

November 14, 2006

NEMO WIB ISSUANCE #03-01, Change 1

TO: All Program Operators

FROM: Sharon Hays, Executive Director

SUBJECT: Procurement Guidelines

PURPOSE: To provide updated Procurement Guidelines for the Workforce Investment Act Programs.

SUBSTANCE: Attached are the NEMO Workforce Investment Board's Procurement Guidelines.

ACTION: The Procurement Guidelines are to be used by sub-contractors effective immediately.

CONTACT: If you have any questions, please contact Sharon Hays or Casie Baumann at (660) 327-5125.

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Sharon Hays, Executive Director

# **Procurement Guidelines**

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## Purchase Order System

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# Procurement System Guidelines

This document establishes acceptable principles and practices for purchasing systems and procurement guidelines administered by the NEMO Workforce Investment Board. These principles apply to funds provided to subcontractor(s) and their lower tier subcontractor(s), if applicable, under the Workforce Investment Act (WIA) and any additional funds provided through any contract agreement(s) with the NEMO Workforce Investment Board.

The NEMO Workforce Investment Board (NEMO WIB) and its subcontractor(s) shall have written procedures for purchasing and/or procurement transactions. These procedures shall ensure that all solicitations incorporate a clear and accurate description of the technical requirements for the material, product or service to be procured.

The description for competitive procurement must identify all requirements, which the offerer must fulfill, and a description of the basic procedure to be used in evaluating bids or proposals. The description shall not contain features that unduly restrict competition.

The NEMO Workforce Investment Board and its subcontractor(s) shall maintain a written code of Standards of Conduct governing the performance of persons engaged in the award and administration of contracts and sub-grants. To the extent permitted by state or local law or regulation, such standards of conduct will provide penalties, sanctions or other disciplinary actions for violations of such standards by the awarding agency's officers, employees or agents or by contractors of their agents. See Exhibit C.

The NEMO Workforce Investment Board and its subcontractor(s) shall be responsible for the efficient and effective administration of procurement systems. The contractor and subcontractor assume the responsibility for seeing that program funds have been expended for procurement of goods and services consistent with program objectives. Each agency will have the primary responsibility for employing those organizational and management techniques that will result in the proper and efficient administration of the procurement system. The basic premise of governmental procurement is that maximum open and fair competition is essential to acquire/lease the best supplies or services at the lowest cost to tax payers. "Purchase" shall mean the acquisition of any item, service, system of items, or groups of similar items. Grouping of items for purchase is encouraged to assist the program of discounts and competitive bidding. "Acquisition" shall include leases, rentals, purchases, or lease/purchases.

The NEMO Workforce Investment Board's audit of subcontracts purchasing/procurement systems will always follow up at a minimum, the procurement guidelines sent forth by the Division of Workforce Development, as well as those of the NEMO Workforce Investment Board.

The NEMO WIB procurement system shall document and include at a minimum (excluding reoccurring purchases such as rent, utilities, telephone, insurance, payroll, payroll deductions, and payroll taxes for which a Needs Assessment is prepared at time of bid, as necessary) for all procurements, the following elements:

- Needs Assessment

- Independent Cost Estimate
- Evaluation of Resources
- Review and Selection of Procurement Options

The following outlines the procurement system and guidelines utilized by the NEMO Workforce Investment Board and its subcontractor(s). OMB Circular # A-122 shall be utilized for determining the appropriateness of all costs applicable to WIA.

For ease of use, the NEMO Workforce Investment Board procurement system and guidelines are divided into two sections. Section one shall be used for the procurement of small purchases, including goods and services that cost no more than \$24,999.99. Section two shall be used to purchase goods and services of \$25,000.00 or more, and for the selection of service providers.

All subcontractors of the NEMO Workforce Investment Board shall notify the Administrative Entity (AE) in writing of any purchase of equipment of \$500.00 or more. A "Request to Purchase Equipment Costing \$500 or more" form must be submitted to the AE by the subcontractor prior to the purchase of equipment (see attachment #5). Sub-contractors shall complete an "Equipment Memorandum" form for the purchase of any equipment of \$500.00 or more, after the procurement of the equipment.

Terms and conditions used through this document may be found in Exhibit B.

A non-competitive proposal (sole source) procurement is defined as procurement through a solicitation of a proposal from only one source, or when competition is determined inadequate after solicitation from a number of sources. Sole source procurements under WIA and other federal or state funding sources shall be minimized to the extent practicable. All sole source procurements shall be justified and documented in writing. Any procurement which results in less than three (3) bids shall be well-documented and shall support the sole source procurement.

The NEMO WIB shall utilize only cost reimbursement contracts when contracting with a governmental entity and other regions. The NEMO Workforce Investment Board intends to contract annually, with the option of up to two (2) one year renewals, and the right to include additional funds for the same services as, or if, funds are made available if:

- 1) The service provider met or exceeded overall state mandated performance measures.
- 2) The service provider provided quality training as reflected by satisfactory monitoring results and at a reasonable cost, which supports the previous bid and/or reflects local economic conditions. If these conditions are not met in any Workforce Investment Region, the AE and the Workforce Investment Board may revert to an annual RFP or CFI process in any and all sub-regions that do not meet the conditions.
- 3) The NEMO Workforce Investment Board recognizes that the cost of training participants may vary as a result of changes or new requirements dictated by federal or state government. The program operator will not be penalized for incurring a higher cost per participant, entered employment, or successful termination for training which is a result of those changes or new requirements. However, program operators must be able to document that increased costs were outside of their control rather than a lack of fiscal management and control.

