

Fresno Regional Workforce Investment Board

2125 Kern Street, Suite 208 • Fresno, California 93721 • 559.490-7100 • Fax 559.490.7199 •
www.workforce-connection.com

Blake Konczal, Executive Director

POLICY BULLETIN

FRWIB PB # 01-13

Date Released: May 2, 2013

To: All Fresno Regional Workforce Investment Board Providers of Services

From: Blake Konczal, Executive Director

Effective Date: May 2, 2013

Subject: Provider of Services Procurement Policy

Applicable Program: All

Revision History: Initial Release

This Policy Bulletin (PB) supersedes PB 02-06, Revised Procurement Manual, released on September 23, 2009.

This policy provides guidance regarding the procurement of goods and services by Providers of Services receiving Workforce Investment Act (WIA) funds. Providers of Services include but are not limited to One-Stop Contract Coordinators, and contractors.

For the purpose of this policy, the term “procurement” includes any acquisition action which obligates WIA funds for the purchase of equipment, materials, supplies, and program or administrative services beginning with the process for determining the need and ending with contract completion closeout.

All service providers must have a written document outlining their procurement policy that minimally meets the requirements contained in this policy. Providers may follow their own policies and procedures if they are consistent with FRWIB policies, State and local laws and regulations.

Providers are responsible for the resolution of all contractual and administrative issues arising out of the procurements unless the issues concern violations of statute. Those matters are to be referred to the proper federal, state, or local authority depending on who has jurisdiction.

In addition, procurement practices should encourage the utilization of small businesses, minority-owned firms, and women’s business enterprises whenever possible.

If you have any questions, please contact the FRWIB Program, Contracting, and Procurement Manager.

Citations from the WIA, Federal Final Rule, State Directives, Office of Management and Budget (OMB) & U.S. Department of Labor (DOL) TAG

All procurement will be conducted in compliance with federal and state regulations governing the Final Rule of the Workforce Investment Act (WIA, or the Act). All provisions of the WIA Final Rule became effective August 11, 2000. All WIA-funded programs and activities must comply with applicable provisions in the Final Rule.

Controlling Legislation – Federal, State, and Local Requirements

1. Workforce Investment Act of 1998(b); Workforce Investment Act, Final Rule, 20 CFR (Code of Federal Regulations) Parts 652 and 660-671;
2. Specific References, including but not limited to:
 - a. Department of Labor Employment & Training Administration, WIA
 - b. Title 20 CFR Part 663, Subpart B, 663.200-663.250; 20 CFR 667.200 Fiscal and Administrative Rules
 - c. Title 29 CFR Part 97, Sections 97.32, 97.33, 97.36 and 97.42
 - d. Title 29 CFR Part 95, Sections 95.34, 95.35, 95.40 through 94.48 and 95.53
 - e. Title 41 CFR Part 02-85, Section 102-85.35
 - f. Office of Management and Budget (OMB) Circular A-122, Cost Principles for Non-Profit Organizations
 - g. OMB Circular A-21, Cost Principles for Educational Institutions.
3. OMB A-87, Cost Principles for State, Local and Indian Tribal Governments.
4. The following directives contain additional guidelines. The directives, *including references and attachments*, also shall govern the FRWIB procurement process under the WIA.
 - a. State of California Employment Development Department (EDD) Directive WSD-12-10 – Procurement
 - b. EDD Directive WIAD 03-9 – Property - Prior Approval, Purchasing, Inventory and Disposal
 - c. EDD Directive WSD 10-1– Nondiscrimination and Equal Opportunity Procedures.

GENERAL GUIDELINES AND PROVISIONS

All procurement actions are to be conducted in a manner that provides for “full and open competition”. Within the context of open competition, the following four (4) methods may be used to procure goods or services: small purchase; sealed bids; competitive proposals (request for proposal (RFP); and non-competitive proposals (sole source)).

The type of purchase is generally determined by the “per transaction” value of the procurement and the type of goods or services being purchased. “Per transaction” is a single solicitation for a single item (e.g., copying machine), group of related items (e.g., office furniture), or a specified service (e.g., staff training). Purchases are not to be broken down into smaller components to avoid more stringent procurement requirements.

