Policy Letter #19

TO: **All Mid-Carolina Workforce Development Service Providers**

FROM: **Samantha Wullenwaber, Director**

SUBJECT: **Procurement and Contracting Policy**

PURPOSE

This policy establishes minimum standards and procedures designed to ensure the proper procurement of and contracting for services. These requirements are intended to ensure the fair and equitable treatment of all parties involved in public purchasing, maximize the value of public funds, and maintain a procurement system characterized by quality and integrity.

Mid-Carolina Workforce Development Board (Mid-Carolina WDB) and subrecipients are required to establish and maintain procurement and contracting policies and procedures to ensure full and open competition. These minimum standards apply to all funding received through the Division of Workforce Solutions (DWS), including funded used to procure property, consultants, or personal services contracts.

BACKGROUND

Local Area Workforce Development Boards (WDBs) and other subrecipients are required to establish and maintain procurement and contracting policies and procedures to ensure full and open competition. These procedures are designed pursuant to the NC Division of Workforce Solutions Subgrant Agreement Section 3.3; 20 CFR Part 652, et al., 29 CFR Part 97.36 Uniform Administrative Requirement; 29 CFR Part 95 Sections 95.40 through 95.48; and Office of Management and Budget (OMB) Uniform Guidance 2 CFR 200.

ACTION

Procurement and contracting is the primary management system for ensuring accountability in the proper use of grant funds and integrity regarding the legitimacy of the result being accomplished in terms of both program objectives and cost-effectiveness.

The nature of employment and training programs requires that flexibility be allowed to effectively respond to circumstances that will vary widely among local workforce board service areas and among the target populations to be served. Procurement and contracting is a major management tool for ensuring that appropriate flexibility does not result in unnecessary or inappropriate relaxation in the administration of funds for program activities.

This policy outlines the requirements and minimum standards for guidelines and procedures governing the solicitation and acquisition of goods and services from external and internal sources. The requirements are based on the procurement and sub-grant management principles defined in the US Office of Management and Budget (OMB) Uniform Guidance 2 CFR 200, the Workforce Innovation and Opportunity Act (WIOA), and other applicable State and Federal regulations.

The Mid-Carolina WDB recognizes that each procurement and contracting process must follow consistent procedures that promote accountability, transparency, and integrity. To uphold these principles, the Mid-Carolina WDB and its staff shall establish clear performance expectations and measurable objectives that address local needs and apply them consistently throughout every stage of the procurement and contracting process.

Procurement
Accountability and integrity are central to the procurement of goods and services. The public ~~is~~ expects procurement activities to be conducted in an environment that is free of undue influence and to provide taxpayers the best value for public funds.

To meet these expectations, the integrity of the procurement process must remain a primary consideration. The major components of the process which are:

- Identifying goods and services are necessary to achieve program objectives;
- Selecting the appropriate procurement method for acquiring the good and/or services;
- Clearly defining the specifications and requirements for the goods and/or services desired; and
- Establishing evaluation criteria and minimum qualifications for evaluating and selecting providers to provide the goods and services; and
- Ensuring full and open competition to obtain the best value for goods and services based on established criteria.

All procurement systems must be consistent with the principles outlined in this section.

A. **General Requirements**
The Mid-Carolina WDB must have written procurement policies and procedures consistent with the requirements described in this section which are also consistent with applicable state and local laws and regulations.

Responsible Service Providers
The Mid-Carolina WDB shall make awards only to responsible entities possessing the ability to perform successfully under the term and conditions of a proposed procurement at a reasonable cost.

Code of Conduct
The Mid-Carolina WDB must maintain a written code of conduct governing the performance of their employees, officers, and agents involved in the award and the administration of contracts. ~~(~~Reference: Policy Letter #17)

Arm's Length Negotiations
All negotiations of a contract for or with potential contractors/service providers must be arm's length negotiations. The definition of an arm's length negotiation is an agreement made by two parties freely and independently of each other, and without special relationship, such as being a relative, having another deal on the side or one party having complete control of the other. It becomes important to determine if an agreement was freely entered into to show that the price, requirements, and other conditions were fair

and real.

Restricting Competition
The Mid-Carolina WDB must prohibit non-competitive pricing practices between firms, organizations, or affiliated companies or organizations.

Consideration of Small, Minority, and Women's (SMW) Businesses and Labor Surplus Suppliers
The Mid-Carolina WDB must provide an opportunity to SMW business organizations and labor surplus suppliers to participate in its procurement process.

Occupational Skills Training
The Mid-Carolina WDB must identify occupations for which there is a demand for training.

Bidders' List
The Mid-Carolina WDB must ensure that a list of persons, firms, or other organizations which are used in acquiring goods and services are current and include sufficient numbers of qualified sources to ensure maximum open and free competition.

Avoidance of Unnecessary or Duplicative Purchases
Procedures must provide for a review of proposed procurements to avoid the purchase of unnecessary or duplicative items and to facilitate the acquisition of goods/services in the most economical manner.

Adequate Administrative and Support Funds
The Mid-Carolina WDB must ensure that sub-recipient contracts include adequate funds necessary for administrative and supportive services. The level of administrative funding to be covered by the agreement should be determined through negotiations. If administrative funds are to be donated, the agreement must so stipulate.

Maintenance of Records
The Mid-Carolina WDB shall maintain records sufficient to detail the significant history of procurement. These shall, at a minimum, include the following:

- Rationale for the method of procurement;
- Selection of contract type;
- Subrecipient selection or rejection;
- The basis for the contract price; and
- The contract development process.

B. **Competitive Procurement Options**

Competitive procurement is the strongly preferred method for procuring goods and services. This section describes the various competitive methods to be considered and the requirements for each method.

Note: The Mid-Carolina WDB is required to use a competitive procurement process to

select providers of the Workforce Innovation and Opportunity Act (WIOA) Youth, Adult, and Dislocated Worker program services, as well as for the operator of the local certified NCWorks Career Center using the WIOA Final Regulations. The Mid-Carolina WDB shall function in a strategic and oversight capacity while maintaining an arm's-length relationship with the day-to-day delivery of services to Career Center customers.

