

# **WORKFORCE SOLUTIONS TEXOMA POLICIES & PROCEDURES**

## **CHAPTER 2 - PROCUREMENT AND CONTRACTING**

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## **2.1 GENERAL PROCUREMENT POLICY**

The Workforce Solutions Texoma (WST), administrative entity and grant recipient of TWC funds, plans, oversees, evaluates and monitors workforce development activities. Categorical programs include Employment Services, TANF/Choices, Food Stamp Employment and Training, Childcare Management Services, and the Workforce Investment Act. WST serves a three-county area, which includes Cooke, Fannin and Grayson counties.

The procurement policies adhered to by the Workforce Solutions Texoma endeavor to ensure that all procurement transactions will be conducted in accordance with the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments and the Texas Workforce Commission Financial Management for Grants and Contracts (FMGC). Further, the Workforce Solutions Texoma will strive to select service providers who have demonstrated effectiveness in delivering comparable or related services based on demonstrated performance in terms of meeting performance goals, and cost and quality of training and/or services.

## **2.2 POLICY OF COMPETITION**

The Workforce Solutions Texoma (WST) utilizes a procurement process for the purchase of supplies, equipment, construction and specific services, program activities, or goods for the operation of WST services and programs; the process attempts to ensure full and open competition. These standards are intended to guarantee that purchases are obtained efficiently and economically and are in compliance with all Federal and State guidelines. These standards apply to any transaction by subcontractors of WST who purchase goods or services.

These policies and procedures may be modified in compliance with federal, state or local policy changes. The effective date of such modifications will be stated as part of the revised document. It is the intent of WST to avoid purchasing unnecessary or duplicate items. When reviewing Invitations for Bids and Requests for Proposals, item- consolidation and/or item breakout will be considered in an effort to obtain the most efficient purchase. When appropriate, an analysis of lease versus purchase alternatives as well as any other appropriate analysis will be made to determine the most prudent procurement approach.

To foster greater economy and efficiency, WST will, whenever possible and practical, enter into state and local inter-governmental agreements for procurement or use of common goods and services. Further, whenever possible and practical, WST and its subcontractors will use federal excess and surplus property in lieu of purchasing new equipment and property if such use is feasible and reduces project costs.

## **2.3 PROCUREMENT REQUESTS**

In procuring services or goods, the following areas will be considered:

- 1) Procurement shall be conducted in a manner providing full and open competition.
- 2) The use of sole source procurements will be minimized to the extent practicable, and in every case will be justified.
- 3) The procurement process will involve an appropriate analysis of the reasonableness of costs and prices.
- 4) Procurements will not provide excess program income (for governmental and non-profit entities) or excess profit (for private for-profit entities), and appropriate factors will be utilized in determining whether such income or profit is excessive, such as:
  - a) The complexity of the work to be performed.
  - b) The risk borne by the contractor.
  - c) Market conditions in the surrounding geographical area.
  - d) The contractor's investment.
  - e) The amount of subcontracting.
  - f) The quality of the contractor's record of past performance.
  - g) Industry profit rates in the surrounding geographical area for similar work.
- 5) Procurements will clearly specify deliverables and the basis for payment.
- 6) Procurement transactions will follow the written procedures contained herein.
- 7) No grantee, contractor, subgrantee, or subcontractor shall engage in any conflict of interest, actual or apparent, in the selection, award, or administration of a contract or grant resulting from a procurement transaction.
- 8) Compliance with procurement standards will be ensured by oversight of services by all grantees and subgrantees.

- 9) Procurement transactions between units of State or local governments, and any other entities organized principally as the administrative entity for service delivery areas, will be conducted on a cost reimbursable basis.

## **2.4 SELECTION OF SERVICE PROVIDERS**

The primary consideration in selecting agencies or organizations to deliver services within this service delivery area will be the effectiveness of the agency or organization in delivering comparable or related services based on demonstrated performance, in terms of the likelihood of meeting performance goals, cost, quality of training, and characteristics of participants. Further, proper regard will be given to community-based organizations as service providers. The following information must be documented, as applicable.

### **2.4.1 SERVICE PROVIDER QUALIFICATIONS**

The selected service provider must have:

- 1) Adequate financial resources or the ability to obtain them as required by TWC Rule 801.54.
  - a) Fiscal integrity evaluation indicators will be utilized to evaluate the fiscal integrity of workforce service contractors prior to the award of a contract and periodically thereafter based on the total dollar amount of the contract.
    - a. The fiscal integrity evaluation shall include provisions for ensuring that workforce service contractors are meeting performance measures in compliance with federal, state and local requirements.
    - b. The fiscal integrity evaluation shall include a review and consideration of the workforce service contractor's prior three-year financial history prior to awarding or renewing a workforce service contract and may include provisions such as accounting for program income in accordance with federal regulations, resolving questioned costs and the repayment of disallowed costs in a timely manner, and safeguarding faxed assets, as well as those referenced in TWC's FMGC.
- 2) Demonstrated the ability to meet the program design specifications at a reasonable cost, as well as the ability to meet performance goals.
- 3) A satisfactory record of past performance in job training, basic skills training, or related activities, including demonstrated quality of training; reasonable dropout rates from past programs; the ability to provide or arrange for appropriate supportive services as specified

including child care, retention in employment, and earning rates of participants.

- 4) The ability to provide services that can lead to the achievement of competency standards for participants with identified deficiencies.
- 5) A satisfactory record of integrity, business ethics, and fiscal accountability.
- 6) The necessary organization, experience, accounting and operational controls.
- 7) The technical skills to perform the work.
- 8) When applicable, sufficient bonding, insurance or other method of securing funds to cover losses.

It is WST's policy to contract, whenever possible, with small and minority owned businesses, women's businesses and enterprises, and labor surplus areas, which have historically been under-utilized, disadvantaged organizations (HUBS). Accordingly, affirmative steps will be taken to assure that the above identified firms are utilized as sources for goods and services including, but not limited to: supplies, equipment, construction, and services.

#### **2.4.1.1 AFFIRMATIVE ACTION STEPS**

Affirmative steps for encouraging HUB participation include the following:

- 1) Identifying qualified small and minority (HUB'S) businesses on solicitation lists.
- 2) Assuring that small and minority businesses are solicited whenever their product or service is being procured.
- 3) When economically feasible, dividing the total procurement requirements into smaller tasks or quantities to allow maximum small and minority business participation.
- 4) Where time permits, establishing delivery schedules which encourage participation by small and minority business.

- 5) Using the services and assistance of the Small Business Administration, the Office of Minority Business Enterprise, and the Community Services Administration when appropriate.

Note: If any subcontracts are to be let, the prime contractor is required to take the affirmative steps delineated above.

#### **2.4.2 PROHIBITION AGAINST DIRECTLY DELIVERING SERVICES**

As required by TWC Rule 801.53, WST shall ensure that it does not directly deliver or determine eligibility for workforce services in its local workforce development area or contract with the following persons or entities to deliver or determine eligibility for workforce services:

- 1) a Board member;
- 2) a business, organization, or institution that a Board member represents on the Board;
- 3) a Board member's business, organization, or institution in which a Board member has a substantial financial interest; or
- 4) a Board employee.

The prohibitions in this section do not apply to public education agencies, such as community colleges and independent school districts, that have Board members who fulfill the requirements of local Workforce Development Board composition.

WST may grant a one-year exception to the prohibitions of this section for a community-based organization that fulfills the requirements of local Workforce Development Board composition. The exception can only be granted by a two-thirds vote of the members present in an open meeting and may not be granted for contracts for the operation of local workforce centers.

### **2.5 PROCUREMENT AUTHORITY**

Once a need for services or goods is established, the staff member may begin the purchase process by developing a Request for Proposals or an Invitation to Bid, or by generating a Request for Telephone Quotations. Any designated staff member may prepare the services or goods specifications. However, the Director must review the final documentation pertaining to the procurement. The administrative staff will retain final contracting authority.

### **2.5.1 Allowable Outreach and Promotional Materials**

Costs for outreach and promotional materials are considered public relations costs. The UGMS states “public relations” include community relations and mean those activities dedicated to maintaining the image of” of the organization, “or maintaining or promoting understanding and favorable relations with the community or public at large or any segment of the public.”

Grant award funds may be used for public relations if:

- specifically required by the grant award;
- incurred for outreach efforts involving costs of communicating with the public on specific activities or accomplishments sponsored by the grant award (or subaward); or
- incurred as a cost of conducting general liaison with news media and government public relations officers necessary to keep the public informed on matters of public concern (e.g. notices of grant awards).

#### **1) Documentation**

Documentation must be available to ensure outreach and promotional materials are necessary and reasonable for the proper and efficient performance and administration of a program that purchased the materials.

- Materials costs must be allocable to the program and grant award charged in accordance with relative benefits received (e.g., cost of outreach and promotional materials promoting multiple programs must be appropriately allocated among benefitting funding streams in accordance with the relative benefit received); and
- Otherwise allowable in accordance with FMGC, Chapter 8.

Documentation must show the intent of an activity (award ceremony, apparel for job fair);

What is included in the costs, for example:

- What is included in the activity (e.g., a script or description of what was being promoted); and
- Detailed specifics (e.g., when, where, how long etc.) and
- When appropriate, that a “fair share” was allocated to the grant award.

#### **2) Promoting Program Activities**

Outreach and promotional materials must clearly communicate to the public specific activities or accomplishments resulting from performance of grant awards.

Examples: Materials may include a short phrase that informs the public about program activities, such as:

- Need Help Finding Qualified Workers?
- Linking Employers and Job Seekers
- Business Services
- Employment and Training Services
- Youth Services

Flash drives or similar devices may include documents such as brochures, presentations and flyers that communicate program specific information or activities.

### **3) Nondiscrimination and Equal Opportunity Information**

WIA provisions at 29 CFR 37.34 does not require nondiscrimination and equal opportunity information to be displayed on promotional items. However, it is required for recruitment brochures, and other materials ordinarily distributed or communicated to staff, clients or the public at large, regardless of whether such information is provided orally or in writing, and electronically or on paper; and information published or broadcast in the news media.

#### **2.5.2 Unallowable Outreach and Promotional Materials**

Outreach and Promotional Materials that solely promote the Board are unallowable uses of funds awarded by TWC. This includes items that only include the Board's logo, name or brand name, only the website or contact information such as addresses and phone numbers.

The Board may not use funds awarded by TWC for contributions or donations, including cash, property and services. Examples include campaigns or funds for specific causes, gifts to charities and other organizations.

The Board may not use TWC funds to pay sponsorships but may participate in cost sharing of a relevant event such as job fair.

## **2.6 PROCUREMENT CODE OF CONDUCT**

WST requires, as part of their Personnel Policy, all staff members to adhere to a code of conduct. Specifically, "A WST employee may not accept any gift (including a free service) that might tend to influence his or her official actions or impair his or her independence of judgment in performance of duties for WST," and "Specifically, with reference to contracts, no officer or employee of WST who exercises any functions or responsibilities in the review or approval of an undertaking or the carrying out of one of WST's contracts shall

participate in any decision relating to that contract if the decision affects his or her personal pecuniary interest."

Further, "An officer or employee may not:

- 1) Solicit or accept or agree to accept a financial benefit, other than from WST, that might reasonably tend to influence his or her performance of duties for WST or that he or she knows or should know is offered with intent to influence the employee's performance.
- 2) Accept employment or compensation that might reasonably induce him or her to disclose confidential information acquired in the performance of official duties.
- 3) Accept outside employment or compensation that might reasonably tend to impair independence of judgment in performance of duties for WST.
- 4) Make any personal investment that might reasonably be expected to create a substantial conflict between the employee's private interest and duties for WST.
- 5) Solicit or accept or agree to accept a financial benefit from another person in exchange for having performed duties as a WST employee in favor of that person."

WST considers it a breach of ethical standards to retain anyone to solicit or secure a contract for a commission, brokerage, or contingent fee, or for the promise of such payment. Further, at no time during the procurement process, are WST staff or WST members allowed to formally or informally discuss detailed information related to the procurement with anyone. Should any such information inadvertently be provided to a potential proposer, the same information must be provided to all other proposers. Detailed information includes, but is not limited to, advance information, preferred brands of goods, anticipated price of services/goods, offers from other proposers, confidential or proprietary information about other proposers, or technical information. For purposes relating to programs or activities of the WIA or other categorical workforce development program, no employee, officer, or agent of WST will participate in the selection, or in the award or administration of a contract supported by federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when the employee, officer or agent; any member of his immediate family; his or her partner; or an organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award.

WST's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to sub-agreements. WST may set minimum rules defining the point at which financial interest is considered to be insubstantial and the gift is determined to be an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, WST standards of conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by WST's officers, employees, or agents, or by its subcontractors or their agents. The awarding agency may by regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

### **2.6.1 CONFLICT OF INTEREST**

WST also requires staff members to identify and report any potential conflict-of-interest. Any entities reflecting a conflict of interest would then be prohibited from participating in any phase of that procurement.

