

PROCUREMENT STANDARDS

EXECUTIVE SUMMARY

This policy establishes procedures governing the use of WIOA funds to procure goods and services. The Monterey County Workforce Development Board (Monterey County WDB) utilizes Monterey County's Contracts and Purchasing Division for procurement and follows state and federal requirements for procurement and contracting conducted under WIOA.

The goal of the Monterey County WDB's WIOA procurement process is fair and equal treatment of all persons and organizations involved, maximizing the purchasing power of WIOA funds, and establishing safeguards that ensure the integrity of WIOA procurements.

REFERENCES

WIOA (Public Law 113-128); Title 2 CFR Part 200; Title 2 CFR Part 2900; California Employment Development Department Workforce Services Directive WSD17-08, Subject: Procurement of Equipment and Related Services (March 14, 2018).

GUIDANCE

I. GENERAL REQUIREMENTS

Procurements are conducted on an ongoing basis, as the Monterey County WDB has discretion to initiate and conduct procurements at any time during a program year.

Contracts are generally one year in length, with the option of up to two (2) additional one-year extensions, subject to the availability of WIOA funds and the quality of contractor performance.

Funding levels for the Monterey County WDB's WIOA programs are contingent on final WIOA Title I allocations received from the US Department of Labor (DOL) and the State of California (State).

WIOA requires local workforce development areas to adopt procurement procedures that ensure:

1. Procurements are conducted in a manner providing full and open competition. This includes the requirement that any individual or entity who develops specifications, Requests for Proposals, who evaluates or makes recommendations on such proposals, or who participates in any manner in the

preparation of a procurement for goods and services with WIOA funds, is NOT eligible to compete in the resulting procurement. This prohibition applies to all types of contracts or grants.

2. The use of sole source procurements is minimized to the extent practicable, but in every case where they are used must be justified;
3. Procurements include an appropriate analysis of the reasonableness of cost and price;
4. Procurements do not provide excess program income for nonprofit and governmental entities or excess profit for private for-profit entities. Appropriate factors shall be used in determining whether 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 clearly specify deliverables and the basis for payment.
6. Procurement contracts and other transactions between the Monterey County WDB and units of State and local governments are conducted on a cost reimbursement basis, with no provision for profit.
7. Procurements avoid the purchase of unnecessary or duplicative goods or services. Surplus and inventory items will be used as preferred alternatives to the purchase of new items.
8. Procurements include a comparative cost analysis between equipment purchase and equipment lease, based on the action that provides the most benefit to the Monterey County WDB.
9. Small businesses, minority-owned and women's businesses, and labor surplus area firms are considered in procurements when possible.

II. GENERAL ASSURANCES AND CONTRACT CERTIFICATIONS

All Monterey County WDB vendors and subrecipients awarded a WIOA contract must comply with the requirements specified below and must adhere to various assurances and certifications based on the specific goods and services they supply. Required certifications will be included in Request for Proposals (RFPs) and contract documents to ensure that vendors and subrecipients are apprised of the terms and conditions that govern expenditures of WIOA funds.

Contract Amendments

All WIOA contracts must specify the full and complete understanding of the parties, subject to applicable laws, rules, and regulations. The Monterey County WDB may issue administrative directives and/or unilateral contract amendments implementing interpretations of federal rules and regulations, directives received from the State, and/or requests from the Monterey County Board of Supervisors, in its role as Chief Elected Official, that may require contractors to change procedures. Contractors must comply with such administrative directives and amendments only after they are formally notified in writing of the actions necessary.

Contractors may initiate requests for contract amendments, including budget line-item amendments, only once per fiscal quarter. All requests for contract amendments must include detailed justifications. The Monterey WDB is not obligated to agree to requested amendments.

Prohibition of Sub-awards to Debarred, Suspended, and/or Excluded Parties

Neither the Monterey County WDB nor its subcontractors and subrecipients may make awards to any party that is debarred or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs, in accordance with DOL regulations. Each entity awarded funds of \$25,000 or more must self-certify that it and its principal staff are neither debarred nor suspended. The Monterey County WDB is not required to verify the certification.

