

# Mendocino County Workforce Investment Board

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## PROCUREMENT

### POLICY NO. 15

#### **Purpose:**

To provide guidance to the Mendocino County Workforce Investment Board (WIB), its One-Stop Operator and subrecipients regarding State of California and federal regulations which govern the procurement of goods and services with Workforce Investment Act (WIA) funds.

The aim of this procurement policy is to incorporate and comply with State of California and federal procurement regulations and policies, specifically Title 20 Code of Federal Regulations (CFR), Section 667.200, Title 29 CFR, Section 97.36, and Title 29 CFR, Sections 95.40 through 95.48.

The guiding principle for all procurement actions is to purchase necessary, high-quality goods and services for the best possible price, and to ensure free and open competition among suppliers.

#### **General Requirements:**

The WIB, as an agent of the Mendocino County Board of Supervisors, shall adhere to Mendocino County Policy No. 1, *Purchasing, Leasing & Contracting Policies and Procedures*, provided those policies and procedures do not negate the requirements of applicable state or federal regulations.

Each WIB subrecipient is responsible for complying with all applicable state and federal requirements and must have written procedures that include, but are not limited to, the following:

- A code of conduct for employees conducting procurements, including criteria regarding conflict of interest;
- Selection procedures for procurement transactions;
- A list of the types of procurement including when and how to use them;
- Requirement for a price or cost analysis; and
- Limited conditions under which a sole source procurement may occur.

When considering the relative merits of leasing and purchasing, the most economical and practical method should be utilized. When obtaining goods and services through a lease, the total value of all future lease payments for the

entire term of the lease constitutes the dollar value of the procurement. This does not apply to facility leases, which may utilize an annual average.

WIB and subgrantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

The WIB and subrecipients will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

**Definitions:**

**Small purchase** means the acquisition of goods or services that do not cost more than fifty thousand dollars (\$50,000) in the aggregate.

**Single transaction** – for the purposes of determining the appropriate procurement method, a single transaction is defined as a discreet purchase of the same specific type of good or service. For example, the purchase of ten identical computers at the same time would be a single transaction, whereas the purchase of ten difference computers at the same time would be ten single transactions.

**Employee Code of Conduct/Conflict of Interest:**

No member, employee, officer, or agent of the Mendocino County Workforce Investment Board shall participate in the award or administration of a contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when the member, employee, officer or 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 these, has a financial or other interest in the firm selected for award.

A WIB member shall not cast a vote on, nor participate in any decision-making capacity on the provision of services by such member (or any organization that member represents), nor on any matter which would provide any direct financial benefit to that member.

WIB members and its employees or agents will neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subcontracts. Unsolicited gifts of nominal intrinsic value are not considered in violation of this prohibition.

**Selection Procedures for Procurement Transactions:**

If the unit cost exceeds five thousand dollars (\$5,000), the bidding should not be limited directly or indirectly to any specific brand, product, or service, unless

specifically justified by unique performance factors, specific required factors, or reasons why some brands have specifically been excluded.

All requests for reimbursement for property that has a unit cost of five thousand dollars (\$5,000) or more must include a copy of the vendor's invoice showing the date of acquisition, a description of the item, manufacturer's name, model and serial number, and acquisition cost.

**Types of Procurement and Uses for Each:**

Every purchase utilizing WIA funds must follow one of the following procurement methods:

- 1. Small Purchase:** Small purchase procurement shall be conducted for goods or services under fifty thousand dollars (\$50,000) in a single transaction that is easily quantifiable and where price is the primary consideration. Single transactions shall not be broken down into several smaller purchases for the purpose of utilizing the small purchase method. If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.

If the nature of the purchase is more complex and factors other than price are most important in the selection process, the Competitive Proposal method should be utilized even if the purchase price is less than fifty thousand dollars (\$50,000).

For small purchases up to \$999, one quote or price must be obtained. For small purchases from \$1,000 to \$9,999, two documented quotes are required. Between \$10,000 and \$50,000, three written quotes are necessary. For goods and services costing over \$50,000, sealed bids or formal advertising are required.

Documentation for the small purchase may be the sales receipt, current catalogs with price lists, or formal quotes depending on the amount of the purchase. No further documentation is required for a small purchase.

- 2. Sealed bids (formal advertising):** Bids will be publicly solicited and a firm-fixed-price contract (lump sum or unit price) will be awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the Invitation for Bid (IFB), is the lowest in price. WIB will publicly advertise the solicitation and will notify all bidders of the dispute resolution process. When using this method, there must be at least two responsible bidders who are willing and able to compete effectively for the business. All bids received will be opened publicly at the time and place stated in the solicitation and will be examined for

the lowest price and conformity with the specifications of the IFB. Contracts will be awarded to the responsible bidder offering the lowest price. WIB reserves the right to reject any and all bids when the bid is not responsive and will state this in the solicitation. The specific reasons for a bid rejection will be fully described and documented in the procurement file.

