

**Metro North Regional Employment Board  
186 Alewife Brook Parkway, Suite 216  
Cambridge, MA 02138**

**WIOA Procurement Policy for Education and  
Training Services**

**Revised: November 30, 2017**

**Metro North Regional Employment Board  
Procurement Policy for Education and Training Programs**

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## **A. AUTHORITY TO TAKE PROCUREMENT ACTIONS**

### **PROCUREMENT FOR THE PROVISION OF CLIENT TRAINING SERVICES**

The Metro North Regional Employment Board (MNREB) is the designated fiscal/administrative entity for the Metro North Workforce Investment Area designated as required by the Workforce Investment and Opportunity Act of 2014 (WIOA). The MNREB is responsible for managing the procurement process necessary to award funds through WIOA and other funding sources. The procurement process is managed by the staff of the MNREB under the direction and oversight of REB committees. Final approval of funding decisions and fund allocation for WIOA and related grants is the responsibility of the full REB membership.

The policy and procedures, and the specific individuals with authority, are listed below by function:

1. Allocate funds to procure services.

The President of the MNREB with designated REB staff are responsible for the initial allocation of funds for the procurement of services. This allocation is reviewed and approved by the pertinent specific REB committee, and ultimately approved by the full REB.

2. Approve procurement plans.

The President of the MNREB and designated REB staff are responsible for the development of the initial procurement plan for the region. These plans are reviewed and approved by the pertinent specific REB committee.

3. Approve non-competitive and sole source procurement.

The MNREB President and designated staff are responsible for presenting the REB committee or membership (as appropriate) with documentation and information related to non-competitive and sole source procurement. The REB has review and approval authority, and ultimately the procurement and its results must be approved by the full REB.

4. Approve the issuance of a solicitation package.

The MNREB President and designated staff are responsible for the creation of the solicitation package. Prior to issuance, the pertinent specific REB committee must review and approve the solicitation package.

5. Approve the selection of contractors or service providers.

Following the pre-qualification process and the proposal review, recommendations for the selection of service providers are made to the pertinent specific REB committee. The REB

Committee reviews the recommendations to ensure consistency with the overall WIOA plan, equitable geographic distribution of services, non-duplication of existing services, and for quality. Following review and approval by the pertinent specific REB committee, a recommendation is made to the full REB and final approval lies with the Regional Employment Board.

6. Sign contracts. (Please see Attachment A, the certification by the Board of Directors that this individual has legal authority to sign contracts.)

The MNREB President has signatory authorization for contracts.

7. Approve and sign contract modifications.

Contract modifications are approved by designated MNREB staff and are submitted to the President of the MNREB. The President has the signatory authorization for both contracts and contract modifications.

8. Issue notices of contract termination.

The President of the MNREB has the authority to issue notices of contract termination.

Exceptions to this authority as defined above exist in the areas of Individual Referral procurement and for other state line-item funds awarded to the MNREB. Exceptions are as follows:

Individual Referral procurement: Funds set aside for individual referral procurement are initially approved by the REB in conjunction with the approval of the plan and slots. The REB may make adjustments to this budget amount due to circumstances which evolve in the course of the year. The REB does not have to approve each individual referral contract.

State Line-Item Awards: In certain rare circumstances, a state agency or its designate will undertake a procurement for a specific training package. Since the procurement for these programs occurs at the state level, the MNREB and Board roles are slightly different. The MNREB will comply with all requirements as set out in the state procurement process, and the Board membership shall make all required decisions as outlined in the state process.

## **B. ETHICAL PROCUREMENT PRACTICES**

Introductory note: Vendor capacity building conducted prior to the solicitation process for technical assistance purposes is permitted when conducted with appropriate public notice to ensure fairness and in order to avoid a competitive advantage for any vendor.

### **CONFLICT OF INTEREST**

1. No employee, officer, agent or board member of MNREB or the REB shall participate in procurement activities resulting in the selection or award of contracts where a real or apparent conflict of interest may be involved. Such a conflict may arise if any of the following individuals has a financial or other interest in any firm under consideration or selected for contract award:
  - a. employee, officer or agent,
  - b. any member of the employee's, officer's or agent's immediate family,
  - c. any employee's, officer's or agent's business partner, or
  - d. an organization which employs, or is about to employ, any of the above.
2. No REB Board member shall participate in any decision making capacity (including discussions to which all proposers are not afforded equal opportunity) or cast a vote on the provision of services by that member (or any organization which that member directly represents), or cast a vote on any matter which would provide any direct financial benefit to that member or a member of his/her immediate family.
3. Individuals who participate or influence any level or stage of the procurement planning/negotiation/award process are required to disqualify themselves from participation in procurement decisions in which they have an interest.
4. Upon completion of the evaluation of proposals by the selection committee, members must sign a certification that their decisions were not affected by any conflict of interest.
5. If an individual disqualifies him/herself, or is disqualified based on the guidelines provided in Paragraphs 1 through 3 above, a formal record of disqualification of interested parties shall be included in the record of the procurement.
6. In cases where inappropriate participation in procurement transactions has resulted in the loss of program funds, excessive costs or improper benefit to the party or organization with the conflict of interest, any agreements still in place will be terminated as soon as possible and an attempt at recovery of funds will be made. If advisable, resolution through the courts will be pursued.

## **CODE OF CONDUCT**

The following Code of Conduct shall govern the performance of officers, employees or agents engaged in the selection, award and administration of contracts.

1. Officers, employees, or agents of the MNREB may not solicit or accept gratuities, kickbacks, favors or other items of monetary value from contractors/vendors, potential contractors/vendors, parties to sub-agreements, or otherwise interested parties. Such provisions shall be in minimum compliance with State law concerning Conduct/Financial Disclosure (cite: M.G.L. 268A & B). An exception to this general rule would be the acceptance of an unsolicited gift of nominal intrinsic value, provided it is not in conflict with the State Finance Law. Nominal intrinsic value is less than twenty-five dollars (\$25.00).
2. MNREB officers, employees, or agents may not improperly disclose confidential information acquired during the performance of official duties, or use such information to further personal gain. Prohibitions include, but are not limited to disclosure of procurement plans, proposal cost/price and technical information, relative scores or standing of bidders/offerors prior to award, advance solicitation notification (prior to public announcement), or disclosure of any information which may compromise the fairness or objectivity of the procurement process resulting in a competitive advantage to one or more offerors.
3. Penalties, sanctions, or other disciplinary actions for violations of the Code of Conduct by MNREB officers, employees, or agents shall be in minimum compliance with State law concerning Conduct / Financial Disclosure (cite: M.G.L. 268A & B).

## **PROCUREMENT PRACTICES**

1. MNREB procurement procedures shall provide for a review of proposed procurements to avoid purchase of unnecessary duplicative items. Consideration shall be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.
2. Where appropriate, the MNREB shall enter into state and local intergovernmental agreements for procurement or use of common goods and services to foster greater economy and efficiency.
3. Where appropriate, the MNREB shall use federal excess/surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs. The MNREB will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity,

compliance with public policy, record of past performance and financial and technical resources.

4. The MNREB shall maintain records sufficient to detail the significant history of a procurement. These records shall include, without limitation, the rationale for the method of procurement, selection of contract type, contractor selection or rejection and the basis for the contract price, as more particularly described below. The MNREB shall use time and materials type contracts only after the determination that no other contract is suitable and if the contract includes a ceiling price that contractor exceeds at its own risk. The MNREB shall be solely responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues may include, without limitation, source evaluation, protests, disputes and claims. Compliance with the MNREB procurement policies does not relieve the MNREB of any contractual responsibilities under its contracts. Violations of law shall be referred to the local, state or federal authority having proper jurisdiction.
  
5. The MNREB shall adopt protest procedures to handle and resolve disputes relating to its procurements and shall in all instances disclose information regarding any protest to the awarding agency. A protestor must exhaust all administrative remedies with the MNREB before pursuing a protest with the state or federal agency. Reviews of protest by the federal agency will be limited to violations of federal law or regulations and the standards of 2 CFR Part 200.317 (violations of state or local law with be under jurisdiction of state or local law authorities) and violations of the MNREB protest procedures for failure to review a complaint or protest. Protests received by the federal agency other than those specified herein shall be referred to the MNREB.

## C. PROCUREMENT PLANNING

### CONSISTENCY OF THE PROCUREMENT PLAN AND THE METRO NORTH JOB TRAINING PLAN

The procurement plans are developed subsequent to the approval of the annual Metro North Job Training Plan and other grant plans required for the next fiscal year. If final allocations are not available when program funding decisions are made, estimates of allocations are used and funding decisions fall into two categories: programs to be funded, and programs which are prioritized for funding contingent upon the receipt of final allocations.

