

Oklahoma Employment Security Commission

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Oklahoma Employment and Training Issuance 11-2003

DATE: August 15, 2003

FROM: Terry Watson, Director of Employment and Training Division

TO: WIA Grant Recipients
WIA Fiscal Agents
WIA Board Chairs
WIA Board Staff
WIA Service Providers
Chief Local Elected Officials

SUBJECT: State Procurement and Contract Policy

PURPOSE: The purpose of this issuance is to disseminate the changes in State Policy concerning procurement and contracting.

These minimum standards are established to ensure that purchases made with public funds are economical and efficient, and are in compliance with applicable laws and regulations.

A. DEFINITIONS

Award

Means a contract, grant, sub-contract, sub-grant or other type of legal instrument that conveys funds.

Immediate Family Member

Includes a spouse, son, son-in-law, daughter, daughter-in-law, mother, mother-in-law, father, father-in-law, brother, brother-in-law, sister, sister-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent, and grandchild.

Individual Training Accounts

Is an Individual Training Account established on behalf of WIA Title I adult and dislocated workers for training services from eligible providers they select in consultation with their case manager.

Procurement

Means the process that leads to any award of funds.

Service Provider

Means 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.

Sub-recipient

Means the legal entity to which an award is made and which is accountable to the recipient (OESC) for the use of the funds provided. For WIA 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 WIA program or project. Service Providers are consider Sub-recipients and NOT Vendors.

Vendor

Means 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 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 is not a sub-recipient and does not exhibit the distinguishing characteristics attributable to a sub-recipient as defined above.

Youth Service Provider

Means an entity or individual identified by the local board in accordance with Sec. 123 of the Act to carry out youth activities.

B. 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 Investment Board (LWIB) members, Local Workforce Development Councils (LWDC), 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. The individual,
 - 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 above, has financial or other interest in the firm or organization, selected for award.

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 Council Conflicts of Interest--LWIB, LWDC 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 LWIB, LWDC and Youth Council members must declare, on the record, possible conflicts of interest. At a minimum, each LWIB, LWDC and Youth Council member must declare a possible conflict when:
 - (1) The member or immediate family member is a volunteer board member of a nonprofit bidding organization,
 - (2) The member is voting on an indirect affirmation of a contract relationship, such as a vote on the Local Plan; or
 - (3) The member is voting on a rival proposal, though there is no direct competition.
 - b. Abstention from voting--Each Code of Conduct must address circumstances under which a LWIB, LWDC or Youth Council member must abstain from voting on a procurement action. No member of any LWIB, LWDC 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 LWIB, LWDC 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 LWIB, LWDC or Youth 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.
 - d. LWIB, LWDC and Youth Council Membership
Neither membership on the LWIB, LWDC or Youth Council nor the receipt of funds to provide training and related services-by itself-violates this conflict of interest provision.
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 (29 CFR Part 98)--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 it 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 Part 98.

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

1. Free and Open 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 includes, but are not limited to:

- a. Placing unreasonable requirements on firms or organizations in order for them to qualify to do business,
- b. Requiring unnecessary experience and excessive bonding,
- c. Noncompetitive pricing practices between firms or organizations or between affiliated companies or organizations,

- d. Noncompetitive awards to consultants that are on retainer contracts,
- e. Organizational conflicts of interest;
- f. 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;
- g. Overly restrictive specifications; and
- h. Any arbitrary action in the procurement process.

2. Solicitations

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

- a. Solicit offers by disseminating a Request for Proposal (RFP) to an adequate number of qualified sources to ensure competition (generally, sources included on the bidders source lists), or advertising in one or more newspapers designed to reach service providers;
- b. Ensure that the RFP includes a Statement of Work or specifications, including a description of the requirements for time, place, and methods for performance of the service,
- c. 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.
- d. Ensure that the RFP requires a line item budget,
- e. Ensure that the RFP includes the boilerplate terms and assurances that will be included in any resulting contract,
- f. Ensure that the RFP includes certifications, assurances, and representations, including:
 - (1) A certificate regarding debarment, when required by regulations;
 - (2) A certification regarding lobbying;
 - (3) 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; and
 - (4) Identify contract renewal and extension limitations.
- g. Ensure that the RFP describes the solicitation process, including provisions for protest or appeal of the final award,
- h. Ensure that when transitioning from one service provider to another, services to current active clients are not interrupted from participating in the program. The new service provider must factor in the additional cost concerning these participants when submitting their proposal based on current client data,

- i. Ensure that the RFP identifies all significant evaluation or rating factors and the relative importance of each factor,
- j. Ensure that the evaluation factors include minimum thresholds that, if not met, require disqualification,
- k. 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; and
- l. Award a contract to the bidder (s) who is (are) successful.

3. 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.

All bidders must be notified, in writing, of the results of the technical evaluation. 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--

1. 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 OESC's contracting policy.

