

**WORKFORCE INVESTMENT BOARD  
OF TULARE COUNTY  
PROCUREMENT POLICY MANUAL**

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## INTRODUCTION

The purpose for procurement requirements is "to ensure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal statutes and executive orders." The Workforce Innovation and Opportunity Act (WIOA) and its implementing regulations seek to ensure that the best value is received for each WIOA dollar spent, but not necessarily that the lowest price is always obtained. Additionally, the regulations seek to provide "a level playing field" for all potential competitors/bidders or proposers.

This manual provides the Workforce Investment Board of Tulare County (WIB) and its subrecipients policy related to the procurement of goods and services under the Workforce Innovation and Opportunity Act (WIOA) and its implementing regulations. This document covers the purchase of supplies, equipment, administrative services, and programmatic services from service providers, vendors, and independent contractors. Additional, or more detailed, guidance to providers and vendors will be included in any Solicitation/Request for Proposal (RFP) issued by the WIB.

The WIOA regulations at 20 CFR provide guidance for the administration of the program. For procurement, the guidance includes specific direction and referral to 29 CFR Part 2900 for Department of Labor (DOL) exceptions. The intent of the federal government is consistent: procurement policies must ensure free and open competition and secure the best possible price.

This manual is not a stand-alone guide since procurement affects and is affected by other areas in the WIOA regulations.

This document assumes that service providers and WIB staff have read and are familiar with the citations listed in "REFERENCES" below.

### References

This manual references, and makes every attempt to be consistent with Federal, State and local rules, regulations and policies, including but not limited to:

- WIOA (Public Law 113-128)
- Title 2 *Code of Federal Regulations* (CFR) Part 200: "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance)
- Title 2 CFR Part 2900: "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" (Department of Labor (DOL) Exceptions)
- Title 20 CFR WIOA, "DOL; Final Rule"

- Title 34 CFR WIOA, “Joint Rule for Unified and Combined State Plans, Performance Accountability, and the One-Stop System Joint Provisions; Final Rule”
- *California State Contracting Manual*, Subject: Chapter 5: “Competitive Bidding Methods” (April 2015)
- Workforce Services Directive WSD 16-10, Subject: *Property – Purchasing, Inventory, and Disposal* (November 10, 2016)
- WSD 16-05, Subject: *WIOA Closeout Requirements* (July 29, 2016)
- WSD 16-14, Subject: *Selection of AJCC Operators and Career Service Providers* (December 19, 2016)
- WSD 16-16, Subject: *Allowable Costs and Prior Written Approval* (February 21, 2017)
- WSD 17-08, Subject: *Procurement of Equipment and Related Services*
- Memorandum dated June 20, 2018: *Executive Office of the President, Office of Management and Budget, “Implementing Statutory Changes to the Micro-Purchase and Simplified Acquisition Thresholds for Financial Assistance.*



## PART I GENERAL REQUIREMENTS

The Workforce Innovation and Opportunity Act (WIOA) requires the Local Workforce Development Area to have procurement procedures that ensure:

1. Procurements will be conducted in a manner providing full and open competition;
2. The use of sole source procurements is minimized to the extent practicable, but in every case shall be justified;
3. Procurements will include an appropriate analysis of the reasonableness of cost and price;
4. Procurements will not provide excess program income (for nonprofit and governmental entities) or excess profit (for private for-profit entities), and that appropriate factors shall be used in determining whether such income or profit is excessive, such as—
  - a) The complexity of the work to be performed;
  - b) The risk borne by the contractor; and
  - c) Market conditions in the surrounding geographical area;
5. Procurements will clearly specify deliverables and the basis for payment; and
6. Procurement contracts and other transactions between Local Boards and units of State and local governments will be conducted only on a cost reimbursement basis. No provision for profit will be allowed.

This procurement manual shall be used by the Workforce Investment Board of Tulare County (WIB) and its subrecipients and contractors to purchase all goods and services with WIOA funds. It shall provide for:

1. Open and free competition. This includes the requirement that any individual who develops specifications, Request for Proposals, evaluates or makes recommendations on such proposals, or participates in any manner in the procurement of goods and services with WIOA funds shall **NOT** be eligible to compete in the procurement. This applies to all types of contracts or grants.
2. Consideration of both price and the subrecipients potential ability to meet specifications;

3. Avoidance of purchasing unnecessary or duplicative goods or services. Surplus and inventory items will be used prior to the purchase of new items.
4. Consideration of minority businesses, women's business enterprises, and labor surplus area firms are used when possible (200 CFR 200.321).

### **Responsibility**

The WIB shall use the County of Tulare Purchasing Department Procedures for supplies, equipment, and other services (independent contractor services) provided in the WIB/LEO Administrative Services Agreement and the procedures described in this manual. Other procurement responsibilities of the WIB include:

- Approval of all property purchases by WIB subrecipients prior to its purchase. Monetary limitations are stated in the contract document with the respective subrecipients.
- Purchasing training services from subrecipients and independent contractors.
- Approving contracts for services and training. (The WIB Chair is authorized to sign contracts on behalf of the WIB.)
- Approving contract amendments. (The WIB Chair shall sign amendments on behalf of the WIB.)
- The WIB has granted the Executive Director the authority to sign contracts and amendments that do not exceed \$10,000 and do not exceed a contract period of one year.
- Providing technical assistance to subrecipients.
- Procurement activities will be conducted in a confidential manner. Staff/or WIB Directors involved in procurement must not divulge advance purchasing information, specific proposal/offer evaluation criteria, negotiations with bidders or in-house discussions regarding a procurement.

### **Full and Open Competition**

All procurement transactions by the WIB, its subrecipients and contractors will be conducted in a manner providing full and open competition consistent with standards of the "Uniform Guidance" (Title 2 CFR Part 200) and "Department of Labor (DOL) Exceptions" (Title 2 CFR Part 2900). To the extent possible, bidders/proposers or offerors must have an equal chance to secure a contract. The requirements specified in the



procurement must bear a relationship to the need being procured.

Some of the situations considered to be restrictive of competition include but are not limited to:

1. "Placing unreasonable requirements on firms or organizations in order for them to qualify to do business"--Requiring a business to have an office within the boundaries of the Workforce Development Area may be unreasonable unless it has a detrimental effect on the delivery of services.
2. "Requiring unnecessary experience and excessive bonding"—any requirement that is unrelated to the delivery of service described in the proposed procurement.
3. "Noncompetitive awards to consultants that are on retainer contracts" -  
-The services of a consultant on retainer must be procured competitively. This provision applies to such consultant services as managerial, organizational or program effectiveness.
4. Non-competitive pricing practices between firms or between affiliated companies,
5. Organizational conflicts of interest,
6. Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance of other relevant requirements of the procurement.
7. Any arbitrary action in the procurement.