Workforce Development Board Members are required to complete a "Conflict-of-Interest" statement which must be updated should any change occur. These statements must be reviewed prior to any procurement initiated through the WST to ensure that any potential conflict-of-interest is identified and appropriately addressed.

## **2.7 SELECTION PROCEDURES**

All procurement transactions (regardless of whether verbal or written price quotations, sealed bids or by negotiation and without regard to dollar value) will be conducted in a manner that provides maximum, full and open competition. Procurement procedures will not restrict or eliminate competition.

Examples of what are considered to be restrictions of competition include, but are not limited to:

- 1) Placing unreasonable requirements on firms in order for them to qualify to do business.
- 2) Non-competitive pricing practices between firms or organizations or between affiliated companies or organizations.
- 3) Organizational conflicts of interest.
- 4) Requiring unnecessary experience or excessive bonding.
- 5) Non-competitive awards to consultants that are on retainer contracts.

- 6) Specifying a "brand name" product instead of allowing "an equal" product to be offered and describing the performance of other relevant requirements of the procurement.
- 7) Any arbitrary action in the procurement process.
- 8) Overly restrictive specifications.

### **2.7.1 WRITTEN SELECTION PROCEDURE REQUIREMENTS**

WST's written selection procedures include the following minimum requirements:

- 1) Solicitations of offers, whether by competitive sealed bids or competitive negotiation will:
  - a) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. The description will not, in competitive procurement, contain features, which unduly restrict competition. The description may, however, include a statement of the qualitative nature of the material, product or service, and, when necessary, may set forth the minimum essential characteristics and standards to which the product must conform if it is to satisfy its intended use. Detailed product specifications will be avoided when at all possible, and when it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description will be used as a means to define the performance or other salient requirements of procurement. The specific features of the "named brand" which must be met by offerers shall be clearly stated.
  - b) Identify all requirements that offerers must fulfill and all other factors to be used in evaluating bids or proposals.
- 2) Awards will be made only to responsible entities that possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given of such matters as integrity, compliance with public policy, record of past performance, and financial and technical resources.

- 3) WST will ensure all pre-qualified lists of persons, firms, or products that are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Further, WST will publicly advertise Requests for Proposal or Invitations to Bid and accept all public responses to either. WST will not preclude potential bidders from being added to the bidders list and receiving Requests for Proposals or Invitations to Bid during the solicitation period.
- 4) WST will make available, upon request, technical specifications on proposed procurements in order to assure that the item and/or service specified is the one being proposed for purchase.
- 5) WST will, upon request, make available pre-award review procurement documents, such as Request for Proposals or Invitations for Bids, independent cost estimates, and other pertinent documents, when:
  - a) The procurement procedures or operation fails to comply with the procurement standards in this section.
  - b) The procurement is expected to exceed \$100,000 and is to be awarded without competition or only one bid/offer is received in response to a solicitation.
  - c) The procurement is expected to exceed \$100,000 and specifies a "brand name" product.
  - d) The proposed award exceeds \$100,000 and is to be awarded to other than the apparent low bidder under a sealed bid procurement.
  - e) A proposed contract modification changes the scope of a contract or increases the contract amount by more than \$10,000.

NOTE: WST may be exempt from the pre-award review if its procurement systems comply with the standards of this section.

WST will utilize a complaint procedure in accordance with the requirements of 20CFR 667.600, 20CFR, 667.700, 29CFR Parts 37-38, and WIA Section 181 and 188

to resolve all disputes arising from proposers and/or contractors associated with the procurement process.

## **2.8 PROCUREMENT METHODS**

To ensure all procurement is conducted in a manner that enhances full and open competition, WST requires use of a procurement method that is appropriate to the type of purchase/contract being pursued. Further, in the event of non-competitive procurement, WST will obtain advance approval and appropriate documentation in accordance with the policies of the Texas Workforce Commission and the FMGC.

Procurement under TWC contracts may be made by one of the following methods (each method is further expanded upon below):

- 1) Small purchase procedures (informal procurement).
- 2) Competitive sealed bids (formal advertising or Invitation to Bid, ITB).
- 3) Competitive negotiation (Request for Proposals, RFP).
- 4) Non-competitive negotiation (sole source).
- 5) Customized training procurement.
- 6) On-the-Job Training (OJT) Contracts.
- 7) State and local inter-governmental agreements for procurement.

### **2.8.1 SMALL PURCHASE PROCEDURES**

Small purchase procedures (informal procurement purchases) involve simple and informal procurement methods that are sound and appropriate for a procurement of services, supplies or other property costing not more than \$100,000 in the aggregate.

Purchases that do not exceed \$3,000 may be completed without requiring price or rate quotations (simplified acquisition threshold) if the purchase can be deemed reasonable. Purchases made under such procedures shall be distributed equitably among qualified suppliers to the extent practicable. Action to verify price reasonableness of goods or services that fall within the threshold need be taken if:

- It is suspect or if there is information to indicate that the price might not be reasonable
- Purchasing a good or service for which comparable pricing is not readily available.

Procurements must not be broken out to circumvent these requirements.

With regard to the "aggregate cost" element of the simplified acquisition threshold the aggregate cost of a contract is the total contract amount, inclusive of option years. For recurring purchases, such as office supplies, aggregate cost means the cost of each individual purchase.

When transacting a small purchase, the basis for placing the order with the successful bidder and the factors considered in determining the lowest and best bid must be documented by the procuring staff member and filed with all other documentation related to the transaction. The small purchase method will be used when it is determined that the purchase of supplies, materials, equipment, or services would be made most effectively in the open market. Open market purchases will not require newspaper advertising. Solicitations may be oral or written; however, oral quotations and offers are generally only used for aggregate acquisitions less than \$25,000.

### **2.8.1.1 SMALL PURCHASE ORDER SYSTEM**

A small purchase order system will be used to:

- 1) Establish a record of purchases negotiated on the behalf of WST.
- 2) Provide duplicate records for use in payment of invoices and/or billings for services rendered and in documentation of allowability of related costs.
- 3) Assure that unnecessary or duplicate items are not purchased.

A purchase order will be required on negotiated purchases for the procurement of services, supplies, or other property costing not more than \$100,000 in the aggregate. Three quotations will be solicited and, at the discretion of the Executive Director, a vendor/contractor will be selected, based on quality, performance, delivery, price and other pertinent factors.

### **2.8.1.2 PURCHASE ORDER APPROVAL**

All purchase orders will be approved and signed by the Executive Director. A purchase order, approved and signed by the Executive Director will be required for applicable negotiated purchases made on behalf of WST where the aggregate value of the purchase is less than \$100,000. The Executive

Director will ensure informal quotations from three or more vendors were pursued.

Public exigency or emergency purchases may be made to meet any unforeseen, critical need of WST if WST's ability to serve the public would be impaired should the purchase be delayed. Emergency purchases are exempt from standard purchasing procedures, but do require the approval of the Director.

### **2.8.2 COMPETITIVE SEALED BIDS**

Competitive sealed bids (formal advertising) are publicly solicited bids, which use firm, fixed-price contracts (lump sum or unit price). Such contracts are awarded to the bidder whose response most conforms to all the material terms and conditions of the Invitation to Bid (ITB), at lowest price. The use of formal bids requires the presence of the following minimum conditions:

- 1) A complete, adequate, and realistic written specification or purchase description must be identified.
- 2) Two or more responsible bidders are solicited to compete for WST's business.
- 3) The procurement must lend itself to a firm-fixed-price contract, which allows successful bidder selection to be made principally on the basis of price.

When formal advertising is used for procurement under a TWC contract, the following requirements apply:

- 1) Bids must be solicited from an adequate number of known suppliers with sufficient time allowed prior to the date set for the opening of bids. The invitation will be publicly advertised.
- 2) The Invitation to Bid, including specifications and pertinent attachments, must clearly define the items or services needed so the bidders may properly respond to the invitation.
- 3) All bids will be opened publicly at the time and place stated in the Invitation to Bid.
- 4) A firm, fixed-price contract award will be made by written notice to the bidder whose response most conforms to the Invitation to Bid at

the lowest cost. When specified in the bidding documents, factors such as discounts, transportation costs and length of contract costs may be considered when determining which bid is lowest.

- 5) If the vendor is not the manufacturer of the equipment being procured, the responder must include a warranty/guarantee from the manufacturer with the proposal.
- 6) WST reserves the right to reject any or all bids when there are sound, documented reasons which are in the best interest of WST.

### **2.8.3 COMPETITIVE NEGOTIATION**

Competitive negotiation employs Requests for Proposals (RFP) to solicit responses from an adequate number of sources. The Request for Proposal must be publicized, and negotiations may be conducted when more than one of the sources submits an offer. Either a fixed-price or cost-reimbursement contract will be awarded, as appropriate. Competitive negotiation may be used when conditions are not appropriate for the use of formal advertising.

If competitive negotiation is used for procurement under a TWC contract, the following requirements apply:

- 1) Proposals will be solicited from an adequate number of qualified sources to permit reasonable competition consistent with the nature and requirements of the procurement. The Request for Proposal will be publicized and reasonable responses to the proposal by sources other than those solicited will be honored to the maximum extent practicable.
- 2) The Request for Proposal will identify all significant evaluation factors, including price or cost where required and the relative importance of each factor.
- 3) WST will develop a criteria summary, which includes a technical review and the evaluation criteria to be used on the proposals received. Further, WST will identify the criterion necessary to be considered a responsive offerer for the purpose of written or oral discussions, and will provide documented selection practices for contract award.
- 4) Award will be made to the responsible offerer whose proposal is judged to be most advantageous to WST. Price and all other

identified factors will be considered. Both the successful and the unsuccessful offerers will be notified of the evaluation outcome.

- 5) Other factors, beside price, will be considered when deciding to award a contract.
- 6) Two or more responsible suppliers who are willing and able to compete effectively for the award must be identified or, efforts to solicit two or more responsible suppliers can be documented.

WST may use competitive negotiation procedures for the procurement of professional services such as architectural, engineering, accounting, optometry, and medicine and will abide by the terms of the Professional Services Procurement Act, (Article 664-4 Vernon Civil Statutes). Service providers will be selected based on demonstrated performance of the type of professional services being solicited. Professional fees will be considered fair and reasonable as long as they are consistent with and not higher than the published recommended practices and fees of the various applicable professional associations and do not exceed the maximum provided by any state law. Competitors' qualifications will be evaluated and the most qualified competitors will be selected. Fair and reasonable compensation may be negotiated.

#### **2.8.4 USE OF PRIVATE CONSULTANTS**

WST will abide by the terms of Article 6252-11c, Vernon Civil Statutes, Use of Private Consultants. Under an independent contract, consulting services study an existing or a proposed operation or project of WST and advise WST of their findings. Only those contracts that provide for the study of an existing or a proposed operation or project of WST with regard to the operation or project can qualify as Consultant Contracts. Consultant contracts of less than \$100,000 do not require formal bids. However, individual consultants may not receive a combination of such contracts which in total would exceed \$100,000 during any WST fiscal year without benefit of a published competitive procurement, and consultant contracts under \$100,000 will be awarded after pursuing a thorough evaluation process. This process will include at least three prospective contractors who will be compared based on their ability to perform as well as their proposed cost/price.

The object of the evaluation process will be to determine that the best cost/price was obtained from the most qualified contractor for the service being sought. Consultant contracts expending \$100,000 or greater must be secured through the formal bid or request for proposal procurement process. Contractor performance will be evaluated and used as a consideration in any contracting with the same party. WST will use a Contract for Services for Consultant Contracts.

### **2.8.5 NON-COMPETITIVE NEGOTIATION**

Non-competitive negotiation is used when soliciting a proposal from only one source, or when, after solicitation of a number of sources, competition is determined inadequate. Non-competitive negotiation may be used when the award of a contract is not feasible following the small purchase, competitive bid or competitive negotiation procedures. It is the policy of WST to exhaust all possibilities before utilizing non-competitive negotiation. If non-competitive procurement is determined necessary, it is the policy of WST that the determination only be valid for that program year. If repeated use of such a source were deemed necessary, evaluation of past performance would be considered and every effort would be made to identify a method of competitive negotiation. Contracts awarded by non-competitive negotiation are limited to one or more of the following conditions:

- 1) The item is only available from a single source.
- 2) Public exigency or emergency in circumstances when the urgency for the requirement will not permit a delay resulting from competitive solicitation.
- 3) WST authorizes noncompetitive negotiation upon receipt of approval from TWC.
- 4) After solicitation of a number of sources, competition is determined to be inadequate.
- 5) If the entity is a public educational institution that meets the particular conditions as discussed in the following "Customized Training Section."

### **2.8.6 CUSTOMIZED TRAINING SERVICES**

Customized training services do not require the use of a request for proposal process. Customized training procurement will be permitted only when the services are established in one of the following ways:

- 1) Only available from a single training provider or group of training providers within one specific industry, or specific geographical area.
- 2) Provided through a non-financial agreement.
- 3) Designed in a way that does not allow competition. For example:

a) the cost of the program is pre-established by WST and cost is not a factor in selection of providers,

(b) the services can only be provided in a particular environment, or

(c) services are directed by state/federal agency guidelines and requirements to meet grant applications.

