



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
LANSING

DAVID C. HOLLISTER
DIRECTOR

Emailed 3/1/04 jl

OFFICIAL
Michigan Department of Labor & Economic Growth (DLEG)
Office of Workforce Development (OWD)
Policy Issuance (PI) No. 04-03
Index: IV

Date: February 27, 2004

To: Michigan Works! Agency (MWA) Directors

Programs Affected: All programs administered through DLEG/OWD

Subject: Procurement Policy

Purpose: This PI is being issued to consolidate into one single document OWD's policy on procurement as previously presented in Michigan Department of Career Development (MDCD)/OWD PI 99-34 and its subsequent changes, as well as incorporating new policy information relating to the procurement of equipment.

References: Office of Management and Budget (OMB) Circular for Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Government, **The Common Rule** (as amended May 19, 1995).

OMB Circular A-110, Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations (as further amended August 29, 1997), as applicable.

OMB Circular A-102, Grants and Cooperative Agreements with State and Local Governments (as further amended August 29, 1997), as applicable.

OMB Circular A-87, Cost Principles for State, Local and Indian Tribal Governments (as further amended August 29, 1997), as applicable.

OMB Circular A-122 (06/01/1998), Cost Principles for Non-Profit Organizations

Workforce Investment Act (WIA) Regulations, 29 Code of Federal Regulations (CFR) Section 667

Welfare To Work (WTW) Regulations, 20 CFR Section 645

Temporary Aid to Needy Families (TANF) Regulations, 45 CFR Section 263

Michigan Compiled Laws Annotated (MCLA) 752.791, The Michigan Computer Law, as applicable.

Rescissions: MD/OWD PI 99-34 and subsequent changes.

Background: This policy restates the uniform administrative requirements for the procurement of equipment, supplies, and/or services utilizing any OWD funding source. In addition, it clarifies the requirement for prior approval of the procurement of capital assets in excess of \$25,000.

Policy: **A. GENERAL**

MWAs shall maintain a written procurement policy, which shall apply in the selection of service providers and vendors for all procurement utilizing OWD funds. All procurements utilizing OWD funding sources must comply with this policy, specific grant requirements, all applicable OMB circulars, and all regulations specific to the funding source(s) used. MWAs shall conduct procurement procedures in such a manner that provides full and open competition.

The Michigan Department of Management and Budget (DMB) has agreed to accept for state agencies the competitive bid process undertaken by partner agencies at the Michigan Works! Service Center, for the same goods and services, as satisfying the competitive bid requirements for purchasing such items as space, furniture, and equipment for their use at a Michigan Works! Service Center.

The OMB "Common Rule" competitive bid requirements are also met if state departments have undertaken a DMB competitive bid process for space, furniture, and equipment, and the terms of those contracts are extended to the MWAs. Thus, it would not be necessary for a Michigan Works! Service Center or its partners to undertake another competitive bid process for space, furniture, and equipment for Michigan Works! Service Centers.

MWAs are reminded that acquisitions under such contracts must adhere to the uniform administrative requirements for the procurement of equipment and/or services, including proper documentation, record retention, and inventory requirements.

The May 27, 1999, letter from Mel Farmer, Director, DLEG Office Services, is an example of the type of documentation that can be used to satisfy the competitive bid requirements for the procurement of office products specified under the designated Haworth, Inc., contracts. Such documentation must be maintained on file for OWD monitoring purposes.

B. CAPITAL EXPENDITURES

OMB Circulars A-87 and A-122 require the approval of capital expenditures by the grantor agency. This approval authority has been delegated to the state for all grants administered by DLEG/OWD. And, to the extent that state procedures for state organizations are sufficient to define the allowability of Employment & Training Administration (ETA) capital asset acquisition costs and do not inappropriately constrain non-state organizations, the state's policy can be applicable to non-state governmental subgrantees.

The DMB Procedure No. 0510.01, issued August 31, 1998, delegates purchasing authority for procurements of equipment up to \$25,000 to state departments. Per the above, DLEG/OWD delegates this authority to the MWAs. Although this authority rests in the MWA, all equipment procurements, regardless of cost, are only allowable costs if they are necessary and reasonable for proper and efficient performance and administration of the grant award. Procurements may not be divided into separate orders (transaction splitting) with the intent to stay within this delegated authority.