Youth, Adult, and Dislocated Worker Training Services

Section 107(g)(1)(A) of WIOA mandate that the Mid-Carolina WDB shall not provide training services to customers. This requirement is also reiterated in the Final Rule at 679.410(b) that the Mid-Carolina WDB acting as a direct provider of services is not optimal, as the the Mid-Carolina WDB is designed to oversee the one-stop system and its services, not provide them. The Mid-Carolina WDB must competitively procure these training services in compliance with all state and federal regulations, and have a very clear and distinct firewall between the Mid-Carolina WDB and the services delivered to customers; the effective date of this requirement was July 1, 2016. WIOA section 107(g)(1)(B) allows that a waiver of these procurement requirements may be granted under certain conditions, provided that the request is submitted to the Mid-Carolina WDB's Division Planner within 30 days of the failed procurement.

Reference Attachment A, Waiver of Training Prohibition

One-Stop Operator

Requirements for the competitive procurement of one-stop operators are addressed in WIOA Final Rules section 678.605 (a)-(d). That section requires the one-stop operator to be selected through a competitive process; the effective date of this requirement was July 1, 2017. While the Final Rule allows for the possibility of the Mid-Carolina WDB to be the one-stop operator, DWS's position is to reject that, as the Mid-Carolina WDB's role is to provide strategic direction and oversight to service delivery. The Final Rule (CFR 678.615) also allows a one-stop operator to be a service provider. However, the section clarifies that there must be firewalls in place to ensure that the operator is not conducting oversight of itself as a service provider.

Micro-Purchase Option – Threshold ($0 - $9,999)

An acquisition of products or services where the aggregate amount does not exceed $9,999. An exception to the formal procurement method is the case of purchases less than or equal to $9,999 (i.e. micro-purchases) or other lower threshold set by the Mid-Carolina WDB as they deem appropriate for purchases. Purchases below the established threshold may be made without soliciting competitive prices or rate quotations if the price is considered to be reasonable. A reasonable price may be by comparing to a previous purchase, personal knowledge of the item being purchased, or by comparing to similar items being purchased. Records still need to be kept for all purchases regardless of the procurement method used, including micro-purchases. Also, to the extent practicable, micro-purchases must be distributed equitably among qualified suppliers.

Small Purchase Option ($10,000 - $250,000) - A simple and informal competitive process for securing services, supplies, and other property that do not cost more than $10,000 in the aggregate on an annual basis is allowable. For purposes of economy,

responsiveness to needs and administrative efficiency, the Mid-Carolina WDB may consolidate procurements for similar needs (e.g. yearly requirements for office consumables or instruction materials), or break out project requirements into more than one procurement (e.g. separating computer hardware and software) in order to procure the best and most effective items in each category. This option may **not** be used to purchase training services.

The Mid-Carolina WDB must not break out purchase requirements for the sole purpose of staying under the aggregate limit of $10,000 or the administrative entity's limit, if lower. The following requirements must be met and documented:

- ***Price Quotes***
  A minimum of three price quotes is required, which are supported by documentation consisting of product or service catalogs, current price lists, or telephone quotes substantiated by a written record of the price and source providing the quote, which is signed and dated by the staff person who obtained the quotes. When the minimum of three quotes cannot be obtained, the justification for sole-source procurement must be met (see Section C, Non-Competitive Procurement Options).

- ***Basis for Selection***
  For most commodity goods/services, the basis for selection would be the lowest price. If the basis is something other than price, the criteria for selection must be documented (e.g. the need and benefit of the purchase and the relative advantage of the offering from the provider selected).

- ***Formal Document***
  A purchased order, letter of agreement, or contract must be issued. Unless required by local procedures, a bilateral contract is not required. Purchase orders, vouchers, bills, sales slips, or similar record can provide documentation. **Note:** For the purchase of consumable materials under $10,000 per transaction, non-competitive procurement is an option (see Section C, Non-Competitive Procurement Options).

Aggregate Purchase

A purchase of multiple items of the same product. The aggregate purchase costing $**10,000** and over **must** have a review and written approval by DWS before the purchase is completed. The filing is to be submitted to the assigned DWS Financial Monitor via email to DWS_FinanceMonitors@nccommerce.com a minimum of fifteen (15) business days prior to purchase. During the onsite monitoring, the DWS Financial Monitor will review the purchase documentation against the filing submitted to DWS.

Request for Proposal (RFP) Method

An RFP is commonly used in procuring training or services for participants when potentially more than one entity would be submitting offers and program specifications are too broad to compare responses solely on the basis of cost. The solicitation must

clearly specify deliverables and the basis for payment and incorporate a clear and accurate description of the technical requirements for the material, product, or services being procured (including quantities).

Contents of Request for Proposal

To ensure resulting proposals include the information needed to make sound award decision, it is required that the RFP include the following elements, as appropriate to the service being solicited:

- Name and address of the Mid-Carolina WDB's administrative entity.
- Name, address, and phone number of the person(s) to contact regarding the solicitation.
- General description of the sub-grant program, including identification of the applicable federal, state, and local laws and regulations with which the selected subrecipient must comply. [**Note:** At a minimum, the RFP should reference the Workforce Innovation and Opportunity Act; the 2 CFR Part 200 Uniform Guidance, USDOL Regulations; and any appropriate NC Commission policy statement(s) or NC Division on Workforce Solutions operational guidance(s).]
- The population to be served and minimum levels of services to specific target groups.
- An estimate of the number/range of individuals to be served and expected results in each activity.
- Applicable coordination requirements.
- Funding parameters by activity must include a reasonable amount. An RFP with no funding or nominal funding will restrict competition and would violate the prohibition on non-competitive pricing practices under 2 CFR 200.319(a) and 29 CFR 97.36(c)(l)(iii).
- A description of the training and/or services to be provided.
- The period of performance.
- Applicable monitoring and reporting requirements, including, but not limited to, data entry, performance, and financial reporting.
- Other services or requirements (e.g. responsibility for eligibility determination, Mid-Carolina WDB policy on support payments, audit requirements, and work statement requirements) that will affect proper budgeting by the proposer.
- Prohibition against sub-contracting without the Mid-Carolina WDB approval.
- Line-item budget of proposed costs, including any profit to be realized and/or funds to be contributed.
- Documentation to be supplied by the proposer to establish its programmatic and financial capability to perform the work.
- Requirements for preparation and submission of the proposal, due date and time, content and format, number of copies and location/person where the bid should be submitted.
- Process and procedures by which proposals will be evaluated for

competitiveness, including identification of specific criteria that will be used.

