subrecipient may retain any program income earned by the subrecipient only if such income is added to the funds committed in the particular WIA grant/subgrant and title under which it was earned, and such income is used for that title's purposes and under the terms and conditions applicable to the use of the grant funds; and

- (c) All records, accounts and reporting of program income are to be maintained in accordance with the requirements of the NMDOL SAE.

#### Closeout Procedure

- (a) The subrecipient shall submit a completed and acceptable closeout package to the NMDOL SAE or applicable funding authority fiscal agent no later than seventy-five (75) calendar days after the conclusion of each program year; and
- (b) Funds advanced under this agreement from the NMDOL SAE or applicable funding authority, either unspent, or otherwise not properly obligated in accordance with policies in the performance of this agreement, shall be refunded to the NMDOL SAE or applicable funding authority within three (3) days from the date of this agreement terminating, unless the subrecipient submits a written request for waiver and is approved by the SAE or applicable funding authority. All non-expendable property and equipment shall be returned to the NMDOL SAE or applicable funding authority immediately.

#### Audits and Inspections

- (a) At any time during the period/term of this agreement, and any time during normal business hours and as often as deemed necessary, the USDOL Employment and Training Administration, the Comptroller General of the United States, and/or any of their duly authorized representatives shall have access to any books, invoices, payrolls, time sheets, documents, papers and records of the subrecipient which are directly pertinent to a specific grant/subgrant program for the purpose of conducting audits, examinations, excerpts, or transcriptions. Audits will be conducted pursuant to applicable auditing standards sets forth in the financial and compliance element of the Standards for Audit or Governmental Organization Programs, activities and functions issued by the Comptroller General of the United States, and applicable state audit provisions. The subrecipient will be held accountable for any audit exceptions incurred;
- (b) The contractor/subrecipient may arrange for an independent audit of all funds received under this agreement in accordance with applicable OMB Circulars by a USDOL certified public accountant or an independent audit firm;
- (c) The applicable funding authority, at the option of the NMDOL SAE may participate in a unified audit program established by the NMDOL SAE to provide an audit of the contractor/subrecipient;
- (d) Contractors/subrecipients shall be responsible for insuring that required independent audits of their program and fiscal operations and those of their subcontractors/subrecipients are performed on a timely scheduled basis;
- (e) The contractor/subrecipient shall assure that it will adhere to all applicable audit and audit resolution guidelines promulgated by the NMDOL SAE; and
- (f) Books and records relating to the contract/subgrant audit shall be maintained by the contractor/subrecipient for a period of three (3) years from date of final payment under the prime contract and by the subcontractor for a period of three

years from date of final payment under the subcontract unless a shorter period is otherwise authorized in writing.

#### Travel

- (a) Travel costs for contractor/subrecipient staff are allowable under this agreement when travel is specifically related to the administration/operation of this agreement and conducted within the contractor's/subrecipient's area of operation as specified in the agreement;
- (b) Out of state or jurisdictional area travel requests shall be approved by the NMDOL SAE or applicable funding authority prior to travel; and
- (c) The NMDOL SAE or applicable funding authority fiscal agent shall reimburse the contractor/subrecipient for travel expenses essential for the operation and administration of the agreement at rates established by the NMDOL SAE or applicable funding authority's preapproval policy. The contractor/subrecipient shall follow applicable policy in computing travel and per diem costs of its employees.

#### Indirect Costs

- (a) Indirect or overhead costs normally shall be charged to administration, except specific costs charged to an overhead or indirect cost pool that can be identified directly with a WIA cost objective/category other than administration may be charged to WIA cost objective/category directly benefited. Contractors/subrecipients shall maintain documentation of such charges; and
- (b) An approved indirect cost rate may be used by the contractor/subrecipient only in determining those costs properly chargeable to the WIA. A copy of the contractor's/subrecipient's interest cost rate agreement shall be made part of this contract/subgrant.

#### Uses of Federal Funds

- (a) Federal funds received by the subrecipient, as a result of this agreement, shall be expended only for purposes permitted under the WIA and as specified in this agreement;
- (b) Interest earned on funds received through this agreement shall be returned to the NMDOL SAE or applicable funding authority upon written request, or shall be expended at the direction of the NMDOL SAE or applicable funding authority;
- (c) Entertainment costs shall not be allowed under this agreement; and
- (d) Funds received under this agreement shall be allocated as allowable costs pursuant to applicable federal regulations.

# PROGRAM STANDARDS AND SPECIAL PROVISIONS

## Performance

As the SAE shall hold the local board/applicable funding authority liable for performance outcomes of its contractors/subrecipient/ service providers, so shall the local board/applicable funding authority hold the contractor/subrecipient liable for performance outcomes and ensure that the subrecipient/service provider comply with all mandated performance measures in accordance the WIA as specified in this agreement.