Procurement of equipment and capital improvements in excess of \$25,000 are subject to approval by DLEG/OWD. The MWA's request for approval should include at a minimum the following applicable information:

1. A description of the proposed capital improvement or equipment to be procured.
2. A discussion of how the proposed capital improvement or equipment will benefit the MWA's program(s).
3. The expected cost of the procurement with a cost or price analysis.

4. A copy of the technical specifications or other pertinent information given to prospective bidders that explains in sufficient detail what is being procured.
5. Copies of at least two bids secured by using the competitive bid process with the preferred bid indicated. If the preferred bid is not the lowest bid, the reason for selection should be noted. If only one bid is secured, a brief description of the competitive procurement efforts made. And, if sole source procurement will be utilized, documentation that gives the rationale for sole source acquisition is required.
6. For a capital improvement, the date it will begin, when it will be completed, the location of the building, and the site.

Please submit the above information, along with a cover letter requesting approval, to:

Mr. Ted De Leon, Division Director
Reporting and Monitoring Division
Office of Workforce Development
Michigan Department of Labor & Economic Growth
201 N. Washington Square, 5th Floor
Lansing, Michigan 48913

No procurement of equipment or capital improvements in excess of \$25,000 can be made prior to the date of approval.

Construction or Purchase of Facilities is prohibited under the grants administered by DLEG/OWD with limited exceptions.

Workforce Investment Act (WIA) Title I Funds may be spent on construction or purchase of facilities:

1. To meet a grant recipient's obligation to provide physical and programmatic accessibility and reasonable accommodation, as required by section 504 of the Rehabilitation Act of 1973, as amended, and the Americans With Disabilities Act of 1990
2. To fund repairs, renovations, alterations, and capital improvements of property, including:
 - a. SESA real property, identified at WIA Section 193.
 - b. Job Training Partnership Act owned property which was transferred to WIA Title I programs.

3. Job Corp facilities, as authorized by WIA Section 160 (3) (B).

Trade Adjustment Assistance funds can only be used to procure real property if approved in advance by the Grantor agency U. S. Department of Labor.

Repairs and alterations are considered current operating costs and are allowable.

C. BASIC POLICY REQUIREMENTS

At minimum, the procurement policy shall require:

- Cost and/or price analysis for every procurement;
- Written standards for all types of procurement;
- Conduct that ensures full and open competition;
- Methods for acquisition of equipment, building space, or related facilities, as well as the selection of service providers;
- Provisions for leases and contracts;
- Provisions which prohibit conflict of interest and discrimination;
- Procedures for inventory, record keeping, and reporting to show history of each procurement;
- Methods to ensure subrecipient compliance with the terms and conditions of contractor purchase orders and awards made to responsible subrecipients;
- Review of proposed procurement to prevent unnecessary purchases; and
- Documentation of all procurements by the MWA and any subrecipient for all procurement regardless of dollar amount.

D. STANDARDS

In order to ensure that unfair requirements are not placed on procurement procedures, the following situations that are considered restrictive of competition are to be avoided:

- Placing unreasonable requirements on firms or organizations in order to qualify to do business,
- Requiring unnecessary experience and/or excessive bonding,
- Noncompetitive pricing practices between firms or organizations or between affiliated companies or organizations,
- Noncompetitive awards to consultants that are on retainer contracts,
- Awards that would create organizational conflicts of interest,
- Specifying brand name products instead of allowing a similar product of equal quality and describing the performance of other relevant requirements of the procurement,
- Overly restrictive specifications, and
- Any arbitrary action in the procurement process.

1. **Competitive Procurement**

- For all procurements in excess of \$25,000 **formal procedures** are to be used. Formal procurement procedures approved for using OWD funding sources are the following:
- **Sealed bids** are publicly solicited procurements for which a firm fixed-price (lump sum or unit price) or other fixed price arrangement is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. Invitations for bids shall be publicly advertised, and solicited from at least two or more vendors. The invitation for bids shall include any specifications and pertinent attachments, and shall define the items or services in order for the bidder to properly respond. All bids shall be publicly opened at the time and place prescribed in the invitation for bids.
- **Competitive proposals** are conducted with more than one source submitting an offer and either a fixed-price or cost reimbursement type award is made. MWAs must implement documented procedures for the methodology