Applicability

The procedures in this procurement manual do not apply to the selection of training services paid through Individual Training Accounts (ITA) or On-the-Job Training (OJT) contracts. Procurement for these services is outlined in a separate FRWIB policy.

Standard of Conduct and Conflict of Interest

All Providers will maintain a "Standard of Conduct and Conflict of Interest" policy which will govern the performance of their officers, staff, or agents engaged in the award and administration of contracts supported by Federal funds. This policy at a minimum must meet all of the requirements outlined in the FRWIB Master Agreement Exhibit F - 8 "Standard of Conduct".

All procurement activities are subject to the rules and regulations pertaining to the code of conduct and conflict of interest policies, including sanctions as prescribed by law, described in the FRWIB's policies and Operational Directives

Documentation

All procurement files will be retained for a minimum of three (3) years following the submission of the final expenditure report for each procurement. Procurement records must be maintained sufficient to detail the significant history of a procurement. These records will include, but are not necessary limited to, the following:

1. Rational for the method of procurement (small purchase, request for proposal, etc.)
2. The selection of agreement type, (cost reimbursement or fixed price)
3. Awardee selection or rejections.

Cost and Price Analysis

The purpose of engaging in a cost or price analysis is to ensure that the Provider is obtaining the greatest value for WIA funds. To that end, Provider staff will perform a cost analysis when:

1. The solicitation specifies that a cost reimbursement contract will be entered into with the successful bidder and requires that a line item budget be submitted as an element of the bid; or,
2. Whenever the underlying costs associated with the provision of the goods or services is readily available or ascertainable.

The cost analysis will include an examination of each item of cost to determine if it is necessary, reasonable, and allocable to the grant.

When acquiring equipment, a cost comparison between leasing and purchasing the equipment will be made.

Each element of the cost analysis must be documented in the procurement file.

Equipment is defined as: tangible, nonexpendable personal property having a useful life of more than one (1) year and an acquisition cost of \$5,000 or more per unit, including all costs related to the property's final intended use; and Software costing more than \$5,000 or more per unit. Prior state approval is required for acquisitions greater than \$5,000.

Provider staff will perform a price analysis when the underlying cost of the goods or services is not readily available or ascertainable, or when it is appropriate to compare price quotations, market prices, and other relevant indicators to establish best value for the money. Each element of the price analysis must be documented in the procurement file.

Subrecipient and Vendor Distinctions

A subrecipient is a legal entity to which a sub-award of federal funds is made and that is accountable to another subrecipient or recipient for the use of the funds provided.

A vendor is a dealer, distributor, merchant or other seller providing goods or services that are required for the conduct of a federal program.

High-Risk Subrecipient

A subrecipient may be considered “high-risk” if the Provider determines that the subrecipient is otherwise responsible, but:

1. Has a history of unsatisfactory performance;
2. Is not financially stable;
3. Has a management system that does not meet standards set forth in 20 CFR Part 627;
4. Has not conformed to the terms and conditions of a previously awarded grant or sub-agreement;
- or**
5. Is otherwise not responsible.

If the awarding agency determines that an award will be made, special conditions and/or restrictions shall correspond to the high-risk condition and shall be included in the award.

If the Provider determines that awards should be made to a high-risk organization, special funding restrictions that address the high-risk status may be included in the award. Restrictions may include, but are not limited to:

1. Payment on a reimbursement basis;
2. Withholding authority to proceed to the next phase until the receipt of evidence of acceptable performance within a given funding period;
3. Requiring additional, more detailed financial reports;
4. Additional project monitoring;
5. Requiring the grantee or subgrantee to obtain technical or management assistance; **and/or**
6. Establishing additional prior approvals.

If the Provider decides to impose such funding restrictions, the subrecipient will be notified in writing, as early as possible, of the following:

1. The nature of the funding restriction(s);
2. The reason(s) for imposing the funding restriction(s);
3. The corrective actions that must be taken before the funding restriction(s) will be removed;
4. The time allowed for completing the corrective actions; **and**
5. The method of requesting reconsideration of the funding restrictions imposed.

