

## NORTH CENTRAL COUNTIES CONSORTIUM

**PROCUREMENT POLICY****I. Purpose**

This document establishes policies governing procurement transactions for the North Central Counties Consortium (NCCC), including One Stop operators and program operators (subrecipients).

**II. Background**

The Workforce Innovation and Opportunity Act (WIOA) Federal Regulations provide guidance for the administration of the WIOA program. The guidance includes specific direction and referral to Title 29 CFR Part 97 for states and local governments. Title 29 CFR Part 97.36 outlines the rules governing procurement of goods and services except when purchasing training services through the Employment Training Provider list (ETPL).

**III. References**

- WSD17-08, Subject: Procurement of Equipment and Related Services
- WSD16-16, Subject: Allowable Costs
- Title 20 CFR 667.200
- Title 29 CFR Part 97, Sections 97.32, 97.33, 97.36 and 97.42

**IV. General Provisions**

All procurement awards shall be conducted in accordance with the WIOA, Department of Labor regulations and State of California policies and directives. In the event either the Department of Labor or the State of California establishes standards which are more stringent than this policy, the more stringent requirements shall be controlling.

Records shall be maintained to detail the significant history of each procurement, including rationale for the method of procurement, selection of contract or agreement type, selection/rejection of proposals, basis for cost/price and noncompetitive procurement justification, if applicable.

**V. Policy**

NCCC will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration shall be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach. NCCC has established the following guidelines relative to procurement requirements:

## A. Cost/Price Analysis

An analysis of cost or price shall be performed for every procurement action, including modifications of monetary contract terms. Estimates shall be made by staff prior to receiving bids or proposals and shall be documented in the procurement file.

1. 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.
  - An analysis of cost shall be performed for all noncompetitive (sole source) awards to service providers and for all procurements which require submission of cost elements.
  - Program income and/or profit shall be analyzed and negotiated as a separate element for each procurement in which a cost analysis is performed.
2. 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.
  - An analysis of vendor price shall be performed by comparing proposed prices to catalog or market prices of comparable products sold to the general public, or based on prices set by law or regulation. Price analysis may also be performed for service providers by comparing the proposed price to pre-bid estimates.

## B. Methods of Solicitation

Each purchase utilizing WIOA funds must follow one of five procurement methods: (1) Micro Purchase, (2) Small Purchase, (3) Sealed Bids, (4) Competitive Proposals, or (5) Noncompetitive Proposals (sole source). Each procurement method must be documented.

### 1. Micro Purchase

When the “per transaction” value of a purchase is less than the micro-purchase threshold (currently \$10,000 per Federal Acquisition Regulations), and may be used without soliciting competitive quotations if the price is reasonable. To the extent practicable, micro-purchases must be distributed equitably among qualified suppliers. Micro-purchases are not required to receive written prior or purchase approval, but they must be documented.

### 2. Small Purchase Procedures

- a) Small purchase means the acquisition of goods or services that do not cost more than the Simplified Acquisition Threshold<sup>i</sup> (currently \$250,000 per Federal Acquisition Regulations) “per transaction” and the use of informal quotations may be used, in lieu of the more expensive and time-consuming sealed bid or competitive proposal

method. If the nature of the acquisition is more complex, the competitive proposal method should be utilized even if the purchase price is less than **\$250,000**.

Small purchase procurement is most commonly used for supplies, goods and basic services. The basis for selection in small purchase procurements is usually the lowest price (determined by performing a price analysis). However, other factors can be considered when making the procurement decision. Other criteria such as availability of the goods or services and location are some additional factors that could influence procurement selection.

- An example of the “availability” criteria would be: you need office supplies today and only one vendor has them in stock. Another “availability” example is: the new chairs must be delivered within 30 days and only one provider was able to meet this requirement. An example of the “location” criteria would be: you want to send a staff person to a first aid class and one class location is 50 miles closer than the other.

