

Workforce Development Agency, State of Michigan (WDASOM)
Policy Issuance (PI): 12-29

Date: March 5, 2013

To: Michigan Works! Agency (MWA) Directors

From: Mike Wurminger, Director, Office of Audit & Financial Compliance
SIGNED

Subject: Procurement

Programs Affected: All programs and grants administered by Workforce Development Agency (WDA).

Rescissions: Office of Workforce Development PI 04-03, issued February 27, 2004

References: Title 2 in the Code of Federal Regulation (CFR) Part 180 – Office of Management and Budget (OMB) Guidelines to Agencies on Government-wide Debarment and Suspension

Workforce Investment Act of 1998

U.S. Department of Labor, Employment and Training Administration, One-Stop Comprehensive Financial Management Technical Assistance Guide

Federal Cost Principles

2 CFR Part 220 – Cost Principles for Educational Institutions (research, development, training, and other sponsored work performed by colleges and universities) [Formerly OMB Circular A-21]

2 CFR Part 225 – Cost Principles for State, Local, and Indian Tribal Governments [Formerly OMB Circular A-87]

2 CFR Part 230 – Cost Principles for Non-Profit Organizations [Formerly OMB Circular A-122]

48 CFR Part 31 – Federal Acquisition Regulation, Contract Cost Principles and Procedures [Commercial Organizations]



Workforce Development Agency, State of Michigan

Office of Audit & Financial Compliance

Victor Office Center, 3rd Floor | 201 North Washington Square | Lansing, Michigan 48913
www.michigan.gov | (517) 373-8293 | TTY (888) 605-6722 | FAX (517) 373-9313

Federal Uniform Administrative Requirements

2 CFR Part 215 – Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations (including Commercial Organizations and other organizations as adopted by the federal awarding agency, such as, 29 CFR Part 95 and 45 CFR Part 74) [Formerly OMB Circular A-110]

OMB Circular A-102 – Grants and Cooperative Agreements with State and Local Governments

Common Rule – Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (as adopted by the federal awarding agency, such as, 29 CFR Part 97 and 45 CFR Part 92)

Background: This policy establishes WDA requirements and highlights federal requirements for procurements. The information provided in this policy issuance is intended to aid grantees and subgrantees in administering WDA funded formula grants and, as applicable, other WDA grants. It is not intended to unduly supplant or replace federal or state regulations and requirements contained in applicable federal and state statutes. If in any instance the use of this policy issuance appears to be in conflict with the rights and authorities given to WDA under the regulations, such conflict must be resolved in favor of the applicable federal or state regulation.

Policy: All procurements made in whole or in part with funds administered by WDA shall be conducted in a manner that provides full and open competition.

Grantees and subgrantees shall establish, maintain, and follow written procurement standards and procedures that are in compliance with all applicable local, state, and federal laws and regulations.

I. Simplified Acquisition Threshold

Unless otherwise prescribed by the specific grant or funding source, the WDA simplified acquisition threshold for procurements made in whole or in part with funds administered by WDA is set at \$100,000. Grantees and subgrantees may establish a lower simplified acquisition threshold.

II. Capital Assets and Capital Improvements

Procurement of capital assets (e.g., equipment, buildings, and land) and capital improvements (cost of improvements to capital assets that materially increase their value or useful life) require special treatment.

A. Buildings and Land

With limited exceptions, the purchase or construction of buildings and the purchase of land is prohibited under federal grants. Therefore, regardless of the amount, prior WDA approval is required for all procurements (including capital leases) for the construction or purchase of buildings and land that is to be made in whole or in part with funds administered by WDA.

B. Equipment and Capital Improvements

1. Formula Grants

Under formula grants awarded to state and administered by WDA, the procurement of all equipment, capital improvements, and other capital expenditures in excess of the WDA simplified acquisition threshold require prior WDA approval.

2. Discretionary Grants

Discretionary grants and other non-formula grants administered by WDA may have lower thresholds for which prior WDA and/or federal awarding agency approval is required. Lacking specific guidance, approval from the federal awarding agency is required for capital expenditures, including equipment, of \$5,000 or more.