### TIME FRAMES

To ensure operational efficiency and the fair treatment of offerors, MNREB uses the following general procurement schedule:

Technical Assistance Period - One to two months of technical assistance workshops and individual meetings with any interested vendors prior to proposal solicitation. Technical assistance opportunities are publicized through legal notices and letters to MNREB's extensive mailing list.

Issuance of Requests for Proposals (RFP) - Issued within the weeks preceding any Bidders' Conference or at the Bidders' Conference. Legal notices publicize the Bidders' Conference and the availability of RFPs. Vendors on the mailing list receive either a letter notifying them of RFP availability or the RFPs themselves, along with notification of the Bidders' Conference, if one is to be held.

Bidders' Conference – When deemed necessary, this public meeting may be held simultaneously with the issuance of an RFP.

Proposal Review - The MNREB Planning Department first reviews proposals to ensure the inclusion and acceptability of all materials necessary for pre-qualification. Proposal review then occurs over a period of two to four weeks, with recommendations given to the pertinent REB committee. Recommendations are then submitted to the full REB for final approval. All of the review and approval process should be completed within a reasonable amount of time following the date of proposal submission, and with enough time to negotiate and develop contracts and to ensure timely program implementation.

Notification of Vendors - All vendors submitting proposals are notified in writing of the disposition of their proposals within a reasonable time frame following REB approval.

Contract Negotiations and Contract Execution - Contract negotiations and execution occur prior to the program start.



For each procurement cycle, the above general schedule is made specific with the addition of dates for each aspect of the process, and is distributed in letters to the MNREB mailing list and at technical assistance meetings.

## **MECHANISMS FOR ENSURING THAT STATUTORY AND REGULATORY REQUIREMENTS ARE MET**

MNREB ensures that all statutory and regulatory requirements are met through developing a comprehensive and informative RFP, which includes all of those elements noted in part E section III of this policy.

Where appropriate, proposals must include:

- Signatory Authorization for Corporate Providers
- Certification Regarding Debarment, Suspension, and Other Responsibility Matters
- Evidence of Commitment to Equal Opportunity and Affirmative Action
- Statement of Commitment to a Drug-free Workplace
- Most Recent Audit

Proposals also provide:

- Evidence of organizational capacity to provide services
- Evidence of past performance in delivering comparable or related services
- Detailed program design and curriculum information
- Specific competencies to be achieved during the course of services
- Detailed cost information

The overall goals of proposal review include:

1. Providing services which do not duplicate existing services
2. Providing an equitable geographic distribution of services
3. Funding quality programs which meet the needs of the client population as well as matching local labor market demand, as determined through the in-depth proposal review process

To ensure that a fair and equitable procurement process occurs, proposal review training may be conducted for prospective reviewers and other involved parties, procurement guidelines are strictly observed, and documentation of each step involved in proposal review is maintained.

## **D. COMPETITIVE PROCUREMENT**

### **COMPETITIVE PROCUREMENT PROCEDURES**

MNREB procurement procedures promote and maximize the competitive procurement process. MNREB procurement decisions must:

- a. appropriately target resources based on approved job training plans
- b. be made impartially and at "arms length"
- c. be based upon demonstrated applicant performance
- d. include a determination of cost/price reasonableness
- e. be in compliance with all related federal and state laws, regulations and policy.

To ensure that these minimum requirements are met, MNREB policy and procedural guidance includes the following:

MNREB procurement policy requires that there shall be unrestricted, open and full competition wherever possible.

- a. There must be an equitable and impartial dissemination of solicitation and proposal information to potential vendors/contractors. Potential vendors and contractors must be informed of procurement plans/solicitations through use of public advertisement(s). MNREB will maintain a potential service providers mailing list and use public meetings/bidders conferences to ensure equitable and impartial dissemination of solicitation information.
- b. Solicitation/RFP documents cannot include statements or requirements which may unduly restrict competition (for example, excessively narrow or excessively broad geographic requirements or undue/excessive prescription of programmatic design).
- c. MNREB will assure that there will be an adequate investment of time and resources to complete the procurement process.
- d. The process for the reallocation and award of lag funds identified during the grant period will meet minimum procurement standards.
- e. MNREB policy and procedures define the methods required for procurement of goods and services at three specific dollar threshold levels. The threshold dollar limits shall be as defined in 100 DCS 01.102, reflective of the threshold limits outlined in the Workforce Investment and Opportunity Act (WIOA):

**NOTE: For all three threshold levels:**

- a. Proper competition requires a minimum of two (2) responsive bids/quotes/proposals (as

appropriate).

- b. In determining the appropriate threshold, procurement must be viewed in the **aggregate**. This includes multiple procurement for the same type of good or service within a single program activity or from an individual vendor/contractor within one fiscal year (see Individual Referral three bid process exception). Sound business practice requires that such procurement be reviewed historically, anticipated in the annual planning process and then, be subject to the requirements of the appropriate threshold.

### **THRESHOLD LEVELS:**

- a. **Goods and Services \$3,500 or less (Micro-purchase).**  
Procurements within this threshold do not require a formal bid solicitation process, however, price and/or rate quotes must be documented from an adequate number of qualified sources. Documentation of the price analysis, procurement method and justification for the selection among competitive providers is required. This may include a pre-qualified service provider inventory list. Care should be exercised in establishing specificity in agreements to ensure that outcome goals are achieved.
- b. **Goods and Services from \$3,501 to \$150,000 (Small Purchase)**  
Procurements within this threshold do not require a formal bid solicitation process, however, bids and/or proposals must be documented from an adequate number of qualified providers. Documentation of the best price selection and award justification among competitive providers based on full cost/price analysis is required.
- c. **Goods and Services over \$150,000 (Simplified Acquisition Process).**  
Procurements at this threshold level are subject to the formal bid/proposal solicitation requirements outlined within this policy.

### **INDIVIDUAL REFERRALS**

Either an individual selection process, or a Request for Qualifications (RFQ) process (which establishes an approved provider's list for the awarding of individual referral (IR) agreements) may be used for selection of Individual Referrals.

#### Individual Selection Process:

MNREB may select individual referral services utilizing a process similar to that of small purchases. Such a process must require selection from among a minimum of three (3) qualified sources for each individual referral service procurement. The selection process must take into consideration, at a minimum, price and demonstrated performance. Other factors for consideration may include, but are not limited to: participant need and preference, participant's potential to benefit, transportation and geographical feasibility, total costs, anticipated value of placement and wage outcomes. All factors considered in

the selection process must be documented in the procurement file for each individual service selection. (Note: While this procurement method is not subject to a formal solicitation process, additional justification may be required where consistent/multiple selections from a single provider, in the aggregate, exceed the level at which a formal solicitation would otherwise be indicated.)

#### RFQ Selection Process:

An RFQ (formal solicitation) process may be used to form the basis for selection of Individual Referral services (see section E). When this process is elected, the MNREB must further establish a rationale for final source selection from the approved vendor's list. This rationale must be consistently applied in the selection of each individual referral service selected from the list. At a minimum, each final individual selection must document demonstrated performance and cost/price comparison between a minimum of two potential offers of the same/like good or service. Other considerations may include participant need and preference, participant's potential to benefit, transportation and geographical feasibility, total costs, anticipated value of placement and wage outcomes. To the extent that these additional considerations enter into source selection, their application must be documented. Where only one provider of a particular good/service has responded to the RFQ or is available on the provider list, a failed competition process must be observed - including adequate cost/price analysis and documented justification of the ultimate procurement.

MNREB must always make a strong attempt to assure that prices are reduced for quantity purchases. This may require that the RFQ or RFP solicitation include requirements for proposers/bidders to state minimum class size and quantity discount scales expressed in numbers of students and in percentage of minimum class size.

### **NON-COMPETITIVE PROCUREMENT**

A procurement will be considered non-competitive when a formal solicitation results in less than two responsive and responsible proposals (failed competition), or when there is a sole source provider. Written procedures must ensure documentation of the award justification including a complete cost and price analysis for any non-competitive award. Non-competitive awards may be justified only when the award of a contract is infeasible under small purchase or formal solicitation procedures and one of the following circumstances applies:

1. Failed Competition - Solicitation has resulted in less than two (2) responsive and responsible bids.
2. Actual Sole Source - the item or service is available only from a single source (utility company, etc.);
3. Emergency or exigency - the public need for the item or service does not permit a

delay resulting from competitive solicitation (fire damage, etc.);

4. Prior approval from the state agency providing funding and oversight;
5. OJT - the purchase is for an On-the-job training contract, except OJT brokering contracts which must be selected competitively;

NOTE: MNREB is aware that poor planning is not an adequate justification for non-competition. With proper planning, a formal solicitation process may be initiated within a relatively short time frame.