Other Requirements

For contracted vendor services, the Provider will follow these guidelines:

1. If the services cost \$10,000 to \$25,000 per year, or over \$20,000 in total for any five (5) consecutive years:
 - a. Provider will conduct a cost/price analysis;
 - b. If that analysis determines that the services can be provided by another vendor at a lower cost, a procurement for these services will be conducted in accordance with this procurement manual
2. Contracted vendor services that cost over \$25,000 per year will be procured every five (5) years, following the procedures in this policy.
3. In the event there is a tie between two (2) or more bidders, and at least one (1) of the bidders is a local business, the contract will be awarded to the local business. A local business is defined as a business that has a physical location in Fresno County.

Provider staff will review each request for goods and services to avoid purchasing unnecessary or duplicate items.

If “brand name or equal” is used as a specification in a solicitation, special features of the “brand name or equal” description must be included in the procurement document.

The federal government prohibits awards to any party that is debarred. No recipient or subrecipient shall make any awards, or permit any awards at any tier, to any party that is debarred or suspended, or is otherwise excluded from or ineligible for participation in federal assistance programs, in accordance with the Department of Labor (DOL) regulations. All contracts and awards to vendors and/or sub recipients, in excess of the small purchase threshold as defined in the following sections, shall include debarment certifications.

If an award is granted in excess of \$100,000, the subrecipient shall certify that no funds shall be used for lobbying.

PROCUREMENT METHODS

For a transaction of less than \$50,000, the small purchase method may be used. However, the sealed bid and RFP may also be selected if appropriate. **For transactions of \$50,000 or more, the sealed bid or competitive (RFP) proposal must be used.** Sole source, only where justifiable, can be used for a transaction of any amount.

Small Purchase Procedures

Small purchases mean the acquisition of goods or services that do not cost more than \$50,000 in the aggregate. The following defines the documentation required for the specified dollar range:

Purchase Amount	Required Documentation
\$1.00 to \$9,999.99	Two (2) documented quotes
\$10,000.00 to \$49,999.99	Three (3) written quotes and Request for Quotes(RFQ)

For small purchases between \$1 and \$9,999, two (2) or more documented quotes must be obtained. The documentation can include product or service catalogs, current price lists, email messages/price lists, and telephone contact with the vendors to obtain quotes and prices. Catalogs and price lists should be determined to be current, at least annually. However, real-time internet research is preferred. Prices may also be obtained utilizing “historical pricing” by demonstrating that other transaction occurring in the past twelve (12) to eighteen (18) months shows that historical prices for similar acquisitions have yielded no material change in cost.

For items under \$5,000, the documentation for the selected price will be maintained in the vendor file, and the vendor and price for the second quote will be recorded. For items \$5,000 to \$9,999, the two (2) documented quotes will be maintained in the vendor file.

For small purchases between \$10,000 and \$49,999, three (3) written quotes and a RFQ are 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 be provided in writing in one of the following methods: mail services; fax; email; or available for download and printing from the Workforce Connection website. The written response must be signed and dated by the vendor. Electronic-generated or emailed quotes will be considered signed and dated by authorized vendor representative.

Small Purchase Selection Basis: Provider staff will review the quotes according to the specifications of the requests or of the RFQ. For commodity goods or services, the general basis for selection is the lowest total price (excluding sales tax) if all other specifications are met; however, the selection of the lowest quote is not always required. Qualifications of the vendor, availability of the goods or services, service, quality, and location are additional factors that could influence the procurement. The documentation must contain the basis for vendor selection. If the basis is something other than price, the documentation in the procurement file must describe the additional criteria for selection, the relevance of the criteria to the need and benefit, and the relative advantage of the offering from the selected vendor.

Proper documentation for a small purchase includes:

1. A description of the goods or services being purchased, including the quantity and any additional criteria used to determine the procurement decision, such as a copy of the RFQ.
2. All providers contacted/considered and the prices offered or formal quotes for purchases between \$10,000 and \$49,999.
3. Why the provider was selected, including how the provider met any additional criteria, and the price analysis. Board agenda item and minutes
4. Copy of the purchase document (sales receipt, contract).

