**MASSHIRE FRANKLIN HAMPSHIRE WORKFORCE BOARD**

**and**

**FRANKLIN HAMPSHIRE EMPLOYMENT AND TRAINING CONSORTIUM**

**PROCUREMENT MANUAL**

### PROCUREMENT OF GOODS & SERVICES

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PURPOSE

The purpose of this policy is to establish procurement and contracting guidelines for the MassHire Franklin Hampshire Workforce Board (FHWB) and for Franklin Hampshire Employment and Training Consortium (FHETC), the Administrative Entity for the Workforce Innovation and Opportunities Act for the Workforce Development Area of Franklin and Hampshire Counties.

All solicitations for goods and services shall promote open and fair competition. Price and demonstrated performance shall be primary considerations in all awards.

FHWB/FHETC will follow procurement procedures as established in the following regulations whichever is more restrictive for the procurement circumstance:

1. Workforce Innovation and Opportunity Act (WIOA);
2. WIOA Communication No. 100 DCS 01-102 Procurement and Contracting;
3. WIOA Communication No. 100 DCS 19.100 Procurement of Youth Activities;
4. WIOA Communication No. 100 DCS 14.134 Subsequent Eligibility for ITA Training Providers Courses;
5. WIOA Communication No. 100 DCS 14.100 Massachusetts Eligible Training Provider List (MA ETPL) Initial and Subsequent Eligibility Process;
6. Federal Regulations 2CFR 200 Uniform Guidance
7. Chapter 30B Massachusetts General Laws Uniform Procurement Act.
8. Office of Management and Budget Memorandum M-18-18

AUTHORITY TO TAKE PROCUREMENT ACTION

The Chief Elected Officials (CEO’s) for the Workforce Development Area have delegated procurement authority to FHWB and FHETC for supplies, materials, services, and real property associated with each agency. The CEO’s have also authorized FHWB to delegate its procurement authority to FHETC as needed.

FHWB Procurement Authorization: Local Agreement between the Mayor of the City of Greenfield and the Mayor of the City of Northampton and the Local Workforce Development Board, March 2017 (updated), section12. b. iii.

FHETC Procurement Authorization: Franklin Hampshire Employment and Training Consortium Agreement Amendment dated March 21, 2017.

The FHWB Executive Director has been designated by CEO’s as the Chief Procurement Officer for the FHWB for purposes of M.G.L. c. 30B on March 27, 2017.

The FHETC Executive Director has been designated as the Chief Procurement Officer for FHETC for purposes of M.G.L. c. 30B on March 27, 2017

ETHICAL PROCUREMENT PRACTICES

* **Conflict of Interest**

It shall be a breach of ethical standards for any agent, FHWB/FHETC member or employee to participate, directly or indirectly, in procurement when the agent, member, or employee knows that:

1. The agent, FHWB/FHETC member or employee, or any member of the immediate family of the aforementioned, has a financial interest pertaining to the procurement
2. A business or organization in which an agent, FHWB/FHETC member or employee or any member of the immediate family has a financial interest pertaining to the procurement.
3. Any other person, business, or organization in which a FHWB/FHETC member of employee or any member of the immediate family of the aforementioned is negotiating or has an arrangement concerning prospective employment is involved in the procurement.
4. Upon discovery of an actual or potential conflict of interest, an employee, agent, or board member of the FHWB/FHETC shall promptly file a written statement of disqualification and shall withdraw from further participation.
5. Prior to the evaluation of proposals by the selection committee, members must sign a certification that their decisions will not be affected by any conflict of interest.

PROCUREMENT PLANNING

###### Service Targeting

FHETC and the FHWB are responsible for ensuring that procurement solicitations and contracts are consistent with the goals established with the FHWB’s annual training plan and WIOA policies where applicable.

* Requirements When Contracting

Considerations in procurement:

1. The primary consideration and affirmative steps in selecting agencies or organizations to deliver services within a Workforce Development Area shall be the effectiveness of the agency or organization in delivering comparable or related services based on demonstrated performance, in terms of the likelihood of meeting performance goals, cost, quality of training, and characteristics of participants. In complying with this subsection, proper consideration shall be given to minority firms, women’s business enterprises, labor surplus area firms and community-based organizations.
2. Funds provided under this act shall not be used to duplicate facilities or services available in the area (with or without reimbursement) from federal, state, or local sources, unless it is demonstrated that alternative services or facilities would be more effective or more likely to achieve workforce area goals.
3. Appropriate education agencies in the service delivery area shall be given the opportunity to provide educational services, unless alternative agencies or organizations would be more effective or would have greater potential to enhance the participants continued occupational and career growth.
4. Occupational skills training programs will not be funded unless the level of skills provided in the program are in accordance with the guidelines set forth by the FHWB.

