

NoRTEC POLICY STATEMENT

PROCUREMENT

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PURPOSE

To provide guidance for NoRTEC Staff and Program Operators regarding the procurement requirements of the Workforce Investment Act (WIA), Department of Labor Regulations (DOL), State Directives, and NoRTEC policy.

The guiding principle for all procurement actions is to purchase necessary, high-quality goods and services for a fair and reasonable price, and to ensure full and open competition among suppliers.

The NoRTEC Standards of Conduct and Complaints Resolution policies are incorporated into this policy, by reference.

Definitions

Bidder's Conference is an open exchange between purchasers and vendors to help ensure a clear understanding of contract requirements.

Cost Analysis is the line-item by line-item examination of the estimated or actual cost of contract performance to determine the probably cost to the vendor. This is a more detailed and costly method than price analysis in terms of both time and manpower.

Equipment (Goods) is defined as tangible, nonexpendable personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit, including costs related to the property's final intended use. Purchases of equipment require prior approval from the State and NoRTEC.

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.

Single Transaction is a single solicitation for a single item (e.g., copying machine), group of related items (e.g., office furniture), or a specified service (e.g., staff training). Purchases are not to be broken down into smaller components to avoid more stringent procurement requirements.

Subrecipient is a legal entity to which a subaward of federal funds is made and that is accountable to the grantee for the use of the funds provided. The terms "recipient" and "subrecipient" are often used interchangeably with "grantee" and "subgrantee."

Supplies are tangible personal property other than equipment.

Vendor is a dealer, distributor, merchant, or other seller providing goods or services that are required for the conduct of a federal program.

General Requirements

NoRTEC service providers must have written procedures that include, but are not limited to, the following:

- Written standards of conduct, including conflict of interest provisions and disciplinary actions for violations. The conflict of interest standards must also address the requirements of 29 CFR 667.200(a)(4) related to State and Local Workforce Investment Board (local board) members.
- A system that provides for full and open competition whenever possible. Awards should be made based on a responsive bid or offer. The one most advantageous to the grantee after consideration of price, quality, and any other factors contained in the solicitation should be chosen.
- Procedures to detail the review of prospective procurements to avoid purchase of unnecessary or duplicate items, including analysis of lease versus purchase.
- A list of the types of procurement including when and how to use them.
- Limited conditions under which sole source procurement may occur.
- Requirements for a price or cost analysis.
- Solicitations must provide for clear and accurate descriptions of the goods or services being procured. The description must not contain features that restrict competition. They must include all requirements that must be fulfilled and all other factors used in evaluating bids or proposals. Any technical requirements must be described in terms of functions to be performed or performance required, including a range of acceptable or minimum acceptable standards. Specific features of "brand-name or equal" descriptions must be included, if included in the solicitation. If procuring goods or certain types of services, the acceptability of metric measurements.
- A cost sharing process (whenever applicable).
- Documentation of each of the significant steps followed in making an award to include selection criteria, agreement type, basis for contract price, and independent agency estimate of price.
- Procurement records shall be maintained in a procurement file for three years following submission of the final expenditure report for the funds utilized for each procurement.
- A process to ensure that awards are made only to responsible contractors with the ability to perform successfully.
- Protest procedures to handle disputes related to both award and administration of contracts.

Standards of Conduct

Members of the WIB and Governing Board are governed by the NoRTEC Standards of Conduct Policy referenced above.

No employee, officer or agent of NoRTEC shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when the employee, officer or agent, any member of his immediate family, his or her partner, or any organization which employs, or is about to employ, any of the above has a financial or other interest in the organization selected for award. Officers, employees or agents of NoRTEC shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors or parties to subagreements.

Procurement Methods

Goods and services must be procured using one of the following four methods: small purchase, sealed bids, competitive proposals, and non-competitive proposals.

Sole source, only where justifiable, can be used for a transaction of any amount. In the absence of sole source justification, one of the other three procurement methods must be used. For a transaction of less than \$50,000, the small purchase method may be used. However, the sealed bid and competitive proposal may also be selected. For transactions of \$50,000 or more, the sealed bid or competitive proposal must be used.

Small Purchase

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

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

The following chart shows the guidelines for small purchases from \$1, but less than \$50,000.

Dollar Range of Purchase	Contacts and Method
\$1 to \$9,999	Two documented quotes
\$10,000 to \$49,999	Three or more written quotes

For small purchases between \$1 and \$9,999, two or more documented quotes must be obtained. 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.

A pre-approved vendors list based upon price sampling may be utilized in lieu of separate price quotes for each individual purchase. The price sampling must include a sufficient number of items to reasonably establish that the vendor's prices are competitive, and must be updated annually.

For small purchases between \$10,000 and \$49,999 a Request for Quote (RFQ) must be used. The RFQ specifies the quantity, time frames, and all the requirements of the product or services being sought. The RFQ must be provided in writing (including fax or e-mail). Three or more written quotes must be obtained with this method.

Sealed Bids

When the nature of the good or service to be purchased will be more than \$50K, and can be precisely defined, the sealed bid procurement is generally used. The sealed bid process begins with issuance of an Invitation for Bid (IFB). The IFB will be publicly solicited or advertised through newspapers, local advertising and trade papers. The IFB defines the quantity, timeframes, and product requirements. Vendors are notified of the purchase requirements and submit a sealed bid to a specified location by a specified date and time. The bids are then opened at a specific date and time. A diligent effort should be made to secure at least three competitive bids. The responsible bidder (a bidder that can meet the technical requirements of the procurements), that submits the lowest bid is usually awarded the contract. Any bidder that falls outside of the parameters will normally have their bid rejected. Award of a firm fixed-price or fixed unit price contract by written notice is sent to the lowest responsible bidder. If only one bid is obtained and that bidder is deemed to be responsible, then the noncompetitive or sole source process may be used.