Documentation for the award of sealed bids shall include the reason for selecting this method of procurement, the request for bid, the bids received, the reason for the selection and the award document.

- 3. Competitive Proposals:** WIB will use this method of procurement when the nature of goods or services to be acquired cannot be defined as precisely as required by the sealed bid method; and specifically, when factors other than price are important in the selection decision. Any Requests for Proposal (RFP) will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical. WIB will indicate in the publicized RFP the scope of work and area to be serviced, the method for scoring proposals, and the deadline for receipt and the dispute resolution process. WIB reserves the right to reject any and all proposals. This right will be stated in the publicized RFP and specific reasons for any rejection will be documented in the procurement file. WIB will maintain a receipt register documenting dates and times proposals are received. WIB will conduct a cost or a price reasonableness analysis of all proposals received.

Documentation for this type of procurement shall include the reason for selecting this method, the solicitation, the register of proposals received, the scoring criteria and the scores assigned, the reason for the selection and the award document.

- 4. Sole Source:** WIB and its subrecipients will use this form of procurement when attempts at securing a minimum of two responsive offers have failed. WIB will limit the sole source method of procurement to those occasions when the service or item is only available from one source, the urgency of need of the service or item is essential, there is insufficient time to use other methods of procurement, or approval to contract with one source has been obtained from the appropriate state or federal agency. WIB will negotiate, and document this negotiation, on technical and cost aspects of the agreement. This written record will demonstrate that the objectives of least cost, fairness, impartiality, and independence have been appropriately safeguarded in the absence of competition.

Documentation for the use of sole source procurement shall include the reason for selecting this method, the justification for the selection and the award document.

**Requirements for a Price or Cost Analysis:**

WIB and its subrecipients will perform a cost or price analysis in connection with every procurement action, including contract modifications. 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.

**Methods of Awards:**

Awards shall be made to the bidder or offeror whose bid or offer is responsive to the particular type of solicitation and is most advantageous to the WIB or subrecipient, price, quality and other factors considered. Any and all bids or offers may be rejected when it is in the WIB's or subrecipient's interest to do so.

**Appeals/Dispute Resolution Process:**

Each respondent to a Request for Proposal or Invitation to Bid issued by the WIB shall have an opportunity to appeal the funding decision or award of bid by the WIB. All respondents will receive a written or faxed notice from the WIB announcing the funding decision or award of bid.

Should the respondent wish to appeal the funding decision or award of bid, the respondent must provide written notice within five (5) working days to the Coordinator of the WIB requesting an appeal based on one or more of the four (4) criteria for appeal noted below. The appeal must specifically detail the nature of the violation and provide clear and substantive evidence supporting the appeal.

Criteria upon which an appeal may be based:

1. Clear and substantial error or misstated facts relied upon by the WIB in making a funding decision or award of bid;
2. Unfair competition in the decision making process;
3. Any illegal or improper act or violation of law; and
4. Other legal basis that may substantially alter the WIB's decision.

In order for an appeal to be considered, the appeal must contain the full name, address, and telephone number of the appealing party, a full and complete statement of the reasons for the appeal, including the issue(s) in dispute and the legal authority or other basis for the appellant's position, and a statement of relief sought. An appellant must make the appeal as specific as possible and must fully identify the procedural issue being contested.

Once the coordinator of the WIB has received the appeal, the following process shall be followed:

1. The coordinator of the WIB will meet with the appellant to discuss the nature and content of the appeal;
2. If a satisfactory resolution cannot be reached, representatives of the WIB's Executive Committee and the appealing party shall meet and attempt to resolve the dispute; and
3. If the appealing party concludes that an agreement cannot be reached, any and all unresolved issues shall be submitted to the full WIB Executive Committee for final resolution and presentation to the full WIB. The decision of the full WIB is final. If it is alleged that a violation of the law has occurred, the matter will be resolved in accordance with 20 CFR 627.500(c).

Proposals disqualified for not meeting the deadline for submission and final decisions based on the above process are not eligible for appeal. Ratings and scoring by an evaluation panel are not subject to appeal.

**Record Retention:**

WIB and its subrecipients will maintain records sufficient to detail the significant history of a procurement and will retain all books, records, documents, and papers relating to any specific contract for a period of three years after final payment has been made and all other pending matters have been closed.

Adopted by Oversight Committee: April 26, 2002

Adopted by Workforce Investment Board: May 8, 2002

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