For small purchases, **two or more** documented quotes or prices must be obtained for purchases ranging from **\$10,000 to \$250,000**. Prices/quotations can be obtained from current catalogs, price lists, prior receipts, or contact (in person, telephone, fax or e-mail) with vendors.

b) Proper documentation for a small purchase includes:

- The reason for selecting the small purchase method.
- The subrecipient’s 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).

c) Single transactions shall not be broken down into several smaller purchases for the purpose of utilizing the small purchase procurement method

d) A “**Vendor List**”\* (see definition of vendor below) should be established utilizing hard copy catalogs and price lists updated at least annually, however real-time internet research is preferred. One technique that a buyer may use is called “historical pricing.” With historical pricing, a buyer is able to demonstrate that other transactions occurring in the past 12-month period shows that historical prices for similar acquisitions have yielded no material change in cost. A vendor list containing the names and addresses of organizations which are prequalified for the provision of

goods and/or services is required for the NCCC Administrative Office and subrecipients. Each entity shall maintain a vendor list.

Each entity shall update their vendor list at least annually and shall include but not be limited to those vendors in good standing whose goods/services have been purchased through the NCCC procurement process as outlined in this policy.

*\*Definition of a Vendor – A vendor is a dealer, distributor, merchant, or other seller providing goods or services that are required for the conduct of a federal program. The following activities are indicative of a vendor relationship with an organization:*

- *Provides the goods and services within normal business operations.*
- *Provides similar goods or services to many different purchasers.*
- *Operates in a competitive environment.*
- *Provides goods or services that are ancillary to the operation of the federal program.*
- *Is not subject to the federal compliance requirements of the program.*

### 3. Sealed Bids

a) When the nature of the good or service to be purchased will be more than **\$250,000**, and can be precisely defined. The sealed bid procurement is generally used. The sealed bid process begins with issuance of an Invitation for Bid (IFB). The IFB will be publicly solicited or advertised through newspapers, local advertising and trade papers. The IFB defines the quantity, timeframes, and product requirements. Vendors are notified of the purchase requirements and submit a sealed bid to a specified location by a specified date and time. The bids are then opened at a specific date and time. A diligent effort should be made to secure at least three competitive bids. The responsible bidder (a bidder that can meet the technical requirements of the procurements), that submits the lowest bid is usually awarded the contract. Any bidder that falls outside of the parameters will normally have their bid rejected. Award of a firm fixed price or fixed unit price contract by written notice is sent to the lowest responsible bidder. If only one bid is obtained and that bidder is deemed to be responsible, then the noncompetitive or sole source process may be used.

b) Proper documentation for a sealed bid purchase includes:

- The reason for selecting the sealed bid method.
- The subrecipient's estimate of the potential purchase price.
- A copy of the IFB.
- Bids received.
- Determination of the responsibility of the bidder.
- Why the provider was selected.
- Copy of the award document.

c) IFB versus RFP

The IFB is used when there is a clear understanding of the project requirements, scope of work and technical specifications. The RFP is used in cases where the specific requirements and technical specifications of a project are of a functional nature or unclear. The RFP then provides a guideline for potential offerors to use in preparing a bid/proposal.

4. Competitive/Request for Proposal (RFP)

Competitive Proposals are used when the nature of the good or service to be purchased will be more than \$250,000, but its nature cannot be defined as precisely as the sealed bid method.

a) The Request for Proposal method for procurement should be used when:

- i) The nature of the item or service needed precludes developing a specification or a purchase description so precise that all potential suppliers have an identical understanding of the requirements;
- ii) Those responsible for preparing the procurement are unable to predetermine product or service specifications to the level needed to assure that both a fair price and the optimum product or services will be obtained through the competitive bid process;
- iii) Price is not the primary or dominant factor in the award decision.

b) If the Request for Proposal method is used, the solicitor shall:

- i) Solicit offers by publishing a Request for Proposal (RFP) to an adequate number of qualified sources to ensure competition;
- ii) Publicly advertise the RFP;
- iii) Allow sufficient time for potential suppliers to respond;
- iv) Ensure that the RFP identifies the scope of work and service area, all significant evaluation or rating factors, and the deadline for receipt of responses to the RFP;
- v) Establish evaluation factors for the award and the relative importance of each in the evaluation process;
- vi) Provide for negotiation with any or all proposers determined through the rating process to be responsive and advantageous to the program, and the notification of unsuccessful proposers in a reasonable amount of time.

c) Appropriate documentation for the Request for Proposal method shall include:

- i) The rationale for why the RFP method was selected;
- ii) The estimate of the potential purchase price;
- iii) The RFP document;
- iv) The list of known suppliers to whom the RFP was sent;
- v) Evidence of public advertisement of the RFP;

- vi) Bidders' conference questions and answers;
- vii) All responses to the RFP;
- viii) Documentation of the results of the scoring of the proposals, including the determination of the responsibility of the bidder and cost/price analysis;
- ix) Why the provider was selected;
- x) Copy of the award document.