Competitive negotiation requires that at least two responsive proposals for the same scope of work and service area are received in response to the RFP. If only one responsive proposal is received, then there has been a failed competition and the WIB has the option to re compete the procurement or proceed. The WIB's definition of a failed competition and their rights and options in the event of such a failure will be included in the RFP. The WIB will consider a competition to have failed when less than two responsive proposals have been received to a solicitation, i.e., Request for Proposal or Request for Quote.

### **Procurement Documentation**

When conducting a procurement, i.e., Request for Proposal (Issuance of a solicitation), Request for Quote, or Small Purchase, documentation will be maintained sufficient to

detail the significant history of a procurement. These records will include the following, as applicable:

- Rationale for procurement type, i.e. RFP, small purchase, etc.;
- Rationale for selection of contract type;
- A copy of the solicitation package (the RFP);
- A copy of the public notification(s);
- Bidders' list to which notices were mailed;
- Agenda and minutes of the bidders' conference, if a conference was conducted;
- Written responses to all clarifying questions received outside of a bidders' conference;
- A copy of each proposal received; (funded and those not funded);
- Rating and scoring sheets completed in the evaluation process, (for the protection of the identity of readers, summary sheets will be made available upon request, original copies will not be provided);
- Rationale for selection or rejection of any offeror;
- Determination of demonstrated performance/capability of the selected bidder;
- Documentation of the rationale for selection and funding of any offeror that did not receive the highest score/ranking in the evaluation process;
- Completed Memorandum of Negotiations for each contract as appropriate;
- A copy of any submitted protests/grievances and the resolution of each; and
- Price/cost analysis as appropriate.



## **Contract Certifications**

### **Prohibition of Subawards to Debarred and Suspended Parties**

The WIB nor its contractors and subrecipients shall make any awards at any tier to any party that is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs in accordance with the Uniform Guidance, 2 CFR 200.205. Each entity that is awarded funds in excess of \$25,000 is required to self-certify that it and none of its principal staff is neither debarred nor suspended. The awarding agency is not required to do a verification of the certification.

### **Lobbying**

WIB will require all contractors and subrecipients receiving \$100,000 or more in WIOA funds to certify that no federal funds will be used for lobbying activities in accordance with Uniform Guidance, 2 CFR 200.450.

## **PART II PLANNING**

A description of how employment and training needs will be met in Tulare County is included in the content of the Strategic Four Year Local Plan. The content and time frames outlined in the Plan dictate procurement for programmatic services and identifies funds available for employment and training needs. The Workforce Investment Board of Tulare County (WIB) strives to provide the maximum level of services directly to the client population. The planning process will include:

1. Identification of training or services that are consistent with the Four Year Plan designed to meet the needs of participants.
2. Review of labor market information for demand occupations.
3. Review of demographic information with emphasis on non-traditional employment for women.
4. Targeting hard-to-serve youth and adults.
5. Reviewing the Plan with a focus on performance, i.e. placement, wage rates, retention, skill attainment, and training needs.
6. Identification of other procurement needs, i.e. consultants, equipment, furniture, space, etc., that may be required for program operation.

Procurements shall be conducted by the WIB at intervals of not less than once every three years.

### **Contract Type Selection**

Selection of contract type will be made using a combination of factors including experience, size and complexity of the procurement and complexity of the service delivery as described in the Statement of Work. Further, when selecting the contract type the following will be considered:

- a. Price Competition – Effective price competition will produce a basis for pricing fixed price contracts.
- b. Price Analysis - The degree to which price analysis, with or without competition, provides a reasonable pricing standard for fixed price contracts.

- c. Cost Analysis – The cost estimate made by contractors will be considered, particularly in the absence of effective competition. The type of organization i.e. CBO, Private for Profit or Public Agency is a factor for cost reimbursement contracts.
- d. Risk Assessment – An analysis of the risk level associated with the potential contractor or existing contractors. (TCWIBD-01-9)

Only cost reimbursement contracts will be used when dealing with local governmental agencies and community based organizations. A determination will always be made prior to issuance of a contract and the determination documented in the contract file.

### **Preparing for a Competitive Procurement**

The process for a competitive procurement includes the following:

- Prepare a Request for Proposal/Quote (RFP/RFQ) including response timelines ensuring sufficient time for all phases of the procurement process to be carried out. Establish proposal evaluation procedures.
- Issue a public notification of the procurement through an announcement in a local public medium (e.g., newspaper) or media that, minimally, covers the entire service area. Provide a copy of the RFP/RFQ to any party requesting it. Make notification through dissemination of RFP/RFQ to entities included on the current, applicable proposal list.
- Make a record (e.g., log) of all inquiries received regarding the procurement and the submission requirements. Respond in writing to all inquiries, except those, which are clearly answered in the solicitation, and distribute copies of all inquiries and written responses on a timely basis to all parties to whom the solicitation has been distributed. Issue clarification updates on a weekly basis to ensure that timely and accurate information is distributed to all potential bidders.
- Hold a proposers' conference after the distribution of the RFPs. When such a conference is held, all parties to whom the solicitations have been distributed will be notified of the date, time and place of the conference. This notification will be included in the RFP itself. Document in writing each question answered at the conference and provide this information as an addendum to the solicitation package to any subsequent requesters of the RFP.
- The date and time proposals are received will be noted in order to ensure that only proposals received by the due date and time qualify for the evaluation process.



## PART III CODE OF CONDUCT

The Workforce Investment Board of Tulare County (WIB) and its staff will take every reasonable course of action in order to maintain the integrity of the procurement of goods and services using funds provided under the Workforce Innovation and Opportunity Act (WIOA). The WIB and its staff shall conduct all acquisitions in an impartial manner, free from personal, financial or political gain. The WIB Board of Directors and staff will avoid all situations that may give rise to a suggestion that any decisions were influenced by prejudice, bias, special interest or personal gain.

During the procurement of goods, training or other services, WIB Board members and staff will not disclose proposal or procurement solicitation information, including:

- Procurement plans,
- Advance solicitation information prior to release of Request For Proposals (RFP),
- Proposal technical and cost/price information,
- Relative scores or standings of offerors prior to award,
- Confidential or proprietary information, or
- The disclosure of information to one or more offerors that is not made to all offerors in order to maintain confidentiality and objectivity when dealing with offerors, contractors, proposers or service providers.

