

## FISCAL ADMINISTRATIVE POLICY

**To: work2future Staff & Subrecipients**  
**From: work2future Director**  
**Effective Date: May 2020**  
**SUBJECT: Procurement Policy**  
**Pages 1 - 16**

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## OPERATIONAL DIRECTIVE

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### **Scope:**

The information in this policy applies to work2future and all subrecipients receiving WIOA funds.

### **Effective Date:**

This directive is effective upon date of issue.

### **REFERENCES:**

- Workforce Innovation and Opportunity Act - WIOA – Final Rule (Public Law sections 113 – 128)
- WSD 17-08 Procurement of Equipment and Related Services (March 14, 2018)
- Workforce Services Directive WSD16-16, Allowable Costs (February 21, 2017)
- Title 2 CFR 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- Title 2 CFR 2900 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- DOL Memorandum M-18-18 Office of Management and Budget Increase to the Micro-purchase and Simplified Acquisition Thresholds
- City Administrative Policy Manual, Section 5.1 Purchasing: Procurement
- City of San Jose Municipal Code, Section 4.12 Procurement of Goods and Services
- Department of Labor (DOL) One-Stop Comprehensive Financial Management Technical Assistance Guide (July 2002)

### **Policy**

It is the policy of work2future to use the City of San Jose procurement policies for procurement of WIA goods and services (2 CFR section 200.318 – 200.326), provided that the City of San Jose procurement policies are not in conflict (more permissive) than the minimum requirements of the Workforce Innovations and Opportunity Act (WIOA), and/or relevant federal and state regulations.

In the event there is such a conflict, work2future will make the appropriate modifications so that purchases using WIOA funding comply with the more restrictive Federal and State laws and regulations. When the City of San Jose's procurement policies are more restrictive, work2future will follow those more restrictive City rules.

Work2future will have occasion to purchase items that are excluded from the City of San Jose's procurement processes, and those exclusions are described below:

1. Procurement of training packages. (Including Eligible Training Provider List tuitions, Customized Training agreements, and On-The-Job-Training (OJT) agreements.)
2. Work2future also may choose consulting services from pre-approved competitively scored statewide lists (e.g. The California Workforce Association)
3. When work2future contracts with lower tier subrecipients who do not have access to the City's procurement process, they will be required to purchase goods and services using the minimum procurement requirements of the WIOA law, regulations, and Federal and State policies as referenced and described in this policy.

This policy applies to any and all procurements that use WIOA funding, in whole or in part.

## **Background**

The City of San Jose is the local grant **Recipient** for Workforce Innovation and Opportunity Act (WIOA) grant funds. The funds are annually allocated by formula to the San Jose Silicon Valley Workforce Investment Area from the California State allotment of Federal WIOA funding.

To provide employment and training services to job seekers and employers, and to carry out its administrative functions, the City created work2future. Work2future is a division of the Office of Economic Development and operates under the umbrella of the City Manager's Office. The work2future is subject to City policies and procedures.

For purposes of this policy, work2future will comply with all established purchasing ordinances that are codified in the San Jose Municipal Code. The procurement of supplies, materials, equipment and services are centralized in the Purchasing Division of the General Services Department. Under the direction of the Director of General Services, the Purchasing Division's Manager(s) is responsible for coordinating, monitoring and documenting all phases of City procurement of supplies, equipment, materials, and services. City procurement operates under strict standards and has a thorough conflict of interest code (see addendum).

As part of the governance structure for the San Jose Silicon Valley Workforce Investment Area, the local San Jose Silicon Valley Workforce Investment Board (SJ/SVWIB) was created, and among other duties, approves policy.

## **Overview of WIOA Requirements**

The Workforce Innovation and Opportunity Act Final Rule contained in Title 20 CFR 652 provides guidance for the administration of the WIOA program. The guidance includes specific direction and referral to Title 29 CFR Part 97 for states and local government. Title 29 CFR Part 97, section 36 requires all grantees (recipients) and subrecipients for purpose of this policy to comply with paragraphs:

- 36(b) Procurement Standards,
- 36(c) Competition,
- 36(d) Methods of Procurement,
- 36(e) Contracting with small and minority and price,
- 36(g) Awarding Agency Review,
- 36(h) Bonding Requirements, and
- 36(i) Contract Provisions.

