



Ohio Administrative Code Rule 5101:9-4-07.1 Procurement methods.

Effective: April 19, 2021

(A) General purpose

Unless applicable local requirements are more restrictive, county family services agencies (CFSAs) and local Workforce Innovation and Opportunity Act (WIOA) areas shall use one of the following procurement methods when acquiring goods and/ or services paid for in whole or part with federal funds.

(B) Informal procurement methods

Informal procurement methods are used when the value of the purchase does not exceed the lower of the local small purchase threshold or the federal small purchase threshold as set by 48 C.F.R. subpart 2.1.

(1) Micro-purchases

(a) CFSAs or local WIOA areas may acquire by micro-purchase any supplies or services in which the aggregate dollar amount does not exceed the micro-purchase threshold as set by the federal acquisition regulation at 48 C.F.R. subpart 2.1.

(b) Micro purchases may be awarded without soliciting quotes for acquisitions of supplies or services if:

(i) Price is considered reasonable based on research, experience, purchase history or other information and documents; and

(ii) To the extent practical, micro-purchases are distributed equitably among qualified suppliers.

(2) Small purchase procedure



(a) For purchases where price is the overriding factor and which involve standardized products or services (e.g., office equipment and supplies) and where the aggregate acquisition costs are greater than the micro-purchase threshold but do not exceed the lower of the local small purchase threshold or the federal small purchase threshold as set by 48 C.F.R. subpart 2.1 for purchases involving U.S. department of health and human services (HHS) and U.S. department of labor (DOL) funds and U.S. department of agriculture (USDA) food and nutrition service funds (FNS), CFSAs and local WIOA areas may use relatively simple and informal procurement methods by obtaining price or rate quotations from an adequate number of qualified sources but not less than three sources, if available.

(b) For purchases where price is not the overriding factor but are relatively simple and straight forward purchases that are greater than the micro-purchase threshold and do not exceed the lower of the local small purchase threshold or the federal small purchase threshold as set by 48 C.F.R. subpart 2.1, and where relative quality and performance must be evaluated (e.g., consultant services), CFSAs and local WIOA areas shall seek proposals from an adequate number of qualified sources, but not less than three sources if available. CFSAs and local WIOA areas shall maintain a list of qualified sources from which to solicit proposals, and the list shall include qualified sources that have expressed an interest in providing products or services to the CFSA or local WIOA area. The CFSA and local WIOA area must identify and document the evaluation factors included in the solicitation and their relative importance. Awards will be made to the responsible source whose proposal is most advantageous to the program, with price and other factors considered.

(C) Formal procurement methods

Formal procurement methods are required when the value of the purchase exceeds the lower of the local small purchase threshold or the federal small purchase threshold as set by 48 C.F.R. subpart 2.1

(1) Sealed bids

(a) CFSAs and local WIOA areas shall use sealed bids (formal advertising) under the following conditions:

(i) A complete, adequate, and realistic specification or purchase description is available;



(ii) Two or more responsible bidders are willing and able to compete effectively for the business; and

(iii) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(b) CFSAs and local WIOA areas shall adhere to the following procedural requirements in administering sealed bids (formal advertising):

(i) The invitation to bid (ITB) will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;

(ii) The ITB which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;

(iii) All bids will be publicly opened at the time and place prescribed in the ITB;

(iv) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation costs and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of ; and

(v) Any or all bids may be rejected if there is a sound documented reason.

(2) Proposals

(a) CFSAs and local WIOA areas shall use proposals when the conditions are not appropriate for the use of sealed bids, micro-purchases, small purchases, or non-competitive procurement. The technique of proposals is normally conducted with more than one source submitting an offer, either a fixed price or cost reimbursement type contract is awarded, and the following conditions are met:

(i) The complex and technical nature of the procurement cannot be described in bid specifications;



and

(ii) It is logical to award a contract on factors other than price.

Evaluation factors other than price can only be used when they are clearly explained in the purchasing agency's request for proposal (RFP).

(b) CFSAs and local WIOA areas shall comply with the following procedural requirements in administering competitive proposal procurements, commensurate with the scope and complexity of the acquisition:

(i) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical.

(ii) Proposals will be solicited from an adequate number of qualified offerors.

(iii) CFSAs and local WIOA areas will have a written method for conducting technical evaluations of the proposals received and for selecting awardees. A technical evaluation is a review to verify that the technical requirements contained in the request for proposals are met.

(iv) Awards will be made to the responsible offeror whose proposal is most advantageous to the program, with price and other factors considered.

(v) CFSAs and local WIOA areas may use proposal procedures for qualification based procurement of architectural/engineering (A/E) professional services whereby competitor's qualifications are evaluated and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services through A/E firms that are a potential source to perform the proposed effort.

If after solicitation of an adequate number of qualified offerors, CFSAs or local WIOA areas determine that competition is inadequate resulting in a failed formal competitive procurement, the



CFASAs or local WIOA area has completed a legitimate and reasonable competitive procurement, subject to documenting the process as described in paragraph (C)(3)(b) of this rule.