Further, WIB members agree to be bound and governed by the Standards of Conduct adopted in its bylaws and contained in this document, and the grant or Subgrant Agreement with the State of California that provides funds for use by the Local Workforce Development Area.

The Tulare County WIB and its staff will take every reasonable course of action in maintaining fairness and objectivity in the proposal review process. The WIB and its staff shall conduct all proposal reviews in an impartial manner, free from personal, financial or political gain. The WIB Board of Directors and staff will avoid all situations in this process that may give rise to a suggestion that any decisions were influenced by prejudice, bias, special interest or personal gain.

The following actions by offerors, bidders, vendors or subrecipients, its executive or management staff, employees, and Board of Directors are strictly prohibited:



1. Payment of gratuities to agency staff or board members;
2. Receipt, solicitation or offering of kickbacks;
3. The obtaining of or attempts thereof to obtain confidential procurement information not made available to all offerors, bidders, or proposers;
4. Improper communication with WIB staff or board members, i.e., attempts to influence procurement/funding decisions.

## **Conflict of interest**

This section addresses the need to maintain a written code of standards of conduct governing the performance of persons engaged in the award and administration of WIOA contracts and subgrants. No WIB director shall engage in any activity, including participation in the selection of subrecipients or contractors, the award of, or administration of a contract funded with WIB/WIOA funds if a conflict of interest, real or apparent, would be involved. A conflict of interest would arise when any of the following has a financial or other interest in the business or organization selected for the award:

1. The WIB Director;
2. Any member of the WIB Director's immediate family;
3. The Director's business partner; or
4. An organization, that employs the WIB Director, or is about to employ the Director,

The officers, employees, or agents of the awarding agency will neither solicit nor accept gratuities, favors, or any monetary value from subrecipients or contractors or other providers of services.

During the procurement process, i.e., after offers have been made or proposals have been submitted, WIB Directors or staff shall not communicate with current subrecipients or contractors, potential subrecipients or contractors regarding the procurement. This could lead to a breach of the procurement and be cause for elimination of the prospective subrecipient, contractor or other providers of service, which could fatally damage the integrity of the procurement process.

## **Confidentiality**

A seal of confidentiality must be maintained around all procurements. Offerors are required to submit sealed bids or proposals, which are securely handled and stored. People involved in any aspect of a procurement must not reveal or disclose information to anyone outside of the official group involved in reviewing offers and making contract award decisions.

Confidentiality also applies to other actions, before the review and award phases. No information should be disclosed to anyone about the Statement of Work, the funds available, or related data until that information is made know to all offerors, through publicizing the intent to solicit or disseminating the RFP. Information must be given to all offerors and potential offerors equally.

## **Voting**

Each WIB Director shall be entitled to one vote and shall have the privilege of participating fully in the voting procedure, except that a Director shall not cast a vote on, participate in, or in any way attempt to use his or her official position to influence:

1. Any decision on the provision of services by that Director (or any organization that the Director represents, or
2. Any decision or matter that would provide financial benefit to that Director, or in which that Director has reason to know that he/she, or any member of that Director's immediate family, will receive financial benefit.

## **Violations and Sanctions:**

If a violation of Part IV, Methods of Procurement, is alleged the WIB Chair shall conduct a review or cause a review to be conducted to determine whether a violation has occurred.

If a determination is made that a violation has occurred and the procurement or a portion thereof has been tainted, the WIB will cancel the procurement or the portion impacted and the proposal/ offeror involved will not be permitted to participate in the procurement.

Further, if it is determined that a WIB Director or staff member was involved in or contributed to the violation those individuals will not participate further in the procurement.

Other remedies may include an administrative penalty of up to \$2,000 for each violation (Gov. Code 91005(b) and 91005.5) (California Political Reform Act of 1974 as amended).



## **PART IV METHODS OF PROCUREMENT**

The following methods of procurement shall be used when purchasing goods and services with Workforce Innovation and Opportunity Act (WIOA) funds. Local procedures may be used if compatible; however, minimum standards must follow procedures established in this document.

### **Micro Purchase**

The micro purchase procurement method is used when the “per transaction” value of a purchase is less than the micro purchase threshold, currently \$10,000 per Federal Acquisition Regulation (FAR) 48 CFR Subpart 2.1, 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. Although micro purchases are not required to receive written prior or purchase approval, they must still be documented.

### **Small Purchases**

Small purchase, as defined in EDD Directive WSD 17-08 entitled “Procurement of Equipment and Related Services,” means the acquisition of goods or services with a “per transaction” value is less than the Simplified Acquisition Threshold of \$250,000.

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:

Purchases between \$10,000 and \$250,000 require a minimum of two documented quotes from qualified sources. Documented quotes can be obtained from catalogs, price lists, or from a contractor in writing. Catalogs or price lists should be no more than one year old. NOTE: A purchase order through Tulare County Purchasing may be used in lieu of the process described above.

Proper documentation for a small purchase includes:

- The reason for selecting the small purchase method.
- The subgrantee’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.



- 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).

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.

### **Competitive Sealed Bids**

In this type of procurement bids are publicly solicited for which a firm fixed price (lump sum or unit price, greater than \$250,000) arrangement is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the Invitation for Bid (IFB), is the lowest price. Competitive sealed bids are most effective when the specifications in the procurement 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 a diligent effort will be made to secure at least three competitive bids.
- b. Reasonable effort will be made to publicize the IFB to the widest practicable area of circulation.

Proper documentation for a competitive sealed bid purchase includes:

- The reason for selecting the sealed bid method.
- The subgrantee'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.

## Competitive Negotiation

Competitive negotiation is a method of soliciting proposals, in excess of \$250,000, from a number of sources through a publicly announced Request for Proposal (RFP) or Request for Quotation (RFQ), and guided in its specifics by the particular solicitation issued. 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 a diligent effort will be made to secure at least three competitive bids.
- c. The solicitation will identify all significant evaluation factors, including price or cost where required, and their relative importance.
- d. A technical evaluation of proposals received, including review by staff and/or Local Workforce Development Area committees will be completed and documented.
- e. Contract awards will be made to the responsible, responsive bidder whose proposal is most advantageous to the WIB. In making an award, price and other factors will be considered and documented. Unsuccessful offerors will be notified promptly.

