



RIVERSIDE COUNTY
ECONOMIC DEVELOPMENT AGENCY
POLICIES & PROCEDURES

Date: November 15, 2001

Number: 18-02

SUBJECT: PROCUREMENT GRIEVANCE AND APPEALS PROCESS

PURPOSE: To provide guidance and notification to Riverside County Economic Development Agency (EDA), EDA Workforce Development staff, hereinafter known as EDA, Workforce Development Board members, and Service Providers regarding rights to a hearing; to establish uniform procedures; and process for a rapid resolution of Procurement action appeals.

REFERENCES: Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA)

Balanced Budget Act of 1997: Welfare-to-Work Grants

Title IV of the Social Security Act of 1935

Workforce Investment Act of 1998, Section 181(c)(1)

Title 20 Code of Federal Regulation (CFR) Welfare-to-Work (WtW) Grants Interim Rule, Sections 645.230(a)(1)

Title 20 Code of Federal Regulations (CFR) Workforce Investment Act (WIA), Final Rule Sections 667.200(a)(3) and (4)

Title 29 CFR Part 95 Sections 95.40 through 95.48 (Non-profit Organizations, Institutions of Higher Education, Hospitals, and Commercial Organizations.)

Title 29 CFR Part 97 Sections 97.36 (States and Other Governmental Grantees and Sub-grantees)

Grant Agreement Award Notification, Department of Labor, Agreement # Y-6779-8-00-81-60

WtW Subgrant Agreement #W965821, as modified

DISTRIBUTION: WDB; SP; ADMIN; PPD; FISCAL; PROG.COMP.; CUST.SERV.

SUPERCEDES: Riverside County Private Industry Council, Job Training Field Memorandum Number: 95-4, dated March 31, 1995
Riverside County Private Industry Council, Job Training Field Memorandum Number: 95-19 dated September 1, 1995, and any addenda.

LOCALLY IMPOSED REQUIREMENTS: NONE

EFFECTIVE DATE: January 01, 2002

BACKGROUND:

EDA adheres to the requirements necessary to conduct appropriate and valid Service Provider Procurements. These procedures meet the standards required by the various federal, state, and local laws and regulations that govern these programs. This appeals procedure is different from the General Nature Grievance procedure that governs other aspects of these programs, as it is limited to procurement appeals and related issues, and is conducted on an expedited basis with limited and rigid timelines to meet the time sensitive nature of a program limited by a calendar and calculated funding.

Definitions: These terms are capitalized throughout the document where the meaning is as defined below:

1. "Claim," as used in this Memorandum, means a written Grievance by one of the responders to a solicitation for goods or services arising from decisions made by EDA during the Procurement process.
2. "Day," as used in this Memorandum, means consecutive calendar days, including weekends and holidays unless otherwise specified.
3. "EDA" is the acronym for the Economic Development Agency.
4. "Grievance" means any complaint or issue arising from decisions rendered in conjunction with any Procurement decision.
5. "Procurement" includes 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.
6. "Service Provider" means any individual, company or organization that provides job training or other related services required by EDA. The term includes public and private organizations, not-for-profit and for-profit organizations, and Subrecipients.
7. "Subrecipient" is a legal entity to which a subaward is made and is accountable to the recipient for the use of the funds provided. Characteristics of a Subrecipient exist when the organization receiving a federal award performs the following activities:
 - ◆ Has its performance measured against the objectives of the program,
 - ◆ Has responsibility for programmatic decision making,
 - ◆ Has responsibility for adherence to applicable program compliance requirements (for example, the regulations), and

- ◆ Uses the funds to carry out a comprehensive program as opposed to providing goods or services.
8. "WDB" is the acronym for the Workforce Development Board.
 9. "WDC" is the acronym for the Workforce Development Center.

POLICIES AND PROCEDURES:

As required by the above noted federal laws and implementing regulations, EDA provides this procedure as a means for the resolution of Procurement Grievances. Due to the time sensitive nature of Procurement actions, this appeal procedure has been established to expedite complaint resolution on conflicts, issues or claims arising from Procurement decisions implemented by EDA. Due to the importance of quickly resolving such matters, especially questions about unsuccessful proposals, this procedure compresses filing, hearing and decision periods. The following process provides a period for resolution and notification of decisions pertaining to Procurement appeals.

APPLICABILITY

The Procurement appeal process is limited to Service Provider complaints or Grievances relating to the rejection of a proposal submitted in response to a formal solicitation.

