

## NORTH CENTRAL COUNTIES CONSORTIUM

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

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

**II. Background**

The Workforce Investment Act (WIA) Federal Regulations provide guidance for the administration of the WIA program. The guidance includes specific direction and referral to Title 29 CFR Part 97 for states and local governments. Title 29 CFR Part 97.36 outlines the rules governing procurement of goods and services.

**III. References**

- WIAD00-2, Subject: Procurement
- Title 20 CFR 667.200
- Title 29 CFR Part 97, Section 97.36

**IV. General Provisions**

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

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

**V. Policy**

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

**A. Bidder and Vendor Lists**

1. A "Bidder List" containing the names and addresses of potential service providers shall be maintained at the NCCC Administrative Office.

Solicitation letters shall be sent to all potential providers on the Bidder List, appropriate to the type of goods and services to be procured. Solicitation packages (RFP or IFB) shall be sent to all who request them.

The Bidder List shall be updated at least annually.

2. A “Vendor List” containing the names and addresses of organizations which are prequalified for the provision of goods and/or services shall be maintained at the NCCC Administrative Office.

The Vendor List shall be updated at least annually and shall include but not be limited to those vendors in good standing whose goods/services have been purchased through the NCCC’s procurement process.

#### B. Cost/Price Analysis

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

An analysis of cost shall be performed for all noncompetitive awards to service providers and for all procurements which require submission of cost elements.

An analysis of vendor price shall be performed by comparing proposed prices to catalog or market prices of comparable products sold to the general public, or based on prices set by law or regulation. Price analysis may also be performed for service providers by comparing the proposed price to pre-bid estimates.

Program income and/or profit shall be analyzed and negotiated as a separate element for each procurement in which a cost analysis is performed.

#### C. Methods of Solicitation

Each purchase utilizing WIA funds must follow one of the four procurement methods: (1) Small Purchase, (2) Request for Proposal, (3) Noncompetitive Proposal, or (4) Request for Quote. Each procurement method must be documented.

##### 1. Small Purchase Procedures

- a) Small purchase means the acquisition of goods or services that do not cost more than \$50,000 in the aggregate. If the nature of the acquisition is more complex, the Competitive Proposal method should be utilized even if the purchase price is less than \$50,000.
- b) For Small Purchases, two quotes or price must be obtained. Price documentation from vendor catalogues is acceptable.

- c) Single transactions shall not be broken down into several smaller purchases for the purpose of utilizing the Small Purchase procurement method.

## 2. Request for Proposal (RFP)

- a) The Request for Proposal method for procurement should be used when:
  - i) The nature of the item or service needed precludes developing a specification or a purchase description so precise that all potential suppliers have an identical understanding of the requirements;
  - ii) Those responsible for preparing the procurement are unable to predetermine product or service specifications to the level needed to assure that both a fair price and the optimum product or services will be obtained through the competitive bid process;
  - iii) Price is not the primary or dominant factor in the award decision.
- b) If the Request for Proposal method is used, the solicitor shall:
  - i) Solicit offers by publishing a Request for Proposal (RFP) to an adequate number of qualified sources to ensure competition;
  - ii) Publicly advertise the RFP;
  - iii) Allow sufficient time for potential suppliers to respond;
  - iv) Ensure that the RFP identifies the scope of work and service area, all significant evaluation or rating factors, and the deadline for receipt of responses to the RFP;
  - v) Establish evaluation factors for the award and the relative importance of each in the evaluation process;
  - vi) Provide for negotiation with any or all proposers determined through the rating process to be responsive and advantageous to the program, and the notification of unsuccessful proposers in a reasonable amount of time.
- c) Appropriate documentation for the Request for Proposal method shall include:
  - i) The rationale for why the RFP method was selected;
  - ii) The RFP document;
  - iii) The list of known suppliers to whom the RFP was sent;
  - iv) Evidence of public advertisement of the RFP;
  - v) All responses to the RFP;
  - vi) Documentation of the results of the scoring of the proposals.

## 3. Noncompetitive Proposals (Sole Source)

- a) Except when the Small Purchase Procedures method is used, the Noncompetitive Proposals (sole source) method may be used only when the procurement is infeasible under Request for Quote method or the Request for Proposal method due to one of the following circumstances:
  - i) The item or service is available from only one source (sole source). If this rationale is utilized, the solicitor must document how it was established that there was a single source for the good or service; or
  - ii) Public urgency or emergency will not permit the time required for a competitive solicitation; or

- iii) A failed competition has occurred; or
  - iv) Approval is obtained from NCCC, who must also obtain permission from the State of California.
- b) A failed competition occurs when less than two qualified, responsive quotes or proposals are received.
- c) The rationale for utilizing the Noncompetitive Proposal method must be adequately documented in the procurement file.