C. Approval Requests

It is incumbent upon the grantee or subgrantee making the procurement to follow the applicable approval requirements under the grant in which the procurement is made. All necessary approvals must be obtained and documented prior to initiating the purchase.

1. WDA approval requests shall contain:

- a. How the item benefits the program(s) for which it is being purchased.
- b. An independent estimate of the expected cost/price of the item.
- c. A copy of the solicitation that will be used for the procurement.
- d. Bidder's list and how the solicitation will be publicized.

2. Submit WDA approval requests to:

Christine Quinn, Director
Workforce Development Agency
Victor Office Center, 5th Floor
201 N. Washington Square
Lansing, Michigan 48913

III. Procurement Methods

- A. Before determining which procurement method is appropriate for the identified need, grantees and subgrantees are to consider:
1. The total value of the procurement. For example:
 - a. A two-year contract at \$40,000 per year with the option for a third year is a procurement valued at \$120,000.
 - b. An item's cost is \$50,000, but delivery, set-up, and other ancillary charges necessary for the purchase are another \$10,000. The total value of the procurement is \$60,000.
 - c. The procurement value of computers, phone systems, network devices, etc. will include the cost of application and system software to make the items usable for the purpose in which it is being purchased.
 2. Procurements cannot be separated into multiple processes or purchases unless it is documented that the multiple processes resulted in a more economical purchase (i.e., saved money).
 3. Rebates, trade-in amounts, sale proceeds, etc. may be used to reduce the cost of the new purchase.
- B. There are four approved methods of procurement:

1. Small Purchase

This is a relatively informal method used primarily to procure standardized goods and services that do not cost more than the WDA simplified acquisition threshold.

The small purchase method is not appropriate for all procurements that do not cost more than the WDA simplified acquisition threshold. It is only appropriate when price is the overriding factor and may be easily quoted and compared, delivery is standardized, and performance outcomes are not dependent upon the content of the goods or services being procured.

When small purchase procedures are used, price or rate comparisons from an adequate (more than one) number of qualified sources must be obtained. The price quotes must be viable, in that the grantee or subgrantee must be able to purchase the item for the quoted price.

Quotes in excess of the WDA simplified purchase threshold are not usable quotes in meeting the requirements of this method. If an adequate number of quotes cannot be obtain under the WDA simplified purchase threshold, this method cannot be used.

If this method is used to consolidate, into a single process, the procurement of frequently needed standardized items (e.g., office supplies, clothing supportive services) the time period cannot exceed five years and the total costs during the time period cannot exceed the WDA simplified acquisition threshold. If actual costs exceed the dollar threshold originally procured, a new procurement process must be conducted. Example: A \$30,000 procurement was done to cover office supplies for two years. Sixteen months into the procurement \$30,000 has been spent on office supplies. Having reached the value of the original procurement a new procurement process for office supplies must be conducted at 16 months, rather than the two years originally planned.

2. Sealed Bids

Under sealed bid procedures, bids are publicly solicited, and the procurement is awarded to the lowest bidder, resulting in a fixed-price (either lump sum or unit price) contract. This method is typically used for procurements with complex technical specifications such as information technology acquisitions.

- a. In order for this process to be feasible, all of the following conditions must be met:
 - i. A complete, adequate, and realistic specification or purchase description is available and used in the solicitation.
 - ii. Two or more responsible bidders are willing and able to compete effectively for the business.
 - iii. The procurement may be made principally on the basis of price through a firm fixed-price contract.
- b. If sealed bids are used, all of the following requirements apply:

- i. An independent estimate of the cost/price prior is made prior to receiving bids.
- ii. The Invitation for Bid (IFB) is publicly advertised and bids are solicited from an adequate (more than one) number of known suppliers.
- iii. The IFB contains all specifications and pertinent attachments and defines the items or services to be procured in sufficient detail for the bidders to respond properly.
- iv. All bids are publicly opened.
- v. A firm fixed-price contract is awarded to the lowest responsive and responsible bidder.
- vi. Any or all bids may be rejected if there is a sound documented reason.