The City of San Jose will ensure fiscal accountability and prevent fraud and abuse by acting in accordance with procurement standards established under WIOA. At a minimum, procurement will:

1. Be conducted in a manner that provides fair and open competition regardless of method or dollar amount. Analysis will be made of lease/rental versus purchase alternatives to determine which approach would be the most advantageous (not always the lowest price);
2. Minimize the use of sole source procurement, and document the justification in every case;
3. Clearly set forth the requirements that bidders or offerors must meet, and the factors to be used in evaluating bids or proposals:
  - a. Clearly specify deliverables and basis for payment;
  - b. Clearly disclose the compliance requirements with citations of law, regulations, and policy;
  - c. Assure the process is free of discrimination and that it includes equal opportunity provisions as found in 29 CFR Part 37 and WIOA section 188; and
  - d. Contain certifications, where applicable, regarding debarment, suspension, lobbying and drug free workplace;
4. Provide a clear and accurate written description of the technical requirements for the material, product, or services to be procured, including:
  - a. method of procurement and the basis for selection of the type of contract,
  - b. criteria for contractor selection or rejection, and
  - c. basis for payment.

Competitive procurement will not contain features that unduly restrict or eliminate competition.

Contracts will be awarded to responsible bidders who demonstrate the capability to perform successfully under the terms and conditions of the procurement. Consideration will be given to such matters as contractor's integrity, past compliance with public policy, records of past performance, and financial and technical resources.

Procurements between work2future and governmental agencies, and with nonprofit organizations will result in cost reimbursable contracts. These contracts may also include provisions for performance-based deliverables.

To the extent possible, small firms, minority firms, and women-owned businesses will be included in targeted for mailings and advertised procurement. These firms will be provided maximum opportunity to compete in all procurement of goods and services of work2future.

WIOA funds will not be used to duplicate facilities or services available in the area from Federal, State or local sources, unless it is demonstrated that additional capacity is needed or that alternative services or facilities increase the performance goals and mission of work2future.

### **Procurement Methods:**

To comply with federal, state and local procurement laws, regulations and guidelines, all WIOA related procurement shall be made using the following methods:

#### **Purchases Without Formal Bidding/Small Purchases**

As a general rule, purchases that are made without formal bidding will be done using the City of San Jose's centralized procurement process. The following information however is particularly

relevant to situations where work2future exercises the exclusions noted above, and where subrecipients of work2future acquire goods and services.

These purchases using non-formal bidding fall into two categories as follows:

a. Micro-Purchase - \$1 and \$10,000

Procurement by “micro-purchase” is the acquisition of supplies or services where the aggregate dollar amount does not exceed \$10,000. The intent is to expedite the acquisition and minimize the associated administrative cost and burdens. Micro purchases may be awarded without soliciting competitive quotations when the price is reasonable. Federal regulations require that these purchases be distributed equitably among qualified suppliers to the extent practical.

Work2future generally will obtain at least two competitive prices for any purchase not otherwise made by the City Purchasing Division or P cards and will always consider price reasonableness. All subrecipients will create policy that assures work2future that their purchases, even when falling under Micro-Purchase criteria, are made in a reasonable manner.

b. Small Purchase – greater than \$10,000 and up to \$250,000

These are defined as purchases below the “Simplified Acquisition Threshold” (small purchases) as set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 and in accordance with 41 U.S.C 1908. As of this writing, as referenced in the January 31, 2019 DOL Memorandum (M-18-18) the threshold is \$250,000. If this threshold changes, the threshold amounts listed in this policy will change to the newer approved levels.

A cost or price analysis is not required for small purchases; however, price or rate quotations must be obtained from an adequate number of qualified sources.

Purchases Subject to Formal Bid/Competitive Sealed Bids

Sealed Bids - Procurements by sealed bid and the product of formal advertising. Bids are publicly solicited, and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The City shall where practicable engage in competitive procurement.