5. Noncompetitive Proposals (Sole Source)

- a) Except when the Small Purchase procedures method is used, the Noncompetitive Proposals (sole source) method may be used only when the procurement is infeasible under Request for Quote method or the Request for Proposal method due to one of the following circumstances:
  - i) The item or service is available from only one source (sole source). If this rationale is utilized, the solicitor must document how it was established that there was a single source for the good or service.
  - ii) Public urgency or emergency will not permit the time required for a competitive solicitation.
  - iii) Approval is obtained from NCCC, who must also obtain permission from the State of California.
  - iv) Competition is determined inadequate. This usually occurs after a competitive process has been used and there are insufficient bidders (fewer than three).
- b) 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 documented and maintained.
- c) Proper documentation for a sole source purchase includes:
  - i) 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.
  - ii) The subrecipient's estimate of the potential purchase price.
  - iii) A copy of the RFQ/IFB/RFP.
  - iv) A determination of the responsibility of the bidder and the cost analysis.
  - v) Why the provider was selected.
  - vi) Copy of the award document.

C. Appeals

Any award decision may be appealed by submitting an appeal letter to the NCCC within ten (10) calendar days after notification of the adverse award decision. Appeals shall:

- 1. Be in writing, dated and signed.

2. State the reason for disputing the award.
3. Include the desired remedy.
4. Be acknowledged in writing by the NCCC.

Appeals shall be heard by an Appeals Committee within forty-two (42) calendar days after NCCC's receipt of the appeal letter. The Appeals Committee shall include three or more persons appointed by the Chair of the awarding board. No person may hear an appeal if they have a conflict of interest which may affect their judgment.

The Appeals Committee shall issue a written decision within fourteen (14) calendar days after hearing the appeal and subsequent closure of the record. Appeal hearings shall be informal and open. A decision of the Appeals Committee shall be binding unless reversed by vote of the NCCC Governing Board, or by the State of California.

#### D. Contract Administration

1. NCCC will ensure that each contractor performs in accordance with the requirements of each award through periodic review and monitoring of each contract.
2. Awards will only be made to responsible contractors with the ability to perform successfully. NCCC's awarding agency standards include: integrity, compliance with public policy, past performance and contractor resources (technical and financial) for prospective contractors.
3. All agreements must be cost reimbursement.

#### E. Authorization

Solicitations may be released at any time by NCCC's Executive Director. Awards shall be authorized by the Executive Director or the Director's designee.

Any signature delegation by the Executive Director shall be in writing.

#### F. Code of Conduct – NCCC Policy No. 12

##### I. Purpose

This Code of Conduct implements and interprets state and federal requirements governing Workforce Development Boards (WDB) and activities funded by the Workforce Innovation and Opportunity Act (WIOA). The Political Reform Act (Government Code Section 81000, et seq.) and the Fair Political Practices Commission regulations (2 Cal. Code of Regs. Sec. 18730) are incorporated into this Code of Conduct by reference.

## **II. Effective Date**

This policy shall take effect upon adoption by the North Central Counties Consortium (NCCC).

## **III. Definitions**

- A. The term “official” means any NCCC Governing Board, WDB or Youth Council member, or NCCC employee or agent, or any citizen volunteer authorized to act on behalf of the WDB or NCCC. The term includes, but is not limited to, all individuals who participate in the making of WDB or NCCC policy, procurement, fund obligation, contract management or personnel decisions.
- B. The term “immediate family” means a spouse, parent, in-law, guardian, child, brother, sister foster child, grandchild, grandparent, or other person to whom the official is not related but who resides in the same household. The relatives listed above need not reside in the same household to be included as immediate family.

## **IV. Trust**

Officials shall treat their position as a public trust.