2. Monitoring

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

C. 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.**

Price Analysis

1. 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.
2. Price analysis must be performed on every procurement action.
3. Price analysis techniques include:
 - a. Comparison of proposed prices with independent estimates of cost developed by the subrecipient;
 - b. Comparison of competitive price quotations;
 - c. Comparison of prior quotations and contracts with current quotations for the same or similar items;
 - d. 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
 - e. Comparison of prices on published price lists with published market prices of commodities, together with discount or rebate schedules.

Cost Analysis

1. 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.
2. 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.
3. Cost analysis includes evaluation of the:
 - a. Supporting data submitted by the offeror,
 - b. Cost elements, and
 - c. Factors the offeror considered in projecting from the data to develop the estimate of cost to perform the specified work.

Profit or Program Income

1. 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.

2. To establish a fair and reasonable profit or program income, consideration shall be given to:
 - a. The complexity of the work to be performed;
 - b. The risk borne by the contractor;
 - c. The contractor's investment;
 - d. The amount of subcontracting;
 - e. The quality of the contractor's record of past performance;
 - f. Industry profit rates in the surrounding geographical area for similar work; and
 - g. Market conditions in the surrounding geographical area.
3. The cost plus a percentage of cost method of contracting shall not be used.

D. 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 Two Thousand Five Hundred dollars (\$2,500). **If a purchase is made that does not exceed \$2,500.00 in the aggregate no contract is necessary. The only exception to this would be when writing an agreement for OJT or Customized Training, then the sub-recipient must follow the OJT Policy OETI #27-2000 and the Customized Training Policy OETI #28-2000.**

Small Purchases

Small purchase procedures may be used for the purchase of goods or services that exceed Two Thousand Five Hundred dollars (\$2,500) but does not exceed Twenty Five Thousand dollars (\$25,000.00) in the aggregate. A purchase in excess of the small purchase limitations of \$25,000.00 shall not be split in order to circumvent the small purchase limit. Price or rate quotations shall be obtained from 3 or more sources (unless a lesser number is justified in the procurement file) to ensure reasonable competition. 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

1. 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 the following conditions are present:

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

2. Requirements

If this method is used, the recipient shall:

- a. Allow sufficient time, prior to the date set for opening bids, for potential suppliers to respond; and
- b. Solicit bids by issuing an “Invitation for Bids” (IFB) to known suppliers, and by publicly advertising the Invitation in one or more newspapers designed to reach suppliers;
- c. The “Invitation for Bids”, clearly define the items or services needed in order for the bidder to properly respond to the Invitation;
- d. Open all bids publicly at the time and place stated in the Invitation for Bids; and
- e. 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 are 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 the following conditions are present:

1. Conditions

- a. 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; and
- b. In addition to price, other factors will be significant in the award decision.

2. Technical evaluation methodology

Each sub-recipient must have written procurement policies that include a methodology for technical evaluation of competitive proposals and award to responsible offer or whose proposals are most advantageous to the program with price, technical, and other factors considered. This methodology must contain at a minimum the following:

- a. Evaluation planning
The methodology must include a schedule or plan for the technical evaluation process. For example, a schedule should include dates and the length of the process with deadlines.
- b. Evaluation approaches and procedures
The methodology must include the evaluation factors and their relative weights to be used, as well as the scoring system to be used. The factors to be 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, include the:
 - (1) Adequate financial resources or the ability to obtain them;
 - (2) The ability to meet the program design specifications at a reasonable cost, as well as the ability to meet performance goals;
 - (3) A satisfactory record of past performance including demonstrated quality of training and the ability to provide or arrange for appropriate supportive services;
 - (4) The ability to provide services that can lead to the achievement of competency standards for participants with identified deficiencies;
 - (5) A satisfactory record of integrity, business ethics, and fiscal accountability;
 - (6) The necessary organization, experience, accounting and operational controls; and
 - (7) The technical skills to perform the work.
- c. 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.
- d. 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.

- e. 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.
- f. Awarding contracts
Contracts successfully negotiated must be awarded and notification to unsuccessful bidders must be in a reasonable amount of time.
- g. 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 is when one of the following circumstances apply:

1. The item or service is available from only a single source; or
2. An emergency situation exists that will not permit the time required for a competitive solicitation; or
3. 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 \$2,500.00 does not require a competitive process), or competitive proposals and one of the above circumstances apply.

When writing On-the-job training (OJT) and customized training contracts the sole source method of procurement may be used. NOTE: OJT brokering awards must be selected competitively.

The purchase of workers compensation insurance coverage from the State of Oklahoma, Comp Source are not subject to a competitive process because the rates of the State Insurance Fund are established by a commission.

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 LWIB, 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 profession or possess a special skill are allowable if charged in accordance with OMB A-87 Attachment B Item 33. Professional service costs or OMB A-122 Attachment B Item 39. Professional service costs or OMB A-21 Section J.32 Professional service costs as appropriate.

Individual Training Accounts (ITA)

WIA mandates that all training services (except for on-the-job training and customized training) are provided through the establishment of an ITA and that eligible adults and dislocated workers shall receive an ITA through the one-stop delivery system.