- used for technical evaluations, and award to the responsible offer whose proposal is most advantageous to the program with respect to price, technical, and other factors considered.
 - **Informal procurement procedures** may be conducted for small purchase procurement of property or services **under \$25,000** in the aggregate. MWAs shall not break down one purchase into several purchases merely to be able to use small purchase procedures. Documentation of price rates or quotes shall be maintained from an adequate number of qualified sources.
2. **Non-Competitive (Sole Source) Procurement:**—Sole source procurement through a proposal from only one source or after a determination that competition is inadequate shall be **minimized, justified, and documented**. This procedure may be **used only** when the award is not feasible under competitive procedures due to one of the following circumstances:
- The item or service is only available from a single source; or
 - When there is a public emergency need for the item or service which does not permit a delay resulting from using competitive procedure; or
 - After solicitation of a number of sources, only one bid is received and/or competition is determined inadequate.
3. **Deliverables and Basis for Payment**—Each procurement shall clearly specify deliverables and the basis for payment.
4. **Small, Minority, and Women Owned Businesses**—The following affirmative steps are to be taken to ensure that minority firms, women’s business enterprises, and labor surplus area firms are used when possible:
- Placing qualified small, minority, and women’s businesses on solicitation lists;
 - Ensuring that small, minority, and women’s businesses are solicited whenever they are potential sources;
 - Dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by small, minority, and women’s businesses;

- Establishing delivery schedules, where the requirements permit, which encourage participation by small, minority, and women's businesses;
- Using the services and assistance of the United States Small Business Administration and the Minority Business Development Agency of the United States Department of Commerce; and
- Requiring the prime contractor, if subcontracts are to be let, to take the same affirmative steps.

5. **Lease Requirements**—Procurements with OWD funds are to be covered by a written contractual agreement. Leases must contain the following:

- The agency or organization name and business address of the lessee and the lessor;
- The signatures of authorized representatives of both the lessee and the lessor;
- The effective dates of the agreement (beginning and ending dates);
- Specific items covered by the agreement, i.e., address of the facility, quantity and description of equipment items, quantity and type of motor vehicles, specific maintenance and operating costs which are included or excluded;
- Insurance costs;
- Lease insurance for motor vehicles, if applicable; and
- Conditions for termination of the lease without penalty costs should federal funds become unavailable.

6. **Cost or Price Analysis**—A cost or price analysis shall be performed for every procurement action, including contract modifications, except those, which have no monetary impact.

Cost analysis is necessary when the offeror is required to Submit the elements of the estimated costs, or when adequate price competition is lacking. Cost analysis is also required for all sole source procurement.

Cost analysis is the review and evaluation, element by element, of an agency's proposal. Contract cost analysis is the element-by-element examination of costs and related information presented in the cost and pricing data offerors submit.

Price Analysis shall be used when price reasonableness can be established on the basis of the catalog or market price of a product or is based on prices set by law or regulation. Price analysis is the process of examining and evaluating a price without looking at individual cost elements. The focus is the "bottom-line" price. The method and degree of the analysis depends on the particular procurement and pricing situation. At a minimum, the awarding agency shall make independent estimates before receiving bids or proposals.

A certification should be submitted by the offeror to the MWA, stating that the cost data is accurate, complete, and current at the time of agreement, in all cases where a cost analysis is necessary and there is inadequate price competition. Awards or modifications negotiated in reliance on such data should provide the MWA a right to a price adjustment to exclude any significant sum by which the price was increased in cases there the awardee had knowingly submitted data that was not accurate, complete, or current as certified.

7. **Selection of Service Providers**—The primary consideration in selecting agencies or organizations to deliver services within a local 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. The selection of service providers shall be made on a competitive basis to the extent practicable, and shall include a determination of the ability of the service provider to meet program design specifications established by the administrative entity that take into account the purposes and goals of the specific program.

In compliance with Section 104 of PRWORA, the Charitable Choice provision, MWAs are to consider religious organizations on an equal, nondiscriminatory basis with the other groups when deciding to contract with private institutions for welfare services funded by TANF or Food Assistance programs.

8. **Debarred and Suspended Parties**—MWAs shall not contract with any party which is debarred or suspended or is otherwise excluded from, or ineligible for, participation in federal assistance programs. A party's eligibility for participation in federal assistance programs can be determined by accessing the Federal Excluded Parties Listing System located on the Internet at <http://epls.arnet.gov>. MWAs shall establish procedures for the effective use of the List of Parties Excluded from Federal Procurement or Nonprocurement programs to ensure that they do not award assistance to listed parties in violation of this requirement.