The City of San Jose outlines its selection of procurement method in its Municipal Code Section 4.12.210. The procurement authority shall use the following methods of procurement under the circumstances described below:

- A. Purchases which are estimated not to exceed \$10,000 may be made without a competitive procurement method.
- B. The Request for Quotes process shall be used for purchases with an estimated value between \$10,000 and \$100,000.
- C. Request for Proposal process shall be used for purchases of services with an estimated value of more than \$100,000.
- D. Formal bidding process shall be used for purchases of supplies, materials, and equipment with an estimated value of more than \$100,000, or for services determined that it is in the best interest of the city to do so.

- All amounts shown above are subject to adjustments pursuant to Municipal Code Section 4.04.085.

Credit Cards - The City of San Jose uses the City Procurement Cards to purchase goods and services within the transaction limits set by the Director of Finance from vendors accepting the Procurement Card. Per the City Administrative Policy Manual (Section 5.1.2), the maximum single transaction limit for services is \$1,000 and for goods is \$2,500 with a monthly transaction limit of \$10,000.

### **Competitive Proposals**

The City of San Jose utilizes formal bidding procedures when the cost of supplies, materials and equipment required on a single purchase exceeds \$100,000. This process involves using the City's partner WebGrants for posting, distributing, and receiving electronic responses to the City's solicitations. All bid documents will be available electronically, in addition to updated questions and answers, addenda and final results during the procurement process.

A diligent effort is 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. The final determination of which bidder(s) get contract(s) is documented in the award file. Any bidder that falls outside of the parameters will normally have their bid rejected.

In general, the procurement of WIOA goods and services use competitive proposals (most often the RFP) to obtain more than one prospective proposer. Although the lowest price is not necessarily the determining factor for awarding either a fixed-price or cost reimbursement agreements, the competitive method allows for the selection of a proposal that will deliver the best outcomes. The RFP process is typically used when the nature of the goods or services needed cannot be defined at the level of completeness or precision required by the sealed bid method.

Once the competitive proposals method has been determined appropriate, a Request for Proposal (RFP) will be developed which may include, but is not limited to the following information:

- Statement/Scope of Work
- Deadline for Receipt of Proposals. Proposals must be submitted to work2future by the specified time and date listed in the RFP. Late proposals will not be accepted.
- Proposal Submission Checklist
- Requirements for time, place and methods for performance of service
- Objection, Protest, and Appeal processes
- Agreement clauses that outline what the proposers will be required to comply with and perform to
- Certifications, assurances, and representations (forms that proposers must complete to affirm that they will comply with the regulatory requirements set by the Department of Labor, the State of California, and work SJ/SVWIB)
- Instructions on how to prepare and submit, at a minimum, the technical and cost/price analysis sections of the proposal. Other submissions may include proposal summary, statement of financial capability, and certification of adequacy of the proposer's accounting system.
- Evaluation factors and method for rating the proposals including qualifying criteria.
- Solicitation provisions and RFP timeline

- The right of work2future to reject any or all proposals when the proposal(s) is/are found to be unresponsive as stated in the RFP.
- The right of work2future to cancel the procurement process if such cancellation is in the best interests of SJ/SVWIB or the City of San Jose.

The RFP will be publicly advertised for a minimum of ten days prior to a pre-proposal conference, submission of question due date, or the closing of the RFP, whichever occurs first.

The RFP will be posted on the City's WebGrants City-approved system and will be sent to those listed on work2future prospective bidders' list and, upon request, to all interested parties.

A Technical Assistance Conference may be held for all interested parties. If a Technical Assistance Conference is held, the questions and answers generated at the Technical Assistance Conference will be posted on the City WebGrants or other City-approved system.

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.
- Proposals received.
- The scoring criteria and the evaluation/scoring sheets for each proposal.
- Why the provider was selected.
- A determination of the responsibility of the bidder and the cost analysis.
- The public notice of intent to award.
- Copy of the award document.

If only one responsive proposal is received, the applicable RFP will be considered a failed competition. work2future then has the option to re-compete the procurement or to enter into a sole source procurement.

If any proposer or bidder planning to submit a proposal finds discrepancies or omission(s) in the RFP or has any doubt as to the true meaning or interpretation of any item, clarification may be requested via e-mail by the Deadline for Objections and Questions date listed in the RFP timeline.

