

GST MICHIGAN WORKS!

PROCUREMENT POLICIES AND PROCEDURES

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GST MICHIGAN WORKS!

Procurement Policy

BACKGROUND:

All procurements utilizing funds received from the State of Michigan Department of Labor and Economic Opportunity-Workforce Development (LEO-WD) must comply with specific grant requirements, all applicable CFR's, all regulations specific to the funding sources used and LEO-WD policy letters and guidelines for procurement.

This policy covers all procurements including acquisitions of equipment, leases or related facilities, services and supplies, and the selection of service providers and vendors. This policy also applies for procurement for repair, maintenance, accounting, audit services, legal, bookkeeping, printing, insurance, consultant/consulting and other services required for administration and overall operation. GST Michigan Works! (GSTMW) will conduct procurement procedures in such a manner that provides full and open competition.

In selecting service providers, GSTMW offers proper consideration to community-based organizations with programs of demonstrated effectiveness in the delivery of workforce development services. Consideration shall be given to making use of appropriate services currently available in the community with or without reimbursement, which GSTMW has determined to be effective. The purpose of this consideration shall be to avoid the purchase of unnecessary or duplicative items and to obtain such services at a cost saving over establishing another such service or activity. When appropriate, an analysis will be made of lease versus purchase alternatives, and any other analysis to determine the most economical approach.

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

I. General

- A. GSTMW, in accordance with the minimum requirements established in 2 CFR, part 200, shall prescribe and implement procurement standards to ensure fiscal accountability and prevent waste, fraud, and abuse in programs administered under this Act.
- B. GSTMW shall review proposed procurements to avoid purchase of unnecessary or duplicative items.
- C. When procuring goods and services, GSTMW shall follow the same policies and procedures it uses for procurement from its Non-Federal funds, provided that GSTMW's procurement procedures also comply with the minimum requirements of this section.

- D. Each sub-recipient shall use GSTMW's procurement procedures, which reflect applicable State and local laws and regulations. Sub-recipients may utilize their own procurement policy provided that the sub-recipient's procurement procedures also comply with the requirements of this section and the standards established by the GSTMW, pursuant to paragraph (a)(1).
- E. GSTMW and sub-recipients shall not use funds to duplicate goods or services available in the area (with or without reimbursement) from Federal, State, or local sources, unless it is demonstrated that the alternative goods or services would be more effective or more likely to achieve performance goals.
- F. All programs administered through LEO-WD shall conduct procurement in accordance with Policy Issuance 19-30 and subsequent letters.
- G. A cost or price analysis shall be performed for every procurement action in excess of \$250,000, including contract modifications, and those which have no monetary impact. (PI 19-30)
- H. Consideration shall be given to consolidating or breaking out procurements to obtain a more economical purchase.

II. Procurement Planning and Standards

- A. **Planning** – Workforce development needs in the MWA area shall be identified through strategic planning with the Workforce Development Board and will be contained in the Local Area Plan. How these needs will be met shall be identified within the various types of programs and activities planned. Provisions shall be made to avoid the purchase of, or contracting for, unnecessary or duplicative services. The MWA staff shall be responsible for establishing sufficient time for all phases of the procurement process in accordance with statutory and regulatory requirements to ensure program continuity and fair treatment of potential service providers.
- B. **Standards** – All procurements will be conducted in compliance with all applicable Federal, State and local laws, policies and regulations. Each procurement shall clearly specify deliverables and the basis for payment. GSTMW and sub-recipients, to the degree possible, shall conduct procurement in a manner that provides full and open competition. Such transactions shall not, in competitive procurements, contain features which unduly restrict competition. No unreasonable qualifications or requirements will be stipulated that will qualify or disqualify a potential service provider. In order to ensure that unfair requirements are not placed on procurement procedures, the following situations that are considered restrictive of competition are prohibited: (PI 19-30)
 - Placing unreasonable requirements on firms or organizations in order to qualify to do business;
 - Requiring unnecessary experience and/or excessive bonding;
 - Noncompetitive pricing practices between firms or organizations or between affiliated companies or organizations;

- Noncompetitive awards to consultants that are on retainer contracts;
- Awards that would create organizational conflicts of interest;
- Specifying brand name products instead of allowing a similar product of equal quality and describing the performance of other relevant requirements of the procurement;
- Overly restrictive specifications; and
- Any arbitrary action in the procurement process.

The following affirmative action steps shall be taken to ensure that minority firms, women's business enterprises, and labor surplus area firms are used when possible. (PI 19-30)

- Placing qualified small, minority, and women's businesses on solicitation lists;
- Ensuring that small, minority owned, and women's business enterprises are solicited whenever they are potential sources; Sites to check:
 - www.co.genesee.mi.us/oed/MinBusDir.htm
 - www.sba8a.com
 - www.puremichiganb2b.com/b2b-web/#finddashboard
 - www.bizhwy.com/search.php
- Dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by small, minority, and women's businesses;
- Establishing delivery schedules, where the requirements permit, which encourage participation by small, minority, and women's businesses;
- Using the services and assistance of the United States Small Business Administration and the Minority Business Development Agency of the United States Department of Commerce;
- Requiring the prime contractor, if subcontracts are to be let, to take the same affirmative steps; and

Amendments to solicitations will be accepted if submitted within the time frames of the original solicitation requirement. Procurements shall not permit excess profit for private for-profit entities.