- Description of the procedures for responding to bidder inquiries and a schedule for the receipt of proposals including approximate dates for review and award.
- Grievance procedures for contesting the procurement process.
- Affirmative action assurance that the proposer will comply fully with the nondiscrimination and equal opportunity provisions of the Workforce Innovation and Opportunity Act, the Non-traditional Employment for Women Act of 1991, 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, and with all applicable requirement imposed by or pursuant to regulations implementing those laws, including but not limited to, 29 CFR Part 34. The United States has the right to seek judicial enforcement of this assurance.

The Mid-Carolina WDB may choose to include other background and reference information in the solicitation. In organizing the solicitation package, the Mid-Carolina WDB should clearly distinguish information which is a general background from that which is directly applicable to preparing and submitting a competitive proposal.

Publication Requirements and Clarifying Information

The Mid-Carolina WDB must provide adequate public notice of the solicitation prior to the date established for submission. Such notice must include written notification to all organizations on the current, applicable bidders' list and written publication in newspapers(s) of general (i.e. the Mid-Carolina WDB's service area) circulation or posting to an accessible website.

To provide the opportunity for a maximum number of qualified organizations to prepare bids, it is strongly recommended that the sub- recipient issue the public notice a minimum of 30 days prior to the submission date for proposals.

If the Mid-Carolina WDB accepts inquiries, the solicitation should describe the process for receiving/responding to the inquiries. Any comments provided in response to inquiries must be provided to all recipients of the RFP.

Amendments to Solicitations

If a determination is made to amend (expand or restrict) the solicitation, distribution of this information to each person or organization who received an RFP is required.

Evaluating for Competitiveness/Demonstrated Performance

Criteria must be established for evaluating competitiveness and demonstrated performance. At a minimum, the procedures must include:

- Provisions for ensuring the independence of ratings by those involved in the

evaluation process; and
- Provisions for the use of weighted criteria and a standard evaluation worksheet.

In establishing the scoring methodology to evaluate competitiveness, awarding additional points for specific organizations including minority enterprises, women-owned businesses, Community Based Organizations (CBOs), or publicly-funded educational institutions, may only be given to the extent the Mid-Carolina WDB's agency-wide policy allows such additional points in procurement for funding sources other than WIOA.

Selection and Award Procedures
The Mid-Carolina WDB must establish and follow procedures by which proposal evaluation results are prepared, reviewed by the Mid-Carolina WDB, and the extent to which the staff is authorized to award and negotiate resulting contracts.

This process and specific Mid-Carolina WDB authority must be reflected in the Mid-Carolina WDB bylaws, the oversight section of the local Workforce Development Area plan, and/or in the Mid-Carolina WDB's procurement procedures.

Use of Contingency List
If the Mid-Carolina WDB chooses to use a contingency list for proposals which were not selected for immediate award, but to whom contracts may be awarded if additional funds become available, the list must:
- Include only proposals that have an evaluation score which meet or exceeds the minimum level defined for competitiveness.
- Be developed, maintained, and used in accordance with established procedures regarding the priority order for using bidders on the list.

Intention to Bid
This competitive method maintains the integrity of a competitive procurement process by identifying, through a public notice, potential bidders to determine the feasibility of procurement.

Criteria for Use
This procedure is appropriate when there is a high level of uncertainty regarding the number of bids that will be received and whether there will be a sufficient number of bids to justify the development of a solicitation.

Procedural Requirements
To use this method, the Mid-Carolina WDB must complete the steps described below:
- Develop a set of preliminary training/service specifications for which the WDB intends to request bids. The specifications must include the following parameters:
    - Date the proposed solicitation will be issued;
    - Specific type of training/services to be performed;
    - Estimated number of participants and/or available fund or ranges, if preferred;

- Expected period of performance;
- Geographic area to be served;
- Specific target groups to be served, if applicable;
- Type of contract to be awarded; and
- Expected performance.

- Issue a public notification in the same manner as that used for the issuance of RFPs. In addition, issue letters or email notifications to all applicable organizations on the bidders' list, requesting an indication of whether the organization intends to bid on specific training/services which are described in the letter, consistent with the specifications developed in the preceding step. The letter must indicate the date by which a response is to be received.

- If the intention to bid process is used and no interest is received, non- competitive sole source procurement may be used. When one intention to bid response is received, every effort must be made to negotiate desired training/services with that provider. However, if acceptable training/services cannot be negotiated, the Mid-Carolina WDB may use a sole source justification to obtain the training/service. A complete history of this process must be documented in the procurement file.

Note: In the intention to bid process, a second public notice does not have to be completed if the RFP is being distributed in conjunction with an intention to bid process. In this case, the RFP must be distributed to the providers responding to the intention to bid, as well as to any party requesting it.

Limitations
Sole source procurement may not be used if more than one organization indicated its intent to bid. In this case, a solicitation for the training/services advertised must be developed and transmitted to all who responded to the intention to bid.

Request for Quotation/Invitation for Bid (Formal Advertising for Sealed Bids)
Under this method, bids are publicly solicited and a contract is awarded to the responsible proposer whose bid, conforming to all material terms and conditions of the solicitation, is the lowest in price. A fixed-price contract is a preferred method to be used.

Note: Procurement by sealed bids may not be used when securing program or activity-type services.

According to 29 CFR 200.318 – 200.327, all procurement contracts and other transactions between the Mid-Carolina WDB and units of state or local government must be conducted **only** on a **cost reimbursement basis**. There is no provision for profit allowed. (WIOA Section 184(a)(3)(B))

Criteria for Use
This method is appropriate and effective when the Mid-Carolina WDB is capable of

specifying and describing goods or services to be provided at a high level of precision and completeness. The best examples are commodity-type goods/services which are widely available in the marketplace; e.g. computer equipment and software, instructional and testing materials, furniture, or training available to the general public.