IN-HOUSE PROGRAMS

When the FHWB determines that services may be provided by FHETC and will not be procured, a determination will be made by the FHWB of the demonstrated performance of FHETC to operate the program. This determination will be in writing and will take the following into consideration:

1. adequate financial resources or the ability to obtain them
2. the ability to meet the program design specifications at a reasonable and competitive cost as well as the ability to meet the performance goals.
3. A satisfactory record of past performance in-house services including:
4. demonstrated quality of service
5. reasonable dropout rates from past programs
6. the ability to provide or arrange for appropriate supportive services as specified in the Career Development Plan
7. retention in employment,
8. earning rate of participants or documentation or failed competition in an effort to procure services from qualified providers
9. the ability to provide services that can lead to the achievement of competency standards for participants with identified deficiencies
10. a satisfactory record of integrity, business ethics and fiscal accountability
11. the necessary organization, experience, accounting and operational controls with documentation providing assurance that FHETC can provide the services in a cost effective and more efficient manner than alternative service providers
12. the technical skills to perform the work

COMPETITIVE PROCUREMENT

The FHWB/FHETC shall tailor all purchasing requirements to meet federal, state and local provisions. At a minimum, the selection of vendors shall be open and competitive.

* Complete and Impartial Dissemination of Information

Each year allocations are made available through public notices. In addition the Workforce Development Area’s annual plan is available for review.

* Unrestricted Competition

RFPs/RFQs are reviewed to ensure that they clearly set forth applicable program requirements, but they do not contain any unnecessary restrictions that discourage competition. Potential contractors are asked to propose their concepts with the appropriate operational framework so that the proposal review committee will be able to evaluate the broadest possible range of proposal.

* RFP/RFQ Timeframes

All procurement will meet timeframes required by the most restrictive State/Federal policy/regulations.

* Reallocation and Award of Lag Funds

If any lag funds accrue by non-performing contractors, then the funds can be re-directed to other successful contractors. If there are insufficient resources to fund the RFPs at the amount planned, proposers will have the opportunity to modify their plans.

METHOD OF PROCUREMENT

1. FHETC will follow procurement methods prescribed in Chapter 30B unless a DCS or Federal policy is more stringent.
2. Supplies or Services Estimated to Cost under $10,000: FHWB and FHETC will use sound business practices defined as ensuring the receipt of a favorable price by periodically soliciting price lists or quotes. A formal competitive process is not required but the process will ensure the quality of supplies and services at a reasonable price and as per 100 DCS 01.102 price or rate quotes from an adequate number of qualified sources.
3. Supplies or Services Estimated to Cost at least $10,000 but not more than $50,000: FHWB/FHETC will seek written price quotes from at least three vendors based on a written purchase description and award the contract to the responsible vendor offering the supply or service needed for the best price.
4. Supplies or Services Estimated to Cost more than $50,000: Conduct a formal, advertised competition by issuing an invitation for bids (IFB) or a request for proposals (RFP). If a bid process is used, the contract will be awarded to the qualified bidder meeting the specifications and at the best price. If a proposal process is used, the contract will be awarded to the offer submitting the most advantageous proposal, taking into consideration the specified evaluation criteria as well as price.
5. Acquisition of real property: by lease or purchase at a cost of more than $35,000 will be accomplished via a formal advertised competition using a request for proposals process.
6. Multi-year contracts: must be consistent with the requirements for multi-year contracts in Chapter 30B and with DCS Procurement and Contracting policies.
7. Subawards: FHWB and FHETC may award subawards when the subrecipient will carry out part of the award received by either agency. Subawards will be awarded in accordance with the rules of the awarding agency. Subrecipient agencies that are partners in the grant application in which FHWB or FHETC are the lead applicant will not require a competitive procurement process provided the lead agency follows the required procedures for subrecipient determination and management of the awarding entity.

NON-COMPETITIVE PROCUREMENT

With proper justification and documentation, failed competition and sole source are the two types of non-competitive procurement that may be used by the FHWB/FHETC.

1. Failed Competition:

Less than two responsive bids are received after conducting the normal procurement process constitutes a failed competition. The FHWB/FHETC reviews the planning and procurement process to ensure that all procedures were followed to attract prospective vendors. After finding that there were no flaws in the process, then the FHWB/FHETC may award a contract after completion of an in-depth cost/price analysis.