If CFASAs or local WIOA areas determine that competition is inadequate resulting in a failed procurement after solicitation of an adequate number of qualified offerors, then CFASAs or local WIOA areas must document the process described in paragraph (C)(3)(b) of this rule to support that a legitimate and reasonable competitive procurement has transpired.

(3) Noncompetitive procurement

(a) CFASAs and local WIOA areas may use noncompetitive procurement only when the award of a contract is infeasible under the micro-purchasing threshold, and one of the following conditions applies:

(i) The item is available only from a sole source. This type of noncompetitive proposal means only one source exists for the goods or services being procured; an example being the procurement of proprietary products. Business justification or long-term relationships with a particular contractor does not constitute justification as sole source procurement. Sole source procurements do not require prior approval.

(ii) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation. This type of noncompetitive procurement is mainly reserved for emergencies caused by natural disasters. Public exigency or emergency procurements do not require prior approval.

(iii) The federal awarding agency or ODJFS authorizes noncompetitive procurements in response to a written request.

(iv) The purchases are for equipment or services where the prices are established by law for technical equipment requiring standardization and interchangeability of parts with existing equipment.

(v) A failed formal competitive procurement as described in paragraph (C)(2)(b)(v) of this rule.



(b) Noncompetitive procurement requires the mutual discussion and arrangement of terms of a transaction or agreement for the purpose of arriving at a common understanding of contract essentials such as technical requirements, schedules, prices, and terms. From any noncompetitive procurement in excess of the small purchase threshold, written documentation must be included in the records to show why a noncompetitive procurement was used . Such justification must include the following items:

(i) Copies of the public advertisements;

(ii) A list of providers contacted;

(iii) Copies of all letters received from prospective bidders or respondents, including those indicating a bidder's lack of interest in competing for the contract;

(iv) Any other materials which would justify the agency's use of noncompetitive procurement methods; and

(v) Cost analysis, the projections of the data, and the evaluation of the specific elements of costs and profit. Independent estimates must be made before receiving bids or proposals.

(D) Special circumstances

(1) State purchasing contracts

(a) If the county is a member of the department of administrative services cooperative purchase program, purchases may be made by CFSAs and local WIOA areas under the competitively bid state purchasing contracts. Because the state completes competitive procurement, purchases made through state purchasing contracts excluding master maintenance agreements (MMA) meet all of the requirements contained in section 125.04 of the Revised Code are not subject to the requirements contained in paragraphs (C)(1) to (C)(2) of this rule.

(b) An agency cannot access state purchasing contracts when competitive bidding by the county has already occurred unless the state purchasing contract has the same terms, conditions, and



specifications at a lower price.

(c) A CFSA or local WIOA area may also use the price contained in a state purchasing contract in other competitive selection procedures performed pursuant to this rule.

(2) State term schedules

State purchasing contracts are not to be confused with state term schedules, which are non-competitive schedules of products or services and shall be treated only as a pre-qualified vendor contractor list. State term schedules do not represent competitive procurement. Purchases made by a CFSA or local WIOA area using the state term schedule to obtain a pre-qualified vendor list must follow the requirements contained in paragraphs (C)(1) to (C)(2) of this rule.

(3) Foster care maintenance purchases and child welfare service purchases

(a) Purchases for foster care placement services that include public and private agency foster homes, group homes, children's residential centers, residential parenting facilities, adoption services and other services performed by a public children services agency (PCSA) in the discharge of its duties under Chapter 5153. of the Revised Code, including services on behalf of a child in the custody of a PCSA and purchases made pursuant to rule 5101:2-47-23.1 of the Administrative Code, will generally be considered to follow the small purchase procedures or noncompetitive proposals of this rule when they are purchased for individually specific cases. The need for these purchases shall be documented by the PCSA in records that support each case.

(b) When purchasing case specific services other than foster care placement and adoption services, and where there are contractors in close proximity providing substantially similar services, and who are equally qualified to meet the service need presented; the PCSA shall document that the process of awarding the contract was done in a manner that demonstrates that a cost comparison of the contractors has been performed.

(c) A PCSA may not establish an exclusive or preferential relationship with foster care maintenance providers, adoption services providers, or other service contractors to the exclusion of all other foster care maintenance providers, adoption service providers or service contractors, with the exception of



those relationships resulting from the competitive means as described in this rule. In addition to following such procurement procedures, the PCSA shall also document the reasons for seeking an exclusive relationship with the foster care maintenance provider, adoption service provider, or service vendor. Such documentation shall include a demonstration that the foster care maintenance provider, adoption service provider, or service contractor is qualified to meet the needs of all children and families who will receive services from the provider or vendor, and provide assurances that no child or family will be denied services due to the exclusive nature of the relationship with the foster care maintenance provider, adoption service provider, or service contractor.

(d) Procurements of goods and services made by a PCSA shall conform to the requirements of this rule. This includes the purchase of child welfare services that benefit children and families that are not purchased in response to a specific case need. Examples of such services include, but are not limited to, outreach and recruitment campaigns; promotional items; training for staff, adoptive families, and foster parents; master contracts for home studies from third parties; visitation center leases; child abuse prevention campaigns; and foster parent liability insurance master contracts.