



WORKFORCE DEVELOPMENT BOARD
OF SOLANO COUNTY

POLICY ISSUANCE

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PROCUREMENT POLICY

INTRODUCTION

Federal, state, and local guidelines require that all WDB procurement is an open and free competition that leads to cost effective and high-quality goods and services. In addition, applicable rules and regulations stipulate that in order for a cost to be allowable, it must be necessary and reasonable for the proper and efficient administration of the program. Workforce Innovation and Opportunity Act (WIOA) Sec. 184(a)(3)(A) requires each state, local area, and WIOA service provider receiving funds under this title to comply with the appropriate uniform administrative requirements for grants and agreements applicable for the type of entity receiving the funds, as disseminated in circulars or rules of the Office of Management and Budget (OMB). The Procurement Policy of the Workforce Development Board (WDB) of Solano County summarizes requirements for the proper procurement of goods, materials and services, with the exception of the procurement of training contract and One-Stop Operator, refer to the One-Stop Operator policy.

QUESTIONS

Questions relating to this policy should be directed to Brian Hooker, Planning and Industry Coordinator, at bhooker@solanowdb.org or 707-863-3588.

POLICY

Procurement transactions, regardless of method or dollar value, will maximize open and free competition consistent with OMB standards. Neither the WDB nor contractors to the WDB shall not engage in procurement practices which may be considered arbitrary or restrictive. The WDB and its contractors will use documented procurement procedures that reflect state and local laws and regulations, provided that the procurements conform to applicable Federal law and standards.

The Executive Director, whenever and wherever practical and prudent, will designate staff person(s) to be responsible for purchasing transactions and another staff person(s) to be responsible for inventory records and disposition of property. The Executive Director will ensure that systems and procedures within the organization will be sufficient to establish a system of checks and balances in regard to procurement and property management.

All WIOA procurements must be necessary and reasonable in the operation of WIOA programs and conform to the following:

- Consistency with uniform guidance and established policies and procedures;

- Similar costs must be considered either direct or in-direct costs;
- Costs must be determined with generally accepted accounting principles;
- Costs must not be used as cost sharing or matching requirements; and
- Documentation concerning all procurements must be maintained in an auditable condition.

All procurement contracts between local boards and units of government must be conducted on a cost-reimbursement basis. The WDB will use federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs. If a fixed amount award with a governmental or nonprofit agency results in revenues in excess of actual costs incurred, the excess revenues will be considered program income. Any fixed amount awards will reference this requirement.

Funds used for procurements that are determined to be unallowable will be returned to the federal government per Uniform Guidance Section 200.345. Questioned costs as defined by DOL Exceptions Section 2900.3 could result from the following:

- Procurements that violate statute, regulations, or terms and conditions of award;
- Procurements without support documentation; or
- Procurements with unreasonable costs.

Cooperative Procurement

The WDB's procurement procedures will avoid acquisition of unnecessary or duplicative items and promote cost-effective use of shared services by entering into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services as encouraged in 20 CFR Section 200.318(e). In lieu of preparing and issuing procurement instruments, the WDB may, where and when appropriate, engage in Non-Competitive Negotiations with entities that have been procured through an open and free competition with the County of Solano and/or other similar agencies to the WDB. Use of a cooperative or "piggyback" procurement must be consistent with the original solicitation and contract parameters, restrictions, and requirements must remain substantially the same as the existing piggybacked contract.

Competitive bidding is not required by the WDB and Solano County Code for the following purchases when the following types of personal property or service are being acquired, obtained, rented, or leased from:

- Any other governmental agency which has a contract with a vendor that allows such other governmental agency to acquire such property or services and re-sell them to other governmental agencies (i.e.: cooperative purchasing agreement, multiple award schedules, etc.), or
- Any private vendor which has a contract with another public agency and satisfactory documentation is produced to show that:
 - Such other contract is currently then in effect,
 - Such contract was let through a competitive pricing process, such as competitive written bids, request for proposals, or quotes for such items,

- Such items to be acquired by the County of Solano are of comparable description and quality as the items described in such other governmental contract, and
- The price of such items to be acquired by the County of Solano is not greater than that specified in such other governmental contract.