ITAs are funded with adult and dislocated worker funds authorized under Title I of WIA. Payments are made from ITAs for training services in demand occupations as defined by the LWIB. Payments can only be made to an eligible training provider. [Sections 134(d)(4)(F)(ii) and 134(d)(4)(G)(iii)]. 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 Part 663.410] (Refer to OETI #10-2000 on ITAs).

ITAs are only established for WIA adult and dislocated worker participants.

WIA Consumer Choice

WIA 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 LWIB, through the local one-stop center, must make available to customers the State list of eligible training providers as required in WIA Section 122(e).

The LWIB must follow OETI #10-2000 (Oklahoma's ITA Policy) 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.

Eligible Training Providers

The State maintains a list of eligible training providers that have complied with the requirements of OETI #6-2000. An eligible training provider is:

- (a) a postsecondary educational institution that-
 - (i) is eligible to receive Federal funds under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.);and
 - (ii) provides a program that leads to an associate degree, baccalaureate degree, or certificate;
- (b) an entity that carries out programs under the Act of August 16, 1937 (commonly known as the "National Apprenticeship Act"; 50 Stat. 664, chapter 663; 29 U.S.C. 50 et seq.); or
- (c) an other public or private provider of a program of training services.

Individual Referral Voucher

The Individual Referral 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 Referral Voucher will not be liable for any charges made by a student

unless the charges are shown on the original signed referral voucher. Proper invoices must be submitted before payment can be made.

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

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.

E. 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 WIA Regulations state a Local Board (this includes Board Staff) may not directly provide core services, or intensive 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 is **requiring** that **all Adult and Dislocated Worker Service Providers of core and intensive 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 core and intensive services for the Adult and Dislocated Worker programs they must also compete in a competitive process.

Duplication of Services—No funds shall be used to duplicate facilities or services available in the area (with or without reimbursement) from Federal, State, of 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.

F. 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, the following **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; and
4. Justification if the lowest priced item is not purchased.

The procurement file must contain, if applicable, the following **small purchase procurement items**:

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

The procurement file must contain, if applicable, the following **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; and
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;
4. Summary of the negotiations establishing fair and reasonable profit or program income.
5. 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 after the effective date of the contract.

Any increase in funds must be based on adequate documentation of past-demonstrated performance outcomes and the rationale provided. The contract may be extended two consecutive years (in one year increments) from the original contract ending date. The provisions justifying the extension must be documented utilizing the modification process.

B. CONTRACT REQUIRED

A written contract or purchase order is required when procuring goods or services that exceed \$2,500.00 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 has been 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. They are 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 of 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 LWIB (Local Workforce Investment Board) 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 LWIB's contracts. All lower tier contracts below the LWIB 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 include:
 - 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, and
 - 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 will performance outcomes be documented and verified.

3. Payment and Delivery Provisions--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. 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 LWIB 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 LWIB 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 LWIB to terminate the contract without becoming liable for breaching the contract by giving reasonable notice.
 - (c) Funding--This clause must allow the LWIB 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.
 - (3) Provision Against Assignment--Must ensure that the contractor will not assign its interest in the contract without written approval from the LWIB.
 - (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 LWIB.
 - (5) Indemnification (Hold Harmless)--The provision must protect the LWIB, the State of Oklahoma, the U.S. Department of Labor, 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 LWIB, 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 LWIB, State of Oklahoma, the 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 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 after the effective date of the contract.
- (11) Increases and Extensions--Any increase in funds must be based on adequate documentation of past-demonstrated performance outcomes and the rationale provided. The contract may be extended two consecutive years (in one year increments) from the original contract ending date. The provisions justifying the extension must be documented utilizing the modification process.
- (12) Deobligation/Reobligation/Extensions—Must define situations, if any, which contract payments may be decreased or the contract length extended.
- (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 \$2,500) 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 (Attached) 29 CFR 37.20(a)(1), Section 188 of WIA)
 - (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 LWIB 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. LWIB must have the right to renegotiate the contract relative to changed cost. OESC federal funds must be used only to supplement training resources available through Education Assistance Programs. OESC 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 OESC 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) LWIB Policy, and
 - (i) The U.S. Department of Labor Statement 29 CFR 37.20(a)(1), Section 188 of WIA
- (2) Record Retention--Must require retention of the contractor's records for three years from 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 LWIB if the contractor goes out of business.
- (3) Reporting--Must require contractor to furnish the LWIB any narrative, statistical, and financial reports related to the elements of the contract in the forms and at such times as required by the LWIB.
- (4) Program Income--Must ensure that income earned from OESC 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 OESC 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 OESC 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 LWIB, 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; and
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 Section 188 of WIA

ACTION REQUIRED: Please distribute this issuance to appropriate staff and include it as part of your permanent records.

RESCISSIONS: This document supersedes OETI 27-2001, Ch-2.

CONTACT: Questions and comments may be directed to Terry Watson at 405/557-7294 or Mike Ferguson at 405/557-5315 or Donna Hewitt at 405/557-5313.