

DIRECTIVE

WORKFORCE SERVICES

Number: WSD12-10

Date: November 30, 2012
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TO: WORKFORCE DEVELOPMENT COMMUNITY

SUBJECT: PROCUREMENT

EXECUTIVE SUMMARY:

Purpose:

This directive provides State and federal guidance to grantees and subgrantees of Workforce Investment Act (WIA) funds regarding the procurement of goods and services. Specifically, this directive includes policy, procedures, definitions and information regarding procurement. In addition, this directive provides guidelines for the proper use of federally owned property, equipment, and supplies.

Scope:

This directive applies to all Local Workforce Investment Areas (local area) and all other grantees of WIA funds.

Effective Date:

This directive is effective on date of issuance.

REFERENCES:

- Title 20 Code of Federal Regulations (CFR), WIA Final Rule, Section 667.200
- Title 29 CFR Part 97, Sections 97.32, 97.33, 97.36 and 97.42
- Title 29 CFR Part 95, Sections 95.34, 95.35, 95.40 through 95.48 and 95.53
- Title 41 CFR Part 02-85, Section 102-85.35
- Office of Federal Procurement Policy, 41 USC Chapter 7, Section 403 (Definitions)
- Office of Management and Budget (OMB) Circular A-21, Cost Principles for Educational Institutions (May 10, 2004)
- OMB Circular A-87, Cost Principles for State, Local and Indian Tribal Governments (May 10, 2004)
- OMB Circular A-122, Cost Principles for Non-Profit Organizations (May 10, 2004)

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- Department of Labor (DOL) One-Stop Comprehensive Financial Management Technical Assistance Guide (July 2002)
- DOL Training and Employment Guidance Letter (TEGL) 7-04, Issues Related to Real Property Used for Employment and Training Administration (ETA) Program Purposes (October 20, 2004)
- DOL TEGL 31-04, Payment of Royalties on Intellectual Property Created with Federal Grant Funds (April 29, 2005)
- WIA Directive WIAD03-10, Subject: Allowable Costs (April 9, 2004)
- California's Strategic Two-Year Plan for Title I of the WIA of 1998, and the Wagner-Peyser Act (July 2009 - June 2010)
- California State Contracting Manual, Subject: Chapter 5: Competitive Bidding Methods (October 2005)

STATE-IMPOSED REQUIREMENTS:

This directive contains federal and State requirements. The State-imposed requirements are printed in ***bold, italic type***.

FILING INSTRUCTIONS:

This directive supersedes Directive WIAD00-2, dated August 24, 2000 and finalizes Workforce Services Draft Directive WSDD-67, issued for comment on June 7, 2012. The Workforce Services Division received 30 comments during the draft comment period. This resulted in nine substantive changes to the directive which is viewed as highlighted text. The highlighted text will remain on the Internet for 30 days from the issuance date. A summary of the comments is provided as an Attachment. Retain this directive until further notice.

BACKGROUND:

The WIA Final Rule, Title 20 CFR 652, provides guidance for the administration of the WIA program. The guidance includes specific direction and referral to Title 29 CFR Part 95 for institutions of higher education, hospitals and other nonprofit and commercial organizations, and to Title 29 CFR Part 97 for States and local governments. While the format and wording of Part 95 and Part 97 vary slightly, the intent of the federal government is consistent: procurement policies must ensure free and open competition and must secure the best possible price. Additional federal guidance can be found in the One-Stop Comprehensive Financial Management Technical Assistance Guide, Chapter II-10.

POLICY AND PROCEDURES:

The guidance in this directive applies to all purchases of equipment (goods) and services, using WIA funds, for the operation and support of the WIA program or for the benefit of WIA participants [except when purchasing training services through the Employment Training Provider List (ETPL)]. The procedures and guidelines described

in this directive are to be used by all entities that plan to use WIA funds to make a purchase.

Definitions

Acquisition is the act of acquiring goods and services for the use of governmental activity through purchase, rent, or lease. This includes the establishment of needs, description of requirements, selection of procurement method, selection of sources, solicitation of procurement, solicitation for offers, award of contract, financing, contract administration, and related functions.

Agreement is a duly executed and legally binding contract; the act of agreeing.

Bid or Bidding is an offer to contract with the State submitted in response to a bid invitation issued by the Employment Development Department (EDD) or an issuing entity.

Bidder's Conference is an open exchange between purchasers (e.g. EDD) and vendors (bidders) to help ensure a clear understanding of contract requirements.

Competitive Bidding is the process of inviting and obtaining bids from competing sources in response to advertised competitive specifications, by which an award is made to the lowest and best bidder meeting the specifications. The process contemplates giving potential bidders a reasonable opportunity to bid, and requires that all bidders be placed on the same plane of equality. Each bidder must bid on the same advertised specifications, terms, and conditions in all the items and parts of a contract. The purpose of competitive bidding is to stimulate competition, prevent favoritism, and secure the best goods and services at the lowest practicable price, for the benefit of the State.