Clarification of the RFP will be made by written addendum only. Only duly authorized work2future procurement contacts may discuss and/or prepare the addendum to the RFPs. Addenda to a released RFP will be posted on the City's WebGrants or other City-approved system. The work2future will not be responsible for any other explanation or interpretation.

All submitted proposals become the property of work2future. Proposals will not be made public until after the award agreement is fully executed. work2future reserves the right to reject all proposals in response to the RFP.

### **Selection Process**

The proposal review process will include the following activities to ensure that work2future procurement system meets the required Federal and State procurement standards and City requirements:

- WDB staff will screen all proposals that have been submitted via WebGrants by the submittal deadline for minimum qualifications, format compliance and completeness, and will verify references. If a proposal does not meet minimum qualifications, or is not in compliance and complete, it will not be submitted to the proposal rating panel.
- Rating panel members will be screened by WDB staff to ensure that there is no conflict of interest, such as direct financial benefit to them, their organizations and/or employers, or any member of their immediate families, as a result of the award of a contract.
- The panel members will rate each accepted proposal, and this information will be entered in the rating section on WebGrants. The WDB reserves the right to conduct oral interviews as part of the evaluation process. The final scores of each panel member will be averaged to attain a final score for each proposal.
- work2future may also conduct interviews prior to the final ranking of written proposals. Proposers will answer specific questions. General presentations will not be permitted.

Only those proposals that have scored highest in the evaluation will be forwarded for consideration to the SJ/SVWIB Executive Committee. All Executive Committee recommendations will be forwarded to SJ/SVWIB Board of Directors for their approval of the final award(s).

Awards may be made to the organization(s) possessing the ability, as demonstrated by the scoring of their proposal to perform successfully under the terms and conditions of the proposed contract.

work2future staff may negotiate and execute contracts with those entities whose proposals were approved for funding. These discussions will take place after final funding approval by SJ/SVWIB Executive Committee and/or SJ/SVWIB Board. Discussions may center on such items as cost, program design, service levels, service by geographic locations and/or target populations, and miscellaneous clarifications.

The decision made by the full SJ/SVWIB Board of Directors as to which proposal(s) is funded will be final.

#### Noncompetitive Proposals (Sole Source)

Sole source procurement is generally an unforeseen outcome of a solicitation of a proposal where only one proposal is received, or, when after solicitation (through RFQ, RFP, or IFB) all competition is determined inadequate to fulfill the requirement of work2future. The work2future shall minimize the use of sole source procurement to the extent practicable. In every case, the use of sole source procurement must be justified and documented.

Noncompetitive proposals may only be used under certain limited circumstances. (see addendum)

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 work2future (or subrecipient's) pre proposal estimate of the potential purchase price.
- A copy of each RFQ/IFB/RFP that failed along with a description and conclusion of why it was deemed failed.
- A determination of the responsibility of the bidder.
- A cost analysis.
- Why the provider was selected using sole source considering reasons why the solicitation wasn't reissued.

*If the decision to sole source procurement is the result of inadequate competition, the following areas of the RFP, RFQ or IFB will be reviewed to ensure that the process was as competitive as possible and documented in the procurement file:*

1. The specifications to ensure they were not unduly restrictive or would favor the selection of one supplier or service provider.
2. The price or cost estimates to ensure that they are fair and reasonable.
3. The timetable to ensure that there was ample time in the planning process to publicize solicitations in newspapers and other sources.

If the sole source method was chosen due to a public emergency, a complete description of the emergency and the rationale for sole source must be documented in the procurement file.

- Copy of the award document.

**A cost analysis is required for all noncompetitive procurements.** The reason for entering into a noncompetitive agreement, together with the justification for the provider selection must be carefully documented and maintained.

## **Protest/Appeals**

If any agency submits a proposal and it is not recommended for funding during the review process, and the agency can show that any substantial portion of the RFQ/RFP process has not been followed, the agency may appeal the recommendation to work2future.