3. Competitive Proposals

Competitive proposals are used when there is more than one prospective bidder, the lowest price is not necessarily the determining factor for award, and either a fixed-price or cost-reimbursement agreement will be awarded. The competitive proposal is appropriate when evaluation factors focus on approach, program design and outcomes, innovation, coordination, and experience in addition to price.

The following requirements apply to competitive proposals:

- a. An independent estimate of the cost/price prior to receiving proposals.
- b. Request for proposals must be publicized. They must contain the specifications that provide a common understanding for the proposed goods or services and identify all the evaluation factors and their relative importance or weight in selection of successful bidders.
- c. Proposals will be solicited from an adequate (more than one) number of qualified sources.
- d. A method for conducting technical evaluations of proposals and selection of awardees is in place.

- e. Awards are made to selected bidders whose proposals are most advantageous to the program based on price and the other evaluation factors.

4. Noncompetitive Proposals

Procurement by noncompetitive proposals is the solicitation of a proposal from only a single source, or the solicitation of a proposal from more than one source and competition is determined to be inadequate to fulfill the requirements of the funding agency. This method may only be used when the procurement is not practical using one of the three other methods discussed above, and one of the following conditions apply:

- a. The item is available from only one source.
- b. A public emergency for the requirement will not permit a delay resulting from a competitive solicitation. A public emergency must meet one of the following criteria:
 - i. Necessary for the imminent protection of public health.
 - ii. Emergency repairs to protect life or property.
 - iii. Unforeseen crisis requiring immediate procurement.
- c. The federal awarding agency authorizes the specific noncompetitive procurement.
- d. After solicitation of a number of sources competition is determined inadequate. This usually occurs after a competitive process has been used and there are insufficient bidders.

As with all procurement transactions, a cost analysis is required for all noncompetitive procurement actions. This entails verification of the proposed cost data and evaluation of the specific elements of costs and profits, including comparison with the independent price estimate.

Noncompetitive procurements are considered a last resort option and used only when there is a documented reason for sole source selection. Grantees and subgrantees are required to ensure the procurement process is open and fair, therefore caution is advised when using noncompetitive procurements.

IV. Partner Organizations

If two or more organizations plan to share responsibility for carrying out the main work of the grant, then those organizations may partner as co-grantees or co-subgrantees with one organization being designated as the “lead”. However, each organization will be equally responsible for performance and financial obligations. This relationship need not result in a new legal entity being formed, but some form of a contractual relationship must be documented and submitted that reflects the roles and responsibilities of the parties.

In the alternative, if one organization will be responsible for the overall work of the grant, with other organizations performing separate and distinct functions to serve or aid that principal effort, then such other organizations must be procured by the grantee as subcontractors or subgrantees.

Subcontractors and subgrantees cannot be identified in a bid or proposal unless they were competitively procured for the intended purpose prior to the submission of the bid/proposal. To do so would jeopardize full and open competition. If a bid or proposal is submitted that identifies subcontractors or subgrantees, the grantee must ensure that the identified parties were properly procured or the bid/proposal must be rejected.

V. Third-Party Procurements

The Michigan Legislature has authorized two programs in which eligible grantees and subgrantees may utilize third-party procurements:

A. MiDEAL

Authorized under Public Act 431 of 1984, Section 263, MiDEAL allows local units of government in Michigan to use state procured contracts to buy goods and services. For more information please refer to the MiDEAL website at <http://www.michigan.gov/localgov>.

B. REMC Association of Michigan

Authorized under Public Act 451 of 1976, Section 380.671, the REMC Statewide \$AVE (Schools Aggregated Volume in Education) Bid Project allows the following to purchase a variety of supplies, equipment, software, computer, and networking items through its procured vendors.

1. Public, non-public and private schools (K-12, preschools)

2. Community Colleges, Universities and Colleges
3. Public Libraries and Museums (local, county, state)
4. State, County, and Local Government Agencies

For more information on the REMC \$AVE Bid Project please refer to its website at <http://remcbids.org/>.