III. Procurement Methods

There are five types of procurements: micro-purchase, informal for small purchases, sealed bid, competitive and non-competitive. Before determining which type of procurement is appropriate, the total value of the procurement must be considered (See PI 19-30 for examples of determining total value). Regardless of the method of procurement used, the following should be done for all procurements:

- Documentation must be maintained for each step in the procurement process; including independent cost estimates (if applicable), cost/price analysis, solicitations, bids, proposals, justifications, profit, bidder lists, approvals, contracts, etc.
- At a minimum, all procurement records must be retained for three years after final disposition of the item procured. If any litigation, audit, or claim, is initiated involving the item procured during the three-year retention period, the procurement records must be

retained until resolution of all issues and final action is taken or until the end of the three-year retention period; whichever is later. For example, the retention period for procurement documentation on a five-year lease starts at the end of the lease, not from the date the lease was procured.

- With the exception of the non-competitive (sole source) procurement, a minimum of three documented quotes should be obtained.. (see PI 19-30).

A. **Micro-Purchase**

Micro purchase procedures may be utilized for the acquisition of supplies or services and participant support services when the aggregate dollar amount does not exceed \$10,000. To the extent practical, micro-purchases are to be distributed equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotes if the price is considered to be reasonable. Participant support services must be obtained in conjunction with applicable grant requirements and may be subject to more restrictive practices based on grant rules and regulations.

Planned reoccurring services such as payroll, accounting, security, lawn care, janitorial, etc. are not viewed as separate purchases each time the service is rendered (PI 19-30). Therefore, if the aggregate value of the individual purchased service exceeds \$10,000 in a 12-month period, the micro-purchase method cannot be used.

B. **Small Purchase (Informal Method)**

Informal procurement procedures maybe utilized for small purchases of standardized goods and services with an aggregate value *under* \$250,000. When informal procurements are used, the purchase shall not be broken down into several purchases merely to be able to use small purchase procedures, and to avoid competitive procurement. Procurement by small purchase may **not** be used when securing workforce program/activity service providers. Documentation of price rates or quotes shall be obtained from at least three vendors.

For "documented quotes," the documentation can include product or service catalogs, current price lists, email, website documents and documented telephone contact with the vendors to obtain quotes. Catalogs and price lists should be determined to be current at least annually. The price quotes must be viable, in that the good or service can be purchased for the quoted price.

For "written quotes" a Request for Quote (RFQ) is required. The RFQ should specify the quantity, time frames, and all the requirements of the product or service. Quotes must be solicited from vendors that can reasonably be expected to provide the goods or services needed. The identification of sources and solicitation of quotes must be supported by documentation. The RFQ must either be provided in writing to the vendor or transmitted as uniformly as possible over the telephone, FAX or email. The written response must indicate the entities logo or business name, address, contact information and date.

The purchase of the personal services of consultants is allowed when the deliverables are specifically defined and priced.

C. Sealed Bids

Sealed bids are publicly solicited procurements for which a firm fixed-price (lump sum or unit price) or other fixed price arrangement is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. Invitations for bids shall be publicly advertised and solicited from at least two or more vendors. The invitation for bids shall include any specifications and pertinent attachments and shall define the items or services in order for the bidder to properly respond. All bids shall be publicly opened at the time and place prescribed in the invitation for bids. (PI 19-30)

If sealed bids are used, all of the following requirements apply:

- An independent estimate of the cost/price is made prior to receiving bids.
- The Invitation for Bid (IFB) is publicly advertised and bids are solicited from an adequate (more than one) number of known suppliers.
- The IFB contains all specifications and pertinent attachments and defines the items or services to be procured in sufficient detail for the bidders to respond properly.
- All bids are publicly opened.
- A firm fixed-price contract is awarded to the lowest responsive and responsible bidder.
- Any or all bids may be rejected if there is a sound documented reason.

D. Competitive Proposals

Competitive procurement is used when the lowest price is not necessarily the determining factor for the award, there is more than one bidder and either a fixed-price or cost-reimbursement agreement will be awarded. Competitive procurement should be used when evaluation factors focus on approach, program design and outcomes, innovation, coordination and experience in addition to price. All procurement transactions, regardless of dollar amount, will be conducted in a manner that provides open and free competition. An independent cost/price estimate must be completed prior to receiving proposals.

Competitive procurement shall be the method of procurement of workforce program/activity service providers regardless of the amounts, except as provided for in situations described under the noncompetitive procurement section.