Proper documentation for a sealed bid purchase includes:

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

Competitive Proposals (RFP)

This method is typically used when the nature of the goods to be acquired cannot be defined as precisely as required by the sealed bid method. Competitive proposals are specifically used when factors other than price are important in the selection decision; however, procurements must be in excess of \$50K. Subgrantees must indicate in the Request for Proposal (RFP) the scope of work, the method for scoring the proposals, the deadline for receipt of proposals and the dispute process. A public notification of the RFP is normally given through an announcement in a local newspaper that cover the the entire service area. A copy of the RFP is sent to anyone who requests it and to any prior bidders. A bidders' conference is usually held to allow interested parties to have any questions answered. Bidders' conferences also allow attendees to receive the same information. Bidders are required to submit their proposals to a specified location by a specified date and time. Each RFP is reviewed and evaluated as to the merits of the proposal. This review includes a cost analysis. There should be a documented methodology for technical evaluation of each proposal. The review committee then makes a final recommendation as to which proposal(s) best meets the stated requirements. Careful documentation of the successful bidder selection should be maintained for reference. A public notice of intent to award is issued, and followed by the award, and the execution of the contract. If only one proposal is obtained and that proposal is deemed to be responsible, then the noncompetitive or sole source process may be used.

Proper documentation for a competitive proposal purchase includes:

- The reason for selecting the competitive proposal method.
- The subrecipient's estimate of the potential purchase price.
- A copy of the RFP.
- Bidders' 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 provider was selected.
- The public notice of intent to award.
- Copy of the award document.

Noncompetitive Proposals (sole source)

Noncompetitive proposals may be used under certain limited circumstances. The purchase must be infeasible 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 (for example, a flood at the local day care center requires the immediate acquisition of additional services).
- The awarding agency authorizes the specific noncompetitive procurement (upon a formal request for approval).
- Competition is determined inadequate. This usually occurs after a competitive process has been used and there are insufficient bidders (fewer than three).

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 or price analysis.
- Why the provider was selected.
- Copy of the award document.

Required Contract Clauses

- For all contracts in excess of the small purchase threshold, administrative, contractual, or legal remedies where contractors violate or breach contract terms. The clause must also provide for sanctions or penalties, as appropriate.
- Termination for cause and for convenience by the awarding agency, including the process for exercising the clause and any basis for settlement (applies to contracts in excess of \$10,000 (For State and Local Governments) or contracts in excess of \$100,000 (institutions of higher education, hospitals and other nonprofit and commercial organizations)).
- Access to records by the awarding agency, the grantee, the DOL, or the Comptroller General.
- The Comptroller General of the United States for the purposes of audit, examination, excerpts, and transcriptions (for other than small purchase transactions).
- 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 29 CFR 97.42 or 29 CFR 95.53.

- Compliance with Equal Employment Opportunity provisions in Executive Order (E.O.) 11246, as amended by E.O. 11375 and supplemented by the requirements of 41 CFR Part 60. These are codified for DOL programs at 29 CFR Parts 33 and 37.
- Compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 328 and 333) (all contracts in excess of \$2,500 that involve employment of mechanics or laborers and all construction contracts in excess of \$2,000).
- Compliance with the applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act, Section 508 of the Clean Water Act, E.O. 11738, and Environmental Protection Agency regulations (40 CFR Part 15) (applies to contracts, subcontracts, and subgrants in excess of \$100,000).
- Mandatory standards and policies related to energy efficiency, which are contained in the State energy conservation plan issued in compliance with the Energy Policy Conservation Act (Public Law 94-163).
- A provision requiring compliance with the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). This requirement is also found in 29 CFR Part 93.
- A provision requiring compliance with the debarment and suspension requirements E.O. 12549 and 12689). This requirement is also found in 29 CFR Part 98.
- Compliance with the provisions of the Davis-Bacon Act for construction contracts in excess of \$2,000.
- A provision requiring compliance with the Copeland Anti-Kickback Act (construction and repair awards).

Subgrantee and Vendor Distinctions

The applicability of the WIA, its regulations, and other program regulations, including the Office of Management and Budget (OMB) circulars, is limited to grantees and subgrantees funded by those programs. Thus, the distinction between subgrantees and vendors becomes critical to the program. Payments received by a vendor for goods or services are not considered to be federal awards.

Subrecipient

A subrecipient is a legal entity to which a subaward of federal funds is made and that is accountable to the grantee for the use of the funds provided. When the organization performs the following activities, a federal award to a subrecipient is indicated:

- Determines eligibility for the federally funded program.
- Has its performance measured against the objectives of the federal program.
- Has responsibility for programmatic decision-making.

- Has responsibility for adherence to applicable federal program compliance requirements (for example, the regulations).
- Uses the federal funds to carry out a program of the organization as opposed to providing goods or services for a program.

Vendors

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

- Provides the goods and services within normal business operations.
- Provides similar goods or services to many different purchasers.
- Operates in a competitive environment.
- Provides goods or services that are ancillary to the operation of the federal program.