Contract is an agreement to do or not to do a certain thing (Civil Code 1549). It gives rise to an obligation or legal duty enforceable in an action at law (Civil Code 1428). Contract and Agreement are used interchangeably in the State Contracting Manual (SCM). A contract sets forth terms, conditions, and the statement of work to be performed.

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.

Disabled Veteran Business Enterprise (DVBE) is a business that is at least fifty-one percent (51%) owned by one or more disabled veterans or, in the case of any publicly owned business, at least fifty-one percent (51%) of the stock of which is owned by such individuals, and whose management and daily business operations are controlled by one or more of such individuals.

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.

Grantee is the direct recipient of grant funds from the DOL. Some documents refer to a grantee as a recipient or subrecipient. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document.

Invitation for Bid (IFB) is a type of solicitation document, used in a formal competitive bidding process, which contains a precise statement and complete specification of what the agency is attempting to purchase. Qualifying bidders compete solely on the basis of cost.

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 is all stages of the process of acquiring property or services, beginning with the process for determining a need for property or services and ending with contract completion and closeout.

Proposal is an offer made by one party to another as a basis for negotiations, prior to the creation of a contract.

Recipient means a non-federal entity that expends federal awards received directly from a federal awarding agency to carry out a federal program.

Request for Proposal (RFP) is a type of competitive procurement issued at an early stage in a procurement process, where an invitation is presented for suppliers, often through a bidding process, to submit a proposal on a specific commodity or service. The RFP process brings structure to the procurement decision and is meant to allow the risks and benefits to be identified clearly up front.

Request for Quote (RFQ) is used when discussions with bidders are not required (mainly when the specifications of a product or service are already known) and when price is the main or only factor in selecting the successful bidder. An RFQ may also be used as a step prior to going to a full-blown RFP to determine general price ranges. In this scenario, products, services or suppliers may be selected from the RFQ results to bring in to further research in order to write a more fully fleshed out RFP.

Services include professional and consultant services secured from those individuals or companies that perform a special skill, such as training. Services include equipment and property maintenance, training services, when being purchased outside of the ETPL, and other types of services procured for participants' benefit or program operation and support.

Small purchase is a procurement method where the acquisition of goods or services that fall between \$1 and \$50,000.

Solicitation for Proposal (SFP) is a formal document which elicits proposals for acquisition or financial assistance awards. An SFP may include Invitations for Bid (IFB), Requests for Proposals (RFP), and Requests for Quotation (RFQ).

Specification is a concise statement of a set of requirements to be satisfied by a product, material or process that indicates whether the requirements are satisfied.

Standard(s) is the established and fixed measure or measures used in assessing quality or performance.

Subcontract is a contract between a prime contractor and a subcontractor to furnish supplies or services for the performance of a prime contract or subcontract.

Subgrantee is the government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided.

Subrecipient is a legal entity (e.g. Mentoring Ex-Offenders R Us) 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 Provisions

The following provides information regarding significant federal procurement requirements. However, each grantee and subgrantee is responsible for complying with all applicable federal requirements. Grantees and subgrantees must have written procedures that include, but are not limited to, the following:

- A code of conduct for employees conducting procurements, including criteria regarding conflict of interest.
- 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.
- A cost sharing process (whenever applicable).
- Procedures to detail the review of prospective procurements to avoid purchase of unnecessary or duplicate items, including analysis of lease versus purchase.
- 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.

- 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.

State and Other Governmental Grantees

Procurement Policies and Procedures

The requirements pertaining to the procurement for State and local governmental grantees and subgrantees of goods and services are listed in 29 CFR 97.36. States are required to follow the same policies and procedures they employ for procurements using non-federal funds. In addition, they are required to ensure that all federally required clauses are included in all purchase orders and other agreements. All other governmental grantees and subgrantees are required to follow the requirements of 29 CFR 97.36(b) through (i).

Local governmental and Indian tribe grantees and subgrantees may follow their own policies and procedures if they are consistent with State and local laws and regulations and the procurements conform to the standards of 29 CFR 97.36(b) through (i). Grantees and subgrantees are required to maintain a system for the administration of contracts. In order to comply with these requirements, grantees/subgrantees should maintain written procedures that, at a minimum, address the following standards:

- A contract administration system that ensures a contractor performs in accordance with the requirements of any awards.
- A written code of conduct for employees engaged in the award and administration of agreements. The grantee/subgrantee must also include the standards for conduct specified at 20 CFR 667.200(a)(4), which address conflict of interest provisions for State and local area grantee board members.
- Procedures that detail the requirement for a review of prospective procurements to avoid purchase of unnecessary or duplicate items, including analysis of lease versus purchase.
- A process that promotes the use of intergovernmental agreements for procurement or use of common goods and services, as well as the use of federal excess and surplus property wherever possible.
- A process to ensure that awards are made only to responsible contractors with the ability to perform successfully. The awarding agency standards should address integrity, compliance with public policy, past performance, and contractor resources (technical and financial) for prospective contractors.
- Documentation of each of the significant steps followed in making an award. These must include rationale for method of procurement, selection of agreement type, selection or rejection criteria, and the basis for the contract price, including the independent agency estimate of price.