Procedural Requirements

The minimum procedural requirements for this method are:

- Prepare a Request for Quotation (RFQ)/Invitation for Bid (IFB). The RFQ/IFB must include full and clear definitions and descriptions of the items to be procured, key performance dimensions or specifications, format for submission of bids, submission deadline, and timeframes.
- Distribute the RFQ/IFB to organizations on established bidders' list and publicly advertise the procurement in a local newspaper with Mid-Carolina WDB area-wide circulation or post to an accessible website, allowing sufficient time prior to the date of the bid opening to permit adequate responses to the solicitation.
- Open all bids publicly at the time and place stated in the RFQ/IFB.
- Complete a cost or price analysis to determine the reasonableness of cost.
- Award a contract to the responsible proposer whose bid represents the lowest price and conforms to all of the specifications in the RFQ/IFB and meets the demonstrated performance criteria.
- Provide written notification to unsuccessful proposers promptly and file documentation accordingly.

Note: The Mid-Carolina WDB can reserve the right to reject any or all bids when there are sound reasons in the best interest of the program. However, the Mid-Carolina WDB must communicate this right in the solicitation.

C. **Non-competitive Procurement Options**

Non-competitive procurement may be necessary for selected situations when the competition is not available. This method should be minimized to the extent practicable, but in every case, it must be justified and documented. Although not required, the Mid-Carolina WDB~~s~~ is encouraged to consult with DWS staff when non-competitive procurement is being considered and the appropriateness of the circumstances is uncertain.

The Uniform Guidance states, at 2 CFR 200.320(c), that procurement by noncompetitive (sole source) proposals is procurement through solicitation of a proposal from only one source which may be used only when one or more of the following circumstance apply:

1. The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold;
2. The item or service is available only from a single source;
3. The public exigency or emergency of the item or service will not permit a delay resulting from competitive solicitation;
4. The federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-federal entity; or

5. After solicitation of a number of sources, competition is determined inadequate, whether for reasons of number or quality of proposals/bids.

D. Additional Procurement Guidelines

Mid-Carolina WDB Agreements

The Mid-Carolina WDB may enter into an agreement or contract with another WDB to pay or share the cost of education, training, placing, or providing supportive services to individuals participating in programs funded by WIOA. Any agreement must be approved by the Mid-Carolina WDB and described in the Mid-Carolina WDB's workforce development plans.

Review Process

Non-competitive procurement must be reviewed for competitiveness and demonstrated performance, not just as competitive procurements. Because of the emergency nature of some non-competitive procurements, the review process may be different since time may be a critical factor with such procurements.

Reasonableness of Cost

A determination of cost or price reasonableness must be completed for each procurement action for which an award is made, *both competitive and non-competitive*, including contract modifications and renewals (unless there is no monetary impact). In making the determinations, the allowability, allocability, appropriateness, and necessity of the proposed levels of projected costs must be considered in relation to the level and scope of services to be provided.

Independent Cost/Price Estimates

Development of independent cost/price estimates is required prior to receiving bids or proposals for all procurements. The estimates should be used for internal guidance in determining cost or price reasonableness and should not be included in the solicitation or provided to outside parties.

Cost Analysis

Cost analysis is required in determining the reasonableness of a line-item budget in a cost-reimbursable contract or through a fixed price contract for specified deliverables in which the price is based on the line-item budget and not on market prices. The **Program Cost Analysis Guide** (Attachment B) should be used in the determination of the reasonableness of cost decisions.

Proposer Certification of Cost Data

When cost analysis is required and there is inadequate competition (e.g. when using a line-item budget to establish a fixed price contract and the deliverables are not available on the open market for price comparison), the proposer 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 the fixed price.

Contracts or modifications negotiated in reliance on such data will provide the Mid-

Carolina WDB a right to a price adjustment if it is later discovered that the subrecipient knowingly submitted data that were not accurate, complete or current as certified (as in discovering through monitoring that the subrecipient has not hired the staff or purchased materials as proposed in the line-item budget on which the fixed price was based).

Price Analysis
A simplified price analysis may be used in lieu of a cost analysis when reasonableness can be established on the basis of comparison of catalog or market prices of commercially available products, services, or training packages sold in substantial quantities to the general public or based on prices set by law or regulation (e.g. tuition prices).

Contract Negotiations
The Mid-Carolina WDB must negotiate with subrecipients/service providers prior to contract execution to agree on work statement elements and verify the necessity of proposed costs in relation to the elements of service. Written documentation of the negotiations and the final outcome must be maintained in the procurement file.

High-risk subrecipients/service providers should be determined prior to negotiations so that concerns can be discussed and potential sanctions established during the negotiation process.

Range of Negotiations
Negotiations must be structured around Mid-Carolina WDB-established priorities, policies, definitions, and parameters included in the solicitation. Negotiation ranges are further defined by the criteria and weights used to evaluate the competitiveness of bids submitted. Negotiations cannot alter the structure of the competitive environment established in the procurement process.

Negotiating Profit/Fees
Profit is defined as the subrecipient's/service provider's return after meeting all WIOA-related operating expenses. It is allowable for for-profit subrecipients/service providers only. Profit may be paid as a lump sum after services are delivered, in the form of a fee as incremental performance benchmarks are achieved or as part of a fixed unit price. In all cases, the earning of profit must be tied to the reasonable and measurable delivery of the contract objectives.

The Mid-Carolina WDB~~s~~ must not permit excess profit. Profit must be negotiated as a separate cot item and cannot be paid as a percentage of the contract cost. To establish a fair and reasonable profit, consideration must be given to the following criteria, which are included in the **Determination of Reasonableness of Profit** Worksheet (Attachment C):

- The complexity of the work to be performed;
- The risk borne by the subrecipient;
- The subrecipient's investment;
- The amount of sub-contracting;
- The quality of the subrecipient's record of past performance;

- Industry profit rates in the surrounding geographical areas for similar work; and
- Market conditions in the surrounding geographical area.