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## Section One

### Procurement of Small Purchases and Goods and Services not more than \$24,999.99

The procurement process shall originate with a request to purchase, followed by a needs assessment, an independent cost estimate, an evaluation of resources, and finally the review and selection of procurement options. The selection of procurement option is based upon the amount of purchase. All levels of purchase shall be required to follow the purchasing guidelines listed in the following pages. The extension/modification of contracts requires an evaluation summary and reasonableness documentation (attachment #7).

All procurements shall originate with a staff member completing a needs assessment. A needs assessment shall include at a minimum, the following:

- a. Numbered purchase requisition form (attachment #1), signed by the staff member requesting the purchase, and/or
- b. A Memorandum of Record justifying the purchase, if applicable.

An independent cost estimate is required prior to solicitation of bids or receiving bids or proposals. The staff member requesting the purchase shall complete an independent cost estimate (attachment #1). An independent cost estimate shall include at a minimum, the following:

- a. A description of the goods or services to be procured,
- b. The source used to provide the cost, e.g. catalog price, or the market price of a commercial product sold in substantial quantities to the general public, etc.,
- c. The estimated cost of the item to be procured, and
- d. The signature and date completed.

An evaluation of resources (attachment #1) shall be completed and documented by the Fiscal Officer, to determine if resources are available, adequate and appropriate to initiate the purchase. An evaluation of resources shall include at a minimum, the following:

- a. A written summary that the resources are available to proceed with the procurement, and
- b. The signature and date completed by the Fiscal Officer.

The purchase request along with the documentation of the needs assessment, independent cost estimate, and the evaluation of resources must be submitted to the agency Executive Director for approval or denial of the procurement.

If the purchase request is approved, the selection and review of procurement options is required. The selection and review of procurement options is listed on attachment #1. The selection and review process shall be completed by the staff member requesting the purchase and shall be based on the estimated cost developed in the cost estimate and the evaluation of resources. The option

selected must be checked and the required documentation shall be attached. Another staff person must review the procurement process at this point. The reviewer must check whether the procurement process is complete or incomplete, and sign and date the document. The reviewed procurement option shall be given to the agency Executive Director for signature and date approved prior to completing the selected procurement option.

**A. For Purchases of less than \$5,000.00**

Bids are not required for this procurement option. However a needs assessment, independent cost estimate, evaluation of resources and approval by the agency Executive Director is required prior to the procurement. These items, as well as the invoice, shall be included as documentation.

**B. Purchases of at least \$5,000.00 but not more than \$24,999.99**

This procurement option requires at least three written bids from separate vendors or sub-recipients unless exempted by small item purchase waiver, unavailable waiver, or intergovernmental purchases. In addition to three written bids, a needs assessment, independent cost estimate, evaluation of resources and approval by the agency Executive Director must be submitted as part of this procurement option. When obtaining written bids the NEMO WIB and its subcontractor(s) shall prepare a written description of the item(s) or service(s) and give it in writing to all bidders. Each written response shall be reviewed to ensure that it meets the description. Written responses that meet the description are considered bids. Criteria for awarding service or purchasing contracts may be classified as the lowest price and best service or equipment. The person making the bid award shall prepare a written-initialed analysis for each bidder and clearly define the reasons for selection. A copy of all bids, the determination of each bid and response to all bidders shall be signed and retained. If the NEMO WIB decides that all bids are unacceptable and circumstances do not permit a re-bid, negotiations may be conducted with only those bidders who submitted bids. No additional bidders may be solicited. Upon determination that negotiations will be conducted, the bids and related documents will be closed to public viewing.

The staff member initiating the procurement or other authorized personnel shall complete a price analysis (attachment #3) on all levels of procurement. A price analysis will establish a reasonableness of cost when compared with the independent cost estimate. It presents a method for the price analysis to show what kind of price comparison was used. A price analysis may consist of one of the following methods:

- a. Primary Comparisons. A primary comparison is the most basic form of price analysis. It compares the prices of competing offers and the best price is selected. However, it should be clearly demonstrated that there is strong price competition and the offers are for the same or quite similar item(s) or service(s).
- b. Secondary Comparisons. They include:
  - 1) Comparison of offers to prior contracts and prior quotes (historical data) for the same or similar work. Prior prices must have been competitive themselves.
  - 2) Comparison of offers to an independent cost estimate performed by the procuring agency.

- 3) Parametric estimates that are a type of yardstick or benchmark established by the procuring agency. (A parametric estimate is a generic type of measurement such as cost per instruction hour, cost per square foot, or cost per student placed in a job, etc.)

c. Other Criteria

1. Comparisons
2. Common Sense Analysis
3. Value Analysis

A cost analysis (attachment #4) shall be completed on all levels of procurement, as applicable, by the staff member initiating the procurement or other authorized personnel if a price analysis alone is not sufficient to determine that a price is fair and reasonable for the product(s) or service(s) being procured. The primary function of cost analysis is to form an opinion of what the job should cost the offerer, given reasonable economy and efficiency. A cost analysis is usually required when:

- a) Price competition is weak or where there is only one offerer,
- b) When the offerer is required to submit the elements of the estimated cost,
- c) When adequate price competition is lacking, and
- d) For sole source procurements, including contract extensions, unless price reasonableness can be established on a basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on process set by state or local law or regulation.