The following detail the specific requirements related to competitive proposals:

1. Solicitations

GSTMW and sub-recipients shall have written procedures for procurement transactions. Those procedures shall ensure that all solicitations, RFP/Q will minimally contain the following:

- Clear and accurate description of technical requirements for goods or services to be procured. The description shall not contain features that restrict competition.
- Identify all the requirements the bidders must fulfill and all other factors to be used in evaluating bids or proposals.
- Solicitations will include a description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.
- Solicitation for goods and services shall provide for the specific features of brand name or equal descriptions that bidders are required to meet when such items are included in the solicitation.
- Description of the requirements for time, place, and methods or performance of services.
- General description of the sub-grant program, including identification of the applicable Federal and State laws and regulations with which the selected contractor must comply.
- Contract clauses that will be included in any resulting contract.
- Certifications, assurances, and representations.
- Instruction on how to prepare and submit the technical and cost/price proposals/quotes or bids.
- Due date and submission requirements.
- Solicitation provisions.
- GSTMW and sub-recipient shall ensure that all pre-qualified lists of persons, firms, or other organizations used in acquiring goods and services are current and include sufficient numbers of qualified sources to ensure maximum open and free competition;
- Solicitations will include the acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement.
- Solicitations will include preference, to the extent practicable and economically feasible, for the products and services that conserve natural resources and protect the environment and are energy efficient.
- Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other analysis to determine the most economical approach.
- Solicitations may be required to provide proof of insurances and business license;
- Solicitations shall be performed minimally every 3 years, some exceptions may apply.

All RFPs/RFQs shall be posted to the general public on the GSTMW website. A bidder's list shall be maintained of all entities that have indicated in writing an interest in providing services in the MWA's service area. This list shall be updated as entities indicate interest. A notice indicating the service or activity being procured, date, time, location of the RFP/Q release, etc., shall be sent to all individuals on this list.

A potential bidders' conference may be held after the RFP/Q becomes publicly available. To maintain fair and open competition, the answers to questions that arise from the bidders

shall be provided to all entities by posting the information on the MWA's website.

The closing submission date must be clearly stated in the RFP/Q. When late proposals come in or are sent to the incorrect address, they will be date and time recorded. The proposal will be returned unopened with a letter explaining why it is not being considered. GSTMW reserves the right to accept or reject any and all proposals received in response to the RFP/Q. Obligation to the bidder is contingent upon the availability of grant funds. No legal liability on the part of the GSTMW Governing Board for payment of any money shall arise unless and until funds are made available to the Governing Board for procurement. The bidders shall be responsible for all costs involved in the development of the proposal.

2. Evaluation Process

The intent of the evaluation process is to certify that each proposal received meets the basic submission requirements and to determine the quality of each proposal. GSTMW will review the proposal for completeness of required documents.

Using the evaluation criteria contained in the RFP/Q, the proposal review will be conducted by raters. A GSTMW evaluation team will combine the ratings to calculate an overall rating and make recommendations to the appropriate Board. The two boards will have the final authority for selection of provider(s).

The factors that will be considered in evaluating proposals will be tailored to each acquisition and will include only those factors that will have an impact on the source selection decision. The RFP/Q will clearly state the evaluation factors to be considered and their relative importance. Such factors **may** include the following:

- Program Design/Technical Approach or Methodology
- Performance Measures/ Past Performance
- Organizational Capability
- Cost Effectiveness/Budget Accuracy/Budget Consideration
- Qualifications of Personnel
- Management/Administration / Experience of Responder
- Facilities/Equipment
- Understanding the Requirements
- Completeness of Training
- Compliance with Public Policy
- Other program specific or service factors may be considered where appropriate.

The evaluation process may be divided into the following major steps: 1) a general review of the proposals; 2) an evaluation of the vendor's qualifications; 3) an evaluation of the technical aspects of the proposal; 4) an evaluation of the cost aspects of each proposal (i.e. cost/price analysis); and 5) an evaluation of demonstrated performance, effectiveness, potential for meeting performance goals, costs, and quality of training.

The normal threshold required to consider a proposal for an award of a contract is 70 percent of the total points available. This threshold may be adjusted if in the best interest of GSTMW.

Award of a contract will be to a source whose offer, price and other factors considered, will be most advantageous to GSTMW. Final selections will primarily be based on, yet not limited to, effectiveness, demonstrated performance, potential for meeting performance goals, costs, quality of training, customer service, participant characteristics, past workforce development experience and performance of the bidder and non-duplication of services.

Contracting will not occur with debarred, suspended parties or parties otherwise excluded from or ineligible for participation in Federal assistance programs. Contractors are required to sign a certification stating they are not on the list of parties excluded from federal procurement or non-procurement programs as a method of ensuring assistance is not awarded to listed parties. GSTMW will review the System for Award Management (SAM) located on the Web at: <https://www.sam.gov>. This website will be reviewed prior to entering into a contract.

A letter will be sent to each successful and unsuccessful bidder that contains the boards' decisions related to that procurement.