Grantees and subgrantees are cautioned against using other third-party procurements in place of their own procurement processes. To do so will require the grantee or subgrantee to ensure and document the procurement met their need and all federal, state, and local procurement standards were followed. This includes being able to document competition was not limited in the original procurement and subsequent purchases. Simply using the same vendor or product a third-party procured will not meet these requirements.

VI. Leases and Rent

A. Leases

Leases are subject to procurement standards and lease payments (i.e., rent) must be allowable under the applicable federal cost principles.

A new lease must be procured when an existing lease expires and all of its options have been exhausted. It cannot be renewed, extended, or otherwise amended without the support of an appropriate procurement process. For example: A three year lease with the option of two, one year extensions. If both option years are sequentially picked-up, the lease will need to be procured again in five years. In addition, a cost/price analysis (i.e., market analysis) for each option year entered into is needed to ensure that the rental costs are still competitive.

At a minimum, leases shall contain:

1. The agency or organization name and business address of the lessee and the lessor.
2. The signatures of authorized representatives of both the lessee and the lessor.
3. The effective dates of the agreement (beginning and ending dates).
4. Specific items covered by the agreement, i.e., address of the facility, quantity and description of equipment items, quantity and

type of motor vehicles, specific maintenance, insurance, and operating costs which are included or excluded.

5. Conditions for termination of the lease without penalty costs or fees should federal funds become unavailable.

B. Rent

Rent must be reasonable in light of such factors as comparable property, market conditions, and value. If there is idle capacity or idle facilities, rent must be reassessed to ensure its allowability under federal programs.

The amount of rent that can be charged to federal programs is further limited under less-than-arm's-length and capital leases.

C. Less-Than-Arm's-Length Leases

When one party to the lease agreement is able to control or substantially influence the actions of the other party, a less-than-arm's-length lease exists. Examples include rent paid to the same governmental unit, school district, or non-profit; or rent paid to other entities that are under common control through common officers, directors, immediate family members.

In these cases rent is allowable up to the actual cost for maintenance, taxes, insurance, and either (1) depreciation, or (2) a use allowance. If the building is fully depreciated, then a use allowance is required. The use allowance rate cannot exceed 2 percent of the acquisition cost. [2 CFR 225, Appendix B, Items 11. and 37.c.; 2 CFR 230, Appendix B, Items 11. and 43.c.]

D. Capital Leases

Rental costs for leases that are required to be treated as capital leases under Generally Accepted Accounting Principles are allowable only up to the amount that would have been allowed had the grantee or subgrantee purchased the property on the date the lease agreement was executed. With limited exceptions, capital leases for land, buildings, and other real property are prohibited under federal programs administered by WDA. If permitted under the federal program, prior WDA approval is required. [2 CFR 225, Appendix B, Items 11. and 37.d.; 2 CFR 230, Appendix B, Items 11. and 43.d.]

VII. Documentation

Documentation must be maintained for each step in the procurement process; including independent estimates, cost/price analysis, solicitations, bids, proposals, justifications, profit, bidder lists, approvals, contracts, etc.

At a minimum, all procurement records must be retained for three years after final disposition of the item procured. If any litigation, audit, or claim, is initiated involving the item procured during the three year retention period, the procurement records must be retained until resolution of all issues and final action is taken or until the end of the three year retention period; whichever is later. For example, the retention period for procurement documentation on a five year lease starts at the end of the lease, not from the date the lease was procured.

VIII. Standards of Conduct

- A. A written standards of conduct is required for employees engaged in the award and administration of agreements that is in compliance with the federal uniform administration requirements and 20 CFR 667.200(a)(4); which addresses conflict of interest provisions for state and local area grantee board members. [*Common Rule .36(b)(3); 2 CFR Part 215.42*]
- B. At a minimum the written standards of conduct will be disseminated to all appropriate parties engaged in the award and administration of agreements and shall address:
1. No employee, officer or agent of the grantee or subgrantee (including, as applicable, Workforce Development Board members or Youth Council members), shall participate in selection, or in the award or administration of a contract supported by federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when any of the following has a financial or other interest in the firm selected for the award:
 - a. The employee, officer, or agent.
 - b. Any member of his or her immediate family.
 - c. His or her partner.
 - d. An organization, which employs, or is about to employ, any of the above.
 2. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary

value from contractors, potential contractors, or parties to sub-agreements. The grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value.

3. Penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employee, or agents, or by contractors or their agents.

IX. Procurement Processes and Practices

Processes shall include, as required:

- A. A review of proposed procurements to avoid purchase of unnecessary or duplicative items. *[Common Rule .36(b)(4); 2 CFR Part 215.44(a)(1)]*
- B. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other analysis to determine the most economical approach. *[Common Rule .36(b)(4); 2 CFR Part 215.44(a)(2)]*
- C. A process to ensure that awards are made to only responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. *[Common Rule .36(b)(8); 2 CFR Part 215.44(d)]*
- D. A process to maintain records sufficient to detail the significant history of all procurements. At a minimum, these records will include rationale for the method of procurement, selection of contract type, contractor selection or rejection criteria, and the basis for the contract price, including the independent estimate of price. *[Common Rule .36(b)(9); 2 CFR Part 215.46]*
- E. A settlement process. The Entity is responsible for the settlement of all contractual and administrative issues arising out of the procurements. These include, but are not limited to, source evaluation, protests, disputes, and claims. Violations of law must be referred to the appropriate local, State, or Federal agency having jurisdiction. *[Common Rule .36(b)(11); 2 CFR Part 215.41]*
- F. Protest procedures to handle and resolve disputes relating to both the award and administration of their contracts. Protest procedures must have available remedies and the information related to the protests must, in all instances, be disclosed to the awarding agency. *[Common Rule .36(b)(12); 2 CFR Part 215.41]*

- G. A process to ensure all pre-qualified lists of persons, firms, etc. that are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. The process will not preclude potential bidders from qualifying during the solicitation period. *[Common Rule .36(c)(4)]*
- H. Whenever possible, procurement practices should encourage the utilization of small businesses, minority-owned firms, women's business enterprises, labor surplus area firms, and take all necessary affirmative steps to assure their utilization. *[Common Rule .36(e); 2 CFR Part 215.44(b)]*

X. Solicitations

Solicitations will include, as applicable:

- A. A clear and accurate description of the technical requirements for the goods or services to be procured. The description shall not contain features that restrict competition. *[Common Rule .36(c)(3)(i); 2 CFR Part 215.44(a)(3)(i)]*
- B. All the requirements the bidders must fulfill and all other factors to be used in evaluating bids or proposals. *[Common Rule .36(c)(3)(ii); 2 CFR Part 215.44(a)(3)(ii)]*
- C. A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards. *[Common Rule .36(c)(3)(i); 2 CFR Part 215.44(a)(3)(iii)]*
- D. The specific features of "brand name or equal" descriptions that bidders are required to meet when such items are included in the solicitations. *[Common Rule .36(c)(3)(i); 2 CFR Part 215.44(a)(3)(iv)]*
- E. The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement. *[2 CFR Part 215.44(a)(3)(v)]*
- F. Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient. *[2 CFR Part 215.44(a)(3)(vi)]*

XI. Competition

All procurement transactions are to be conducted in a manner that will provide full and open competition. The following are a few examples that would restrict competition. *[Common Rule .36(c)(1)&(2); 2 CFR Part 215.43]*

- A. Placing unreasonable or overly restrictive requirements on firms in order for them to qualify to do business.
- B. Requiring unnecessary experience and excessive bonding.
- C. Noncompetitive pricing practices between firms or between affiliated companies.
- D. Noncompetitive awards to consultants that are on retainer contracts.
- E. Awards that would create organizational conflicts of interest.
- F. Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance of other relevant requirements of the procurement.
- G. Any arbitrary action in the procurement process.
- H. In-state or local geographical preference in the evaluation of bids or proposals.

