



Oklahoma Office of Workforce Development
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OKLAHOMA WORKFORCE DEVELOPMENT ISSUANCE #10-2017

TO: Workforce Development Board Chairs
Workforce Development Board Staff
Workforce Development Fiscal Agents

FROM: Erin E. Risley-Baird, Executive Director

DATE: August 16, 2017

SUBJECT: Fiscal Requirements, Procurement, and Contracting

PURPOSE: The Oklahoma Office of Workforce Development (OOWD), as the Governor's chosen entity to administer the Workforce Innovation and Opportunity Act (WIOA), provides this issuance as guidance to communicate the State policy concerning fiscal requirements, procurement, and contracting. These minimum standards are established to ensure that purchases are economical and efficient, and are in compliance with applicable laws and regulations.

REFERENCES:

- The Workforce Innovation and Opportunity Act of 2014 (Public Law (Pub. L. 113-128)) Title I, enacted July 22, 2014
- Federal Register/Vol. 78. No. 248, Part 200
- Federal Register/Vol. 81. No. 161, Part 680
- Federal Register/Vol 81. No. 161, Part 683

MESSAGE: The Workforce Innovation & Opportunity Act (WIOA) Fiscal Policy and Procedures Issuance contains all policy/procedures relevant to complying fully with the fiscal requirements of WIOA. This issuance replaces the policy-by-policy issuances of the past, including the OETIs, OWDIs, and OSWDIs.

The issuance has been compiled by the Oklahoma Office of Workforce Development (OOWD) to serve as a single, comprehensive source for WIOA and relevant state-level fiscal policy. When

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revisions are made, the issuance will be updated and sent out via email with a notification detailing the specific changes. The most recent version of the issuance will also be available at www.Oklahomaworks.gov.

Unless otherwise noted, the primary authorities for the policies and procedures within this issuance are the Workforce Innovation & Opportunity Act (WIOA), Federal Register Vol. 81 No. 161, and Federal Register Vol. 78, No. 248. This policy is based on OOWD's reading of the statute along with the Federal Register. This policy may be subject to change as additional Federal regulations and TEGL's are released.

The Workforce Innovation and Opportunity Act (WIOA) and other Federal laws take precedence in the event of a conflict of directives to recipients and service providers. Regulations promulgated under the Federal law, provider agreements, and this policy issuance guide the programs. Any conflicts of directives should be determined based on the reference source having the greatest precedence. The Oklahoma Office of Workforce Development reserves the right to update, amend and waive any and all policies in this issuance.

INSTRUCTIONS: Grantees must develop a policy that is consistent with this guidance. The lack of appropriate policies, procedures and systems could result in findings and disallowed costs. Copies must be distributed to appropriate staff and subcontractors. A copy of this issuance must be maintained as a part of your permanent file.

COMMON FISCAL DEFINITIONS

Aggregate - The total funds expended and/or accrued expenses for a program year.

Allocation - The process of assigning a cost, or a group of costs, to one or more cost objective(s), in reasonable proportion to the benefit provided or other equitable relationship.

Award - A contract, grant, sub-contract, sub-grant, or other type of legal instrument that conveys funds.

Board Administrative Costs - Local Board personnel and non-personnel, direct and indirect costs that are associated with the administrative functions of WIOA. Examples: accounting, budgeting, financial, and cash management functions. Payroll functions, personnel management functions, and development of systems and procedures required for administrative functions. Travel cost to carry out administrative activities or the overall management of the WIOA system.

Board Program Costs - Local Board personnel and non-personnel, direct and indirect costs that are associated with the programmatic functions of WIOA. Examples: Program personnel and related non personnel cost, tracking or monitoring of participant and performance information,

performance and program cost information on eligible providers of training services, youth activities, and appropriate education activities.

Contract - Legal instrument by which an entity purchases property or services needed to carry out the project or program under a Federal award.

Contractor - An entity responsible for providing generally required goods or services. These goods or services may be for the sub-recipients' own use or for the use of participants in the programs. Distinguishing characteristics of a vendor contractor include items such as: providing goods and services within normal business operation, providing similar goods or services to many different purchasers, and operating in a competitive environment. A vendor contractor is not a sub-recipient and does not exhibit the distinguishing characteristics attributable to a sub-recipient as defined above.

Cost Analysis - Is the element-by-element examination of the estimated or actual cost of contract performance to determine the probable cost to the contractor.

Fixed Amount Awards - A type of grant agreement under which the Federal awarding agency or pass-through entity provides a specific level of support without regard to actual cost incurred under the Federal award.

Direct Participant Training Cost - Tuition or instruction payments for participants. Examples: Individual Training Accounts (ITA's), On-the-Job Training (OJT), or contracted services for customized training.

Disallowed Costs - Charges to a Federal award that the Federal awarding or pass-through entity determines to be unallowable, in accordance with the applicable Federal statutes, regulations, or the terms and conditions of the Federal award.

Disbursement - The transfer of cash from the grantee to a sub-grantee or other payee, either by check, voucher or an electronic transfer issued to the entity often through an electronic payment system.

Equipment - Tangible personal property (including information technology systems) having useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the non-Federal entity for financial statement purposes, or \$5,000.00.

Expenditures - Charges made by a non-Federal entity to a project or program for which a Federal award was given.

Fiscal Agent Administrative Costs - Fiscal Agent personnel and non-personnel, direct and indirect costs that are associated with administrative functions of WIOA. Examples are

accounting, budgeting, financial, and cash management functions. Payroll functions, personnel management functions, and development of systems and procedures required for administrative functions. Travel cost to carry out administrative activities or the overall management of the WIOA system.

Immediate Family Member - Includes one party with any of the following relationship to another party: (i) Spouse and parents, (ii) Children, and spouses, (iii) Parents, and spouses, (iv) Siblings and spouses, (v) Grandparents and grandchildren, and spouses, (vi) Domestic partner and parents including domestic partners of any individual in 2 through 5 of this definition, and (vii) Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

Micro-Purchase - A purchase of supplies or services using simplified acquisition procedures, the aggregate amount of which does not exceed the micro-purchase threshold. Micro-purchase procedures comprise a subset of a sub-recipient's small purchase in order to expedite the completion of its lowest-dollar small purchase transactions and minimize the associated administrative burden and cost. The micro-purchase threshold is set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions). It is \$3,000 except as otherwise discussed in Subpart 2.1 of the regulation, but this threshold is periodically adjusted for inflation.

Obligation - The amount of orders placed, contracts and sub-grants awarded, goods and services received, and similar transactions during a given period that will require payment by the grantee during the same or a future period. Obligation is a term that references actions where a legal commitment to pay exists. An obligation may occur at the time the services are rendered, or before services are rendered when a binding agreement has been entered into. Obligations are legal requirements, not plans, budgets, or encumbrances.

One-Stop Operator Administrative Costs - One-Stop Operator personnel and non-personnel, direct and indirect, costs associated with administrative functions of WIOA. Examples: Payroll, personnel, and property management.

Procurement - The process that leads to the purchase of goods and services, including awards of funds.

Service Provider - Any public agency, private nonprofit organization, or private-for-profit entity that delivers services to participants. Awards to service providers may be made by contract, sub-contract, or other legal agreement.

Service Provision Costs - Service Provider personnel and non-personnel, direct and indirect, costs associated with the provision of services to participants. Example: Case management of participants in career services and training services.

Simplified Acquisition Threshold - The dollar amount which an entity may purchase property or services using small purchase methods. Entities adopt small purchase procedures in order to expedite the purchase of items costing less than the simplified acquisition threshold. The simplified acquisition threshold is set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions) and in accordance with 41 U.S.C 1908. The simplified acquisition is currently \$150,000, but this threshold is periodically adjusted for inflation.