Code of Conduct and Conflict of Interest

The procurement system of the WDB is designed to avoid all organizational conflicts of interest and appearances of conflict of interest. WDB staff and Board of Directors will conduct themselves in such a way to ensure that no relationship exists whereby Directors, officers, or staff would be in a position to influence the awarding of contracts.

The WDB's Conflict of Interest Policy provides standards of conduct covering conflicts of interest and governing the actions of its employees and representatives engaged in the selection, award, and administration of contracts. Conflicts of interest must be disclosed in writing when known in advance or announced to the voting body. The party must excuse themselves from any further discussion and/or vote on the matter in question. Further information can be found in WDB's Conflict of Interest Policy.

The receipt of gratuities, favors, and anything of monetary value from a contractor or potential contractor is strictly prohibited for the Board Directors and all WDB staff.

Contractors that develop or draft specifications, requirements, statements of work, and information for bids or requests for proposals will be excluded from competing for such procurements to avoid conflict of interest.

Required Contract Clauses

Each agreement funded by federal funds must contain the following contract clauses referred to in Uniform Guidance Sections 200.318-200.326, as appropriate:

- Administrative, contractual, or legal remedies where contractors violate or breach contract terms for all contracts in excess of the Simplified Acquisition Threshold. 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 for contracts in excess of \$10,000.
- Compliance with Equal Employment Opportunity provisions identified in 41 CFR Part 60.
- Compliance with the *Davis-Bacon Act* (40 U.S.C. 3141-3144 and 40 U.S.C. 3141-3148) for prime construction contracts in excess of \$2,000.
- Compliance with the *Contract Work Hours and Safety Standards Act* (40 U.S.C. 3701-3708) for contracts in excess of \$100,000 that involve the employment of mechanics or laborers.

- Compliance with *Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants* (37 CFR Part 401) for any small business or nonprofit organization.
- Compliance with the *Clean Air Act* (42 U.S.C. 7401-7671q.) and the *Federal Water Pollution Control Act* (33 U.S.C. 1251-1387) for any contract in excess of \$150,000.
- A provision requiring that contracts should be issued for any entity listed on the Excluded Parties List System in the System for Award Management (SAM).
- Compliance with the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) for contractors bidding over \$100,000
- Compliance with Section 6002 of the *Solid Waste Disposal Act* and 40 CFR Part 247 for items in excess of \$10,000.
- A provision that anyone who provides WIOA services must abide by the WIOA equal opportunity and nondiscrimination provisions of Section 188 and 29 CFR Part 38 for all applicable agreements, regardless of the procurement method.

Minority, Women-Owned and Local Businesses

It is the policy of the WDB to aid and encourage the growth and success of minority and women-owned businesses, particularly local ones. WIOA contractors are required to take affirmative steps to assure minority and women-owned businesses are used when possible. To assure that minority and women-owned businesses are considered for WDB procurement, a diligent effort must be made to contact and advise such businesses of WDB solicitations. Effort should be made to divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises.

Additional effort will be made to conduct outreach to local businesses and organizations in solicitation dissemination. However, the WDB may not use administratively-imposed geographical preferences in the evaluation of bids or proposals.

METHODS OF PROCUREMENT

The WDB uses Micro-Purchases, Small Purchases, Sealed Bids, Competitive Proposals, and Non-Competitive Negotiation to procure goods and services. For each method of procurement, the WDB will have written procedures for procurement transactions that ensure all solicitations or quotes incorporate a clear and accurate description of the technical requirements for the material, product or service to be procured, as well as all requirements which the potential vendors must fulfill to be considered. Such descriptions must not, in competitive procurements, contain features which unduly restrict competition.

All contractors are required to assure the administrative capacity to meet Federal, State, and Service Area requirements.

An overview of procurement method, cost limits, and minimum bids/quotes needed can be found in the following table:

Procurement Method	Cost Limits	Minimum Bids/Quotes Needed
Micro Purchases	Less than \$3,500	One quote at a reasonable cost
Small Purchases	\$3,500-\$150,000	Two quotes; written, verbal or from a catalog
Sealed Bids	No limits	Three written bids in response to an IFB
Competitive Proposals	No limits	Three written competitive proposals in response to an RFP
Noncompetitive Proposals	No limits	All bids and quotes obtained

The County of Solano Purchasing Department is considered a central government purchasing agency which meets the requirements of WIOA regulations for competitive purchasing.