A cost analysis is the review and evaluation, element by element (item by item), of the cost estimate supporting the organization's proposal for the purpose of pricing a contract. Cost analysis examines each line item in a detailed budget and shall consist of the following steps, as applicable:

1. Checking the Offerers computations.
2. Making sure that all necessary costs have been included in the cost proposal, including typical and customary costs and costs attributable to activities proposed in the technical proposal.
3. Reviewing any justifications for the costs proposed by the offerer.
4. Ensure that the required allocation of costs among administration and program services is correct and reasonable, and within the limits set by statute and by the IFB/RFP.
5. Reviewing each proposed cost element for necessity, reasonableness and consistency with the technical proposal.
6. Make a determination that proposed price of the cost element is fair and reasonable. Comparing with the independent cost estimate, other offers for the same solicitation, past

Offerers for the same or similar work, market prices (known or supported by quotes), and/or any other benchmark available.

7. Identify the cost elements that need more explanation or justification and that are too high (or too low).
8. Where significant subcontracts are proposed, review these using the same steps.
9. Review of the proposed profit or fee, if applicable, using guidelines or other benchmarks to develop a feed target or objective.
10. Make a bottom line judgement about the total estimated price or cost, comparing it to other offers in the same procurement, past offers, the independent cost estimate, or other measures of competitive price.
11. Document all findings, including additional information needed from Offerers, questions on costs, and cost/price comparisons. Write a summary of all information needed in order for the agency Executive Director, or other authorized personnel, to make the award.

When the award selection is complete, a purchase order and/or contract, whichever is applicable to the procurement, shall be completed according to the accounting procedures. The purchase order will be given to the agency Executive Director for signature and date approved. The purchase order and/or two copies of the contract will be sent to the agency awarded the purchase and/or contract for signature by the authorized designee. A signed copy of the purchase order and/or contract is also given to the fiscal officer for filing with all documentation included. The agency Executive Director must approve all purchases, thereby safeguarding against any unauthorized purchases.

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## Section Two

### Procurement of Goods and Services for \$25,000 or more

This procurement process shall originate with a request to purchase followed by a needs assessment, independent cost estimate, evaluation of resources, and the review and selection of procurement options. The selection of procurement options shall be through the formal, advertised, competitive bid process. All levels of purchase shall be required to follow the procurement guidelines listed in the aforementioned pages, including contract extensions as applicable.

When the procurement is estimated to be \$25,000 or more, a formal method of solicitation must be utilized. Formal competitive bidding may be accomplished by using an Invitation for Bid (IFB). However, when the procurement requires a competitive negotiation, the formal Request for Proposal (RFP) or Call for Implementors (CFI) should be utilized.

#### **A. Invitation for Bids (IFB) or Request for Proposal (RFP)**

These procurement options require a minimum of three written bids. An IFB/RFP shall be prepared and a public notice announcing the availability of the IFB/RFP shall be submitted to at least two (2) newspapers of general circulation within the Northeast Region, to make prospective bidders aware of the service(s) or equipment(s) requested. Copies of the public notice shall be

mailed to Community Based Organizations, Labor Organizations and all vendors maintained on the vendor's list. A copy of the IFB/RFP will be made available to anyone responding to the advertisement. The newspapers should be selected to provide the best coverage of the area. A tear sheet and a certification of publication shall document advertising of the IFB/RFP. The NEMO WIB intends to provide written notification of the IFB/RFP to ensure that it is made available to an adequate number of Offerers, in an effort to obtain the receipt of three (3) bids. The IFB/RFP and the public notice will be included with the needs assessment, cost estimate, evaluation of resources and the approval of the agency Executive Director as documentation. An IFB/RFP shall contain at a minimum, the following elements:

- 1) A statement which identifies the desired quality of work, applicable performance standards, quality control measures and all record and reporting requirements (technical, progress, and financial reports);
- 2) Clear definitions of important terms relating to work to be performed and for which there could be more than one meaning;
- 3) The objectives to be achieved or outcomes expected to result from the purchase of the particular service or goods;
- 4) A work schedule for the contract period which identifies time frames, benchmarks, and review and approval points (including contract completions);
- 5) Any limitations or requirements concerning equipment to be purchased or used by the contractor, of if equipment may be made available by the awarding agency;
- 6) Any practical or legal limitations or sanctions which should be expected or may be imposed upon the performance of work under a contract, including the manner of payment and acceptance of performance.
- 7) Instructions concerning use of formats, attachments or additional documents to be submitted, specific elements to be addressed when responding and instructions on submitting cost/price information.
- 8) Identification of all laws, licensing, certification or assurances with which a contractor is expected to comply;
- 9) A statement of nondiscrimination and Equal Opportunity requirements as set forth in the WIA of 1998;
- 10) A statement that the offerer shall have written procedures for procurement transaction that include or comply with the procurement procedures included in the NEMO Workforce Investment Board Financial Manual and/or any additional procurement instructions issued by the agency issuing the IFB.
- 11) A statement that the offerer or its sub-recipients shall not use funds provided through the IFB under WIA to duplication facilities or services available in the area (with or without reimbursement) from Federal, State or Local sources.
- 12) The offerer shall certify that to the best of their knowledge and belief, the cost data is accurate, complete and current as submitted in their response;

