



## Ohio Administrative Code

### Rule 5101:9-4-07 Procurement and contract requirements.

Effective: April 19, 2025

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#### (A) General purpose and applicability

(1) County family services agencies (CFSAs) and Workforce Innovation and Opportunity Act (WIOA) local areas may enter into procurement contracts to acquire goods and services for the administration of a federal program. Where applicable, WIOA local areas shall include workforce development boards (WDB). CFSAs and WIOA local areas follow procurement standards established in 2 C.F.R. 200.318 to 200.327. Specific methods of procurement are outlined in rule 5101:9-4-07.1 of the Administrative Code.

(2) Subgrant agreements as outlined in rule 5101:9-4-88 of the Administrative Code funded in whole or in part with federal funds do not represent acquisitions and are not subject to the requirements contained in this rule provided that such relationships are documented between the entities. CFSAs and WIOA local areas shall inform sub-grantees of applicable procurement requirements in any subgrant or other applicable types of agreements used in awarding the grant.

(3) Unless applicable local requirements are more restrictive, acquisitions that are made in whole or in part with federal funds, including instances where state or county funds are used as a match for state/federal funds, CFSAs and WIOA local areas shall procure pursuant to rule 5101:9-4-02 of the Administrative Code and the federal requirements set forth in this rule.

(a) Pursuant to division (D) of section 307.86 of the Revised Code, acquisitions made under section 329.04 of the Revised Code are exempt from state competitive bidding requirements. However, acquisitions made under section 307.86 of the Revised Code are not exempt from applicable federal requirements, including those referenced in this rule.

(b) Acquisitions made with federal block grants authorized by the Omnibus Budget Reconciliation Act of 1981 and the "Child Care and Development Block Grant of 1990," as amended, are excluded from the requirements of this rule. However, CFSAs and WIOA local areas shall adhere to



requirements contained in rule 5101:9-4-02 of the Administrative Code and local standards of acquisition.

(B) General procurement requirements

The following are general procedural requirements applicable to all procurements unless deemed exempt:

(1) Contract cost and price analysis

(a) CFSAs and WIOA local areas shall perform a cost or price analysis in connection with every procurement action in excess of either the local small purchase threshold or, the simplified acquisition threshold (as defined in 2 C.F.R. 200.1) including contract modification. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point the CFSA and WIOA local area must make independent estimates before receiving bids or proposals. The CFSA and WIOA local area must maintain written documentation to support any procurement action based on cost or price analysis.

(i) A cost analysis shall be performed when the bidder is required to submit elements of the estimated cost, (e.g., under professional consulting and architectural engineering services contracts.) A cost analysis is the verification of proposed cost data and projections of the data, and the evaluation of the specific elements of costs and profits. A cost analysis will be necessary when adequate price competition is lacking. A cost analysis will also be necessary for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of catalog or market price of commercial product sold in substantial quantities to the general public; or based on prices set by law or regulation.

(ii) A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

(b) Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with federal cost principles. CFSA's and WIOA local areas may reference their own cost principles that comply



with the applicable federal cost principles.

(c) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

## (2) Competition

All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of 45 C.F.R. 75.328 (U.S. department of health and human services (HHS)), and 2 C.F.R. 200.319 and 200.320 (U.S. department of labor (DOL) and U.S. department of agriculture (USDA) food and nutrition service (FNS)). In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids must be excluded from competing on those procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

(a) Placing unreasonable requirements on firms for them to qualify to do business;

(b) Requiring unnecessary experience and excessive bonding;

(c) Non-competitive pricing practices between firms or between affiliated companies;

(d) Non-competitive contracts to consultants that are on retainer contracts;

(e) 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 procurement; and

(g) Any arbitrary action in the procurement process.

## (3) Selection procedures



All CFSAs and WIOA local areas shall have written selection procedures for all procurement transactions.