Proper documentation for competitive negotiation includes:

- The reason for selecting the competitive proposal method.
- The subgrantee's estimate of the potential purchase price.
- A copy of the RFP.
- Bidder's conference questions and answers.
- Bids received.
- The scoring criteria and the evaluation/scoring sheets for each proposal, including determination of the responsibility of the bidder and the cost analysis.



- Why the subrecipient was selected.
- The public notice of intent to award.
- Copy of the award documents.

### **Non-Competitive Negotiation (Sole Source)**

Procurement by noncompetitive negotiation is the solicitation of a proposal from only one source, or after solicitation of a number sources, competition is determined inadequate. It is established as policy by the WIB that procurement by noncompetitive negotiation may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive negotiation proposals and one or more of the following circumstances applies:

1. The public exigency or emergency need for the item or service does not permit a delay resulting from competitive solicitation.
2. The item or services is only available from a single source.
3. The State of California authorizes a sole source procurement.
4. After solicitation of a number of sources, competition is determined inadequate.
5. The solicitation yields no more than one respondent.

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 carefully documented and maintained.

Proper documentation for a sole source purchase includes:

- 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.
- The subgrantee's estimate of the potential purchase price.
- A copy of the RFQ/IFB/RFP.
- A determination of the responsibility of the bidder and the cost analysis.
- Why the subrecipient was selected.

- Copy of the award document.

Noncompetitive procurement will be minimized to the extent practicable.

## **Exclusions**

The following exclusions to the competitive process will apply:

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 contractors through an ITA as described in 2 CFR 200.466 is excluded if the cost falls within the guidelines of the small purchase procedures, i.e., three quotes are provided through the ETPL provided by the State. The classroom training will be described in the contractor's published catalog, price list, schedule or other form regularly maintained by the contractor and made available for inspection by buyers, i.e., the general public.

When purchasing commercially available training packages please refer to the WIB Directive on ETPL Policies and Procedures (TCWIBD 06-15).

## **Prequalified List of Bidders**

WIB will ensure that the list of potential contractors, including contractors, is updated every three years and includes enough qualified sources to ensure maximum open and free competition.

## **Subrecipient versus Contractor**

It is not possible to determine if a particular entity is treated as a contractor or subrecipient for procurement purposes unless it is known under what circumstances the entity is providing the goods and/or services to the WIB, lower tiered subrecipient, or a participant. For example, a school can provide a training class to participants and be a contractor in one instance and a subrecipient in another. The determining factor would be whether or not the entity was accountable to the higher tier subrecipient for the use of its funds. A subrecipient's performance is measured against meeting the objectives of the Federal assistance award. A contractor provides goods and services to many different purchasers within normal business operations. Program compliance requirements do not pertain to the goods and services provided and the contractor is not subject to the statutory and regulatory requirements of WIOA or this manual.

The definition of both subrecipient and contractor can be found in Chapter VII, "Definitions," of this manual.



## **Selection of Subrecipients**

The primary consideration in selecting agencies or organizations to deliver services within a Workforce Development Area shall be the effectiveness of the agency or organization in delivering comparable or related services based on demonstrated performance, in terms of the likelihood of meeting performance goals, cost, quality of training, and characteristics of participants.

Funds provided to the WIB under the WIOA will not be used to duplicate facilities or services available, with or without reimbursement, from Federal, State, or local sources, unless it is demonstrated that alternative services or facilities would be more effective or more likely to achieve the WIB's performance goals.

Educational agencies in the WIB service area are provided the opportunity to provide educational services that are consistent with the needs of participants served by the WIB. Alternative agencies or organizations may also be used if it can be shown to be more or as effective or would have greater potential to enhance participant continued occupational and career growth.

The WIB will not fund any occupational skills training program unless the level of skills provided in the program are in accordance with guidelines and/or goals established by the WIB.

## **Proposal Evaluation**

After receipt, proposals are reviewed by staff to determine if the submissions are responsive to the solicitation. This will include a determination as to their completeness and compliance with the solicitation requirements. Further, proposals will be distributed to the WIB Directors that are appointed to conduct reviews, ratings, and to selected Administrative staff with instructions that:

- a. The number and names of offerors will not be disclosed during the proposal evaluation and review process.
- b. Technical or cost/price information from proposals will not be disclosed to anyone, not officially involved in the procurement, while the procurement is in progress. Disclosing such information to competing offerors/proposers could fatally damage the integrity of the procurement process. Technical or proposal information that the offeror has designated as a trade secret, will not be disclosed to other offerors, even after the award is made and publicized.
- c. The WIB Program Committee has the responsibility for proposal review, rating and development of funding and slot level recommendation(s) to the full WIB. Other WIB Directors may participate in this confidential process;

however, they must be appointed by the WIB Chairperson; and it must be ensured no conflict of interest exists. Representatives of agencies or organizations, that have submitted proposals, may be invited, at the discretion of the Committee or WIB, to answer specific questions as needed. To prevent violation of the procurement process, individuals, directors, and staff not designated by the WIB Chair are excluded.

- d. The Program Committee will, after review and rating of the proposals, prepare recommendations to be submitted to the WIB for approval.

The proposals will be rated systematically using a standard developed and approved by the WIB as described in each specific solicitation. This includes, but is not limited to, program cost, performance, demonstrated administrative capability of the organization, previous experience in delivering the training or services, ongoing performance of a current subrecipient/contractor or a combination of these factors.



## Evaluation Criteria

Potential offerors will find rating criteria published as a part of the solicitation package. The evaluation criteria should tell offerors which aspects of a proposal will be important to the WIB in selecting a subrecipient or contractor. Some areas to be evaluated may be, but are not limited to:

### 1. Qualifications of Agency Personnel:

Education and past experience affect an individual's ability to perform professional work. The success of WIB funded programs is often dependent on individual abilities. Consequently, this is a common factor used in evaluation of proposals for WIB funded awards. This factor may be expressed as "Key Personnel," "Qualifications of Personnel," "Staffing," or "Staff Capability."

### 2. Experience, Management & Administration:

Every WIB activity (e.g., enrollment, training, and job placement) has its own set of problems and pitfalls. Successful performance often requires knowledge of where those problems are likely to occur and a familiarity with ways to solve them. This applies to both individuals and to organizations. Experience is often the best teacher. Thus, the familiarity of the organization with the type of work to be performed can be important to success. In addition to whether an organization has done this type of work, one may also want to consider how well they have performed on similar projects. A good track record does not guarantee success; but it may be an important indicator. Such factors are usually expressed as "Organizational Experience," or "Past Performance."