Neither the Monterey County WDB nor its subcontractors and subrecipients may make awards to any party that is listed on the Excluded Parties List System in the System for Award Management (SAM), regardless of the contract amount. The Monterey County WDB must either obtain a copy of each contractor's or subrecipient's SAM registration or must verify in SAM that the contractor or subrecipient is not excluded from doing business with the federal government.

Lobbying

The Monterey County WDB will require all subcontractors 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 DOL regulations.

Equal Employment Opportunity Compliance

All contractors and subrecipients shall comply with the requirements of 41 CFR section 60-1.4 regarding Equal Opportunity and Nondiscrimination.

Clean Air Act and Federal Water Pollution Control Act Compliance

All contracts over \$150,000 shall contain a provision that requires compliance with applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387).

Termination

All Monterey County WDB contracts over \$10,000 will address termination for cause and for convenience by the Monterey County WDB, including a process for exercising the clause. All Monterey County WDB contracts over the federal simplified acquisition threshold (currently \$250,000) will address administrative, contractual, or legal remedies in instances where contractors and subrecipients violate or breach contract terms. Termination clauses shall provide for sanctions or penalties, as appropriate.

III. PURCHASE PROCEDURE

Procurement responsibilities of the WDB's Fiscal Office include:

1. Pre-approval of all property purchases made by service providers and subcontractors.
2. Purchasing training services from service providers, vendors and independent contractors.
3. Approving contracts for services and training.
4. Approving contract amendments.
5. Providing technical assistance to service providers and subcontractors.

IV. CONFLICT OF INTEREST AND CODE OF CONDUCT

An employee, officer, or agent of the Monterey County WDB and its contractors, subcontractors and subrecipients shall not participate in selection, award, or administration of a contract supported by federal funds if a conflict of interest, real or apparent, would be involved. A conflict would arise when the employee, officer, agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the above, has a financial or other interest in the firm or firms that may be selected for award.

An employee, officer, or agent of the Monterey County WDB and its contractors, subcontractors and subrecipients will neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub-agreements. Exceptions are limited to when the financial interest is not substantial, or the gift is an unsolicited item of nominal intrinsic value.

An employee, officer or agent of the Monterey County WDB and its contractors, subcontractors and subrecipients with a real or apparent conflict must declare a conflict, remove themselves from the decision-making process and document their actions.

No person involved in a competitive procurement may divulge information about the procurement before release of procurement documents. To the extent permitted by state, local law or regulations, violations of these standards may result in penalties, sanctions, or other discipline.

V. PROCUREMENT METHODS

The following methods of procurement shall be used by the Monterey County WDB when purchasing goods and services with WIOA funds. Local procedures of the Monterey County Contracts/Purchasing Division may be used where compatible. Minimum standards are established in this policy.

No small purchase shall be made without pre-approval of a complete, signed "Request to Purchase" (RTP) form (Attachment 1).

1. Small Purchase

This procurement method is used when the "per transaction" value of a purchase is less than \$50,000. The use of informal quotations may be used in lieu of the more expensive and time-consuming sealed bid or competitive proposal methods.

The following guidelines for small purchases apply:

Micro Purchases – Up to \$3,500

\$3,500 to \$9,999 – Requires two or more documented quotes before purchase. Prices/quotations can be obtained from catalogs, current price lists, prior receipts, or contact (in person, telephone, fax or e-mail) with vendors. Hard copy catalogs and price lists should be updated at least annually; however, real-time internet research is preferred.

\$10,000 to \$250,000 – Requires a Request for Quote (RFQ). The RFQ specifies the quantity, time frames, and all requirements pertinent to the product or service sought. The RFQ must be provided to potential bidders in writing (including fax or e-mail). Three or more written quotes must be obtained with this method. A purchase order through the Monterey County Contracts and Purchasing Division may be used in lieu of the process described above.

The Monterey County WDB will maintain documentation for both types of small purchases, including:

- The reason for using the small purchase method.
- The estimate of the potential purchase price.
- A description of the goods or services purchased, including the quantity and any additional criteria used to make the procurement decision. A copy of the RFQ suffices.
- A list of all providers contacted/considered, and the prices offered using current catalogs, price lists, prior sales receipts, or written quotes, depending on the amount of the purchase.
- Why the provider was selected, including the responsibility of the provider, how the provider met any additional criteria, and the price analysis.
- Copy of the purchase document (sales receipt, contract).