4) Multiple contracts are awarded on a pro-rata basis to all those institutions that have the capability, demonstrated performance, and desire to participate in the particular program.

WST will utilize state and local inter-governmental agreements for procurement or use of common goods and services as an alternative if it is determined to be a prudent use of program funds. (Example: Texas General Services Commission).

#### **2.8.7 OJT CONTRACTS**

WST does not allow OJT Contracts at this time.

### **2.9 CONTRACT DEOBLIGATION / REOBLIGATION POLICIES AND PROCEDURES**

If designated contract funds are not spent by the contractor as specified, the unspent funds may be deobligated by the appropriate WST staff member who will then do one of the following:

1) Reobligate the funds to eligible RFP responders.

2) Reobligate the funds to other current contractors (providing performance standards are being met) for same or additional purposes. Additional funds received by current contractors will not exceed 10% of the amount of the original RFP response.

3) Make the funds available through a letter of notification for re-obligation of funds that will be sent to all respondents to the original RFP. Each responder would be required to submit a request for these funds that documented how the additional funds would be utilized.

4) Proceed with a new RFP.

Verification of the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit (cost analysis) is required.

## **2.10. DEVELOPMENT OF A PROCUREMENT DOCUMENT**

Procurement involving the purchase of goods will primarily utilize an "Invitation to Bid (IFB);" "Request for Proposals (RFP)" will be used to solicit proposals for program services.

Final approval of the procurement document must be obtained from the Director or his/her designated staff member prior to issuance of the document to the general public. Review of the document by the Director or the fiscal/monitoring staff person of WST may also be required for some procurement. The IFB/RFP will include the minimum thresholds and qualifications the responders must meet for the proposal to be considered responsive.

The IFB/RFP will address the procedure which will be used should the need for an amendment to the IFB/RFP arise and will also address how WST evaluation group will insure each offerer has addressed the amendment(s). The IFB/RFP will state the method to be used by the offerer to acknowledge receipt of the amendment(s).

### **2.10.1 CONTENTS OF AN INVITATION TO BID**

A standardized format that contains, at a minimum, the following items will be employed:

- 1) The document will include submission requirements including date, number of copies, and to whom and where bids must be submitted. The procedure to be used for bids received after closing date of bid should also be addressed.
- 2) Any applicable state, federal or local laws, with which bidder must comply should be identified.
- 3) The IFB must have a complete, adequate and realistic specification or purchase description including sufficient, appropriate technical/descriptive information to ensure comparability of goods, without specifying brand names. If brand name specification is unavoidable, a Manufacturer's warranty must be used.
- 4) The evaluation criteria and process, including anticipated decision date and procedures for disputes will be included.
- 5) The anticipated delivery date, payment terms and invoicing procedures will be addressed.

- 6) Any restrictions, prohibitions, warranties, or manufacturer's certifications related to the procurement must be identified in the IFB.

### **2.10.2 CONTENTS OF REQUEST FOR PROPOSALS (RFP)**

A standardized format will be utilized. The RFP document will contain, at a minimum, the following items:

- 1) Request will address background information, including the purpose of the RFP and general information.
- 2) All submission requirements, including the due date, number of copies, to whom and where the RFP will be submitted will be included in the RFP. Submissions received after the RFP closing date and time will be deemed non-responsive.
- 3) A precise description of program services to be procured, including target service population, length of planned program, required activities, staffing, expected outcomes, facilities, equipment, participants to be served, and geographic area to be served must be a part of the RFP. The RFP will also include the goals and objectives of the program, including any applicable performance requirements and/or reports; the RFP will note any applicable state, federal or local laws, with which bidders must comply. Potential respondents to the RFP will be expected to be familiar with the WIA and any other applicable Categorical Programs under TWC and WST, their regulations, and appropriate directives governing the program, so copies of the regulations will be available to all applicants upon request.
- 4) The evaluation criteria and process, including anticipated decision date and procedures for disputes will be included as part of the RFP.
- 5) Any contract assurances or agreements that will be part of the proposal contract will be identified in the procurement document.
- 6) The document will provide appropriate forms and instruction for completing the RFP which include:
  - a) Any documentation necessary to determine the financial and programmatic capability of the proposer, such as past performance reports, audit reports, bonding information, etc.

- b) Any restrictions or prohibitions related to the procurement
  - c) Certifications regarding anti-Lobbying, Debarment, Drug-Free Workplace Certification, and Conflicts of Interest.
- 7) If a bidders conference is held, the RFP will state when and where the conference will occur.
  - 8) The RFP will specify WST's right to make no award.
  - 9) Disqualifications relating to not meeting responsiveness thresholds must be addressed in the procurement document.
  - 10) If applicable, proposed line item budget requirements should be identified in the RFP.
  - 11) Applicable service provider considerations should be addressed in the RFP.
  - 12) Should the most recent independent audit of the offerer be a necessary part of the proposal evaluation (to establish fiscal stability and accountability), the RFP will make that stipulation.
  - 13) If applicable, the latest State Corporation Certification and/or Certification of Non-profit Status must be identified as a weighted responsiveness value of the RFP.
  - 14) The RFP will define all key terms expressed as services solicited, if applicable.
  - 15) The applicant's staff's qualifications and licensing and/or certification necessary to provide services, when applicable, must be identified in the RFP. A section delineating job descriptions for personnel to be hired for the services to be provided should also be provided.
  - 16) In training definition requirements the following information regarding any training to be provided should be addressed:
    - a) Days/hours
    - b) Course sequence requirements

- c) Duration
- d) Course Curriculum
- e) Skills to be achieved
- f) Measurement of Achievement
- g) Pre/post testing
- h) Entrance minimums/maximums
- i) Attendance requirements

- 17) In most cases, the RFP will avoid and protect against giving inappropriate signals of acceptable price.
- 18) If RFP is targeted toward participant services, it will contain information concerning participant selection, policy priorities, Pell grant and other funding sources.
- 19) Information regarding program income requirements is located in WST Fiscal Policies and Procedure 1.10.

### **2.10.3 Contents of a Facilities Procurement**

Workforce Solutions Texoma upholds the highest standards of non-discrimination and the provision of equal opportunity to all customers. See WST Equal Opportunity Policy at Chapter 16 for additional details. Any procurement of a Board or workforce center facility will ensure that the building is located in an accessible location. The Board Executive Committee will follow a process to ensure that procurement of any new locations do not exclude sections of the population and provide additional protections to customers with disabilities. Procurement of a new facility will be performed in compliance with the following:

- Section 188 of the Workforce Investment Act (WIA) and the implementing regulations found in 29 Code of Federal Regulations (CFR) Part 37.
- Americans with Disabilities Act (ADA) of 1990, and ADA Amendments Act of 2008 (ADAA) (which prohibits employers and social service agencies from discriminating against qualified individuals with physical or mental disabilities on any basis.

- Section 504 of the Rehabilitation Act of 1973, as amended, and the implementing regulations found in 29 CFR Part 32, which prohibits discrimination against persons with a physical, sensory or mental disability in programs receiving or benefiting from federal financial assistance.
- Texas State law for accessibility requirements.
- The Architectural Barriers Texas Accessibility Standards (TAS).

In reviewing proposals for new facilities, the Executive Committee will take into consideration the following factors:

- Facility's accessibility, including restrooms
- Accessible parking
- Assurances that discrimination against individuals or a class of individuals on the basis of a physical or mental disability will not be caused by the selection of the site.

If a proposed facility is does not meet accessibility standards, the Executive Committee will entertain a discussion with the proposed landlord of a reasonable accommodation/modification to the facility to bring the facility up to required standards. A reasonable accommodation and/or modification is defined as any change in the facility to allow our customers with a disability to have equal opportunity in utilizing the facility's services. When a consideration for a location is being made and is part of a larger center, the structure and overall resources of the larger organization would be considered, as well as the financial and administrative relationship of the facility to the site.

Documents that can be collected to ensure that a proposed facility meets accessibility standards include, but is not limited to:

- Copy of the proposed lease agreement that assures that the facility is in compliance with the Architectural Barriers Texas Accessibility Standards
- Review of the proposed facility by WST using the most current Facilities Compliance Survey

## **2.11 RECEIPT OF PROPOSALS**

Handling of proposals submitted in response to an RFP will be conducted in the following manner:

- 1) All proposals must be submitted on or before the due date as stipulated in the RFP to be evaluated as responsive.

- 2) Every response will be date stamped and the time of arrival will be written on the sealed document to provide a written record of when proposals are received and from whom. This procedure will be strictly adhered to since a deadline for submission of proposals will be enforced, and proposals received after stated deadlines will be returned unopened without evaluation.
- 3) All proposals arriving on or before bid closing will be reviewed. Initially, the proposals will be reviewed for completeness; the RFP will identify the items necessary for a proposal to be considered complete as well as the disqualifying responsiveness thresholds that will be applied to each requirement.

## **2.12 CONTRACT PRICING**

WST will perform a proposal cost or price analysis or other document, as appropriate, in connection with procurement action pursuant to FMGC standards on all RFP proposals as the first step of the evaluation process. The RFP may utilize optional attachments in connection with this process if necessary. The method and degree of analysis will be dependent upon the facts surrounding the particular procurement situation. A cost analysis must be performed whenever the offerer is required to submit a line item estimated cost document. A cost analysis will also be completed when adequate price competition is lacking and for all sole source procurement including modifications. A price analysis may be used in all other instances to determine the comparative reasonableness of the proposed contract price.

WST procedures for conducting a Cost/Price Analysis are located in Section 2.20.

## **2.13 CONTRACT PROVISIONS**

WST procurement procedures will strive to ensure that the contract is an "arms-length" business arrangement that states the rights of both parties clearly. The contract will stipulate that payment will be made only for items delivered as specified in the contract. Special treatment that would benefit the contractor but would not provide commensurate benefit to WST is prohibited. Conversely, the contractor is not expected to provide benefits other than those specifically required in the procurement document. To ensure that only those items called for in the contract are delivered, WST's code of conduct prohibits illicit favors to or the special treatment of WST procurement staff members by contractors. The contractors will not be given a competitive advantage in subsequent purchases by virtue of having been successfully awarded a contract.

WST procurement procedures will strive to provide a means that allows both parties to remedy a disagreement related to the terms of the contract and/or either party's contractual obligation. Just as the contract requirements will be stated specifically, the rights of each party to remedy undesirable conditions will also be defined clearly. A

protester should exhaust all administrative remedies through WST before pursuing a protest/dispute at a higher level. WST Director or his/her designee will identify the staff member who will be responsible for the coordination of such a protest. Violations of the law will be referred to the Department of Labor, Office of the Inspector General, and other appropriate local and state authorities having proper jurisdiction.

In accordance with the provision, federal law, or awarding the awarding agency, WST will provide not only a sound and complete procurement document but will also include, as applicable, the following contract provisions or conditions in contracts and subcontracts:

- 1) The contract/subcontract will include at least the following:
  - a) A purpose statement.
  - b) The names, titles and addresses of the responsible parties of the contract.
  - c) The beginning and ending dates of the contract.
  - d) The type of contract.
  - e) The total obligated dollar amounts of the contract.
  - f) The funding source.
  - g) The federal ID number.
  - h) The signatures, date blocks, typed names, and titles of all responsible parties.
- 2) All WST contracts, including modifications, must be written and properly signed by the appropriate official(s), and must include any beginning and ending dates related to contract performance and payment.
- 3) Contracts, other than small purchases, will contain provisions or conditions which allow for administrative, contractual, or legal remedies in instances where contractors and/or /subcontractors violate or breach contract terms. Such sanctions and penalties may be provided as appropriate.
- 4) All contracts in excess of \$10,000 will contain suitable provisions for termination by the contractor, including the manner by which termination will be effected and the necessary terms of settlement. In addition, such

contracts shall describe the conditions under which the contract may be terminated for default as well as the conditions allowing the contract termination because of circumstances beyond the control of the subcontractor.

- 5) All contracts awarded in excess of \$10,000 will contain a provision requiring compliance with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor (DOL) regulations (41 CFR Part 60).
- 6) All contracts and subcontracts for construction or repair will include a provision for compliance with the Copeland "Anti-Kickback" Act (18 USC 874) as supplemented in DOL regulations (29 CFR Part 3). This Act requires each subcontractor to 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 is otherwise entitled. WST will report all suspected or reported violations to the appropriate agency.
- 7) When required by the federal grant program legislation, all construction contracts in excess of \$2,000 awarded by WST and their subcontractors will include a provision for compliance with the Davis-Bacon Act (40 USC 276a to a-7) as supplemented by DOL regulations (29 CFR Part 5). Under this Act, WST or their subcontractor will be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, WST or their subcontractor will pay wages not less often than once a week. WST will provide a copy of the current prevailing wage determination issued by the DOL in each solicitation and the award of a contract will be contingent on the contractors' expressed agreement to adhere to the specifications. WST will report all suspected or reported violations to the appropriate agency.
- 8) All contracts awarded by WST and their subcontractors in excess of \$2,000 for construction contracts and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers will include a provision for compliance to Section 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327-330) as supplemented by DOL regulations (29 CFR Part 5). Under 103 of the Act, each subcontractor is required to compute the wages of every mechanic and laborer on the basis of a standard 8-hour workday and a standard 40-hour workweek. Work in excess of the standard workday or workweek is only permissible provided that the worker is compensated at a rate of not less than 1-1/2 times the basic rate of pay for all hours worked in excess of 8 hours in any calendar day or 40 hours in

the work week.