The structure of an organization can affect its ability to get work done. How the subrecipient plans to organize for the effort can be important. Quality control and quality assurance planning within the organization can have a significant impact on performance. Whether the lines of communication and control within the organization will be able to report problems, so that appropriate assistance can be given, may be important. Procedures for record-keeping, support service payments, and reporting to the WIB should also be evaluated.

### 3. Past Performance

For Offerors Who Have NOT Contracted with the WIB Previously—

- Has the offeror demonstrated previous successful experience in



operating similar programs, and is this documented.

- Does the offeror have previous successful experience serving the targeted population, as specified in the RFP, and is this documented?
- Are administrative procedures in place and are they being used?

For Offerors Who Have Been Awarded Previous Contracts with the WIB—

- Do the results of the offeror's most recent contract(s) demonstrate successful performance? List positive completion, Entered Employment rates, and/or narrative information.
- Do monitoring reports on file indicate that corrective action was necessary?
- If yes, were appropriate improvements made in a timely fashion that did not impede service delivery?
- Are administrative procedures in place and are they being utilized?
- Are there relevant audit issues and have those issues been resolved?

#### 4. Program Objectives

- Has the offeror clearly outlined the goals and objectives of the program as specified in the RFP with projected numbers of clients to be served and positive outcomes?
- Has the offeror adequately addressed all target groups as specified in the RFP, if applicable?
- Is there clear demonstration of collaboration to maximize service opportunities and resource use?

#### 5. Program Design Considerations –Rating - See Solicitation Sheets.

#### 6. Budget Considerations

- Have such costs been determined as reasonable? (Attach any cost analysis back-up.)
- Does the offeror access other funds/in-kind resources to offset costs being requested from the WIB?

- List the cost per participant and state whether this cost is reasonable and within the WIB's range of affordability.
- List the cost per positive outcome and state whether this cost is reasonable and within the WIB's range of affordability.

### **Contract Pricing**

Price Analysis: 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.

Price analysis includes a number of techniques:

1. Comparison of competitive price quotations.
2. Comparison of prior quotations and contracts with current quotations for the same or similar items.
3. Use of yardsticks or parametric relationships to point up apparent gross differences. Examples are: cost per placement, price per instruction hour, price per participant/training hour, etc.
4. Comparison of prices on published price lists with published market prices of commodities, together with discount or rebate schedules.
5. Comparison of proposed prices with independent estimates of cost developed by WIB Administrative staff.

There are instances when price analysis may not be required. If the WIB receives three or more offers/proposals, competing for the same contract, it will be considered sufficient and a comparison of the final price will be used after comparing the price with the independent price analysis. If, however, there are wide ranges among proposed prices, an analysis must be conducted.

## PRICE ANALYSIS WORKSHEET

Proposal Number \_\_\_\_\_

Offeror \_\_\_\_\_

### PART I – General

1. Proposed price is a catalog price Yes No
2. If yes to 1 above, was price verification made Yes No
3. If yes to 2 above, give date of catalog or price list. \_\_\_\_\_
4. How was verification performed: \_\_\_\_\_  
\_\_\_\_\_
5. Was discount offered? Yes No
6. Will discount be sought? Yes No

### PART II -- Primary Comparison (with other offerors to this RFP)

	This Offeror Name	Offeror 2 Name	Offeror 3 Name	Offeror 4 Name
1. Price per participant	\$ _____	_____	_____	_____
2. Total price	\$ _____	_____	_____	_____
3. Price per instruction hr.	\$ _____	_____	_____	_____
4. Price per participant /instruction hr.	\$ _____	_____	_____	_____



**PART III -- Secondary Comparison**

	This Offeror Name	Offeror 2 Name	Offeror 3 Name	Offeror 4 Name
1. Price per placement:	\$ _____	_____	_____	_____
2. Total unit price:	\$ _____	_____	_____	_____

Note: In using past contracts, be sure that past prices were competitive and evaluations reasonable.

**PART IV -- Narrative**

1. Give a brief narrative judgment about reasonableness of offeror's proposed prices. Justify your judgment. If you developed an independent agency cost estimate, describe how offeror's proposed prices compare to your estimate.

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Price proposed is too high, develop new price objectives for negotiations and justify.

Proposed new price: \$ \_\_\_\_\_

Rationale: \_\_\_\_\_  
\_\_\_\_\_

**PART V -- Signatures**

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Cost Analysis: Cost analysis will differ from price analysis in the level of review conducted. Price analysis examines the total price as the single pricing factor under consideration, cost analysis segregates the total price into various cost elements, and these diverse component parts are individually assessed. This review includes analysis and evaluation of (1) the supporting data submitted by the offeror, (2) the cost elements, and (3) the factors the offeror considered in projecting from that data to develop the estimate of cost to perform the specified work. The method and degree of cost analysis are dependent on the facts surrounding each procurement.

Cost analysis is required when price analysis alone is not sufficient to determine that price is fair and reasonable for a product or service and must be performed and documented on every cost reimbursement procurement.

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 of data provided by the offeror may be adjusted if it is discovered data is not accurate, complete, or current.

#### Elements of Cost Analysis

In performing cost analysis, the assigned staff must perform discreet functions. First, they must verify the cost and pricing data submitted and evaluate the cost elements in that data. This includes judging the necessity for and reasonableness of proposed costs. It also includes evaluating the offeror's cost trends on the basis of current and historical cost or pricing data. This function also includes conducting a technical appraisal of the estimated labor, material, and other requirements proposed.

A second element of cost analysis is comparison of costs proposed by offerors with other data. This data includes actual costs incurred by the same offeror in the past. Cost analysis can also compare the current proposed costs with previous cost estimates from the same offeror or from other offerors for the same or similar items. It is quite appropriate and helpful to compare an offeror's costs with those proposed by other offerors in the same procurement. Another important comparison that can be made is with the WIB's independent cost estimate.

A cost analysis will be performed on all contracts awarded on a sole source basis and for all contract modifications where additional funds are obligated.

After costs are identified, they are evaluated to determine allowability of individual items. Necessity, reasonableness, allocability, application of applicable contract cost principles and the WIOA statute and regulations are considered. The cost principles for specific types of entities can be found in 2 CFR. Subpart E – Cost Principles.



## Relation of Cost Analysis and Price Analysis

While there are similarities between the two types of analysis and they often are performed together, there are distinct differences. Cost analysis focuses on what the work "should" cost a particular offeror, assuming reasonable economy and efficiency. The method necessarily involves a review of costs as they impact on the offeror's proposal.