Sub-recipient - The legal entity to which an award is made and which is accountable to the recipient (OOWD) for the use of the funds provided. For WIOA purposes, distinguishing characteristics of a sub-recipient include items such as: determining eligibility of applicants, enrollment of participants, performance measured against meeting the objectives of the program, responsibility for programmatic decision making, responsibility for compliance with program requirements, and use of the funds awarded to carry out a WIOA program or project. Service Providers are considered sub-recipients not contractors.

Supportive Services Costs - Costs for services that are necessary to enable an individual to participate in activities authorized under the WIOA. Examples: transportation, child care, dependent care, housing, and needs related payments.

System Costs - Costs necessary for the functioning of the workforce system. Examples: office supplies, rental and maintenance of office space, rental or purchase of equipment, and utilities, and other maintenance services.

FINANCIAL MANAGEMENT

Each sub-recipient must establish and maintain a financial management system in accordance with generally accepted accounting principles (GAAP) requirements and 2 CFR §200.302, which will provide for adequate control of funds and other assets, ensure the accuracy of the financial data, provide for operational efficiency and for internal controls to avoid conflict of interest situations (and avoid the appearance of apparent conflicts of interest) and to prevent irregular transactions or activities. The required records and reports shall be uniform in definition, accessible to authorized Federal and State staff, and verifiable for monitoring, reporting, audit, program management, and evaluation purposes per WIOA Section 185 (a)(1) and (2).

Internal Controls

In accordance to 20 CFR §200.303 each sub-recipient must:

- Establish and maintain effective internal control over the Federal award that provides reasonable assurance that management of the award is in compliance with Federal and State statutes, regulations, and the terms and conditions of the Federal award.
- Evaluate and monitor sub-recipients' compliance with statute, regulations and terms and conditions of Federal awards.

- Take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings.

COST LIMITATION COST CATEGORIES

The Title I cost classifications are Administration and Program. These cost classifications are described in general in 20 CFR §683.205 and 683.215 of the Federal Register and under Section 128 (4) (A). The costs of Administration at the local level must be tracked and reported by the Local Workforce Development Boards (LWDBs), local grant recipients, local grant sub-recipients, local fiscal agents, and One-Stop Operators. Allowable costs shall be charged (allocated) to the benefiting funding stream and cost objective/category.

ADMINISTRATIVE COST CATEGORY

Cost Limitations

Local area expenditures for administrative process under WIOA formula grants are limited to no more than 10 % of the amount allocated to the local area under Section 128 (b) and 133 (b) of WIOA.

Allowable Costs

1. The costs of administration are that allocable portion of necessary and allowable costs that are associated with the overall management and administration of the workforce investment system and which are not related to the direct provision of workforce investment activities. These costs can be both personnel and non-personnel and both direct and indirect.
2. LWDB, local grant recipient, local grant sub-recipient, local fiscal agent, and One-Stop Operator costs associated with the specific functions, identified in 20 CFR 683.215, must be classified as administrative costs. These functions are:
 - a. Performing the following overall general administrative functions and coordination of those functions under WIOA Title I:
 - Accounting, budgeting, financial and cash management functions;
 - Procurement and purchasing functions;
 - Property management functions;
 - Personnel management functions;
 - Payroll functions;
 - Coordinating the resolution of findings arising from audits, reviews, investigations and incident reports;
 - Audit functions;
 - General legal services functions; and

- Developing systems and procedures, including information systems required for these administrative functions;
 - b. Performing oversight and monitoring responsibilities related to WIOA administrative functions;
 - c. Costs for goods and services required for the administrative functions of the program, including goods and services such as rental or purchase of equipment, utilities, office supplies, postage, and the rental and maintenance of office space;
 - d. Travel costs incurred for official business in carrying out administrative activities or the overall management of the WIOA system; and
 - e. Costs of information systems related to administrative functions (for example, personnel, procurement, purchasing, property management, accounting and payroll systems) including the purchase, systems development and operating costs of such system.
3. Awards to sub-recipients or vendors that are solely for the performance of administrative functions are classified as administrative costs.
 4. Personnel and related non-personnel costs of staff that perform both administrative functions specified in paragraph 2 (a-e) and programmatic services or activities must be allocated as administrative or program costs to the benefiting cost objectives/categories based on documented distributions of actual time worked or other equitable cost allocation methods.
 5. Specific costs charged to an overhead or indirect cost pool that can be identified directly as an administrative cost must be charged as administrative costs. The key to charging indirect costs as administrative costs is to identify such costs directly as an administrative cost by function, not by its relationship to costs in the direct cost base.
 6. Continuous improvement activities are charged to administration or program category based on the purpose or nature of the activity to be improved. Documentation of such charges must be maintained.

PROGRAM COST CATEGORY

Allowable Costs

1. Personnel and related non-personnel costs of staff that perform both administrative functions and programmatic services or activities must be allocated as administrative or program costs to the benefiting cost objectives/categories based on documented distributions of actual time worked or other equitable cost allocation methods.
2. Specific costs charged to an overhead or indirect cost pool that can be identified directly as a program cost may be charged as a program cost. Sufficient documentation to identify

these costs as programmatic must be maintained. “The key to charging indirect costs as program costs is to identify such costs directly as a program cost by function, not by its relationship to costs in the direct cost base.” [USDOL Monitoring Report dated 5/10/10]

3. Except as provided under the Administrative Cost Category item 3 above, all costs incurred for functions and activities of sub-recipients and vendors are program costs.
4. Costs of the following information systems including the purchase, systems development and operating (e.g., data entry) costs are charged to the program category;
 - Tracking or monitoring of participant and performance information;
 - Employment statistics information, including job listing information, job skills information, and demand occupation information;
 - Performance and program cost information on eligible providers of training services, youth activities, and appropriate education activities;
 - Local area performance information; and,
 - Information relating to supportive services and unemployment insurance claims for program participants.
5. Continuous improvement activities are charged to administration or program category based on the purpose or nature of the activity to be improved. Sufficient documentation to identify these costs as programmatic must be maintained.

PROGRAM INCOME

Program income means gross income earned by the non-Federal entity that is directly generated by a supported activity or earned as a result of the Federal award during the period of performance.

Program income includes:

- Receipts from goods or services (including conferences) provided because of activities funded under this title;
- Funds provided to a service provider under this title that are in excess of the costs associated with the services provided; and
- Interest income earned on funds received under this Title. WIOA Sec. 194(7)(B)(i)(ii)(iii).
- Any excess revenue over costs incurred for services provided by a governmental or non-profit entity. 20 CFR 683.200 (a)(7).

Program income does not include:

- Rebates, credits, discounts, refunds, etc. or interest earned on any of them.
- Such funds must be credited as a reduction of costs if received during the same funding period that the cost was initially charged. Credit received after the funding period must be returned to the Oklahoma Office of Workforce Development (OOWD).

Use of Program Income:

1. Section 194(7)(A) states that, “Income under any program administered by a public or private nonprofit entity may be retained by such entity only if such income is used to continue to carry out the program.”
2. Allowable expenditures for program income are the same as those for the grant. The administrative cost limit does not apply to program income. The administrative cost limit for the program is calculated based on the total allocation or grant amount, not on the amount available for expenditure that includes program income.
3. On a fee-for-service basis, employers may use local area services, facilities, or equipment funded under Title I of WIOA to provide employment and training activities to incumbent workers:
 - When the services, facilities, or equipment are not being used by eligible participants;
 - If their use does not affect the ability of eligible participants to use the services, facilities, or equipment; and
 - If the income generated from such fees is used to carry out the programs authorized under this title. 20 CFR 683.200(a)(9).
4. When the cost of generating program income has been charged to the program, the gross amount earned must be added to the WIOA program. However, the cost of generating program income must be subtracted from the amount earned to establish the new amount of program income available for use under the grants when these costs have not been charged to the WIOA program. 20 CFR 683.200(a)(6).