- 13) Instructions that each offerer conduct and document oversight to ensure compliance with procurement standards;
- 14) Instructions that each offerer shall maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions and specifications of their contracts or purchase orders;
- 15) Instructions that the offerer shall have written protest procedures to handle and resolve disputes relating to their procurements that comply with policies and procedures or systems developed by the State and the agency issuing the IFB;
- 16) A precise statement of when, where and how bids/proposals are to be submitted (time frames will be reasonable to allow for an informed bid);
- 17) A contact person to whom questions may be directed, and identification of any special procedures to be used in requesting information (e.g., questions must be submitted in writing, etc.). A response to questions which clarify, change or interpret the IFB requires a written amendment to be prepared and distributed to anyone who received the original IFB;
- 18) A precise statement of the evaluation criterion to be used to evaluate the bids;
- 19) The right to reject all bids, if it is in the best interest of the program;
- 20) The right to extend or renew, for the same services, for a specialized period of time. The maximum contract period shall be one year with two (2) one-year renewal options. Additional, the right to include additional funds for the same or similar services as, or if, the funds are made available; and
- 21) Any item intended for inclusion in the contract that is not listed above.

**B. Call for Implementors (CFI)**

This procurement option requires a minimum of three written bids. A Call for Implementors (CFI) may be utilized for this procurement option. A CFI shall be prepared and a public notice announcing the availability of the CFI shall be submitted to at least two (2) newspapers of general circulation within the Northeast Region, to make prospective bidders aware of the service(s) requested. Copies of the public notice shall be mailed to Community Based Organizations, Labor Organizations and all vendors maintained on a vendor's list. A copy of the CFI will be made available to anyone responding to the advertisement. The newspaper should be selected to provide the best coverage of the area. A tear sheet and a certification of publication shall document advertising of the CFI. The NEMO WIB intends to provide written notification of the CFI to ensure that it is made available to an adequate number of Offerers, in an effort to obtain the receipt of three (3) bids. The CFI and the public notice as well as the needs assessment, cost estimate, evaluation of resources and the approval of the agency Executive Director shall be included as documentation. A CFI should contain at a minimum, the following seven (7) elements that are applicable to the procurement:

- 1) Givens: Those conditions, requirements or parameters that are not flexible. These constraints guide what we can and cannot do (e.g. period of performance) assurances of compliance with relevant laws, etc.

- 2) Assumptions: Those lessons we have learned or beliefs we have formed, about what does and doesn't work for these types of services (e.g. quality training promotes placements, job placements and economic development are linked, etc.)
- 3) Outcome Statements: This is the end state that the Workforce Investment Board wishes to achieve over time, an "intent" that is explicit and directly linked to the Boards' investment of funds.
- 4) Investor Targets: These are qualitative goals consistent with and building support for, the WIB's outcome statement (i.e. to move unemployed customers into employment, reduce duplicative employer contacts, etc.
- 5) Implementor Targets: These are the specific, quantitative results that the implementor (contractor) is committed to achieve. They should be verifiable and largely under the control or influence of the implementor. These targets represent the implementors' piece of the "investor targets" pie (i.e. to increase the number of customers attending one-stop orientation by 10%, to increase the number of youth achieving Youth Employment Competencies, etc.).
- 6) Performance Target Outline: This is the format for the potential implementors to submit which focuses on what is being bought, and the chance that it will be delivered as planned. It includes information on Customers, Products (services), Targets, Milestones (steps), Key individuals, Organizational Support, Financial Projections and Assurances.
- 7) Timelines /Selection Process: This provides information to the potential implementor about timelines for submission, evaluation, selection, award, and implementation. It also briefly describes the three-step due diligence evaluation process.
- 8) Any item intended for inclusion in the contract that is not listed above.

An evaluation committee shall be formed with at least three members of the NEMO WIB administrative staff. There shall be no impropriety of any of the committee members. The appointment of the evaluation committee shall be done in writing and retained.

A pre-bid conference may be held with prospective bidders in order to clarify any questions or issues in the RFP or CFI. A list of all persons attending the pre-bid conference shall be maintained for documentation.

Upon receipt of any bids, the bids shall be recorded in a procurement log (attachment #6) with the date and time received by the individual accepting the bid. A second staff person must verify the date and time received by signing the procurement log. The procurement log will then become part of the procurement process. One copy of each bid shall be retained. Bids received after closing time shall be unopened. Documentation shall be made and retained for filing, noting that the bid was received after closing time. In the event that the WIB receives a container that is not identifiable as a specific bid/proposal, an authorized person may open the container to determine the contents. If the contents are determined to be a bid/proposal, the container will be resealed and the solicitation number, opening date, and time will be noted on the outside. The container will then be filed until the official time for opening.