Only appeals that cite the specific sections of the RFQ/RFP that are being questioned will be considered. The appeal must be in writing and shall set forth specific facts and evidence and specify which component of the RFQ/RFP, procurement policy or procedure is being disputed.

The appeal must be received by work2future within ten (10) business days of the agency's receipt of the notification of refusal.

All appeals should be directed to the attention of work2future Director.

Appeals received after the established time frame will not be accepted.

Appeals will be scheduled for hearing at the next regularly scheduled Executive Committee meeting or within 45 days of the submission of an appeal. A decision by the Executive Committee



will be made within 15 business days following the hearing and communicated to the agency in writing within the same time period.

An agency may appeal the decision of the Executive Committee to the full SJ/SVWIB Board for hearing at the next regularly scheduled full SJ/SVWIB Board meeting. A decision by the full SJ/SVWIB Board will be made within 15 business days following the hearing and communicated to the agency in writing within the same time period. All decisions of SJ/SVWIB Board shall be final.

Appeals of the final decision of the full SJ/SVWIB Board shall be limited to the relief set forth below and/or in accordance with 29 CFR 97.36, or as may otherwise be available under applicable laws and regulations.

### Grievances

Following a decision made by the full SJ/SVWIB Board of Directors, an applicant may file a formal grievance with the State of California Employment Development Department Compliance Review Division. In no event shall the filing of an appeal or grievance to the California Employment Development Department Compliance Review Division delay the procurement process or the award of a contract under this RFQ/RFP.

### **PROCUREMENT RECORDS**

Procurement records will be maintained sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to, the following:

1. Rationale for the method of procurement (small purchase, request for proposal, etc.);
2. The selection of agreement type, (cost reimbursement or fixed price); and
3. Awardee selection or rejections.

Records of solicitations shall include:

1. Copy of the solicitation package;
2. Copy of the public notification;
3. Bidders' List to which notices were mailed;
4. List of all organizations/entities that received the RFP;
5. Agenda and minutes of a bidders' conference, if held;
6. Written responses to all clarifying questions received outside of the bidders' conference;
7. Copy of each proposal received;
8. Rating sheets completed in the evaluation process;
9. Determination of demonstrated performance;
10. Documentation of the relative strengths, weaknesses and risks of each minimally qualified response to the RFP, including the rationale for selection and funding of any offeror which did not receive the highest ranking in the evaluation process;
11. Completed cost or price analysis for each selected bidder; and
12. Copy of any submitted protests and the resolution of each.

### Definitions:

**Recipient** - The applicability of the Workforce Innovation and Opportunity Act (WIOA), its regulations, other applicable program regulations including Office of Management and Budget (OMB) circulars, **pertains to recipients and subrecipients**. The work2future is a recipient (and in some cases a subrecipient) of federal WIOA funds, and accordingly must abide by WIOA regulations, and other applicable regulations.

**Subrecipient** - A legal entity to which a sub-award of Federal funds is made **and that is accountable to the recipient for the use of the funds provided**.

Characteristics which support the classification as a subrecipient include:

- (1) The entity determines who is eligible to receive what Federal assistance;
- (2) has its performance measured in relation to the objectives of the Federal program;
- (3) has responsibility for programmatic decision-making;
- (4) is responsible for adherence to applicable Federal program requirements specified in the Federal award; and
- (5) in accordance with its agreement, uses the Federal funds to carry out a program for a public purpose specified in authorizing statute. (As opposed to providing goods or services for the benefit of the pass-through entity.)

**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:

- (1) provides the goods and services within normal business operations;
- (2) provides similar goods or services to many different purchasers;
- (3) operates in a competitive environment; and
- (4) provides goods or services that are ancillary to the operation of the Federal program.

Payments received by a vendor for goods or services are not considered Federal awards and are therefore not subject to the Federal Compliance Requirements.

**Procurement** - For purposes of this policy, the term "procurement" includes any acquisition action which obligates and ultimately uses WIOA funds for the purchase of equipment, materials, supplies, and program or administrative services, beginning with the process for determining the need and ending with contract or Purchase Order.

**Solicitation** - An Invitation for Bid (IFB), Request for Proposal (RFP), or any other document, such as a Request for Quotation (RFQ) issued by a purchasing agency for the purpose of soliciting offers to perform a contract.