### **Prior Approval**

Prior written approval must be obtained from the state agency providing funding and oversight for any actual sole source or emergency/exigency award which is in excess of \$150,000. All such awards must be justified and documented. Requests for approval must include the following information:

- a. a copy of the offeror's proposal
- b. a copy of the cost/price analysis
- c. a copy of related REB meeting discussion minutes
- d. a copy of the non-competitive/award justification
- e. a cover letter requesting approval

NOTE #1: MNREB realizes such awards will not be approved retroactively.

NOTE #2: Although such awards in an amount below \$150,000 need not be submitted to the state agency providing funding and oversight for approval, MNREB must internally document and justify awards below this level as well.

NOTE #3: Such procurements which initially do not require approval from the state agency providing funding and oversight, but which are modified to an amount which exceeds \$150,000, must be submitted for approval from the state agency providing funding and oversight.

NOTE #4: MNREB realizes that failure to obtain required **prior** approvals may result in questioned costs.

### **Failed Competition**

When MNREB conducts a formal solicitation process and receives only one qualified proposal, the award process must be justified and documented.

Documentation should address the following questions:

1. Was there a weakness in the solicitation specifications?

2. Was the statement of work clear?
3. Was the statement of work too narrowly defined?
4. Were the administrative requirements too cumbersome?
5. Was there an excessive amount of experience required?
6. Was the cost the entity was willing to pay too low?
7. Was there adequate time to prepare proposals?
8. Was the solicitation advertised in an adequate number of locations?
9. Are the services/training being sought really only available from one offeror?

Once these issues have been addressed and it has been documented that the process was not flawed and that in fact only one vendor can provide the sought services, a cost/price benefit analysis must be completed prior to awarding the contract.

### **Actual Sole Source**

Since most services are offered by more than one firm, each potential sole source situation must be reviewed carefully. Examples:

Not Acceptable: Specifying the use of IBM computer equipment when compatible equipment is available

Acceptable: Local telephone service, utility or a computer software firm that developed software specifically for MNREB. It may be too costly for another to provide the same service. However, this fact must be documented. This could be accomplished by contacting other firms and offering them the opportunity to bid for the service and finding that they choose not to bid due to the cost involved.

### **Emergency or Exigency**

This should be limited to a physical emergency which threatens the well-being of MNREB or its clients.

MNREB may perform a limited solicitation by telephone and, if one offeror is willing to resolve the emergency, this would be satisfactory justification.

### **SOLICITATION FREQUENCY**

These procurement policies shall ensure that:

1. **Steps have been taken to maximize competition.**

This may be accomplished through (but not limited to): Bidders conferences; mailings to potential vendors; public advertisements (every procurement must be publicized in one or more newspapers which will reach the vendor audience). An effort will be made to avoid writing too vague or overly restrictive solicitations which may limit competition.

2. **The Solicitation of proposals targets appropriate vendors.**
3. **Procedures regarding solicitation are documented.**  
MNREB will maintain an up-to-date mailing list of potential vendors; if applicable, MNREB will maintain documented minutes of the bidders conference and maintain copies of all advertisements/announcements of procurement etc.
4. **Solicitation occurs on a frequent basis.**  
Depending upon funding, solicitation should occur at a minimum every two years to promote and encourage competition. Solicitation of Audit services shall occur at a minimum of every five years.
5. **Multi-year funding** of contractors must be consistent with the conditions of the approved RFP and award. In addition, subsequent year funding is to be retained as the option of MNREB only and must be subject to successful performance and formal, documented contract negotiations.

### **Open or Rolling Solicitations**

The use of this type of solicitation that permits vendors to submit proposals for funding at any time during the year may be utilized for an RFQ situation, but is not recommended for RFP solicitations (see IR selection). If such proposals are received, MNREB will ensure that proposals are reviewed based upon "like" competitive services with detailed cost/price analysis. Failure to do so will result in failed competition.

### **Maintenance of Appropriate Procurement Documentation**

MNREB requires the maintenance of organized and centralized procurement files. Procedures require files to contain sufficient documentation to track the significant history of each procurement. Files shall contain all documentation related to that procurement including, but not limited to the: procurement planning records, the solicitation, notices of public advertisement, bidders conference minutes, all proposals submitted with records of their receipt, all proposal evaluation documentation (including sign-offs and certifications), all proposal negotiation documentation, and all related meeting/committee minutes to document the contract(s) review, evaluation and award.

The checklists on the following pages may be utilized to ensure inclusion of all required documents.

## PROCUREMENT FILE

Solicitation Name/Type: \_\_\_\_\_

Funding Source: \_\_\_\_\_

Funding Period: \_\_\_\_\_ Total Funding: \_\_\_\_\_

### CHECKLIST:

- \_\_\_\_\_ Procurement Planning Records (meeting minutes, etc.)
- \_\_\_\_\_ Copy of Solicitation Document (RFP, RFQ, IFB)
- \_\_\_\_\_ Original Public Notice(s)/Ad(s) (tear sheets)
- \_\_\_\_\_ Copy of Solicitation Mailing List(s)
- \_\_\_\_\_ List of Entities which requested a proposal
- \_\_\_\_\_ Records of Bidders Conference Attendance
- \_\_\_\_\_ Minutes from Bidders Conference
- \_\_\_\_\_ Copy(s) of Q & A's sent to proposers
- \_\_\_\_\_ Copy(s) of amendments to solicitation
- \_\_\_\_\_ Log of proposals submitted
- \_\_\_\_\_ Copies of proposals submitted (with date stamp & time)
- \_\_\_\_\_ Minutes of Review team/committee meeting(s)
- \_\_\_\_\_ Signed proposal rating sheets
- \_\_\_\_\_ Cost/Price analysis documentation
- \_\_\_\_\_ Signed review team non-conflict statements
- \_\_\_\_\_ Written recommendations of review team/committee
- \_\_\_\_\_ Documentation of proposal/contract negotiation(s)
- \_\_\_\_\_ Amended/Last and Final Proposals
- \_\_\_\_\_ Misc. proposal clarification documents/correspondence
- \_\_\_\_\_ Minutes of Award/Selection meetings and votes
- \_\_\_\_\_ Copies of Approval/Award/Rejection letters
- \_\_\_\_\_ Required certifications (debarment & suspension, etc.)



## CONTRACT FILE

Contract Name: \_\_\_\_\_

Contract Number: \_\_\_\_\_ Contract Amount: \_\_\_\_\_

Contract Period: \_\_\_\_\_

Funding Source: \_\_\_\_\_

### CHECK LIST:

- \_\_\_\_\_ Signed/Executed copy of the contract
- \_\_\_\_\_ Signed copy(s) of subsequent contract modifications
- \_\_\_\_\_ Contract/Mod. cost/price analysis & justification
- \_\_\_\_\_ Proposal or other documents incorporated by reference
- \_\_\_\_\_ Required certifications (debarment & suspension, etc.)
- \_\_\_\_\_ Pre-award surveys or other review data
- \_\_\_\_\_ Copy(s) of contract negotiation data
- \_\_\_\_\_ Subcontract/sub-agreement approval documentation
- \_\_\_\_\_ Copy(s) of required insurance/bonds
- \_\_\_\_\_ Copy(s) of Agency/Contractor correspondence
- \_\_\_\_\_ Monitoring Reports/Corrective Actions/Follow-up documents
- \_\_\_\_\_ Invoice/Billing Records of Payment
- \_\_\_\_\_ Records of Cash Advances/On-Hand and Liquidation of Funds
- \_\_\_\_\_ Property/Equipment Acquisition and Disposition Records
- \_\_\_\_\_ Documentation of Termination actions
- \_\_\_\_\_ Contractor report(s) of deliverables provided
- \_\_\_\_\_ Contract Close-Out/Cash Settlement/Program Income Reports
- \_\_\_\_\_ Copies of required Audit Report/Review and Resolution

## **E. DEVELOPMENT OF FORMAL SOLICITATIONS AND THE STATEMENT OF WORK**

### **POLICY**

The solicitation is the document that MNREB issues to elicit offers from proposers or bidders. The formal solicitation (RFQ, IFB, RFP), in most instances, is the document that invites offers from potential service providers.

