

POLICY

Date: August 1, 2024

Number: CWDB24-01

State-Funded Program: Subrecipient and Contractor Management

Summary

This policy provides guidance and establishes procedures regarding the distinction between sub-recipients and contractors, as well as the roles and responsibilities of all parties to an agreement. It applies to all entities contracted with the California Workforce Development Board (CWDB) for a state-funded grant and is effective on the date of issuance.

Definitions

CWDB follows Uniform Guidance in defining the terms below:

Conflict of Interest

An employee, officer, agent, or any member of the organization with interest in a financial gain or tangible benefit and who participates in the selection, award, or administration of a contract supported by a state award.

Contractor

An entity that receives a contract as defined in this document. The word “vendor” has been replaced with “contractor.”

Fiscal Agent

Refers to the awarded agency that enters into an agreement with the State of California and carries out the state award as a recipient of grant funds (grantee) under the CWDB.

Invitation for Bid (IFB)

A type of solicitation document used in a formal competitive bidding process containing a detailed statement of what the agency 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 based on cost (California State Contracting Manual).

Pass-through entity

A Fiscal Agent that provides a subaward to a subrecipient to carry out part of a state program on their behalf.

Request for Proposal (RFP)

A type of solicitation document used in a formal competitive bidding process where an invitation is presented for suppliers to submit a proposal on a specific commodity or service. The RFP process brings structure to the procurement decision and allows the risks and benefits to be identified clearly upfront. The RFP is used to obtain complex services in which professional expertise is needed, which may vary and/or where different methods and approaches may be applied during performance. (California State Contracting Manual).

Request for Quote (RFQ)

A type of solicitation document used in a formal competitive bidding process, 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.

Subaward or Subgrant

An award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a state award received by the pass-through entity. It does not include payments to a contractor or to an individual who is a state program beneficiary. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.

Subrecipient or Subgrantee

A non-federal entity that receives a subaward or subgrant from a pass-through entity (Fiscal Agent) to carry out part of a state program but does not include an individual that is a beneficiary of such program. A subrecipient or subgrantee may also be a recipient of other state awards directly from the state awarding agency.

Subrecipient and Contractor Distinctions

The Fiscal Agent must determine the relationship with partners within the scope of the grant on a case-by-case basis prior to entering into a contractual agreement. When determining whether a contractor or Subrecipient relationship exists, the substance of the relationship is more important than the form of the agreement (i.e., grant, contract, subgrant, or subcontract). All characteristics related to the type of provider and agreement should be analyzed and no single factor should be taken in isolation. Not all characteristics will be present in every relationship. In rare situations an entity can be considered a recipient, a Subrecipient, and a contractor, depending on the substance of each agreement.

Subrecipients are responsible for meeting all programmatic compliance requirements captured in the contract documents, including but not limited to the grant administration and data guides, solicitation, grant notification letter and award announcement, grant agreement, and all exhibits attached to the grant agreement. Contractors are subject to procurement regulations but are exempt from programmatic requirements. Contractors may receive payments for goods or services that originate from a state award, but those payments are not considered a state award.

Contractor

A contractor is a vendor, dealer, distributor, merchant, or other seller providing goods or services required to conduct a state program.

The following descriptions are indicative of a contractor in a procurement relationship with the Fiscal Agent disbursing state funds:

- Provides goods and services to a variety of purchasers within normal business operations.
- Operates in a competitive environment.
- Provides goods or services that are ancillary to the operation of the state program.
- Does not participate in program design.
- Holds little or no independent discretion over program work or direction.
- Undelivered work will result in non-payment.
- Not required to support the goals of the grant directly.
- Requires procurement.

Subrecipient

A Subrecipient carries out a portion of a state award and follows the same programmatic compliance requirements as the grantee.

The following descriptions are indicative of a non-federal entity in the role of a Subrecipient:

- Determines eligibility for the state program.
- Performance is measured against the objectives of the state program.
- Maintains programmatic control or independent discretion over work.
- Responsible for adherence to applicable state program compliance requirements.
- Uses state funds to carry out a program for a specified public purpose as opposed to providing goods or services for a program or pass-through entity.
- Directly supports the goals of the grant.

Exclusions

The System for Award Management (SAM) contains the names of parties debarred, suspended, or otherwise excluded by agencies and parties declared ineligible under statutory or regulatory authority. A subgrant or contract cannot be entered into with parties listed on the government-wide exclusions list in the SAM. SAM Exclusion records can be searched on the [SAM website](#). Grantees should check the SAM website prior to applying for a grant.

Contractor Procurement Methods

Contractors are subject to procurement regulations. All state grant procurements must be “necessary and reasonable” in operating the state program and directly contribute to its success and outcomes. This section only applies to service contracts, not equipment purchases.