XII. Contract Cost and Price

- A. Prior to the contract award a cost or price analysis is required for every procurement action, including contract modifications. [*Common Rule .36(f)(1); 2 CFR Part 215.45*]

1. Cost Analysis – is the element-by-element review and evaluation of each item of cost and related information presented in the bidder’s proposal. It is necessary when the bidder is required to submit the elements of the estimated costs, or when adequate price competition is lacking.

A certification should be submitted by the bidder stating that the cost data is accurate, complete, and current at the time of agreement. Awards or modifications negotiated in reliance on such data should provide a right to a price adjustment in cases where the awardee submitted data that was not accurate, complete, or current as certified. The price adjustment shall at a minimum exclude any significant sum by which the price was increased by the suspect data.

2. Price Analysis – is the process of examining and evaluating a price without looking at individual elements of cost. The focus is the “bottom-line” price. The method and degree of the analysis depends on the particular procurement and pricing situation. Price

analysis shall be used when price reasonableness can be established on the basis of the catalog or market price of a product or is based on prices set by law or regulation.

- B. Cost reimbursement is the preferred method of contracting and is the only method allowable for contracts with state and local governments (e.g., cities, counties, school districts) when reimbursements are made in whole or in part with Workforce Investment Act (WIA) funding. *[WIA of 1998 Section 184(a)(3)(B); 20 CFR 667.200(a)(3)]*
- C. Cost plus a percentage of cost contracts are prohibited under all federal funding sources. *[Common Rule .36(f)(4); 2 CFR Part 215.44(c)]*
- D. Under fixed-price and performance-based contracts, governmental and non-profit agencies must treat and report any revenue in excess of its actual costs as program income. Therefore, it is recommended that a provision is included in this type of contract that limits the recovery of costs to the lesser of actual costs incurred or the cumulative increments earned for less than full performance. *[Common Rule .25; 2 CFR Part 215.24]*

XIII. Profit

- A. Profit is an allowable cost payable only to commercial organizations. The profit must be separately negotiated from the contract's price and cannot be based on a percentage of costs budgeted or expended in the agreement. Profit must be tied to performance and cannot be paid as a guaranteed fixed fee. Profit is only earned when performance outcomes are attained and can only be disbursed when those outcomes are validated. Profit cannot be paid in addition to performance payments or incentive payments. *[Common Rule .36(f)(2); 48 CFR Part 15.404-4]*
- B. Profit rates can be negotiated up to a maximum of ten percent. Profit rates can only be applied against the commercial organization's personnel-related costs (i.e., salaries, wages, and benefits) for the staff that contributed to the organization's unique capacity to manage and achieve the performance of the contract. *[48 CFR Part 15.404-4(c)(4)(i)]*
- C. Factors to consider when negotiating profit are the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work. *[Common Rule .36(f)(2); 48 CFR Part 15.404-4(d)]*
- D. Under cost reimbursement contracts there is little to no risk to the commercial organization, therefore profit is usually not warranted.

XIV. Debarment and Suspension

- A. Grantees and subgrantees must not make any award or permit any award to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs. *[Common Rule .35; 2 CFR Part 215.13]*
- B. Verification can be accomplished by: *[2 CFR Part 180.300]*
 - 1. Checking if the party is excluded. This is the preferred method as it does not rely on self-certification by the party. Excluded parties are listed on the federal System for Award Management (SAM) website at www.sam.gov.
 - 2. Collecting a certification from the party. (See 48 CFR Part 52.209-5 for an example)
 - 3. Adding a clause to the contract or grant.

XV. Contract Administration

Grantees and subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts. *[Common Rule .36(b)(2); 2 CFR Part 215.47]*

XVI. Contract Provisions

- A. There must be sufficient language in the contract to protect the federal funds and the interests of the grantee or subgrantee. Provisions should ensure compliance with all applicable federal, state, and local laws.
- B. At a minimum, contract clauses must be sufficient to address the following as applicable to the contract and the type of grantee or subgrantee:
 - 1. For all contracts in excess of the WDA simplified acquisition threshold: administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms. The contract clause must also provide for sanctions or penalties, as appropriate. *[Common Rule .36(i)(1); 2 CFR Part 215.48(a)]*
 - 2. Termination for cause and for convenience by the awarding agency, including the process for exercising the clause and any basis for settlement. *[Common Rule .36(i)(2) – Contracts in excess of \$10,000; 2 CFR Part 215.48(b) in excess of the simplified acquisition threshold]*