Micro Purchases

The micro purchase procurement method is used when the per transaction value of a purchase is less than the micro-purchase threshold (currently \$3,500 per Federal Acquisition Regulation [FAR] 48 CFR Subpart 2.1 and based on inflation). Micro purchases may be made without soliciting competitive quotations if the price is reasonable. To the extent possible, micro-purchases must be distributed equitably among qualified suppliers. Micro-purchases do not require written prior of purchase approval, but they must be documented.

Small Purchases

The small purchases may be used for negotiations when the per transaction value of supplies, equipment, or services is less than the Simplified Acquisition Threshold (currently \$150,000 per FAR Subpart 2.1 and subject to inflation). The main factor for determining awards is price as determined by a price analysis, but availability, delivery time, current stock, location, and other factors can be taken into consideration. All purchases must be reasonable, necessary, and allowable under the grant rules, and have proper documentation of purpose and approval.

Small purchases require a minimum of two documented quotes and may be procured formally or informally depending on the complexity of the purchase. Informal quotes may be obtained from catalogs, price lists, prior receipts, or from a contractor in writing or via verbal quotes. Price determinants should not be more than one year old. Formal quotes must be solicited through a Request for Quote (RFQ).. Processes for determining informal or formal small purchase procurements must be outlined in procedural documents.

All bids and quotes received must be documented. Proper documentation is outlined in procurement procedures. Single transactions may not be broken down into several small purchases in order to use small purchase procedures.

Sealed Bids

Sealed bids are used when the per transaction value of the good or service is more than the Simplified Acquisition Threshold (currently \$150,000 per FAR Subpart 2.1 and subject to inflation), and when the nature can be precisely defined. An Invitation For Bid (IFB) will be used for all sealed bids. The IFB is usually limited to instances where the recognized body of knowledge and experience of the WDB makes it possible to state exactly what is wanted, and complete and realistic specifications or purchase description can be detailed. Examples of services which may be acquired by an IFB include, but are not necessarily limited to audit services, office renovation and other construction services, and trade or craft services.

A diligent effort must be made to secure at least three competitive bids. Federal and California requirements call for awarding a contract resulting from an IFB to the responsible bidder offering the lowest price. The contract award must be made without benefit of discussion or negotiation. Details on IFB preparation, dissemination, and award determination must be detailed in procedural documents.

Competitive Proposals

Competitive Proposals are used when the per transaction value of the good or service is more than the Simplified Acquisition Threshold (currently \$150,000 per FAR Subpart 2.1 and subject to inflation), and when factors other than price are important in the selection decision, or whenever the nature of the goods or services to be acquired cannot be defined precisely. Contracts relating to delivery of participant services over the Simplified Acquisition Threshold must be selected via the competitive proposal method.

Under the Competitive Proposal method, a Request for Proposal (RFP) must be used and be publicly solicited to an adequate number of known suppliers. A RFP must be issued that defines quantity, product requirements, specifications, solicitation timeframes, and the evaluation factors used along with their quantitative importance. Contractors must submit a proposal based on the requirements of the RFP to a specified location by a specified date and time to be evaluated. A minimum of three proposals must be obtained; if less than three proposals are received, the WDB will explain the limited participation. RFPs will be evaluated by a review committee and all documentation must be carefully maintained. A public notice of intent to award should be issued followed by the award and execution of the contract. Details on RFP preparation, dissemination, and award determination must be detailed in procedural documents.

A minimum of three proposals should be obtained; if less than three proposals are received, the WDB must explain the limited participation. RFPs will be evaluated by a review committee and all documentation must be carefully maintained. A public notice of intent to award should be issued followed by the award and execution of the contract. Details on RFP preparation, dissemination, and award determination must be detailed in procedural documents.