Bids shall not be opened prior to the stated closing time and date. The opening of all bids shall be made by at least two (2) persons of the administrative staff. These opened bids shall be forwarded to the Evaluation Committee. Each committee member shall be advised to review

each bid before the formal Evaluation Committee meeting is held. Documentation of those present at the bid opening shall be retained.

The staff member initiating the procurement or other authorized personnel shall complete a price analysis (attachment #3) on all levels of procurement as described in section one. If a price analysis is performed, a copy will be given to the Evaluation Committee for review. A price analysis will establish a reasonableness of cost when compared with the independent cost estimate and will be completed on the price analysis form. It presents a method for the price analyst to show what kind of price comparison was used.

A cost analysis (attachment #4) shall be completed on all levels of procurement, as applicable, by the staff member initiating the procurement or other authorized personnel, if a price analysis alone is not sufficient to determine that a price is fair and reasonable for the product(s) or service(s) being procured as outlined in section one. The primary function of a cost analysis is to form an opinion of what the job should cost the offerer, given reasonable economy and efficiency. If a cost analysis is performed, a copy will be forwarded to the Evaluation Committee for review.

The Evaluation Committee shall schedule a meeting to evaluate the bids. A time and date should be chosen carefully with very little conflict in order to get as many to attend as possible. The Evaluation Committee has four (4) items in particular to address when determining who shall be awarded a bid through an IFB. These items are:

1. Determine which bids are responsive. Non-responsive bids shall be omitted from future analysis. A written report deeming each bidder either responsive or non-responsive must be prepared with adequate documentation of the reasoning for any bid deemed non-responsive.
2. The proposals shall be analyzed in accordance with criteria established in the IFB.
3. The committee shall make the decision on who shall be awarded the bid based on the evaluation. The committee has the option to recommend that no bid be awarded if there are reasons why it is not in the best interest of the WIA program.
4. The committee shall prepare a formal report of the award or denial and stating reasons for doing so.

The selection of an implementor for services (service provider) shall be based on the following three-step due diligence process:

1. Telephone interview to clarify questions;
2. Personal interview as necessary; and
3. Verification or reference checks with customers and/or other investors (including review of past performance with the Private Industry Council or Workforce Investment Board).

The following criteria will be reviewed during the due diligence process, and will be the basis for selection:

- ❖ Performance Targets
- ❖ Probability of Achievement

❖ Reasonableness of Costs (Return on Investment)

Once implementors are selected, performance targets and milestones may be negotiated in order to bring the entire workforce investment area into compliance with goals created by the WIA Performance Measures.

A formal advertised competitive bid process does not have a minimum number of proposals required; however, should only one be received or deemed responsive, it is imperative that reasonableness of cost and price analysis be completed, as outline in section one of the Procurement System and Guidelines.

The evaluation report shall be retained to support the award or the denial of an award.

The Evaluation Committee shall issue an award notice to the successful bidder. Before doing so, the Executive Director has the authority to accept the recommendation made by the committee, request the committee to re-evaluation all bids based on an applicable requirements included in the procurement system guidelines or throw out all bids. If the Executive Director rejects the recommendation, he/she shall be required to prepare a form report stating the reasons for his/her rejection.

A copy of the award notice and any succeeding reports shall be maintained for documentation.

The Administrative Entity will only issue sub-contracts based on the proposal submitted and selected by the WIB and CLEO's. When the award selection is completed, two copies of the contract agreement shall be signed by the Executive Director and sent to the agency awarded the contract for the authorized signature of the contracted agency. One signed copy shall be retained by the contracted agency. The Executive Director must approve all contracts, thereby safeguarding against any unauthorized contracts.

It is the intention of the NEMO Workforce Investment Board and Chief Local Elected Officials to authorize the Missouri Department of Elementary and Secondary Education (DESE) to administer all WIA Section 122 activities with the exception of on-the-job training, customized training and requiring higher levels of training provider performance.

**C. Additional Policies Applicable to Equipment**

1. Specifications included in an Invitation for Bid (IFB) shall be described with generic or functional terminology whenever reasonably possible. However, specifications may be based upon brand name descriptions if generic or functional specifications ("or equal") are added as an inherent part of the bid solicitation.
2. Any purchase of personal or real property of \$500 or more requires the written approval of the Administrative Entity (AE) prior to the procurement of such personal or real property. The program operator must submit a "Request for Purchase of Equipment Costing \$500 or More" form (attachment #5) prior to the procurement of any personal or real property over \$500. A copy of the needs assessment, independent cost estimate, and an evaluation of resources must accompany the "Request for Purchase" form. "Request for Purchase" for approval made after the purchase, if denied, constitutes a WIA Unallowable Cost. The program operator must complete a cost/price analysis prior to purchase.
3. Intergovernmental purchases - Purchases between units of government shall be documented by the NEMO WIB and requires a needs assessment, independent cost estimate and

evaluation of resources. Documentation explaining why the unit of government is the best agency for which to make the purchase. The documentation for the formal evaluation of reasonableness of need(s) shall be retained.

