
**Workforce Investment Act
State Compliance Policies**

Section: 3.9

Procurement

November 2009

I. General:

- A. Procurement is the process, which leads to any award of Workforce Investment Act (WIA) funds. Procurement actions by Local Workforce Investment Boards (LWIBs) and their subrecipients are governed by 29 CFR 95.48, 29 CFR 97.36, One-Stop Comprehensive Financial Management Technical Assistance Guide (July 2002), Nevada Revised Statutes (NRS) Title 27, Chapters 332 and 333 Nevada Administrative Code 333.150, and State Administrative Manual (SAM) – Chapter 1500 Purchasing. The requirements of WIA law and regulation prevail over the requirements of NRS Title 27 and Chapters 332 and 333 (20 CFR Part 652 §667.200).
- B. Procurement records must be maintained in sufficient detail so as to provide a significant history of the procurement action. These records must include, but are not limited to, the following: rationale for the method of procurement, the selection of agreement type, awardee selection or rejections, and the basis for the agreement type.
- C. LWIBs and their grantees must maintain a contract administration system, which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. All contracts must include provisions required by 29 CFR 97.36(I) and 95.48. Each recipient and sub recipient must conduct and document oversight to ensure compliance with procurement standards.

II. Conflict of Interest:

- A. A member of the State Workforce Investment Board (SWIB), LWIB or employees thereof, or youth council must neither cast a vote on, nor participate in, any decision-making capacity on the provision of services by such member (or any organization which that member directly represents), nor on any matter which would provide any direct financial benefit to that member or a member of his immediate family [20 CFR Part 652 §667.200(a)(4)(i) and 667.200 (a)(4)(ii), Section 117(g)].

Note: Neither membership on the SWIB, the LWIBs, or the youth council, nor the receipt of WIA funds to provide training and related services, by itself, violates these conflict of interest provisions [20 CFR Part 652 §667.200(a)(4)(i)].
- B. A public officer or employee cannot participate as an agent of government in the negotiation or execution of a contract between the government and any private business in which he has a significant pecuniary interest [NRS 281.481(3), and WIA Section 117(g)(2)].
- C. Subgrantees must maintain a written code or written standards of conduct which will govern the performance of its officers, employees, or agents in contracting with or procuring supplies, equipment, construction, or services with WIA funds. These standards must provide that no officer, employee, or agent (including LWIB/Council members) will [29 CFR 97.36(b)(3)]:

1. Solicit or accept gratuities, favors, or anything of monetary value from suppliers or potential suppliers, including subcontractors' contracts; or
 2. Participate in the selection, award, or administration of a procurement supported by WIA funds where, to the individual's knowledge, any of the following has a financial or other interest in any organization which may be considered for award were:
 - a. The officer, employer, or agent;
 - b. Any member of his or her immediate family;
 - c. His or her business partner; or
 - d. A person or organization, which employs, or is about to employ, any of the above, has a financial, or other interest in the firm or organization selected for award.
- D. To the extent permitted by state and local law or regulations, subgrantees standards must provide for penalties, sanctions, or other disciplinary actions (such as suspension, termination, or civil action to recover money damages) to be applied for contract related violations of law or established standards of conduct by LWIB/Council officers, employees or agents, or by contractors or their agents [29 CFR 97.36(b)(3)(iv)].

III. Procurement Systems and Policies/Procedures:

The LWIB/Council and their subrecipients must use procurement systems and policies/procedures, which reflect applicable Federal and State laws, rules, and regulations to the extent that systems and policies/procedures do not conflict with NRS, the WIA regulations, or this policy.

A. Written Policies/Procedures

LWIB/Council and subrecipients must have written policies/procedures for procurement transactions that ensure that all solicitations incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured including quantities, and identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals. The policies/procedures must include the following [29 CFR 97.36(c)(3) and 95.44]:

1. Identify who is authorized to issue solicitations, and who is an authorized signatory for what types of goods/services and in what dollar amounts.
2. Specify and describe the alternative forms of procurement that are allowable and the appropriate conditions for use of each. Policies/procedures must be developed to identify the specific circumstances under which a noncompetitive procurement method can be used, and a description of the elements and policies/procedures that will comprise a competitive procurement process.
3. Specify how the procurement history will be recorded and, at a minimum, the record must contain the rationale for the method of procurement, the selection of the agreement type, awardee selection or rejection, and the basis for the agreement price.
4. Include a resolution process to resolve disputes relating to procurement.
5. Include methods for recording receipt of bids and for dealing with late or nonresponsive bids.