Reporting Requirements

Each WIOA grant recipient is required to submit Monthly Accrued Expenditure Reports to the OOWD. These reports must include any income or profits earned. Any cash-on-hand from program income must be liquidated before requesting additional cash.

Program income generated during the life of a specific allocation must be expended before the end of the availability of the funds. Any unexpended funds must be returned to the OOWD.

STATE PROCUREMENT AND CONTRACTING

The contract procurement requirement for grantee or sub-grantee/non-Federal entities (other than States), including sub-recipients of a State, can be found in the Federal Register Vol. 78 No. 248 2 CFR Chapter I, Chapter II, Part 200 Sec. 200.318 through 200.326. These provisions require that the non-Federal entity must use its own documented procurement procedures

which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.

MINIMUM STANDARDS

Each sub-recipient of funds shall maintain a written procurement policy, which contains and adequately addresses the elements contained herein.

Code of Conduct—Each sub-recipient shall maintain a written code of conduct that governs the performance of its Local Workforce Development Board (LWDB) members, Youth Councils, employees, or agents engaged in the award and administration of contracts. Each Code shall address:

1. Staff Conflicts of Interest—Each sub-recipient shall ensure that no individual in a decision-making capacity shall engage in any activity, including participation in the selection, award, or administration of a contract if a conflict of interest, or appearance of a conflict of interest, would be involved. Such a conflict would arise when a financial or other interest in the firm or organization selected for award is held by:
 - a. An individual with decision-making capability,
 - b. An immediate family member of the individual,
 - c. The individual's partner, or
 - d. An organization, which employs, or is about to employ, any of the individuals identified above.

The officers, employees, or agents of the agency making the award will neither solicit nor accept gratuities, favors, or anything of more than nominal value from contractors, potential contractors, or parties to sub-agreements.

2. Board and Youth Council Conflicts of Interest—LWDB and Youth Council members have a conflict of interest when considering the provision of services by such member or his organization, or any other matter, which would provide any direct financial benefit to that member, his immediate family members, his partner, or his organization.
 - a. Declaration of possible conflicts—Each Code of Conduct must address circumstances under which LWDB and Youth Council members must declare, on the record, possible conflicts of interest. At a minimum, each LWDB and Youth Council member must declare a possible conflict when:
 - The member or immediate family member is an employee or volunteer board member of a nonprofit bidding organization,
 - The member is voting on a proposal, contract, local plan, etc., and a real, apparent, or perceived conflict of interest could be involved.

- b. Abstention from voting—Each Code of Conduct must address circumstances under which a LWDB or Youth Council member must abstain from voting on a procurement action. No member of any LWDB or Youth Council shall cast a vote on the provision of services by that member (or any organization which that member directly represents) or vote on any matter, which would provide a direct financial benefit to that member. No member of any LWDB or Youth Council shall cast a vote on the provision of services by any person or organization that is in direct competition with a proposal or bid, which would provide a direct financial benefit to the member.
 - c. Abstention from participation—Each Code must address circumstances under which LWDB or Youth Council members, employees, officers, and agents must refrain from participating in the procurement process. No such person shall participate in decisions about contracts with the organization that he or she represents or from which they or immediate family members receive direct financial benefit. Participation includes discussion, lobbying, rating, scoring, recommending, explaining, or assisting in the design or approval of the procurement process. Participation also includes negotiation of any contract on behalf of the organization that he or she represents.
3. Sanctions—Each Code must prescribe penalties, sanctions or disciplinary actions relevant to violations of procurement standards and the Code of Conduct, including procedures for determining violations and resolving grievances of the parties affected.

Certificate Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion (2 CFR 180)—With each purchase of goods or services of \$25,000 or more in the aggregate, the vendor or service provider must submit a Certificate Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion for itself and its principals at the time that the vendor submits its proposal in connection with a covered transaction.

Each sub-recipient shall require their subcontracts in lower tier covered transactions to include the certificate for the vendor and its principals in any proposal submitted in connection with any lower tier covered transaction.

Drug-Free Workplace—Each sub-recipient of Federal funds must comply as required by the Drug-Free Workplace Act of 1988, codified at 29 CFR 98.

Competition—Each sub-recipient of funds shall maintain a written procurement policy that adequately describes the procurement methods and procedures it will use.

Competition

The procurement procedures of each sub-recipient shall promote free and open competition. Some of the situations considered being restrictive of free and open competition include, but are not limited to:

- Placing unreasonable requirements on firms or organizations in order for them to qualify to do business,
- Requiring unnecessary experience and excessive bonding,
- Noncompetitive pricing practices between firms or organizations or between affiliated companies or organizations,
- Noncompetitive awards to consultants that are on retainer contracts,
- Organizational conflicts of interest,
- Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance of other relevant requirements of the procurement,
- Overly restrictive specifications, and
- Any arbitrary action in the procurement process.

Solicitations

The written procurement policy of each sub-recipient must provide that they will:

- Solicit offers by disseminating a Request for Proposal (RFP) to an adequate number of qualified sources to ensure competition (generally, sources included on the bidder’s source lists), or advertising in one or more newspapers designed to reach service providers.
- Ensure that the RFP includes a Statement of Work or specifications, including a description of the required outcomes, the time frame for which they will be measured and documentation necessary to verify the outcomes. If the proposal is to become a part of the contract this must also be specified in the RFP. When procuring Adult and Dislocated Worker Service Providers/Sub-recipients, the local area must be buying services that are consistent with the local service delivery design and the goals set forth in the LWDB 2-year plan. In order to ensure the potential bidders have a clear understanding of the services for which they are bidding, the following items may be helpful:
 - the description of the local service delivery design,
 - a customer flow chart,
 - an organizational chart for all service delivery locations which includes the functional unit position for which the proposal is requested,
 - an operational policies and procedures issuance, and
 - a list of products that should be available through the workforce development system.
- Ensure that the RFP includes the deadline date and time the proposals must be submitted, and that all proposals have the stamped date and time the original proposal was received.
- Ensure that the RFP requires a line item budget.

- Ensure that the RFP includes the boilerplate terms and assurances that will be included in any resulting contract.
- Ensure that the RFP includes certifications, assurances, and representations, including:
 - A certificate regarding debarment, when required by regulations,
 - A certification regarding lobbying,
 - A certification that to the best of its knowledge and belief, the cost data submitted by the bidder is accurate, complete, and current at the time of agreement on price,
 - Identify contract renewal and extension limitations
- Ensure that the RFP describes the solicitation process, including provisions for protest or appeal of the final award.
- Ensure the RFP requires that when transitioning from one service provider to another, services to current active clients are not interrupted. The new service provider must factor in the additional cost concerning these participants when submitting their proposal based on current client data.
- Ensure that the RFP identifies all significant evaluation or rating factors and the relative importance of each factor.
- Ensure that the RFP states that the evaluation factors include minimum thresholds that, if not met, require disqualification.
- Negotiate with any or all bidders determined through the rating process to be responsive and advantageous to the program, and notify unsuccessful bidders in a reasonable amount of time.
- Award a contract to the bidder(s) who is (are) successful.

Bidders' lists

Each sub-recipient of funds shall ensure that all pre-qualified lists of persons, firms, or their organizations which are used in acquiring goods and services are current and include sufficient numbers of qualified sources to ensure maximum open and free competition.

Dispute Resolution

Each sub-recipient must have protest procedures to handle and resolve disputes relating to their procurements. These procedures must be included in all RFPs issued.

All bidders must be notified, in writing, of the results of the award. Failed bidders must be advised in writing that they have the right to protest the decision. The procedures to receive, investigate, and resolve grievances, and to conduct hearings to adjudicate disputes are set forth in the Federal Act and Regulations that govern the particular program.