Conflict of Interest—MWAs shall adopt appropriate procedures and practices to ensure that conflict of interest is avoided in the procurement of goods and services involving OWD funding sources. Individuals on the Workforce Development Board must avoid any appearance of a conflict of interest

E. PROPERTY MANAGEMENT STANDARDS:

1. **Record Retention**—All pertinent property disposition records and supporting documentation shall be maintained for a period of three years. The retention period begins on the date of DLEG/OWD's acceptance of the final closeout report for the grant or contract. Records for nonexpendable property shall be retained for a period of three years after final disposition of the property. Records shall be retained beyond the three years if any litigation or audit is begun or if a claim is instituted involving the grant or agreement covered by the records. In these instances, the records shall be retained until the litigation, audit, or claim has been finally resolved.
2. **Property Maintenance**—Adequate maintenance procedures must be developed to keep the property in good condition. This includes securing pertinent warranties, following manufacturers recommended procedures for maintenance, and providing adequate care.
3. **Vestment of Title**—Title to equipment with an acquisition cost of \$5000 or more is to be vested in the MWA or with the subcontractor as determined by the MWA. Vestment of title is contingent upon the MWA's operation of applicable programs. Title to equipment will transfer to OWD upon the MWA's termination of applicable programs.

4. **Inventory Requirements**—MWAs are responsible for the maintenance of the property inventory. The OWD defines equipment as property with a per unit acquisition cost of \$5000 or more and having a life of one year or more. Property includes computer software acquisitions if the per unit acquisition cost is \$5000 or more.

For purposes of inventory control, maintenance of records by automatic data processing, ledger, or property card format shall be required for all equipment items purchased in whole or in part with funds from DLEG/OWD. Equipment inventory is to be physically verified annually by the MWA, by someone other than the Director or Property Manager, and a list of all equipment sent to DLEG/OWD by May 1 of each year. Equipment with an acquisition cost of \$5000 or more may not be moved outside the MWA's jurisdiction.

The annual inventory list shall include **all** of the following information:

- Description of equipment
- Serial number
- I.D. or Tag number
- Funding source(s) of equipment
- Vestment of Title
- Acquisition date
- Cost
- Percentage of federal funds used in the acquisition
- Location of the equipment
- Condition of the equipment
- Program utilizing the equipment
- Approval date for disposal
- Disposal Date
- Net sales proceeds (if disposed of)

The inventory list shall be sent to:

Michigan Department of Labor & Economic Growth
Office of Workforce Development
201 North Washington Square, 5th Floor
Lansing, Michigan 48913
Attention: Inventory Account Analyst

For all new purchases with a unit cost of \$5000 or more, the MWA shall add the items to their inventory list within 30 days of

acquisition. In addition, the MWA shall notify DLEG/OWD, of all the inventory control information listed above (with the exception of the last three items), **by submitting a Confirmation of Equipment Purchase (OWD Form-7) within 30 days of acquisition.**

5. Equipment Disposition—Written approval must be obtained from DLEG/OWD prior to disposal of any equipment items that had an original acquisition cost of \$5000 or more. Equipment purchased utilizing OWD funding sources, which is no longer needed, must be disposed of at fair market value. Equipment may be traded-in or sold with the proceeds applied to offset the cost of replacement equipment. Equipment may be sold or otherwise disposed of (junked, donated, etc.) with the proceeds (if any) treated as program income and applied to offset program costs in the original funding sources. All equipment dispositions must be properly documented and the information retained as required in Item 1.
6. **Destroyed, Missing, or Stolen Equipment**—MWAs shall maintain documentation of all equipment destroyed. Documentation shall include date equipment was destroyed, a description of equipment and serial number(s), and the cause of loss. MWAs shall contact their local police department and request a report to be completed on any missing or stolen equipment. A copy of the report shall be maintained by the grant recipient/administrative entity. For equipment, which originally cost \$5000 or more, a copy of the police report must be forwarded to OWD/DLEG. Inventory records shall be adjusted accordingly.

Action: MWAs shall establish, maintain, and follow a written procurement policy, which complies with this policy.

Inquiries: Questions regarding this policy should be directed to the Federal Reporting Section of OWD's Reporting and Monitoring Division

In accordance with the Americans With Disabilities Act, the information contained in this instruction letter will be made available in alternative format (large type, audio tape, etc.) upon special request received by this office.

Expiration: Continuing.

SIGNED

Vicki S. Enright, Director
Office of Workforce Development

VSE:ML:JL