- B. All written policies/procedures for procurement activities must be made available to the public.

IV. **Methods of Procurement:**

These methods apply to all procurement by the LWIB/Council and their subrecipients. This procurement includes, but is not limited to, the acquisition of administrative or program equipment, supplies, and professional services (e.g., individual legal, accounting, and personnel services contracts). Procurement must be documented in accordance with the state grantee and subrecipient written policies/procedures and all procurements must be documented as required in paragraph I. B. of this policy.

- A. **Small Purchases:** This is a relatively informal method used primarily to procure goods, services, supplies, equipment, or other property that do not cost more than \$100,000 in the aggregate” [29 CFR 97.36(d)].

1. For small purchases, the low-end threshold for the purchase of consumable supplies or materials without a formal award process or documentation is \$5,000. Amounts over \$5,000 will require a minimum of three bids.
2. One purchase cannot be split into several purchases in order to use small purchase policies/procedures instead of other procurement policies/ procedures.
3. These policies/procedures can be used where the “per transaction” value of the procurement is \$100,000 or less. “Per transaction” is a single solicitation for a single item (e.g., copying machine), group of related items (e.g., chairs), or a specified service (e.g., staff or participant training). The method can be used to secure supportive services such as day care. This method is generally used for purchases from vendors, but can be used in subrecipient purchases.
4. For all small purchases exceeding \$5,000, a Request For Quote must be prepared specifying the quantity, time frames, and all the requirements of the product or service. The identification of sources and solicitation of quotes must be supported by documentation.
5. For commodity goods/services, the basis for selection is normally the lowest bid. However, qualifications of the vendor, availability of the goods or services, quality, and location are some additional factors that could influence the procurement. The document must contain the basis for vendor selection and if the basis is something other than price, the state grantee or subrecipient must prepare written documentation in the procurement file describing 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.

- B. **Sealed Bids - formally advertised:** Under sealed bid procedures, bids are publicly solicited from at least three known suppliers, and the procurement is awarded to the lowest bidder, resulting in a firm-fixed-price (lump sum or unit price) contract. In order for this process to be feasible, three conditions must be met: 1) complete and realistic specification of required goods and services is available and part of solicitation; 2) there are at least two responsible bidders; and 3) the procurement may be made principally on the basis of price. A firm fixed-price contract may be awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is the lowest in price [29 CFR 97.36(d)(2)]. Any or all bids may be rejected if there is a documented reason.

1. This method is generally used for purchases from vendors for commodity-type goods/services, which are widely available in the market place; e.g. computer

equipment, furniture, vehicles.

2. As required under Section IV C-2 of this policy, all solicitations including sealed bids must incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured including quantities; identify all requirements which the offerors must fulfill; and all other factors to be used in evaluating bids or proposals. The selected bidder will generally be the bidder with the lowest price, if all the technical requirements of the solicitation are met. All bids must be publicly opened at the time and place prescribed in the invitation for bids [29 CFR 97.36(d)(2)(I)(C)].
3. Documentation must include, at a minimum:
 - a. A copy of the formally advertised invitation for bid;
 - b. The vendors receiving invitation for bids by request and through a qualified bidders' list;
 - c. The publication notice(s);
 - d. All bids received; and
 - e. A statement in the file detailing the reasons for rejecting the lowest bid.

C. **Competitive Proposals**: Competitive proposals are used when there is more than one prospective bidder, the lowest price is not necessarily the determining factor for award, and either a fixed-price or cost reimbursement agreement will be awarded. The competitive proposal method also meets the standards for “full and open competition” and is appropriate when the agency seeking goods or services is looking for a variety of methods that may be employed to achieve the results called for in the Request For Proposal (RFP). Often the evaluation factors will focus on approach, program design, innovation, coordination, and experience [29 CFR 97.36(d)(3) and 95.43].