3. Contract Finalization

Following approval by the Boards, GSTMW will proceed with contract finalization with approved contractors. GSTMW will schedule the finalization meetings with these contractor representatives at the earliest opportunity of both parties. Letters and or emails will be sent to these contractors providing advance notice pointing out information required prior to the meeting, technical deficiencies, questions regarding cost/price data, and other clarification that may be requested concerning the proposals. The information included in these letters need not be inclusive of all items to be discussed at the finalization meeting. The contract finalization meeting may involve best and final proposal requests and evaluation at the discretion of the review team and GSTMW staff.

The contract finalization meeting will be directed to resolve all the terms and conditions of the proposed contract. Any new or changed GSTMW policies will be presented. Any questions by the Contractor will be entertained. All terms and conditions will be agreed upon; all ambiguities are fully clarified.

The contract finalization meeting will result in the best buy of services being procured. Award of a contract will be to a source whose offer, price and other factors considered, will be most advantageous to GSTMW. In the event only one source responds, the proposal must be reasonably acceptable. At that point, definitive contract finalization meeting leading to contract award would be held.

E. Noncompetitive Proposals (Sole Source)

Noncompetitive procurement is the solicitation of a proposal from a single source, or the solicitation of a proposal from more than one source and competition is determined to be inadequate to fulfill the requirements of the funding agency. Justification that competition is inadequate shall be minimized, justified and documented. The procedure may be used only when the award is not feasible under the other three procurement methods due to one of the following circumstances: (PI 19-30)

- The item or service is available from a single source; or
- There is a public emergency need for the item or service which does not permit a delay resulting from competitive procedure. A public emergency must meet one of the following:
 - Necessary for the imminent protection of public health
 - Emergency repairs to protect life or property
 - Unforeseen crisis requiring immediate procurement
- The awarding agency (federal or state government) authorizes the noncompetitive procurement; or
- After solicitation of a number of sources only one bid is received and/or competition is determined inadequate;
- Prior approval is required for all sole-source awards in excess of \$250,000 when Sealed Bids or Competitive Proposals were not used. (PI 19-30)

Documentation of sole source files should include at a minimum:

- The awardee's capabilities and qualifications;
- Efforts made to seek other qualified bidders;
- Specifications of the procured item or service; and
- Where/when the item or service is to be used.

Staff shall conduct a cost analysis and contract negotiation process for all noncompetitive procurements. The termination or suspension of a current contractor shall be considered as an emergency under certain conditions; however, termination of an existing contract should not be used to circumvent competitive solicitation. Final approval will be made by the Boards. GSTMW is responsible for fully documenting this method of procurement. Special attention shall be given to code of standards of conduct, conflict of interest, and safeguarding values normally achieved through competition.

IV. Leases and Rent

A. Leases

Leases are subject to all procurement standards and lease payments (i.e., rent) must be allowable under the applicable federal cost principles. Factors such as, location, parking, access to public transportation, maintenance, security, telecommunications, and other included services are normally considered when selecting office space or service center locations. Due to this unique and customizable nature, office and building leases typically do not qualify for procurement

under the micro-purchase or small purchase methods. Procurements with LEO-WD funds are to be covered by a written contractual agreement. Leases are subject to procurement standards and lease payments (i.e., rent) must be allowable under the applicable federal cost principles. The aggregate cost of lease payments thru the term of the lease is used to determine the total value for procurement purposes.

A new lease must be procured when an existing lease expires and all of its options have been exhausted. It cannot be renewed, extended, or otherwise amended without the support of an appropriate procurement process. For example: A three-year lease with the option of two, one year extensions. If both option years are sequentially picked-up, the lease will need to be procured again in five years. In addition, a cost/price analysis (i.e., market analysis) for each option year entered into is needed to ensure that the rental costs are still competitive. Leases must contain the following: (PI 19-30)

The agency or organization name and business address of the lessee and the lessor;

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

B. Rent

Rent must be reasonable in light of such factors as comparable property, market conditions, and value. If there is idle capacity or idle facilities, rent must be reassessed to ensure its allowability under federal programs.

The amount of rent that can be charged to federal programs is further limited under less-than-arm's-length and capital leases.

C. Less-Than-Arms'-Length Leases

When one party to the lease agreement is able to control or substantially influence the actions of the other party, a less-than-arm's-length lease exists. Examples include rent paid to the same governmental unit, school district, or non-profit; or rent paid to other entities that are under common control through common officers, directors, immediate family members.

In these cases, rent is allowable up to the actual cost for maintenance, taxes, insurance, and either (1) depreciation, or (2) a use allowance. If the building is fully depreciated, then a use allowance is required. The use allowance rate cannot exceed 2 percent of the acquisition cost.

D. Capital Leases

Rental costs for leases that are required to be treated as capital leases under Generally Accepted Accounting Principles are allowable only up to the amount that would have been allowed had the grantee or sub-grantee purchased the property on the date the lease agreement was executed. With limited exceptions, capital leases for land, buildings, and other real property are prohibited under federal programs administered by LEO-WD. If permitted under the federal program, prior LEO-WD approval is required.