**Request for Proposal (RFP)** - The document that invites offers or proposals from contractors for the delivery of a specific type of service. It includes a description of the product(s) or services desired which enable a potential contractor to submit a proposal.

- The RFP will include information necessary for an objective evaluation and comparison to similar proposals.
- The RFP is used in cases where the specific requirements and technical specifications of a project or the functional nature are unclear.
- The RFP provides flexibility of approach to deliver the purpose of the solicitation.

- The RFP then provides a guideline for potential offers to use in preparing a bid/proposal.
- The RFP is the specific term applied to a solicitation where negotiation is used.

### **Invitation for Bid (IFB)**

A type of solicitation used in a formal competitive bidding process, which contains a detailed statement of what work2future is attempting to purchase. An IFB is used to obtain simple, common, or routine services that may require personal or mechanical skills. Qualifying bidders compete solely on the basis of cost if their bids meet the minimum specifications of the purchase. The IFB is used when there is a clear understanding of the project requirements, scope of work and technical specifications and/or deliverables.

**Responsive Proposal** - The term used for a proposal or bid that meets all requirements of the solicitation, and the submitted proposal or bid does not constitute a substitute or counter offer. (When a bidder substitutes a "like item," the submittal is considered non-responsive if and when the like item fails to meet published specifications. The same principle holds when the proposal is a substitute or counter offer.)

**Price Analysis** - A price analysis will be used in all instances to determine the reasonableness of a proposed contract price, including contract modifications. A price analysis is the process of examining and evaluating a price without looking at the cost elements or proposed profit. It is used when price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulations. This method also compares the pre bid expectations of price with the proposal offer price.

**Cost Analysis** - A cost analysis is the process that examines element-by-element factors of production. That is, the cost analysis makes a reasonable prediction of what will be needed to complete the contract deliverable along with the reasonable assessment of the cost of those factors. The result is a zero-based budget appraisal about what cost should be expected for the deliverable. The method and degree of cost analysis are dependent on the facts surrounding each procurement.

A cost analysis of the proposed contract or contract modification will be performed when the offeror is deemed a sub-recipient, individual cost elements have been requested, procurement is made by sole source method, and no catalog or market price is available. Costs or prices will be consistent with reasonable and allowable cost principles.

For cost analysis, the offeror will certify that to the best of their knowledge, the cost data are reasonable forecasts, complete, and current at the time of the agreement's negotiation. Contracts or modifications negotiated in reliance on data provided by the offeror may be adjusted if it is discovered data is not accurate, complete, or current.

**Profit** - Profit may be separately negotiated if an award is made to a for profit entity. The profit needs to be determined reasonable and cannot be a factor of cost. The following factors will be considered in determining whether income or profits are excessive:

1. Complexity of work to be performed;
2. The risk borne by the contractor;
3. The contractor's investment;
4. The amount of subcontracting;

5. The quality of the contractor's record of past performance;
6. Industry profit rates in the surrounding geographical area; and
7. Market conditions in the surrounding geographic area.

**CONTRACT PRICING** - The cost-plus method of contracting will not be used.

**High Risk Subrecipient** - A subrecipient may be considered "high risk" when and if work2future determines that the subrecipient is a viable deliver of the services needed. However, this determination will be made provided appropriate controls are set in place to safeguard WIOA funding and the interests of WIOA mission. The following considerations may be part of the determination:

1. When there is a history of unsatisfactory performance, has the entity made organizational and operational changes that make satisfactory performance more likely;
2. When the entity is not financially stable, especially if its primary source of revenue is the WIOA program, has the entity described how it will finance operations;
3. When there are perceived weaknesses in a management system that do not meet standards set forth in 2 CFR 200.302, has the entity agreed to strengthen those areas;
4. When an entity has not conformed to the terms and conditions of a previously awarded agreement, has changes been made to increase the probability it can now meet the terms and conditions.