FILING

A notice of Grievance must be submitted in writing within five (5) working days following notification of a decision to which the complainant takes issue and must contain the following:

- ◆ **Date of the Notice**
- ◆ **Name, addresses, telephone number, fax number and email address (where applicable)**
- ◆ **Name and title of the person or persons authorized to represent the organization in the Grievance matter**
- ◆ **A statement confirming that the complainant is electing to use the WDC Procurement Grievance and Appeal Process**
- ◆ **Detailed statement of all Grievances**
- ◆ **A statement identifying resolution being sought**
- ◆ **List of the documents to be submitted or relied upon at the hearing. Any documents not already in possession of EDA staff should be submitted with the notice**
- ◆ **A list of persons the complainant may ask to present testimony at the hearing with a brief statement as to their topic of testimony. Their actual testimony does not need to be stated in the notice, and the list of persons may be amended at any time before the hearing.**
- ◆ **Identification list of persons from EDA the complainant may wish to call to present testimony at the hearing. Note: EDA Workforce Development Administrator will have the option of whether to make such person available**

for testimony and will advise the complainant as soon as possible if the person will not be available.

- ◆ **An estimate of the time required to present the complainant's case**
- ◆ **Signature of an authorized official of the complainant organization**

The Grievance may not be considered received within the five (5) working day response period if any information is missing.

The notice will be sent to the attention of the Workforce Development Administrator at the Riverside County Economic Development Agency, Workforce Development Center at 1151 Spruce Street, Riverside, CA 92507. The envelope will be clearly marked, "NOTICE OF APPEAL." While not required, it is in the complainant's best interest to obtain verification of the date of receipt of the Notice of Appeal by EDA. This can be done by using certified mail or by personally delivering the notice to the address noted above and obtaining a receipt from EDA staff. Any personally delivered documents must be date stamped by EDA staff.

Subsequent Communications in Writing

Subsequent written notices may be delivered personally, sent by certified mail, or faxed using registered facsimile machines that show the sender and time sent in the margins.

RIGHTS OF THE PARTIES

- ◆ Counsel may represent either party if so desired, but such representation is not required. Each party will bear the cost of such representation.
- ◆ Either party may call witnesses and submit documents and other evidence at any level of appeal.
- ◆ Within five (5) working days following the action to which the complainant takes issue, but prior to the submission of the Grievance, the complainant will have the right to review its Procurement file. The complainant will make an appointment with EDA Program Planning and Development management staff to review the file and make copies at that time only. At no time will the file be released from EDA.

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DELAY IN PROCUREMENT ACTIVITY

A Grievance and appeal notice may delay the final Workforce Development Board Executive Committee's approval of EDA recommendations for the current Procurement. The delay will not extend beyond the 45 days allowed for the process to be completed.

Note: See Timeline Summary and Comment Table on following page.

TIMELINE SUMMARY AND COMMENT

All times calculated from the time of each EDA decision notification (if there are more than one) being received by the complainant.

Time Period	Action	Procedure Reference
Within 1-5 working days from receipt of EDA decision notification	Complainant to review its Procurement file.	Filing
Within 1-5 working days from receipt of EDA decision notification	Complainant files notice of appeal.	Rights
Within 10 calendar days following receipt of grievance appeal	*EDA will schedule hearing. Informal resolution efforts commence.	Hearing Schedule Appeals Level I
Within 45 calendar days following receipt of the grievance appeal	Should informal resolution efforts fail, Grievance hearing panel convenes and renders initial decision.	Appeals Level II Decision
Within 45 calendar days following receipt of the grievance appeal	Decision forwarded to the Workforce Development Board Executive Committee for final approval.	Final Approval

*EDA Program Planning and Development staff will attempt to schedule the hearing as quickly as possible, and the complainant is expected to be prepared.

HEARING SCHEDULE

A hearing will be scheduled by EDA within ten (10) days of the receipt of the Grievance, and must convene by day 45 of the appeal period. Every effort will be made to coordinate the hearing date with the complainant. However, in the interest of time, it is expected the complainant be prepared to present its case at any time. EDA will notify the complainant in writing as to the date, time, place and the membership of the hearing panel. The scheduling or taking part in informal resolution efforts outlined below will not cause delay in the scheduling of this hearing. The complainant will be allowed to reschedule once, but only if the original panel members' schedule permits.