To document that excess profit was not permitted, subrecipient's/service provider's audits must include a profit schedule, and the Mid-Carolina WDB must determine that the profit earned was reasonable in consideration of the work performed.

Determining Business Operation Capability

The Mid-Carolina WDB must verify the business operation capability of each potential service provider. Information required to make this determination may be required with submission of the proposal (if an evaluation factor) or obtained during a pre-award review, but the determination must be made prior to contract execution. Items for consideration include:

- Staffing capabilities;
- Business licenses and/or registrations with appropriate oversight agencies;
- Adequate accounting systems;
- Sufficient bonding and insurance coverage;
- Determining the Absence of Debarment and Suspension. The Mid-Carolina WDB must ensure that the organization is not on any current federal, state, or local "debarment and suspension" list. The sub-recipient must require each prospective bidder to certify that it is not on any federal, state, or local debarment or suspension list. A "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion Lower Tier Covered Transactions" form must be executed and included in all contracts of *$25,000* or more.

Procurement Records

The Mid-Carolina WDB must develop and maintain a record/file of each relevant procurement sufficient to detail the significant history of the procurement and support the procurement decisions made. The record should include the following information as appropriate for the type of procurement:

- Evidence of the Mid-Carolina WDB involvement in the decision-making and planning process;
- A copy of the solicitation package (e.g. RFP/RFQ/IFB/ITB);
- A copy of the public notification;
- Bidders' list to which notices were mailed;
- List of all organizations/entities sent a solicitation package (i.e. RFP/RFQ/IFB/ITB);
- Agenda and minutes of the bidders' conference, if a conference is conducted;
- A copy of each question asked and the answer issued, if applicable;
- Log sheet of bid proposals received, including the date and time;
- A copy of each bid which was received;
- Rating and scoring sheets completed during the evaluation process;
- Business operation capability evaluations;
- Documentation of the rationale for selection and funding of any proposal which did not receive the highest score/ranking in the evaluation process;

- Evidence of the Mid-Carolina WDB approval of the procurement;
- Completed Memo of Negotiations for each sub-recipient contract;
- Completed cost analysis for each selected bidder;
- A copy of any submitted grievance(s) and the resolution of each;
- High-risk determinations and special award/contract conditions, if appropriate; and
- Completed profit analysis, if appropriate.

Contracting

A. **Introduction**

This section identifies the allowable contract instruments which can be used. Each instrument is described in terms of appropriate use and a description of general provisions and specific contract provisions that must be included in contracts.

One of the first considerations in developing a contract is the relationship the Mid-Carolina WDB expects to have with the organization delivering the services. Based on the complexity of the work to be performed, these relationships fall into two categories:

- A contractor is an entity that receives a contract. A contract is for the purpose of obtaining goods and services for the non-federal entity's own use and creates a procurement relationship with the contractor.
- Characteristics indicative of a procurement relationship between the non- federal entity and a contractor are when the contractor:
    1. Provides the goods and services within normal business operations;
    2. Provides similar goods or services to many different purchasers;
    3. Normally operates in a competitive environment;
    4. Provides goods or services that are ancillary to the operation of the federal program; and
    5. Is not subject to compliance requirements of the federal program as a result of the agreement, though similar requirements may apply for other reasons.

Sub-recipient means an entity, usually but not limited to non-Federal entities, that receives a sub-award from a pass-through entity to carry out part of a Federal award, but does not include an individual that is a beneficiary of such award. The Mid-Carolina WDB may also be a recipient of other Federal awards directly from a Federal awarding agency.

Both contractors and sub-recipients are defined as service providers.

B. **Contractor Contracts**

Fixed price contracts must be used with contractors.

Fixed Price Contracts

A fixed price contract is used to purchase generally required goods and services which are sold to the general public during normal business hours at an agreed upon price regardless of the contractor's cost incurred. The appropriate uses of fixed priced contracts are

provided below:

- For the purchases of equipment, supplies, or materials when a purchase order is not appropriate.
- For the purchases of personal services of consultants when the deliverables are specifically defined and priced. Consultants and personal services contracts, costing $10,000 and over, must be filed with the DWS Financial Monitor before the contract is finalized. The filing is to be submitted to DWS a minimum of fifteen (15) business days prior to the execution of the contract.
- During the onsite monitoring, the DWS Financial Monitor will review the contract documentation against the filing submitted to DWS. The filing must be sent to the DWS Financial Monitor via email to DWS_FinanceMonitors@nccommerce.com. The filing submitted to DWS must include:
    1. The cost of the proposed contract;
    2. The starting and ending dates;
    3. The purpose of the contract;
    4. The list whether the procurement is Competitive or Non-competitive; and
    5. The funding source to be used.

  Once the review is complete, the subrecipient will receive a compliance certification letter from DWS.

The contract must identify the specific deliverables and the related price for each deliverable for which payment will be made.

C. Sub-recipient Contracts

Cost Reimbursable Contracts

The Mid-Carolina WDB~~S~~ may use a cost reimbursable contract for any form of procurement. In this type of contract, reimbursements are made to the subrecipient for actual expenses incurred in the provision of goods/services. Under cost reimbursable contracts, the primary risk in achieving a reasonable relationship between expenditures and results fall to the Mid-Carolina WDB in negotiating line costs.

This type of contract is required for procurement transactions between a unit of state or local governments and any other entity organized principally as the administrative entity for the local workforce development board.

Each contract must contain a detailed line-item budget specifying the expense item and estimated amounts for all costs. All costs in the approved budget must be allowable and properly allocated among the cost categories that will benefit. The contract must fully describe the services to be delivered and the invoicing, payment, and procedures including signatory authority for the submission of invoices. Any provisions of flexibility in expenditures among the specific line items must also be described in the contract.

Cost Reimbursable Contracts with Profit

A cost reimbursable contract may include a profit element when an incentive is appropriate to induce a private for-profit subrecipient/services provider to provide WIOA

training or services.

Fixed Price Contracts
The use of a fixed price contract is limited to specific circumstances in which a subrecipient/service provider agrees to deliver specified WIOA services at a negotiated price. These situations might include such services as eligibility determination, assessment, or case management with a detailed work statement, with a unit price established for each deliverable, e.g. number of enrollments, number of assessments, etc.

