



APPROVAL DATE: 12/14/11
APPROVED BY: Betty Baker, WIB Chair

**COUNTY OF SAN LUIS OBISPO  
DEPARTMENT OF SOCIAL SERVICES**

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**POLICY NO:** 5-08  
**TO:** Service Providers  
**EFFECTIVE:** March 1, 2009 – **Revised** April 30, 2013  
**SUBJECT:** Procurement of Goods and Services

**REFERENCES:**

- Title 20 Code of Federal Regulations (CFR)WIA Final Rule, 667.200
- Title 29 CFR Part 95, Sections 95.34, 95.35, 95.40 through 95.48 and 95.53
- Title 29 CFR Part 97, Sections 97.32, 97.33, 97.36 and 97.42.
- Title 41 CFR Part 02-85, Section 102-85.35
- Office of Federal Procurement Policy, 41 USC Chapter 7, Section 403 (Definitions)
- Office of Management and Budget (OMB) Circular A-21, Cost Principles for Educational Institutions (May 10, 2004)
- OMB Circular A-87, Cost Principles for State, Local and Indian Tribal Governments (May 10, 2004)
- OMB Circular A-122, Cost Principles for Non-Profit Organizations (May 10, 2004)
- Department of Labor (DOL) One-Stop Comprehensive Financial Management Technical Assistance Guide (July 2002)
- DOL Training and Employment Guidance Letter (TEGL) 7-04, Issues Related to Real Property Used for Employment and Training Administration (ETA) Program Purposes (October 20, 2004)
- WIA Directive WIAD03-10, Subject: Allowable Costs (April 9, 2004)
- California's Strategic Two-Year Plan for Title I of the WIA of 1998, and the Wagner- Peyser Act (July 2009 - June 2010)
- San Luis Obispo County General Services Purchasing Guide.

**PURPOSE:**

To provide guidelines and requirements that apply to all purchases of equipment (goods) and services using WIA funds, for the operation and support of the WIA

program or for the benefit of WIA participants (except when purchasing training services through the Employment Training Provider List (ETPL)). The procedures and guidelines are to be used by all service providers that plan to use WIA funds to make purchases.

## **BACKGROUND:**

The WIA regulations at 20 CFR 652 provide guidance for the administration of the WIA program. The guidance includes specific direction and referral to 29 CFR 95 for institutions of higher education, hospitals and other nonprofit and commercial organizations, and to 29 CFR 97 for states and local governments. While the format and wording of Part 95 and Part 97 vary slightly, the intent of the federal government is consistent: procurement policies must ensure free and open competition and must secure the best possible price. Additional federal guidance can be found in the One-Stop Comprehensive Financial Management Technical Assistance Guide, Chapter II-10.

## **DEFINITIONS:**

Acquisition is the act of acquiring goods and services for the use of governmental activity through purchase, rent, or lease. This includes the establishment of needs, description of requirements, selection of procurement method, selection of sources, solicitation of procurement, solicitation for offers, award of contract, financing, contract administration, and related functions.

Agreement is a duly executed and legally binding contract; the act of agreeing.

Bid or Bidding is an offer to contract for goods or services submitted in response to a bid invitation issued by the San Luis Obispo County or a service provider using WIA funds.

Bidder's Conference is an open exchange between purchasers and vendors (bidders) to help ensure a clear understanding of contract requirements.

Competitive Bidding is the process of inviting and obtaining bids from competing sources in response to advertised competitive specifications, by which an award is made to the lowest and best bidder meeting the specifications. The process contemplates giving potential bidders a reasonable opportunity to bid, and requires that all bidders be placed on the same plane of equality. Each bidder must bid on the same advertised specifications, terms, and conditions in all the items and parts of a contract. The purpose of competitive bidding is to stimulate competition, prevent favoritism, and secure the best goods and services at the lowest practicable price.

Contract is an agreement that sets forth terms, conditions, and the statement of work to be performed.