OVERSIGHT

Contract administration

Each sub-recipient shall maintain a written contract administration system, which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. Each sub-recipient must follow OOWD's contracting policy.

Monitoring

Each sub-recipient shall conduct and document oversight of their procurements to ensure compliance with State policies and Federal guidelines.

REASONABLENESS OF COST

Determination Required

Documentation of cost reasonableness is required for every procurement action, including contract modifications (except for modifications where a determination has been made that they do not have a monetary impact). Acceptable methods of documenting cost reasonableness are price analysis and cost analysis. In addition to other evaluation factors used for price or cost analysis, the awarding agency shall make independent estimates before receiving bids or proposals.

Where appropriate, an analysis shall be made of lease and purchase alternatives to determine which would be the most economical and practical.

Price Analysis

- Price analysis is the process of examining and evaluating a price without looking at the estimated cost elements and proposed profit of the offeror whose price is being evaluated.
- Price analysis must be performed on every procurement action.
- Price analysis techniques include:
 - Comparison of proposed prices with independent estimates of cost developed by the sub-recipient,
 - Comparison of competitive price quotations,
 - Comparison of prior quotations and contracts with current quotations for the same or similar items,
 - Use of yardsticks or parametric relationships to point up apparent gross differences (e.g., dollars per placement, price per instruction hour, price per participant-training hour, etc.), and
 - Comparison of prices on published price lists with published market prices of commodities, together with discount or rebate schedules.

Cost Analysis

- Cost analysis is the review and evaluation, element by element, of the cost estimate supporting a company's proposal for the purpose of pricing a contract.
- A cost analysis is necessary when the offeror is required to submit the elements of the estimated cost, when adequate price competition is lacking, and for sole source procurements, including contract modifications (except for modifications where a determination has been made that they do not have a monetary impact), unless 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 regulation.
- Cost analysis includes evaluation of the:
 - Supporting data submitted by the offeror,
 - Cost elements, and
 - Factors the offeror considered in projecting from the data to develop the estimate of cost to perform the specified work.

Profit or Program Income

- If profit or program income is included in the price, the awarding agency shall negotiate profit or program income as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is required.
- To establish a fair and reasonable profit or program income, consideration shall be given to:
 - The complexity of the work to be performed,
 - The risk borne by the contractor,
 - The contractor's investment,
 - The amount of subcontracting,
 - The quality of the contractor's record of past performance,
 - Industry profit rates in the surrounding geographical area for similar work, and
 - Market conditions in the surrounding geographical area.
- The cost plus a percentage of cost method of contracting shall not be used.

METHODS OF PROCUREMENT

Each sub-recipient shall maintain a written procurement policy that adequately describes the procurement methods and procedures, which it will use. Such procedures shall promote free and open competition. The following methods are recognized to be appropriate.

Non-Competitive Procurement Purchases

Each sub-recipient shall minimize the use of non-competitive procurements to the extent practicable and any such procurement shall be justified. Purchases may be made with no price or rate quotations when the purchase is made at off-the-shelf or catalogue prices, and the

purchase in the aggregate is less than Three Thousand dollars (\$3,000.00). If a purchase is made that does not exceed \$3,000.00 in the aggregate no contract is necessary.

Micro-Purchases

Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed \$3,000. To the extent practicable, the non-Federal entity must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.

Small Purchases

Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that does not cost more than the Simplified Acquisition Threshold. If small purchase procedures are used, price or rate quotations must be obtained from three (3) or more qualified sources (unless a lesser number is justified in the procurement file) to ensure reasonable competition. A purchase in excess of the small purchase limitations shall not be split in order to circumvent the small purchase limit. Criteria other than cost may be used, but must be provided in the local entity's procedures.

Note: When small purchases are made, an agreement must be entered into between the provider of services or goods and the recipient outlining the delivery and payment provisions of such services or goods.

Competitive Bids

Conditions

Sub-recipients shall use a competitive, Invitation for Bids (IFB), sealed bid method of procurement for the purchase of goods or services in excess of \$25,000.00 if these conditions are present:

- A complete, adequate, and realistic specification or purchase description is available.
- There are two or more responsible suppliers willing and able to compete effectively for the award.
- The procurement lends itself to a firm-fixed-price contract, and selection can appropriately be made based on price.

Requirements

If this method is used, the recipient shall:

- Allow sufficient time, prior to the date set for opening bids, for potential suppliers to respond.
- Solicit bids by issuing an IFB to known suppliers, and by publicly advertising the Invitation in one or more newspapers designed to reach suppliers.

- The IFB clearly define the items or services needed in order for the bidder to properly respond to the IFB.
- Open all bids publicly at the time and place stated in the IFB.
- Award a firm-fixed-price contract (lump sum or unit price) by written notice to the responsible bidder whose conforming bid is lowest in price, or reject any or all bids when there is sound documented business reasons for doing so.

Competitive Negotiation

Sub-recipients shall use competitive negotiation Request for Proposal (RFP) for the purchase of goods or services in excess of \$25,000 when these conditions are present:

Conditions

The nature of the item or service needed precludes developing a specification or a purchase description so precise that all potential suppliers have an identical understanding of the requirements. In order to clarify to potential bidders, an RFP issued for the procurement of Service Providers/Sub-recipients should include:

- the description of the local service delivery design,
- a local customer flow chart,
- local organization chart for each service delivery location, which includes the functional unit position for which a proposal is requested,
- an operational policies and procedures issuance, and
- list of products available through the workforce development system.

Technical Evaluation Methodology

Each sub-recipient must have written procurement policies that include a methodology for technical evaluation. The evaluation process must ensure awards are offered to bidders whose proposals are most advantageous to the program with price, technical, and other factors considered. This methodology must contain at a minimum:

- Evaluation planning
The methodology must ensure each RFP includes a schedule or plan for the technical evaluation process. For example, a schedule should include dates and the length of the process, with deadlines.
- Evaluation approaches and procedures
The methodology must ensure each RFP includes the evaluation factors and their relative weights, as well as the scoring system to be used. The factors used should be tailored for each procurement, but the price or cost to the awarding agency must always be a factor. Other factors which may be appropriate are:
 - Adequate financial resources or the ability to obtain them,
 - A satisfactory record of integrity, business ethics, and fiscal accountability,

- The necessary organization, experience, accounting, and operational controls, and/or
- The technical skills to perform the work.
- **Assignment of reviewers**
Staff or committees must be selected to conduct the technical evaluations. They should be supplied with the critical dates and deadlines, the RFP, the proposals, the evaluation factors, and scoring form. The reviewers should also be reminded of the conflict of interest policies of the recipient prior to the review.
- **Conducting evaluations**
All timely proposals must be reviewed against the evaluation factors. There should be a process to exclude proposals that are rated unacceptable from further consideration. This process must be specified in the RFP.
- **Approval and negotiation**
There must be a designation of who will make the selection or approval of the recommended proposals for final negotiations, as well as who will conduct the negotiations.
- **Awarding contracts**
Contracts successfully negotiated must be awarded and notification to unsuccessful bidders must be in a reasonable amount of time.
- **Documenting evaluation results**
A record must be made that can be used to respond to protests, grievances, or other actions attacking procurement decisions.

Sole Source Procurement

“Sole source procurement” occurs when one of these circumstances apply:

- The item or service is available from only a single source.
- An emergency situation that will not permit the time required for a competitive solicitation exists.
- After solicitation from a number of sources, competition is determined inadequate.

Procurement by sole source may be used only when the award of contract is infeasible under small purchase procedures (any procurement under \$3,000.00 does not require a competitive process), or competitive proposals and one of the above circumstances apply.