Sealed Bid Procedures

Sealed bids are publicly solicited procurements for which a firm fixed-price award (lump sum or unit price), or other fixed-price arrangement, is awarded to the responding entities whose bid has conformed to all the requirements, terms, and conditions of the IFB, and is lowest in price. This method is appropriate when the desired goods and services to be provided can be specified and described with a high level of precision and completeness. The best examples are commodity-type goods or services that are widely available in the marketplace. Sealed bids will be used for purchases over \$50,000 that meets these criteria. Preparation of an IFB is required.

Once the sealed bid method has been determined as appropriate, an IFB will be developed, which shall include the following:

1. Solicitation/Agreement forms;
2. Description of the procurement process and time frames;
3. Supplies or services and prices;
4. Statement of Work;
5. Agreement clauses/considerations;
6. Certifications and instructions;
7. Evaluation factors/criteria for award;
8. Identification of the place that all responses must be delivered;
9. Appeal process; and
10. The circumstances under which bids will be rejected or disqualified.

IFBs must incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured, identify all requirements that responding entities must fulfill, and all other factors to be used in evaluating bids.

The IFB will be publicly noticed for a minimum of two (2) consecutive days through local newspapers, local advertising, and trade papers that covers the entire service area, and sent to those listed on the Provider's prospective bidders' list and, upon request, all interested parties.

Sealed Bid Selection Basis: All bids received at the time and place stated in the IFB will be publicly opened and reviewed for qualification or disqualification. Generally, circumstances under which bids will be rejected or disqualified are:

1. The bid is not submitted on time,
2. The bid does not meet all qualifying criteria, or
3. The bidder does not meet all of the requirements/specifications of the IFB.

The bidder with the lowest price, and who has met the technical requirements of the solicitation, will receive the award. Written notice of the award must be mailed or delivered to the successful bidder. Those bidders who were not accepted will also receive written notification of the award.

Proper documentation for sealed bids includes:

1. The reason for selecting the sealed bid method.
2. The estimate of the potential purchase price.

3. A copy of the Public Notice.
4. A copy of the IFB.
5. Copies of all bids received.
6. Determination of the responsibility of the bidder.
7. Why the bidder was selected (Board agenda item and minutes).
8. Copy of the award document (Board agenda item and minutes).

Competitive Proposals

Competitive proposals (RFPs/RFQs as applicable) are used when the purchase is in excess of the small purchase amount. This method is typically used when the nature of the goods or services to be acquired cannot be defined at the level of completeness and precision required by the sealed bid method, and specifically when factors other than price are important in the selection decision and either a fixed-price or cost-reimbursement agreement will be awarded and the procurement is in excess of \$50,000.

Once this method has been determined to be appropriate, an RFP/RFQ will be developed. The RFP/RFQ will include the following information, as applicable:

1. Statement/Scope of Work;
2. Service area, if applicable;
3. Deadline for receipt of the RFP/RFQ;
4. Proposal submission checklist;
5. Requirements for time, place, and methods or performance of service;
6. Appeal process;
7. Agreement clauses that outline what the proposers will be required to comply with and perform, in addition to the basic Statement of Work;
8. Certifications, assurances, and representations (forms that the proposer will have to complete to affirm that it will comply with the regulatory requirements set by the DOL, the State of California, the local governing bodies, and the FRWIB);
9. Instructions on how to prepare and submit, at a minimum, the technical and cost/price analysis sections of the proposal. Other submissions may include proposal summary, statement of financial capability, and certification of the adequacy of the proposer's accounting system;
10. Evaluation factors for the award and method for scoring the proposals, including qualifying criteria;
11. Solicitation provisions and the RFP/RFQ calendar;
12. The right to reject any or all proposals when the proposal(s) is/are not responsive in providing the services as stated in the RFP/RFQ. The specific reasons must be fully described and documented in the procurement file;
13. The requirement of the signature of an appropriate official who is authorized to submit the proposal for the responding agency/entity, and their Board Resolution providing the name and title of the official with this authorization.

The RFP/RFQ will be publicly noticed for a minimum of two (2) consecutive days through local newspapers, local advertising, and trade papers that covers the entire service area, and sent to those listed on the Provider's prospective bidders' list and, to all interested parties upon request. The RFP/RFQ and all addendums may also be available on the FRWIB website. A minimum of one (1) Pre-Bid Conference may be held for all interested parties.

