**Section 2630.82 Procurement**

a) Procurement Systems for State Agency Subrecipients – State agency subrecipients shall administer procurement systems in accordance with the Standard Procurement Rules of the Department of Central Management Services (44 Ill. Adm. Code 1) for selection of JTPA providers.

b) Procurement Systems for Non-State Agency Subrecipients – All subrecipients shall administer procurement systems. The procurement system shall take into consideration past performance (e.g., entered employment rates, cost per placement, and ability to meet contract objectives). The procurement system may consider other criteria as determined locally. The procurement system shall include the following requirements:

1) Subrecipient/Grantor Responsibility

These standards do not relieve the subrecipient of any contractual responsibilities under its contracts. The subrecipient is responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements entered in support of an award. These include but are not limited to source evaluation, protests, disputes, and claims. Violations of law are to be referred to the local, State, or Federal authority having proper jurisdiction.

2) Code of Conduct

A) Subrecipients shall maintain a written code or standards of conduct which shall govern the performance of their officers, employees or agents engaged in the award and administration of contracts supported by Federal funds. Each subrecipient shall ensure that no individual in a decisionmaking capacity, including PIC members (whether compensated or not), shall engage in any activity, including participation in the selection, award, or administration of a contract supported by JTPA funds, if a conflict of interest, real or apparent, would be involved. A PIC member shall not cast a vote on, nor participate in, any decisionmaking capacity on the provision of services by such member (or any organization which that member directly represents), nor on any matter which would provide any direct financial benefit to that member. Additionally, no employee, officer or agent of the subrecipient, or governing body of the grantee shall participate in the selection, award, or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, is involved. Such a conflict shall arise when the employee, officer or agent; any member of his or her immediate family; his or her partner; or an organization which employs, or is about to employ any of the previously identified, has a financial or other interest in the entity selected for an award. This provision does not prohibit a community based organization, education agency, employer, or other contractor represented by a PIC member from receiving an award for the provision of training and/or services to participants. However, when such a conflict of interest arises, PIC members must abstain from voting on the award. The subrecipient is prohibited from awarding a contract:

i) to any PIC member for performing administrative services (i.e., consultant services, accounting services, etc.); or

ii) to any PIC member or entity with which he/she is affiliated which results in direct personal gain to the PIC member.

B) The recipient's officers, employees or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, potential contractors (i.e., persons who perform services of type contracted for), or parties to grants.

3) Selection Procedures

A) All procurement transactions, regardless of whether by sealed bids or by negotiation and without regard to dollar value, shall be conducted in a manner that provides maximum open and free competition consistent with this Section. Procurement procedures shall not restrict or eliminate competition. Examples of what shall be considered to be restrictive of competition include, but are not limited to:

i) placing unreasonable or different requirements on various firms in order for them to qualify for the same procurement;

ii) noncompetitive practices between firms;

iii) organizational conflicts of interest;

iv) unnecessary experience and bonding requirements (i.e., requests for qualifications or experience that are not related to the services to be procured);

v) non-competitive awards to consultants that are on retainer contracts;

vi) specifying only a "brand name" product instead of allowing an "equal" product to be offered and describing the performance of other relevant requirements of the procurement;

vii) overly restrictive specifications; and

viii) any arbitrary action in the procurement process.

B) The recipient shall have written selection procedures which shall provide, at a minimum, the following procedural requirements:

i) Solicitations of offers, whether by competitive sealed bids or competitive proposals shall incorporate a clear and accurate description of the technical requirements for the service to be procured. Such description shall not, in competitive procurements, contain features which restrict competition. The description shall include a statement of the qualitative nature of the service to be procured and set forth those standards to which the service shall conform in order to meet the program purpose. Solicitations of offers shall clearly set forth all requirements that contractors must fulfill and all other factors to be used in evaluating proposals pursuant to Section 2630.82(b)(3)(B)(ii) of this Part.

ii) Awards are to be made to organizations possessing the demonstrated ability to perform successfully under the terms and conditions of the proposed contract. Such determinations shall be in writing, completed prior to the award of the contract, and take into consideration such matters as whether the organization has:

Adequate financial resources or the ability to obtain them;

Technical qualifications, experience, organization, and facilities adequate to meet the program design specifications, as well as the ability to meet the performance goals;

A satisfactory record of integrity, business ethics, and fiscal accountability;

The necessary organization, experience, and operational controls;

Accounting and auditing procedures adequate to control property, funds, and assets, pursuant to Section 2630.83(a) and (b) and 2630.84(c) through (i) of this Part;