Poor planning on the part of the sub-recipient shall not qualify as an emergency. Procurement may be handled as an emergency if the following occurs:

- A public calamity requires the prompt purchase of items to provide for public needs or preserve property;
- The item is necessary to preserve or protect the public health or safety of residents; or
- The item is made necessary by unforeseen damage to public property.

When hiring Board Staff without following a competitive procurement process, procedures must be established which includes advertising the position and the qualifications required, conducting interviews of the applicants and a system for rating and selection of the individual or individuals.

The Board staff does not have to be an employee of the Fiscal Agent or the LWDB, however, when this occurs arrangements must be made for an employer of record.

The cost of professional and consultant services rendered by persons or organizations that are members of particular professions, or possess a special skill, are allowable if charged in accordance with Professional Service costs in the entity's appropriate OMB Cost Principles Circular.

When writing On-the-Job Training (OJT) and customized training contracts, the sole source method of procurement may be used.

Individual Training Accounts (ITA)

Individual Training Accounts (ITAs) are the primary method to be used for procuring training services under WIOA for Title I Adult and Dislocated Worker services. A contract for training services may be developed instead of an ITA when at least one of the circumstances below applies, and if the local area has fulfilled the consumer choice requirements of 20 CFR 680.340.

Training services may be provided pursuant to a contract for services in lieu of an individual training account if—

- such services are on-the-job training, customized training, incumbent worker training, or transitional employment;
- the local board determines there are an insufficient number of eligible providers of training services in the local area involved (such as in a rural area) to accomplish the purposes of a system of individual training accounts;
- the local board determines that there is a training services program of demonstrated effectiveness offered in the local area by a community based organization or another private organization to serve individuals with barriers to employment;
- the local board determines that (i) it would be most appropriate to award a contract to an institution of higher education or other eligible provider of training services in order to facilitate the training of multiple individuals in in-demand industry sectors or occupations; and (ii) such contract does not limit customer choice; or

E. the contract is a pay-for-performance contract.

Payments are made from ITAs for training services in demand occupations as defined by the LWDB. Payments can only be made to an Eligible Training Provider. [Sections 134(c)(3)(G)(i) and 20 CFR 680.410]. Payments may be made in a variety of ways, including the electronic transfer of funds through financial institutions, vouchers, or other appropriate methods. Payments may also be made incrementally—through payment of a portion of the costs at different points in the training course. [20 CFR 680.300]

ITAs may be used in lieu of competitive procurement for youth ages 16-24, per 20 CFR 681.550. Use of an ITA allows youth to utilize the Eligible Training Provider List in choosing a training provider and course of training.

Training for youth that is not provided through the use of an ITA must be competitively procured with the process documented on Attachment H, Youth Training Provider Procurement Form, found in the most recent Youth policy OWDI 02-2016, Change 1 located at <http://oklahomaworks.gov/policy-center/>.

Contracts for services may be used instead of ITAs only when the exceptions described in 20 CFR 680.320 apply, and when the LWDB has fulfilled the consumer choice requirements of WIOA Sec. 134(c)(3)(G), 20 CFR 680.340 and current State policy. The determination of when training needs to be provided by contract in lieu of an ITA is made by the LWDB based on factors including, but not limited to, an insufficient number of eligible training providers in the area, the availability of a training program of demonstrated effectiveness already offered in the community, and/or the facilitation of training for multiple individuals in in-demand occupations at an institution of higher education. Local boards must develop policy and procedures for when contracts will be used in lieu of ITAs, describing the factors used to support the policy. ITAs are not utilized for on-the-job training (OJT), customized training, incumbent worker training or transitional jobs.

WIOA Consumer Choice

Training services must be provided in a manner that maximizes informed consumer choice in selecting an eligible training service provider in accordance with the goals and objectives outlined in the participant's individual employment plan. The LWDB, through the local one-stop center, must make available to customers the State and local lists of eligible training providers as required in WIOA Section 122(d).

Eligible training providers include:

- Post-secondary education institutions;
- Registered Apprenticeship (RA) programs;
- Other public or private providers of training, which may include joint labor-management organizations and eligible providers of adult education and literacy activities under Title II if

such activities are provided in combination with occupational skills training (Category 3 training provider in the State plan);

- Local Boards, if they meet the conditions of WIOA sec. 107(g)(1); and
- Community Based Organizations or private organizations of demonstrated effectiveness that provide training under contract with the Local Board.

The LWDB must follow most recent State ETPL policy found at <http://oklahomaworks.gov/policy-center/> when developing their policies and local operating procedures concerning the cost of training and training-related expenses that reflect prudent fiscal management and results in outstanding customer satisfaction. Every effort should be made to honor the commitments made to participants, but participants must also understand they must assume the responsibility of obtaining their planned goal and objectives.

Individual Training Voucher

The Individual Training Voucher provides authorization only for an approved, eligible training provider to deliver training and services to students for those costs at the current rates that are published and are standard costs charged to all students. The issuing entity of the Individual Training Voucher will not be liable for any charges made by a student unless the charges are shown on the original voucher signed by the participant and the WIOA Service Provider. Proper invoices must be submitted before payment can be made.

The issuing entity of the Individual Training Voucher will abide by the attendance and refund policies written in the training providers' catalogs or brochures.

Common Principles Covering Both a Customized Training Contract and OJT Contract

Pre-Award Review. The Employer wanting to implement training must be reviewed on-site prior to the execution of the first training agreement of each year. Understanding that the LWDB may add additional criteria to the Pre-Award Review, the State requires the Pre-Award Review to cover the following, at minimum:

1. Ensure that WIOA funds are not used or proposed to be used for:
 - a. The encouragement or inducement of a business, or part of a business, to relocate from any location in the United States, if the relocation results in any employee losing his or her job at the original location.
 - b. Training for a business or part of a business that has relocated from any location in the United States, until the company has operated at that location for 120 days, if the relocation has resulted in any employee losing his or her jobs at the original location.
2. Verify that an establishment which is new or expanding is not, in fact, relocating employment from another area.

3. Must include names under which the establishment does business, including predecessors and successors in interest, and contain the name, title, and address of the company official certifying the information.
4. Must include whether WIOA assistance is sought in connection with past or impending job losses at other facilities, including a review of whether WARN notices relating to the employer have been filed.
5. Ensure this request for training is for a high growth, high demand occupation in the local area targeted industry cluster(s).
6. Ensure that Worker's Compensation coverage provided to employees.
7. Ensure that the employer has not had any Wage and Hour or Child Labor violations during the past 12 months.
8. Ensure that the training will be conducted with a commitment by the employer to employ, or in the case of incumbent workers, continue to employ, an individual on successful completion of the training.
9. Ensure that the training activity shall not impair an existing contract for services or collective bargaining agreement, and no such activity that would be inconsistent with the terms of a collective bargaining agreement shall be undertaken without the written concurrence of the labor organization and employer concerned.
10. Training must not be available in the absence of WIOA funds.
11. The employer must not have exhibited a pattern of failing to provide WIOA enrolled training participants with continued long-term employment with wages, benefits, and working conditions equal to that of regular employees doing similar work for a similar length of time.

In addition to the Pre-Award review, the WIOA Service Provider must maintain documentation to support the need for the participant training and the length of training to be provided.

Basic Customized Training Contract Requirements

Basic conditions that must be met and documented as described by LWDB policy for an employer to be eligible to execute a Customized Training contract are:

The Customized Training MUST relate to one of the following:

- a. The introduction of new technologies
- b. The introduction of new production or service procedures

- c. Upgrading to new jobs that require additional skills
- d. Workplace Literacy, or
- e. Other appropriate purposes as identified by the LWDB

Basic conditions that a Customized Training contract requires from the employer:

1. A list of specific skills that must be mastered to accomplish specific tasks required by one or more occupations, and a schedule of the training hours dedicated to each task.
2. A list of competencies that participants are expected to achieve during Customized Training.
3. A method of measuring participant's competencies.
4. The number of trainees they will train and hire (or retain in employment).
5. Training should be provided during normal working hours.