- A settlement process. Grantees and subgrantees are solely responsible for the settlement of all procurement actions, including those related to source evaluation, protests, claims, and disputes. Violations of law must be referred to the appropriate local, State, or federal agency having jurisdiction.
- Protest procedures to handle disputes related to both award and administration of contracts. Protest procedures must include available remedies, and the information related to protests must be disclosed to the awarding agency. Protestors must exhaust all grantee and subgrantee administrative remedies before pursuing a protest with a federal agency, and any protest to the federal level must allege a violation of federal law or regulation or of the governmental grantee's violation of its own protest procedures.

Written procedures will also assist grantees and subgrantees to meet the requirements for procurement system certification that are contained in 29 CFR 97.36(g)(3) related to awarding agency review of proposed procurement actions.

Procurement Methods

Title 29 CFR 97.36(c) specifies that all procurement actions are to be conducted in a manner that provides for "full and open competition." Within the context of open competition, four methods are discussed in Section 97.36(d) by which agencies may procure goods or services (small purchase, sealed bids, competitive proposals, and non-competitive proposals). The type of purchase method is generally determined by the "per transaction" value of the procurement and the type of good or service being purchased. "Per 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.

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.***

1. 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. An example of the "availability" criteria would be: you need

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

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. (This applies to Governmental grantees, Non-Governmental grantees, and subgrantees.) 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.

With some departments and agencies, prices can also be obtained by preparing a list of commonly procured items and having providers submit prices that can be guaranteed for a “set time period.” However, the EDD does not use the “set time period” technique in procurement. One technique that a buyer may use is called “historical pricing.” With historical pricing, a buyer is able to demonstrate that other transactions occurring in the past 12-18 month period shows that historical prices for similar acquisitions have yielded no material change in cost.

For small purchases between \$10,000 and \$49,999, a Request for Quote (RFQ) must be used. (This applies to Governmental grantees, Non-Governmental grantees, and subgrantees.) 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.***

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. A copy of the RFQ would suffice.
- All providers contacted/considered and the prices offered using current catalogs, price lists, prior sales receipts, or formal quotes depending on the amount of the purchase.

- Why the provider was selected, including how the provider met any additional criteria, and the price analysis.
- Copy of the purchase document (sales receipt, contract).

2. 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 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.

IFB versus RFP

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

3. Competitive Proposals

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 covers

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 subgrantee'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.

4. Noncompetitive Proposals (sole source)

Noncompetitive proposals may be used under certain limited circumstances. Per the [One-Stop Comprehensive Financial Management Technical Assistance Guide](#), 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).

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 provider was selected.
- Copy of the award document.

Non-Governmental Grantees and Subgrantees

Institutions of higher education, hospitals and other nonprofits, and commercial organizations that receive grants and subgrants under ETA-funded grant programs must follow the procurement standards of 29 CFR Part 95. These standards are slightly different from the standards imposed on States and governmental grantees. The requirements for nongovernmental grantees are discussed in the following subsections.

Procurement Policies and Procedures

The standards to be employed under Part 95 are listed in 29 CFR 95.41 through 95.47. The standards are similar to those listed in Part 97 and are described as follows:

- Each grantee/subgrantee must maintain 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.
- Each grantee must maintain 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.
- Each grantee/subgrantee must establish written procurement procedures to prevent purchases of unnecessary items.
- Each grantee/subgrantee must establish written procurement procedures that provide for an analysis of lease versus purchase options to determine the most "economical and practical" procurement.

In addition, solicitations must provide for the following:

- Clear and accurate descriptions of the goods or services being procured. The description must not contain features that restrict competition.
- All requirements that must be fulfilled and all other factors used in evaluating bids or proposals.
- Technical requirements 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, if included in the solicitation.
- If procuring goods or certain types of services, the acceptability of metric measurements.
- Preference for ecologically sound and energy-efficient products.
- Procedures that detail the requirement for a review of prospective procurements to avoid purchase of unnecessary or duplicate items, including analysis of lease versus purchase.

Grantees are also responsible for the resolution of all contractual and administrative issues arising out of the procurements unless the issues concern violations of statute. Those matters are to be referred to the proper federal, State, or local authority depending on who has jurisdiction.

In addition, procurement practices should encourage the utilization of small businesses, minority-owned firms, and women’s business enterprises whenever possible.

Procurement Methods

Section 29 CFR 95.43 requires that procurements be conducted in a manner designed to provide full and open competition. The four methods described earlier in this Directive are **approved** methods to procure both goods and services under the provisions of Part 95, with certain caveats:

- The small purchase threshold for Part 95 grantees and subgrantees is \$100,000. This also applies to subgrants or subawards. [29 CFR 95.2(ii)] Grantees are again cautioned that the small purchase threshold applicable to their organization may be lower (e.g. \$50,000).
- While there is not a requirement for prior approval from the awarding agency, unless the awarding agency specifically requires such an approval for noncompetitive procurements, any such procurement is always subject to review by the awarding agency. [29 CFR 95.44(e)] Awarding agencies may and do regularly add prior approval requirements to grants and subgrants.