- A. WDB and NCCC powers and resources are to be used for the benefit of the public rather than for personal benefit.
- B. Officials shall establish and implement policies in good faith, as equitably and economically as possible, regardless of their personal views.
- C. Whistle-blowing is appropriate in the event of unlawful or improper actions. Anyone who observes any unlawful or improper actions by an official is expected to report them. Customarily, the actions are reported to the official’s employer. If the employer appears to be involved in the improper actions, the report can be made to a higher level, to NCCC’s Executive Director or to the WDB’s Chair or the NCCC Governing Board’s Chair.  
  
“Whistle-blowing” differs from “leaking” because leakers act covertly and are essentially unaccountable for the consequences of their actions. It is improper to harass or punish officials who seek accountability through whistle-blowing. Leakers are not similarly protected.
- D. Citizens shall have a fair and equal opportunity to express their views to officials. Often it is impossible for an official to talk personally with every concerned citizen, but obtaining an appointment or a chance to speak at a WDB or NCCC meeting should not appear to depend upon friendship or animosity.

- E. Officials shall not give the appearance of impropriety in their official conduct. Officials should not accept any personal gift, meal or entertainment valued at \$50.00 or more. The official should consider the decisions he or she may have to make and shall exercise conservative judgment as to whether accepting a gift in any amount is appropriate. The key question for an individual official is, “By accepting this gift/meal/entertainment, am I giving preferential treatment to the gift giver, or am I giving the appearance to reasonable people of giving favor to the individual?” If the answer is “yes” to either question, then the official should not even accept a gift below the \$50.00 threshold.

Officials, as representatives of the WDB or NCCC or while conducting business on behalf of the WDB or NCCC, may accept gifts for the benefit of NCCC and may be guests at meals or entertainment activities. For example, gifts as part of a company grant or giving program should be accepted, and shall become the property of NCCC. Gifts for employee awards, volunteers, and community cooperation are allowed. Donations to NCCC programs are also allowed.

- F. Officials shall devote NCCC resources, including paid time, equipment, computers, supplies, and capital assets, to public benefit. Time paid for by NCCC is intended for NCCC business. Supervisors should not ask subordinates to perform personal services. Office supplies are for NCCC use only.

NCCC may adopt procedures allowing for limited personal fax transmissions, photocopies and telephone calls to be made under specified circumstances. This procedure may also permit limited completion of personal tasks on computers.

Officials should not use WDB or NCCC letterhead or refer to their public position when requesting personal benefits or resolving personal disputes.

- G. Political activities shall not be engaged in on NCCC time or property. No NCCC employee shall solicit any money, influence, service or other thing of value or otherwise promote or oppose any political committee or promote or oppose the nomination or election of a candidate, the gathering of signatures on an initiative, referendum or recall petition, the adoption of a measure or the recall of a public office holder while on the job during working hours.

This section does not restrict the right of NCCC employees to express personal political views, so long as these views do not adversely impact the quality or content of WDB or NCCC services or policy making. For example, a staff member should not express a racist sentiment while servicing a customer or otherwise representing the WDB or NCCC. Similarly, an NCCC employee while on NCCC premises or during work hours can express personal political views to co-workers but may not distribute flyers for a political campaign.

The WDB or NCCC may take a position on pending state or federal legislation or rulemaking. Officials may then provide information or otherwise act as directed on that position. Federal and state grant funds may not support lobbying activities.

## V. Objectivity

WDB and NCCC decisions shall be based on the merits of each issue. Judgment shall be independent and objective.

- A. If an official's individual financial or personal interests will be specifically affected by a decision, the official is to withdraw from participating in the WDB and NCCC decision. This prohibition applies to all WDB and NCCC meetings, the Youth Council, standing committees, "task group" or "ad hoc workgroup" meetings, and discussions before or during meetings which involve lobbying for or against a WDB or NCCC action or agenda item or which deliberate towards a decision. This includes the personal or financial interests of the official's immediate family and household. Recusal and disqualification involve a statement such as, "My brother-in-law is part owner of the property under discussion. Therefore, I will not be speaking or voting on this lease."

State law distinguishes between actual conflict of interest, which definitely would affect the official, and potential conflict, where the effect is not certain. In the case of a potential conflict, the WIOA official must disclose the conflict but may be permitted to participate in the decision. A formal or informal opinion should be requested when a potential conflict arises.