#### 4. Request for Quote (RFQ)

- a) For purchases over \$50,000, a Request for Quote method of procurement should be used if:
- i) The procurement lends itself to a firm, fixed price, and selection can appropriately be made primarily based on price and perceived quality of the goods or services;
  - ii) A complete, adequate, and realistic specification or purchase description has been developed; and
  - iii) There is at least the possibility of two or more responsible suppliers willing and able to compete effectively for the award.
- b) If this method is used, the solicitor shall:
- i) Allow sufficient time for potential suppliers to respond;
  - ii) Solicit quotes by issuing a Request for Quote document to known suppliers, and by publicly advertising the Request for Quote;
  - iii) Clearly define in the RFQ document the items or services needed, key performance criteria, and dimensions or specifications in order for the applicant to properly respond to the RFQ;
- c) The documentation that must be retained for the RFQ method shall include:
- i) The rationale for why the RFQ method was selected;
  - ii) The RFQ document;
  - iii) The list of known suppliers to whom the RFQ was sent;
  - iv) Evidence of public advertisement of the RFQ;
  - v) All responses to the RFQ;
  - vi) The rationale for the selection.

#### D. Appeals

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

1. Be in writing, dated and signed.
2. State the reason for disputing the award.

3. Include the desired remedy.
4. Be acknowledged in writing by the NCCC.

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

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

E. Authorization

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

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

F. Code of Conduct – NCCC Policy No. 12

I. Purpose

This Code of Conduct implements and interprets State and Federal requirements governing Workforce Investment Boards (WIB) and activities funded by the Workforce Investment Act (WIA). The Political Reform Act (Government Code Section 81000, et seq.) and the Fair Political Practices Commission regulations (2 Cal. Code of Regs. Sec. 18730) are incorporated into this Code of Conduct by reference.

II. Effective Date

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

III. Definitions

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

IV. Trust

Officials shall treat their position as a public trust.

- A. WIB and NCCC powers and resources are to be used for the benefit of the public rather than for personal benefit.

- B. Officials shall establish and implement policies in good faith, as equitably and economically as possible, regardless of their personal views.
- C. Whistle-blowing is appropriate in the event of unlawful or improper actions. Anyone who observes any unlawful or improper actions by an official is expected to report them. Customarily, the actions are reported to the official's employer. If the employer appears to be involved in the improper actions, the report can be made to a higher level, to NCCC's Executive Director or to the WIB's Chair or the NCCC Governing Board's Chair.

"Whistle-blowing" differs from "leaking" because leakers act covertly and are essentially unaccountable for the consequences of their actions. It is improper to harass or punish officials who seek accountability through whistle-blowing. Leakers are not similarly protected.

- D. Citizens shall have a fair and equal opportunity to express their views to officials. Often it is impossible for an official to talk personally with every concerned citizen, but obtaining an appointment or a chance to speak at a WIB or NCCC meeting should not appear to depend upon friendship or animosity.
- E. Officials shall not give the appearance of impropriety in their official conduct. Officials should not accept any personal gift, meal or entertainment valued at \$50.00 or more. The official should consider the decisions he or she may have to make and shall exercise conservative judgment as to whether accepting a gift in any amount is appropriate. The key question for an individual official is, "By accepting this gift/meal/ entertainment, am I giving preferential treatment to the gift giver, or am I giving the appearance to reasonable people of giving favor to the individual?" If the answer is "yes" to either question, then the official should not even accept a gift below the \$50.00 threshold.

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

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

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

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

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

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

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

## V. Objectivity

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

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

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

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

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

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

## VI. Accountability

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

- A. Officials shall exercise their authority in open meetings supported by public records subject to the normal and usual exceptions, including but not limited to 1) pending or threatened litigation, 2) personnel decisions, 3) contract negotiations where disclosure of NCCC's position may inflate costs or prevent NCCC from carrying out its mission as effectively as possible, and 4) a decision to sanction a WIB member or NCCC Director where that member or Director wishes to contest the facts supporting the sanction in a confidential meeting and the Board concurs with the confidentiality request.
- B. Each official is encouraged to improve WIB and NCCC systems by identifying problems and proposing improvement. NCCC officials who believe a policy or practice is not achieving its stated purpose, is creating unintended harm, or is inefficient, should express such concerns and should suggest possible improvements.

- C. NCCC systems shall be self-monitoring, with procedures in place to ensure appropriate actions. Managers should make sure their practices for purchasing, contracting, and hiring include routines that elicit fair choices and assure protection of NCCC assets. Such routines include checklists, separation of duties, bank account reconciliations, and reports to management.
- D. Any official's immediate family shall not receive preferential treatment in employment or in the receipt of NCCC funded services. NCCC's service providers shall adopt and shall comply with nepotism provisions no less restrictive than this paragraph.
- E. No official shall also be an NCCC contractor, subcontractor or vendor without full disclosure and authorization from the NCCC Governing Board. This section shall not apply to WIB members who 1) are salaried officials for public or nonprofit entities, or who serve on the boards of such entities, and 2) who provide vendor services to NCCC clients utilizing the same rates as for the general public. For example, the NCCC Governing Board need not approve community college tuition arrangements merely because a community college president sits on the Governing Board.
- F. The WIB's Officers, Committee Chairs, Council Chairs and Executive Committee members may not represent, serve on the board of, or work for a public, private for profit or nonprofit NCCC contractor or subcontractor. WIB and NCCC Governing Board members should be especially careful to disclose and avoid conflict of interest situations. The Governing Board and/or other Local Elected Officials serving as a member will be held to the most restrictive state or local interpretation of public conduct.

**VII. Leadership**

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

**VIII. Informal or Formal Opinions**

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

**IX. Sanctions**

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

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