4. Emergency Purchases - Emergency purchases for a situation that creates a serious or obvious threat to public health, safety or operation of the agency in executing its legal responsibilities to the public, or property in its legal care or control as may arise by reason of flood, epidemic, illness, riot, natural disaster, accident, equipment failure or similar causes will require strict documentation of the existing emergency conditions to be filed with the purchase order and invoice. An emergency purchase can only be allowed when immediate action is necessary to resolve an extra-ordinary situation and the resolution of the condition receives priority over routine operations and duties of the agency. The requirement for formal competitive bids or proposals may be waived. However, the emergency procurement should be made with as much informal bidding as practicable. Emergency procedures should only be utilized to purchase those supplies, which are necessary to alleviate the emergency. Emergency purchases of less than \$1,000 may be obtained from any local vendor.

Emergency purchases in excess of \$1,000 which are not in response to a life-threatening situation require three telephone bids. A written notification shall follow the telephone concurrence. A copy of the written notification, which should reference the date, time, contact person, and brief description of the emergency shall be retained along with the bids.

“Exceptions to the above listed bidding process may be made in an emergency situation; however, the President’s (Director in your case or Board Chair) approval must be obtained before the final purchase.”

5. Co-purchase Prohibition - NEMO WIB and its subcontractor shall not use any WIA funds to co-purchase equipment. Requests for approval made after purchase, if denied, constitute a WIA unallowable cost.

#### **D. Items Exempt from Competitive Procurement: Sole Source Exemptions/Single Feasible Source**

Exempt procurements must follow the requirements of this guide in regards to the reasonableness of cost and price analysis, cost reimbursable basis, and debarred and suspended parties. Agencies are required to select the best-known price from known vendors.

1. The following items are exempt from competitive procurement:
  - ❖ The parts are required to maintain validity of a warranty,
  - ❖ Additions to a system must be compatible with original equipment,
  - ❖ Only one (1) type of computer software exists for a specific application, or
  - ❖ Factory authorized maintenance must be utilized in order to maintain validity of a warranty,
  - ❖ The materials are copyrighted and are only available from the publisher or a single distributor,
  - ❖ The services of a particular provider are unique, e.g. entertainers, authors, etc.

- ❖ Magazines, books, periodicals and newspapers.
- ❖ Any form of direct advertising space and time, unless there are multiple businesses in the area able to provide the same services to the same coverage area needed and same demographics
- ❖ Conferences - The cost of attending or participating is exempted. The cost of putting together a conference is not exempted.
- ❖ Training Sessions and Seminars - related to the individual's profession or program.
- ❖ Updates of computer software that the agency already owns.
- ❖ Agencies eligible to acquire equipment from either State or Federal surplus property may do so without any additional procurement practices.
- ❖ Agencies eligible to buy from state contract awarded by the Division of Purchasing may do so without any additional procurement practices.
- ❖ Agencies may contract with DWD, to provide statewide coordinated services (such as ToolBox).
- ❖ Agencies may contract with the State of Missouri, Department of Elementary and Secondary Education (DESE) to provide services provided DESE does so at no additional administrative cost.
- ❖ Enrollment of individual participants in classroom training.

If past procurement activity indicates that only one (1) bid has been submitted in a particular region, a Single Feasible Source procurement may be authorized.

#### **E. PROCUREMENT SYSTEM GENERAL STATEMENTS**

1. The NEMO WIB and its subcontractors shall not utilize any WIA funds to co-purchase equipment.
2. The NEMO WIB and its subcontractors will have a formal lease agreement for any rental payments. All lease agreements shall contain a 30-day cancellation clause in the lease in the event the contract would be canceled or there would be discontinuation of funding. The Grant Recipient/Administrative Entity must approve any lease with a purchase option in writing. Failure to inform the Administrative Entity of a purchase option even if it is not exercised may, at the AE's discretion result in disallowance of the entire lease cost.
3. Any capital improvements, including any repairs in **excess** of \$500 shall have Grant Recipient approval in writing.
4. An equipment purchase requires prior check with the various Government warehouses.
5. Any purchase of equipment not specifically mentioned in a contract, in both price and quantity shall not be allowed.
6. Any purchase of equipment costing over \$500 shall require a request for purchase of

equipment from the subcontractor(s) to the Administrative Entity before any purchase shall be granted for approval.

## **PROPERTY MANAGEMENT AND INVENTORY**

The NEMO Workforce Investment Board has established and implemented inventory rules and regulations that will be used by the Administrative Entity and contracting agencies. All subcontractors will be required to implement these rules and regulations.

Personal or real property procured with funds authorized by WIA or transferred from programs under CETA or JTPA prior to July 1, 1993 must be used only for purposes authorized by WIA. The State of Missouri shall have clear title to all such property. Personal or real property procured after July 1, 1993, by States and Governmental sub-recipients with JTPA or WIA funds shall be governed by the definitions and property requirements in the DOL Regulations at 29 CFR, Part 97. Personal or real property procured after July 1, 1993, by non-governmental sub-recipients with JTPA or WIA funds shall be governed by the definitions and property management standards of OMB Circular A-110, as codified by Administrative Regulations of the Department of Labor. Title to property acquired or produced by a sub-recipient that is a commercial organization shall vest in the awarding agency, providing such agency is a governmental entity or a non-governmental organization that is not a commercial organization. If the awarding agency is also a commercial organization, title shall vest in the higher level, non-commercial awarding agency that made the sub-award to the commercial sub-recipient.