1. This method is generally used when the nature of the goods/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. The most common instrument for procuring these types of services is the RFP.
2. For each RFP, the local workforce investment board shall publish:
 - a. The name and location of the entity requesting proposals;
 - b. Where and how the RFP specifications can be obtained;
 - c. The date and time not later than which responses must be received by the requesting entity; and
 - d. The date and time that the responses will be opened.
3. A local workforce investment board shall give reasonable notice of all RFP's for the proposed purchases of goods and services when utilizing Workforce Investment Act Title I funds.
4. Local workforce investment boards shall, without limitation:
 - a. Publish the RFP notice in at least one newspaper of general circulation in the respective local workforce investment area;
 - b. Post the RFP notice on their respective Web site;
 - c. Send notification of the RFP to an established list of interested parties; and
 - d. Ensure that copies of the complete RFP package are available to the public at the respective local workforce investment board office.

5. Local workforce investment boards may also provide notice of the RFP to local and/or state purchasing entities, as appropriate.
6. The RFP must contain the specifications that provide a clear, accurate, and common description of the technical requirements for the material, product, goods, or service to be procured, and all requirements must be identified which the offerors must fulfill as well as all other factors and their relative weight or importance to be used in evaluating the bids or proposals. At a minimum, the RFP file must contain:
 - a. A copy of the solicitation package;
 - b. A copy of the public notification;
 - c. A bidders' list to which notices were mailed;
 - d. A list of all organizations/entities that received the RFP;
 - e. An agenda and minutes of a bidders' conference, if held;
 - f. Written responses to all clarifying questions received outside of the bidders' conference;
 - g. A copy of each proposal received;
 - h. A determination of demonstrated performance;
 - i. Rating and scoring sheets completed in the evaluation process;
 - j. Written documentation that clarifies instances when an evaluation team member's score(s) varies significantly from those received from other team members.
 - k. Documentation of the rationale for selection and funding of any offeror, which did not receive the highest score/ranking in the evaluation process;
 - l. Documentation regarding negotiation for each contract;
 - m. A completed price analysis for each selected bidder, and a cost analysis when required; and
 - n. A copy of any submitted grievances and the resolution of each.

D. Noncompetitive Procurement (Sole Source): This method is the solicitation of a proposal from a single source, or, after solicitation of a number (more than one) of sources, competition is determined inadequate to fulfill the requirements of the funding agency [29 CFR 97.36(d)(4)].

1. Recipients and subrecipients must minimize the use of sole source procurement to the extent practicable, but in every case, the use of sole source procurement must be justified and documented.
2. Such procurement may only be used when the award of a contract is infeasible under small purchase policies/procedures, sealed bid, or competitive proposals with the exception of on-the-job training and customized training and if one of the following circumstances applies:
 - a. The item or service is available only from a single source;
 - b. The public exigency or emergency need for the item or service does not permit a delay resulting from competitive solicitation; or
 - c. After solicitation of a number of sources, competition is determined inadequate.
3. The file documentation for this method must include:
 - a. A description of the specific circumstances supporting the sole source procurement and the results of any negotiations with the subrecipient/vendor;
 - b. The cost analysis or other means of verifying the reasonableness of the

price;

- c. A determination of demonstrated effectiveness of a provider or vendor who provides educational, training, employment or supportive services to participants.

E. Commercially Available or Off-the-Shelf Training: Defined as a training package sold or traded to the general public in the course of normal business operations, at prices based on established catalog or market prices.

1. To be considered as sold to the general public, the package must be regularly sold in sufficient quantities to constitute a real commercial market that must include buyers other than WIA programs.
2. The package must include performance criteria pertaining to the delivery of the package, which may include participant attainment of knowledge, skills, or employment.
3. For the product to be unmodified, it must be sold to the general public in the same condition that it is sold to the state grantee or subrecipients. If the product is altered or customized in order to meet the specific training needs of WIA, it is not a commercially available or off-the-shelf product. The LWIB/Council and subrecipients may negotiate a price that is below the cost paid by the public and/or a different rate or method of payment may be accepted. This would be acceptable and the package would still be considered unmodified. However, the addition of training, services, or provider performance would be considered modifications.
4. A catalog price is one that is published in a catalog, price list, schedule, or other form regularly maintained by a supplier and is published or made available for inspection by buyers.