Cost Analysis is the element-by-element examination of the estimated or actual cost of contract performance to determine the probable cost to the vendor. This is a more detailed and costly method than price analysis in terms of both time and manpower.

Equipment (Goods) is defined as tangible, nonexpendable personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit including costs related to the property's final intended use. Purchases of equipment require prior approval from the State.

Invitation for Bid (IFB) is a type of solicitation document, used in a formal competitive bidding process, which contains a precise statement and complete specification of what the agency is attempting to purchase. Qualifying bidders compete solely on the basis of cost.

Price Analysis is the process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit. This process determines whether the price is fair and reasonable.

Procurement is all stages of the process of acquiring property or services, beginning with the process for determining a need for property or services and ending with contract completion and closeout.

Proposal is an offer made by one party to another as a basis for negotiations, prior to the creation of a contract.

Recipient means a non-federal entity that expends federal awards received directly from a federal awarding agency to carry out a federal program.

Request for Proposal (RFP) is a type of competitive procurement issued at an early stage in a procurement process, where an invitation is presented for suppliers, often through a bidding process, to submit a proposal on a specific commodity or service. The RFP process brings structure to the procurement decision and is meant to allow the risks and benefits to be identified clearly up front.

Request for Quote (RFQ) is used when discussions with bidders are not required (mainly when the specifications of a product or service are already known) and when price is the main or only factor in selecting the successful bidder. An RFQ may also be used as a step prior to going to a full-blown RFP to determine general price ranges. In this scenario, products, services or suppliers may be selected from the RFQ results to bring in to further research in order to write a more fully fleshed out RFP.

Small Purchase is a procurement method where the acquisition of goods or services that fall between \$1 and \$24,999

Specification is a concise statement of a set of requirements to be satisfied by a product, material or process that indicates whether the requirements are satisfied.

Standard(s) is the established and fixed measure or measures used in assessing quality or performance.

Subcontract is a contract between a prime contractor and a subcontractor to furnish supplies or services for the performance of a prime contract or subcontract.

Subgrantee is the government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided.

Subrecipient is a legal entity (e.g. Mentoring Ex-Offenders R Us) to which a subaward of federal funds is made and that is accountable to the grantee for the use of the funds provided. The terms "recipient" and "subrecipient" are often used interchangeably with "grantee" and "subgrantee."

Supplies are tangible personal property other than equipment.

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

#### **POLICY:**

The policy will be to use competitive selection in all procurement to ensure maximum open and free competition to the extent possible. Where there is a conflict between San Luis Obispo County, the Administrative Entity/Fiscal Agent, and WIA requirements, the more stringent requirements will be used.

In conducting procurement, the staff responsible will complete, sign and date all appropriate documentation. Responsibility will conform with specific written authority for performing procurements and authority to enter into contracts or agreements.

Every entity will maintain a "Code of Conduct" as a written code or standards of conduct which will govern the performance of their officers, employees or agents engaged in the award and administration of contracts supported by Federal funds.

#### **EXCLUSIONS:**

The following exclusions will apply to this policy:

On- The-Job Training (OJT): The competitive provisions of this policy will not apply to OJT employers, except in the procurement of OJT brokering services.

Individual Training Accounts (ITA): The delivery of classroom training from vendors through an ITA as described in 20 CFR 663.410 is excluded if the cost falls within the guidelines of the small purchase procedures.

## **I. GENERAL REQUIREMENTS:**

Local governmental and Indian tribe grantees and subgrantees may follow their own policies and procedures if they are consistent with State and local laws and regulations and the procurements conform to the standards of 29 CFR 97.36(b) through (i). Grantees and subgrantees are required to maintain a system for the administration of contracts. In order to comply with these requirements, grantees/subgrantees should maintain written procedures that, at a minimum, address the following standards:

- A contract administration system that ensures a contractor performs in accordance with the requirements of any awards.
- A written code of conduct for employees engaged in the award and administration of agreements. The grantee/subgrantee must also include the standards for conduct specified at 20 CFR 667.200(a)(4), which address conflict of interest provisions for State and local area grantee board members.
- Procedures that detail the requirement for a review of prospective procurements to avoid purchase of unnecessary or duplicate items, including analysis of lease versus purchase.
- A process that promotes the use of intergovernmental agreements for procurement or use of common goods and services, as well as the use of federal excess and surplus property wherever possible.
- A process to ensure that awards are made only to responsible contractors with the ability to perform successfully. The awarding agency standards should address integrity, compliance with public policy, past performance, and contractor resources (technical and financial) for prospective contractors.
- Documentation of each of the significant steps followed in making an award. These must include rationale for method of procurement, selection of agreement type, selection or rejection criteria, and the basis for the contract price, including the independent agency estimate of price.
- A settlement process. The procuring entity is solely responsible for the settlement of all their procurement actions, including those related to source evaluation, protests, claims, and disputes. Violations of law must be referred to the appropriate local, State, or federal agency having jurisdiction.
- Protest procedures to handle disputes related to both award and administration of contracts. Protest procedures must include available remedies, time lines, required forms, and other information related to protests and must be disclosed by the awarding agency. Protestors must exhaust all administrative remedies before pursuing a protest with a federal agency, and any protest to the federal level must allege a violation of federal law or regulation or of the governmental

grantee's violation of its own protest procedures.

Institutions of higher education, hospitals and other nonprofits, and commercial organizations that receive grants and subgrants under ETA-funded grant programs must follow the procurement standards of 29 CFR Part 95. These standards are slightly different from the standards imposed on States and governmental grantees and are described as follows for service providers/contractors who are recipients of WIA funds:

- Each service provider/contractor must maintain written standards of conduct, including conflict of interest provisions and disciplinary actions for violations. The conflict of interest standards must also address the requirements of 29 CFR 667.200(a)(4) related to State and Local Workforce Investment Board (local board) members.
- Each service provider/contractor must maintain a system that provides for full and open competition whenever possible. Awards should be made based on a responsive bid or offer. The one most advantageous to the grantee after consideration of price, quality, and any other factors contained in the solicitation should be chosen.
- Each service provider/contractor must establish written procurement procedures to prevent purchases of unnecessary items.
- Each service provider/contractor must establish written procurement procedures that provide for an analysis of lease versus purchase options to determine the most "economical and practical" procurement.

In addition, solicitations must provide for the following:

- Clear and accurate descriptions of the goods or services being procured. The description must not contain features that restrict competition.
- All requirements that must be fulfilled and all other factors used in evaluating bids or proposals.
- Technical requirements described in terms of functions to be performed or performance required, including a range of acceptable or minimum acceptable standards.
- Specific features of "brand-name or equal" descriptions, if included in the solicitation.

- If procuring goods or certain types of services, the acceptability of metric measurements.
- Preference for ecologically sound and energy-efficient products.
- Procedures that detail the requirement for a review of prospective procurements to avoid purchase of unnecessary or duplicate items, including analysis of lease versus purchase.

Service Providers/Contractors are also 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.

Each agreement funded by the Employment and Training Administration (ETA) grant programs must contain the specific clauses referred to in 29 CFR 97.36(i), or 29 CFR 95.48, and Part 95, Appendix A, as appropriate.

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

## **II. METHODS OF PROCUREMENT:**

For the purpose of this policy, procurement will be made by the following methods:

### **1. Small Purchases**

In order to promote efficiency and economy in contracting, a simplified purchase process for procurements of less than \$24,999 is allowed. The process provides for relatively simple and informal methods that are sound and appropriate for the specific type of procurement involved.

The following guidelines for small purchases will apply:

1. \$1 - \$9,999 - Requires, at a minimum, two (2) documented quotations.. 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
2. \$10,000 to \$24,999 - 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.