V. Capital Assets and Capital Improvements

All capital asset procurements, regardless of cost, are only allowable costs if they are necessary and reasonable for proper and efficient performance and administration of the grant award. Procurements of equipment, capital improvements, and other capital expenditures of \$250,000 or more are subject to approval by LEO-WD. No procurement of equipment of \$250,000 or more or any capital improvements can be made prior to the date of approval by LEO-WD. (PI 19-30)

The Michigan Works Agency's (MWA) request for approval should include at a minimum the following applicable information: (PI 19-30)

- A description of the proposed capital improvement or equipment to be procured.
- A discussion of how the proposed capital improvement or equipment will benefit the MWA's program(s).
- The expected cost of the procurement with a cost or price analysis.
- A copy of the technical specifications or other pertinent information given to prospective bidders that explains in sufficient detail what is being procured.
- Copies of at least two bids secured by using the competitive bid process with the preferred bid indicated. If the preferred bid is not the lowest bid, the reason for selection should be noted. If only one bid is secured, a brief description of the competitive procurement efforts made should be documented. And, if sole source procurement will be utilized, documentation that gives the rationale for sole source acquisition is required.
- For a capital improvement, the date it will begin, when it will be completed, the location of the building, and the site.

The above information, along with a cover letter requesting approval should be submitted to:

Michigan Dept of Labor and Economic Opportunity
Workforce Development
Victor Office Center
201 N. Washington Square, 4th floor
Lansing, Michigan 48913

Facility Construction or Purchase

Procurement for the purchase or construction of buildings and the purchase of land (including capital leases) are usually prohibited under federal grants and therefore require LEO-WD approval regardless of the amount.

Metric System of Measurement

The Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act, 15 U.S.C. 205, declares that the metric system is the preferred measurement system for U.S. Trade and commerce. Therefore, in GSTMW procurement of goods, the metric system as well as inches will be used to allow companies to better compete.

VI. Resource Conservation and Recovery Act (RCRA), Section 6002 of Public Law 94-580 (codified at 42 U.S.C. 6962)

To be in compliance with the Resource Conservation and Recovery Act (RCRA), GSTMW will, in consideration of purchasing of goods, give preferences to vendors of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency (EPA) (40 CFR parts 247-254) where all other things being of equal value.

VII. Debarment and Suspension

The MWA shall not contract with any party which is debarred or suspended or is otherwise excluded from, or ineligible for, participation in federal assistance programs. A party's eligibility for participation in federal assistance programs can be determined by accessing the federal System for Award Management (SAM) located on the internet at <https://www.sam.gov>. The MWA and its sub-recipients will check this internet site to search for parties that are excluded from federal assistance programs to ensure that listed parties in violation of this requirement are not awarded assistance. (PI 19-30). This is required for all procurements that exceed \$25,000.

VIII. Price/Cost Analysis

GSTMW will perform an independent cost estimate for competitive and sealed bid procurements prior to accepting proposals or procuring of goods. An independent cost estimate is an in-house estimate of the likely cost and price of the procurement. It provides a yardstick by which responders cost and prices shall be measured. The independent cost estimate will be prepared by GSTMW prior to issuing a solicitation for bids or proposals. A number of sources can be used to develop the independent cost estimate, such as 1) past and current contracts for the same or similar services; 2) contractor financial reports to develop estimates of labor, materials, and other direct costs for each segment of the requirements; and 3) historical costs that have been adjusted for inflation and upward or downward price trends.

A price or cost analysis shall be performed for every procurement action except micro purchases, including contract modifications, except those which have no monetary impact. (PI 19-30). The Cost Analysis form is attached to this policy.

A. Price Analysis

Price Analysis shall be used when price reasonableness can be established on the basis of the catalog or market price of a product or is based on prices set by law or regulation. Price analysis is the process of examining and evaluating a price without looking at individual cost elements. The focus is the “bottom-line” price. The method and degree of the analysis depends on the particular procurement and pricing situation. At a minimum, the awarding agency shall make independent estimates before receiving bids or proposals. (PI 19-30)

A certification should be submitted by the responder to the MWA, stating that the cost data is accurate, complete, and current at the time of agreement, in all cases where a cost analysis is necessary and there is inadequate price competition. Awards or modifications negotiated in reliance on such data should provide the MWA a right to a price adjustment to exclude any significant sum by which the price was increased in cases where the awardees had knowingly submitted data that was not accurate, complete, or current as certified. (PI 19-30)

B. Cost Analysis

A cost analysis will be used to establish the basis for negotiation of contract prices where price competition is not adequate or is lacking altogether, and where price analysis, by itself, does not ensure the reasonableness of prices. Cost analysis will review and evaluate element by element, the cost estimate supporting a company proposal for the purpose of pricing a contract. This review will include analysis and evaluation of (1) the supporting data submitted by the responder, (2) the cost elements, and (3) the factors the responder considered in projecting from that data to develop the estimate of the cost to perform the specified work.