This type of contract differs from a fixed unit price, performance-based contract only to the extent that it provides for the delivery of a specific service, regardless of participant outcomes. Requirements for establishing and paying the fixed price are the same, except that payment conditions must be based on the delivery of measurable units of service, rather than on participant outcomes.

Hybrid Contracts (Cost Reimbursable with Fixed Price Element)
Hybrid contracts incorporate a combination of cost-reimbursement and fixed price characteristics. In these contracts, some cost items will be separately identified to be reimbursed on actual costs incurred and other cost items will be units identified as a fixed price.

These contracts must be negotiated and executed on the bases of a detailed line-item budget in which the cost items to be reimbursed are separately identified from the fixed price element(s). The requirements applicable to the cost reimbursable and fixed price contracts will apply to each separately identified set of expenses.

Fixed Unit Price/Performance Based Contracts
Fixed unit price/performance-based contracts are allowable for employment and training services as an incentive for subrecipients to perform efficiently and achieve high levels of participant outcomes. The following requirements apply in establishing a fixed unit price and the condition for payments:

- A cost analysis of all cost elements, i.e. line-item costs, must be conducted and documented, and reasonableness of the unit price determined;
- The fixed unit price must be allocated to benefitting cost categories based on the ratios established in the cost price analysis;
- The proposer must certify in writing that cost data are accurate, complete, and current at the time of agreement on price. The awarding agency must retain the right price adjustment if it is discovered that the sub-recipient knowingly submitted data that were not accurate, complete, and current; and
- Payment conditions must include measurable participant outcomes (e.g. quantifiable levels of skill attainment, placement in training-related position, a placement wage requirement, job retention, etc.).

D. **General Contract Provisions for All Contracts**
Except for small purchase for which a purchase order is appropriate, the Mid-Carolina WDB must award a bilaterally executed contract which includes, at a minimum:

- The fixed price and/or estimated costs;
- A description of the scope and extent of work performed or specification of the goods/services to be provided; and
- The period of performance.

Note: There is no requirement that fixed unit price agreements establish minimum or maximum quantity or funding levels to require performance or limit obligations. However, it is strongly recommended that a maximum be included in the agreement to identify obligations and to manage risk.

The Mid-Carolina WDB must include in each contractor and sub-recipient contract the following provisions and must require that the subrecipient include the provisions, or references to them, in any subcontracts:

Remedies
A provision will allow for administrative, contractual, or legal remedies if the subrecipient violates or breaches terms of the contract and which provides for appropriate sanctions and penalties.

Termination
A provision for termination of the contract for cause and for convenience by the awarding agency and for termination because of circumstances beyond the control of the subrecipient. The provision must include an identification of the conditions under which termination actions will be taken, the manner in which actions will be taken, and the basis for settlement.

Modification
A provision defining the conditions under which the contract can be modified, including specification of the conditions by which the contract can be unilaterally modified by the Mid-Carolina WDB,

Assignment
A provision prohibiting the assignment of the contract to another party.

Funds Availability
A provision for withdrawal of funds from the contract as a result of discontinued or more limited funding to the Mid-Carolina WDB from its funding source.

Coordination of Grant Funds
A provision for coordination, documenting, and reporting funds from High Education Act grants (e.g. Pell, Supplemental Educational Opportunity Grant (SEOG)), and other sources that are used in conjunction with WIOA fund on behalf of participants.

Payment Conditions and Delivery Terms
A provision that describes conditions under which payments will be made, the documentation required for invoicing, and the timeframes for submission and payment of

invoices. (Payment conditions depend on the type of contract used.)

Contract Period
The Mid-Carolina may, with sufficient justification, renew an annual contract for two (2) additional years without benefit of competitive procurement, not to exceed a total of three (3) years. Each renewal shall be limited to a one (1) year period. Renewal of an annual contract shall not preclude the contract negotiation requirement or the cost or price analysis process. This requirement applies except in the case of non-competitive procurement under the emergency criterion and unsolicited proposals. If establishing a contract period which crosses program years, contract provisions must address the longer period of performance.

Audit Responsibilities - A provision describing the Mid-Carolina WDB's/service provider's audit responsibilities. In the case of vendors, in lieu of an audit, the right to access to vendor records of program charges and to staff for interviews must be included.

Data/Copyrighting
A notice of WIOA requirements pertaining to rights of data of products developed with the use of WIOA funding. Specifically, the awarding agency, DWS, and the US DOL must have unlimited rights to any data first produced or delivered under the agreement, including agreements which involve the use/development of computer programs/applications, or the maintenance of databases or other computer data processing programs, including the input of data.

There must also be a notice of WIOA requirements pertaining to copyrighting only in contracts that involve the use or development of copyrighted materials.

Reporting Requirements
A description of the Mid-Carolina WDB requirements for reporting data and other information.

Complaints
Information for filing a complaint or grievance.

Records and Retention
A description of the records that must be maintained and the applicable record retention period defined.

E. **Additional Provisions for the Mid-Carolina WDB Contracts**
In addition to the general provisions required for all contracts described above, the following provisions are required for the Mid-Carolina WDB/service provider contracts only:

Adherence to Applicable Laws and Regulations
A provision that the Mid-Carolina WDB/service provider will adhere to all applicable federal, state, and local regulations, laws, and policies, including:

- Certification Regarding Lobbying (29 CFR Part 93)
- Drug-Free Workplace Requirements Certification (29 CFR Part 98)

Use of Program Income
A provision defining the procedures and criteria for the disposition and use of program income earned by the Mid-Carolina WDB, if applicable.

Non-duplication of Services
An assurance that facilities and services are not duplicated through the contract unless it has been established that alternative services or facilities would be more effective or more likely to achieve performance goals.