APPEALS-Level I Informal Resolution Efforts

Efforts to resolve the Grievance prior to a hearing are encouraged and should be informal. Either party may initiate efforts for informal resolution of the Grievance at any time prior to the hearing. These efforts may take place in a meeting, by telephone, by correspondence, or any other method agreed to by the parties. Neither party will withhold information or proof from the other party in the informal resolution efforts. In the event that the complainant refuses to cooperate in a timely fashion in informal resolution efforts initiated by EDA staff, the complainant's notice of appeal will be terminated, and the complainant will be forever barred from raising the Grievance. "Refusal to cooperate" in a timely manner is defined as a lack of response or communication by the complainant in a reasonable time to address questions or clarify issues of disagreement. This procedure is expedited to resolve problems in the most immediate manner possible. Therefore, lack of communication in excess of ten (10) days shall be deemed a refusal to cooperate.

Should informal resolution efforts result in a decision acceptable to both parties, all recommendations for the current Procurement will be forwarded to the Workforce Development Board Executive Committee for final approval.

APPEALS-Level II-Hearing

If the Grievance cannot be resolved through informal resolution efforts, the hearing will be convened as scheduled. The hearing panel will be comprised of:

- ◆ The Chair of the WDB Executive Committee.
- ◆ The Vice Chair of the WDB Executive Committee.
- ◆ The Workforce Development Administrator with non-voting rights.
- ◆ One impartial third party representative acceptable to both parties. In the event that no agreement is reached on the impartial third party appointment, the WDB will have the final right to make this appointment in the interest of expediting the resolution of the Grievance.
 - a. The impartial third party will be the hearing panel chairperson unless that person declines, in which case the panel will select another chairperson from among its membership. A hearing panel member will disqualify him or her-self in the event there is a conflict of interest. Affiliation with the Riverside County WDB or the Riverside County Board of Supervisors will not be considered a conflict of interest.
 - b. EDA and the complainant will jointly submit a statement of the Grievance to the hearing panel to ensure that the parties are agreed upon the details of the Grievance and to give notice to the hearing panel of the issue or issues to be adjudicated.
 - c. EDA will present its position on the Grievance first, and then the complainant will have the opportunity to present its case. The complainant is barred from presenting information or from raising issues that were not included in the original grievance submission.

- d. The hearing will be conducted in a formal manner with each side having full opportunity to present its testimony, witnesses, and evidence and to rebut the testimony and evidence of the other party. The formal rules of evidence found in judicial proceedings will not apply to the hearing proceedings.

The hearing proceedings will be electronically or stenographically recorded and are a matter of public record.

DECISIONS

Within 45 days of the appeal period, the WDB will forward the decision of the hearing panel to the WDB Executive Committee for review and approval. Within three (3) working days the complainant will be notified in writing of the decision of the WDB Executive Committee. The formality of this requirement does not preclude the WDB Executive Committee from rendering an oral decision. The WDB Executive Committee's decision will be considered final in this matter.

WAIVER

The complainant, by using this procedure, specifically waives all rights to further appeals or rehearing under this procedure or under any other applicable grievance or appeal procedure. The complainant further waives any and all of its rights to having the matter adjudicated in a civil court. These waivers can only be set aside upon the showing by the complainant of gross misconduct in the adjudication of the Grievance by a member of the hearing panel or upon the showing by the complainant of willful misconduct of an EDA staff member in withholding or altering relevant facts.

CONSOLIDATION OF GRIEVANCES

This appeal procedure is an extraordinary effort by EDA to expedite the resolution of Grievances. Full attention to detail and cooperation of all parties is expected.

To expedite the appeal process, all of a complainant's Grievances must be filed in the same Notice of Appeal if they arise from the same decision or concurrent decisions of EDA, and they are Grievances included in the APPLICABILITY section of this policy. The complainant's failure to raise all concurrent issues in the initial Notice of Appeal will forever waive the complainant's right to appeal those issues.

If the complainant receives notices or decisions from EDA at different times, it may file separate Notices of Appeal. If separate notices are filed, EDA has the right to combine the Grievances into one hearing if they all involve Procurement issues that need to be resolved in an expedited fashion. If agreed to by both parties, the schedule applicable to the first appeal will be used.

QUESTIONS AND INTERPRETATIONS

Once the complainant has submitted a Notice of Appeal, all questions regarding interpretations of this procedure should be directed to the attention of the Workforce Development Administrator at the Riverside County Workforce Development Center, 1151 Spruce Street, Riverside, CA 92507. Such inquiries and responses should be in writing, delivered in person or by facsimile at (909) 955-3131. The Workforce Development

Administrator may delegate the authority to receive questions and to respond when such delegation would aid in the expediting of the procedure.

At all other times, please direct any questions or concerns regarding this Policy and Procedure to EDA Workforce Development Division's Program Planning and Development Unit.

Jerry Craig, Workforce Development Administrator

JC/KF/MF/ep