### **I. REQUEST FOR QUALIFICATIONS (RFQ)**

In an RFQ process, proposals are solicited from qualified sources by formally advertising in local newspapers and sending out the RFQ to the potential vendors/service providers selected from the inventory of providers. Proposals are received, evaluated and those potential providers who qualify are placed on the approved provider's list. To be accepted as a viable procurement vehicle, all provider lists must be current and include a sufficient number of qualified sources. Services are then selected utilizing a specific rationale (price comparison, demonstrated performance, etc.) established for final selection from the approved vendor list (see Competitive Procurement). This is an acceptable method for the procurement of Individual Referral Services.

If MNREB finds that it did not necessarily reach all potential offerors, it may send out the RFQ specifications to other potential providers after the provider's list has been established and augment the list if subsequent providers meet the same evaluation criteria.

#### **Notice of Request for Qualifications**

The notice must, at a minimum, briefly summarize all important information regarding the RFQ including:

- Description of MNREB as the entity issuing the RFQ;
- Name, address, title and phone number of person to contact regarding questions;
- How to obtain the RFQ Specifications;
- Response due date and time deadlines;
- Number of copies of response;
- Period for which services are sought (could be Program Year);
- Specific location and method of delivery for response;
- Other stipulations and clarifications as required; and
- Statement that MNREB is an equal opportunity employer.

## **RFQ SPECIFICATIONS**

### **Introductory Information**

The RFQ package may include an introductory section covering general explanatory information to clarify any special points or items of interest. For example, this section could be used to discuss provider's conference meeting plans and procedures and general information on evaluation of proposals, how vendors will get on the approved provider's list.

### **Nature of the Services Being Sought**

This section should describe the services being requested. Grant requirements and the realities of labor market conditions will be considered. In addition, note that the degree of effective competition attained will differ between an RFQ that requests "classroom training services" and one that specifies the particular types of occupational/classroom training sought. The more general the RFQ, the more rigorous must be the rationale and documentation for the individual source selection decisions that will follow. The better anchored the RFQ in the detailed objectives of MNREB's plan, the better it is as a procurement instrument. While a single provider may offer a range of courses, it is not likely to be equally competitive in each, particularly in terms of demonstrated performance. To the degree that the RFQ results only in the selection of blanket providers rather than the selection of particular services offered by these providers, the RFQ process will be only marginally effective.

### **Cost**

Potential service providers/vendors should submit a cost which is non-rescindable (except for catalogs or price lists which change on a pre-determined schedule). Potential service providers must submit a line item cost basis for the program which includes the training itself, any related costs in providing the training and overhead costs.

Under the following circumstances potential vendors may submit an "off-the-shelf"/tuition based single unit charge for services:

1. The services are sold to the general public in the course of normal business operations;
2. The services are sold in sufficient quantities to constitute a real commercial market;
3. The services are sold to buyers which may include WIOA programs, but must include other than WIOA programs;
4. The cost is a single charge for tuition;
5. The price is published in a catalog or price list describing the course; and
6. All conditions above must be documented by attaching public documents substantiating these conditions;
7. The service provider must submit positive affirmations that offeror has all the required licenses to perform the services being sought and a statement of their refund policy.

## **Technical Proposal**

Offerors who submit proposals which are not "off-the-shelf"/tuition based single unit charges are required to provide the following information:

1. Their qualifications to provide the services;
2. A description of their background and experience with the services for which bids are being provided;
3. Information as to the size and organization of the offeror's organization;
4. Positive affirmations that offeror has all the required licenses to perform the services being sought;
5. Offerors should provide a statement of their understanding of the services to be provided, including time and cost, and
6. A statement of their policy concerning the pro-ration of costs vis-a-vis attendance, etc.

## **Evaluation of Qualifying Proposals**

Criteria for offerors to be placed on the provider's list include, but are not limited to the following:

1. Offeror's qualifications and experience in providing the services/training.
2. Frequency of training/services offered.
3. Demonstrated performance.
4. Cost/Price

Additional Criteria Suggested:

1. Geographic Location
2. Size of firm/capacity

Similar services/training will be compared.

All vendors submitting proposals are notified in writing of the disposition of their proposals within a reasonable timeframe following approval. MNREB will inform successful offerors that while they may have been placed on the provider's list:

1. They will not automatically be awarded contracts when the need arises, and
2. MNREB's selection procedures will be utilized prior to the final negotiation/award of contracts.

## **Rationale for Final Service Selection**

Rationale, justification and documentation of final selection must be documented in writing. This rationale must be consistently applied in the selection of each service/good selected from the list. At a minimum, each final individual selection must consider and document price comparison and demonstrated performance. Additional factors for consideration may be indicated (see Individual Referral process, pg. 12). To the extent that any additional considerations enter into source selection, their application must be documented.

## **II. INVITATION FOR BIDS (IFB)**

Sealed bids (Formal Advertising) are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is lowest in price. When this method is used the solicitation is called an Invitation for Bids (IFB). In this method the contracting agency awards the contract to the responsible offeror whose bid is most advantageous considering only price and price-related factors.

### **Notice of Invitation for Bids**

The notice should briefly summarize all important information regarding the IFB. It must include:

- Description of MNREB as the entity issuing the IFB;
- Name, address, title and phone number of person to contact regarding questions;
- Period for which services will be provided (Clarify if multi-year proposal);
- Other stipulations and clarifications as required;
- Statement that MNREB is an equal opportunity employer;
- Response due date and time deadlines with consequences of late responses;
- Number of copies of response;
- Specific location and method of delivery for response; and
- Date and time for public opening of all bids.

### **Introductory Information**

The IFB package may include an introductory section covering general explanatory information to clarify any special points or items of interest. For example, this section could be used to discuss bidders conference meeting plans and procedures and general information on the evaluation of proposals and the bid opening procedures.

## **Nature of the Services Required/Statement of Work**

This section should describe the services being requested and how those services are to be provided (times and dates). This is explained in more detail in the section on the statement of work.

## **Cost/Budget:**

The IFB should include a standard budget format with detailed support for each line item.

## **Technical Proposal**

Offerors should be required to provide the following information:

1. Their qualifications to provide the services
2. A description of their background and experience with the services being sought
3. Resumes of those staff who would provide services
4. Information as to the size and organization of the offeror's firm
5. A statement of their financial capabilities
6. A copy of their most recently completed audit should be submitted with their proposal
7. Positive affirmations that offeror has all the required licenses to perform the services being sought
8. Offerors should provide a statement of their understanding of the services to be provided, including time and cost

## **Evaluation of Proposals**

Information concerning the factors to be used in evaluating proposals and the process for notifying offerors as to the final outcome will be included in the IFB.

## **III. REQUEST FOR PROPOSALS (RFP)**

RFPs shall include:

1. **The Statement of Work or Specifications.** The Statement of Work (SOW) is the document that clearly describes the services that are being acquired. (SOW requirements are addressed later in this Document).
2. **A description of the requirements for time, place and methods or performance of services.** This will be included within the SOW, however, it is beneficial to state these requirements in a separate section to summarize the work to be completed with dates and places for delivery of services.

3. **Contract clauses that will be included in any resulting contract.** The standard "boilerplate" clauses will be made available to bidders. This may be accomplished by inclusion in the RFP or by information to the bidders that the boilerplate is available for review at MNREB. This is particularly important in the case where a particular, non-standard, boilerplate clause is unique to the solicitation. It is essential that the bidder have a clear understanding of relevant clauses. (See list of contract elements in Section G.)
4. **Assurances, certifications and representations.** The bidder must submit assurances and/or certification that they will comply with any regulatory requirement established by the funding source. At a minimum, MNREB will maintain files with copy of vendor certification on Debarment and Suspension; Anti-lobbying disclosure forms; Statement of vendor financial capability. The RFP must include a clause requesting Affirmative Action/EEO/non-discrimination assurances. MNREB may solicit additional assurances and certifications from vendors (depending on local policies) e.g. articles of incorporation, personnel procedures, etc. MNREB may choose to request updated statement/listing of other funding sources and amounts for which the vendor has contracted.
5. **Detailed information on how to prepare and submit the proposal.** The RFP must provide clear direction on the proposal format; the number of copies to submit; the location where the proposal should be submitted and the submission closure time and date.
6. **Description of how price or cost will be utilized as a factor affecting proposal awards decisions.**
7. **Criteria and evaluation developed to review proposals for award decisions.** The RFP must include a description of the criteria and evaluation to be utilized.
8. **Solicitation provisions.** The RFP must clearly state the provisions that govern the solicitation process and how MNREB will manage the procurement process. At a minimum, this must include logging in of proposals, expected time frame for notification of award/non award and what appeals process is available to bidders. In addition, the RFP may include time frames and levels of REB reviews and approvals. Further, the RFP may include a description of the process which will be followed if the RFP is amended, e.g., if the Bidder's conference results in clarification needed or if changes/decisions are made which affect the services being procured.
9. **Budget Instructions.** The RFP must request a full line item budget which identifies the basis for all costs by cost category, and should provide detailed instructions as to what constitutes a complete budget. (Standardized forms will be used.)
10. **Summary or cover sheet.** The RFP will request a summary or cover sheet.