The NEMO WIB will require its subcontractors to submit an Equipment Memorandum form when equipment is purchased, disposed of, or transferred. The Equipment Memorandum will be submitted to the NEMO WIB within 30 days of any status change. Once an Equipment Memorandum form is submitted a "Property of NEMO Workforce Investment Board" tag will be affixed. "Sensitive items" (cameras, VCR's, TV's, computers, etc.) with a cost between \$100.00 and \$499.99 will have a "Property of NEMO Workforce Investment Board" tag affixed to the item. Items may be determined to be sensitive at the discretion of the NEMO WIB.

The NEMO WIB will perform, reconcile, and document a physical inventory at least once every other year to be conducted along with the financial monitoring or during the last quarter of the fiscal year (April-June). The Fiscal Officer and/or another staff person, such as Secretary, for verification may perform the physical inventory. The NEMO WIB will submit a letter to DWD upon completion of the inventory and reconciliation assuring accountability.

The NEMO WIB inventory system and equipment listing shall contain a description of all property, manufacturer, serial number or other identification number, the source of property, who holds title, acquisition date, cost of the property, percentage of Federal participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition date including the date of disposal and sale price of the property, NEMO WIB Inventory tag number, and WIA inventory tag number that has been assigned by the DWD. This system will be applicable to all NEMO WIB inventory items having initial purchase of \$500.00 or more.

## DEFINITIONS

- A. Agency - The entity that has or will enter into a contract agreement directly with the Division of Workforce Development or a sub-recipient or any tier below that level making a procurement.
- B. Sub-recipient - shall mean the legal entity to which a subcontract is awarded and which is accountable to the recipient (or higher tier sub-recipient) for use of the funds provided. For WIA purposes, distinguishing characteristics of a sub-recipient include items such as determining eligibility of applicants, enrollment of participants, performance measured against meeting the objectives of the program, responsibility for programmatic decision making, responsibility for compliance with program requirements and use of the funds awarded to carry out a WIA program or project, as compared to providing goods or services for a WIA program or project (vendor). Northeast Region Grant Recipients and WIA Title I Sub-state Grantees are particular types of sub-recipients.
- C. Subcontractor - shall mean the agency that contracts with a DWD contractor or any level below that subcontractor.
- D. Offeror - The entity submitting a response to a procurement solicitation.
- E. Vendor - shall mean an entity responsible for providing generally required goods or services to be used in the WIA program. These goods or services may be for the contractor or subcontractors own use or for the use of participants in the program. Distinguishing characteristics of a vendor include items such as: providing the goods and services within normal business operations; providing similar goods or services to many different purchasers, including purchasers outside the WIA program; and operating in a competitive environment. A vendor is not a sub-recipient/subcontractor and does not exhibit the distinguishing characteristics attributable to a sub-recipient/subcontractor. Any entity directly involved in the delivery of program services not available to the general public, with the exception of an employer providing on-the-job training, shall be considered a sub-recipient rather than a vendor.
- F. Contractors - the organization, entity or individual that is awarded a contract under the agency or sub-recipient's procurement standards or procedures.
- G. Cost Estimating - the process of determining what the asking price for goods and services should be given WIA regulations concerning the criteria for a reasonable and fair price.
- H. Allocability - a term which means that an expense must be in support of one or more of the objectives of the grant/contract/agreement.
- I. Allowability - a term which means that an expense can be charged to a contract, either as a direct or indirect charge.
- J. Catalog Price - a price published in a catalog, price list, schedule or other form regularly maintained by a manufacturer or supplier and is published or made available for inspection by buyers.
- K. Cost Analysis - the review and evaluation, element by element, of the Cost Estimate

supporting an organization's proposal for the purpose of pricing a contract.

- L. Commercial Item - a class or kind of product or service regularly used for other than government purposes and sold or traded in the course of normal operations.
- M. Direct Cost - costs that can be identified specifically with a particular final cost objective.
- N. General Public - an item is sold to the general public if it is sold to other than affiliates of the seller for end use by non-government organizations.
- O. Indirect Cost - costs that are incurred for a common or joint purpose benefiting more than one cost objective and not readily assignable to the cost objective specifically benefited without effort disproportionate to the results achieved.
- P. Market Price - a price currently established in the usual and ordinary course of trade between buyers and sellers free to bargain. The price must be established from sources independent of the manufacturer or vendor.
- Q. Parametric Estimate - a cost of price yardstick or benchmark, such as: dollars per pound, dollars per square yard, cost per hour and price or cost per instructional hour.
- R. Price Analysis - the process of examining and evaluating a price without looking at the estimated cost elements and proposed profit of the offerer whose price is being evaluated.
- S. Reasonableness - a term which means that a cost or price is not greater than what one would expect an ordinarily competent and prudent person to charge when conducting business in a competitive environment.
- T. Substantial Quantities - enough of the product or service is sold to establish a real commercial market for the item.
- U. Comparisons - When conducting comparisons keep in mind that the lowest price is not necessarily the best prices since factors other than the final price must be considered (e.g., demonstrated performance). Other factors to be considered may consist of:
  - 1. Ensuring that the offerer is, in fact, actually capable of performing the work at the level of effort and with the quality required to satisfy the contract, and
  - 2. Ensuring that the offerer is actually submitting a proposal which answers the statement of work (scope of work) in the IFB, and
  - 3. Compared with current proposals for IFBs/RFPs for similar work on other contracts.