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 29 CFR 97.36(i), or 29 CFR 95.48, and Part 95, Appendix A, as appropriate. They are listed below.

- 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 (Part 97) or contracts in excess of \$100,000 (Part 95)).
- 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).

Grantees and subgrantees must also use the contract provisions to include other requirements of the WIA or other ETA grant program, as appropriate. These include provisions 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 (see below for more information).
- Applicability of the appropriate ETA program and administrative regulations.
- Audit requirements of 29 CFR Parts 96 and 99.

Cost Analysis versus Price Analysis

Grantees and subgrantees must perform a cost or price analysis with the method and degree of analysis dependent on the facts surrounding the particular procurement situation. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.

As a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of their estimated cost (e.g. under professional, consulting, and architectural engineering services contracts). A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders. A cost analysis may not be necessary if one can establish price reasonableness 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 regulation. A price analysis will be used in all other circumstances to determine the reasonableness of the proposed contract price. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts.

Additional WIA Requirements

In addition to the requirements of 29 CFR Part 97 or Part 95, the following requirements apply to procurements and agreements funded under the WIA:

- All agreements between local boards and units of government must be cost-reimbursement. [20 CFR 667.200(a)(3)] There is no provision for profit with governmental agencies.
- If a fixed-price agreement with a governmental or nonprofit agency results in revenues in excess of actual costs incurred, the excess revenues are considered to

be program income. [20 CFR 667.200(a)(6)] Any such fixed-price agreements should reference this requirement.

- The local workforce investment plan must contain a description of the competitive process used to award grants and contracts under all programs funded under WIA Title I. The description must also include the process used to procure training services outside the Individual Training Account (ITA) process. [20 CFR 661.350(a)(10)]
- The procurement requirements for services to be provided under WIA Title IB Youth programs are specified in Section 123 of the Act. This section requires that activities and services for youth be competitively procured. Small purchase procedures can be used to purchase a training slot for a youth at a training institution if allowable under the agency's procurement policy. Additional guidance on the procurement of youth services is found in TEGL 9-00, dated January 23, 2001; TEGL 12-01, dated February 21, 2002; and the [WIA Youth Program RFP Guide](#).
- The procurement requirements addressed in this chapter do not apply to the identification of eligible training providers. The process for identification of eligible training providers for training services under WIA Title IB programs is described in 20 CFR Part 663, Subpart E. The State is responsible for the development and maintenance of a State-wide training provider list. While not a federal requirement, each grantee should have a formal agreement for services when a training provider is to deliver services. This may be in the form of a purchase order, contract, voucher, or other mechanism that provides for payment information and may be incorporated or referenced in the individual ITAs.

Bidding Process:

The bidding process often takes three to eight months from the time the advertisement is placed until the award is made. This time does not take into account internal approval steps or delays caused by protests. Resolution of protests may add a delay of one to three months.

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

Bidder's Conference:

The Comparison Chart of Bidding Methods below (Source: California State Contracting Manual) shows that a bidder's conference is optional for IFBs and RFPs. However, bidder's conferences are prevalent in the Public Sector and help governmental agencies and vendors alike. These conferences provide a forum for open dialog and clarification of a RFP, as well as bringing up any missing elements that should be considered in the evaluation process.

Competitive Bidding Options:

Comparison Chart of Bidding Methods

Considerations	IFB	Primary RFP	Secondary RFP
When this method is typically used	To obtain simple, common, or routine services that may require personal or mechanical skills. Little discretion is used in performing the work.	To obtain complex services in which professional expertise is needed and may vary. Where different methods and approaches may be applied during performance.	To obtain very complex and/or unique services in which professional expertise and methods may vary greatly. Creative or innovative approaches are needed.
Cost/value of services	\$5,000 or more.	\$5,000 or more.	\$5,000 or more.
California State Contracts Register advertising	Yes (see note below).	Yes (see note below).	Yes (see note below).
Bidders' conference	Optional. Held if necessary to clarify service needs.	Optional. Held if needed to clarify service needs.	Optional. Held if needed to clarify service needs.
How award is made	Lowest responsible bidder: public bid opening.	Lowest qualified responsible proposer; public bid opening.	Highest-scored responsible proposer; public bid opening.
Oral Interviews	Not applicable.	Optional. Held if needed.	Optional. Held if needed.
What information is submitted	Bid form and other material deemed necessary by the awarding agency.	Narrative proposal and a separate envelope containing cost information.*	Narrative proposal, including a cost component, in one envelope.
Statement of work (SOW) considerations	SOW is predeveloped.	Objectives, major tasks, and timelines are identified. Proposer offers detailed work plans, methods, etc.	Goals and objectives are stated. Proposer offers detailed work plans, approaches, methods, etc.
How small business preference is applied	The cost bid of a certified small business is reduced for evaluation purposes by 5 percent of the lowest cost bid offered by a noncertified small business.	The bid of a certified small business is reduced for evaluation purposes by 5 percent of the lowest cost offered by a noncertified small business.	Certified Small business will have its points increased by 5% of the total points awarded to the highest scored non small business bidder.