## 11. Reservation of the MNREB's right to reject all proposals

## 12. Statement of the proposer's rights of protest and appeal

### IV. STATEMENT OF WORK

The Statement of Work (SOW) is the section of the solicitation (RFQ, IFB, RFP) that specifically describes the scope of work, the materials necessary to complete the work and the services to be procured. The SOW will include:

1. **Background Information.** At a minimum the information must include: the audience for which the solicitation is being prepared; funding source and authorization; MNREB role and responsibilities; information on previous MNREB sponsored training programs; definitions/terminology; references to regional plans where applicable; labor market surveys and any other relevant background.
2. **Purpose.** The overall program objectives and their relationship to this solicitation must be included; the purpose of the contract (what services MNREB wants to procure); and the target groups the program will serve. Focus should be on outcomes, allowing flexibility on how to achieve the goals.
3. **General Responsibilities.** The SOW must include requirements for information on management, staffing and the direction of programs; location and facilities; hours of operation; coordination with MNREB; administrative procedures; component budget; if applicable, minimum staff qualifications.
4. **Demonstrated Performance.** It is required that the offeror document its record of demonstrated performance (consistent with the standards established in this policy) in the past delivery of employment and training or related services.
5. **Services to be Performed.** This section should describe the services to be performed, but should describe what is to be accomplished as opposed to how it should be accomplished. When procuring for employment and training services, this section could include **applicant services** (recruitment, outreach, intake); **participant services** (Individual Service Strategy (ISS), counseling, referrals to training, job placement, training program curriculum, number of weeks, teacher/student ratio,); **support services** (transportation, child care, shelter); requirements for testing; competencies; materials and equipment necessary to accomplish goals; provision for measurement of cost reasonableness.
6. **Standard of Performance.** This section identifies how well the offeror must perform. Criteria that can serve to determine satisfactory performance must be included. Examples of items that this section could reference: program outreach, recruitment goals (e.g. target



groups); intake; program design standards; program performance outcome standards (goals should be constant, achievable and coherent.)

7. **Administrative Requirements.** This section must identify to the offeror what specific actions must be taken to come into compliance with Federal, State and Local regulations, policies and procedures. Examples of items that this section could reference: requirements for maintenance of applicant/participant records; fiscal management and reporting; program status records and reports; MNREB furnished property or space; allowing for subcontracting; grievance procedures; requirements, where applicable, for submission of audits.
8. **Exhibits.** This section should include any lengthy materials to provide to offeror as exhibit. These exhibits may include, but are not limited to: standard forms and reports; standardized procedures; maps and flow diagrams; proposal evaluation format; and organizational charts.

## F. REVIEW/EVALUATION OF SOLICITATIONS

**1. Proposal review procedures.** A procurement file will be developed that documents all actions up to and including the awarding of contracts for all procurement. Proposals for training programs will be reviewed by MNREB staff and where appropriate, MNREB Board members utilizing the process described below.

- a. Receipt of proposals: A log of incoming proposals containing the name, date and time of receipt of proposals will be kept. The log should not be visible to offerors who hand deliver their proposals because names and the number of offerors submitting proposals is confidential until the solicitation process has been completed. Incoming proposals must also be date stamped. If proposals are late and it has been specified in the solicitation that late submissions will not be accepted, the proposals should still be logged in and then returned to the offeror specifying that the requirements of the solicitation were not satisfied. Proposals should be opened and the content of proposals reviewed at a specified time and place. (Note that when a pre-qualification package is required, favorable review of the pre-qualification package by is a prerequisite to proposal review. In this case, the proposal opening/content review procedure is critical.) A checklist should be developed, utilizing the solicitation specifications. If a pre-qualification package is required, all proposals which do not have complete pre-qualification packages must be rejected.
- b. Proposal evaluation conduct: Selecting review committee membership requires sensitivity to all the possibilities of undue influence and partiality. In assigning review membership, it should be clear that all members are expected to read all competing proposals in their assignment. Sections of proposals should not be subdivided among different committees. Rating sheets should be completely filled out and signed and certified (no conflicts) by the reviewers. The rating sheets should be retained in the procurement file as an audit trail supporting the reliability, objectivity and impartiality of the review process. The ratings should be summarized and aggregated. The results of the evaluation should then be forwarded in writing by the chair of the committee to the next level of review. Documented minutes should be maintained. If multiple levels of review occur, the results of each must be separately recorded and documented.
- c. Staff review: Proposals will be reviewed and rated by MNREB staff, assisted by staff or persons not employed by MNREB, including MNREB members, depending upon the particular RFP. Proposals will be reviewed and rated according to a point system. Training programs will be rated on such things as organizational background, previous performance, job market analysis, accessibility of training, training impact, general training design, management plan, staff qualifications and cost effectiveness (see the sections on cost and price analyses which follow). Each solicitation will include the criteria that will be used to evaluate proposals and maximum points to be earned per section will be specified. Proposals within designated categories will comprise a competitive range and compete with each other. For those organizations that have current contracts with MNREB, statistical reports,

monitoring reports, program evaluations and qualitative experience with the organizations will contribute to staff ratings and comments on relevant proposal section. Failure to respond to a specific item or to attach requested material will result in loss of points. In some cases, there will be optional sections which may be completed for extra points. These extra points sections will be clearly designated in the RFP.

- d. **REB review:** Proposal recommendations from the initial review team, along with staff ratings and comments, will be reviewed by the pertinent REB committee. The REB committee may choose additional criteria for proposal evaluation. Criteria may include, but are not limited to, the following: projected effectiveness of proposed training in meeting client needs and regional program goals as identified in the WIOA Comprehensive Plan; contribution to a diverse program mix; consistency with need for geographic distribution of services; fiscal viability of proposing agency as evidenced by the fiscal audit. Interviews may be requested before final recommendations are made. The REB committee will then formulate funding recommendations and forward them, along with comments, to the full REB for final approval unless authority for final approval has been delegated by the REB to the REB committee.

**2. Price and cost analysis:** One critical and mandatory element in the review and awarding of contracts is price and/or cost analysis. WIOA contracts must be awarded to the offeror that presents the best services at the most favorable price. Price and cost analysis also demonstrate the offeror's understanding of the services to be provided and their commitment of the needed resources to get the work done. Such analysis is usually separate from program analysis as this avoids prejudice in the evaluation.

It is particularly important to conduct a cost and price analysis for sole source or one-response (Failed Competition) solicitation processes in order to ensure that the purchase is fairly and reasonably priced.

A cost or price analysis must be performed in connection with every procurement action, including contract modifications. Each offeror shall certify that to the best of its knowledge and belief, the cost data is accurate, complete, and current at the time of agreement on price.

Price Analysis: Price analysis must be performed for all procurement. Price analysis is the process of examining and evaluating a price without looking at the cost elements and the proposed profit of the offeror. It must involve:

1. Comparison of competitive price quotations.
2. Appropriate comparison of historical or current prices for similar items which have been competitively procured, or formally determined as reasonable based on price and/or cost analysis.
3. Appropriate use of measures to point out differences such as price per training hour, price per slot or price per placement among essentially similar services.

4. Appropriate comparisons of prices on published price lists with published market prices together with discount or rebate schedules.
5. Comparison of proposed prices with independent estimates (see above) developed by the contracting entity.

In sealed bidding, price analysis is used to determine whether a price is reasonable by comparing prices offered. However, one might also need to compare the offered price to what one is currently paying or paid in the past for similar services.

In negotiated procurement, especially if technical criteria is also used, price competition may be weak since it is not the only factor in awarding a contract. It may also be necessary to conduct a cost analysis in this type of procurement.

