

the awarding agency and the Department of Labor shall have unlimited rights to any data first produced or delivered under the agreement (agreements which involve the use/development of computer programs/ applications, or the maintenance of databases or other computer data processing program, including the inputting of data);

(iv) Termination for cause and for convenience by the awarding agency, including the manner by which the termination will be effected and the basis for settlement;

(v) Notice of awarding agency requirements and regulations pertaining to reporting;

(vi) Audit rights and requirements;

(vii) Payment conditions and delivery terms;

(viii) Process and authority for agreement changes; and

(ix) Provision against assignment;

(5) The Governor may establish additional clauses, as deemed appropriate, for State and subrecipient procurements.

(i) *Disputes.* (1) The Governor shall ensure that the recipient and each subrecipient have protest procedures to handle and resolve disputes relating to their procurements. A protester shall exhaust all administrative remedies with the subrecipient before pursuing a protest at a higher level.

(2) Violations of law will be handled in accordance with the requirements contained in § 627.500(c).

(j) Each recipient and subrecipient shall maintain records sufficient to detail the significant history of a procurement. These records shall include, but are not necessarily limited to, the following: rationale for the method of procurement, selection of agreement type, awardee selection or rejection, and the basis for the agreement price.

§ 627.422 Selection of service providers.

(a) Service providers selected under titles I, II, and III of the Act shall be selected in accordance with the provisions of section 107 of the Act, except that section 107(d) shall not apply to training under title III.

(b) Consistent with the requirements of this section, the Governor shall establish standards to be followed by re-

ipients and subrecipients in making determinations of demonstrated performance, prior to the award of all agreements under titles I, II, and III of the Act. These standards shall comply with the requirements of this section, § 627.420, of this part, Procurement, and section 164(a)(3) of the Act. The standards shall require that determinations of demonstrated performance will be in writing, and completed prior to the award of an agreement.

(c) Each recipient and subrecipient, to the extent practicable, shall select service providers on a competitive basis, in accordance with the standards established in § 627.420(b) of this part, Procurement. When a State, SDA, SSG, or administrative entity determines that services other than intake and eligibility determination will be provided by its own staff, a determination shall be made of the demonstrated performance of the entity to provide the services. This determination: Shall be in writing; shall take into consideration the matters listed in paragraph (d) of this section; and may, if appropriate, be documented and described in the Job Training Plan, GCSSP, or EDWAA plan.

(d) Awards are to be made to organizations possessing the demonstrated ability to perform successfully under the terms and conditions of a proposed subgrant or contract. Where comparable proposals have been received from an offeror which has demonstrated performance and a high-risk recipient/subrecipient, and a determination has been made that both proposals are fundable, the award should be made to the offeror which has demonstrated performance, unless other factors dictate a contrary result. Determinations of demonstrated performance shall be in writing, and take into consideration such matters as whether the organization has:

(1) Adequate financial resources or the ability to obtain them;

(2) 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 drop-out rates from past programs; where applicable, the ability to provide or arrange for appropriate supportive services as specified in the ISS, including child care; retention in employment; and earning rates of participants;

(4) For title II programs, 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; and

(7) The technical skills to perform the work.

(e) In selecting service providers to deliver services in a service delivery area/substate area, proper consideration shall be given to community-based organizations (section 107(a)). These community-based organizations, including women's organizations with knowledge about or experience in non-traditional training for women, shall be organizations which are recognized in the community in which they are to provide services. Where proposals are evenly rated, and one of these proposals has been submitted by a CBO, the tie breaker may go to the CBO.

(f) Appropriate education agencies in the service delivery area/substate area shall be provided the opportunity to provide educational services, unless the administrative entity demonstrates that alternative agency(ies) or organization(s) would be more effective or would have greater potential to enhance the participants' continued educational and career growth (section 107(c)). Where proposals are evenly rated, and one of these proposals has been submitted by an educational institution, the tie breaker shall go to the educational institution.

(g) In determining demonstrated performance of institutions/organizations which provide training, such performance measures as retention in training, training completion, job placement, and rates of licensure shall be taken into consideration.

(h) Service providers under agreements to conduct projects under sec-

tion 123(a)(2) shall be selected in accordance with the requirements of this section.

(i) The requirements of section 204(d)(2)(B) shall be followed in entering into agreements to provide services for older individuals funded under title II, part A.

(j) Additional requirements for selection of service providers by substate grantees are described at section 313(b)(6) of the Act and §631.52 of this chapter.

(k) Amounts for service providers. Each SDA/SSG shall ensure that, for all services provided to participants through contracts, grants, or other agreements with a service provider, such contract, grant, or agreement shall include appropriate amounts necessary for administration and supportive services (section 108(b)(5)).

(l) When a State, SDA or SSG has a policy of awarding additional points to proposals received from such organizations as minority business enterprises and women-owned businesses, and this policy is generally applicable to its other funds, the State, SDA or SSG may apply this policy to the JTPA funds.

§ 627.423 Funding restrictions for "high-risk" recipients and sub-recipients.

(a) A recipient or subrecipient may be considered "high-risk" if an awarding agency determines that the recipient or subrecipient is otherwise responsible, but:

(1) Has a history of unsatisfactory performance;

(2) Is not financially stable;

(3) Has a management system which does not meet the management standards set forth in this part; or

(4) Has not conformed to terms and conditions of a previously awarded grant or subgrant.

(b) If the awarding agency determines that an award will be made to a "high-risk" recipient or subrecipient, then special funding restrictions that address the "high-risk" status may be included in the award. Funding restrictions may include, but are not limited to:

(1) Payment on a reimbursement basis;