A cost analysis will be conducted for contract modifications and sole source procurements. Cost analysis will also determine if the proposed costs are allowed. Allowance is measured by the following standards:

- Necessity
- Reasonableness
- Allocable
- Terms of the contract
- Cost principles
- Funding Source regulations/policies

The general approach to analyzing proposed costs may include:

- Insurance of non-duplication
- Checking computations
- Reviewing for completeness of information
- Reviewing for proper categorization
- Determining the estimating basis

- Determining the allowability of the estimate
- Determination that excess program income and excess profit are not present
- Cost/price analysis will be documented for cases where a cost analysis is necessary and there is inadequate price competition. A certification will be required by the responder that the cost data are accurate, current, and complete at the time of agreement. Awards or modifications negotiated in reliance on such data provides GSTMW a right to a price adjustment and exclude any significant sum by which the price increased when it can be demonstrated that the awardee knowingly submitted data that was not accurate, complete, or current as certified.

IX. Contractor Responsibility

Prior to contract award, GSTMW should determine whether the prospective responder is a responsible source. In procurement parlance, responsibility pertains to a prospective responder's ability and capacity to perform the proposed work. GSTMW will document answers to the following questions:

- Federal Funds Eligibility Status - Has the prospective responder filed the required certification that it is not debarred or suspended from receiving federal funds? (29 CFR 98)
- Resources - Does the prospective responder have adequate personnel, facilities, and financing to complete the contract? If not, does it have the ability to obtain them? For this question, the evaluator must consider the existing work being performed by the source, as well as the proposed additional work.
- Capability - Does the prospective responder have the capability, in terms of skills and experience, to perform the work?
- Integrity and Business Ethics - Does the prospective responder have a record of sound integrity and business ethics?
- Organization - Does the prospective responder have the management, accounting and business systems necessary to perform the work?
- Past Experience - Does the prospective responder have a record of satisfactory past performance?
- Cost Certification - The prospective responder must submit a certification that the cost data information is correct, complete, and current at the time of the agreement on price in cases where a cost analysis is necessary and there is inadequate price competition. Awards or modifications negotiated in reliance on such data should provide the awarding agency a right to a price adjustment to exclude any significant sum by which the price was increased because the awardee had knowingly submitted data that was not accurate, complete, or current as certified.
- Other - Is the prospective responder otherwise eligible to receive the award under applicable laws and regulations?

X. Contract Type

All contracts written by GSTMW will be written on a cost reimbursement basis, unless funding does not prohibit performance-based contracts. Contracts written for proposers may be considered high-risk under certain situations. These situations may include:

- A history of unsatisfactory performance;
- Is not financially stable;
- Has a management system that does not meet the management standards set forth by the Regulations;
- Has not conformed to the terms and conditions of a previously awarded grant or sub-grant;
- Has not met the negotiation threshold in the evaluation process.

At the MWA's discretion, they may procure either single or multi-year program proposals and enter single or multi-year contracts. Multi-year contracts may not exceed a three (3) year period. Such multi-year contracts shall include provisions for first year funding and activity levels and provisions and conditions for the negotiation of subsequent year funding and activity levels.

XI. Files

A. Procurement and Vendor Files

Procurement and vendor files will be maintained for goods and services purchased of \$250,000 or less which used the Small Purchase procurement methods. These files will at a minimum include the following:

- Cost/Price Analysis
- Documented Quotes
- Business License and Insurance (if applicable)
- Completed "Procurement Procedures" form
- System for Award Management located on the Internet at <https://www.sam.gov>. (if applicable)

B. RFP/Q Procurement Files

RFP/Q Procurement files will be maintained for goods and services purchased over \$250,000, and other procurements where the Sealed Bid or Competitive procurement methods are used. These files will at a minimum include the following:

- Independent Cost Estimate to set baseline for reasonable costs
- System for Award Management located on the Internet at <https://www.sam.gov>.
- Copy of Public Notice to include dates printed and sources utilizing mailing list
- Bidders List and Bidders letter
- Request for Proposal or Quote
- Business License and Insurance (if applicable)
- Proposals Received
- Proposal Rating Sheets for all reviewers
- Summary of Ratings
- Cost/Price Analysis
- Justification of Selection
- Completed "Procurement Procedures" form

- Request for State Approval for procurement of equipment or capital improvements \$250,000 and over.
- State Approval Letter
- Board Agenda and Minutes showing recommendations and approvals.

C. Contract Files

- Negotiation Documents
- Letter to Incur Costs
- Extension Letter to Incur Costs (If applicable)
- Signed contract
- Signed modifications and the cost/price analysis for the modification (If applicable)
- All correspondence related to contract
- Copies of Insurance policy(s) if applicable
- Documentation relating to termination actions
- Any other documentation related to contract

XII. Appeal and Protest

All appeals and protests will be handled in accordance with current Federal, State, and local guidelines. The Appeal Process is attached to this policy.