- (a) The contractor/subrecipient understands and agrees that continuation of funding of this agreement is contingent upon its meeting mandated local performance measures specified in the agreement.

The contractor/subrecipient's performance shall be measured against the program goals, as reflected in the narrative, program planning summary and budget information summary, of this agreement;

Performance below mandated measures constitutes noncompliance with this provision. The NMDOL SAE or applicable funding authority shall notify the contractor/subrecipient in writing of any performance deficiencies or areas of non-compliance and require a corrective action plan with a specified date of completion. It is the responsibility of the contractor/subrecipient to implement corrective action measures as required. This may include requesting (from the NMDOL SAE or applicable funding authority) adjustment or modification of performance goals where allowable and appropriate. Failure to take appropriate corrective action measures shall be cause for termination of this agreement if, after a reasonable period (as negotiated with the NMDOL SAE or applicable funding authority), the performance deficiency(ies) or areas of non-compliance have not been rectified by the subreceptient;

- (b) The contractor/subrecipient understands and agrees that performance under this agreement shall be within the limitations set forth in the Act or the regulations and as amended;
- (c) For any modifications of performance criteria, prior approval must first be requested and obtained in writing from the NMDOL SAE or applicable funding authority in accordance with procedures set forth in this agreement. Such requests must provide ample and reasonable justification for the intended modification;
- (d) The NMDOL SAE or applicable funding authority shall conduct regular performance reviews including scheduling meetings with the contractor/subrecipient to ensure compliance with performance criteria and ensure that corrective action measures have been implemented where required; and

- (e) The NMDOL SAE or applicable funding authority shall take prompt corrective action as necessary, including terminating this agreement where the contractor/subrecipient fails to take appropriate corrective action, or continuously fails to maintain satisfactory performance.

#### Application for Enrollment

The subrecipient assures adherence to applicable state rules or applicable funding authority policies pertaining to the enrollment of participants.

#### Eligibility Determination and Verification Requirements

The contractor/subrecipient assures adherence to state rules or applicable funding authority policies that pertain to determination of and verification of eligibility for enrollment in WIA programs or services.

#### Program Monitoring

As part of its internal control process, the contractor/subrecipient shall conduct periodic monitoring of this agreement and activities thereunder as often as is reasonable and necessary to ensure compliance with the WIA and its regulations, state policy, and the terms and conditions of this agreement.

#### Termination of Participants

The contractor/subrecipient shall immediately terminate any participant found ineligible by either the contractor/subrecipient, the NMDOL SAE or applicable funding authority.

#### Participant Tracking and Record-Keeping

- (a) The contractor/subrecipient shall maintain a participant tracking and data system that will provide reports required by the NMDOL SAE or applicable funding authority. Required data/reports shall be verifiable and accessible to authorized federal and NMDOL SAE or applicable funding authority staff for monitoring, reporting, auditing and evaluation purposes;
- (b) The contractor/subrecipient shall maintain required data/records on each WIA participant as appropriate, including but not limited to proof of citizenship, proof of income (including income computation methodology and source documentation). Where required verification on military selective service registration as applicable, proof of residency, and other criteria as required shall be maintained, with sufficient detail to demonstrate compliance with eligibility criteria set forth by the NMDOL SAE or applicable funding authority;
- (c) The contractor/subrecipient shall be responsible for retention of all records pertinent to this agreement including participant data, financial, statistical, property and supporting documentation for a period of three (3) years from the termination of this agreement, except in the case of unresolved audit finding(s) or pending litigation. In such case, records shall be retained until such audit findings or litigation is resolved; and
- (d) In the event that this agreement is terminated and the contractor/subrecipient is unable to maintain records as required, the contractor/subrecipient is responsible

for transferring such records to the SAE or applicable funding authority in accordance with procedures established by the NMDOL SAE. The NMDOL SAE or applicable funding authority shall then assume responsibility for the maintenance of such records.

### Sanctions

The NMDOL SAE or applicable funding authority may impose sanctions on the contractor/subrecipient for non-compliance with the WIA, regulations, and/or applicable rules and policies or with respect to program performance, reporting/audit requirements, program activities and administration.