The minimum elements required in the Customized Training contract are:

1. Trainee name
2. Trainee wage
3. Name, address and telephone number of the employer and the Grantor
4. Employer identification number
5. Training job title
6. Description of demand occupation involved, skill(s) and competencies to be provided and learned
7. Definition of what constitutes successful completion of training
8. Beginning and end dates, and hours of training to be provided
9. Agreement on maximum allowable costs of training
10. Written commitment from employer to hire or retain all successful trainees
11. Employer commitment to fund 10% - 50% of the cost of training, as determined by the following sliding scale.
 - 1) No less than a 10 % match for employers with 50 or fewer employees,
 - 2) no less than a 25 % match for employers with 51-100 employees, and
 - 3) no less than a 50 % match for employers with more than 100 employees.
12. Collective Bargaining Unit Concurrence

Basic On-the-Job Training Contract Requirements

Training is to be provided to a paid participant while engaged in productive work in a job that:

1. Provides knowledge or skills essential to the full and adequate performance of the job.
2. Provides reimbursement to the employer of up to 50 % of the wage rate of the participant for the extraordinary costs of providing the training and additional supervision related to the training. For local areas to increase the reimbursement level up to 75 %, the following factors must be taken into account:

- a. The characteristics of the participants taking into consideration whether they are individuals with barriers to employment” as defined in WIOA 3(24);
 - b. The size of the employer, with an emphasis on small businesses;
 - c. The quality of employer-provided training and advancement opportunities e.g., if the OJT contract is for an in-demand occupation and will lead to an industry-recognized credential); and
 - d. Other factors the State or local boards may determine appropriate (e.g. the number of employees participating in the training, wage and benefit levels of the employees, including both pre- and post-participation earnings), and relation of the training to the competitiveness of the participant.
 - e. LWDBs must document the factors used when deciding to increase the wage reimbursement levels above 50% and up to a maximum of 75%.
3. Determining the appropriate length of the contract, consideration should be given to the skill requirements of the occupation, the academic and occupational skill level of the participant, prior work experience, and the participants IEP.
 4. The employer has not failed to meet the requirements of a previous OJT contract. The exception to this requirement is if the employer failed to meet the requirements of a previous OJT contract through no fault of his/her own.
 5. The employer has not reduced the workforce with the intention of filling the vacancy with the individual receiving training from the OJT contract or displaced a currently employed worker as a result of the OJT contract.
 6. If there is a collective bargaining agreement, the training provided under the OJT contract does not violate the terms of this agreement.
 7. If there is a collective bargaining agreement and the training being provided is inconsistent with the terms for a collective bargaining agreement, a written agreement must be obtained from the representing labor organization.
 8. No one should be laid off from the same job for which they will receive OJT training and an OJT contract is being developed.

The minimum elements required in the OJT contract are as follows:

1. Trainee name
2. Trainee wage
3. Name, address and telephone number of the employer and the Grantor
4. Employer identification number
5. Training job title
6. Description of demand occupation involved, skill(s) and competencies to be provided and learned
7. Definition of what constitutes successful completion of training
8. Beginning and end dates, and hours of training to be provided
9. Agreement on maximum allowable costs of training
10. Written commitment from employer to hire or retain all successful trainees

11. Employer is to be reimbursed of up to 75 %of the wage rate of the participant for the extraordinary costs of providing the training and additional supervision. LWDBs must document the factors used when deciding to increase the wage reimbursement levels above 50% and up to a maximum of 75%.
12. Collective Bargaining Unit Concurrence

In addition to the Training conditions listed above, both Customized Training and OJT contracts must have the following four “clauses” as well as the minimum standards for contracts of sub-recipients who serve participants, which can be found on pages 20-24 stated in this guidance.

1. Termination of Training Participants

The Employer agrees that the customized training participant shall not be terminated from training without prior notice and must be given reasonable opportunity for correction or improvement of performance prior to termination. The Employer also agrees that it will immediately notify the LWDB designated entity; i.e., Fiscal Agent or Service Provider if the customized training participant has an attendance or disciplinary problem or has demonstrated an inability to perform in accordance with the training outline contained in the Contract. The Employer understands that the termination of a customized training participant is subject to the LWDB’s grievance procedures.

2. Displacement of Currently Employed Workers

The Employer agrees that no currently employed worker shall be displaced by the customized training participant including a partial displacement such as a reduction in the hours, wages, or employment benefits. The Employer also agrees that no customized training participant shall be placed into a position that is currently vacated by an employee who is on layoff or into a position in which the Employer has terminated the employment of an employee with the intention of filling the position with a customized training participant. The Employer further agrees that this Contract does not infringe in any way upon the promotional opportunities of current employees not involved in the customized training.

3. Access to Records

The Employer agrees that at any time during normal business hours, and as often as deemed necessary, the LWDB’s designated Staff Monitor or Board contracted entity (rather than a Board Staff person), State of Oklahoma, U.S. Department of Labor, or other authorized Federal agencies or their agents may inspect and monitor any records or activities pertaining to this Contract. Such inspection shall be made to determine if the Employer is in compliance with the terms and provisions of this Contract and if the customized training participant is making sufficient progress.

4. Recordkeeping System

The responsible entity for payment has responsibility for making sure that records are maintained properly. The LWDB policy must be adhered to by the entity responsible for payment. The LWDB shall establish and maintain a customized training recordkeeping system with procedures that will provide timely and relevant information for management and planning purposes. This system will allow the LWDB to generate information on each contract such as the number of unused training hours, current funds expended to date, etc.

On-Site Review

The LWDB will designate a Board Staff member or an individual who is not the WIOA service provider staff to monitor each customized training site and each OJT site at least once during the training period to ensure compliance with contract terms and to help solve any concerns between the LWDB, Employer(s), and/or Trainee Participant.

The “monitor” should verify the participant is receiving the training described in the Contract, and that the participant is not required to engage in activities prohibited by WIOA. The monitor must also review the participant’s attendance records to ensure that the participant is attending and succeeding in the training, and review employer records to assure that the participant is receiving proper wages and that the employer is withholding taxes and paying workers compensation (or equivalent insurance).

Any compliance issues requiring corrective actions must comply with the local monitoring policies and procedures before final payment is made on the customized training contract.

Documentation

The documentation listed below must be maintained in the Customized Training and OJT Contract file in addition to the required elements stated in this guidance:

1. Original Customized Training or OJT Contract;
2. Pre-award checklists;
3. Any modifications to the Training Contract;
4. Training Time Documentation;
5. Participant Level of Completion;
6. Training payment invoices;
7. Monitoring reports, including problems, corrective action, and follow-up;
8. Justification of termination;
9. Proof of Worker’s Comp.

Pass Through

The procurement policies do not apply to pass through of monies from any unit of State or local government to other such units, such as a local educational agency or public housing authority. To qualify as a pass through, the receiving entity must either further pass through the monies to another such entity or procure services in accordance with the procurement policies.

SELECTION OF SERVICE PROVIDERS

Youth Service Provider Selection

All youth service providers must be selected by a competitive process as outlined in this policy, the exception to this would be if the Grant Recipient/Fiscal Agent elects to provide the Summer Employment opportunities element of the local youth program, service for intake, objective assessment and the development of individual service strategy.

Adult and Dislocated Worker Service Provider Selection

The WIOA Regulations state a LWDB (this includes Board Staff) may not directly provide career or training services, or be designated or certified as a One-Stop operator, unless agreed to by the Chief Elected Official and the Governor. The State of Oklahoma requires all Adult and Dislocated Worker Service Providers of career and training services must be selected by a competitive process as outlined in this policy. This means before the Grant Recipient/Fiscal Agent can be a service provider of career and training services for the Adult and Dislocated Worker programs they must also compete in a competitive process.