Note: Exception: See SCM 5.80 B for contracts under \$100,000 awarded to a certified small business or DVBE.

A minimum of three competitive bids or proposals are required unless one of the following applies:

- 1) Emergency. The work or service is the immediate preservation of the public health or welfare, or the safety or protection of State property.***
- 2) The contract is exempt from being competitively bid as listed in PCC 10348 and SCM Chapter 5.***
- 3) Non-Competitively bid exemption (NCB). The Director of DGS has approved exemption from competitive bidding because the State's best interests are better served by exemption.***
- 4) Governmental agency contract. The contract is with another 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 (CRP). The exemption applies to contracts with workshops conducted in accordance with the Welfare and Institutions Code, and which have been justified under General Code Section 19130(b).***

Primary Bidding Method: RFP/SFP

The State of California's primary method of competitive bidding for contracts is referred to as the Request for Proposal (RFP). Potential bidders are made aware of funding available for competitive bid through notification in the California State Contracts Register 82.

When appropriate, the State will use a form of the RFP called the Solicitation for Proposal (SFP) to distribute competitive local grants under the Governor's WIA Discretionary Fund. Grants will be available to public, private non-profit, and private for-profit entities through the SFP process, which will encourage the coordination of proposals with local boards. The availability of competitive grants will be advertised on the California Workforce Investment Board (State Board) and EDD websites, among others, and through public notices mailed to interested parties. As appropriate, bidders' conferences will be held at various locations throughout the State to clarify the requirements for bid submittal and grant awards.

California's SFP process includes:

- Notification of available funding is posted on the State Board and/or EDD websites and mailed to an interested party mailing list of over 7,000 individuals. Additionally, both the State Board and the EDD provide free email***

subscription services. Subscribers to the EDD email list receive notification announcing the latest news about programs and services online, including what's new on the EDD's website, recently added forms and publications, events, and announcements.

- **Release of the SFP to bidders and making it available via mail, email, and the Internet.**
- **In order to allow for timely and consistent responses to questions from applicants/bidders, the State has also implemented an electronic question and answer process. Questions are submitted by email and answers are posted to the website on a flow basis.**
- **Bidders' conferences and grant writing workshops held throughout the State, conducted in person and through teleconferences.**
- **Upon receipt of proposals, teams of federal, State, and local-level partners' complete evaluation and scoring using factors given specific numeric values.**
- **Scoring and comments are recorded on an evaluation rubric or scoring sheet. In the event of a significance difference in the scores between two teams, a third independent reading is done.**
- **Depending on the funding category, site visits are conducted for proposals reaching a threshold score. Onsite scores are compiled and added to proposal reader scores to arrive at final scores.**
- **Staff presents recommendations to the funding authority for approval.**

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. To aid grantees and subgrantees in making the proper distinctions, the following guidance is provided. The descriptions have been drawn from 29 CFR 99.210.

Subgrantees

A subgrantee 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 subgrantee 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.
- Is not subject to the federal compliance requirements of the program.

In making the determinations of subgrantees and vendors, direct grantees, local areas, and other subgrantees should take into account all of the characteristics related to the type of provider. When deciding whether a vendor or subgrantee relationship exists, it is the relationship that matters, not the label on the award document (e.g. grant, contract, subgrant, or subcontract). No one factor should be taken in isolation; all the applicable criteria for each decision should be reviewed. However, under no circumstances should a designation of vendor be made for providers that have a financial or performance requirement related to eligibility or selection of participants. As previously stated, the designations of subgrantee and vendor relate to type of product or service provided, and not to the type of agreement document used or whether that agreement is called a contract or a subgrant.

The following chart includes a list of indicators that may be of assistance in distinguishing subgrantees from vendors. This guidance is based in part on the information found in 29 CFR 99.210.

Indicators of Subgrantee and Vendor Relationships

Factor	Vendor	Subgrantee
Activity ¹	Sell deliverables (goods/services)	Provide services
Assistance Arrangement	Buyer-seller	Financial assistance to operate a program
Closeout Package	Final invoice	Comprehensive
Control	Control is outcome focused	Control is on process
Development Costs	Absorbed	Controlled
Extent of Flexibility	Bound to adhere to specific contract terms	Latitude to make decision within terms of agreement
Federal Rules	N/A	Compliance
On-the-Job Training	Subgrantee developed (direct employer award)	Award to broker
Payment Basis ²	Is paid for specific deliverable	Is paid for services whether expensed as a deliverable or not
Product	Specific outcomes	Operate a program
Performance Measured ³	Against the specific requirements of contract	Against the performance outcomes of the financial assistance award
Product Development	Develops product and delivers from inventory	Controls development
Public Policy	Contract specific clauses	Standard statement of assurances
Purpose of the Award	To provide specific goods or Services	To carry out a program goal
Receipt of Funds	Number of items delivered	Costs incurred
Risk	Risk to vendor	Share risk w/awarding agency
Type of Training Referral	Slotting on an individual referral basis	Filling a class-sized training Program
Type of Market	For sale within normal business operation; existing product tailored to the program	Customized for specific program purposes
Type of Product	Provide specific product or service ancillary to the federal program	Design a program to meet a broader goal such as performance outcomes

¹ There may be instances where it is possible to obtain the same type of services under either a vendor or a subgrantee award.