A purchase or contract for an amount above the simplified procurement threshold may not be divided into multiple purchases or contracts for lesser amounts in order to circumvent the threshold limits established above.

2. Sealed Bids

When goods or services in an amount of \$50,000 or more will be purchased, can be precisely defined, and where price is the single or most important factor, a sealed bid procurement is generally used. It begins with issuance of an Invitation for Bid (IFB) which is advertised through newspapers, local advertising and

trade papers. The IFB sets forth quantity, timeframes, product requirements and any other purchase criteria. Vendors submit a sealed bid to a specified location by a specified date and time. Sealed bids are thereafter opened at a specific date and time. The Monterey County WDB will make a diligent effort to secure at least three competitive bids. A responsible bidder (defined as a bidder that can meet the technical requirements of the procurement and that demonstrates trustworthiness, quality, fitness, capacity, and experience to satisfactorily perform) that submits the lowest bid is usually awarded the contract. The Monterey County WDB will normally reject sealed bids that fall outside IFB parameters. The Monterey County WDB will send written notice of award to all bidders. If only one bid is submitted in response to an IFB, and that bid is non-responsive or is submitted by a bidder which is not responsible, then a non-competitive or sole source process may be used or the Monterey County WDB, in its discretion, may re-issue the IFB.

The Monterey County WDB will maintain documentation for a sealed bid purchase, including:

- The reason for using the sealed bid method.
- An estimate of the potential purchase price.
- A copy of the IFB.
- Bids received.
- Determination of the responsibility of the successful bidder and responsiveness of the winning bid.
- Why the successful bidder was selected.
- A copy of the written notice of award.

3. Competitive Proposals

A competitive Request for Proposals (RFP) process is generally used for purchases of goods and services in amounts of \$50,000 or more when factors other than price are most important in the selection decision; however, an RFP process may also be used to procure services in amounts under \$50,000 in situations where performance of a complex scope of work is sought.

The Request for Proposal (RFP) will state the scope of work if services are sought, will describe the goods to be purchased, if goods are sought, and will state both if both services and goods are sought. The RFP will state the criteria for selection and method for scoring proposals, the deadline for proposal submission, and other relevant information. Public notification of the RFP will normally be made through published announcement in a local newspaper covering the relevant service area. The RFP will be posted on the County of Monterey's on-line Solicitation Center, will be sent to former Monterey County WDB bidders and vendors, and will be provided to any person or entity who requests a copy. Bidders are required to submit their proposals at a specified location by a specified date and time.

A bidders' conference is usually held to answer the questions of interested bidders. Bidders' conferences ensure even-handed treatment of bidders because they ensure attendees receive the same information. The Monterey County WDB retains discretion to determine whether bidder attendance at a bidders' conference is mandatory or optional.

The Monterey County WDB will appoint a review committee, which may include outside individuals the WDB selects for subject matter expertise, that will review and evaluate proposals. Proposal review will include a documented methodology for proposal evaluation. The review committee will make a recommendation as to which proposal best meets stated requirements. A public notice of intent to award is issued to all persons and entities that submitted proposals, followed by the award, and the execution of a contract. The selected proposal, award, and resulting contract are generally subject to the approval of the Monterey County WDB and may be subject to the approval of the Monterey County Board of Supervisors, acting in its role as the Chief Elected Official of the Monterey County local workforce area. The Monterey County WDB may delegate authority to execute contracts to its Executive Director, within specified parameters.

The Monterey County WDB will maintain documentation for a competitive proposal purchase, including:

- The reason for using the competitive proposal method.
- The estimate of the potential purchase price.
- A copy of the RFP and any addenda that issue.
- Bidders' conference questions and answers.
- Proposals received.
- The scoring criteria and the evaluation/scoring sheets for each proposal, including determination of the responsibility of the bidder, the responsiveness of each proposal, and cost analysis.
- Why the successful proposal was selected.
- Copies of the notice of intent to award, award, and approvals issued by the Monterey County WDB and the Monterey County Board of Supervisors, Chief Elected Official of the Monterey County local workforce area.

If less than two (2) responsive proposals are submitted by responsible bidders, the Monterey WDB may, in its discretion, either cancel and re-issue the RFP or conduct a non-competitive, sole-source procurement. The sole-source procurement is governed by the standards of non-competitive procurements described in the following section.