XIII. Contract Requirements

All contracts over \$100,000 written by GSTMW will minimally include the following:

- Clauses that provide clear specifications of the deliverables and the basis for payment;
- Compliance with Funding Source regulations;
- For contracts other than small purchases, administrative, contractual or legal remedies in instances where contractors violate or breach contract terms, which shall provide for such sanctions and penalties as may be appropriate;
- Notice of Funding Source requirements pertaining to patent rights;
- Notice of Funding Source requirements pertaining to copyrights and rights in data; and
- Termination for cause and for convenience by the awarding agency, including the manner by which the termination will be affected and the basis for settlement.

GST Michigan Works!, Michigan Department of Labor and Economic Opportunity-Workforce Development, the United States Department of Labor, or any of their duly authorized representatives will be granted access to any books, documents, papers, and records (including computer records) of the contractor or subcontractor which are directly pertinent to charges to the program, in order to conduct audits and examinations, and make excerpts, transcripts, and photocopies. This right also includes timely and reasonable access to contractor's and subcontractor's personnel for the purpose of interviews and discussions related to such documents (vendor contract):

- Notice of awarding agency requirements and regulations pertaining to reporting;

- Audit rights and requirements;
- Payment conditions and delivery terms;
- Process and authority for contract changes;
- Provision against assignment;
- The assurance of nondiscrimination and equal opportunity as found in 29 CFR 37.20, assurance required; duration of obligation, covenants;
- Compliance with Equal Employment Opportunity (for constructions contracts in excess of \$10,000);
- Compliance with the Copeland Anti-Kickback Act;
- Compliance with the Davis-Bacon Act (for construction contracts in excess of \$2,000 and when required by Federal grant program legislation);
- Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (for construction contracts in excess of \$2,000 and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers);
- Retention of records as required by the contracted funding source;
- Compliance with applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act, Section 508 of the Clean Water Act and Environmental Protection Agency Regulations (for contracts in excess of \$100,000);
- Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued for compliance with the Energy Policy and Conservation Act;
- Compliance with The Metric Conversion Act, regarding acceptance of metric measurements in procurement of goods;
- Compliance with Resource Conservation and Recovery Act, that requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency (EPA); and
- Compliance with Fair Labor Standards Act (FLSA).

An example boilerplate for all contracts written by GSTMW for participant services and other procurements is available in the Workforce Training Department.

XIV. Contract Administration

Payments to contractors for services will only be made according to the terms of the contract. This procedure is also outlined in a separate policy directive. Documents with original signature must be on file before checks in payment will be released. Standard payment date is three weeks from receipt of the expenditure report.

Requests for modifications by the Subcontractor must be in writing to the CEO. Upon approval of the modification by the CEO, responsible staff will issue a modification to the contractor for signature. This will include signature sheets and replacement pages for those pages of the contract affected by the modification. The CEO or assigned GSTMW staff will sign the modification as the representative of GST Michigan Works.

A contractor must include in their proposal any intent to subcontract any of the services proposed. Approval of GSTMW is required for all subcontracts. These procurement policies must be followed in any and all procurement of contractors. Failure to request approval of subcontracts is grounds for termination.

XV. Contractor and Agency Disputes

All agency/contractor disputes arising from the terms of the contract must be addressed in writing to the CEO of the GSTMW. Correspondence must include the contract clause in dispute, the nature of the dispute, and any potential solution. Disputes will be processed in accordance with State and local policy.

ATTACHMENTS

GST MICHIGAN WORKS! (GSTMW) REQUEST FOR PROPOSAL (RFP) APPEAL PROCESS

In accordance with applicable regulations, proposers who are denied funding have the right to appeal. The following steps must be taken for organizations to appeal funding decisions.

1. Submit a letter within three business days from the date of the contract award to the Chief Executive Officer of GSTMW stating that an appeal to the contract award is being filed and the specific reasons for that appeal based on the four criteria below:
 - a. Clear and substantial error or misstated facts upon which the decision was made by the WDB. An appeal will not be accepted if it attempts to modify or include additional information to the original proposal.
 - b. Unfair competition or conflict of interest in decision making process.
 - c. Any illegal or improper act or violation of law. The basis shall be explicitly stated and make specific reference to appropriate sections of law, regulations and/or contracts.
 - d. Other legal basis on grounds that may substantially alter the WDB decision.
2. The Chief Executive Officer will review the appeal and respond within 10 business days.
3. In the event the Chief Executive Officer's response is not satisfactory to the proposer, an appeal to the appropriate GSTMW Executive Committee (Board Officers) may be requested. The request must be addressed in writing within 10 business days from receipt of response from the CEO. The appeal will be heard by members of the Executive Committee at a time set by the Chair. The decision of the Executive Committee will be issued within five business days. This decision is final. No additional appeal process is available.

GST Michigan Works!

Conflict of Interest/Code of Conduct

I. Ethical Standards

A. Conflict of Interest

No individual in a decision-making capacity, (including a Workforce Development Board or Governing Board member, an MWA/service provider, CEAC member, chief elected officials, local elected officials, MWA employee, officer or agent, or grant recipient) shall engage in any conflict of interest, actual or apparent, in the selection, award or administration of a contract or grant under any funds received by GSTMW.