Section 107 of the Act is only applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous to his health and safety as determined under construction, safety and health standards promulgated by the Secretary of Labor. 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 similar services.

- 9) Contracts will contain require compliance with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act and the Intergovernmental Personnel Act of 1970, as applicable
- 10) Where applicable, the contract will specify WST's requirements and regulations pertaining to:
  - a) Reporting and patent rights under any contract involving developmental, experimental, research, or demonstration work; copyrights; and rights of data obtained as a component of a purchase made from any purchase tier level for supplies or services expected to exceed \$100,000.
  - b) Any discovery or invention that arises or is developed in the course of or under WST contract.
  - c) The basis for payment and terms for delivery, including at a minimum the:
    - maximum amount payable;
    - methods of payment and/or payment schedule;
    - definitions of the types of payments and invoicing procedures, such as format and due dates according to the type of contract;
    - provisions for advancing of funds, if relevant; and
    - liquidation of advances and recovery in the event of nonperformance.
  - d) Compliance with regulations, as applicable.
  - f) Auditing and/or monitoring stipulations.
  - g) The process and authority necessary to institute contract changes,

such as in the event of funding increases or reductions.

- h) Provisions prohibiting assignment.
  - i) Assurances of nondiscrimination and equal opportunity.
  - j) Service provider contracts (including appropriate funds for administrative and supportive services).
- 11) All negotiated contracts awarded by WST, except those awarded by small purchase procedures, will include a provision reflecting the right of WST, the federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives, to have access to any books, documents, papers, and records which are directly pertinent to the specific contract for the purpose of making excerpts and transcriptions, and for auditing and examination. WST will require subcontractors to maintain all records for three years after final contract payment and until all pending financial matters are closed, including final audit resolution. Contractors and subcontractors will be required to ensure that all information collected, assembled or maintained by the applicant relative to a project will be available to the public during normal business hours in compliance with Texas Government Code, Chapter 552, Vernon's 1994, unless expressly prohibited by law.
- 12) Where applicable, contracts and subcontracts in excess of \$100,000 will contain a provision which requires compliance with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 USC 1857(h)), the Federal Water Pollution Control Act as amended (33 USC 1251 et seq), Executive Order 11738, and United States Environmental Protection Agency (EPA) regulations (40 CFR Part 15), which prohibit the use of facilities included on the EPA List of Violating Facilities by organizations under non-exempt federal contracts, grants or loans. The provision also requires the reporting of such violations to the appropriate agency and to the EPA Assistant Administrator for Enforcement (EO 11738).
- 13) WST will strictly adhere to all mandatory standards and policies relating to energy efficiency that are contained in the State energy conservation plan issued in-compliance with the Energy Policy and Conservation Act (PL 94-163).
- 14) WST may require changes, remedies, changed conditions, access and record

retention and suspension of work clauses approved by the DOL.

- 15) Contracts will contain a clause related to subcontracting and/or the utilization of a third party to provide services, which requires, at a minimum, that the contractor inform WST of such proposed subcontracts.
- 16) All contractors and subcontracts must adhere to applicable federal, state and local requirements, rules, regulations, and policies consistent with the program regulations of all categorical programs administered by WST, to ensure acceptable standards of accountability.
- 17) WST will develop a complaint procedure in accordance with 20CFR 667.600, 20CFR 667.700, 29CFR Parts 37-38, and WIA Section 181 and 188 to resolve all disputes arising from proposers/contractors associated with the procurement and contract process.
- 18) WST, Texas Workforce Commission and U.S. Department of Labor reserve the right to conduct monitoring and evaluation of the performances rendered under any contractor. The contractor will then be notified in writing of any deficiencies and requested corrective action. WST will provide technical assistance to the Contractor in an effort to aid in correcting the noted deficiencies, and will also conduct follow-up visits to re-assess the previous deficiencies as well as the efforts made to correct them. If the deficiencies persist, WST may terminate the contract or withhold funds.
- 19) The contract will contain a clause requiring the contractor to abide by all standards of conduct, conflict of interest and disclosure policies issued by WST, Texas Workforce Commission, State of Texas and the U.S. Department of Labor.
- 20) The contract will address fraud and abuse prevention.
- 21) Where applicable, contracts and subcontracts will contain a provision on property management. Should the contractor acquire property purchased with funds under this contract, such property must be limited to use within the activities outline in the contract and will remain the property of WST, Texas Workforce Commission (TWC), or U.S. Department of Labor upon contract completion. All property purchased under the contract must be purchased following the procurement policies of WST and/or TWC.
- 22) Contracts will contain a section prohibiting sectarian involvement, and WST will ensure that no funds under the contract are used, either directly or

indirectly, in the support of any religious or anti-religious activity, worship or instruction.

- 23) Where applicable, contracts and subcontracts will contain a provision that no funds provided under the contract may be used in any way to attempt to influence in any manner a member of Congress to favor or oppose any legislation or appropriation by Congress or for lobbying with state or local legislators.
- 24) Where applicable, contracts and subcontracts shall contain a provision that:  
  
No currently employed worker will be displaced by any participant; no program will impair existing contracts for services or existing collective bargaining contracts unless the employer and the labor organization concur in writing; no participant will be employed or job opening filled when any employee of the contractor is on layoff from the same or any substantially equivalent job or when the employer has terminated the employment of any regular employee or otherwise reduced its work force with the intention of filling the vacancy so created by hiring a participant whose wages are subsidized under the Act. No jobs will be created in a promotional line which infringes in any way upon the promotional opportunities of currently employed individuals.
- 25) Where applicable, a statement ensuring that program income earned from TWC funds is used to further program objectives, or that the funds are returned to the funding source should be included as part of the contract.
- 26) When applicable, the contract will contain a statement that ensures that the costs that are already allocated to other sources are not included in the cost of the contract. For example, duplicate funding or Pell Grants.
- 27) Certification of Debarment and Drug Free Workplace Certification will be included as part of the contract.
- 28) WST contracts will contain a statement ensuring compliance with Section 231.006, Family Code, which prohibits payments to a person who is in arrears on child support payments.
- 29) Contracts will require assurances complying with Section 261.101, Family Code, which requires reporting of all suspected cases of child abuse to local law enforcement authorities and to the Texas Department of Family and Protective Services. Contractors or subcontractors shall also ensure that all

program personnel are properly trained and aware of this requirement.

- 30) Each contract must contain, as applicable, an adequate narrative description of the quantity and quality of work to be performed or the major job skills to be learned by the participant. As applicable, the Statement of Work may include:
  - a) a specific description of services or goods to be provided, the dates the contracted work is to begin and end, start and ending date of merchandise delivery, start-up and closeout dates;
  - b) key elements of service package (services only), for example, assessment, case management, counseling, placement, frequency of client contact, follow-up, etc;
  - c) length of service activities (services only), for example, curriculum must include subject areas and number of hours/weeks of attendance, and defined number of days of each training/education cycle;
  - d) expected outcome(s) (services only) and description of how the outcome will be measured and documented;
  - e) list of barriers (training and education services only) to be addressed, participant selection criteria, and methods of removing barriers, if applicable;
  - f) expenditure schedule;
  - g) Requirement to maintain records of participant information; and
  - h) Performance standards defining the minimum levels of performance according to the type of contract. Such minimum performance levels must be quantifiable and stated in unambiguous terms.
- 31) The contract will address the quantifiable measurement and reporting of Performance Standards and goals, including proper report format and due dates.
- 32) In the case of cost reimbursement contracts, the number of participants covered by the agreement and a budget summary showing planned costs by cost category will be documented.

- 33) The contract will contain a provision assuring that no participant is directly or indirectly charged a fee as a condition for participation in any TWC funded program.
- 34) The contract will contain a provision assuring maintenance of appropriate standards of health and safety, including adoption and implementation of applicable provisions of the model HIV/AIDS work place guidelines of the Texas Department of Health as required by the Health and Safety Code, Ann., Sec. 85.012..
- 35) Contracts with workforce service contractors will require compliance with the prohibition on hiring former WST employees and provide enforcement mechanisms allowing WST to impose corrective actions, up to and including contract termination for violation of this section.
- 36) Contracts will contain an assurance requiring compliance with the prohibition against nepotism as stated in Government Code, Chapter 573.
- 37) If applicable, contracts will contain a provision assuring compliance with Open Meetings requirements as stated in Government Code, Chapter 551.
- 38) The contract will contain a statement limiting the political activity of contractor employees whose principal employment activities are funded in whole or in part with federal funds, as set forth in the Hatch Political Activity Act (5 USC 7321-29).
- 39) When applicable, contractors will be required to comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973.
- 40) Contractors will be required to comply with all federal tax laws, and will be solely responsible for filing all required state and federal tax forms.
- 41) Contractor will be required to maintain an appropriate contract administration system to ensure that all terms, conditions and specifications are met.

## **2.14 CONTRACT CHANGES AND MODIFICATIONS**

All contract changes and modifications must be within the "general scope" of the original contract for goods and services. These modifications may occur because of re-obligations, de-obligations, extensions, or adjustments to expenditure data.

Modifications to contracts must be in writing using the appropriate Modification Form and will become a part of the original contract.

Both WST's Executive Director or his/her designee and the Contractor's Authorized Representative, except for unilateral modifications, must execute all modifications.

With the agreement of both parties, modifications may be executed at any time during the contract period. WST or the Contractor may initiate the modification.

Any de-obligation and/or re-obligation of funds will require modification to the applicable contract.

Contract changes or modifications are permitted when any one of the following occurs:

- | 1) The description of the services to be performed is changed.
- | 2) The time of performance is altered.
- | 3) The location where the services are to be performed is moved.
- | 4) The location identified for delivery is changed.
- | 5) The drawing, design, or specifications are altered.

## **2.15 ISSUANCE OF A PROCUREMENT REQUEST**

The following steps will be taken when issuing a procurement request:

- | 1) WST will maintain a "vendor's list" of individuals/organizations who have requested to be informed of RFPs or IFBs. The list will be updated on a regular basis and reviewed for changes once every program year. Prior to issuance of a procurement request, the list will be utilized to determine potentially interested proposers.
- | 2) Using the "vendor's list," appropriate individuals and/or organizations will be identified and mailing labels which include the name and address of the individual/organization as well as a contact person, if known, will be developed for issuing notices.
- | 3) WST will, at a minimum, advertise the procurement request in the legal notice or public notice section of the regional newspaper at least one time. For procurement of services/goods that are unavailable locally or are

available from one source, the procurement request will be advertised in newspapers in Sherman/Denison, Bonham and Gainesville. Procurement of services and/or goods available only through national suppliers will be advertised in the Dallas Morning News.

- 4) One person will be designated to receive all proposals. It is the responsibility of this individual to date stamp and note the time of arrival on each proposal and to maintain proposals in a central location. No proposals will be accepted after the due date.
- 5) A Bidder's Conference may be held when the estimated procurement cost exceeds \$100,000. The Bidder's Conference will occur at a time prior to the bidding deadline at a time and place designated in the procuring document. All proposal questions must be written and will be accepted until and during the Bidder's Conference. No questions relating to the IFB or RFP will be accepted after the Conference. After the Bidder's Conference, all questions and answers pertaining to the IFB or RFP will be distributed to those who were issued a Proposal Packet. Attendance at the Bidder's Conference will be recorded (see Exhibit 19); attendance is optional.

## **2.16 SELECTION OF PROPOSERS**

The following will be considered in determining responsible prospective proposer:

- 1) Does the proposer have adequate financial resources to perform the contract, or the ability to obtain them?
- 2) Will the offerer be able to meet program design specifications at a reasonable cost, and is the ability to meet performance goals demonstrated?
- 3) Does the response reflect a satisfactory record of past performance including demonstrated quality of training; reasonable dropout rates from past programs; the ability to provide or arrange for appropriate supportive services; retention in employment; earning rates of participants; and job placement?
- 4) Has the proposer demonstrated the ability to provide services that can lead to the achievement of competency standards for participants with identified deficiencies?
- 5) Does the proposal reflect a satisfactory record of integrity, business ethics, and fiscal accountability? (The proposer has not been debarred or

suspended or otherwise excluded from or ineligible for participant in Federal assistance programs in accordance with the Department of Labor regulations at 29, F part 98; and has complied with the applicable requirements of the Department of Labor regulations at 29 CFR part 98).

- 6) Has the offerer displayed the organization, experience, and accounting operational controls necessary to meet the requirement of the procurement?
- 7) Does the proposer have the technical skills necessary to perform the work?

The evaluation and selection process in the procurement request will be different for RFP's and IFB's.

## **2.16.1 SELECTION OF SUCCESSFUL RFP BIDDERS**

### **2.16.1.1 RESPONSE EVALUATION FACTORS**

An evaluation instrument will be developed and used in accordance with the RFP requirements. Response evaluation factors may include, but are not be limited to the following:

- 1) Cost reasonableness.
- 2) Overall price comparisons.
- 3) Applicant's reliability regarding exchange/repairs/ warranties.
- 4) Quality of product or services.
- 5) Capability of product to deliver or meet requirements.
- 6) Delivery time or time of availability for products or services.
- 7) Extended service requirement on products after warranty.

### **2.16.1.2 COST OR PRICE ANALYSIS**

As part of the evaluation process, a cost or price analysis of cost/price will be conducted utilizing the documentation. The method and degree of analysis will depend on the facts surrounding the particular procurement and pricing situation. A cost analysis will be used when the offerer is required to submit the elements of the estimated cost, when adequate price competition is lacking, and for sole source procurement, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial

quantities to the general public or based on prices set by law or regulation. Deficiencies or concerns identified by this process will be discussed during the negotiation phase, if the proposer is selected. WST's detailed Cost/Price Analysis Procedures are located in Section 2.20.

### **2.16.1.3 PROPOSAL REVIEW PROCEDURE**

In accordance with the type of procurement, a proposal review by select WST staff members will be conducted, and documented. A signed record will be maintained reflecting the results of the evaluation. The procedure for the review will be as follows:

- 1) A copy of each proposal will be made for each member of the RFP Selection Committee, which shall consist of at least two WST staff.
- 2) Each member of the RFP Selection Committee will also receive a list of the evaluation criteria. The members will be instructed to review each proposal objectively. In most cases, proposals will be evaluated when the bid opening occurs. However, a specific deadline for completion of the review will be established by the staff/committee should extensive evaluation be necessary. The Committee then will complete the selection at the follow-up meeting. In all evaluations, each staff/committee member will complete and sign a ranking form for each proposal.
- 3) After each staff/committee member has rated each proposal, the scores will be recorded on an Aggregated Rating Form. The Committee may assign additional points to the aggregate score for each proposal (not to exceed 25% of the total possible points) based on a committee and staff review of each proposal using pre-determined areas which are weighted but not considered necessary in terms of responsiveness to the RFP. Additional information outside of the proposal itself may be considered at this time. The Committee's/staff recommendations will be forwarded to the full Board for final consideration. A report on the basis of the Committee's/staff recommendations will be developed and kept in the procurement file. The appropriate staff and/or Board member(s) will enter into negotiations with the approved proposer(s) and, pending successful negotiations, award the contract

- 4) The Board will make the final decision on the selection of proposed Workforce Center Operators after recommendations from WST evaluation committee.
- 5) The Executive Director may make final decisions on procurements other than Workforce Center Operators.

Selection of approved proposers will be based on evaluation results as well as the level of funds available. If more than one proposer is selected, those proposers with the highest scores on the evaluation instrument will be first priority for selection.

Unless otherwise stated in the RFP, negotiations may be conducted with approved proposer(s) to obtain optimum prices and clarify contract elements, such as maintenance agreements, statement of work, performance requirements, etc. Should negotiation be necessary, the evaluation team will be responsible for the negotiation process. A written record of negotiations will be maintained in the procurement file.

#### **2.16.1.4 NOTIFICATION TO PROPOSERS**

The Workforce Solutions Texoma will mail within fifteen (15) days or less after the selection of the approved proposers notification to all proposers regarding contract award. A copy of each letter will be maintained in the procurement file. The Director must sign the notification letter. To maintain a record of the procurement, a procurement file for each RFP will be established (See Section on Procurement Records).

#### **2.16.1.5 CONTRACTOR PRE-AWARD RESPONSIBILITIES**

Pre-award determination of contractor/grantee "responsibility" includes completed documents and/or review of the following:

- 1) Debarment Certification
- 2) Assessment of Ability to Perform Services
- 3) Monitoring reports
- 4) Audit results.

#### **2.16.1.6 ASSESSMENT OF CONTRACTOR'S ABILITY TO PERFORM SERVICES**

Assessment of Ability to Perform Services may include an on-site visit to:

- 1) Review and confirm organization practices with respect to documents and certifications submitted as part of the response to the Request for Proposal.
- 2) Review internal monitoring procedures of the organization.
- 3) Assess internal controls and accounting practices used by the organization in administering funds.
- 4) Review overall procedures and practices of the organization in meeting requirements applicable regulations.
- 5) Review the organizations ability to successfully perform services defined in the proposal.
- 6) Assess the organization's practices with respect to meeting the conditions of the agreement to be awarded.

#### **2.16.1.7 APPEALS OR DEBRIEFINGS OF AN AWARD**

##### **2.16.1.7.1 Filing and Processing the Appeal**

Procedures for filing an appeal and WST's process to respond will include the following:

- 1) Upon receipt of status notice, proposers must inform the WST's Executive Director, in writing, within fifteen (15) days of the date of the notification letter, of the nature of the appeal and desired remedies, if any.
- 2) The WST Executive Director or the designee shall contact the proposer and arrange for an appeals conference to be held at a mutually agreeable date and time at a location designated by the WST Executive Director within 21 days of receipt of the protest letter. An Appeals Committee shall be convened for the conference.
- 3) The WST Executive Director or designee shall serve as the moderator for the conference and shall inform proposer that only those issues presented in the appeal may be addressed at the conference. Proposer may provide further

information to clarify relevant issues and may be questioned by the Appeals Committee.

4) At the conclusion of the conference, the moderator shall call for a vote of the Appeals Committee on whether reconsideration shall be given to the appealed decision. A simple majority vote will be sufficient to reconsider or uphold the original decision.

#### **2.16.1.7.2 DEBRIEFING**

Proposers who are not selected for contract award may request a debriefing for purposes of learning more about the evaluation of their proposal. **A proposer may not request a debriefing and appeal the Board's decision.** The request for a debriefing must be provided in writing to the WST Executive Director no later than 30 days after notification of award. Upon receipt of a request for a debriefing, the WST Executive Director shall contact the proposer and set a mutually agreeable date and time to conduct the debriefing. The debriefing may be held in person, but may also be conducted via telephone.

#### **2.16.1.8 APPEALS CONFERENCE**

An Appeals Committee will be formed to conduct the Appeals Conference. The committee will consist of the Director, who shall chair the committee and at least two staff persons appointed by the Director. In the event the Director is unable to serve, he/she will appoint a senior staff member to serve. Board members serving on the original evaluation committee may also be included.

##### **2.16.1.8.1 APPEALS CONFERENCE PROCEDURES**

The sole purpose of the Appeals Conference is to allow the proposer to present information or clarifications that would, in the judgment of the majority of the Appeals Committee, justify having the proposal evaluation committee reconsider its earlier decision. The Director will serve as moderator for the conference and will inform the complainant (proposer) that only those issues presented in the original letter of appeal may be addressed in the Conference. Procedures include:

1) The Chairperson will direct the complainant or its representative to present its position on the issue(s).

Examples of relevant information include, but are not limited to, changes in costs, program content or performance.

- 2) The Appeals Committee may question the complainant's position.
- 3) The Chairperson will encourage but not coerce the parties to participate in a meaningful discussion.
- 4) At the conclusion of the conference, the Chairperson shall call for a vote of the Appeals Committee to determine if there is sufficient reason to have the evaluation committee reconsider the decision in question.
- 5) If a simple majority of the committee votes to have the proposal reconsidered, the evaluation committee will reconvene and evaluate the proposal using any relevant information brought out in the appeal that had not been previously considered. If the committee votes to uphold the original decision, the appeals process is officially ended.

## **2.16.2 SELECTION OF SUCCESSFUL ITB BIDDERS**

The process outlined in the Invitation to Bid, Section 2.8.2, will be followed in soliciting bids for the procurement of goods and services.

### **2.16.2.1 ITB REVIEW PROCEDURES**

Once the bids have been formally submitted to WST, in accordance with the procedures established by the ITB, the following steps will be followed in evaluating and selecting the successful bidder(s):

- 1) On a date, and at a place and time clearly set out in the ITB, a bid opening will take place. The bid opening will be open to the public and a log will be kept of all persons attending. An evaluation committee of at least two WST staff members will conduct the bid opening. The bids will be opened by one of WST staff members and the responses read aloud and recorded by another WST staff member. After all bids have been opened and recorded, the sign-in sheet will be dated and signed and will become part of the Procurement File, along with copies of all ITB responses.

- 2) WST evaluation committee will evaluate the bids and determine the lowest responsive, responsible bid that meets the specifications set out in the ITB. WST staff will then present the results of their evaluation, along with their recommendations, to the Executive Director or the Director for final approval.
- 3) WST staff will notify all bidders, both successful and unsuccessful, in writing, within 15 days after date of opening or after the Director has taken action on the results of the procurement. The appropriate WST staff member will develop a purchase order for any goods procured and obtain them as soon as possible. In the case of services, WST staff will enter into a contract, the terms of which will be based on the ITB and tailor the contract to fit the particular procurement with the successful bidder as soon as possible.

#### **2.16.2.2 CONTRACTING PROCEDURES**

It is the policy of WST to utilize cost-reimbursement contracts for the purchase of services and fixed-unit price agreements for the purchase of goods. A standard contract for program services will be utilized for all services other than individual-referrals for classroom training. WST's Director or his/her designee must execute the final contract and the contractor's authorized representative prior to the commencement of program activities. All contract modifications or changes or contract terminations must also be executed by WST's Executive Director or his/her designee and the Contractor's authorized representative prior to the commencement of the modification/change or termination. In the event it is not possible to execute a contract prior to the contract date, a Letter of Contract (LOC) may be utilized to allow the contractor to begin activities. The LOC must be sent to the authorized representative of the contractor by the Executive Director of WST or his/her designee and will include statements regarding the reason for contract delay, the maximum level of expenditure prior to contract execution, as well as the terms under which any expenditure may be made. If possible, a copy of the proposed contract will also be sent with the letter.

#### **2.16.2.3 POST-AWARD CONFERENCE**

Prior to the start date of the contract (s), a post-award conference will be held whenever necessary. Attendance will include WST's contract administrator and any appropriate administrative staff, the contractor's project director and any other key staff who will be involved in the administration of the contract.

## **2.17 PROCUREMENT RECORDS**

WST will maintain separate procurement files and contract files. The Procurement File will contain all information pertaining to the RFP from the Request for Procurement of Approval through the negotiation of the contract. The Contract File will include information from the Contract and any modifications through the close out reports.

### **2.17.1 PROCUREMENT FILE MAINTENANCE**

Procurement files will be maintained in sufficient detail to follow the progress of procurement. This file will be maintained by an appointed staff member as a part of the contract administration system. A- "Checklist for Procurement File" will be utilized to ensure that all appropriate information is included in the file. The records will include, but are not limited to, information pertinent to the following:

- 1) Needs Assessment Determination
- 2) Cost Estimate
- 3) Copy of RFP
- 4) Copy of Public Media Advertisements/Dates
- 5) Copy of Newspaper Ad/Affidavit
- 6) List of RFPs Sent/List of Vendors Notified of RFP
- 7) Bidders' Conference Attendance List (if applicable)
- 8) Responses at Bidders Conference (Q&A)
- 9) Proposals Received Log
- 10) Copy of Proposals (Make sure audit included)
- 11) Completed Staff and/or Board Evaluation Forms
- 12) Cost/Price Analysis Forms and Cost Reasonableness Determination
- 13) Cost Evaluation
- 14) Independent Scores Aggregated
- 15) Justification for Award
- 16) Documentation of Negotiation
- 17) Letters of Non-Award
- 18) Copy of Executed Contract
- 19) Documentation related to Disputes, Protests, and Claims (if applicable)

### **2.17.2 CONTRACT FILE MAINTENANCE**

An appointed staff member will maintain contract files, which are a part of the contract administration system. Contract files will, at a minimum, contain the following items:

#### **2.17.2.1 TWC-Related Contracts and Other Contracts that Require Close-Out**

- The original, signed contract and all modifications.
- General correspondence.
- Contract closeout documents, records, progress reports and closeout reports (include any required contractor's self-evaluations, and staff evaluations), as applicable.
- Contract budget.
- Record of payments.
- Reports as applicable.
- Financial reconciliations.

#### **2.17.2.2 All Other Contracts**

- The original, signed contract and all modifications.
- Method(s) of payment. Records of actual payments will be maintained in a separate A/P Vendor file.
- Copies of required insurance policies (if applicable).
- General correspondence.
- All applicable required reports (i.e. contract performance evaluations).
- Contract closeout documents, records, progress reports and closeout reports (include any required contractor's self-evaluations, and staff evaluations), as applicable.
- Applicable equipment use agreements.

### **2.18 CONTRACT ADMINISTRATION**

WST will maintain a contract administration system to be the responsibility of an assigned staff member to ensure that subcontractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. In addition, WST will insure the following:

- 1) All contracts for program services will include provisions for both maximum and minimum levels of qualification for participation in the program which will prevent program service providers from enrolling persons who already possess sufficient skills or persons who are unable to benefit from the planned training.
- 2) In the event a proposer is a previous contractor for workforce center operated programs, a copy of the most recent audit performed on the proposer will be obtained and reviewed prior to the awarding of another contract. A file of audits will be maintained by WST. Previous monitoring reports, closeout reports and other relevant information must also be considered.

### **2.18.1 PROGRAM PERFORMANCE POLICY**

Contractors who fail to meet minimum performance standards, as required by the contract, at the end of a six weeks, quarter or other specified performance reporting period will be required to prepare and submit a corrective action plan to WST within ten (10) working days of notification of failure.

#### **2.18.1.1 CORRECTIVE ACTION PLAN**

The corrective action plan must include the following elements, at a minimum:

- 1) Problem identification.
- 2) Discussion of contributing factors.
- 3) Planned corrective action, including time frames and individual(s) responsible for implementation of such action.

#### **2.18.1.2 FAILURE TO SUBMIT A CORRECTIVE ACTION PLAN**

Failure to submit a corrective action plan, as specified could result in any or all of the following:

- 1) Further technical assistance.
- 2) Suspension or reduction of funds.
- 3) Termination of the contract.

### **2.18.1.3 FAILURE TO MEET PERFORMANCE STANDARDS AFTER IMPLEMENTATION OF CORRECTIVE ACTION PLAN**

Contractors who fail to meet performance standards after the implementation of a corrective action plan will be subject to one or more of the following actions:

- 1) Development and implementation of an additional corrective action plan.
- 2) Further technical assistance and more frequent on-site monitoring and evaluation.
- 3) Reduction or de-obligation of funds.
- 4) Suspension and/or modification of contract.
- 5) Termination of the contract.

### **2.18.1.4 ADDITIONAL FUNDING REQUESTS**

Contractors who fail to meet performance standards during a program year and subsequently request program funding during the next program year may be considered for refunding. However, information regarding their performance will be presented to all individuals involved in the program evaluation process and will result in a lowered evaluation score.

### **2.18.2 CONDITIONS FOR "HIGH-RISK" SUBCONTRACTORS**

A subcontractor may be considered "high-risk" if WST determines that it:

- 1) Has a history of unsatisfactory performance.
- 2) Is not financially stable.
- 3) Has a management system that does not meet the management standards set forth by WST.
- 4) Has not conformed to the terms and conditions of previous awards.
- 5) Is otherwise not responsible.

If WST determines that an award will be made to a high-risk subcontractor, special conditions and/or restrictions will correspond to the high-risk conditions and will be included as a condition of the award.

### **2.18.2.1 CONDITIONS FOR "HIGH-RISK" AWARDS**

Special conditions or restrictions may include, but are not limited to requiring:

- 1) Additional and/or more detailed financial reports.
- 2) More frequent project monitoring.
- 3) The subcontractor to obtain technical or management assistance.
- 4) Additional prior approvals.

### **2.18.2.2 CONTRACTOR NOTIFICATION**

If WST decides to impose such conditions, WST will notify the subcontractor as early as possible, in writing, of the:

- 1) Nature of the special conditions/restrictions.
- 2) Reasons for imposing them.
- 3) Corrective actions, which must be taken before they will be removed, and the time allowed for completing them.
- 4) Method of requesting reconsideration of the conditions and/or restrictions imposed.

## **2.19 PAYMENTS, PROCEDURES, AND INVOICES**

The preferred payment to subcontractors will be by reimbursement method. However, WST may provide advances to subcontractors if the advance is to cover its estimated disbursement needs for an initial period, which will in no event exceed 20 percent of the contract amount. Thereafter, reimbursements are for actual cash disbursements.

Each subcontractor will disburse program income, rebates, refunds, contract settlements, audit recoveries, and interest earned on such funds before requesting additional cash payments.

### **2.19.1 INVOICES**

Invoices for payment requests must include the following information:

- 1) Identification of the contractor (name, mailing address, and telephone

number)

- 2) Contact person
- 3) Contract or purchase order number or other appropriate identification
- 4) Amount of payment
- 5) Itemized list of charges
- 6) Number of participant(s) served, when applicable.

#### **2.19.1.1 REVIEW AND APPROVAL OF INVOICES**

Invoices will be reviewed and approved under the following procedures:

- 1) A determination that payments are in accordance with the time frame and schedule of the contract.
- 2) A determination that line items and amounts are consistent with the contract and that necessary back-up documentation is included (cost reimbursement).
- 3) Review and signature of the Director or his/her designee who has knowledge regarding allowable expenditures and classification of costs as well as the appropriateness of the expense (operation or fiscal) and who has authority to approve payments under the contract.
- 4) A mechanism of review to insure that it is specified in the contract to withhold payment if monitoring results indicate problems have been identified and corrective action has not been taken.
- 5) A review to insure that, (as per the mechanism in the contract) if monitoring results indicate problems serious enough to withhold payments, corrective action has been taken before any payments are made.

#### **2.20 COST/PRICE ANALYSIS POLICY AND PROCEDURES**

WST will perform a proposal cost or price analysis in connection with procurements pursuant to FMGC standards on all RFP proposals as the first step of the evaluation process. The method and degree of analysis will be dependent upon the facts surrounding

the particular procurement situation. A cost analysis must be performed whenever the offerer is required to submit a line item estimated cost document. A cost analysis will also be completed when adequate price competition is lacking and for all sole source procurement including modifications. A price analysis may be used in all other instances to determine the comparative reasonableness of the proposed contract price.

Price analysis will include a comparison of prices paid for the same or similar products in the past, as well as the current market rate. Quantities, production, and delivery rates will also be taken into consideration. Cost analysis will be done in an element-by-element examination of the detailed costs submitted in the line item budget. Each of the costs will contribute to the total price.

WST will evaluate profit as a separate element of the price for each contract in which there is no price competition and in all cases involving cost analysis. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the sub-contractor, the sub-contractor's investment, the amount of sub-contracting, the quality of its past performance record, industry profit rates in the surrounding geographical area for similar work, and market conditions in the surrounding geographical area.

Costs or prices based on estimated costs for agreements under contracts will be allowed only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with federal cost principles. The cost plus a percentage of cost method of contracting will not be used.

### **2.20.1 DEFINITION/RELATIONSHIP BETWEEN COST/PRICE ANALYSIS**

Cost analysis and price analysis are used to accomplish the same goal - to obtain the best services or product for the money being spent. However, cost and price analysis are two distinct concepts and have different requirements and uses.

The primary purpose of cost analysis is to determine what the work being offered should cost to perform, given that the organization performing the work has a reasonable state of competency and efficiency. Things such as cost of materials and labor and location are taken into consideration. Cost analysis focuses on how much an organization needs to receive to ensure that it recovers its costs and makes a fair profit.

The primary use of price analysis is to ensure that the final price paid for a product or service is a fair and reasonable price. No other circumstances are taken into consideration

### **2.20.2 INDEPENDENT COST/PRICE ESTIMATES**

Cost estimating is the process of determining the asking price for goods and services based on a reasonable and fair price. During cost estimating, a cost/price analysis of the desired services or costs is performed before receiving any proposals. The important point is that someone who has no financial interest in the outcome of the procurement must perform the independent estimate.

The method and degree of analysis depends on the fact surrounding the particular procurement and pricing situation, but at a minimum, the awarding agency shall make independent estimates before receiving bids or proposals. The following paragraphs discuss sources available to assist in developing an independent cost estimate:

- 1) **Cost Accounting:** Cost accounting is a management information system directed at providing the business with essential information in a timely manner as to where the business has been, where it is going, and where its future lies. Cost accounting gives the seller its basis for development of its costs. If the cost accounting systems used by the seller can be determined, then a better determination of seller cost methods can be made.
- 2) **Cost Allocation:** Cost allocation is the process of estimating what relationship exists between the dollars paid for a particular item or service and the projected or actual costs of performance. Using cost allocation aids the analyst in development of overall costs estimating. These costs include direct costs, indirect costs, and other costs.
- 3) **Estimating Profit:** The offerer will try to make the maximum profit possible. It needs to be determined what a reasonable profit is and apply that cost accordingly.
- 4) **Past and Current Contracts for the Same or Similar Services:** These can be used as a cost estimating tool. The costing methods used in these contracts can be directly compared to the current operation. Bear in mind that inflation and other factors may limit the value of historical data.
- 5) **Contractor Financial Reports for Previous Contracts:** May be used to perform an independent cost analysis. These reports are most valuable if used in evaluation of the same contractor on a new proposal for the same type of work. They become less useful the

farther away from the original contract the new proposal gets.

### **2.20.3 ESTIMATES ON A UNIT COST BASIS FOR KEY COSTS**

By preparing a unit cost basis for key costs, an estimate of costs to the seller for the particular project can be made. For example, while the total number of staff devoted to the contract for a certain contract may be unknown, the types needed and the appropriate compensation can be estimated. Similarly, the types of materials needed and unit costs for these can be estimated. Such an estimate can be adjusted for each offerer's mix and quantity of direct costs and provide benchmark unit costs for evaluating the offerer's proposed costs and price.

### **2.20.4 PARAMETRIC ESTIMATES**

Parametric estimates are also known as yardstick or benchmark measurements or rules of thumb. This is a generic type of measurement such as a cost per instruction hour, cost per square foot, or cost per student placed in a job. It is merely a convenient way to enable the analyst to evaluate the cost or price.

### **2.20.5 PRICE ANALYSIS**

#### **2.20.5.1 DEFINITION**

Price analysis is the process of examining and evaluating a price without looking at the estimated cost elements and proposed profit of the offerer whose price is being evaluated. A price analyst is one who analyzes the offerer's proposal and establishes the price objective. Price analysis comes down to making a determination if the final price being requested by an offerer for a particular service or product is fair and reasonable taking all circumstances concerning the program or product into consideration.

#### **2.20.5.2 COMPARABILITY**

To conduct a successful price analysis, the price analyst must compare the service or product being analyzed to a service or product, which is as similar as possible to the service or product being analyzed. The best way to avoid having to do an "apples and oranges" comparison is to write the RFP in such a manner that the offerer will be required to submit the proposal to very specific requirements.

When conducting a price analysis, one is not concerned with the individual components of the product or the individual elements of the service. Evaluation of the final price, or as it is often referred to, the "bottom line" is the ultimate purpose of price analysis.

#### **2.20.5.3 PREPARATION**

- 1) Knowledge of Item to be Provided or Services to be Performed: Before one can begin to make an evaluation of an offerer's proposed price, one must have knowledge of the product or service being offered. It may be necessary to obtain technical expertise to assist in this decision.
- 2) Familiarity with Local Market Conditions: This knowledge is essential in conducting a price analysis. Things such as equipment costs, material costs, tuition costs, and labor rates vary significantly from one part of the country to another, and these rates directly affect the final cost.
- 3) Familiarity with Historical Data for Similar Purchase Actions: Referring to historical data for similar purchase actions is another way to conduct price analysis. However, there are pitfalls to this method, particularly inflation. The price of goods and services change over time. The older the historical data with which the current proposal is being compared is, the less valuable this data is as an analysis tool.

#### **2.20.5.4 METHODOLOGY**

##### **2.20.5.4.1 PRIMARY COMPARISONS**

The most basic form of price analysis is called Primary Comparisons, where the prices of competing offers are compared and the best price is selected. However, before this direct approach can be used, it should be clearly demonstrated that there is strong price competition. The offers must be for the same or quite similar items of service.

##### **2.20.5.4.2 SECONDARY COMPARISONS**

In some situations, such as the use of utilities or the use of the only service provider available in a rural area, the services being sought will not exist in a purely competitive environment. Either the services may be unique, or stipulations, such as state mandated use of a small business, have been made which reduce the competitiveness of the offer. Still, price analysis must be done. The method of accomplishing this price analysis is through secondary comparisons, which include:

- 1) Comparison of offers to prior contracts and prior quotes for the same or similar work. Here prior prices must have been competitive themselves and inflation has to

be taken into account.

- 2) Comparison of offers to an independent agency estimate. Here the independent agency estimate has been carefully developed and reflects the probable costs an efficient and well-run organization will incur.
- 3) Comparison of offers to parametric estimates or benchmarks. A parametric estimate is a cost or price yardstick or benchmark, such as: dollars per pound, cost per instructional hour, and cost per hour. A unit price should be derived from each offerer and compared against the parametric price comparison of offers with market prices. Compare the offerer's price with what the public would pay for the same service.

#### **2.20.5.4.3 OTHER CRITERIA**

Criteria other than lowest price will be considered, i.e., demonstrated performance. The offerer must be capable of performing the work at the level of effort and with the quality required to satisfy the contract and must have actually submitted a proposal, which answers the statement of work in the RFP. Comparison with current proposals for RFP's for similar work on other contracts is another form of comparison. Here the comparison is not quite as ideal as with primary comparisons. The difference in this instance is that because there are different conditions for the work or because the work is only similar, the actual performance of the work will be different and the comparison will not be quite as accurate as with a primary comparison. An independent estimate occurs when someone not having a personal financial interest in the outcome of the proposal examines the RFP prior to the receipt of the proposals and makes a determination of what the price of that service should be.