Equal Opportunity
The Mid-Carolina WDB must include the following equal opportunity provision verbatim and must require that its subrecipients/service providers include the clause in any of their contracts which has, or is expected to have, an aggregate value exceeding $25,000 within a 12-month period:

During the performance of this contract, the service provider agrees as follows:

- *The service provider will comply fully with the nondiscrimination and equal opportunity provisions of the Workforce Innovation and Opportunity Act (WIOA), including the Nontraditional Employment for Women Act of 1991, Title VI of the Civil Right Act of 1964, as amended, Section 504 of the Americans with Disabilities Act of 1990, as amended, the Age of Discrimination Act of 1975, as amended, Title IX of the Education Amendments of 1972, as amended, and with all applicable requirements imposed by or pursuant to regulations implementing those laws, including, but not limited to, 29 CFR Part 34. The United States has the right to seek judicial enforcement of this assurance.*

- *The service provider will not discriminate against any employee or applicant for employment, or program applicant/participant because of race, color, age, religion, sex, disability, national origin, or political affiliation or belief. The subrecipient will take affirmative action to ensure that applicants are employed/selected and that participants and employees are treated during their period of employment/participation without regard to their race, color, age, religion, sex, disability, national origin, political affiliation or belief. Such action must include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or*
- *termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The subrecipient agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of the non- discrimination clause.*

- *The service provider will, in all solicitations or advertisements for employees or participants placed by or on behalf of the subrecipient, state that all qualified applicants will receive consideration for employment without regard to race, color,*

age, religion, sex, disability, national origin, political affiliation or belief.

- *The service provider will permit access to any contract-related books, records, and accounts by the contracting agency, the State of North Carolina, and the US Secretary of Labor for purposes of investigation to ascertain compliance with applicable rules, regulations, and orders.*

- *In the event of the service provider's non-compliance with the non- discrimination clauses of this contract with any such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the service provider may be declared ineligible for further government contracts and such other sanctions may be imposed and remedies invoked as provided by rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.*

Compliance with Contract Work Hours and Safety Standards Act (40 U.S.C. 327-332)
Contracts for the construction and repair of any government building funded by WIOA and whose values exceed $2,500 must include a statement referencing compliance with (c)(3)(iii) of the Contract Work Hours Safety Standards Act. This requirement does not apply to contracts for the purchase of supplies or materials or articles ordinarily available on the open market, or to work where the USDOL assistance is in the form of a loan guarantee or insurance.

Safety
The Mid-Carolina WDB must include in all construction contracts in excess of $2,000 which involves the employment of laborers or mechanics a provision requiring the subrecipient to comply with 29-70.21613 (c)(3). Except in instances where the contract is subject to the Davis-Bacon Act, the following provision must be included:

> *The Mid-Carolina WDB shall not require a laborer or mechanic employed in the performance of the contract to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to health and safety.*

Compliance with Copeland Anti-kickback Act (40 U.S.C. 276c and 18 U.S.C. 874)
Contracts in excess of $2,000 for construction, completion, or repair of public buildings, public works, or building work financed in whole or in part by federal funds, must include the provision prescribed in 29 CFR 5.5 (a)(5), requiring compliance with the Copeland Act. The Copeland Act prohibits illegal deductions or kickbacks of wages to which employees are otherwise entitled. The Mid-Carolina WDB must report all suspected or reported violations to the State.

Certification Regarding Lobbying
Executed contracts with a value in excess of $100,000 must include a provision that prohibits the use of federally appropriated funds for lobbying the Executive or Legislative branches of the Federal Government in connecting with a specific contract, grant, or loan. The Mid-Carolina WDB must ensure that the subrecipient completes and signs a "Certification Regarding Lobbying" form so indicating. The provision must also specify that the contractor must complete a "Disclosure of Lobbying Activities" form for any and

all lobbying activities which are supported by other than federally appropriated funds.

Buy American Notice Requirement
In the case of any equipment or product that may be authorized to be purchased with financial assistance provided using funds available under WIOA, it is the sense of the Congress that entities receiving assistance should, in expending assistance, purchase only American-made equipment and products, as required by the Buy American Act (41 USC 10a et seq.). ~~(~~Reference WIOA Section 502- Buy American Requirements~~)~~

Salary and Bonus Limitations
None of the funds appropriated under the heading 'Employment and Training' in the appropriation statute(s) may be used by a recipient or sub-recipient of such funds to pay the salary and bonuses of an individual, either as direct costs or indirect costs, at a rate in excess of Executive Schedule Level II pay cap (as published annually by OPM). This limitation shall not apply to vendors providing goods and services as defined in OMB Uniform Guidance. Where states are recipients of such funds, states may establish a lower limit for salaries and bonuses of those receiving salaries and bonuses from sub-recipients of such funds, taking into account factors including the relative cost-of-living in the state, the compensation levels for comparable state or local government employees, and the size of the organizations that administer federal programs involved including Employment & Training Administration programs. ~~(~~Reference Public Law 113-76~~,~~ (Division H, Title I, Section 105) and USDOL Training and Employment Guidance Letter (TEGL) Number 10-24 for further clarification. TEGL 10-24 is available at: TEGL 10-24 | U.S. Department of Labor.

Intellectual Property Rights
The Federal Government reserves a paid-up, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for federal purposes:

i. the copyright in all products developed under the grant, including a sub-grant or contract under the grant or sub-grant; and
ii. ii) any rights of copyright to which the grantee, sub-grantee, or a subrecipient purchases ownership under an award (including, but not limited to, curricula, training models, technical assistance products, and any related materials).

Such uses include, but are not limited to, the right to modify and distribute products worldwide by any means, electronically or otherwise. Federal funds may not be used to pay any royalty or license fee for use of a copyrighted work, or the cost of acquiring by purchase copyright in a work, where the U.S. Department of Labor has a license or rights of free use in such work. If revenues are generated through selling products developed with grant funds, including intellectual property, these revenues are program income. Program income is added to the grant and must be expended for allowable grant activities.

If applicable, the following needs to be on all products developed in whole or in part with grant funds:

This workforce product was funded by a grant by the U.S. Department of Labor's

Employment and Training Administration. The product was created by the grantee and does not necessarily reflect the official position of the U.S. Department of Labor. The Department of Labor makes no guarantees, warranties, or assurances of any kind, express or implied, with respect to such information, including any information on linked sites and including, but not limited to, the accuracy of the information or its completeness, timeliness, usefulness, adequacy, continued availability, or ownership. This product is copyrighted by the institution that created it. Internal use by an organization and/or personal use by an individual for non-commercial purposes inadmissible. All other uses require the prior authorization of the copyright owner.