Proposals will be submitted by the specified time and date listed in the RFP/RFQ. The proposals will be time and date stamped upon receipt. Late proposals will be rejected and will not be considered for funding.

If less than three (3) responsive proposals are received, the applicable RFP/RFQ will be considered a failed competition. The Provider then has the option to re-compete the procurement or to enter into a sole source procurement.

Proper documentation for RFPs/RFQs includes:

1. The reason for selecting the competitive proposal method.
2. The estimate of the potential purchase price.
3. A copy of the Public Notice.
4. A copy of the RFP/RFQ.
5. Bidders' conference questions and answers (if applicable).
6. Copies of all bids received.
7. The scoring criteria and the evaluation/scoring sheets for each proposal, including determination of the responsibility of the bidder and the cost analysis.
8. The public notice of intent to award (Evaluation Summary).
9. Why the bidder was selected (Board agenda item and minutes).
10. Copy of the award document (Board agenda item and minutes).

Cooperative Purchasing

Equipment and products may be purchased through contracts entered into by the State of California or the City or County of Fresno through a competitive bid process or through cooperative purchasing contracts. Equipment and products purchased through this process is considered to be purchased competitively and to have met the FRWIB procurement requirements.

Provider staff will obtain documentation to verify the contract and procurement process for any item prior to a purchase. All equipment or products purchased in this provision must meet the specification requirements as determined by the FRWIB.

Noncompetitive Proposals (Sole Source)

The FRWIB shall not allow the use of sole source procurement except under one of the following conditions:

1. The item or service is available only from a single source (must be documented in the procurement file);
2. A public emergency precludes delay;
3. The awarding agency (FRWIB) authorizes the specific noncompetitive procurement; or
4. After solicitation of a number of sources, competition is determined inadequate. This condition is only allowable after a competitive process has been used and there are insufficient bidders (fewer than three (3)).

Use of noncompetitive procurement for public emergency reasons should be for goods, supplies, or services that will provide for the agency's immediate need to enable correction or resolve the emergency. For long-term or on-going needs, one of the competitive procurement methods must be used.

Proper documentation for Noncompetitive Proposals (Sole Source) includes:

1. 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.
2. The estimate of the potential purchase price.
3. A copy of the RFQ/IFB/RFP for noncompetitive procurement.
4. A determination of the responsibility of the bidder and the cost analysis.
5. Why the bidder was selected (Board agenda item and minutes).
6. Copy of the award document (Board agenda item and minutes).

If the decision to sole source a procurement is the result of inadequate competition, the following areas of the RFQ, RFP, or IFB will be reviewed to ensure that the process was as competitive as possible and documented in the procurement file:

1. The specifications to ensure they were not unduly restrictive or would favor the selection of one (1) supplier or service provider;

2. The price or cost estimates to ensure that they are fair and reasonable; and
3. The timetable to ensure that there was ample time in the planning process to publicize solicitations in newspapers and other sources.

If the sole source method was chosen due to a public emergency, a complete description of the emergency and the rationale for the sole source procurement must be documented in the procurement file.

Provider staff will document in the procurement file the conditions that require the sole source procurement. In all cases, Provider staff will determine that the costs for the program are necessary and reasonable as required by federal regulations and document the determination in the procurement file.

Protest/Appeals and Grievances

Protest/Appeals Process

All Providers are required to maintain a "Protest/Appeals and Grievances" policy, which outlines the process the provider will follow in the event a Protest/Appeal or Grievance is submitted in response any procurement process. If the Provider does not have a Protest/Appeals Process they may utilize the FRWIBs policy.

Grievances

Filing a formal grievance is the second step in the dispute resolution process available only after denial of a protest/appeal. The FRWIB Grievance Procedures are intended for a more formalized, comprehensive process usually involving legal representation by both parties.

Grievances regarding procurement procedures may be made using the procedures outlined in the FRWIB's "WIA Complaint and Hearing Procedures" available upon request. The grounds for filing a grievance are limited to charges that the procedures specified in the procurement document, FRWIB policies, or that are required by law, have not been followed. The grievance shall set forth specific facts and evidence and specify which law, procurement procedure, or FRWIB policy has been violated. All grievance procedures must be exhausted at the FRWIB before proceeding with a grievance to the State Workforce Investment Division.