V. Transactions Between Units of Local Government:

Procurement transactions between units of state or local governments and other entities organized principally as the administrative entity for LWIBs or sub state areas must be conducted on a cost reimbursement basis. No provision for profit is allowed [20 CFR Part 652 §667.200(a)(3), Section 184 (a)(3)(b)].

VI. Price and/or Cost Price Analysis [29 CFR 97.36(f)]:

A. Introduction:

Procurement must include an appropriate analysis of the reasonableness of cost and price. A price and/or cost analysis must be performed in connection with every procurement action, including contract modifications with a monetary impact. The method and degree of analysis depends on the facts surrounding the particular procurement and pricing situation, but at a minimum, the awarding agency must make independent estimates before receiving bids or proposals.

B. Price Analysis is the process of examining and evaluating a price without looking at the estimated cost elements and proposed profit of the offeror whose price is being evaluated. The sole purpose of price analysis is to determine if the final price is fair and reasonable.

1. All recipients and subrecipients are required to perform a price analysis for every procurement, including contract modifications.

2. Recommended process for comparisons are:
 - a. Comparison of prices of competing offers and selecting best price;
 - b. Comparison of prior quotes and contracts for the same or similar requirements taking into account inflation;
 - c. Comparison of offers to parametric estimates or benchmarks, e.g., dollars per square foot or cost per instructional hour;
 - d. Comparison with competitive published price lists and published market price; and/or
 - e. Comparison of offers to an independent agency estimate.

Note: The lowest price is not necessarily the best price since factors other than the final price must be considered, e.g., demonstrated performance. LWIBs and their subrecipients must ensure that the offeror is capable of performing the work at the level of effort and with the quality required to satisfy the contract and that the proposal addressed all the questions in the RFP.

C. **Cost Analysis** is the review and evaluation, element by element, of the cost estimate supporting a proposal for the purpose of pricing a contract. Unlike price analysis, which is required for every procurement, cost analysis is required when price analysis alone is not sufficient to determine that a price is fair and reasonable for a product or service. It is usually required when price competition is weak or where there is only one offeror. For all non-competitive procurement actions, a cost analysis is required.

1. Prior to undertaking a cost analysis, a decision must be reached to determine if the scope of services required justifies a cost analysis. It may end up costing more time and money analyzing a contract than the contract is worth.
2. A cost analysis must be conducted when:
 - a. The offeror is required to submit the elements of the estimated cost;
 - b. When adequate price competition is lacking; and
 - c. For sole source procurement, including contract modification or change orders, unless price reasonableness can be established 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.
3. Cost analysis differs from price analysis in the level of review conducted. Cost analysis segregates the total price into various cost elements (line items in detailed budgets). These are then individually assessed.
4. Cost analysis process must include the following:
 - a. Verification of the cost or pricing data and evaluation of cost elements, including necessity and reasonableness;
 - b. Comparison of proposed costs for individual cost elements with actual costs previously incurred by the same offerors, previous cost estimates from the same or other offerors for the same or similar items, other cost estimates received in response to the request, and independent contracting agency cost estimates;
 - c. Verification that the offerors' cost submissions are in accordance with cost principles of allowability/allocability;
 - d. Determination that the cost or pricing data, which are necessary to make the proposal accurate, complete, and current, have been submitted;
 - e. Verification that any indirect costs are not duplicated by proposed

- direct charges and that rates have been appropriately approved. Where there is no approved rate, the offerors must submit a cost allocation plan identifying costs that will be designated as indirect and how they will be allocated to the contract; and
- f. Verification that if subcontractors are to be used, those services are clearly identified, described, and justified in the cost proposal.
5. Profit must be individually negotiated and included as a separate element of the contract.