Price analysis per se is not concerned with any single offeror's methods or situations. It focuses on a comparison between the amount proposed and a benchmark amount that is considered fair and reasonable for successfully accomplishing the work. Price analysis also deals with a question of what the work "should" cost - but it is in a more normative or prescriptive context. Here, it is used in the sense of, "What amount reflects a going rate for the goods or services in the market, in general?" Price analysis focuses on what the buyer should pay to ensure that reasonable value is received as opposed to the cost analysis focus on how much a proposer needs to receive to ensure that it recovers its costs and commercial agencies makes a fair profit.

The WIB or subrecipients will not use a "cost plus percentage of cost" contract when procuring goods or services using WIOA funds.

Profit: The following factors will be considered 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.



# Cost Analysis Worksheet

Procurement (Proposal No.) \_\_\_\_\_

Offeror \_\_\_\_\_

## PART I -- General

	<u>Yes</u>	<u>No</u>
1. Proposer's Computations Checked & Verified	_____	_____
Problems/Comments _____		
_____		
_____		
2. All Necessary Cost Elements Included	_____	_____
Problems/Comments _____		
_____		
_____		
3. Proposer's Supporting Documentation & Justification Complete	_____	_____
Problems/Comments _____		
_____		
_____		

**PART II -- Specific Costs**

<b>Cost Element</b>	<b>Necessary/ Reasonable</b>	<b>Basis for Judgment (Check One or More)</b>
1. Staff Costs	<u>Yes</u> <u>No</u> [ ]    [ ]	Independent Agency Estimate Compared/Other Current Offers Compared/Past Offers Verified Market Price or Quota Other (Specify) _____

Comments/Concerns/Problems:

<b>Cost Element</b>	<b>Necessary/ Reasonable</b>	<b>Basis for Judgment (Check One or More)</b>
2. Fringe Benefits (For tax-based elements, be sure that rates & bases are current)	<u>Yes</u> <u>No</u> [ ]    [ ]	Independent Agency Estimate Compared/Other Current Offers Compared/Past Offers Verified Market Price or Quota Other (Specify) _____

Comments/Concerns/Problems:

<b>Cost Element</b>	<b>Necessary/ Reasonable</b>	<b>Basis for Judgment (Check One or More)</b>
3. Materials Training/ Program	<u>Yes</u> <u>No</u> [ ]    [ ]	Independent Agency Estimate Compared/Other Current Offers Compared/Past Offers Verified Market Price or Quota Other (Specify) _____

Comments/Concerns/Problems:

<b>Cost Element</b>	<b>Necessary/ Reasonable</b>	<b>Basis for Judgment (Check One or More)</b>
4. Materials - Office Supplies/ General	<u>Yes</u> <u>No</u> [ ]   [ ]	Independent Agency Estimate Compared/Other Current Offers Compared/Past Offers Verified Market Price or Quota Other (Specify) _____

Comments/Concerns/Problems:

<b>Cost Element</b>	<b>Necessary/ Reasonable</b>	<b>Basis for Judgment (Check One or More)</b>
5. Facilities	<u>Yes</u> <u>No</u> [ ]   [ ]	Independent Agency Estimate Compared/Other Current Offers Compared/Past Offers Verified Market Price or Quota Other (Specify) _____

Comments/Concerns/Problems:

<b>Cost Element</b>	<b>Necessary/ Reasonable</b>	<b>Basis for Judgment (Check One or More)</b>
6. Staff Travel	<u>Yes</u> <u>No</u> [ ]   [ ]	Independent Agency Estimate Compared/Other Current Offers Compared/Past Offers Verified Market Price or Quota Other (Specify) _____

Comments/Concerns/Problems:



<b>Cost Element</b>	<b>Necessary/ Reasonable</b>	<b>Basis for Judgment (Check One or More)</b>
7. Accounting/ Audits	<u>Yes</u> <u>No</u> <input type="checkbox"/> <input type="checkbox"/>	Independent Agency Estimate Compared/Other Current Offers Compared/Past Offers Verified Market Price or Quota Other (Specify) _____

Comments/Concerns/Problems:

<b>Cost Element</b>	<b>Necessary/ Reasonable</b>	<b>Basis for Judgment (Check One or More)</b>
8. Legal Services	<u>Yes</u> <u>No</u> <input type="checkbox"/> <input type="checkbox"/>	Independent Agency Estimate Compared/Other Current Offers Compared/Past Offers Verified Market Price or Quota Other (Specify) _____

Comments/Concerns/Problems:

<b>Cost Element</b>	<b>Necessary/ Reasonable</b>	<b>Basis for Judgment (Check One or More)</b>
9. Supportive Services	<u>Yes</u> <u>No</u> <input type="checkbox"/> <input type="checkbox"/>	Independent Agency Estimate Compared/Other Current Offers Compared/Past Offers Verified Market Price or Quota Other (Specify) _____

Comments/Concerns/Problems:

<b>Cost Element</b>	<b>Necessary/ Reasonable</b>	<b>Basis for Judgment (Check One or More)</b>
10. Indirect Costs (When proposed, be sure that audit agreement & proposal are attached; ensure that costs not duplicated in direct costs)	<u>Yes</u> <u>No</u> <input type="checkbox"/> <input type="checkbox"/>	Independent Agency Estimate Compared/Other Current Offers Compared/Past Offers Verified Market Price or Quota Other (Specify) _____

Comments/Concerns/Problems:

<b>Cost Element</b>	<b>Necessary/ Reasonable</b>	<b>Basis for Judgment (Check One or More)</b>
11. Subcontracts (Review Subcontractor cost/price proposal)	<u>Yes</u> <u>No</u> <input type="checkbox"/> <input type="checkbox"/>	Independent Agency Estimate Compared/Other Current Offers Compared/Past Offers Verified Market Price or Quota Other (Specify) _____

Comments/Concerns/Problems:

<b>Cost Element</b>	<b>Necessary/ Reasonable</b>	<b>Basis for Judgment (Check One or More)</b>
12. Other  (Specify)	<u>Yes</u> <u>No</u> <input type="checkbox"/> <input type="checkbox"/>	Independent Agency Estimate Compared/Other Current Offers Compared/Past Offers Verified Market Price or Quota Other (Specify) _____

Comments/Concerns/Problems:







## **Independent Estimate**

A valuable tool available for cost and price analysis is an independent estimate. This is an in-house estimate of what the likely costs and price of the procurement will be. This should be completed for all procurements including small purchases.

An independent agency estimate is a cost estimate prepared by the awarding agency in advance of issuing the solicitation or at least prior to receipt of proposals - written or verbal.