(a) Written procedures must ensure that all solicitations:

(i) Incorporate a clear and accurate description of the technical requirements for the property, equipment or services being procured. The description may include a statement of the qualitative nature of the property, equipment or service being procured. When necessary, the description must provide minimum essential characteristics and standards to which the property, equipment or service must conform . Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to clearly and accurately describe the technical requirements, a "brand name or equivalent" description of features may be used to provide procurement requirements . The specific features of the named brand must be clearly stated.

(ii) Such description shall not, in competitive procurements, contain features which unduly restrict competition.

(iii) Identify all requirements that the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(b) CFSAs and WIOA local areas shall ensure that all pre-qualified lists of persons, firms or products, used in procurement transactions, are current and include enough qualified sources to ensure maximum open competition. When establishing or amending prequalified lists, the CFSAs and WIOA local areas must consider objective factors that evaluate price and cost to maximize competition. CFSAs and WIOA local areas must not preclude potential bidders from qualifying during the solicitation period.

(c) To the extent consistent with established practices and legal requirements applicable, CFSAs and WIOA local areas are not prohibited from developing written procedures for procurement transactions that incorporate a scoring mechanism that rewards bidders that commit to specific numbers and types of U.S. jobs, minimum compensation, benefits, on-the-job-training for employees making work products or providing services on a contract, and other worker protections. This also does not prohibit CFSAs or WIOA local areas from making inquiries of bidders about these subjects



and assessing the responses. Any scoring mechanism must be consistent with the U.S. Constitution, applicable federal statutes and regulations, and the terms and conditions of the federal award.

(d) CFSA and WIOA local area procedures must avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, the CFSA and WIOA local area shall conduct an analysis of lease versus purchase alternatives and any other appropriate analysis to determine the most economical approach.

(4) Non-profit agencies for persons with severe disabilities

(a) If permissible under federal law for procurements involving federal funds, then before determining which method of procurement to use, CFSAs and WIOA local areas shall determine whether a product or service is on the procurement list for products and services provided by persons with severe disabilities as described in section 4115.33 of the Revised Code. If the product or service is on the procurement list and is available within the period required by that agency, the agency must procure the product or service at the price established by the state use committee from a qualified nonprofit agency.

(b) If the provision of the product or service cannot be made in either the time period required or in the amount specified by the agency, the CFSAs and WIOA local areas may pursue a method of procurement outlined in rule 5101:9-4-07.1 of the Administrative Code.

(5) Small businesses, minority businesses, women's business enterprises, veteran-owned businesses and labor surplus area firms

When possible, the CFSA and WIOA local area should ensure that small businesses, minority businesses, women's business enterprises, veteran-owned businesses and labor surplus area firms, are considered when they are potential resources for supplies, equipment, construction and services as established in 2 C.F.R. Part 200.321. Such consideration means:

(a) These business types are included on solicitation lists and assuring that those business types are solicited whenever they are deemed eligible as potential resources.



- (b) Dividing procurement transactions into separate procurements to permit maximum participation by these business types.
- (c) Establishing delivery schedules to encourage participation by these business types, where the requirement permits. For example, the percentage of an order to be delivered by a given date of each month.
- (d) Utilizing organizations as the small business administration, and the minority business development agency of the U.S. department of commerce.
- (e) Requiring a contractor under a federal award to apply paragraphs (B)(5)(a) to (B)(5)(d) of this rule to subcontracts.
- (6) The board of county commissioners, by resolution, may adopt the model system of preferences for products mined or produced in Ohio and for Ohio-based contractors (formerly "Buy-Ohio"). The resolution shall specify the class or classes of contracts to which the system of preferences apply. While the system of preferences is in effect, no county officer or employee shall award a contract in violation of the preference system.
- (7) The CFSA and WIOA local areas should, to the greatest extent practicable and consistent with law, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this paragraph shall be included in all subawards, contracts and purchase orders under federal awards.
- (8) CFSAs and WIOA local areas are prohibited from obligating or expending loan or grant funds to procure, obtain, or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is:
- (a) Telecommunications equipment produced by "Huawei Technologies Company" or "ZTE



Corporation" (or any subsidiary or affiliate of such entities);