3. Compliance with Executive Order 11246 of September 24, 1965, entitled “Equal Employment Opportunity,” as amended by Executive Order 11375 of October 13, 1967, and as supplemented in 41 CFR Part 60. *[Common Rule .36(i)(3) – Construction contracts in excess of \$10,000; 2 CFR Part 215 Appendix A 1. – All contracts]*
4. Contracts for construction or repair shall comply with the Copeland “Anti-Kickback” Act (18 U.S.C. 874) as supplemented in 29 CFR Part 3. *[Common Rule .36(i)(4) – All amounts; 2 CFR Part 215 Appendix A.2 – In excess of \$2,000]*
5. All construction contracts in excess of \$2,000 shall comply with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by 29 CFR Part 5. *[Common Rule .36(i)(5); 2 CFR Part 215 Appendix A.3]*
6. All contracts in excess of \$2,500 that involve employment of mechanics or laborers and all construction contracts in excess of \$2,000 shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by 29 CFR Part 5. *[Common Rule .36(i)(6); 2 CFR Part 215 Appendix A.4]*
7. Notice of awarding agency requirements and regulations pertaining to reporting. *[Common Rule .36(i)(7)]*
8. Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery of invention, which arises or is developed in the course of or under such contract. *[Common Rule .36(i)(8); 2 CFR Part 215 Appendix A.5]*
9. Awarding agency requirements and regulations pertaining to copyrights and rights in data. *[Common Rule .36(i)(9)]*
10. Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions. *[Common Rule .36(i)(10); 2 CFR Part 215.48(d)]*
11. Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed. *[Common Rule .36(i)(11)]*
12. Contracts in excess of \$100,000 shall comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 18579h00, section 508 of the Clean

Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15).
[Common Rule .36(i)(12); 2 CFR Part 215 Appendix A.6]

13. Mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy and Conservations Act (Pub. L. 94-163, 89 Stat. 871). [Common Rule .36(i)(13)]
14. For construction or facility improvement contracts or subcontracts in excess of the WDA simplified acquisition threshold: the necessary bonding obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR Part 223 “Surety Companies Doing Business with the United States.”
[Common Rule .36(h); 2 CFR Part 215.48(c)]

Minimum Bonding Requirements:

- a. A bid guarantee from each bidder equivalent to five percent of the bid price.
 - b. A performance bond on the part of the contractor for 100 percent of the contract price.
 - c. A payment bond on the part of the contract for 100 percent of the contract price.
15. A provision for contractors who apply or bid for an award of \$100,000 or more to comply with the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). [2 CFR Part 215 Appendix A.7]
 16. A provision requiring compliance with the debarment and suspension requirements of Executive Orders 12549 and 12689. [2 CFR Part 215 Appendix A.8]
 17. Other requirements as defined by the federal awarding agency. These include provisions related to program and administrative regulations, such as:
 - a. The awardee agrees to comply with the required financial and compliance audits in accordance with the Single Audit Act of 1984.
 - b. Salary and Bonus Limitations: Under Public Law 109-234 and Public Law 111-8, Section 111, none of the funds appropriated in Public Law 111-5 or prior Acts under the heading “Employment and Training” that are available for expenditure

on or after June 15, 2006, shall 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 Level II. The salary and bonus limitation does not apply to vendors providing goods and services as defined in OMB Circular A-133. *[Training and Employment Guidance Letter No. 5-06]*

Action: Grantees and subgrantees shall establish, maintain, and follow written procurement standards and procedures that are in compliance with all applicable local, state, and federal laws and regulations.

Inquiries: Questions regarding this policy issuance should be directed to the Office of Audit & Financial Compliance at (517) 373-8293.

The information contained in this policy issuance will be made available in alternative format (large type, audio tape, etc.) upon request to this office.

Expiration Date: Continuing.

MW:cjb