To develop this estimate, a number of services may be used. One source is past and current contracts for the same or similar services. Another useful source is contractor financial reports. This information can be used to develop estimates of labor, materials, and other direct costs for each segment of the proposed procurement. If using a pre-approved vendor list, the estimate may not be necessary providing the listings are current.

Where multiple awards will be made, it is imperative that these prices are estimated before the cost and price analysis is completed. This will make the analysis easier to perform, as well as helping determine if the offerors' proposed price is unreasonable.

# INDEPENDENT COST ESTIMATE

RFP ( ) REQ (small purchase) ( ) Sole Source ( )

Goods/Services Purchased

## Part I -- General

---

1. Proposed services prices is for i.e., Training/Services Yes No

Comments:

2. Will discount be sought if not offered? Yes No

Comments:

3. Will a written report or computer software be developed as a part of the services being requested? Yes No

Comments:

## Part II -- Primary Comparison (Items that may be used: past & current contacts; contractors financial report; market rates and/or catalog prices.)

---

1. Price(s) paid for previous services \$ \_\_\_\_\_  
(May include price per unit, per hour, per participant or placement)

2. Estimate for this proposed service/item \$ \_\_\_\_\_

## Part III -- Narrative

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1. Give a brief narrative judgment about cost estimate. Justify your judgment.

## Part IV --Signatures

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\_\_\_\_\_  
Date



## ESTIMATE BUDGET WORKSHEET

Agency Name:		Contract No.:	
		Contract Term:	
Activity Name:		Mod Number:	

### ADULT PROGRAM BUDGET SHEET

LINE ITEM	PROGRAM COSTS	% OF WIOA PROGRAM	NON WIOA Resource	Total
<b>STAFF COSTS</b>				
STAFF COSTS				
1 Salaries				
2 Fringe Benefits				
3 SUB-TOTAL STAFF COSTS				
<b>OPERATING COSTS</b>				
4 Advertising				
5 Building Maintenance				
6 Building Rent				
7 Conference				
8 Duplicating/Printing				
9 Equipment Maintenance				
10 Equipment Purchases				
11 Equipment Rental				
12 Instructional Supplies				
13 Insurance				
14 Office Supplies				
15 Telephone				
16 Vehicle Expense				
17 Other Operating Expenses				
18 SUB-TOTAL OPERATING COSTS				
19 TOTAL STAFF & OPERATING COSTS (Line 3 + 23) (Add lines 3 and 18)				
<b>PARTICIPANT COSTS</b>				
20 Participant Wages (Work Exp. & Intern.)				
21 Support Services				
22 Other Participant Program Costs				
23 OJT Employer Reimbursement				
24 SUB-TOTAL PARTICIPANT COSTS				
25 <b>TOTAL CONTRACT AMOUNT (19+24)</b> (Record on Proposal Cover Page)				
Percentage by Cost Category				
Note: All program costs must be identified in the format above at the time of proposal submission.				
Any services or equipment not identified will not be considered during the contract year.				
This budget was prepared:				
Manually	Program Name			
On Computer Spreadsheet Software	Version			
By:				
Name			Title	



			Contract Term:
Program Name:			Mod Number:

**YOUTH BUDGET COVER SHEET**

LINE ITEM		PROGRAM COSTS		Total	% OF GT	NON WIOA RESOURCE
		IN SCHOOL PROGRAM	OUT OF SCHOOL PRG.			
<b>STAFF COSTS</b>						
	STAFF COSTS					
1	Salaries					
2	Fringe Benefits					
3	<b>SUB-TOTAL STAFF COSTS</b>					
<b>OPERATING COSTS</b>						
4	Advertising					
5	Building Maintenance					
6	Building Rent					
7	Conference					
8	Duplicating/Printing					
9	Equipment Maintenance					
10	Equipment Purchases					
11	Equipment Rental					
12	Instructional Supplies					
13	Insurance					
14	Office Supplies					
15	Telephone					
16	Vehicle Expense					
17	Other Operating Expenses					
18	<b>SUB-TOTAL OPERATING COSTS</b>					
19	<b>TOTAL STAFF/OTHER OPERATING COSTS (Line 3 + 18)</b>					
<b>PARTICIPANT COSTS</b>						
20	Participant Wages (Work Exp, Intern)					
21	Support Services					
22	Other Participant Program Costs					
23	OJT Employer Reimbursement					
24	<b>SUB-TOTAL PARTICIPANT COSTS</b>					
25	<b>GRAND TOTAL (GT) (Line 19 + 24)</b>					

**30% OR MORE OF ALL YOUTH FUNDS MUST BE SPENT ON OUT-OF-SCHOOL YOUTH ACTIVITIES**

(Out of School Youth does not include Alternative Education)

Note: All program costs must be identified in the format above at the time of proposal submission. Any services or equipment not identified will not be considered during the contract year.

This budget was prepared:				
Manually		Program Name		
On Computer Spreadsheet Software		Version		
By:				

Name:	Title:	Phone:
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## PART V PROTEST PROCEDURES

The Workforce Innovation and Opportunity Act (WIOA) final regulations, (Public Law 113-128), provide guidance for the administration of the WIOA program. Uniform Guidance (2 CFR 200.388 – 200.341) provides instruction of the federal grantee's responsibility to have protest procedures in place to handle and resolve disputes.

Each proposer responding to a Request for Proposal issued by the Workforce Investment Board of Tulare County (WIB) shall have an opportunity to appeal the funding decision of the WIB.

All proposers will receive a written or faxed notice from the WIB informing them of the Board's funding decision(s). Should a proposer wish to appeal the WIB's decision, the proposer must provide written notice within five (5) working days of the postmarked date of the registered mail/return receipt requested letter of award status to the Executive Director of the WIB, requesting an appeal based upon 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. Listed below are acceptable criteria to form the basis of an appeal.

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

To be considered for review, the appeal must contain the following information:

1. The full name, address, and telephone number of the appealing party;
2. A full and complete statement of the reasons for appeal, including the issue(s) in dispute and the legal authority or other basis for the protestors' position; and
3. A statement of relief sought.

Proposers must make their appeal as specific as possible and must fully identify the procedural issue being contested.

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

1. An Appeal Review Panel comprised of the WIB Chair, WIB Executive Director, members of the Program Committee, and other designees as selected by the WIB Chair will convene. At the discretion of the Appeal Review Panel the appellant may be requested to meet. The Appeal Review Panel will issue a decision regarding the appeal. The Appeal Review Panel will forward their recommendation to the full WIB.