NOTE: Here the comparison is not quite as ideal as with primary comparisons. The difference in this instance is that because there are different conditions for the work or because the work is only similar, the actual performance of the work will be different and the comparison will not be quite as accurate as with a primary comparison.

- V. Common Sense Analysis - With this technique, the analyst asks the question of whether the price of the product or service being proposed should approximate what the offer is asking. This should be the last step. By the time the contracting agency is at this point in the

analysis, the analyst will have developed enough of a feel for the product or service that the analyst should be able to readily tell whether the asking price is reasonable or not. This technique applies to prices that are too low as well as to those that are too high.

W. Value Analysis - A method which, when applied to price, provides an opinion as to the value of the product. It is an evaluation of the function and value of a product or service and its related price to determine its worth. To apply value analysis, the analyst needs to seek answers to the following questions:

- 1) What does the product do or what service is furnished?
- 2) What does it cost now and what will it cost to continue?
- 3) Are there other ways to achieve the same results?
- 4) What will these other ways cost?

Essentially, value analysis determines if the goods or services as constituted offers the best deal for the Contracting Agency in terms of value.

X. Needs Assessment - a written support document necessary to determine the justification of the procurement.

Y. Evaluation of Resources - a documented, written determination which shows that the resources are available to support the procurement.

## CONFLICT OF INTEREST

The NEMO Workforce Investment Board and its subcontractor's shall maintain a written code of standards of conduct governing the performance of persons engaged in the award and administration of contracts and sub-grants. To the extent permitted by State or Local law or regulation, such standards of conduct will provide for penalties, sanctions or other disciplinary actions for violations of such standards by the awarding agency's officers, employees or agents, or by contractors or their agents.

- A. Each agency and its sub-recipients shall ensure that no individual in a decision making capacity, including  
WIB members (whether compensated or not), shall engage in any activity, including participation in the selection, award or administration of a sub-grant or contract supported by WIA funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:
1. The individual;
  2. Any member of the individual's immediate family;
  3. The individual's partner, or
  4. An organization which employs, or is about to employ, any of the above, has a financial or other interest  
in the firm or organization selected for award.
- B. The officers, employees or agents of the agency making the award will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors or parties to sub-agreements.
- C. WIB Conflict of Interest:
1. A WIB member shall not cast a vote on, nor participate in, any decision-making capacity on the provision of services by such member (or any organization, which that member directly represents), nor on any matter that would provide any direct financial benefit to that member.

NOTE: Article IX - General provisions of the Workforce Investment Board by-laws 9.4 states "A member of the NEMO Workforce Investment Board shall be required to leave the meeting room when any recommendation regarding a bidder or discussions on any funding discussions regarding a bidder are before the meeting, if the member, or a member's relative within the fourth degree, whether by affinity or consanguinity:

- Is employed by the bidder;
- Works for the bidder;
- Is general member of the bidder;
- Is a member of the bidder's governing body; or
- Has a financial interest in the bidder."

Article IX - General provisions of the Workforce Investment Board by-laws 9.5 states "A member of the NEMO Workforce Investment Board shall not be on the Resources or Outcomes committee if the member, or a member's relative within the fourth degree, whether by affinity or consanguinity:

- Is employed by the bidder;

- Works for the bidder;
- Is general member of the bidder;
- Is a member of the bidder's governing body; or
- Has financial interest in the bidder."

2. Neither membership on the WIB nor the receipt of WIA funds to provide training and related services shall be construed, by themselves, to violate provisions of section 117(g) of the Act.

## CODE OF CONDUCT

The following shall apply to all staff members of the Administrative Entity, Sub-state Grantee, Sub-recipient and Subcontractor engaged in the award and administration of contracts and sub-grants.

No employee shall:

1. Accept any direct or indirect financial benefit from any source other than their paid position as a result of the performance of their official duties.
2. Accept any position, whether compensated or not, which will impair the independence of judgement in the exercise of their official duties.
3. Accept any position or engage in any business that will require the disclosure of confidential information gained by reason of their official duties.
4. Improperly disclose confidential information acquired during the performance of their official
5. Duties or use such information to further personal gain.
6. Use or attempt to use their official position to secure unwarranted privileges or exemptions personally or on behalf of others or give the appearance of such action.
7. By conduct, give reasonable basis for the impression that any person or organization can improperly influence the performance of their office duties.
8. Pursue a course of conduct that will raise suspicion among citizens that the acts engaged in are in violation of public trust.
9. Pursue any other course of conduct that will give rise to a violation of the conflict of interest statutes.
10. Take part in any political activities in violation of the Federal Hatch Act.
11. Take part in any religious or anti-religious activity in the discharge of their official responsibilities
12. Promote or oppose unionization in the discharge of their official duties.
13. Participate in any effort to violate any other applicable Federal, State and Local laws and regulations.

Violations of any provision of this code of conduct may be cause for immediate dismissal and are subject to any penalties, sanctions or other disciplinary measures set forth in applicable Federal, State or Local laws.