Cost Analysis: Cost analysis is not always required. It is used to establish the basis for negotiating a contract price where price comparison is not adequate or is lacking altogether or where price analysis does not ensure the reasonableness of prices. Cost analysis is the review and evaluation, element by element, of the line item budget included in the proposals to establish the reasonableness of proposed costs.

Elements of Cost Analysis: All offerors shall be required to submit a detailed line item budget. Offerors should be required to also submit a narrative describing the assumptions and rationale for arriving at these cost estimates. Reviewers must then verify the cost and pricing data and evaluate them. This would include:

- a. Judging whether costs are reasonable.
- b. Evaluating the cost trends on the basis of current or historical cost data.
- c. Conducting an appraisal of the estimated labor, materials, etc.
- d. If indirect charges are included, reviewers are required to evaluate negotiated or federally audited rates. In conducting such a review, reviewers may reference federal indirect cost rate circulars. Some universities have approved indirect cost rates which may be based upon research or other grant data and would not necessarily apply in the realm of employment and training grants. The rate basis should be clear.
- e. Reviewers should also compare costs proposed with any other data available. This would include what the offeror proposed in the past, has or is delivering now. One could also compare other offerors to the current one being reviewed.
- f. Reviewers should also verify that the proposed costs are in accordance with applicable contract cost principles. For instance, if the solicitation states that administration may not exceed 10 percent, then all proposals must be reviewed for compliance with this requirement.

Independent estimates: The method and degree of analysis depends on the facts surrounding the particular procurement and pricing situation, but at a minimum, MNREB shall make independent estimates before receiving bids or proposals. Independent estimates of the cost elements of the service(s) utilizing budget line item costs and prices may be developed from

past experience, contractor financial reports, etc., to estimate what the likely costs and price of the procurement will be. This provides a yardstick for the comparison of the costs and prices of an offeror. Estimates may be developed in the form of acceptable ranges for price and cost elements to be measured against the bases of cost/price data during proposal review.

WIOA Classification of costs: MNREB will require offerors to submit proposals utilizing the WIOA categories so that a determination may be made whether costs comply with cost limitations and whether costs are properly classified. The reviewers must be certain that offerors do not include the same services as both direct and joint/indirect charges. If possible, costs should be budgeted as direct charges. If the offeror has budgeted indirect charges, the rate must be one approved by a cognizant federal agency or based upon cost allocation plan approved by MNREB. Further, MNREB is not required to allow an approved rate if sufficient funds are not available or if the administrative cost limitation would be exceeded.

Analyzing proposed costs: In analyzing proposed costs, reviewers must have an overall understanding of the basis being used for the estimated costs (i.e. historical data, quotes, catalogs or price data). They must make a judgment about whether proposed resources are sufficient, though not excessive to achieve objectives, including reasonableness of staffing patterns and salary rates. Reviewers must verify that costs will not violate laws, regulations and policy and solicitation requirements and restrictions. Costs must be necessary and reasonable.

Documenting Conclusions and Concerns: Reviewers must document their conclusions and concerns, including the cost analysis, particularly if MNREB intends to negotiate with the offeror. Documentation is critical if offeror protests are filed and is helpful in the monitoring and administration of the contract.

**3. Analysis of specific costs:** Each element of costs should be reviewed separately to determine whether it is reasonable and necessary. For example, staffing costs should be reviewed to determine if the staffing pattern and number of staff are appropriate, whether the compensation is appropriate and similar factors should be considered. For all items, reviewers must determine if the proposal is including a fair share of the cost and whether there is a less costly way of providing the same services. The reviewer needs to analyze the client supportive services proposed to verify whether those costs are necessary to enable eligible clients to participate in the training. Due to the importance of this area, this policy includes a brief treatment of some of the more frequently used categories:

#### Staffing Costs

The reviewer should review the estimated number of hours and staff assigned. Are they necessary and adequate? Are the proposed wage rates for staff appropriate for the positions proposed? Are the rates consistent with compensation policies? Are the fringe benefits consistent with the offeror's policies? MNREB may require offerors to attach a copy of their personnel policy. Did the offeror include the mandated benefits such as

FICA and unemployment insurance? If the offeror included subcontracted services, is there duplication of services?

### Materials

Materials may include training/program materials and office supplies. If both are included, the categories should be costed separately. Given RFP requirements, are the materials necessary and reasonable? Are unit prices fair? Do they represent competitive rates? Are the materials already owned by the vendor? Is the offeror including a cost already recovered under another contract?

### Equipment

This item may also be divided into categories. Certain equipment will be devoted to the provision of direct services. Other equipment will be more general such as a copy machine. Others may have multiple uses. Each should be costed separately. The reviewer should analyze how the equipment is acquired (purchase/lease). MNREB may choose not to allow the purchase of equipment. Consider RFP requirements and state and local guidelines when analyzing these costs.

### Communications

This includes such items as postage and telephone. The reviewer should focus upon whether the costs are reasonable. On what basis are the costs estimated? Is the offeror proposing additional telephone lines? Is this warranted? How do proposed costs compare with such costs in past contracts for comparable services?

### Insurance

Offerors are required by law to carry certain types of insurance such as general liability or auto insurance. Are these costs appropriately identified? Are the covered limits in compliance with RFP requirements? Are the premiums reasonable? Are the costs allocated to the appropriate WIOA cost category?

### Staff Travel

The reviewer should focus upon the need for travel. Does the travel serve a necessary contract purpose? Are the costs reasonable? Is the travel in compliance with RFP requirements, state funding policies and cost principles? If leased vehicles for travel are included in the proposal, the offeror should be required to submit a justification on how the cost was estimated. The reviewer needs to analyze whether reimbursed staff-owned vehicles would be more cost effective.

### Other costs

Other costs may be added such as consultants, staff training, etc. The same principles apply to the analysis of these costs. The reviewer should analyze the quantity and level, unit cost basis and the reasonableness and allowability of such costs.

#### **4. Subcontracts:**

When an offeror includes a subcontract, it should be clearly identified, described and justified. The reviewer needs to perform price and cost analysis of subcontracts as well. The reviewer should analyze how the prime offeror will monitor subcontracts, review reports, etc.

#### **5. Client supportive services:**

The reviewer needs to analyze the client supportive services proposed to verify whether those costs are necessary to enable eligible clients to participate in the training. The reviewer should focus upon whether costs are needed and whether they are fairly priced. Do the proposed costs conform to the RFP requirements?

#### **6. Indirect costs:**

As stated above, in some cases, MNREB may permit offerors to include indirect costs. These costs must conform to state and local guidelines. The reviewer needs to analyze these costs to ensure that the charges included in the rate are not duplicated in the direct charges. If the indirect rate is not an audited or federally approved one, a cost allocation plan should be prepared and reviewed. The reviewer needs to ascertain whether this contract can support the rate and whether it is appropriate for the proposed services. Remember that university rates may be inappropriate to Employment and Training services.

#### **7. Profit or Fee:**

In the WIOA procurement system, profit may only be earned by For-Profit organizations. Non-Profit organizations are required to treat any profit earned, as Program Income, and are required to reprogram these funds according to state policy. WIOA procurement shall not permit excess profit or program income. If profit or program income is included in the price, MNREB shall negotiate profit or program income as a separate element of the price for each contract in which there is not price competition and in all cases where cost analysis is performed. Please note, however, that while MNREB may allow profit for a For-Profit organization, it is not MNREBs normal practice to do so.

There is no fixed guideline for the identification of excess profit. In the rare instances where profit would be negotiated, MNREB would establish a limit based on the current market/industry standard/rate of profit for similar work. Any figure which exceeds this established limit must be clearly documented as justified, or reduced to that established limit. To establish a fair and reasonable profit or program income, consideration shall be

given to:

1. The complexity of the work to be performed;
2. The risk borne by the contractor;
3. The contractor's investment;
4. The amount of subcontracting;
5. The quality of the contractor's record of past performance;
6. Industry profit rates in the surrounding geographical area for similar work; and
7. Market conditions in the surrounding geographical area.

MNREB contracts which provide for profit or program income must require that the provider submit a certification of revenue earned in excess of contract expenses through contract financial close-out reporting.

#### **8. Second Year Costs:**

Solicitations which also seek services for a second year must be subjected to review and evaluation consistent with that of the original awarding year's review. Costs may be less in the second year in the absence of start-up costs. Other costs may rise due to inflation, salary or cost-of-living increases for staff assigned to the contract. All costs must be analyzed and documented to be necessary and reasonable in the second/subsequent year.