Veterans' Priority Provisions

This program, funded by the U.S. Department of Labor, is subject to the priority of service requirements of 38 USC 4215 and 20 CFR Part 1010. Section 4215 of Title 38 requires that priority of service be provided to veterans and spouses of certain service members and veterans for the receipt of employment, training, and placement services. TEGL No. 10-09 is available at TRAINING AND EMPLOYMENT GUIDANCE LETTER No. 10-09 | U.S. Department of Labor.

F. **The Mid-Carolina WDB Work Statement Requirements**

The following elements are required in contract work statements with subrecipients/service providers who will provide participant training, and in other contract work statements as appropriate, to the services to be provided or the work to be performed. Other contract requirements may be added at the discretion of the Mid-Carolina WDB.

Training Activities

A description of the type and duration of the training activity including, if applicable, length of training cycles and the approximate number of participants per cycle.

Other Training and Support Activities

A description of other specific services and activities to be provided such as assessment, the administration of specific test instruments, individual service strategy completion, counseling, job development, placement, work experience, support payments, follow-up, and their relationship to the training activities.

Placement Targets/Wages

Occupational target considered as training-related placements, as well as the related placement wage for each target. Wages should reflect the prevailing local wage for the occupation, based on local or regional surveys.

Participant Completion Definitions

A description of the skill levels to be acquired and the method(s) for measuring attainment.

Program Entry Requirements

A description of the minimum skill levels required for entry into the program. Any educational requirement should reflect the minimum skills needed to successfully complete training. Occupational skill requirements should reflect an absence of skills necessary for entry in the occupation of training. The method to be used to assess the skills must be included.

Target Population
A description of the participants to be served in the program by number, key demographic, or target group characteristics.

Staffing/Management Plan
A description of each job title and primary responsibilities, number of staff per job title and percent of time committed for each position to the contract. This breakout may be included in the statement of work or as the backup to the line item budget. It is recommended that an organizational chart and related job descriptions/qualifications of the individuals in the WIOA funded positions be attached to the contract to verify the adequacy and abilities of the staff to deliver quality services and provide effective monitoring/oversight of performance.

Program Performance
The planned number of eligible individuals must be identified (by group, if applicable) who are to be enrolled, complete training, and meet performance outcome/retention criteria.

Facilities
A description of the facilities and location to be used during the training/contract period.

Equipment
An itemized listing of the equipment (e.g. computers, etc.) to be used in the program in accordance with the requirements of training.

Training Supplies and Materials
An itemized listing of training supplies and materials (e.g. work tools, work books, supplied, etc.) to be used in class-sized programs, in accordance with the requirements of the curriculum and the number of participant slots.

Implementation Schedule
The period of performance and any requirement related to minimum start-up and completion dates for individual training cycles.

Sub-contracts
Any third parties to whom any part of the contract will be subcontracted must be identified and their responsibilities defined. All applicable work statement items will flow to the sub-contract contract, with the sole exemption being the On-the-Job Training employers.

Coordination

A description of coordination arrangements with other organizations which will contribute funds or provide services on behalf of program participants. This description should correlate to a statement of shared/contributed costs in the budget section.

Note: When payments are tied to performance, the work statement elements must be consistent with payment conditions stated in the contract.

G. **Timely Contract Execution/Use of Pre-agreement Letters**
As a standard operating procedure, sub-grant funds are to be obligated and disbursed to subrecipients in accordance with a fully-executed contract and/or sub-contract. When the risks associated with having a fully-executed contract are outweighed by the need to provide services, the use of a pre-agreement letter should be used to clarify expectations until a fully-executed contract is finalized. Such costs are allowable only to the extent that they will be incurred after beginning of the contract period. The letter should be executed by the Mid-Carolina WDB prior to program start-up. At a minimum, the letter should contain the following information:

- A general description of the service to be provided;
- The negotiated line-item budget for the project;
- The period of the proposed contract;
- A statement indicating that a fully-executed contract will be in place within a specified period (e.g. 60 days)
- A statement indicating that no money will be exchanged between the parties until the contract is executed; and
- Names, titles, and signatures of the individuals for both entities planning to enter the proposed contract and agreeing to terms outlined regarding negotiated contract costs.

H. **Contract Administration and Records**
The Mid-Carolina WDB~~s~~ must maintain a system for contract administration to ensure that subrecipients/service providers and other suppliers comply with the terms, conditions, and applicable performance requirements of contracts or purchase orders and to ensure adequate and timely completion of all transactions.

I. **Monitoring**
The Mid-Carolina WDB~~s~~ must maintain a system for contract monitoring (both programmatic and fiscal) to ensure that subrecipients/service providers comply with the performance requirements and provisions of the contracts.

J. **Contract Files**
The Mid-Carolina WDB~~s~~ must maintain a file on each executed contract sufficient to document the record of the contract, performance against the contract and payments made. The file should include the following elements:

- Executed contract and modifications;
- Cost/price analysis for each modification or documentation as to why it was not required;
- Official correspondence;

- Memos to file.

K. **Property Control**
The Mid-Carolina WDBs must develop procedures and maintain controls for property acquisition, utilization, maintenance, and disposition. A physical inventory of all property costing $500 or more per unit and having a useful life of one year or more must be performed at least once a year.

REFERENCES
CPS 02-2022, Change 1: Procurement and Contracting Policy
CPS 02-2026: Selection Processes for Service Providers and One-Stop Operators
CPS 02-2025 Financial Management Policy for Workforce Innovation and Opportunity Act Title 1
OG 08-2026: NCWorks Partner Infrastructure Funding Agreement
North Carolina General Statutes (N.C.G.S.)

ATTACHMENTS
Attachment A: Waiver of Training Prohibition
Attachment B: Cost Analysis Guide
Attachment C: Cost Analysis and Determination of Reasonableness of Profit Worksheet

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