The law also makes an exception where the official's financial interests are included with a whole class of citizens. In this case an informational disclosure may be appropriate, such as, "We will be voting on the Colusa Career Center. My sister's family is receiving training from the Center along with the rest of the community."

State law focuses primarily on elected officials and appointees to boards and commissions, but the ethical principle extends to all officials. For example, a NCCC program monitor should not monitor an on-the-job training (OJT) contract at a business owned by his sister. The relationship should be disclosed and a different, disinterested NCCC employee should conduct the monitoring.

- B. Officials shall avoid bias or favoritism, and shall respect cultural differences as part of decision-making and the conduct of WDB and NCCC business.
- C. Intervention on behalf of constituents or friends is limited to assuring fairness and clarifying policies or improving service to citizens. Officials should avoid giving citizens any reason to believe they would receive better or different services if they had a personal connection with the official.

## **VI. Accountability**

Open government allows citizens to make informed judgments and to hold officials accountable.

- A. Officials shall exercise their authority in open meetings supported by public records subject to the normal and usual exceptions, including but not limited to 1) pending or threatened litigation, 2) personnel decisions, 3) contract negotiations where disclosure of NCCC's position may inflate costs or prevent NCCC from carrying out its mission as effectively as possible, and 4) a decision to sanction a WDB member or NCCC Director where that member or Director wishes to contest the facts supporting the sanction in a confidential meeting and the Board concurs with the confidentiality request.
- B. Each official is encouraged to improve WDB and NCCC systems by identifying problems and proposing improvement. NCCC officials who believe a policy or practice is not achieving its stated purpose, is creating unintended harm, or is inefficient, should express such concerns and should suggest possible improvements.
- C. NCCC systems shall be self-monitoring, with procedures in place to ensure appropriate actions. Managers should make sure their practices for purchasing, contracting, and hiring include routines that elicit fair choices and assure protection of NCCC assets. Such routines include checklists, separation of duties, bank account reconciliations, and reports to management.
- D. Any official's immediate family shall not receive preferential treatment in employment or in the receipt of NCCC funded services. NCCC's service providers shall adopt and shall comply with nepotism provisions no less restrictive than this paragraph.
- E. No official shall also be an NCCC contractor, subcontractor or vendor without full disclosure and authorization from the NCCC Governing Board. This section shall not apply to WDB members who 1) are salaried officials for public or nonprofit entities, or who serve on the boards of such entities, and 2) who provide vendor services to NCCC clients utilizing the same rates as for the general public. For example, the NCCC Governing Board need not approve community college tuition arrangements merely because a community college president sits on the Governing Board.
- F. The WDB's Officers, Committee Chairs, Council Chairs and Executive Committee members may not represent, serve on the board of, or work for a public, private for profit or nonprofit NCCC contractor or subcontractor. WDB and NCCC Governing Board members should be especially careful to disclose and avoid conflict of interest situations. The Governing Board and/or other Local Elected Officials

serving as a member will be held to the most restrictive state or local interpretation of public conduct.

## **VII. Leadership**

- A. Officials shall obey both the letter and the spirit of all laws and regulations.
- B. Leadership shall facilitate, rather than block, open discussion. Officials have an ethical obligation to avoid behavior such as strained interpretation of rules, refusal to return telephone calls to a specific person, or arbitrarily delaying a decision.

## **VIII. Informal or Formal Opinions**

An informal or formal opinion concerning a given conflict of interest or ethical situation may be requested. Such requests should be directed to NCCC's Executive Director or, if the situation involves the Executive Director, the WDB Chair or the Chair of the NCCC Governing Board.

## **IX. Sanctions**

Officials are subject to sanctioning by the NCCC Governing Board, up to and including dismissal. Individuals and entities may also be barred from doing business with NCCC.

NCCC employees and contractors are also subject to sanctions under NCCC procurement, personnel policies and contract provisions. To the extent that this Code of Conduct and NCCC procurement, personnel policies and contract provisions overlap or are perceived to conflict, the most restrictive interpretation shall apply.

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<sup>i</sup> *Simplified Acquisition Threshold* – Fiscal threshold set by Federal Acquisition Regulation (currently \$250,000 per FAR Subpart 2.1). The threshold is periodically updated based on inflation.