The Sealed Bid or Request for Proposal process is required for purchases of \$50,000 and above, unless one of the following applies:

1. Emergency. The work or service is necessary for the immediate preservation of the public health or welfare, or the safety or protection of government property.
2. State Contracting Manual Exemption. The contract is exempt from being competitively bid, per the State Contracting Manual, Chapter 5.
3. Non-Competitively bid exemption. The Director of Department of General Services (DGS) has approved an exemption from competitive bidding because the State's best interests are better served by exemption.
4. Governmental agency contract. The purchase is from a state, local, or federal agency or with the University of California, the California State University, or a California community college or any of their auxiliary organizations.
5. Community-based Rehabilitation Program. This exemption applies to contracts with public or private nonprofit California corporations operating community rehabilitation programs serving persons with disabilities, where they meet the requirements of Welfare and Institutions Code Section 19404 and Government Code Section 19130(b).

4. Non-competitive Procurement (Sole Source)

The Monterey County WDB may procure goods and services without competition under certain limited circumstances. Per the One-Stop Comprehensive Financial Management Technical Assistance Guide issued by the U. S. Department of Labor, the purchase must be unfeasible under one of the other methods discussed above, and one of the following conditions apply:

- The item is available from only one source.
- Public emergency precludes delay.
- The WDB Executive Director recommends a sole source procurement, and the WDB subsequently authorizes the specific non-competitive procurement (upon a formal request for approval).
- A competitive process yields an insufficient number of bidders (fewer than two), yields bidders who are not responsible; yields proposals that are non-responsive, or yields results that are otherwise inadequate to meet Monterey County WDB's program needs, as determined by the Monterey County WDB in its discretion.

A cost analysis is required for all non-competitive procurements and must be reviewed and approved by the WDB's Finance Manager to ensure that each element of cost has been evaluated prior to the initiation of contract negotiations with the potential sole-source provider of the good and/or service.

The Monterey County WDB will maintain documentation for a non-competitive, sole source purchases including:

- A WDB staff report providing the reason(s) for selecting the sole source method, explaining why competitive procurement is unfeasible, and which additional sole source condition applies, if any.
- The estimate of the potential purchase price.
- A copy of the unsuccessful RFQ/IFB/RFP and responses submitted.
- A determination of the responsibility of the selected provider and cost analysis.
- Why the provider was selected.
- A copy of Monterey County WDB meeting minutes indicating approval of the sole-source procurement.
- A copy of the award documents and resulting contract.

VI. CONTRACT COST AND PRICE ANALYSIS

The Monterey County WDB will conduct a cost or price analysis for most procurement actions, unless price reasonableness is established by catalog, by the market price of a commercial product sold in substantial quantities to the general public, or is set by law or regulation. Cost analysis is the review and evaluation of each element of cost to determine if it is reasonable and allowable. Generally, the Monterey County WDB will complete an independent cost estimate before it receives bids or proposals. It will perform a cost analysis when bidders submit the sub-elements of their estimated cost (e.g. hourly rates for professional, consulting, and architectural engineering services). It will perform a cost analysis when adequate price competition is lacking, for sole source procurements, contract modifications, and change orders.

The Monterey County WDB will conduct price analysis in various ways, including comparison of price quotations submitted by competing bidders, market prices and similar indicia, and discounts offered by competing bidders or in the relevant marketplace generally.

In connection with equipment purchases, the Monterey County WDB will compare lease costs to purchase costs as early as feasible in a procurement to determine whether lease or purchase is appropriate. It will consider and document the following factors:

1. Length of time and how much the equipment will be used.
2. Financial, technical and other advantages of the types and makes/models of the required equipment available for the lease or purchase.
3. Leasing cost and purchase options.
4. Costs of equipment purchase and installation.
5. Imminent technological improvements
6. Other factors related to functional performance or costs of equipment, including maintenance costs.

The cost comparison will provide a basis for estimating the point at which cost of leasing will exceed cost of purchase. The Monterey County WDB will use the factors stated above to compare the cost of purchasing and maintaining equipment against the cumulative costs of leasing.

VII. BIDDING PROCESS

Competitive procurement often takes three to eight months from the time the solicitation is advertised until the award is made. Internal approval steps or protests may extend this period.