**9. Appeal/protest process:** The solicitation must include an appeal/protest process which must specify:

- The individual with whom the protest must be filed
- The time limits for the filing of protests
- MNREB procedure for the handling of protests
- The nature of offerors' appeal rights, including appeal of MNREBs decision to the state funding agency.



## **G. CONTRACT NEGOTIATION AND AWARD**

### **I. Contract Negotiations and Award.**

Once proposals have been evaluated and selected for funding, the authority and responsibility for proposal negotiation and final contract negotiation rest with the MNREB.

#### **1. Competitive Range**

MNREB may include the use of a "competitive range" to establish a pool of **negotiable proposals**. Such selection for a "competitive range" may occur only after the initial technical and cost/price evaluation, as cited in the solicitation, has been completed. The "competitive range" is determined by reviewing the independent estimate and all proposals received within a training category and comparing such ratios as cost per participant and cost per participant/hour. Such criteria cannot exclude any proposal that may have a reasonable chance of being selected for award based on the initial proposal evaluation/review. More likely than using a strict cut off for a competitive range would be the close scrutiny of proposed budgets, line item by line item, for reasonableness and sensible calculation. **Proposal negotiation** discussions with offerors shall be restricted to indications of proposal deficiencies and requests for additional technical or cost/price information. Upon completion of proposal negotiations, offerors **must submit revised proposals** which must again be subjected to technical and cost/price evaluation and review prior to award consideration.

#### **2. Final Contract Negotiation**

Contract negotiations shall not significantly alter the technical or cost/price aspects of the proposals. Contract negotiations which significantly alter the proposal as submitted, including technical and/or cost/price aspects must be re-submitted for award consideration prior to contract execution.

#### **3. "High-Risk" Contractors**

A contractor may be considered "high-risk" if MNREB determines that the contractor is otherwise responsible but:

- (a) Has a history of unsatisfactory performance;
- (b) Is not financially stable;
- (c) Has a management system which does not meet required management standards; or
- (d) Has not conformed to terms and conditions of a previously awarded contract or agreement.

When a contractor is considered "high-risk", special funding restrictions to address the "high-risk" status may be included in the agreement. Such restriction may include, but are not limited to:

- (a) Payment on a reimbursement basis;
- (b) Requiring additional and/or more detailed financial or performance reports;
- (c) Additional monitoring;
- (d) Requiring the contractor to obtain specific technical or management assistance; and/or
- (e) Establishing additional prior approvals.

Should MNREB impose such funding restrictions, the contractor must be notified in writing as early as possible, of:

- (a) The nature of the funding restrictions;
- (b) The reason(s) for imposing the restrictions;
- (c) Any corrective actions which must be taken before the restrictions will be removed, and the time allowed for completing the corrective actions; and
- (d) The method of requesting reconsideration of the restrictions imposed.

## **II. Selection of Contract Type and Payment Structure**

The authority for the selection and justification of the contract type rests with the Planning Department. This selection shall not be contrary to that indicated in the solicitation. The acceptable contract types are as follows:

1. **Cost Reimbursement:** This method requires reimbursement of costs incurred to the extent provided for in the agreement, based on WIOA cost classification with limited contractor performance risk. However, MNREB may choose to include performance requirements which must be met in additions to proof of costs expended. Payment will be based upon the receipt of documentation stating the actual costs incurred by the contractor.
2. **Fixed Unit Price:** Requires payment of a specified price for specified deliverables irrespective of actual costs incurred, but is subject to WIOA cost classification with vendor performance risk.
3. **Combination Cost Reimbursement and Fixed Unit Price:** Utilized when some elements of performance are clear and definitive while other performance specifications are more uncertain. Provides shared risk.
4. **Master Agreements:** Master agreements are fully developed contracts that do not necessarily specify a total for the contract payout, but rather indicate either a maximum amount or unlimited quantity, up to which individual continuous charges may be made for a time period designated in the agreement. Master Agreements are usually of the “fixed unit” type, but they may also be “cost reimbursement” or combination types.
5. **Letter Contracts/Limited Agreements:** MNREB procedure allows the use of Letter Contracts/Limited Agreements to expedite entry into an agreement with a contractor only in emergency or unique situations. Letter agreements must include the specific time line of the

agreement and the extent of MNREB financial and other liability. The agreement must include the signatures of all parties required as authorized signature for the full contract document, and may not obligate MNREB to enter into the final/full contract, should contract negotiations fail. Such agreements must include the following minimum provisions:

- a. Specific deliverables required by, and within the time frame of the limited agreement. (This may be achieved through reference to the contract proposal.)
- b. Ceiling price of the limited agreement and the anticipated ceiling price of the final/full contract pending.
- c. Limit of MNREB liability pending finalization of full contract document, including a provision that the limited agreement does not imply obligation to enter into a final/full contract.
- d. MNREBs standard terms and conditions boilerplate.
- e. Active time period of the agreement and execution date with all required authorization signatures.

Such agreements may not be used as, or in place of, full contract documents.

Justification/explanation of the nature of the emergency or unique situation requiring the use of Letter Contracts/Limited Agreements must be maintained in the contract file.

6. **Subcontracts/Sub-Agreements:** The provision of subcontracts/sub-agreements between primary and secondary service providers may be allowable and must be consistent, and in compliance with all related Federal, State and Local procurement and contracting laws, regulations and policies.

7. **Retroactive Contracting** (after-the-fact) for new contracts or for active contract change/modifications is prohibited.

### **III. CONTRACT ELEMENTS**

The contract must clearly determine and clearly document both MNREB and the contractor's responsibilities. This can be done through a combination of standard boilerplate and specific contract provisions. Vendor proposals may be incorporated, in part or whole through reference in the contract document.

The development and inclusion of specific contract elements will be effected by the determination of the contractor's status as a subrecipient or a vendor. Aspects of the contract affected by this status may include but are not limited to: cost classification, audit, and the general requirement to comply with WIOA and funding source regulation and policy. Service providers may generally be considered subrecipients and are subject to the requirements of WIOA, however, under certain conditions service providers may be considered vendors.

**1. Subrecipient** is defined as a legal entity to which a subgrant/contract is awarded and which is accountable to the local WIOA Title I Administrator (or higher tier subrecipient) for use of the funds provided. For WIOA purposes, distinguishing characteristics of a subrecipient

include items such as: developing and operating programs specifically designed for WIOA which may include 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 WIOA program or project (as compared to providing "end-line" goods or services for use by a WIOA program or project as a vendor does). Subrecipient contracts/agreements identify the source of funds (WIOA) and require compliance with all related regulations and policy, including but not limited to appropriate identification and classification of all costs incurred and coverage under required audits.

**2. Vendor** is defined as an entity responsible for providing generally required/"end-line" goods or services to be used by the WIOA program or project. These goods or services may be for the subrecipient's own use or for the use of participants in the program/project.

Distinguishing characteristics of a vendor include items such as: providing the goods and services within normal business operation; providing similar goods or services to many different purchasers, including purchasers outside of the WIOA program; and operating in a competitive environment. Where an organization's normal business operation is to develop and/or provide services tailored to the purchasers specification(s), such organization may be determined to be a vendor only when similar tailored services are sold in the course of normal business operations, in sufficient quantities to constitute a real commercial market, and are also sold to non-WIOA buyers. (All of these conditions must be documented by attaching public documents substantiating these conditions.).