An Adult and Dislocated Worker Service Provider/Sub-recipient cannot be selected based solely on demonstrated experience to meet or exceed the Federal WIOA Performance Measures. Local factors or outcomes must be developed and included in the evaluation criteria.

Duplication of Services—No funds shall 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 in writing that alternative services or facilities would be more effective or more likely to achieve the local workforce area's performance goals.

DOCUMENTATION

Each sub-recipient shall maintain a file for each procurement action sufficient to detail the significant history of the procurement. The demonstrated ability of service providers to effectively deliver the services required shall be documented in the procurement file. The procurement file must contain, if applicable, these general procurement items:

1. Justification for the type of procurement method used;

2. The price and cost analysis performed, including the independent estimates made by the grant recipient prior to receiving bids;
3. Certificates of debarment;
4. Justification if the lowest priced item is not purchased.

The procurement file must contain, if applicable, these small purchase procurement items:

1. Copies of price or rate quotations from an adequate number of qualified sources;
2. Justification for why less than three (3) price or rate quotations were obtained.

The procurement file must contain, if applicable, these competitive procurement items:

1. Copies of any bids or proposal solicitations issued including the evaluation factors
2. Copies of advertisements announcing procurement actions
3. Copies of all solicited bids or proposals received
4. Summary of any negotiations including changes made to the curriculum, price, duration, technical requirements (such as instructor qualifications), or outcomes
5. Summary of the negotiations establishing fair and reasonable profit or program income
6. Copy of the evaluation results of the bids or proposals received
7. Justification of the sound business reasons for rejecting any bids or proposals
8. The original RFP, with the time and date received recorded

The procurement file must contain, if applicable, the following non-competitive procurement items:

1. Summary of any negotiations including changes made to the curriculum, price, duration, technical requirements (such as instructor qualifications), or outcomes
2. Summary of the negotiations establishing fair and reasonable profit or program income
3. Board minutes of selection and authorization for hiring of Board Staff

If a procurement action requires a written agreement or contract, the State Contract Policy must be followed as established in the next segment of this document.

STATE CONTRACT POLICY

- A. PURPOSE**—These minimum standards are established to ensure that public funds are adequately protected in the subcontract process and that grant recipients are in compliance with applicable laws and regulations.

Funds expended prior to the signature date of a contract will be questioned unless the contract contains a pre-agreement cost clause. This clause must allow for the expenditure of funds between the planned beginning, or effective, date of the contract and the actual

signature date. Under no circumstances may a pre-agreement cost clause provide for allowable expenditures for more than 30 calendar days **prior to the actual signature date(s) of the contract.**

Any renewal of a contract must be based on measurable, documented and verified demonstrated experience of the Service Provider/Sub-recipient to meet or exceed the local outcomes during the period as set by the local area and must be during a timeframe that allows the rationale, documentation and verification to occur prior to the effective date of any renewal, i.e. during the 3rd quarter. The basis for any renewal cannot be on the Federal WIOA Performance Measures.

- B. CONTRACT REQUIRED**—A written contract or purchase order is required when procuring goods or services that exceed \$3,000.00 in the aggregate. Purchase Orders should be issued in accordance with local policy.
- C. SELECTION OF CONTRACT**—There are two basic types of contracts used in the state system.
 - 1. Cost Reimbursement Agreements—these provide for the payment of actual costs incurred to the extent as prescribed in the contract. This type of agreement reimburses the contractor for his best efforts to perform up to the total costs and types of costs authorized in the contract. Detailed documentation demonstrating that all reported costs have been incurred is required to earn payment.
 - 2. Fixed-Price Agreements
 - a. A fixed-price agreement pays a contractor a specified price for specified deliverables irrespective of the contractor's actual costs incurred. This form of agreement is used when clear delivery specifications can be stated with little or no uncertainty.
 - b. The most widely used form of fixed-price agreement is the fixed-unit-price, performance-based contract. These agreements make payments to the contractor contingent on successful achievement of specified, measurable performance outcomes. The risk under this form of agreement should be primarily with the contractor since compensation is not owed, regardless of the costs incurred, unless the contractor achieves satisfactory results. Work performed under this type of contract must be allocated to the appropriate cost categories.
 - c. Another type of fixed-price agreement is an indefinite quantity contract. It is used when an organization knows what specific goods or services it needs but cannot specify the quantity it will need or the times they will be needed. Such contracts can contain many types of items, as long as each type is clearly described in the statement of work.

D. CHOICE OF CONTRACT—The type of contract to be used should be based on consideration of cost and price analysis, degree of performance certainty, assignment of risk, and the particular characteristics of a given procurement.

1. Cost Reimbursable Contracts--Contracts between units of State or local government, and any other entity organized principally as the administrative entity for local workforce investment areas or sub-state areas, shall be conducted on a cost reimbursable basis. Cost plus type awards are not allowable. In the case of procurement transactions with schools that are a part of these entities, such as State universities and secondary schools, when tuition charges or entrance fees are not more than the educational institution's catalogue price, necessary to receive specific training, charged to the general public to receive the same training, and for training of participants, the tuition and/or entrance fee does not have to be broken out by items of cost.
2. Fixed-Price Contracts--An appropriate use of a fixed-price contract is where the contract price is made up of single unit charges and payment is contingent upon delivery of the specified units, such as OJT employer agreements and catalogue priced tuition training. A logical use of the indefinite quantity contract would be when contracting for referrals to training that has tuition-based pricing. This would obviate the need to execute small purchases again and again.

E. MINIMUM STANDARDS—Each contract written at the LWDB level must contain elements as described in this policy. This policy is not intended to prescribe a format or order: however, each element identified in this policy must be addressed in the LWDB's contracts. All lower tier contracts below the LWDB level must contain the elements as described in this policy.

1. Signature/Cover Page – All contracts, including modifications, must be written and signed, and must include beginning and ending dates for the contract performance and payments. The signature or cover page must contain:
 - a. A Statement of Purpose
 - b. The names and addresses of the parties to the contract
 - c. The beginning and ending date of the contract
 - d. A list of contract sections and attachments
 - f. The typed names and titles of signatories
 - g. The signatures and the date of signature
2. Statement of Work – Each contract must contain a narrative describing the quantity and quality of work to be performed by the contractor. The narrative should provide a timeline of events such as the dates the contract work is to begin and end, and any start-up or close-out dates (if any), and how performance outcomes will be documented and verified. **Adult and Dislocated Worker Service Provider/Sub-**

recipient contracts must reflect the requirements of the local integration service delivery design to include the minimum integration requirements as set forth by the State.

3. Payment and Delivery Provisions—This provision must describe the conditions under which the agency will make payment or partial payments to the contractor must be clearly stated. Included here should be the budget or benchmarks for payments; frequency of payment if progress or reimbursement payments are used; addresses of where to submit invoices and where to send payments; the types of invoices required, including any backup and supporting documentation, discounts, holdbacks, and other payment-related information. Grant recipients should consider holding back some portion of the contract price pending full performance outcomes as required by the contract. For example, holding some portion of the agreed upon payment price to any OJT employer until the participant has been employed by that employer for more than 90 days.
4. Boilerplate Terms and Conditions
 - A. Contracts with vendors--The following terms and conditions are considered by the State to be the minimum to be included in any contract between a LWDB grant recipient and a vendor or service provider (over \$25,000 in services or goods).
 1. Provisions for early Terminations—
 - a. For cause (default)—The termination for default clause must give the LWDB the right to terminate the contract for the contractor’s failure to perform its obligations under the contract.
 - b. For convenience-This clause must allow the LWDB to terminate the contract without becoming liable for breaching the contract by giving reasonable notice.
 - c. Funding—This clause must allow the LWDB to terminate the contract due to lack of funds.
 2. Modification to Grants—This condition must describe the method and circumstances required for contract modifications. The minimum that is acceptable is to provide a way to change the contract in the event of federal amendments. **This clause may also provide for a way to increase funds if additional funds become available to the area, such as NEG funds, reallocation of funds or any other increase of funds becoming available from USDOL.**
 3. Provision Against Assignment—Must ensure that the contractor will not assign its interest in the contract without written approval from the LWDB.