## **PAYMENTS AND BENEFITS**

### Earnings and Payments

Where Job Training is being conducted, the contractor/subrecipient certifies to the following:

- (a) Participants will not receive payments for training activities in which the participants fail to participate for good cause;
- (b) Participants enrolled in activities for which wages are authorized under this agreement shall be paid wages at not less than the prevailing minimum wage rate under the Fair Labor Standards Act of 1938, as amended, the applicable minimum wage rate under state or local law, or the prevailing wage for individuals in similar occupations by the same employer whichever is highest;
- (c) Participants enrolled in On-the-Job-Training (OJT) shall be compensated by the employer at the same rates, including periodic increases, as similarly situated employees/trainees, and in accord with applicable law, but in no event less than the higher of the rate reflected in the Fair Labor Standards Act of 1938, as amended, or applicable state or local minimum wage law;
- (d) Reimbursements to employers in compensation for extra-ordinary costs associated with training OJT participants and costs associated with the lower productivity of such participants shall not exceed fifty percent (50%) of wages paid by the employer to the OJT participant; and
- (e) The subrecipient will comply with applicable policies pertaining to participants' payments and earnings while enrolled in a WIA funded job-training program.

### Working Conditions and Benefits

- (a) Conditions of employment and training shall be appropriate and reasonable in regard to the type of work, the geographical region, and the skills of the participant;
- (b) Training and related services will, to the fullest extent possible, be practicable and commensurate with the participant's fullest capabilities and shall lead to unsubsidized employment opportunities that enable the participant to become economically self sufficient;

- (c) Each participant employed in subsidized employment shall be provided benefits and working conditions at the same level and to the same extent as other employees working in a similar occupation for a similar period of time;
- (d) Prior to placement with an employer, participants shall be informed of their benefits, rights and responsibilities for the position in which they are placed;
- (e) Participants will not be required or permitted to work, be trained or receive services in buildings, surroundings or under working conditions which are unsanitary, hazardous or dangerous to their health or safety. Participants employed or trained for inherently dangerous occupations, e.g. fire or law enforcement, etc., shall be assigned to work in accordance with the occupations of employer's safety practices/procedures; and
- (f) Funds under this agreement shall not be used for contributions to any participant retirement plans.

## **FUNDING AND OBLIGATIONS**

### Measure of NMDOL SAE or Applicable Funding Authority Liability

In consideration of full satisfactory performance hereunder, the NMDOL SAE or applicable funding authority, shall pay to the contractor/subrecipient the amount established in this agreement, or any modification/revision thereof costs incurred by the subrecipient for performance under this agreement, subject to the following:

- (a) The NMDOL SAE or applicable funding authority shall not be liable to the contractor/subrecipient for expenditures made in violation of the WIA; its regulations, and any applicable laws or policies;
- (b) The SAE or applicable funding authority shall not be liable to the contractor/subrecipient for expenditures incurred or performance rendered unless such expenditures or performance are strictly in accordance with the terms of this agreement, and any applicable modifications hereto, are signed and agreed to by the NMDOL SAE or applicable funding authority and the contractor/subrecipient;
- (c) It is understood and agreed to by the parties hereto that the funding obligations made by the NMDOL SAE or applicable funding authority under this agreement are contingent upon availability of funds from the USDOL and the State of New Mexico. The contractor/subrecipient agrees not to hold the NMDOL SAE or applicable funding authority liable for the unavailability of funding. In the event that funds will not be available, the NMDOL SAE or applicable funding authority shall, as promptly as possible, notify the contractor/subrecipient in writing;
- (d) The NMDOL SAE or applicable funding authority shall not be liable to the contractor/subrecipient for any expenditures or portions thereof incurred by the contractor/subrecipient which have been reimbursed to, or are obligated to the

contractor/subrecipient by an other source other than the NMDOL SAE or applicable funding authority;

- (e) The NMDOL SAE or applicable funding authority shall not be liable to the subrecipient for expenditures/costs incurred or performance by the contractor/subrecipient prior to official start or termination of this agreement;
- (f) The NMDOL SAE or applicable funding authority shall not be liable for any expenditures incurred by the contractor/subrecipient in the performance of this agreement which have not been billed to the NMDOL SAE or applicable funding authority within ninety (90) days following termination of this agreement; and
- (g) In spite of any other provision of this agreement, the total expenditures and other obligations incurred or made by the contractor/subrecipient hereunder shall not exceed the total amount obligated within this agreement.

#### Recapture of Funds

The contractor/subrecipient shall be liable to the NMDOL SAE or applicable funding authority for all funds allocated or advanced by the NMDOL SAE or applicable funding authority. The contractor/subrecipient shall return to the NMDOL SAE or applicable funding authority all funds unspent or held for a period in excess of that amount allowed in this contract/subgrant. Nothing in this agreement shall relieve the contractor/subrecipient from liability to the NMDOL SAE or applicable funding authority for any amount legally due to the NMDOL SAE or applicable funding authority.

### **ADDITIONAL PROVISIONS**

This Section is reserved for any additional provisions unique to this agreement.