

TO: WORKFORCE DEVELOPMENT COMMUNITY

SUBJECT: CONSULTANT SERVICES AND PAY

**SUBJECT MATTER HIGHLIGHTS**

This provides guidance on the use of professional and consultant services.

COMMENTS DUE

February 26, 2016

Comments can be submitted through one of the following ways:

<b>Fax</b>	WSD, Attention: Scott Osborne at 916-654-9753
<b>E-Mail</b>	<a href="mailto:Scott.Osborne@edd.ca.gov">Scott.Osborne@edd.ca.gov</a> (Include "draft comments" in the subject line)
<b>Mail</b>	WSD / P.O. Box 826880 / MIC 69 / Sacramento, CA 94280-0001

All comments received by the end of the comment period will be considered before the final directive is issued. The Workforce Services Branch does not respond individually to each comment received. However, a summary of comments will be released with the final directive. **Comments received after the specified due date will not be considered.**

If you have any questions, contact Scott Osborne at (916) 654-9762.

# WORKFORCE SERVICES DRAFT DIRECTIVE

Number: WSDD-134

Date: February 4, 2016  
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TO: WORKFORCE DEVELOPMENT COMMUNITY

SUBJECT: CONSULTANT SERVICES AND PAY

## EXECUTIVE SUMMARY

### Purpose

This provides guidance on the use of professional and consultant services.

### Scope

This applies to all subrecipients of the *Workforce Innovation and Opportunity Act* (WIOA) funds.

### Effective Date

This is effective on the date of issuance.

## REFERENCES

- Title 2 *Code of Federal Regulations* (CFR) Part 200: *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance), Sections 200.318, 200.319, and 200.459
- Title 5 CFR Part 304: *Expert and Consultant Appointments*, Section 304.104
- Title 20 CFR Part 683: *Workforce Innovation and Opportunity Act* (WIOA) *Notice of Proposed Rulemaking* (NPRM), Section 683.200

## STATE-IMPOSED REQUIREMENTS

This directive contains no state-imposed requirements.

## FILING INSTRUCTIONS

Retain this directive until further notice.

The EDD is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities.

## BACKGROUND

As WIOA and Uniform Guidance implementation continues, consultants, when used appropriately, can be very a helpful resource. This provides subrecipients with guidance that must be considered when deciding whether to hire a consultant, as well as stipulations related to procurement standards and establishing a rate of pay.

## POLICY AND PROCEDURES

According to the Uniform Guidance, the cost of consultant services provided by persons who are members of a particular profession or possess a special skill, and who are not officers or employees of the governmental unit, are allowable so long as they are reasonable and not contingent upon recovery of the costs from the federal government.

As stated in Uniform Guidance Section [200.459](#), when determining whether utilizing a consultant in a specific situation would be an allowable cost, no single factor or any special combination of factors is necessarily determinative. However, the following factors are highly relevant and should be carefully considered by subrecipients:

- The nature and scope of the service rendered in relation to the service required.
- The necessity of contracting for the service, considering the non-federal entity's capability in the particular area.
- The past pattern of such costs, particularly in the years prior to federal awards.
- The impact of federal awards on the non-federal entity's business (i.e., what new problems have arisen).
- Whether the proportion of federal work to the non-federal entity's total business is such as to influence the non-federal entity in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under federal awards.
- Whether the service can be performed more economically by direct employment rather than contracting.
- The qualifications of the individual or concern rendering the service and the customary fees charged, especially on non-federally funded activities.
- Adequacy of the contractual agreement for the service (e.g., description of the service, estimate of time required, rate of compensation, and termination provisions).

In addition, any retainer fees must be supported by evidence of bona fide services available or rendered.

### Procurement

When obtaining consultant services, subrecipients must comply with all federal procurement standards listed in Uniform Guidance Sections [200.318](#) and [200.319](#). Subrecipients must also comply with their own documented procurement procedures that reflect applicable state and local laws and regulations, provided that they also conform to applicable federal law.

Supporting documentation detailing the history of the procurement and how the subrecipient complied with the non-restrictive, free and open competition requirement in its procurement of consultant(s) must be maintained. Examples of these records would include, but are not limited to, the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

#### Rate of Pay

As referenced in 5 CFR Section [304.104](#), compensation for consultant services must be reasonable and consistent with that paid for similar services in the marketplace. Reasonableness is based not only on the per hour charge, but on the overall charge for the work to be done. For example, if the base rate of pay was the same, but one consultant has to fly in and bills for travel time, then this consultant might not be the most reasonable.

When determining the basic rate of pay, subrecipients must consider and maintain supporting documentation of the following:

- The level and difficulty of the work to be performed.
- The qualifications of the expert or consultant.
- The pay rates of comparable individuals performing similar work in federal or non-federal sectors.
- The availability of qualified candidates.

#### **ACTION**

Please bring this directive to the attention of all appropriate staff.

#### **INQUIRIES**

For further information regarding this directive, please contact your [Regional Advisor](#) or Project Manager.

/S/ JOSÉ LUIS MÁRQUEZ, Chief  
Central Office Workforce Services Division