Proper documentation for a small purchase includes:

- The reason for selecting the small purchase method.
- An 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. Competitive Sealed Bids**

In this type of procurement bids are publicly solicited 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 (IFB), is the lowest price. Competitive sealed bids are most effective when the procurement specification can adequately describe and define the item or service. If competitive sealed bids are used, the following procedural requirements will apply:

- a) To promote reasonable competition that is consistent with the nature and requirements of the procurement, proposals will be current and solicited from an adequate number of qualified sources without containing features which duly restrict or eliminate completion.
- b) Reasonable effort will be made to publicize the IFB to the widest practicable area of circulation.

## **3. Competitive Negotiation**

Is a method of soliciting proposals from a number of sources through a publicly

announced Request for Proposal (RFP) or Request for Quotation (RFQ). Negotiations are normally conducted with more than one of the sources submitting offers, and either a fixed price or cost reimbursement type contract is awarded. Procurements of \$25,000 or more require a formal bid or RFP. If competitive negotiation is used, the following procedural requirements will apply:

- a) The solicitation of competitive offers will follow a process for advertising, evaluation and award in accordance with the competitive standards contained in this policy. Reasonable effort will be made to publicize the solicitation to the widest practicable area of circulation.
- b) To promote reasonable competition that is consistent with the nature and requirements of the procurement, proposals will be current and solicited from an adequate number of qualified sources.
- c) The solicitation will identify all significant evaluation factors, including price or cost where required, and their relative importance.
- d) A technical evaluation of responsive proposals received, will be completed and documented.
- e) Contract awards will be made to the responsible bidder whose proposal is most advantageous to the County of San Luis Obispo. In making an award, price and other factors will be considered and documented. Unsuccessful offerors will be notified promptly.

Proper documentation for a competitive proposal purchase includes:

- The reason for selecting the competitive proposal method.
- The subgrantee's 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.

- The public notice of intent to award.
- Copy of the award document.

#### **4. Non-Competitive Negotiation (Sole Source)**

This form of procurement is used under conditions where competition is impractical, infeasible or inadequate.

- a) Noncompetitive procurement will be minimized to the extent practicable.
- b) A non-competitive negotiated procurement may be used when the award of a contract is infeasible under small purchases procedures, sealed bids, or competitive negotiation AND one of the following circumstances applies:
  - 1) The item or service is available from only one single source, or
  - 2) Public emergency precludes delay (for example, a flood at the local day care center requires the immediate acquisition of additional services).
  - 3) The awarding agency authorizes the specific noncompetitive procurement (upon a formal request for approval).
  - 4) Competition is determined to be inadequate, after solicitation of a number of sources.

A cost analysis is required for all noncompetitive 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:

- 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.
- An 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.
- Copy of the award document

### **III. CONTRACT PRICING:**

The cost-plus method of contracting will not be used.

#### **Cost and Price Analysis:**

Some form of cost or price analysis shall be made and documented in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability. A cost analysis is necessary for sole source procurements.

#### **Profit**

The following factors will be considered in determining whether income or profits are excessive:

1. Complexity of work to be performed;
2. The risk borne by the contractor;
3. The contractor's investment;
4. The amount of subcontracting;
5. The quality of the contractor's record of past performance;
6. Industry profit rates in the surrounding geographical area;
7. Market conditions in the surrounding geographic area.

#### **IV. REQUIRED CONTRACT CLAUSES AND ADDITIONAL WIA REQUIREMENTS:**

##### Required Contract Clauses

The type of agreement entered into by all and service providers/contractors (including State and governmental agencies) may be fixed price or cost reimbursement, depending on the method of procurement and goods or services being procured. Each agreement funded by the ETA grant programs must contain the specific clauses referred to in 29 CFR 97.36(i), or 29 CFR 95.48, and Part 95, Appendix A, as appropriate. They are listed below.