Procurement Method	Cost Limits	Minimum Bids/Quotes Needed
Micro Purchases	Less than \$10,000	One quote at a reasonable cost
Small Purchases	Between \$10,000 and \$250,000	Two written quotes from a catalog
Sealed Bids	Any	Three formal written bids in response to an Invitation for Bid (IFB)
Competitive Proposals	Any	Three written competitive proposals in response to a Request for Proposal (RFP)
Noncompetitive Proposals	Any	All bids and quotes obtained

Micro Purchases

The micro purchasing method should be used when contracting a service below \$10,000. This method does not require soliciting competitive quotations if the price is reasonable. Make best efforts to distribute micro purchases equally among qualified suppliers. Although micro purchases are not required to receive written prior or purchase approval, they must still be documented.

Small Purchase

A small purchase is a service between \$10,000 and \$250,000, which requires a minimum of two documented quotes from qualified sources. Documented quotes can be obtained from catalogs, price lists, or from a contractor in writing. Catalogs or price lists should be no more than one year old.

Proper documentation for a small purchase includes the following:

- The reason for selecting the small purchase method.
- The Subrecipient’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.
- 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).

Sealed Bids

The sealed bid procurement method should be used when the “per transaction” value of the good or service to be purchased will be more than the Simplified Acquisition Threshold (currently \$250,000), and its nature can be precisely defined. The desired procurement must have a complete, adequate, and realistic specifications or purchase description.

The sealed bid process requires the issuance of an Invitation for Bid (IFB). The IFB must be publicly solicited or advertised to an adequate number of known suppliers, provide sufficient time to respond, and clearly state specifications, bidding processes, and dates. The IFB defines the quantity, timeframes, product requirements, specifications, and pertinent attachments of the good or service being purchased. Contractors are notified of the purchase requirements and submit a sealed bid to a specified location by a specified 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 will be awarded the contract. The lowest bid should be calculated with factors such as discounts, transportation, and life cycle costs. 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. Bids may be rejected with sound and documented rationale. If only one bid is obtained and that bidder is deemed to be responsible, then the noncompetitive process may be used.

Proper documentation for a sealed bid purchase includes the following:

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

Competitive Proposals

This method is typically used when the “per transaction” value of the good or services will be more than the Simplified Acquisition Threshold (currently \$250,000). Still, its nature 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 or if the technical requirements or specifications are of a functional nature or unclear.

The competitive proposal procurement method is generally used when conditions for a sealed bid cannot be met. The Request for Proposal (RFP) must be publicly solicited or advertised to an adequate number of known suppliers. An RFP should be issued that defines quantity, timeframes, product requirements, specifications, and the evaluation

factors used and their importance. Contractors submit a proposal based on the purchase requirements of the RFP to a specified location by a specified date and time to be evaluated.

All proposals should be considered based on the merits of the proposal, and a written review of technical evaluations should be retained for each. 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 should be issued, 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 proposal method may be used.

If less than three bids are received during a competitive process, justification must be written explaining the limited participation. The justification should include firms and individuals contacted. If applicable, these documents should be kept in the agency's contract file and submitted with procurement requests.

Proper documentation for a competitive proposal purchase includes the following:

- The reason for selecting the competitive proposal method.
- The Subrecipient's estimate of the potential purchase price.
- A copy of the RFP.
- Proposals received.
- The scoring criteria and the evaluation/scoring sheets for each proposal, including the determination of the bidder's responsibility and the cost analysis.
- Why the provider was selected.
- The public notice of intent to award.
- Copy of the award document.

Noncompetitive Proposals (Sole Source)

Noncompetitive proposals, also known as sole sources, may only be used under certain limited circumstances. The reason for selecting this method along with the justification for the provider selection must be carefully documented and maintained.

At least one of the following conditions must apply and be documented:

- The good or service is available from only one source.
- Public exigency or emergency creates an immediate procurement need (e.g., a flood or fire requires the immediate availability of services).
- The awarding agency (CWDB) authorizes the specific noncompetitive procurement (upon a formal request for approval).
- Competition is determined inadequate. This usually occurs after a sealed bid or competitive process has been used and there are insufficient bidders.

Proper documentation for a noncompetitive proposal purchase includes the following:

- The reason for selecting the method, including why the procurement was infeasible under one of the other procurement methods and which of the additional conditions the procurement met.
- The estimate of the potential purchase price.
- A copy of the RFQ/IFB/RFP (if applicable).
- Why the provider was selected.
- Copy of the award document.

Fundamental Rules

- Contractor may not draft any competitive bidding document in a manner that limits bidding directly or indirectly to one bidder.
- The contractor should document each significant step in making an award. The documentation should include the rationale for the method of procurement, selection of agreement type, selection or rejection criteria, and the basis for the contract price, including the independent agency estimate of the price.
- The Contractor and Subrecipient must have procedures to administer contracts and ensure all contractors/subrecipients perform in accordance with the terms, conditions, and specifications of contracts.
- Contractor and Subrecipient must have a written code of conduct and clearly established firewalls for employees engaged in the award agreements or administration to avoid any internal or external conflict of interest.

References

- [California State Contracting Manual](#)
- [California State Administrative Manual](#), Sections 1200 and 3500-3600

Action

Bring this Directive to the attention of all relevant parties interested in or receiving CWDB state funds.

Inquiries

If you have any questions, contact the CWDB Program Analyst/Manager through the assigned grant program initiative email address.

California Workforce Development Board