For Title II programs, the ability to provide services that can lead to the achievement of competency standards for participants with identified deficiencies; and

A satisfactory record of past performance (in job training, basic skills training, or related activities) which shall include, but is not limited to: demonstrated quality of training, retention in training, the ability to provide or arrange for appropriate supportive services as specified in this Individual Service Strategy (ISS), including child care, training completion, job placement, rates of licensure, retention in employment, and earning rates of participants.

iii) When a subrecipient determines that services will be provided by its own staff, a determination shall be made of the demonstrated performance of the staff to operate the program. This demonstration shall be in writing and take into consideration the matters listed in (b)(3)(B)(ii).

C) Subrecipients shall conduct a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis shall be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach. To foster greater economy and efficiency, recipients are encouraged to enter into inter-agency agreements for procurement or use of common goods and services. Subrecipients are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

D) The subrecipients shall take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps shall include:

i) placing qualified small and minority businesses and women's business enterprises on solicitation lists;

ii) assuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources;

iii) dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business and women's business enterprises;

iv) establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business and women's business enterprises;

v) using the services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

vi) requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in subsections(b)(3)(D)(i) through (v).

E) Contract Cost and Price

i) Subrecipients must perform a cost or price analysis in connection with every procurement action, including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, subrecipients must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his/her estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis shall be necessary when adequate price competition is lacking, and for sole source procurements, 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. A price analysis shall be used in all other instances to determine the reasonableness of the proposed contract price.

ii) JTPA procurements shall not permit excess program income (for nonprofit and governmental entities) or excess profit (for private for-profit entities). Subrecipients shall negotiate profit or program income as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit or program income, consideration shall be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, industry profit rates in the surrounding geographical area for similar work, and market conditions in the surrounding geographic area.

iii) Costs or prices based on estimated costs for contracts shall be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with the cost principles as shown in Section 2630.110.

iv) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

v) Additionally, in the case of fixed unit price/performance based contracting, all contracts must conform to the provisions of Section 2630.105.

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

F) Subrecipient contracts must contain the following provisions:

i) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and shall provide for such sanctions and penalties as may be appropriate.

ii) Termination for cause and for convenience by the subrecipient, including the manner by which termination will be effected and the basis for settlement.

iii) Compliance with federal Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and as supplemented in U.S. Department of Labor regulations (41 CFR 60, revised as of July 1, 1989).

iv) Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR 3, revised as of July 1, 1989).

v) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR 5, revised as of July 1, 1989).

vi) Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR 5, revised as of July 1, 1989).

vii) Notice of Departmental requirements and regulations pertaining to reporting, if any.

viii) Notice of Departmental requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

ix) Departmental requirements and regulations pertaining to copyrights and rights in data as contained in the grant agreement.

x) Access by the grantor, the subrecipient, the U.S. Department of Labor, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records (including computer records) of the contractor which are directly pertinent to that specific contract for the purpose of making audits, examinations, excerpts, transcriptions, and photocopies. This right also includes timely and reasonable access to contractors' and subcontractors' personnel for the purpose of interviews and discussions related to such documents.

xi) Retention of all required records for three years after subrecipients make final payments and all other pending matters are closed.

xii) Compliance with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857(h)), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and U.S. Environmental Protection Agency regulations (40 CFR 15, revised as of July 1, 1989).

xiii) 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 (P.L. 94-163, effective December 22, 1975).

xiv) Subrecipients acknowledge that receipt of funds under a contract may require compliance with Section 319 of Public Law 101-121 (31 U.S.C.A. 1352) regarding the certification and disclosure of lobbying activities with the Federal Government and agree to comply with those provisions, and all Federal rules promulgated by the Federal Grantor, which is the funding source for implementation of the Federal program; and shall require that this assurance of compliance with Federal lobbying restrictions is part of any agreement with all subrecipients.

xv) Subrecipients receiving Federal funds of $25,000 or more must provide assurance of nondebarment, nonsuspension and other responsibility matters pursuant to Executive Order 12549 and 29 CFR 98 (as published in the May 26, 1988 Federal Register at 53 FR 19188).

xvi) Compliance with the JTPA.

xvii) Audit rights and requirements.

xviii) Payment conditions and delivery terms.

xix) Process and authority for contract changes.

xx) Provisions against assignment.

G) Subrecipients shall conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference.