A comparison should be conducted with independently developed price estimates. In an ideal situation, the price of the service should be somewhat close to the independent estimate. If it is not, then this difference should be closely examined. It may be that the independent estimate is somewhat off. Perhaps the salaries of the personnel involved are too high, indicating the employees are overqualified, or vice versa. Perhaps the costs the organization is paying for rent is excessive. The point is that an independent price analysis will provide one gauge with which to judge the proposal.

Disparity between the independently developed price estimate and the actual proposal is an indication that the proposal must be examined in greater detail. A well-done independent estimate is an important, valid tool in price estimating.

Comparison with historical records is another secondary comparison. This comparison includes both actual proposals submitted and actual contracts awarded. Here the comparison is less valid still since the circumstances surrounding the proposals will have changed, perhaps slightly or perhaps significantly. Inflation has probably caused personnel costs and material, equipment and similar costs to increase. New methods of accomplishing tasks may have evolved. Therefore historical data must be looked at critically and with a realization that it is only a comparison. If these factors are kept in mind, then comparison with historical data is a valid tool.

Parametric estimates are also a type of yardstick or benchmark against which proposals are compared. If it is possible to break down the service into these parametric estimates then do so. The basic and most helpful one is price per instructional hour. Once this price is developed, the reviewers can compare it to the prices of other offerers in the procurement and to current and past contracts.

Catalogs or market prices, if available, can be used for comparison with the proposed price. To represent a valid indicator and serve as a point of reference, the prices must be those, which a substantial number of purchasers in the general public are currently paying. Market prices must be established from sources independent of the manufacturer or vendor.

A commercial item is a class or kind of product or services regularly used for other than government purposes and is sold or traded in the course of normal operations. Commercially available training packages may be purchased for off-the-shelf prices and without requiring a breakdown of the cost components of the package if such packages are purchased competitively and include performance criteria.

Substantial quantities mean that enough of the product or service is sold to establish a real commercial market for the item. This includes not only total products or service packets sold but also includes the number of times the item has been sold and how many items a given

price or piece structure has been accepted by buyers free to choose. Nominal quantities, like models, specimens, samples, and prototype or experimental units cannot be considered to meet this requirement.

Services sold in substantial quantities are those that are customarily provided by the organization with personnel regularly employed and with equipment, if any is needed, regularly maintained either solely or principally to provide such services.

An item is sold to the general public if it is sold to other than affiliates of the seller for end use by nongovernmental organizations.

Another technique is what can be termed a common sense analysis. Simply put, with this technique, the buyer asks the question of whether the price of the product or service being proposed would approximate what the offerer is asking. This should be the last step. By the time the buyer is at this point in the analysis, the buyer will have developed enough of a feel for the product or service that the buyer should be able to readily tell whether the asking price is reasonable or not. This technique applies to prices that are too low as well as to those that are too high.

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

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

Use of value analysis within the scope of contract pricing can give insight into the inherent worth of the product or service. Essentially, value analysis determines if the goods or services as constituted offer the best deal in terms of value.

#### **2.20.5.5 PRICE ANALYSIS WORKSHEET**

Documentation of analyses is important for those cases where price analysis

alone is the principle or sole tool. The Price Analysis Worksheet presents a format for documenting the price analysis. It presents a method for the price analyst to show what kind of price comparison was used.

## **2.20.6 COST ANALYSIS**

### **2.20.6.1 DEFINITION**

Cost analysis is the review and evaluation, element by element, of the cost estimate supporting an organization's proposal for the purpose of pricing a contract. Cost analysis goes into the product or service to a much greater degree than price analysis. Whereas price analysis basically looks at the final price of the product or service, cost analysis scrutinizes every aspect of the product or service from an individual element cost viewpoint and from an element-by-element comparison of relative costs.

### **2.20.6.2 METHODOLOGY**

Cost analysis differs from price analysis primarily in the level of review conducted. Whereas price analysis examines the total price as the single pricing factor under consideration, cost analysis segregates the total price into various cost elements, and these diverse component parts are individually assessed. By cost elements it is meant the line items in a detailed budget, that is, the individual costs that when added together, total the final price. For example, one cost element would be staff costs, one cost element would be equipment, one cost element would be facilities, one cost element would be staff travel, and so forth. This effort is necessary because comparable price products and services upon which a price analysis can be effectively performed are not available to the WST because of the many services they can be buying. Therefore, the price must be reduced to smaller units which may lead more readily to price comparison with other cost elements, i.e., labor units including hours and rates are compared with other labor units for the same or similar units.

The general approach to cost analysis has the following universally accepted steps:

- 1) Check computations. Anyone or any organization can make mistakes. The purpose is to look at the figures within each cost element to ensure that the total cost is consistent with the sum of sub-costs included in the element. A misplaced decimal point can ruin an otherwise good proposal.
- 2) Review for completeness of information. The reviewer should

be alert to various cost elements and sub-elements that might have been omitted by the offerer. A missing cost element or sub-element can be the result of carelessness, lack of understanding of the program, or even an attempt by the offerer to deceive the WST. If a problem is suspected in one area, the reviewer should be increasingly alert to problems in other areas.

- 3) Review for proper categorization. Costs are categorized in response to various requirements. The RFP usually contains a budget form that identifies and categorizes costs. There may also be instructions in the RFP on how costs should be displayed. The requirements are intended to force a consistency in offerer's presentations that will aid in the analysis of costs. Later it will aid in contract monitoring of costs when compared to initial line items estimates, where cost reimbursement contracts are awarded.
- 4) Offers must also classify cost according to sub-categories of Training, Administration, Training Related, Basic Readjustment, Retraining, and Participant Support to be segregated. Reviewers should ensure that costs are correctly allocated under these rules. If there is doubt, offerers should be asked for explanations and justifications.
- 5) Determine the Estimating Basis. Reviewers should know how the cost or price proposed by offerers was estimated. Did they use historical cost for operating the same or similar programs? Did they obtain competitive quotes for materials, equipment, space and other direct costs? Are any of the prices or costs based on sole source quotes? The capabilities to analyze costs and prices will be strengthened by requiring offerers to identify the bases they used for estimating various costs. This can be done by inserting instructions in the RFP that require this information. The reviewer must remember that cost estimating combines both factual data and judgments applied to project future costs. Determining the estimating bases in nothing more than the process of separating the facts from the judgments.
- 6) Determine the allowability of the estimate. This is the heart of cost analysis. All of the prior steps are in support of this one.

- 7) Remember that the primary function of cost analysis is to form an opinion of what the job should cost the offerer, given reasonable economy and efficiency.

### **2.20.6.3 COST ELEMENTS**

Cost or pricing data is the focal point of cost-based estimating and analysis. It represents all the facts upon which the seller's pricing judgments are based, and it provides evidence for the WST's acceptance of the proposed price as fair and reasonable. In the absence of adequate price competition or other convenient standards of price acceptability, the WST must conduct a cost analysis which, in part, requires the procedure of estimating process of the seller. Without adequate cost or pricing data, this type of analysis would be impractical if not impossible. Obtaining adequate cost or pricing data is, therefore, the starting point of any cost analysis. The submission, certification, and accuracy requirements of cost and pricing data are delineated below.

Cost data should be submitted anytime a cost analysis is required.

The offerer shall certify that to the best of its knowledge and belief, the cost data are accurate, complete, and current at the time of agreement. See form: "Certificate of Current Cost or Pricing Data." If contracts or modifications are negotiated with reliance on inaccurate, incomplete, or out-of-date data, the awarding agency will have the right to price adjustment to exclude any significant sum by which the price was increased because the contractor had submitted data that were not accurate, complete, or current as certified. See form "Pricing Reduction for Defective Cost or Pricing Data."

### **2.20.6.4 ALLOWABILITY/ALLOCABILITY/REASONABLENESS OF COSTS**

One of the goals of cost analysis is to determine the allowability of proposed costs. When conducting a cost analysis, the cost analyst will have to make a determination on the allowability of the proposed costs. Allowability is the cost analysis term for acceptability

#### **2.20.6.4.1 ALLOWABLE**

To be allowable, a cost shall be necessary and reasonable for the proper and efficient administration of the program, be allocable to the program, and with few exceptions, shall not be a general expense required to carry out the overall responsibilities of the Governor or a governmental subrecipient. Costs charged to the program shall be

accorded consistent treatment through application of generally accepted accounting principles appropriate to the WST's program, as determined by the Governor. The governor shall prescribe and implement guidelines on seventeen allowable costs for the WST.

The following are costs that are not allowable charges to the WST's program:

- 1) Cost of fines and penalties resulting from violations of, or failure to comply with Federal, State, or local laws and regulations.
- 2) Back pay, unless it represents additional pay for program services performed for which the individual was underpaid.
- 3) Entertainment costs.
- 4) Bad debts expense
- 5) Insurance policies offering protection against debts established by the Federal Government.
- 6) Contributions to a contingency reserve or any similar provision for unforeseen events.
- 7) Costs pertaining to lobbying or costs of any salaries or expenses related to any activity designed to influence legislation or appropriations pending before the Congress of the United States.
- 8) Costs of activities prohibited in public service employment prohibition, nondiscrimination and nonsectarian activities, relocation, employment generating activities and displacement.

#### **2.20.6.4.2 ALLOCABILITY**

At the very core of the issue of allocability is the fact that the costs must be allocable to the particular grant itself. Costs may be allocable to a contract as direct or indirect costs. A cost is charged as a direct cost or as an indirect cost in accordance with the descriptions of direct and indirect costs contained in the OMB Circulars identified in

DOL regulations. The following paragraphs discuss direct costs and indirect costs:

A direct cost is any cost identified specifically with a particular final cost objective (i.e., contract or end product). Direct costs are not limited to items that are incorporated in the end product as material or labor. Costs identified specifically with a contract are direct costs of that contract. All costs identified specifically with other final cost objectives of the contractor are direct costs of those cost objective. Direct costs essentially represent variable costs.

An indirect cost is any cost not directly identified with a single final cost objective but with two or more final cost objectives or with an intermediate cost objective. Indirect costs essentially represent fixed costs and those variable costs that cannot be easily measured or identified with a specific end product or service. The following categories are normally classified as indirect costs: personnel, accounting, contracting, housekeeping and maintenance, legal, and library.

Indirect costs are those costs that benefit two or more cost objectives, projects, etc. but which are not appropriate for allocation as a direct cost either due to their small dollar amount or due to the number of cost objectives (or contracts) that they may benefit. The most commonly identified groupings of indirect costs are fringe benefits, material overhead, off-site overhead, and general and administrative expense. Each category is selected based upon the need to allocate costs to those cost objectives that they benefit.

A further distinction between types of indirect costs can be made. There are two types of indirect expenses:

- 1) Those that benefit both the contract and other work that can be distributed to them in reasonable proportion to the benefits received. This is also known as "overhead."
- 2) Those that are necessary to the overall operation of the business although a direct relationship to any particular cost objective cannot be shown. This is also known as "G and A" (General and Administrative).

Unless a contractor is working solely on one project wherein all the costs of doing business can be allocated to that single cost objective as direct costs, contractors will incur both direct and indirect costs.

Indirect costs consist of a percentage rate that is applied to a base. Often the base is total direct labor and fringe benefit costs, although other bases can be used. These contract components are costs that cannot be readily allocated to any one contract and benefit all contracts of the offerer. Examples are labor for accounting, bookkeeping, office supplies, general administration, and a variety of other materials and equipment that benefit the organization and enable it to operate. The reviewer must ensure that the costs that make up these components are not duplicated by proposed direct charges that are categorized as administration costs. Otherwise, duplicate charging may occur. To make this judgment, the reviewer must see the offerer's latest approved indirect cost agreement and the proposal that was submitted to the agency that approved these rates. Then the reviewer must compare the component costs to those proposed as direct administration cost to ensure that they are not duplicated. Where there is no approved rate, the offerer must submit a cost allocation plan. This must show the costs that will be designated as indirect and how they will be allocated to the contract.

#### **2.20.6.4.2.1 BENEFITS RULE**

By applying the benefits rule to cost allocation, contractor costs can be fairly easily identified as direct or indirect. If a cost benefits only one cost objective, it must be assigned to that product or service as a direct cost; conversely, if cost benefits more than one cost objective, it must be prorated to the various objectives on an equitable basis. This prorating task is often difficult since not many costs benefit each end product or service in the same manner or to the same degree.

#### **2.20.6.4.3 REASONABLENESS**

Necessity is one criterion for reasonableness. A cost is necessary if it is the type of cost that is recognized as ordinary and necessary for the conduct of the contract or the contractor's business. It must also be necessary for the proper and efficient administration of the program.