Non-Competitive Procurement (Sole Source)

The WDB's policies and procedures regarding sole source procurement are designed to narrow the scope of sole source selection, entail documented review of each instance of sole source purchase to determine that the particular case falls within allowable circumstances, elevate the decision above standard processing, and require approvals by the Fiscal Manager and Executive Director.

Noncompetitive proposals may only be used under certain limited conditions. All sole source procurement must be infeasible under the other defined procurement methods and meet at least one of the following conditions per Uniform Guidance Section 200.320(f):

- **Uniqueness:** The type of service or product is available from only one source or the type of service or product is not readily available from other dealers within the general geographical area;
- **Timing:** Emergency creates an immediate procurement need that doesn't allow sufficient time to use other procurement methods;
- **Prior Authorization:** The federal awarding agency or pass-through entity authorizes the specific noncompetitive procurement upon a formal request for approval;
- **Failed competition:** A competitive procurement solicitation has failed to secure a minimum of two responsive offers; or
- **Cooperative Procurement:** The WDB is authorized, by the awarding agency, to utilize noncompetitive procurements consistent with the State's normal sole source approval process.

All non-competitive negotiations (sole source procurement) must be recorded and accompanied by written documentation, justification, and appropriate approvals. Further details on sole source determination, processes, and award determination must be detailed in procedural documents.

Any procurement of equipment and related services using WIOA funds valued over \$5,000 must receive written approval from California Employment Development Department (EDD) before purchase of the good or service. This includes:

- Procurements with a per-unit cost that exceeds \$5,000,
- Related procurements with a cumulative cost of \$5,000 within the same fiscal year, and
- Procurements resulting in improvements to land, buildings, or equipment exceeding \$5,000.

Procurement requests should be submitted no less than 30 calendar days before the requested procurement action is scheduled to occur. Details of approval request are outlined in the procurement procedures.

DISCLAIMER

This policy is based on WDB's interpretation of the statute, along with the Workforce Innovation and Opportunity Act; Final Rule released by the U.S. Department of Labor

and federal and state policies relating to WIOA implementation. This policy will be reviewed and updated based on any additional federal or state guidance.

REFERENCES

Law

- [Workforce Innovation and Opportunity Act of 2014 \(WIOA\)](#)

Federal Guidance

- Department of Labor [Final Rule](#) – Section 683.200

Title 2 Code of Federal Regulations (CFR) – [Part 200—Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards](#)

State Guidance

- California State Contracting Manual, Subject: Chapter 5 – Competitive Bidding Methods
- California Workforce Service Directive (WSD) 17-08 – Procurement of Equipment and Related Services
- WSD 16-16 – Allowable Costs and Prior Written Approval

Local Guidance

- [Solano County Purchasing and Contracting Policy \(2011\)](#)

Approved by

Workforce Development Board of Solano County

Definition of Key Terms

Cost Analysis as defined EDD Procurement Directive is an element-by-element review and evaluation of the estimated or actual cost to determine the probable cost to the contractor. This is a more detailed and costly method than price analysis in terms of both time and manpower.

Equipment as defined by Uniform Guidance Section 200.33 is considered tangible personal property (including information technology systems) having a useful life of more than one year and a per unit acquisition cost of which equals or exceeds the lesser of the capitalization level established by the non-federal entity for financial statement purposes, or \$5,000.

Information Technology Systems as defined by Uniform Guidance Section 200.58 for the purposes of equipment include computing devices, ancillary equipment, software, firmware, and similar procedures, services (including support services), licensing or subscriptions to software and software support services, and related resources.

Price Analysis as defined by EDD Procurement Directive 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 as defined by EDD Procurement Directive includes 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.

Questioned Costs as defined by Uniform Guidance Section 2900.3 are any cost or procurement that is questioned by an auditor, pass-through entity or awarding agency representative. Purchases can be questioned due to possible violations of statutes and regulations, inadequate documentation or possible unreasonable cost.

Supplies as defined by Uniform Guidance Section 200.94 include all tangible personal property other than equipment.

Per Transaction as defined by EDD Procurement Directive is a single solicitation for a single item (e.g. Copy machine), group of related items (e.g. office furniture), or a specified service (e.g. staff training).