### **3. Required Contract Elements**

Except where clearly not applicable (as in a vendor contract/agreement), required contract elements are as follows:

1. names of responsible parties and organizations
2. type of contracting organization
3. type of contract
4. amount of contract obligation
5. source of contract funds
6. training site(s)
7. contract effective time period
8. number of participants to be served
9. signature of authorized officials
10. document execution date(s)
11. statement of work/deliverables including:
  - a. goal statement/objectives
  - b. target group
  - c. justification for services
  - d. products/outcomes/performance required
  - e. outreach/intake and assessment
  - f. program design/curriculum

- g. frequency of participant contact
  - h. activity time line
  - i. follow-up
12. cost reimbursement line item budget data by cost category
  13. payment and delivery terms/invoice forms and procedures
  14. termination for cause/default/de-obligation/convenience
  15. audit and record access and examination rights
  16. record retention requirements
  17. compliance with related federal state and local laws, regulations, and policies
  18. conflict of interest and code of conduct requirements
  19. debarment and suspension certification
  20. anti-lobbying disclosure
  21. provision against assignment/unauthorized subcontracting
  22. procedures for changes/modifications
  23. definitions of key terms
  24. staff qualifications
  25. reporting requirements - program and fiscal
  26. Table of Contents
  27. AA/EEO assurances/non-discrimination
  28. contractor insurance liability/bonding
  29. grievance procedures for termination and non-payment
  30. monitoring/corrective action/sanctions procedures
  31. equipment and property allowance/disposition
  32. severability provision
  33. hold harmless clause
  34. maintenance of effort clause
  35. program income or work product requirements
  36. individual authorized to sign invoices/request payment
  37. operational plan - participant activity/expense schedule
  38. protests/disputes/claims clause
  39. subcontracting clause
  40. Pell Grant/cost reduction clause
  41. fund advance/reconciliation & recapture clause
  42. contract close-out requirements
  43. A-133 audit coverage (See policy issuance)
  44. program income requirements (See policy issuance)

## H. CONTRACT ADMINISTRATION

The primary purpose of contract administration is to ensure contractor/vendor compliance with all contractual obligations including, but not limited to program performance and financial considerations. All contracts will contain provisions which allow administrative, contractual or legal remedies in instances where contractors violate or breach terms, and provide for such sanctions and penalties as may be appropriate. All contracts relating to the provision of client services will contain provisions which require the sub-contractor to submit to inspections and monitoring visits by MNREB designated representatives. The contract must also include a provision which allows MNREB access to any books, documents, papers and records which are directly pertinent to that specific contract for the purpose of conducting an audit or examination, or for the purpose of making excerpts or transcriptions. Policy and procedural guidance is as follows:

**Provisions to ensure payments consistent with contract terms:** The fiscal department will be provided with copies of all contracts so that they can review payment terms prior to issuing payments on any contract.

**Provision for inspecting/monitoring work performed to ensure consistency with the contract terms:** All contracts relating to the provision of client services will be monitored in compliance with MNREB program monitoring procedures (see separate monitoring policy). The contract monitor will have access to the contract and will confer with the grants manager prior to the site visit in order to determine special areas for monitoring.

**Procedures to provide technical assistance to contractors:** The monitoring visit provides the opportunity to identify specific areas of need for technical assistance and technical assistance will be provided on site immediately whenever possible. In addition, vendor meetings will be scheduled on a regular basis in order to provide technical assistance on general topics for all vendors who choose to attend.

**Criteria and procedures for contract change/modification:** Changes which do not significantly alter the technical or cost/price aspect of a contract may be undertaken by the planning department. All contract modifications are reviewed and approved by appropriate MNREB staff and are signed by the Executive Director of MNREB.

**Procedures for the review, approval and monitoring of sub-agreement procurement and contract documents:** All solicitation documents and contracts state that MNREB must review and approve any sub-agreements entered into by MNREB sub-contractors. Sub-contractor sub-agreements are subject to the same monitoring requirements as sub-contractors are. MNREB solicitation documents state that MNREB prefers to contract directly for services when at all possible.

**Procedures to execute termination provisions as stipulated in contract documents:** The Executive Director of the MNREB has the authority to issue notices of contract termination in compliance with the terms of the contract. All contracts will contain clauses for termination both

with and without cause.

**Procedures to resolve contract protests/disputes/claims as stipulated in contract**

**documents:** All claims which allege either a violation of the Workforce Investment and Opportunity Act, rules, regulations, grants or other agreements made under the Act by the Commonwealth of Massachusetts, MNREB, subrecipients or contractors, or which allege Equal Opportunity violations, must use the formal WIOA grievance procedure outlined in the separate Equal Opportunity and WIOA Complaint/Grievance policy.

All other claims arising under contracts which are disputes concerning questions of fact which are not disposed of by mutual agreement shall be decided by assigned MNREB staff, who shall present a decision in writing to the contractor. The decision of the MNREB shall be final and conclusive unless, within 30 days from the date of receipt of the decision, the contractor gives the MNREB 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 efficiently with the performance of the contract and in accordance with the MNREB decision. This method of handling disputes does not precede consideration of law questions. Nothing in this policy shall be construed as making final the decision of any administrative official, representative or board on a question of law.

**Procedures to develop and monitor corrective actions as stipulated in contract documents:**

Please see separate monitoring policy.

**Required contract file documentation and retention procedures:** See section D for the required contract file documentation. Contract files must be organized and centralized and will be retained for seven years.

**Procedures to close-out contracts and related reporting requirements:** All contract close-outs must be documented and done in a timely manner. Close-out reports must include the following items:

1. Statement of Subcontract/Sub-agreement termination.
2. Statement of Status of Cash accounts and liquidation of advances.
3. Statement of settlement of all contract related financial or other liabilities.
4. Statement releasing MNREB of any further liability.
5. Assignment of any refunds, rebates, or credits due.
6. Statement of Program Income and its disposition.
7. Final Invoice for payment.
8. Reason for termination (completion or other).
9. Any other reports required by the contract document.

## I. CONTRACT MONITORING

MNREB policies and procedures include systems for both program and financial monitoring. Monitoring is used to ensure contractor compliance with all elements of the contractual agreement. MNREB policy for monitoring requires documentation of the following (see also separate monitoring policies):

1. The monitoring plan
2. Method of identification of deficiencies
3. Results of monitoring reviews
4. Written notice to contractors regarding deficiencies
5. Corrective action plans
6. Follow-up and resolution of corrective actions

Monitoring may be performed on-site or through in-house desk reviews of contractor reports submitted, but must be timely and of sufficient frequency to detect deficiencies prior to contract failure.

**Fiscal Monitoring** (See also separate fiscal monitoring policy.)

Fiscal monitoring must ensure that auditable records of financial activity are maintained and retained. **MNREB fiscal monitoring policy requires a minimum of one (1) formal on-site monitoring per contract year for all contracts.** Formal fiscal monitoring procedures include the use of a monitoring tool and system sampling. The tool requires a 10% sampling (as related to the overall contract size). The fiscal monitoring tool includes, but is not limited to review of the following areas:

1. procedures to determine allowability of costs
2. cost classification and allocation procedures
3. general ledger operations and records management
4. invoicing and cash receipt operations
5. cash disbursement operations
6. cash reconciliation procedures
7. analysis of cash advances/cash on hand



8. subcontract/sub-agreement review procedures
9. property/equipment management procedures
10. purchasing/procurement systems
11. matching funds procedures and documentation
12. determination of program income
13. compliance with all related Federal, State and Local laws, regulations, policy and contractual requirements.
14. determination that financial performance is commensurate with program performance.

**Program Monitoring** (See also separate program monitoring policy.)

Program monitoring must be performed to conform to the directives of a specific funding source and must address the following areas:

1. Program monitoring to ensure provision of quality services.
2. Performance monitoring to ensure achievement of contract objectives/contractual obligation.
3. Compliance monitoring to ensure satisfaction of contractual and regulatory requirements.

Program monitoring policy requires a minimum of one (1) formal on-site program monitoring for each contract. Formal monitoring procedures must include the use of monitoring tools to address program areas through system sampling. Tools should require a 10% sampling (as related to the overall contract size). The tools must include, but are not limited to review of the following areas:

**Program/Performance Monitoring**

1. Quality of participant enrollment/intake
2. Quality/quantity of participant counseling
3. Quality of participant orientation
4. Quality of training provision
5. Quality of employability development plans

6. Quality of job development and placement activity
7. Quality/allowability of participant support services
8. Contractor personnel systems
9. Termination and follow-up
10. Level of outcome performance
11. Subcontract/sub-agreement program/performance review
12. achievement of other specific contractual objectives
13. compliance with all related Federal, State and Local laws, regulations, policy and contractual requirements

### **Contract Corrective Action**

See MNREB monitoring policy and procedural guidance which provides for systems to document and resolve contract corrective actions as stipulated in the contract document. Procedures designate authority and responsibility for development, monitoring and follow-up of corrective action plans. Such plans must define the deficiency, state all resolution actions required, and provide a time line for resolution, and follow-up verification. Corrective action plans must be documented, and must be signed by authorized parties.

### **Contract Closeout**

The MNREB shall document contract closeout with respect to each contract. Contractors shall be required to closeout agreements in a timely manner consistent with closeout reporting requirements. Closeout reports shall include the following minimum items:

1. Statement of subcontract/sub-agreement termination.
2. Statement of status of cash accounts and liquidation of advances.
3. Statement of settlement of all contract related financial or other liabilities.
4. Statement releasing MNREB from any further liability.
5. Assignment of any refunds, rebates or credits.
6. Statement of program income/profit and its disposition.

7. Final invoice for payment.
8. Reason for termination (completion or other).
9. Any other reports required by the contract documents.