2. The appeal decision is final and there is no other local administrative action afforded the appellant.

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 either the Review Workgroup or the Program Committee are NOT subject to appeal.

## Part VI CONTRACTING REQUISITES

In order to contract with the Workforce Investment Board of Tulare County (WIB), an agency must:

1. Be legally capable of entering into contracts and be able to provide proof of ability to operate programs (i.e., previous experience operating employment training programs or other related service programs and/or staff experience).
2. Be able to have the proposed program operational within 30 days of the beginning of the contract period. NOTE: This applies to new program activities only.
3. Have current fiscal audits/monitoring reports that indicate the agency's ability to adequately account for WIB funds. If compliance problems have been identified, the WIB Executive Director, prior to funding, must approve a corrective action plan. For new subrecipients/contractors a pre-award survey shall be conducted prior to funding.
4. Be an Affirmative Action/Equal Employment Opportunity (AA/EEO) employer. If selected for funding, an agency will be required to submit its AA/EEO Plan for review prior to entering into a contract. Agencies without an approved AA/EEO Plan may adopt the plan of the WIB.
5. When applicable, provide a certificate of insurance for comprehensive general public liability insurance with combined single limit coverage of at least \$500,000 and workers compensation insurance--with the County of Tulare and the Workforce Investment Board specified as additional insureds prior to contract approval.
6. Be capable of demonstrating good standing with the appropriate governmental agencies responsible for either their corporate standing or licensure.

### Required Contract Clauses

The type of agreement entered into by all grantees or subgrantees (including State and governmental grantees) may be fixed price or cost reimbursement, depending on the method of procurement and goods or services being procured. Each agreement funded by the ETA grant programs must contain the specific clauses referred to in Uniform Guidance, Appendix II to Part 200, as appropriate. They are listed below:

- For all contracts in excess of the small purchase threshold, administrative,

contractual, or legal remedies in instances where contractors violate or breach contract terms. The clause must also provide for sanctions or penalties, as appropriate.

- All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-federal entity, including the process for exercising the clause and the basis for settlement.
- 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.
- Notice of awarding agency requirements and regulations related to reporting.
- Notice of awarding agency requirements and/or regulations related to patent rights, copyrights, and rights in data.
- Record retention requirements as specified in 2 CFR 200.334 – 200.337.
- 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 Pollution Control Act* (33 U.S.C. 1251 – 1387) for any contract in excess of \$150,000.
- A provision requiring that contracts must not 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.

- A provision that all subrecipients of the funding must adhere to the Uniform Guidance, DOL Exceptions, and corresponding WIOA administrative requirements.

Grantees and subgrantees must also use the contract provisions to include other requirements of the WIOA or other ETA grant program, as appropriate. These include provision related to the following:

- Contract cost and price. Specifically, grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications.
- Applicability of the appropriate ETA program and administrative regulations.
- Audit requirements detailed in 2 CFR 200 Subpart F – Audit Requirements.

## Part VII DEFINITIONS

Allowability is a term that means that an expense can be charged to a contract, either as a direct or an indirect charge.

Bilateral modification means a change to a contract that requires the agreement and signature of both parties involved.

Breach of contract means the nonperformance of any contractual duty of immediate performance

Catalog price is a price published in a catalog, price list, schedule or other form regularly maintained by a manufacturer or supplier and is published or made available for inspection by buyers. To represent a valid indicator and serve as a point of reference, the prices must be those that a substantial number of purchasers in the general public are currently paying.

Contractor means an entity that receives a contract as defined in 2 CFR 200.22 Contract.

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. This is a more detailed and costly method than price analysis in terms of both time and manpower.

Cost reimbursable (sometimes referred to as cost reimbursement contract) where the awarding agency reimburses all reasonable, allowable, and allocable costs incurred in performing the work up to a predetermined ceiling that the awardee may not exceed (except at its own risk) without the approval of the Contracting Agency.

Fixed price agreement is an agreement where the price and payment is contingent on delivery of the specified goods or service.

IFB (Invitation For Bid) A document which invites bids in a competitive environment to provide goods or services for a lump sum or unit price.

Market price is the price currently established in the usual and ordinary course of trade between buyers and contractors (sellers) and for which the parties are free to bargain. The price must be established from sources independent of the contractor.

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.

Procurement: For purposes of this policy, the term "procurement" includes any acquisition action which obligates WIOA 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. Non-WIOA procurement will be governed by either the requirements specific to federal or state granted funds or California Law for the public trust corporations, as appropriate.

Program income is income received by the subrecipient or contractor directly generated by a grant or contract supported activity, or earned only as a result of the grant or contract.

Program Income Includes:

- Income from fees for services performed and from conferences;
- Income from the use or rental of real or personal property acquired with grant or subgrant funds;
- Income from the sale of commodities or items fabricated under a grant or subgrant;
- Revenues earned by a governmental or private non-profit service provider under either a fixed-price or reimbursable award that are in excess of the actual costs incurred in providing the services; and
- Interest income earned on advances of subgrant funds.

Program Income Does Not Include:

- Rebates, credits, discounts, refunds, etc. or interest earned on any of them,
- Taxes, special assessments, levies, fines, and other such governmental revenues raised by a recipient or subrecipient;
- Income from royalties and license fees for copyrighted material patents, patent application, trademarks, and inventions developed by a recipient or subrecipient; or
- Proceeds from the sale of WIOA purchased property

Reasonableness is a term that means that a cost or price is not greater than what one would expect an ordinarily competent and prudent person to charge when conducting business in a competitive environment.

Request for Proposal (RFP): The document that invites offers from subrecipients or contractors for the delivery of a specific type of service. It includes a description of the product(s) or service(s) desired that 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 that is used to acquire the price(s) and pertinent information needed from a contractor. Since the quotation is not a formal offer, the awarding agency must reach a bilateral negotiated agreement before a binding contract exists. A 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 contractors 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 that 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: The practice of distributing 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.

Subgrant means an award of financial assistance in the form of money or property in lieu of money made under a grant by a grantee to an eligible subrecipient. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases, nor does it include any form of assistance that is excluded from the definition of Grant in this part.

Subrecipient means a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program. Uniform Guidance provides definitions for distinguishing a subrecipient at 2 CFR 200.93 from a contractor at 2 CFR 200.23

Unilateral modification means a modification made and signed solely by the contracting agency without consideration to the subrecipient/contractor.

Unilateral right means a legal action that may be taken by the contracting agency without consideration to the subrecipient/contractor.