



Procurement of Goods and Services

Department: Office of Economic & Workforce Development

Effective Date: July 1, 2007

Directive # 25-07

Supersedes:

PURPOSE

This policy provides guidance regarding the procurement of goods and services by entities receiving Workforce Investment Act (WIA) funds. These entities include but are not limited to One-Stop Operators, contractors and lower tier service providers

REFERENCES

- Title 20 Code of Federal Regulations (CFR) 663.410
- Title 20 CFR 667.200
- Title 29 CFR 93
- Title 29 CFR 95.40 through 48
- Title 29 CFR 97.36
- Title 29 CFR 98

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.

POLICY

The policy will be to use competitive selection in all procurement to ensure maximum open and free competition to the extent possible.

In conducting a 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. 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 \$50,000 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:

\$1,000 - \$24,999 - Requires, at a minimum, three (3) documented verbal quotations. Documentation must be written.

\$25,000 - \$50,000 - Requires, at a minimum, three (3) formal written quotations from vendors.

Other examples of acceptable documentation for small purchases of less than the amounts indicated above are sales receipts, or current catalogs with price lists.

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.
- b. Reasonable effort will be made to publicize the IFB to the widest practicable area of circulation.

3. Competitive Negotiation

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. 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 City and County of San Francisco. In making an award, price and other factors will be considered and documented. Unsuccessful offerors will be notified promptly.

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) The urgency for the requirement will not permit a delay related to the use of a competitive solicitation process, or
- 3) The State of California Employment Development Department authorizes a non-competitive procurement, or
- 4) Competition is determined to be inadequate, after solicitation of a number of sources.

II. CONTRACT PRICING:

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

Price Analysis

A price analysis will be used in all instances to determine the reasonableness of a proposed contract price, including contract modifications. A price analysis is the process of examining and evaluating a price without looking at the estimated cost elements and proposed profit. It is used when 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 regulations.

Cost Analysis

A cost analysis of the proposed contract or contract modification will be performed when the offeror is deemed a service provider, individual cost elements have been requested, procurement is made by sole source method, no catalog or market price is available. A cost analysis is the process that examines, element-by-element, costs and related information presented in the cost and pricing data submitted by offerors. The method and degree of cost analysis are dependent on the facts surrounding each procurement.

Costs or prices will be consistent with reasonable and allowable cost principles. The offeror will certify that to the best of its knowledge and belief, the cost data are accurate, complete, and current at the time of agreement on price. Contracts or modifications negotiated in reliance on data provided by the offeror may be adjusted if it is discovered data is not accurate, complete, or current.

Profit

The following factors will be consider 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.

III. GENERAL REQUIREMENTS:

At a minimum, procurement will:

A. Be conducted in a manner that provides full and open competition regardless of method or dollar amount. Where appropriate, an analysis will be made of lease/rental versus purchase alternatives, and any other appropriate analysis to determine which approach would be the most economical;

B. Minimize the use of sole source procurement;

C. Clearly set forth the requirements that bidders or offerors must meet and the factors to be used in evaluating bids or proposals;

D. Include a clear and accurate written description of the technical requirements for the material, product, or service to be procured, including the method of procurement, selection and basis for the type of contract, criteria for contractor selection or rejection, contractor selection and basis for payment. Competitive procurement will not contain features which unduly restrict or eliminate completion.

E. Contracts will be awarded to responsible bidders who possess the potential ability to perform successfully under the terms and conditions of the 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 contract award will also include the following provisions:

1. Clearly specify deliverables and basis for payment;
2. Compliance with all applicable regulations; and
3. Assurance of nondiscrimination and equal opportunity as found in 29 CFR 34.20 is required; duration of obligation; covenants.
4. Certifications, where applicable, regarding debarment, suspension, lobbying and drug free workplace.
5. The opportunity to protest the award.

F. Procurement transactions with any other governmental or nonprofit agency or organization will be conducted on a cost reimbursable basis.

G. To the extent possible, small firms, minority firms, and women-owned businesses will be included in bidders lists, and will be targeted for mailings and advertised procurement. These firms will be provided the maximum opportunity to compete in all procurement of goods and services.

H. WIA funds will not be used to duplicate facilities or services available in the area (with or without reimbursement) from Federal, State or local sources, unless it is demonstrated that additional capacity is needed or that alternative services or facilities would be more effective or more likely to achieve performance goals and mission.

IV. PROCUREMENT RECORDS:

A. Procurement records will be maintained sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to, the following:

1. rationale 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,

B. Records of solicitations shall include:

1. Copy of the solicitation package
2. Copy of the public notification
3. Bidders' List to which notices were mailed
4. List of all organizations/entities that received the RFP
5. Agenda and minutes of a bidders' conference, if held
6. Written responses to all clarifying questions received outside of the bidders' conference
7. Copy of each proposal received
8. Rating and scoring sheets completed in the evaluation process
9. Determination of demonstrated performance
10. Documentation of the rationale for selection and funding any offeror which did not receive the highest score/ranking in the evaluation process
11. Completed Memorandum of Negotiation for each contract
12. Completed cost or price analysis for each selected bidder
13. Copy of any submitted protests and the resolution of each.

DEFINITION OF TERMS

Procurement: For purposes 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 and closeout.

Request for Proposal (RFP): A document which invites offers from service providers for the delivery of a specific type of service. It includes a description of the product(s) or service(s) desired which enable a potential contractor to submit a proposal. The RFP will include information necessary for an objective evaluation and comparison to similar proposals. The RFP is the specific term applied to a solicitation where negotiation is used.

This method is the most commonly used form of solicitation when:

1. The nature of the service needed precludes developing a specification or purchase description so precise that all proposers would have an identical understanding or approach to the requirements; and
2. Cost is not the only factor considered in making an award.

Request for Quotation (RFQ): A document which is used to acquire the price(s) and pertinent information needed from a vendor/supplier. Since the quotation is not a formal offer, the awarding agency must reach a bilateral negotiated agreement before a binding contract exists. An RFQ differs from an RFP in that it simply asks for a price based on standard specifications that are generally known or apply industry wide.

It is appropriate to use an RFQ when:

1. A complete, adequate and realistic specification or purchase description is available; and
2. There are at least two responsible vendors who compete effectively for the award; and
3. The procurement lends itself to a firm fixed-price contract and selection of a contractor based wholly on price is appropriate and reflective of the nature of the products or service being purchased.

Responsible entity is one that has been determined to: (1) have adequate financial resources to perform the contract or the ability to obtain such resources; (2) be able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and business commitments; (3) have a satisfactory performance record; (4) have a satisfactory record of integrity and business ethics; (5) have the needed organization, experience, accounting, operational control and technical skills or ability to obtain them; (6) have adequate production, construction or technical equipment and needed facilities or the

ability to obtain them; and (7) be both qualified and eligible to receive the award under applicable law and regulation.”

Responsive proposal is the term used for a proposal or bid that meets all requirements of the solicitation adequately; and the submitted document does not constitute a substitute or counter offer. When a bidder substitutes a “like item,” the submittal is considered non-responsive when the like item fails to meet published specifications. The same principle holds when the proposal is a substitute or counter offer.

Solicitation: means an Invitation for Bid, Request for Proposal, or any other document, such as a Request for Quotation, issued by a purchasing agency for the purpose of soliciting offers to perform a contract.

INQUIRIES

Inquiries should be addressed to the OEWD Director of Operations at 415-701-4848 or workforce.development@sfgov.org.

OEWD and its service providers shall follow this policy. This policy will remain in effect from the date of issue until such time that a revision is required.