4. Subcontracting—Must define circumstances, if any, in which the contractor may subcontract its contract responsibilities. At a minimum, must require written approval from the LWDB.
5. Indemnification (Hold Harmless)—The provision must protect the LWDB, the State of Oklahoma, the U.S. Department of Labor(USDOL), and all agents in case the contractor is sued for acts committed within the contract.
6. Dispute Resolution—Must define a method for resolution of disputes related to contract performance.
7. Audit Rights—Must give the LWDB, State of Oklahoma, and others with statutory audit rights the authority to examine documents pertaining to contract performance and enable the auditor to determine whether the contractor is properly performing its contractual obligations, especially in relation to payments received.
8. Access to Records—Must give access to the LWDB, State of Oklahoma, the U.S. Department of Labor, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records (including computer records) of the contractor or subcontractor which are directly pertinent to charges to the program, in order to conduct audits and examinations, and make surveys, excerpts, transcripts, and photocopies. This right must include timely and reasonable access to contractor’s and subcontractor’s personnel for the purpose of interviews and discussions related to such documents.
9. Copyrights and Rights to Data—Must include a notice of the Funding source requirements pertaining to Copyrights and the rights to data. Specifically, the grant recipient, the State of Oklahoma, and the U.S. Department of Labor shall have unlimited Rights to any data first produced or delivered under the agreement.
10. Pre-agreement Cost Clause—Funds expended prior to the signature date of a contract will be questioned unless the contract contains a pre-agreement cost clause. This clause must allow for the expenditure of funds between the planned beginning, or effective, date of the contract and the actual signature date. Under no circumstances may a pre-agreement cost clause provide for allowable expenditures for more than 30 calendar days prior to the actual signature date(s) of the contract.
11. Renewal—This clause must describe the condition by which a contract can be renewed. It must also describe the outcomes that must be met and timeframe

for which they must be met. The State of Oklahoma allows a contract to be extended two consecutive years (in one year increments) from the original contract ending if basis for renewal has been met, documented and verified. Basis for renewal on the Adult, Dislocated Worker or Youth Service Provider/Sub-recipient contracts must be on having met or exceeded the local established measurable, documented and verified performance outcomes during the original period of the award. The rationale, documentation and verification must occur prior to the effective date of any renewal. In addition, the basis for any renewal cannot be on the Federal WIOA Performance Measures. Service Provider/Sub-recipient contracts cannot be renewed simply at the Board discretion.

12. Deobligation—Must define situations, if any, in which contract payments may be decreased.
 13. Price Adjustment—If a contract or modification was negotiated in reliance upon cost data supplied by an organization offering a proposal. The grant recipient must ensure that it can adjust the price to exclude any significant sum by which the price was increased, because the contractor had submitted cost data in its proposal that was not accurate, complete, or current as certified.
- B. Contracts with Vendors who serve participants--The following terms and conditions are considered by the State of Oklahoma to be the minimum, in addition to the terms required in Paragraph 1, to be included in a contract with a vendor or service provider (over \$3,000) who provides services to participants. An attorney should review all of the contracts.
1. Insurance Requirements--Must provide for minimum liability insurance coverage to be maintained by the contractor. This may include worker's compensation, classroom insurance, non-owned automobile, or general liability coverage.
 2. EEO—Must ensure that no individual shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with this contract on the basis of race, color, religion, sex, national origin, age, disability, or political affiliation or belief. (U.S. Department of Labor Assurance Statement 29 CFR 37.20(a)(1), Section 188 of WIOA).
 - a. Grievances—Must ensure a reasonable method for dealing with participant grievances.
 - b. Duplicate Funding—Must ensure that the contractor's costs which are already allocated to other sources may not be included in the cost of the contract. The contractor must inform the LWDB if the contractor applies for or receives funds, which affect the cost or performance of work under this contract, and how the contractor plans to allocate

duplicated funds. The LWDB must have the right to renegotiate the contract relative to changed cost. Federal funds must be used only to supplement training resources available through Education Assistance Programs. Federal funds may be used in conjunction with PELL, SEOG, and other programs, but funds from different sources must be used to pay for different services with no duplication.

- c. Participant Rights—Must ensure that participants receive similar benefits to other persons in similar positions. Must also ensure that participants receive orientation to the programs funded through OOWD sufficient that they understand who will be providing services, what support services are available, and what the participant must do to be successful in the program.
 - d. Safety—Must ensure a safe working or training environment for participants.
- C. Contracts with Sub-recipients—The following terms and conditions are considered by the State to be the minimum, in addition to the terms required in paragraphs 1 and 2, to be included in a contract with a sub-recipient. Contracts should be reviewed by an attorney.
- 1. Compliance with Law—A clause that requires compliance with the Workforce Investment Act, all implementing regulations, and any other applicable laws including but not limited to:
 - a. The Workforce Investment Act;
 - b. The Workforce Investment Act Regulations;
 - c. The Welfare-to-Work Regulations;
 - d. Other Federal laws;
 - e. State laws;
 - f. Oklahoma State Policies;
 - g. Local laws;
 - h. LWDB Policy;
 - i. The U.S. Department of Labor Statement 29 CFR 37.20(a)(1), Section 188 of WIOA.
 - 2. Record Retention – Must require retention of the contractor’s records for three years from the date of contract closeout or audit/litigation resolution, whichever is later. Clause should define the records that the contractor is required to retain, identify where they will be kept, and make provisions for turning them over to the LWDB if the contractor goes out of business.
 - 3. Reporting – Must require contractor to furnish the LWDB any narrative, statistical, and financial reports related to the elements of the contract in the forms and at such times as required by the LWDB.

4. Program Income – Must ensure that income earned from OOWD funds is used to further program objectives, in accordance with the regulation, OMB circulars, and state policy.
5. Property/Capital Expenditures – All property purchased with Federal funds must be handled in accordance with the state’s property policy.
6. Corrective Action – Must define corrective action procedures relative to contract goals, performance, modification, and termination.
7. Patent Rights – Must include a notice of the Federal requirements pertaining to patent rights.
8. Recruitment – If participant recruitment is the responsibility of the sub-recipient, either wholly or in part, the contract must contain provision for the contingency of low enrollments. The contract must also clearly state any minimum requirements for participants.
9. Disallowed Costs – Must ensure that any costs determined by the LWDB, State of Oklahoma, or the U.S. Department of Labor to be unallowable shall be returned in accordance with State and federal debt collection policy.

F. DOCUMENTATION—Documents listed below must be maintained in a Contract File:

1. A copy of the contract and any modifications;
2. Any program income negotiated;
3. Justification of contract failure;
4. Summary of negotiation of corrective action;
5. The basis for the contract type selected;
6. Current copy of a school catalog, price list, and refund policy for off-the-shelf training contractors;
7. Assurance Statement regarding U.S. Department of Labor (USDOL) Section 188 of WIOA.

ACTION REQUIRED: This Oklahoma Workforce Development Issuance (OWDI) is to become a part of your permanent records and made available to appropriate staff and sub-recipients.

INQUIRIES: If you have any questions regarding this issuance, please contact the Policy and Program Team in the Oklahoma Office of Workforce Development. Contact information can be found at <http://www.oklahomaworks.gov/about/>.