H) Subrecipients shall make available, upon request of the Department, technical or any other specifications on proposed procurements where the Department believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase. This review may take place prior to or after the time the specification is incorporated into a solicitation document. Subrecipients must on request make available for Departmental pre-award review, procurement documents such as Requests for Proposals or invitations for bids, and cost estimates.

I) Each procurement shall clearly specify deliverables and the basis for payment.

4) Methods of Procurement – Procurement under grants shall be made by one of the following methods: procurement by small purchase procedures, procurement by sealed bids, procurement by competitive proposals, or procurement by noncompetitive proposals.

A) Small purchase procedures are those relatively simple (e.g., price or rate quotations documented to the file which describe what is being procured, date provided, provider, amount and delivery date) and informal procurement methods for securing services, supplies, or other property that do not cost more than $25,000 in the aggregate with a single vendor during a fiscal year. If small purchase procurements are used, price or rate quotations will be obtained from an adequate number of qualified sources. For the small purchase procurement of vendor services, proposals to provide the services must additionally be solicited in writing. The written solicitation must minimally include:

i) a description of services to be provided and any deliverables to be prepared, and associated timeframes;

ii) an identification of the required content of written proposals, which minimally includes an explanation of the vendor's qualifications to provide requested services, a workplan for providing services, and a delineation of all costs associated with providing services; and

iii) a due date for the receipt of proposals.

A written explanation regarding the selection of a vendor to provide services must be maintained in the procurement file.

B) Sealed bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is lowest in price. The sealed bid is the preferred method for procuring construction, if the conditions which follow apply. In order for sealed bids to be feasible, the following conditions should be present: a complete, adequate and realistic specification or purchase description is available; two or more responsible bidders are willing and able to compete effectively for the business; and the procurement lends itself to a firm-fixed-price contract and the selection of the successful bidder can be made principally on the basis of price. If sealed bids are to be used, the following requirements apply:

i) the invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers as evidenced by documentation of an attempt to identify and obtain three bids, providing them sufficient time (a minimum of ten working days) prior to the date set for opening the bids;

ii) the invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;

iii) all bids shall be publicly opened at the time and place prescribed in the invitation for bids;

iv) a firm-fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation costs, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts may only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

v) any or all bids may be rejected if there is a sound, documented reason.

C) Procurement by competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

i) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;

ii) Proposals will be solicited from an adequate number of qualified sources;

iii) Subrecipients will have a method for conducting technical evaluations of the proposals received and for selecting awardees;

iv) Award will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

v) Subrecipients may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

D) Procurement by noncompetitive proposal is procurement through solicitation of a proposal from only one source, the funding of an unsolicited proposal, or, after solicitation of a number of sources, when competition is determined inadequate. Subrecipients shall minimize the use of sole source procurements to the extent practicable, but in every case, the use of sole source procurements shall be justified and documented.

i) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and one of the following circumstances applies: the item is available only from a single source; the public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation; the Department authorizes noncompetitive proposals; or after solicitation of a number of sources, competition is determined inadequate.

ii) Cost analysis, i.e., verifying the proposed cost data, and the evaluation of the specific elements of costs and profit, is required.

5) Subrecipient Procurement Records

Subrecipients shall maintain records which detail the history of a procurement. These records shall include, but are not necessarily limited to, the following: the method of procurement, the selection of contracts type, the basis for the selection or rejection of a contractor, and the basis for the contract price.

6) All subrecipients must have protest procedures to handle and resolve disputes relating to procurements, including requirements for a protestor to exhaust all administrative remedies with the subrecipient before pursuing a protest at a higher level.

c) Sole source awards for on-the-job training of program participants may be made, provided that an employer-employee relationship exists and that the employer will provide job training to enable the participant to perform as a regular employee of the employer's (or another employer's) establishment. When such awards are made, records of the awards shall be maintained.

d) All recipients shall maintain a list of potential contractors who have expressed an interest, in writing, in being considered for awards. The list shall include names, addresses, and services. All potential contractors who have expressed interest in being considered for awards shall be sent Requests for Proposals for the area or areas of service for which they wish to be considered. The list shall be considered to be public information.

e) Classroom training, either vocational or academic, may be procured through sole source award without a cost analysis provided that:

1) the training is provided by an accredited or certified institution;

2) tuition is charged, on a per hour, per course, or per curriculum rate;

3) the training is the same provided to non-JTPA individuals; and

4) the tuition rate is listed in a course catalog and is the same as for non-JTPA individuals.

(Source: Amended at 18 Ill. Reg. 9935, effective June 17, 1994)