If the answers to the above questions assures work2future that an award(s) should be made to a high-risk organization, special funding restrictions that address the high-risk status may be included in the award. Restrictions can include, but are not limited to:

1. Payment on a reimbursement basis;
2. Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given funding period;
3. Requiring additional, more detailed financial reports;
4. Pre-launch and additional (early) project monitoring;
5. Requiring the subrecipients to obtain technical or management assistance; or
6. Establishing additional prior approvals.

If work2future decides to impose such funding restrictions, the subrecipient will be notified as early as possible, in writing, of:

1. The nature of the funding restriction; the reason(s) for imposing them;
2. The corrective actions which must be taken before they will be removed;
3. The time allowed for completing the corrective actions; and
4. The method of requesting reconsideration of the restrictions imposed.

### **Addendum 1:**

## **OVERVIEW OF CITY PROCUREMENT PROCESS**

The purchasing process for supplies, materials, equipment, and services begins with the completion of an electronic purchase requisition (PR) by the requestor. The description of the item or service needed should be as clear as possible, and sufficiently detailed to avoid confusion. A complete description includes quantity, model number, size, color, unit of measure, packaging

requirements, and any other pertinent information that describes the requestor's need. Recommended sources for all items should also be indicated.

Upon receipt of the PR, Purchasing Division will prioritize requisitions by date received, urgency of the need, City Council priorities and any critical "need-by " dates and not necessarily in that order.

Normally, simple and uncomplicated requisitions are placed in less than five (5) working days assuming that all required information is submitted in the requisition. More complex requisitions require detailed specifications and may require a formal bid or Request for Proposal.

Formal bids and RFP involve advertising, pre-bid conferences, review by other departments, public bid opening. The time needed to complete the formal bid or RFP process may be anywhere between 60 and 90 days or longer.

Proper documentation for a sealed purchase includes:

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

The City of San Jose has established Bidding Procedures in the San Jose Municipal Code for which are incorporated herein by reference.

To implement these procedures, the Purchasing Division has established the following processes:

1. Coordinate specifications, legal terms and conditions, insurance and bonding requirements, licenses, etc.
2. Organize a pre-bid conference.
3. Develop guidelines for a response format
4. Assign a formal bid/proposal number.
5. Establish closing time and date for submission of sealed bids.
6. Coordinate the formal advertising of Invitation for Bids.
7. Open and review the bids.
8. Evaluate and summarize responses on a tabulated format and provide copy to requesting department.
9. Recommend an award.

Pursuant to the City of San Jose Municipal Code (Section 4.12.240), the City may procure brand name and sole source products for the following reasons:

- For conducting a pilot, field test or experiment to determine the product's suitability for use by City.
- For proper operation or function to match other products with respect to the repair or expansion or completion of a system or program already in use by City, including, but not

limited to, technology purchases required to achieve interoperability with existing hardware, software, systems or programs.

- to obtain a necessary item that is available only from one source and which is purchased in accordance with Section 4.12.230 of the City's Municipal Code.
- to make an emergency purchase pursuant to Section 4.12.220 of the City's Municipal Code.
- In order to achieve significant cost savings based upon consideration of the following factors:
  - (a) Timeliness and quality of installation, repair and maintenance;
  - (b) Quality of user training;
  - (c) Supplies and replacement parts;
  - (d) Modification of existing equipment, materials or systems;
  - (e) Future upgrades and updates;
  - (f) Estimated amount and cost of reasonably foreseeable purchases of equipment that would be required to be compatible or functional with the product which is subject to brand name/sole source procurement determination; or
  - (g) Administrative costs.

## **Addendum 2:**

### **Standards of Procurement**

The City of San Jose will ensure fiscal accountability and prevent fraud and abuse by acting in accordance with procurement standards established under WIOA. At a minimum, procurement will:

1. Be conducted in a manner that provides fair and open competition regardless of method or dollar amount. Subrecipients must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, subrecipients must make independent estimates before receiving bids or proposals;
2. Minimize the use of sole source procurement, and justify it in every case;
3. Clearly set forth the requirements that bidders or offerors must meet, and the factors to be used in evaluating bids or proposals;
4. Provide a clear and accurate written description of the technical requirements for the material, product, or services to be procured, including method of procurement and the basis for selection of the type of contract, criteria for subrecipient or contractor selection or rejection, and basis for payment. Competitive procurement will not contain features that unduly restrict or eliminate competition;
5. Contracts will be awarded to responsible bidders who possess the potential ability to perform successfully under the terms and conditions of the procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. The contract award will also include the following provisions:
  - a. Clearly specified deliverables and basis for payment;
  - b. Compliance with all applicable regulations;
  - c. Assurance of nondiscrimination and equal opportunity as found in 29 CFR Part 37 and WIOA Section 188; and