It is a breach of ethical standards for any of the above individuals to participate directly or indirectly in procurement transactions when:

- An immediate member of his/her family has a financial or other interest in the firm selected for the award;
- A business organization in which any of the individuals listed above or a member of his/her immediate family has a financial interest pertaining to the procurement, including business partner; or,
- Any other person, business, or organization with whom the individual or any immediate family member is negotiating or has an arrangement concerning prospective employment is involved in the procurement.

When the employee or immediate family member holds financial interest in blind trust, there will be no conflict of interest, provided that the blind trust has been disclosed to the organization governing procurement ethics.

Whenever the employee discovers, or becomes aware, of such an actual or potential conflict, he/she should promptly withdraw from the procurement, or seek guidance on participation from the Chief Executive Officer of GSTMW.

Any person involved with the procurement, which has or obtains any benefit from any contract with a business in which he/she has a financial interest must report this to the appropriate official or group, except when the interest has been placed in a disclosed blind trust.

Immediate family member includes the employee's spouse, children, foster children, step-children, parents, step-parents, grandparents, step-grandparents, spouse's grandparents, grandchildren, brother, step-brother, sister, step-sister, significant other and any immediate relative by blood or marriage (i.e., in-laws, cousins, nieces, nephews, aunts and uncles). A "significant other" is defined as a person with whom an employee is in a permanent relationship who resides at the same address as the individual in a decision-making capacity.

B. Gratuities and Kickbacks

It is a breach of ethical standards for anyone to offer, give or agree to give, any GSTMW employee, former GSTMW employee, Governing Board or Workforce Development Board member, officer or agent or for an employee, former employee, Governing Board or Workforce Development Board member to accept from another person, a gratuity or an offer of employment in connection with any aspect of procurement.

It is a breach of ethical standards for any payment, gratuity, favor, anything with a monetary value, or offer of employment to be made by, or on behalf of, a subcontractor under a contract to the prime contractor or higher tier subcontractor, or any person associated with these, as an inducement of the award of a subcontract.

C. Contingent Fees

It is a breach of ethical standards for anyone to be retained, or to retain anyone, to solicit or secure a contract for a commission, brokerage or contingent fee or the promise of such payments. This prohibition does not apply to the hiring of bona fide employees of an organization, or to retaining a bona fide commercial selling organization.

D. Confidential Information

It is a breach of ethical standards for any employee, former employee, Governing Board or Workforce Development Board member, officer, or agent to use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person.

E. Fairness and Impartiality

Everyone involved in the procurement process should be fair to all responders and contractors. In the event where a reviewer is so opposed to a responder before he or she goes into the review and that reviewer cannot rise above this feeling, then the reviewer should withdraw from the review group.

F. Less-than-arm's length

A less-than-arm's length situation for any procurement is not permitted utilizing governmental funds. A less-than-arm's length arrangement is defined as follows:

- One party to the agreement is able to control or substantially influence the actions of the other.
- Both parties are parts of the same government unit; or
- An agency creates an authority or similar entity to acquire and lease back equipment, space, or facilities to the agency or other parties.

G. GSTMW Governing Board/Workforce Development Board Members Conflict of Interest

No member of either board shall cast a vote on or participate in any decision-making capacity or the provision of services by that member (or any organization which that member directly represents) or on any matter which would provide direct financial benefit to that member or member of his/her immediate family.

II. Sanctions and Remedies for Breach/Violation of Code of Conduct Standards

Administrative remedies against non-employees:

- The first violation may result in a written warning outlining violation and request for suspension of said activity.
- The second violation may result in a written reprimand indicating violation and resultant debarment/suspension if activity continues.
- The third violation may result in debarment or suspension from being a committee member of the Board or subcontractor. (For Board members: An affirmative vote of 51% of the Board members present at a meeting in which there is a quorum and all members have been provided a notice of the meeting which specifies the proposed removal.)

Administrative remedies against employees:

- The first violation may result in an oral or written warning.
- The second violation may result in a written reprimand.
- The third violation may result in suspension, with or without pay for specified periods of time; and possible termination from employment.

Due Process:

All procedures under this policy shall be in accordance with due process requirements. Notice and opportunity for a hearing shall be provided prior to imposition of any suspension or termination of employment.

GST MICHIGAN WORKS!

Independent Cost Estimate Form

(List item being procured.)

Independent Cost Estimate

Determine the estimated cost that would be expected as a result of this procurement based on the review of the various factors noted below **and attach documentation** for the procurement file:

1. Cost in prior year:

2. Cost current surveyed:

3. Other factors that may affect the costs (please list factors identified:

Projected cost (total):

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GST MICHIGAN WORKS!

Lease vs. Purchase Analysis

When applicable a Lease vs. Purchase analysis should be performed. This documentation should include the price of the lease and the purchase price. If the lease is less expensive, then an explanation as to why the item is being purchased must be documented. If the purchase price is less expensive and a lease is being entered into, an explanation as to why the item is being leased must be documented.

(List item being procured.)

Lease Price:

Purchase Price:

Explanation: