



Monterey County Workforce Development Board (WDB)
LOCAL POLICY BULLETIN #2013-01

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Full WDB Adopted: August 3, 2016

TO: All Monterey County Workforce Innovation and Opportunity Act (WIOA) Service Providers

SUBJECT: Procurement Standards

PURPOSE: The purpose of this policy is to provide guidance and procedures to be used by local recipients of WIOA funds regarding the purchase and procurement of goods and services.

REFERENCES:

- WIA Directive WSD12-10, Subject: Procurement
- WIOA Final Rule

POLICY: It is the policy of the Monterey County Workforce Development Board, to centralize the purchasing of goods and services under the administration of the Monterey County's Contracting and Purchasing Division and to establish minimum State and Federal requirements for procurements and contracting conducted under the WIOA.

The purpose of the WIOA procurement process is to provide for fair and equal treatment of all persons and organizations involved in a procurement, to maximize the purchasing power or value of WIOA funds, and to provide safeguards to ensure the integrity of all WIOA procurements through the maintenance of a quality procurement system.

ATTACHMENTS:

1. Sole Source and Brand Justification
2. Request for Purchases (RTP) Form

INQUIRIES: For questions or assistance related to this policy, please contact the Monterey County Workforce Development Board (WDB) staff at (831) 796-6434.

This policy will be posted to the WDB website located at: www.montereycountywdb.org/policies/

I. GENERAL REQUIREMENTS

Procurement activities will be conducted on an ongoing basis, with the County having the discretion to initiate and conduct procurements at any time during the program year.

Contracts are generally written for one year and may be extended up to two (2) additional one-year periods subject to the availability of Workforce Innovation and Opportunity Act (WIOA) funds, the contractor(s) performance during the first year of operation, and all subsequent years of performance.

Funding levels for requested programs are contingent upon the final WIOA Title I allocations received from the US Department of Labor and the State of California. The Monterey County Board of Supervisors shall approve any additional funding required for the extended term.

The Workforce Innovation and Opportunity Act (WIOA) program requires that the local workforce development area have procurement procedures that ensure:

1. Procurements will be conducted in a manner providing full and open competition. This includes the requirement that any individual who develops specifications, Request for Proposals, evaluates or makes recommendations on such proposals, or participates in any manner in the procurement of goods and services with WIOA funds, shall NOT be eligible to compete in the procurement. This applies to all types of contracts or grants.
2. The use of sole source procurements is minimized to the extent practicable, but in every case shall be justified;
3. Procurements will include an appropriate analysis of the reasonableness of cost and price;
4. Procurements will not provide excess program income (for nonprofit and governmental entities) or excess profit (for private for-profit entities), and that appropriate factors shall be used 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; and
 - c. Market conditions in the surrounding geographical area;
5. Procurements will clearly specify deliverables and the basis for payment; and
6. Procurement contracts and other transactions between the local WDB and units of State and local governments will be conducted on a cost reimbursement basis. No provision for profit will be allowed.
7. Avoidance of purchasing unnecessary or duplicative goods or services. Surplus and inventory items will be used prior to the purchase of new items.
8. Procurement will include a comparative cost analysis between equipment purchase and lease based on the action that provides the most benefit to the agency.
9. Consideration of small business, minority-owned and women's business enterprises and labor surplus area firms when possible.

II. GENERAL ASSURANCES AND CONTRACT CERTIFICATIONS

All vendors and or subrecipients awarded a contract will be required to comply with the requirements specified below and will be required to adhere to various assurances and certifications based on the goods and services to be supplied. Any required certifications should be included in the Request for Proposal (RFP) documents to ensure that Bidders are aware of the terms and conditions applicable to the use of WIOA funds.

Contract Amendments

All contracts contain the full and complete understanding between the parties subject to any applicable laws, rules, and regulations. The County of Monterey/WDB may issue administrative directives and/or unilateral Contract amendments concerning interpretations of federal rules and regulations, directives received from State and/or requests from the Board of Supervisors that may require changes in procedures by the contractor. The contractor shall be deemed responsible for complying with such administrative directives and/or amendments only after being formally notified in writing of the appropriate action necessary. The contractor may initiate requests for contract amendments, including budget line-item amendments, only once per fiscal quarter. All requests for Contract amendments must provide a detailed justification for such an amendment. There is no obligation by the County of Monterey/WDB to accept requested modifications.

Prohibition of Sub-awards to Debarred and Suspended Parties

The WDB nor its subcontractors and subrecipients shall make any awards to any party that is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs in accordance with Department of Labor regulations. Each entity that is awarded funds in excess of \$25,000 is required to self-certify that it and none of its principal staff is neither debarred nor suspended. The awarding agency is not required to do a verification of the certification.

Lobbying

The WDB will require all subcontractors and subrecipients receiving \$100,000 or more in WIOA funds to certify that no federal funds will be used for lobbying activities in accordance with the Department of Labor regulations.

III. PURCHASE PROCEDURE

Procurement responsibilities of the WDB's Fiscal Office include:

1. Approval of all property purchases by service providers and subcontractors prior its purchase.
2. Purchasing training services from service providers, vendors and independent contractors.
3. Approving contracts for services and training.
4. Approving contract amendments.
5. Providing technical assistance to service providers and subcontractors.

IV. CONFLICT OF INTEREST AND CODE OF CONDUCT

An employee, officer, or agent shall not participate in the selection, award, or administration of a contract supported by federal funds if a conflict of interest, real or apparent, would be involved. A conflict would arise when the employee, officer, 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 above has a financial or other interest in the firm or firms that may be selected for award.

An employee, officer, or agent will neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub-agreements. Exceptions are only when the financial interest is not substantial, or the gift is an unsolicited item of nominal intrinsic value.

Any employee, officer or agent with a real or apparent conflict must declare a conflict, remove themselves from the decision making process and document their actions. No person involved in a competitive procurement will divulge any information regarding the procurement prior to the release of the procurement documents. To the extent permitted by the state, local law or regulations, any violations of these standards by employees, officers, agents, by contractors or their agents may result in penalties, sanctions, or other disciplinary actions.

V. PROCUREMENT METHODS

The following methods of procurement shall be used when purchasing goods and services with WIOA funds. Local procedures may be used if compatible; however, minimum standards must follow the procedures established in this policy.

All small purchases shall not be made without a proper written "Request to Purchase" (RTP) form completed, signed and approved. Reference Attached Request to Purchase (RTP)

1. Small Purchase

This type of procurement method is used when the "per transaction" value of a purchase is less than \$50,000, and the use of informal quotations may be used, in lieu of the more expensive and time consuming sealed bid or competitive proposal method.

The following guidelines for small purchases apply:

\$1 to \$9,999 – Requires two or more documented quotes, prior to purchase. Prices/quotations can be obtained from catalogs, current price lists, prior receipts, or contact (in person, telephone, fax or e-mail) with vendors. Hard copy catalogs and price lists should be updated at least annually, however real-time Internet research is preferred.

\$10,000 or more to \$49,999 – Requires a Request for Quote (RFQ). The RFQ specifies the quantity, time frames, and all the requirements of the product or services being sought. The RFQ must be provided in writing (including fax or e-mail). Three or more written quotes must be obtained with this method. A purchase order through the County Contracts and Purchasing Division may be used in lieu of the process described above.

Proper documentation for a small purchase includes:

- The reason for selecting the small purchase method.
- The estimate of the potential purchase price.
- A description of the goods or services being purchased, including the quantity and any additional criteria used to determine the procurement decision. A copy of the RFQ would suffice.
- All providers contacted/considered and the prices offered using current catalogs, price lists, prior sales receipts, or formal quotes depending on the amount of the purchase.
- Why the provider was selected, including how the provider met any additional criteria, and the price analysis.
- Copy of the purchase document (sales receipt, contract).

A proposed small purchase or contract for an amount above the simplified procurement threshold may not be divided into several purchases or contracts for lesser amounts in order to circumvent the threshold limits described above.

2. Sealed Bids

When the nature of the good or service to be purchased will be more than \$50,000, and can be precisely defined, the sealed bid procurement is generally used. The sealed bid process begins with issuance of an Invitation for Bid (IFB). The IFB will be publicly solicited or advertised through newspapers, local advertising and trade papers. The IFB defines the quantity, timeframes, and product requirements. Vendors are notified of the purchase requirements and submit a sealed bid to a specified location by a specified date and time. The bids are then opened at a specific date and time. A diligent effort should be made to secure at least three competitive bids. The responsible bidder (a bidder that can meet the technical requirements of the procurements), that submits the lowest bid is usually awarded the contract. Any bidder that falls outside of the parameters will normally have their bid rejected. Award of a firm fixed-price or fixed unit price contract by written notice is sent to the lowest responsible bidder. If only one bid is obtained and that bidder is deemed to be responsible, then the non-competitive or sole source process may be used.

Proper documentation for a sealed bid purchase includes:

- The reason for selecting the sealed bid method.
- The estimate of the potential purchase price.
- A copy of the IFB.
- Bids received.
- Determination of the responsibility of the bidder.
- Why the provider was selected.
- Copy of the award document.

3. Competitive Proposals

Competitive Request for Proposals (RFP) is specifically used when factors other than price are important in the selection decision; however, procurements must be in excess of \$50,000. In the Request for Proposal (RFP), it must indicate the scope of work, the method for scoring the proposals, the deadline for receipt of proposals and the dispute process. A public notification of the RFP is normally given through an announcement in a local newspaper that covers the entire service area. A copy of the RFP is sent to anyone who requests it and to any prior bidders. A bidders' conference is usually held to allow interested parties to have any questions answered. Bidders' conferences also allow attendees to receive the same information. Bidders are required to submit their proposals to a specified location by a specified date and time. Each RFP is reviewed and evaluated as to the merits of the proposal. This review includes a cost analysis. There should be a documented methodology for technical evaluation of each proposal. The review committee then makes a final recommendation as to which proposal(s) best meets the stated requirements. Careful documentation of the successful bidder selection should be maintained for reference. A public notice of intent to award is issued, and followed by the award, and the execution of the contract. If only one proposal is obtained and that proposal is deemed to be responsible, then the non-competitive or sole source process may be used.

Proper documentation for a competitive proposal purchase includes:

- The reason for selecting the competitive proposal method.
- The estimate of the potential purchase price.
- A copy of the RFP.
- Bidders' conference questions and answers.
- Bids received.
- The scoring criteria and the evaluation/scoring sheets for each proposal, including determination of the responsibility of the bidder and the cost analysis.
- Why the provider was selected.
- Notify all RFP participants in writing of the intent to award.
- Copy of the award document.

If less than two (2) responsive proposals are received, then the competitive process has not been fulfilled. Therefore, the County of Monterey/WDB reserves the option to either issue the procurement or enter into a non-competitive procurement. The sole-source procurement will follow the standards of non-competitive procurements as described in the following section.

4. Non-competitive Proposals (Sole Source)

Non-competitive proposals may be used under certain limited circumstances. Per the One-Stop Comprehensive Financial Management Technical Assistance Guide, the purchase must be infeasible under one of the other methods discussed above, and one of the following conditions apply:

- The item is available from only one source.
- Public emergency precludes delay (for example, a flood at the local day care center requires the immediate acquisition of additional services).
- The awarding agency authorizes the specific non-competitive procurement (upon a formal request for approval).
- Competition is determined inadequate. This usually occurs after a competitive process has been used and there are insufficient bidders (fewer than three).

A cost analysis is required for all non-competitive procurements. The reason for selecting this method along with the justification for the provider selection must be carefully documented and maintained.

Proper documentation for a sole source purchase includes:

- Completion of the "Sole Source / Sole Brand Justification" form with signatures of approval. Reference Attached Sole Source / Sole Brand Justification Form, including the reason for selecting the sole source method, including why the procurement was infeasible under one of the other procurement methods and which of the additional sole source conditions the procurement met.
- The estimate of the potential purchase price.
- A copy of the RFQ/IFB/RFP.
- A determination of the responsibility of the bidder and the cost analysis.
- Why the provider was selected.
- Signed approval from the Contracts and Purchasing Department Director
- Copy of the award document.

VI. CONTRACT COST AND PRICE ANALYSIS

A cost or price analysis must be conducted in connection with every procurement action. Cost analysis is the review and evaluation of each element of cost to determine if it is reasonable and allowable. As a starting point, an independent estimate must be completed before receiving bids or proposals. A cost analysis must be performed when the bidder is required to submit the elements of their estimated cost (e.g. under professional, consulting, and architectural engineering services contracts). A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders. A cost analysis may not be necessary if one can establish price reasonableness 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 will be used in all other circumstances to determine the reasonableness of the proposed contract price. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts.

A comparison of lease and purchase costs shall be prepared as early as feasible in order to determine the appropriate acquisition strategy. The following factors should be documented:

1. Length of time the equipment is to be used and the extent of its use.
2. Financial, technical and other advantages of types and makes/models of the required equipment available for the lease/purchase.
3. Leasing cost and purchase options.
4. Costs of equipment purchase and installation.
5. Imminent technological improvements
6. Other factors related to functional performance or costs of equipment, including maintenance costs.

The cost comparison shall be completed to provide a basis for estimating the point at which cost of leasing will exceed cost of purchase. The method used shall at least compare the cost of purchasing and maintaining equipment against the cumulative costs of leasing.

VII. BIDDING PROCESS

The bidding process often takes three to eight months from the time the advertisement is placed until the award is made. This time does not take into account internal approval steps or delays caused by appeals. Resolution of appeals may add a delay of one to three months.

The time needed to complete the bidding process will depend on the type of competitive bidding method used, the complexity of the services required, the number of bids or proposals received, whether a bidders' conference is held, whether appeals are received, and other factors.

VIII. BIDDER'S CONFERENCE

Bidder's Conference is an open exchange between purchasers and vendors (bidders) to help ensure a clear understanding of contract requirements. These conferences provide a forum for open dialog and clarification of a RFP, as well as bringing up any missing elements that should be considered in the evaluation process.

A minimum of three competitive bids or proposals are required unless one of the following applies:

1. Emergency. The work or service is the immediate preservation of the public health or welfare, or the safety or protection of State property.
2. The contract is exempt from being competitively bid, per the State Contracting Manual, Chapter 5.
3. Non-Competitively bid exemption. The Director of Department of General Services (DGS) has approved exemption from competitive bidding because the State's best interests are better served by exemption.
4. Governmental agency contract. The contract is with another state, local, or federal agency or with the University of California, the California State University, or a California community college or any of their auxiliary organizations.
5. Community-based Rehabilitation Program. The exemption applies to contracts with workshops conducted in accordance with the Welfare and Institutions Code, and which have been justified under General Code Section 19130(b).

IX. SUBGRANTEE AND VENDOR DISTINCTIONS

The applicability of the WIOA, its regulations, and other program regulations, is limited to grantees and subgrantees funded by those programs. Thus, the distinction between subgrantees and vendors becomes critical to the program. Payments received by a vendor for goods or services are not considered to be federal awards. The definition of a subgrantee and vendor is provided below:

1. Subgrantees

A subgrantee is a legal entity to which a sub-award of federal funds is made and that is accountable to the grantee for the use of the funds provided. When the organization performs the following activities, a federal award to a subgrantee is indicated:

- Determines eligibility for the federally funded program.
- Has its performance measured against the objectives of the federal program.
- Has responsibility for programmatic decision-making.

- Has responsibility for adherence to applicable federal program compliance requirements (for example, the regulations).
- Uses the federal funds to carry out a program of the organization as opposed to providing goods or services for a program.

2. Vendors

A vendor is a dealer, distributor, merchant, or other seller providing goods or services that are required for the conduct of a federal program. The following activities are indicative of a vendor relationship with an organization:

- Provides the goods and services within normal business operations.
- Provides similar goods or services to many different purchasers.
- Operates in a competitive environment.
- Provides goods or services that are ancillary to the operation of the federal program.
- Is not subject to the federal compliance requirements of the program.

In making the determinations of subgrantees and vendors, direct grantees, local areas, and other subgrantees should take into account all of the characteristics related to the type of provider. When deciding whether a vendor or subgrantee relationship exists, it is the relationship that matters, not the label on the award document (e.g. grant, contract, subgrant, or subcontract). No one factor should be taken in isolation; all the applicable criteria for each decision should be reviewed. However, under no circumstances should a designation of vendor be made for providers that have a financial or performance requirement related to eligibility or selection of participants. As previously stated, the designations of subgrantee and vendor relate to type of product or service provided, and not to the type of agreement document used or whether that agreement is called a contract or a subgrant.

X. APPEALS PROCESS

If any bidder submits a proposal and it is not recommended for funding during the review process, and the bidder can show that the proposal did not receive due consideration or that other irregularities existed, the bidder may appeal the recommendation to the County of Monterey/WDB. The appeal must be in writing, on bidder letterhead, and must be received by the County of Monterey/WDB within five (5) business days of the award notification. Appeals after the established time frame will not be accepted. The review shall be limited to information provided in writing. The written appeal must contain:

- Date of appeal;
- The full name, address, and telephone number of the appealing party;
- A brief statement of the reasons for appeal, including citations to the bid name and date of bid closing and other pertinent documents;
- A statement of the relief sought.

Appeals regarding the Workforce Development Board's decision for non-approval of a proposal must be submitted in writing to:

Attn: WDB Executive Director
 Monterey County Workforce Development Board
 730 La Guardia Street
 Salinas, CA 93905

Any bidder formally appealing the decision of the County of Monterey/WDB with regard to their proposal will be scheduled to meet with the County of Monterey/WDB at their next regularly scheduled meeting for final consideration of the appeal. A decision by the County of Monterey/WDB will be communicated to the bidder within 60 days of the filing of the appeal. All decisions of the County of Monterey/WDB shall be final.

Reference the WDB Policy 2005-10 - Grievance and Complaint Procedures for further details of the local level grievance and hearing procedures when participants and other interested parties affected by the local workforce development system file a complaint or grievance. (Policy Reference:

<http://www.montereycountywdb.org/policies/policies/>)