



WORKFORCE IMPLEMENTATION GUIDANCE (WIG) LETTER

DATE: June 26, 2019
NO: WIG GA-19-001
TO: LOCAL WORKFORCE SYSTEM STAKEHOLDERS
FROM: Joe Dan Banker, Assistant Commissioner
SUBJECT: CONTRACT ASSURANCE

1. **Purpose:** To provide guidance in developing policy and procedures regarding Contract Provisions and Assurances under the Uniform Administrative Guidance/Workforce Innovation and Opportunity Act (WIOA). Adherence to a comprehensive policy and procedures will ensure the proper use of federal funds authorized under WIOA.
2. **Intended Audience:** Local Workforce Development Board (LWDB) members, Local Workforce Development Area (LWDA) Executive Directors, Finance Directors and employees.
3. **Background:** The Workforce Innovation and Opportunity Act took effect on July 1, 2015. This WIG covers provisions and items that should be included in the contract and in the contract file. Federal award recipients must agree to comply with the applicable laws and regulations related to the program and its agency as a condition of receiving Federal awards or grants.
4. **Federal Regulation:** §200.326 Contract Provisions The non-Federal entity's contracts must contain the applicable provisions described in Appendix II to Part 200 – Contract Provisions for Non-Federal Entity Contracts Under Federal Awards.

Appendix II to Part 200 –Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

In addition to other provisions required by the Federal agency or non -Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

- A. Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- B. All contracts in excess of \$10,000 must address termination for cause and for convenience by the non -Federal entity including the manner by which it will be effected and the basis for settlement.



- C. Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60 -1.3 must include the equal opportunity clause provided under 41 CFR 60 - 1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964 -1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
- D. Davis -Bacon Act, as amended (40 U.S.C. 3141 - 3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non -Federal entities must include a provision for compliance with the Davis -Bacon Act (40 U.S.C. 3141 -3144, and 3146 - 3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non -Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non -Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti -Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non -Federal entity must report all suspected or reported violations to the Federal awarding agency.
- E. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701 -3708). Where applicable, all contracts awarded by the non -Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Copies formatted for printing are available at: www.maximus.com/higher-education/omb-uniform-guidance 83 Copies formatted for printing are available online at: Page 84 <http://www.maximus.com/our-services/education/higher-education/omb-uniform-guidance> Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must



be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

- F. Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
- G. Clean Air Act (42 U.S.C. 7401 -7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 -1387), as amended —Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non - Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 -7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 -1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- H. Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).
- I. Debarment and Suspension (Executive Orders 12549 and 12689) —A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), “Debarment and Suspension.” The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- J. Byrd Anti -Lobbying Amendment (31 U.S.C. 1352) — Contractors that apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non -Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non - Federal award.



- K. §200.322 Procurement of recovered materials. A non -Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

Additional items under the new Uniform Guidance:

1. LWDA's must include an EEO notice in all recruiting materials. As the recipient of WIOA funds, you must ensure that proper notice is provided stating that all applicants – including people with disabilities, people with limited English proficiency, and people who are part of groups that may face discrimination such as transgender individuals, pregnant women, or people with medical conditions – have access to activities offered through the One-Stop workforce development system. (WIOA Section 188 and 29 CFR §37.4)
2. USDOL requires intellectual property developed under a competitive Federal award process to be licensed under a Creative Commons Attribution license. This license allows subsequent users to copy, distribute, transmit and adapt the copyrighted work and requires such users to attribute the work in the manner specified by the grantee. (2 CFR § 2900.13)
3. The distinction must be made between subrecipients and vendors, and clearly identified as such in the terms of the contract. (2 CFR § 200.330)
4. Please examine the requirements closely, as not every provision may apply to the contract under review. If you are unsure, it is better to include an unrequired provision than fail to include a required one.
5. For certain grants, the terms and conditions may identify additional requirements.

Contract Provision Checklist

- Administrative, contractual, or legal remedies where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts more than the simplified acquisition threshold)
- Termination for Cause (over \$10,000)
- Equal Employment Opportunity (over \$10,000)
- Copeland “Anti-Kickback” Act (Construction or repair)
- Davis-Bacon Act, as amended (Construction over \$2,000)
- Contract Work Hours and Safety Standards Act (Construction over \$2,000 or Labor over \$2,500)



- Agency reporting requirements
- Rights to Invention Made Under a Contractor Agreement (if applicable) Access to records
- Three year retention
- Clean Air Act and the Federal Water Pollution Control Act, as amended (over \$100,000)
- Byrd Anti-Lobbying Amendment (over \$100,000)
- Debarment and Suspension
- Contract amount
- Contract start and end date
- Funding source
- Scope of work, requirements, deliverables and outline for measuring performance
- Approved and signed based on board delegation of authority
- Contract pricing terms, including profits that should be separately managed and negotiated (if applicable)
- Contract relationship - Subrecipient vs. Vendor (Note – this documentation should be completed early in the procurement process)
- Payment terms
- Provider's justification of need for advances (if applicable)
- Any amendments, and copies of subcontracts or memorandums of agreement, if applicable
- Expended amount to date
- Confirmation that contracted party is not debarred or suspended and was verified prior to entering contract
- Required invoice and supporting documentation supporting payments
- Relevant status reports as detailed in the written contract agreement (i.e. performance monitoring, resolution reports, etc.)
- Correspondence regarding contract that could impact analysis of goods/services received, or review/approval processes.

If determined to be a subrecipient, OWD will review the contract for the following additional items:

- Appropriately identified as a subrecipient contract
- Federal award information (including CFDA) is included in contract (Adult - #17.258, Dislocated Worker - #17.278, and Youth - #17.259)
- Compliance information provided to subrecipient
- Subrecipient monitoring requirements
- Single Audit Act and other audit requirements
- Technical advice and training
- Notified of requirement to permit pass through entity and its auditors to access their records for monitoring and auditing purposes



Contract Management: OWD will review selected contracts for all required provisions and review the contract files to verify compliance with terms and conditions of contract. The following is a checklist of items included in this review:

- Contract file maintained
- Process approved contract payments
- Contract activities periodically monitored
- Compliance with federal, state, agency rules, laws, regulations or program requirements
- Compliance with contract, grant award, and/or agreement terms and conditions
- All deliverables were received per contract terms
- Corrective action processes for contractors is in place
- Additional procedures for subrecipients are in place

Close-Out Procedures: If contract has been closed out, OWD will verify the following:

- All goods/services were received per terms
- Payments were approved and correctly calculated
- A final cost-price/budget analysis has been performed
- Follow-up with contractor for any problems noted
- Follow-up with management, as needed

If contract was terminated or there are any issues with vendor performance, OWD will review that processes were documented and followed, and that appropriate levels of management were notified.

For further questions, contact:

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