(b) Video surveillance and telecommunications equipment used for security of government facilities or public safety produced by "Hytera Communications Corporation" or "Hangzhou Hikvision Digital Technology Company" or "Dahua Technology Company" or any subsidiary of such entities;

(c) Telecommunications or video surveillance services provided by such entities or using such equipment;

(d) Telecommunications or video surveillance equipment or services produced or provided by an entity that the secretary of defense, in consultation with the director of the national intelligence or the director of the federal bureau of investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

(9) Debarment and suspension

(a) CFSA and WIOA local area procedures shall include requirements to ensure that no contracts are entered into with or purchases made from a person or entity which is debarred or suspended or is otherwise from receiving or participating in federal awards programs under executive orders 12549 and 12689, debarment and suspension, and other applicable regulations and statutes, including 2 C.F.R. parts 180, 200, and 417, 29 C.F.R. part 98, and 45 C.F.R. part 75.

(b) CFSA and WIOA local area procedures shall also include provisions that purchases will be made in conformance with section 9.24 of the Revised Code which prohibits the awarding of contracts, paid for in whole or in part with state funds, to a person against whom a finding for recovery has been issued by the auditor of state on or after January 1, 2001, if the finding for recovery is unresolved.

(10) Monitoring

CFSAs and WIOA local areas shall maintain a contract administration system that ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.



(C) 2 C.F.R. general contract requirements

CFSA and WIOA local area contracts shall contain the following provisions which are fully detailed and outlined in appendix II to part 200.

(1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. This applies to all contracts in excess of the either local small purchase threshold or the simplified acquisition threshold (as set by 48 C.F.R. subpart 2.1).

(2) Termination for cause and for convenience by the CFSA and local WIOA area including the manner by which it will be affected and the basis for settlement. This applies to all contracts in excess of ten thousand dollars.

(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 DOL regulations (41 C.F.R. chapter 60). This applies to all federally assisted construction contracts awarded in excess of ten thousand dollars by CFSAs and local WIOA areas and their contractors or sub-grantees.

(4) Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 3145) as supplemented by DOL regulations (29 C.F.R. part 3). This applies to all construction contracts in excess of two thousand dollars.

(5) Compliance with the Davis-Bacon Act as amended (40 U.S.C. 3141-3148) as supplemented by DOL regulations (29 C.F.R. part 5). This applies to all construction contracts in excess of two thousand dollars.

(6) Compliance with sections 3702 and 3704 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708) as supplemented by DOL regulations (29 C.F.R. part 5). This applies to all contracts in excess of one hundred thousand dollars that involve employment of mechanics or laborers.





(7) Compliance with "Rights to Inventions" clause 37 C.F.R. part 401 pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

(8) Compliance with all applicable standards, orders, or requirements issued pursuant to the Clean Air Act as amended (42 U.S.C. 7401-7671) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). This is applicable with any contract in excess of one hundred fifty thousand dollars).

(9) Certification that a contractor has not and will not use federal funds to pay for any lobbying activities as defined in the "Byrd Anti-lobbying Amendment" (31 U.S.C. 1352). Certification is required for contractors that apply or bid for an award of one hundred thousand dollars or more.

(10) Compliance with 2 C.F.R. 200.216 on the prohibition of certain telecommunications and video surveillance equipment or services.

(11) Compliance with 2 C.F.R. 200.322 for domestic preferences for procurements.

(D) ODJFS general contract requirements

(1) The Ohio department of job and family services (ODJFS), the CFSA and the WIOA local area, the federal grantor agency, the comptroller general of the United States, or any of their duly authorized representatives shall have access 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.

(2) Financial, programmatic, statistical, and recipient records and supporting documents shall be retained for a minimum of three years after the submittal of the final expenditure report for the grant or as otherwise provided by any minimum retention requirements specified by applicable state or federal law. If any litigation, claim, negotiation, audit or other action involving the records has started before the expiration of the three-year period, the records shall be retained until the completion of the action and resolution of all issues that arise from it, or until the end of the regular



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three-year period, whichever is later.