B. Sole Source

* FHWB/FHETC only uses sole source contracting when an emergency arises that may threaten the well-being of the organization or its clients, if unique services are needed for the organization, if the supplies or services are only available from a single source. In a rural area such as Franklin and Hampshire Counties, vendors are limited, which may constitute the use of sole source contracting.
* Prior written approval will be obtained from MA DCS for sole source contracts using WIOA funds in excess of $150,000. Justification for sole source contracts below $150,000 will be internally documented by each agency. Chapter 30B rules will also be followed for sole source procurement above and below $50,000.
* In addition, MGL Chapter 30B has an exemption for contracting with a non-profit entity to provide support or stimulation under a grant agreement. “Grant Agreement”, an agreement between a governmental body and an individual or nonprofit entity the purpose of which is to carry out a public purpose of support or stimulation instead of procuring supplies or services for the benefit or use of the governmental body.

Requests for approval must provide:

1. a statement of the vendor’s proposal
2. a cost/price analysis
3. documentation of internal approval (including a copy of FHWB discussion minutes for FHWB contracts)
4. a cover letter requesting approval
5. copy of non-competitive justification

Sole source contracts of less than $150,000 will be documented internally by the same standards.

C. Frequency of Solicitations for Non-Competitive Procurement

Solicitation for non-competitive procurement shall occur at a minimum every two years to promote and encourage competition in accordance with DCS Policy.

REQUEST FOR PROPOSAL (RFP)

When required under state or federal law, the FHWB/FHETC will procure employment and training through the use of the RFPs or other formal solicitation processes to ensure open competition. The Chapter 30B process for RFP’s will be followed unless WIOA or federal law is more restrictive.

If the RFP process is selected, the RFP package will include at a minimum:

1. *Statement of Work*: this document clearly defines the services that are being acquired.
2. *A description of the requirements* for time, place, and methods or performance of services including a check list to maximize efforts of potential service providers.
3. *Contract clauses:* Boilerplate clauses, which comply with WIOA requirements, if applicable.
4. *Goals and proposal review* which will be outlined clearly.
5. *Certifications, assurance and representations:* FHWB/FHETC will request that potential providers submit assurances and/or certification that they will comply with any regulatory requirements established by the funding source.
6. *Budget:* FHWB/FHETC will request that potential providers submit budgets that are detailed by WIOA Cost Categories and by line items.
7. *Other element as required by Chapter 30B including but not limited to comparative criteria.*

SOLICITATIONS

Every effort is made to maximize competition. Distribution of solicitations will comply with Chapter 30B.

Up-to-date lists of potential vendors are used when conducting direct mailings. Copies of all placed advertisements are kept on file.

INVITATION FOR BIDS (IFB)

Should FHWB/FHETC utilize an IFB process, the Chapter 30B process will be used.

***INDIVIDUAL TRAINING ACCOUNT***

FHETC follows the policies as outlined in WIOA Communication No. 100 DCS 14.134 Subsequent Eligibility for ITA Training Providers Courses; WIOA Communication No. 100 DCS 14.100 Massachusetts Eligible Training Provider List (MA ETPL) Initial and Subsequent Eligibility Process. It also follows the MassHire Franklin Hampshire Workforce Board’s most recently adopted WIOA Title I ITA Policy.

***TRAINING ALLOCATIONS AND THRESHOLDS***

FHWB/FHETC establishes allocations for ITA contracts within each program. Allocations are established during the budgeting process each fiscal year reflective of the funds allocated to the Workforce Investment Area and approved by the FHWB in the WIOA Title I MOU. Thresholds for ITAs will comply with the most recent ITA Policy.

FHETC engages in numerous Individual Training Accounts (ITA) in any give fiscal year. Potential training providers are provided with the Commonwealth of Massachusetts Multi- Purpose Application for WIOA ITA Provider Initial Eligibility and Training Opportunities Program. All providers are required to follow the application instructions and procedures.

REVIEW/EVALUATION OF SOLICITATIONS

Proposals are received by FHWB or FHETC are reviewed by an impartial committee. Proposals will be evaluated in accordance with required regulation and in accordance with the criteria stated in the solicitation.

CONTRACT NEGOTIATION AND AWARD

FHWB/FHETC reserves the right to negotiate contracts in particular to negotiate a lower price with the selected responsible and responsive vendor provided that such negotiation shall not be conditioned on any change to the quantity or quality of the supply or service or to the scope of services. Each contract must be executed by all parties before it is in force.

FHETC will ensure that, during contract negotiations with each provider, refund policies as well as payment point schedules are established.