- For all contracts in excess of the small purchase threshold, administrative, contractual, or legal remedies where contractors violate or breach contract terms. The clause must also provide for sanctions or penalties, as appropriate.
- Termination for cause and for convenience by the awarding agency, including the process for exercising the clause and any basis for settlement (applies to contracts in excess of \$10,000 (Part 97) or contracts in excess of \$100,000 (Part 95)).
- Access to records by the awarding agency, the grantee, the DOL, or the Comptroller General.
- The Comptroller General of the United States for the purposes of audit, examination, excerpts, and transcriptions (for other than small purchase transactions).
- Notice of awarding agency requirements and regulations related to reporting.
- Notice of awarding agency requirements and/or regulations related to patent rights, copyrights, and rights in data.
- Record retention requirements as specified in 29 CFR 97.42 or 29 CFR 95.53.
- Compliance with Equal Employment Opportunity provisions in Executive Order (E.O.) 11246, as amended by E.O. 11375 and supplemented by the requirements of 41 CFR Part 60. These are codified for DOL programs at 29 CFR Parts 33 and 37.
- Compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 328 and 333) (all contracts in excess of \$2,500 that involve employment of mechanics or laborers and all construction contracts in excess of \$2,000).
- Compliance with the applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act, Section 508 of the Clean Water Act, E.O.

11738, and Environmental Protection Agency regulations (40 CFR Part 15) (applies to contracts, subcontracts, and subgrants in excess of \$100,000).

- Mandatory standards and policies related to energy efficiency, which are contained in the State energy conservation plan issued in compliance with the Energy Policy Conservation Act (Public Law 94-163).
- A provision requiring compliance with the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). This requirement is also found in 29 CFR Part 93.
- A provision requiring compliance with the debarment and suspension requirements (E.O. 12549 and 12689). This requirement is also found in 29 CFR Part 98.
- Compliance with the provisions of the Davis-Bacon Act for construction contracts in excess of \$2,000.
- A provision requiring compliance with the Copeland Anti-Kickback Act (construction and repair awards).

In addition to the requirements of 29 CFR Part 97 or Part 95, the following requirements apply to procurements and agreements funded under the WIA:

- All agreements between local boards and units of government must be cost-reimbursement. [20 CFR 667.200(a)(3)] There is no provision for profit with governmental agencies.
- If a fixed-price agreement with a governmental or nonprofit agency results in revenues in excess of actual costs incurred, the excess revenues are considered to be program income. [20 CFR 667.200(a)(6)] Any such fixed-price agreements should reference this requirement.
- The local workforce investment plan must contain a description of the competitive process used to award grants and contracts under all programs funded under WIA Title I. The description must also include the process used to procure training services outside the Individual Training Account (ITA) process. [20 CFR 661.350(a)(10)]
- The procurement requirements for services to be provided under WIA Title IB Youth programs are specified in Section 123 of the Act. This section requires that activities and services for youth be competitively procured. Small purchase procedures can be used to purchase a training slot for a youth at a training institution if allowable under the agency's procurement policy. Additional guidance on the procurement of youth services is found in TEGL 9-00, dated January 23, 2001; TEGL 12-01, dated February 21, 2002; and the WIA Youth Program RFP Guide.

- The procurement requirements addressed do not apply to the identification of eligible training providers. The process for identification of eligible training providers for training services under WIA Title IB programs is described in 20 CFR Part 663, Subpart E. The State is responsible for the development and maintenance of a State-wide training provider list. While not a federal requirement, each service provider/contractor should have a formal agreement for services when a training provider is to deliver services. This may be in the form of a purchase order, contract, voucher, or other mechanism that provides for payment information and may be incorporated or referenced in the individual ITAs.

**ACTION:**

The Administrative Entity for the WIB and its service providers shall ensure that the policies and procedures described herein are established in writing and followed for the purchase of any goods and services with WIA funds.

**INQUIRIES:**

Inquiries should be addressed to WIB Admin at [wibadmin@co.slo.ca.us](mailto:wibadmin@co.slo.ca.us).

**REVISION HISTORY:**

<i>DATE</i>	<i>DETAILS</i>
04/03/14	1-Updated inquiry contact details.