A cost is reasonable if it is not greater than what one would expect an ordinarily competent and prudent person to charge in conducting a

business in a competitive environment. Reasonableness of costs must be determined with particular care when dealing with organizations that may not be subject to effective competitive restraints. In determining reasonableness, the following points should be considered:

- 1) The restraints or requirements that are imposed by such factors as generally accepted sound business practices, arm's length bargaining, Federal and State laws and regulations and contract terms and conditions.
- 2) The action that a prudent businessperson, considering responsibilities to the owners of the business, the employees, customers, the WST, and the public at large, would take under the circumstances.
- 3) Any significant deviations from the established practices of the contractor that might unjustifiably increase the contract costs.

In making judgments about reasonableness, the reviewer needs to have a clear understanding of the technical requirements of the contract, that is, the reviewer must have enough familiarity with the program to determine if the labor, materials and personnel proposed are necessary and sufficient and within the range that would be considered necessary to perform the task.

The WST policies determine what costs are allowed. Basically this standard requires that all costs of the proposal be allowed by or be in conformance with the WST's policies.

#### **2.20.6.5 COST ANALYSIS PROCESS**

Once it has been determined that the costs are allowed, then the task of analyzing the specific costs commences. Cost analysis is really comprised of two different yet interrelated evaluations: accounting analysis and technical analysis.

Accounting analysis involves essentially rate analysis and verification. It focuses primarily on the factual portions of the offerer's proposal as represented by the cost or pricing data. Usually, such data can be verified from the offerer's accounting records and other supporting documentation.

A technical analysis of the hours, quantities, and the necessity for the incurrence of specific costs must be conducted. Cost data by itself may be verifiable but, by itself, may lead to erroneous conclusion and unreasonable estimates. Someone with thorough knowledge of the buy and what it should cost must be involved in the analysis activity.

Finally, it must be remembered that cost analysis must be supplemented by some form of price analysis so that the “big picture” is retained verification of the overall price, not just the individual elements, as fair and reasonable is essential to the contract pricing process.

#### **2.20.6.5.1 ANALYZING SPECIFIC COSTS**

The following are certain types of cost that are typically found in proposals for WST training services:

- 1) Staff costs: Staff costs are the costs of all direct labor used on the contract and includes the costs for all staff salaries, wages, and fringe benefits paid to those employees whose work for that remuneration will benefit the proposed program and only that program. Staff costs make up the largest group of costs in providing training services.

The cost of direct labor is a product of two variables. One is the number of hours or other time units necessary to perform the functions in question. The other variable is the rate of remuneration for each time unit. Put another way, total estimated staff costs are the product of the level of effort for each staff position and the rate per hour or year for that position. The reviewer must consider the offerer's estimate of hours and numbers of staff, the level of staff positions, proposed wage rates, and the fringe benefits.

Where an offerer proposes to use one or more subcontractors to perform some of the essential training services or closely related services, the reviewer must be sure that there is no duplication of staff costs. Looking for duplication will ensure that the total staff costs are reasonable and in line with the RFP

requirements.

- 2) **Materials:** Materials can include two categories, training and office supplies. These categories should be costed separately even if they are included by potential vendors under the broad heading of materials. The issues for these costs are the same as those for other types or costs. Are the type and quantity estimated necessary and reasonable, given the requirements of the program? Are the unit prices fair ones, representing competitive rates?

The offerer should identify the training materials it estimates it needs and the unit price. For office supplies, unless the amount proposed is relatively small, the cost proposal should contain some estimating basis. This might be historical cost per participant, employee or per office.

- 3) **Equipment:** Equipment can be divided into categories. Certain equipment will be devoted to program goals, for the direct provision of training or other central services being sought. Other equipment will have a more general use, particularly office equipment and business machines. Some equipment will have multiple uses, i.e., computers. At a minimum, the cost proposal should clearly describe what method of property acquisition it will use: rent, lease, or purchase and justify the choices. How the equipment is to be acquired is subject to WST policy.

- 4) **Facilities:** Facilities include the estimated costs for office and training site rental. Cost for space rental is generally determined by the number of square feet used multiplied by a rate, usually in a lease, per square foot. The main concern in cost analysis for this cost element is whether the space is sufficient for the needs of the program and whether the rate is a reasonable price.

- 5) **Communications:** Communications include faxing, telephone and postage. The reviewer must know

where these costs are contained so that they are not duplicated in the cost proposal.

- 6) Staff travel: Staff travel is proposed for staff to conduct contract services and to administer the project. The need for the trip must be analyzed and whether proposed costs are reasonable and in line with travel policies. A potential problem in local travel can arise when the offerer is proposing to charge the contract for leased vehicles that will serve contract purposes. When this occurs, the reviewer must obtain from the offerer a justification that delineates how much of the lease cost will be apportioned to the contract and how the offerer plans to make that apportionment. Before the final costs are accepted, the reviewer should be sure that leased vehicle costs are equal to or less than the reimbursed costs of the use of individual staff-owned automobiles or the use of public transportation.
- 7) Other direct or miscellaneous direct costs include: Consultants, professional services (legal and accounting), printing and photocopying, and staff training. Again the reviewer must determine if those costs are necessary, reasonable and allocable.

### **2.20.7 SUBCONTRACTS**

If the offerer proposes to use subcontractors, the proposed subcontract must be analyzed also. The services or products being proposed by both contracts must be different so that the WST is not paying twice for the same thing. Generally speaking, when a subcontract is used, additional costs are incurred in the prime contract due to the primary contractor's added responsibility to monitor the subcontractor and perform related administrative duties.

The work to be performed by the subcontractor should be clearly identified, described, and justified in the cost proposal. All cost and pricing data from the subcontractor must be submitted in the primary contractor's proposal. Staff, materials, equipment and any other direct costs in the subcontract must be unique to that subcontract and not repeated in the offerer's cost proposal. Then, a cost/price analysis must be conducted on the subcontract along with the cost/price analysis of the primary contract using the same rules and procedures.

### **2.20.8 PARTICIPANT SUPPORT SERVICES**

Participant support services are those which are necessary to enable an individual eligible for training, but who cannot afford to pay for such services to participate in a training program. Such services may include: transportation, health care, special services and materials for the handicapped, child care, meals, temporary shelter, financial counseling, and other reasonable expenses required for participation in the training program.

The same analysis procedures for participant support services should be used as for other costs. The analysis must ensure the proposed participant support services costs are needed and that they are reasonable. When considering participant support services, the reviewer must ensure that any direct payment of funding requirements (i.e., payment of public transportation by use of tokens) are not proposed for reimbursement from contract funds submitted by the offerer.

### **2.20.9 SECOND YEAR PROPOSALS**

Where solicitations seek second year proposals from offerers, these proposals should be subject to the same detailed cost/price analysis as the first year. The reviewer must examine how the second year costs will change from the first year ones. Unless there is something in the RFP calling for a reduced scope of work in the second year, usually the work will be the same.

However, in nearly all instances, costs must change. Inflation occurs. Contractor personnel usually receive pay raises. Thus, the cost of labor and materials usually rise, but they do not rise equally. On the other hand, there will be no start up costs included with second year costs. Also, improvements in efficiency and the work experience level of personnel can result in lower costs. The point is that the reviewer will have to analyze the second year costs in the same manner as other costs.

### **2.20.10 COST ANALYSIS WORKSHEET**

The Cost Analysis Worksheet is a convenient and relatively easy to use instrument for moving the viewer through cost analysis in a logical fashion and for documenting findings.

Part I of the worksheet covers the general steps to be taken: checking computation, cost categorization, etc.

Part II covers specific costs typically found in WST cost proposals. Reviewers should refresh their understanding of what to look for on each cost element by reading the previous sections discussing each cost element. For each cost element, the reviewer can make a "yes-no" decision about the necessity and reasonableness

of the cost, and support the decision on “reasonableness” by showing what benchmark was used to measure that cost against.

Part III examines profit/fee.

Part IV offers a place for the reviewer to document findings; to identify additional information needed from the offerer; and any other comments he or she would like to make. At every point in this worksheet, there is a place for brief narrative comments. They are just as important here as they are for documenting the evaluation of the technical proposal.

## **2.21 CONTRACT CLOSEOUT**

Upon termination or completion of a contract, final reports of expenditures and performance, as appropriate, must be submitted within thirty (30) days, or as specified in the contract, to WST. Refunds or final reimbursements will be concluded within thirty (30) days of the receipt of the final report, or as specified in the contract. Administrative or monitoring staff members may conduct a follow-up of contract activities within ninety (90) days of the end of the contract. Documents that must be submitted include the following:

- 1) A financial status report.
- 2) A program status report.
- 3) The return of unspent funds or unjustified payments.
- 4) The program income report, if applicable.
- 5) Records retention.

## **2.22 MONITORING AND AUDIT REVIEW RESOLUTION**

WST will maintain the following policies and procedures for audit reviews and resolutions, and the contents of items 1, 2, and 3 below will be included in WST contract negotiations. WST monitor is responsible for overseeing audit review and resolution in accordance with WST Policy and Procedures, Chapter 6 - Monitoring.

### **2.22.1 MONITORING AND AUDIT REVIEW PROCEDURES**

In addition to the procedures outlined in WST Policy and Procedures, Chapter 6 - Monitoring, the following must be adhered to:

- 1) The contractor must agree to provide a copy of the most recent independent auditor's report to WST within 180 days after the close

of the audit period for all Board funds. Should the audit period not correspond to the period of operation of the program activity, all audits related to Board funds must be provided for the subsequent time period until an independent audit report of all contracted Board funds has been provided to WST.

- 2) WST Quality Assurance Monitor will maintain a spreadsheet of audits for all contracted entities. The Finance Officer and Quality Assurance Monitor will review audits for material weakness in internal accounting controls and operating efficiency.
- 3) In the event of audit findings and/or questioned costs, WST will utilize the following process to resolve the audit:
  - a) An initial resolution letter will be developed within 45 days from receipt of the audit report.
  - b) Negotiation of cost allowability will begin within 90 days from receipt of the audit report.
  - c) Follow-up resolution and final determination within 120 days from receipt of the audit report will be instituted.
  - d) A final decision within 150 days from receipt of the audit report will be made.
- 4) After the resolution process is completed, an Initial Determination letter will be issued by WST identifying the conditions for informal resolution of any unresolved audit issues. A Final Determination letter detailing any remaining audit issues will be issued no later than 180 days from receipt of the audit report, and any remaining questioned costs will be disallowed and repayment procedures implemented.
- 5) When a debt is established, the following debt collection methods will be employed.
  - Cash will be WST's first preference.
  - Installment payments.
  - Adjustment in payment when cash is impossible - only for

current Contractors.

- Services in lieu of cash - only when the services are needed by WST and cash or adjustment in payments is impossible
- Withholding - only for current Contractors.

Definitions for each of these methods of collection are included in the Texas Workforce Commission Financial Manual for Grants and Contracts (FMGC).

- 6) Debt collection procedures will include an arrangement for a repayment schedule that includes any applicable interest. The demand for payment will be included in WST's letter/notice of final determination establishing the debt. Prompt action will be necessary to protect the government's interest; e.g., prompt legal action may be required in anticipation of executing the statute of limitations.

### **2.23 OPEN RECORDS AND FREEDOM OF INFORMATION ACT REQUESTS**

In the course of procuring goods and services, an occasion may arise in which a citizen wishes to inspect public documents under the Texas Open Records Act. Full access shall be allowed to members of the public to inspect public records in accordance with the Texas Attorney General's Open Records Handbook. Adherence to legal provisions for access, confidentiality of certain records, and timeliness of response by Workforce Solutions Texoma shall be conducted in according to the following provisions of the Handbook, adapted here for use within WST governance structure.

- The response to any and all requests for public inspection of printed and electronic documents shall be for front line and managerial staff to handle the request, in accordance with the Texas Open Records Handbook, within ten calendar days of receiving a verbal or written request;
- The response to verbal or written requests for general program and organizational information, already in print form (e.g. brochures), will be for front line staff to immediately provide such information, subject to availability;
- The response to verbal requests for printed and electronic records that are not commonly published for public use shall be for front line or managerial staff to ask for the request to be provided in writing by the requestor, to ensure that the request may be most accurately answered. Further, WST Director shall be notified immediately via facsimile transmission (handwritten or printed fax) that a verbal

request for information under the Open Records Act has been received);

- Although no fee for small requests of information will normally be charged, burdensome requests which require that staff members deviate from their normal course of duties to research and copy records may require that the requestor pay a fee. All charges for research fees and copying costs shall be conducted in accordance with the Texas Open Records Handbook schedule of fees and by using the suggested form included in the Handbook;
- In cases in which the public good would be compromised by release of documents such as confidential personnel records, ongoing procurement, or conceivable future competitive procurement, samples of the confidential information which the Director wishes to redact (to mark out with a black marker prior to release) shall be attached to a letter from the Director requesting a Texas Attorney General's Opinion (highlighted to facilitate review by the AG's office) and be forwarded to the Texas Attorney General within ten days of the initial request. The requestor shall be notified within ten days of the initial request that an Attorney General's Opinion has been requested and, once the Opinion is received (usually within sixty business days, at the discretion of the Attorney General's Office) the requestor shall be notified of the outcome of such a decision. Redacted records will then be made available for public inspection by the requestor.