² Federal reform efforts are now shifting emphasis from paying for process to paying for results. Such performance- and outcome-based payments are possible under both vendor and subgrantee awards.

³ Same as 2 above.

Federally Owned Equipment (Property)

Title 29 CFR 97.32(f) states that, if a grantee or subgrantee uses federally owned equipment, title will remain vested in the federal government. Federal agency rules will apply to its use, management, and disposition. Federal equipment is not expected to be made available for WIA program activities, with the exception of some Job Corps contracts.

Title 29 CFR 95.33(a) states that, if a subgrantee is provided federally owned property, title will remain vested in the federal government, an annual inventory will be provided the DOL, and the Grant Officer will decide disposition. Federal property is not likely to be made available for WIA activities.

Exempt Property

Exempt property is defined in 29 CFR 95.2(p), which states “Exempt property means tangible personal property acquired in whole or in part with federal funds, where DOL has statutory authority to vest title in the grantee without further obligation to the Federal Government.” No federal statute applicable to ETA programs currently provides this authority.

Supplies

Supplies are defined at Section 97.3 as “all tangible personal property other than equipment...” 29 CFR 97.33 provides standards for supplies that apply to both States and other governmental grantees and subgrantees. It states that title to supplies acquired under a grant or subgrant vests in the grantee or subgrantee, respectively. As to disposition, this regulation indicates that the grantee or subgrantee shall compensate the awarding agency for its share of the residual inventory of unused supplies if the inventory exceeds \$5,000 or more in aggregate fair market value when the award is terminated or completed and if the supplies are not needed for any other federally sponsored programs or projects. Aggregate value is the total value of all remaining supplies (e.g., pencils, paper, printer ink). Supplies are not to be used to provide services to non-federal outside organizations for a fee that is less than that charged by private companies for equivalent services.

For nongovernmental organizations, supplies are defined at 29 CFR 95.29(11) as “all personal property, excluding equipment, intangible property, and debt instruments...and inventions...” 29 CFR 95.35 provides the standards for supplies. Upon acquisition, title vests in the subgrantee subject to management and disposition conditions. The subgrantee must maintain sufficient records to determine the amount of unused supplies on hand at the termination of the award. The subgrantee must compensate the DOL for its share of the residual inventory if the inventory is \$5,000 or more in aggregate value upon termination or completion of the award and if the supplies are not needed for any other federally sponsored programs or projects.

Intangible Personal Property

Copyrights

29 CFR 97.34 states that the federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, and otherwise use, and authorize others to use, for federal government purposes:

- The copyright in any work developed under a grant, subgrant, or contract under a grant/subgrant.
- Any rights of copyright bought with grant funds by a grantee, subgrantee, or contractor.

Note: The federal right in this instance does not “pass through” to contractors.

For nongovernmental entities, 29 CFR 95.36 specifies that the subgrantee may copyright work developed or for which ownership was purchased under an award. DOL has a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, and otherwise use (and authorize others to use) the work for federal purposes.

When such property is developed with the use of ETA grant funds, it is to be made available to any other entity requesting to use the copyrighted materials in a federally funded program without a licensing fee. Incidental costs such as packaging, shipping, and handling, may be charged. If the materials will be used for other than federally funded activities, the developing organization may charge a license fee. The income realized from the sale or licensing of copyrighted materials is not considered as program income unless specified as provided in 29 CFR 97.25(e).

Inventions and Patents

Regulations applicable to nonprofits and small businesses are issued by the Department of Commerce at 37 CFR Part 401. Property requirements for inventions and patents are specifically treated in 29 CFR Part 95 only. The ETA does not anticipate that inventions and patents will be associated with these programs.

Data

Under 29 CFR 95.36(c), the DOL has the right to obtain, reproduce, publish, or otherwise use data first produced under a procurement contract and to authorize others to do the same for federal purposes.

Title, Use, and Disposition

For nongovernmental entities, title to intangible property vests in the subgrantee upon acquisition. Use is restricted to the originally authorized purpose, and the subgrantee must follow the provisions of 29 CFR 95.34(g) for disposition and DOL compensation. There is no similar provision for Governmental grantees.

Note: The federal right in these instances does not pass through to vendors. Grantees and subgrantees must include such rights in the agreement with vendors, should there be a need.

ACTION:

Please bring this directive to the attention of all relevant parties.

INQUIRIES:

Please direct all inquires about this directive to your assigned [Regional Advisor](#) or Project Manager.

/S/ MICHAEL EVASHENK, Chief
Workforce Services Division

Attachment

Summary of Comments Draft Directive “Procurement”

There were 30 comments to the draft version of this directive:

Comment #1: A cost analysis must be done in respect to all non-competitive procurements. Just comparing the proposed price with other prices is price analysis, not cost analysis. Please distinguish between a cost analysis and price analysis in the directive.

Resolution: In the “Definitions” section starting on page 3, we separated the definitions of cost analysis and price analysis, and explained the difference between the two. On page 4, we added the definition for price analysis. Finally, on page 13, we changed the title of section “Contract Cost/Price Analysis” to “Cost Analysis vs. Price Analysis.”

Comment #2: On page 5 under “General Provisions,” please define “cost sharing.”

Resolution: Cost sharing is an agreement between multiple partners that they will share costs of the purchase. Partners must obtain prior approval per DOL (WIAD03-9).

Comment #3: Please clarify why the EDD is using the following bullet on page 6 under Procurement Policies and Procedures: “A process that promotes the use of intergovernmental agreements for procurement or use of common goods and services, as well as the use of federal excess and surplus property whenever possible.”

Resolution: This is meant to encourage the prudent use of resources through interagency agreements and the use of surplus property.

Comment #4: Please clarify the procurement method of requiring at least two quotes for small purchases between \$1- 999.

Resolution: As mentioned in this directive, Small Purchase procurement is most commonly used for supplies, goods and basic services—which often fall below \$1,000 in total price. The basis for selection in Small Purchase procurements is usually the lowest price (determined by performing a price analysis).

Comment #5: Please clarify that the federal requirements for Non-Governmental Grantees and Subgrantees in 29 CFR Section 95.41 through 95.45 and the EDD’s requirements (in Draft Directive WSDD-67) regarding small purchases between \$1-999 are specific only for States and Other Governmental Agencies.

Resolution: This section has been rewritten to clarify that this is not specific to State agencies, but also includes Non-Governmental Grantees and Subgrantees.

Comment #6: The draft directive requires at least two quotes for purchases between \$1- 999, meaning if an item costs less than \$1, there only needs to be a single quote? This is inconsistent with 29 CFR 97.36(d) and unreasonably limits local flexibility to

design procurement policies that meet local needs. Further, the time spent in obtaining the additional quotes would be more expensive than any potential cost savings.

Resolution: Most likely, items will cost more than \$1. Two quotes for small purchase procurements help prevent misuse of funds. Also, 29 CFR 97.36(d) specifies that “quotations will be obtained from an adequate number of qualified sources.” An adequate number is not one quote. Also, 29 CFR 97.36(b) indicates that “grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations...” This section of the CFR indicates that locals have flexibility but it must also reflect applicable California State law. Moreover, States can be more restrictive than federal law, but not less strict.

Comment #7: Would it be possible to tighten up the price quote requirement for non-governmental organizations so that a local area cannot make an argument that they can perform a cost or price analysis with only one price quote for purchases under \$1,000? It would be helpful to have the expectation of at least two quotes clearly stated.

Resolution: The following has been inserted on page 8 “(This applies to Governmental grantees, Non-Governmental grantees, and subgrantee),” in the section regarding Small Purchases.

Comment #8: In regard to “small purchases between \$10,000 and \$49,000,” does the State have a Request for Quote (RFQ) template we can use?

Resolution: The Department of General Services uses the following RFQ template: [RFQ template](#).

Comment #9: The directive states that three or more RFQ’s must be obtained. Is there a minimum amount of vendors we must request an RFQ from or is the request for three sufficient?

Resolution: There is no limit on number of vendors who can submit an RFQ. You need to receive at least three RFQ’s per transaction.

Comment #10: If three RFQ’s are not obtained, may the sole source method be used?

Resolution: There are limited circumstances under which a sole source procurement method is used. A sole source justification must be completed.

Comment #11: Under Competitive Proposals on pages 9-10, can the EDD clarify at what point should a public notice of intent to award be issued?

Resolution: After the review committee makes a final recommendation as to which proposal(s) best meets the stated requirements, a public notice of intent to award is issued.

Comment #12: What does the State consider a public notice (e.g. newspaper advertisement, public WIB meeting)?

Resolution: State of California “public notices” for procuring contracts may appear on websites; however, the most popular method is through [bidsync.com](#).

Comment #13: Should the description of the competitive process in the local workforce investment plan include a narrative on Customized Training and OJT, or are those exempt from competitive procurement?

Resolution: Customized Training and On-The-Job Training are exempt from Federal and State competitive procurement.

Comment #14: Will additional clarification be provided on how to determine if a product is an “ecologically sound and energy efficient product?”

Resolution: The [Federal Energy Management Program \(FEMP\)](#) offers e-mail updates covering energy-efficient product procurement requirements, guidance, and assistance. The State of California, under the auspices of the [Department of General Services \(DGS\)](#), in consultation with the California Environmental Protection Agency and others helps provide assistance and guidance on the environmentally preferable purchasing.

Comment #15: Please clarify if the processes on page 11-14 apply only to non-profits.

Resolution: This reference to the section on “Non-Governmental Grantees and Subgrantees” states specifically that this includes “Institutions of higher education, hospitals and other nonprofits, and commercial organizations that receive grants and subgrants under ETA-funded grant programs must follow the procurement standards of 29 CFR Part 95.” Therefore, the inclusion of “commercial organizations” means this section concerns both non-profit and for-profit organizations.