The time needed to complete a competitive procurement will depend on the type of bidding method used, the complexity of the services required, the number of bids or proposals received, whether a bidders' conference is held, whether protests are received, and other factors.

VIII. BIDDER'S CONFERENCE

The Bidder's Conference is an open exchange between the Monterey County WDB and bidders to ensure bidders gain a clear understanding of the Monterey County WDB's requirements. These conferences provide a forum for open dialog and clarification of solicitation documents (IFBs, RFPs, etc.), and may identify additional elements that the Monterey County WDB should consider in the evaluation process.

IX. PROTEST/APPEALS PROCESS

A bidder who wishes to protest or appeal (protest) a Monterey County WDB procurement decision will be required to deliver its written protest, on bidder letterhead, to the Monterey County WDB Executive Director at 344 Salinas Street, Suite 101, Salinas, California, within 7 business days after the date of the written notice of award (IFB) or written notice of intent to award (RFP). Protests received after this date will not be considered.

The protest must specify what Monterey County WDB procurement action is protested, the reason(s) for protest, and relief sought.

Grounds for protest include one or more of the following:

1. The procurement documents or procurement process violate a federal or state law or fail to follow the Monterey County WDB's Procurement Standards;
2. A member of the rating panel had a conflict of interest relating to the procurement;
3. A substantial portion of the approved procurement process was not followed, which affected the award; minor or inconsequential deviations in procurement process which did not affect solicitation outcome are not a basis for protest;
4. The award was the result of a technical or mathematical error;
5. The procurement responses were not independently submitted in open competition, were collusive, or were submitted in bad faith;
6. The successful bidder is disqualified from receiving a financial award; or
7. The successful bidder fraudulently represented itself as a responsible bidder.
8. The Monterey County WDB determines that the protesting bidder is non-responsible, defined as untrustworthy, lacking in quality, fitness, capacity, and/or experience. In such cases, the Monterey County WDB will notify a bidder of evidence reflecting upon its responsibility received from others or adduced as a result of independent investigation, will afford the bidder an opportunity to rebut such adverse evidence, and will permit it to present evidence that it is qualified to perform the contract. Where a determination of non-responsibility is rebutted by the bidder, the Monterey County WDB nonetheless retains the discretion to make awards based on cost and other criteria set forth in the IFB or RFQ.

The review of the protest is limited to information the protesting bidder provides in writing. The written protest must contain:

- Date;
- The full name, address, and telephone number of the protesting party;
- A statement of the reasons for protest, including citations to the bid name and date of bid closing and other pertinent documents;
- Evidence supporting the stated reason(s) for protest;
- A statement of the relief sought.

Protests must be submitted in writing to:

Attn: WDB Executive Director
Monterey County Workforce Development Board
344 Salinas Street, Suite 101
Salinas, CA 93901

The Monterey County WDB will acknowledge receipt of a protest and may, in its sole discretion, meet with the protesting bidder to review issues raised by the protest.

A bidder protesting the decision of the Monterey County WDB with regard to a proposal or other response to a procurement will be scheduled to meet with the Monterey County WDB at its next regularly scheduled meeting. The Monterey County WDB will hear the protest and provide final consideration of the protest. The successful bidder in a procurement that is the subject of a protest will be afforded opportunity to respond to the protest, if the protest challenges the successful bidder's qualifications or the integrity of its proposal. A decision by the Monterey County WDB will be communicated to the protesting bidder within 60 days of the hearing before the Monterey County WDB.

The Monterey County WDB reserves the right to continue to proceed with its procurement process during the pendency of a protest when (1) delay in procuring goods and services would cause harm to Monterey County WDB clients and WIOA program participants, (2) when the protest is plainly vexatious or frivolous, (3) when other undue harm would occur if award of a contract is delayed (e.g., federal or state funding would be lost or forfeited), or (4) delay would cause other unspecified, serious harm to the achievement of the goals of Monterey County WDB programs.

All decisions of the County of Monterey/WDB shall be final.

ATTACHMENT: (1) Request to Purchase Form

INQUIRIES

If you have questions please contact staff at (831) 796-3505. This policy is posted on the WDB website located at: www.montereycountywdb.org

CHRIS DONNELLY, Executive Director
Monterey County Workforce Development Board