- d. Certifications, where applicable, regarding debarment, suspension, lobbying and drug free workplace.
6. Procurement transactions between work2future and governmental agencies or nonprofit organizations will be conducted on a cost reimbursable basis, performance-based basis, or a combination of a cost reimbursable and performance based.
7. To the extent possible, small firms, minority firms, and women-owned businesses will be included in bidders list and will be targeted for mailings and advertised procurement. These firms will be provided the maximum opportunity to compete in all procurement of goods and services of work2future.
8. WIOA funds will not be used to duplicate facilities or services available in the area (with or without reimbursement) from Federal, State or local sources, unless it is demonstrated that additional capacity is needed or that alternative services or facilities would be more likely to achieve the performance goals and mission of work2future.
9. Although required for governmental entities, per 2 CFR 200.319(d) institutions of higher education, hospitals, and nonprofits are required to ensure pre-qualified vendor lists are current and include enough qualified sources to ensure maximum open and free competition.

### **Standards of Purchasing**

All buyers in the Purchasing Division of the City Finance Department are governed by the written code of standards established by the California Association of Public Procurement Officers (CAPPO) when conducting procurement services for the City of San Jose. These standards include, but are not limited to, the following objectives:

- To regard Public Service as a sacred trust, giving primary consideration to the interests of the agency that employs us.
- To purchase without prejudice, seeking to obtain the ultimate maximum value for each tax dollar expended.
- To avoid unfair practices, giving all qualified vendors equal opportunity.
- To honor our obligations and require that obligations with our agency be honored.
- To accord vendor representatives a prompt and courteous reception, remembering that these representatives are important sources of information and assistance in solving our procurement needs.
- To refuse to accept gifts, gratuities or any form of commercial bribery, and prevent any appearance of so doing.
- To conduct ourselves with fairness and dignity, and to demand honesty and truth in the procurement process.
- To strive consistently for greater knowledge of purchasing methods and of materials and services we procure.
- To cooperate with all organizations and individuals engaged in activities designed to enhance the development of the procurement profession, remembering that our actions reflect on the entire procurement profession.
- To be receptive to competent counsel from our colleagues and cooperate with them, to promote a spirit of teamwork and unity.

### **Standards of Conduct and Conflict of Interest**

#### **City of San Jose Standards of Conduct and Conflict of Interest**

All procurement activities are subject to the City of San Jose's rules and regulations pertaining to the code of conduct and conflict of interest policies including sanctions as prescribed by law. All work2future staff, SJ/SVWIB Board members and outside rating staff must not divulge in advance, purchasing or specific proposal information. Procurement activities must be conducted in a confidential manner.

Individuals in a decision-making capacity, including SJ/SVWIB Board members, are prohibited from engaging in any activity, including the award or administration of a contract, if they have a conflict of interest as defined by law. Conflict of interest and non-disclosure policies and procedures are provided to all work2future employees, outside agency raters, and SJ/SVWIB Board members participating on procurement review teams. These individuals agree to abide by these policies and procedures by signing a "Conflict of interest/Nondisclosure Statement".

2 CFR Part 200.318(c) defines a conflict of interest as arising when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein has a financial interest in or a tangible personal benefit from a firm considered for a contract. In addition, it states that if the non-federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the non-federal entity must also maintain standards of conduct covering organizational conflicts of interest. Because of relationships with a parent company, affiliate, or subsidiary organization, the non-federal entity is unable or appears unable to be impartial in conducting a procurement action involving a related organization.

#### **ACTION**

Bring this directive to the attention of all appropriate staff and subrecipients.

#### **INQUIRIES**

If you require further information regarding this policy, please contact work2future Finance Manager at (408) 794-1146.