Comment #16: On page 12 of the Directive, it states that “the four methods described earlier in the Directive are appropriate methods to procure both goods and services under the provisions of Part 95...” However, the local area staff may read the word “appropriate” as a suggestion and decide it doesn’t apply to them. Please clarify.

Resolution: On page 12, the word “appropriate” was changed to “approved,” as to help clarify this area.

Comment #17: Does the section regarding Required Contract Clauses on page 12 apply to State and Other Governmental Grantees, Non-Governmental Grantees and Subgrantees?

Resolution: Yes, the “Required Contract Clauses” apply to State, Other Governmental Grantee, Non-Governmental Grantees and Subgrantees. This point was clarified on page 12 by writing “all grantees or subgrantees . . .”

Comment #18: Should the fourth bullet on page 12 read: “Access to records by the Comptroller General...”

Resolution: The word “General” was added at the end of the sentence.

Comment #19: Does the “Required Contract Clauses” on pages 12-13 apply to State and other governmental entities?

Resolution: The first sentence under “Required Contract Clauses” was rewritten to provide clarity that this section pertains to all grantees and subgrantees including State and governmental entities.

Comment #20: In regard to contract cost and price analysis on pages 13-14, is the cost analysis applicable only to sole source procurement (or where price competition is lacking)?

Resolution: A cost analysis and price analysis is applicable to all forms of procurement. It is not limited to sole source procurement.

Comment #21: Is the cost analysis applicable to contractors selected through a competitive process, and is it expected for another cost analysis to be done when the contract is modified?

Resolution: A cost analysis is applicable to both competitive and non-competitive methods of procurement.

Comment #22: Do contract modifications that do not include changes to the cost/amount (e.g. no-cost extensions, changes to program/project deliverables) require a new cost analysis? And, if so, what type of cost analysis is expected?

Resolution: It is not necessary to do a new cost analysis when cost/amount is unaffected by contract modifications; however, inventory must be done every two years.

Comment #23: On pages 14-15 under the Bidding Process, it is not clear who is subject to the DVBE requirement?

Resolution: Contracts awarded using the DVBE Option are valued from \$5,000.01 to \$249,999.99 for goods, information technology, and services (valued up to \$250,000 for public works contracts). Use of the DVBE option is dependent on each agency.

Comment #24: This directive should make it clear that RFP/SFP is the State's primary bidding method.

Resolution: On page 17, under "Primary Bidding Method: RFP/SFP," we inserted that the RFP is the State of California's primary bidding method.

Comment #25: What happens if the contractor buys computers, desks or chairs with WIA money? Does it become exempt property or are the items to be returned after the contract ends?

Resolution: See 29 CFR 97.32 and [WIAD03-9](#). According to 29 CFR 97.32, equipment shall be used by the grantee or subgrantee in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original program or project, the equipment may be used in other activities currently or previously supported by a Federal agency. The WIA directive WIAD03-9 on pages 5-6 covers the use and disposal of equipment costing more than \$5,000 and for equipment costing less than \$5,000.

Comment #26: Will this directive supersede WIAD03-9 (Property-Prior Approval, Purchasing, Inventory and Disposal – dated March 25, 2004)?

Resolution: No. The WIAD03-9 is a separate directive that will be updated in the future.

Comment #27: It would be a good idea to include the citation in the Federal Acquisition Regulation (FAR) section 15.603(c) regarding unsolicited proposals. This will help the local areas understand how to handle unsolicited proposals.

Resolution: Unsolicited proposals are outside the scope of this procurement directive.

Comment #28: Please clarify the use of the State Contracting Manual since it is primarily used for those in state government who are involved in the state contracting process. What benefit would this have for the local area?

Resolution: The State Contracting Manual is more restrictive in some areas than federal procurement law (e.g. number of competitive bids required). This is important to help ensure there is not impropriety of any kind or a misuse of funds. Also, due to State procurement being more restrictive, if a vendor/subgrantee is properly following the State Contracting Manual guidance they will be more secure in case of an audit.

Comment #29: Does the EDD want to impose State Contracting Manual requirements on the local areas? Local areas are not subject to state provisions (e.g. minimum of three competitive bids).

Resolution: At the very least, States (and State agencies like the EDD) should include the same requirements as federal procurement law and apply them to local areas. The States may also raise the threshold and be more restrictive.

Comment #30: In the WIA spirit of affording maximum flexibility to local areas, and to insure administrative efficiency, the commenter requests that the State-imposed procurement requirements of WSDD-67 be limited, and that the EDD seek to mirror the federal procurement rules and regulations to the maximum extent possible.

Resolution: The EDD does mirror federal procurement rules and regulations as much as possible. Also, most of our “reference” material for this directive comes from CFR’s, Federal OMB Circulars, and the One-Stop Comprehensive Financial Management Technical Assistance Guide. By law, States cannot change federal procurement requirements, nor be less strict. However, States can be more restrictive than federal procurement requirements, and even add requirements.