SELECTION OF CONTRACT TYPES

The types of contracts that may be awarded by FHWB/FHETC are as follows:

1. *Cost Reimbursement* – provides for the payment of actual costs incurred to the extent prescribed in the contract.
2. *Fixed Unit Price* – pays contractor a specified price for deliverables irrespective of the contractor’s actual costs incurred.
3. *Fixed Unit* – contractor measurable category.
4. *Performance Based* – makes payments to the contingent on successful achievement of performance outcomes and is charges 100% to the specified training cost. However, the total of all costs paid prior to full contract performance must be less than the point at which the contractor’s costs are recovered

MONITORING

FHETC contract monitoring will be conducted in accordance with the funding awarding authority requirements and with FHETC fiscal procedures. FHETC may perform contract monitoring for FHETC contracts or for FHWB contracts functioning as the fiscal agent for FHWB. Monitoring performed directly by FHWB will conform to required monitoring procedures of the funding awarding authority.

TECHNICAL ASSISTANCE

FHETC will provide technical assistance to contractors as needs arise.

SUBCONTRACTS

1. The contractor shall obtain the written consent of FHETC prior to placing any subcontract. FHETC, at its discretion, shall ratify in writing any such subcontract. Such action shall constitute the consent of FHETC.
2. The contractor agrees that no subcontract placed under this contract shall provide for payment on a cost plus or a percentage of cost basis.
3. FHETC, at its discretion, will approve in writing any of the provisions of a subcontract. However, such approval (or the consent of FHETC obtained as required by this clause) shall not be construed to constitute a determination of the allowance of any cost under this contract, unless such approval specifically provides that it constitutes a determination of the allowance of such cost.
4. The contractor shall give FHETC immediate notice of any claim made against the contractor by any subcontractor or vendor which in the opinion of the contractor, may result in litigation, related in any way to this contract, with respect to which the contractor may be entitled to reimbursement from the funding agency.
5. The consent, approval, or ratification of a subcontract or any terms thereof shall not put the contracting office in contractual privity with the subcontractor; shall not unless otherwise stated, constitute an endorsement or approval of any provision of the subcontract; and shall not relieve the contractor of his responsibility for the performance and provision of services under this contract.
6. FHETC shall approve all subcontracts.

DISPUTES

1. Except as otherwise provided in the contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by FHETC, who shall present its decision in writing and mail or otherwise furnish a copy thereof to the contractor. The decision of FHETC shall be final and conclusive unless, within 30 days from the date of receipt of such copy, the contractor mails or otherwise furnishes FHETC with a written appeal addressed to the funding agency. The decision of the funding agency or its duly authorized representatives for the determination of such appeals shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent or capricious or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this clause, the contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the contractor shall proceed diligently with the performance of this contract and in accordance with FHETC’s decision.
2. This “dispute clause” does not preclude consideration of law questions in connection with decisions provided for in paragraph (a) above: provided that nothing in this contract shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

CENTRALIZATION CONTRACT FILES

FHETC will maintain a central file for the following contract documentation:

* a signed copy of the contract agreement
* signed copies of any subsequent modifications
* contract cost/pricing data
* pre-award surveys or review data
* copies of any FHETC’s or contractor’s correspondence
* monitoring reports/corrective actions/follow-up records
* invoice/billing and records of payment documentation (to be kept in fiscal office)
* records of cash advances and liquidation of funds
* equipment acquisition and property disposition records
* documentation related to termination actions
* contractor reports on deliverables provided
* contract closeout reports and related documentation

REFERENCES:

|  |  |
| --- | --- |
| WIOA Communication No. 100 DCS 01-102 | Procurement and Contracting |
|  |  |
| WIOA Communication No. 100 DCS 19.100 | Procurement of Youth Activities |
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| WIOA Communication No. 100 DCS 14.134 | Subsequent Eligibility for ITA Training Providers Courses |
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| WIOA Communication No. 100 DCS 14.100 | Massachusetts Eligible Training Provider List (MA ETPL) Initial and Subsequent Eligibility Process |
|  |  |
| WIOA Communication No 100 DCS 01.104 | Program Income under WIOA |
|  |  |
| Federal Regulations 2CFR 200 | Uniform Guidance |
|  |  |
| Chapter 30B of the Massachusetts General Laws | Uniform Procurement Act |
|  |  |
| Memorandum M-18-18 Office of Management and Budget | Implementing Statutory Changes to the Micro-Purchase and the Simplified Acquisition Thresholds for Financial Assistance |