

## **CONSULTANT SERVICES AND PAY**

---

### GENERAL INSTRUCTIONS

The attached Directive is being issued in draft to give the Workforce Development Community the opportunity to review and comment prior to final issuance.

Submit any comments by email or mail no later than **June 25, 2021**.

All comments received within the comment period will be considered before issuing the final Directive. Commenters will not be responded to individually. Rather, a summary of comments will be released with the final Directive.

Comments received after the specified due date will not be considered.

---

**Email**            [Scott.Osborne@edd.ca.gov](mailto:Scott.Osborne@edd.ca.gov)  
Include "Draft Directive Comments" in the email subject line.

---

If you have any questions, contact Scott Osborne at [Scott.Osborne@edd.ca.gov](mailto:Scott.Osborne@edd.ca.gov).

## CONSULTANT PAY AND SERVICES

### EXECUTIVE SUMMARY

---

---

This policy provides guidance and establishes procedures regarding the use of and pay for consultant services. This policy applies to all subrecipients of *Workforce Innovation and Opportunity Act* (WIOA) funds, and is effective on the date of issuance.

This policy contains no state-imposed requirements.

This policy supersedes Workforce Services Directive *Consultant Services and Pay* (WSD15-22), dated March 15, 2016. Retain this Directive until further notice.

### REFERENCES

- 
- 
- WIOA (Public Law 113-128)
  - *Emergency Supplemental Appropriations Act For Defense, The Global War on Terror, and Hurricane Recovery, 2006* (Public Law 109-234)
  - Title 2 *Code of Federal Regulations* (CFR) Part 200: Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance), Sections 200.318-200.326, 200.331, and 200.459
  - Title 5 CFR Part 304: *Expert and Consultant Appointments*, Section 304.104
  - Title 20 CFR WIOA Department of Labor (DOL); Final Rule, Section 683.200
  - Training and Employment Guidance Letter (TEGL) [05-06](#): *Implementing the Salary and Bonus Limitations in Public Law 109-234* (August 16, 2006)
  - [Workforce Services Directive](#) WSD20-07, *Salary and Bonus Limitations* (February 26, 2021)
  - WSD17-08, *Procurement of Equipment and Related Services* (March 14, 2018)
  - WSD16-16, *Allowable Costs and Prior Written Approval* (February 21, 2017)

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

## BACKGROUND

---

---

This Directive 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 within the DOL's limitation on consultant fees.

When used appropriately, consultants are an allowable cost and can be a very helpful resource. Local Workforce Development Areas (Local Area) and subrecipients should give careful consideration to deciding when it is appropriate to hire a consultant and use consultants to complete specific tasks when Local Areas lack the expertise to complete those tasks.

For example, a Local Area can hire a consultant to complete specific tasks such as (1) to transition its Local Workforce Development Board executive staff from county staff to non-profit staff, (2) to complete a study on the economic impact to the Local Area as a result of banning fracking, and (3) to draft the Local Area Plan required by WIOA.

When the Employment Development Department (EDD) receives a federal award, that federal award includes the DOL's consultant fee limit, the terms and conditions of that award, as well as the pass through entity responsibilities contained in Uniform Guidance Section 200.331, which requires that any grant award or subgrant financed in whole or part under that award must also include and comply with that limit.

## POLICY AND PROCEDURES

---

---

According to Uniform Guidance Section 200.459, the costs of professional and 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.

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 relevant and should be carefully considered by subrecipients:

1. The nature and scope of the service rendered in relation to the service required.
2. The necessity of contracting for the service, considering the subrecipient's capability in the particular area.
3. The past pattern of such costs, particularly in the years prior to federal awards.
4. The impact of federal awards on the subrecipient's business (i.e., what new problems have arisen).
5. Whether the proportion of federal work to the subrecipient's total business is such as to influence the subrecipient 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.

6. Whether the service can be performed more economically by direct employment rather than contracting.
7. The qualifications of the individual or concern rendering the service and the customary fees charged, especially on non-federally funded activities.
8. Adequacy of the contractual agreement for the service (e.g., description of the service, estimate of time required, rate of compensation, and termination provisions).

(Uniform Guidance Section 200.459)

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

Although TEGL 05-06, *Implementing the Salary and Bonus Limitations in Public Law 109-234*, indicates compensation for consultants is an allowable cost, the DOL sets the limitation on payments provided to consultants in grants or contracts. The current consultant fee limitation is set at \$710 per day (representing an 8 hour work day), which could be subject to change by program year or grant. The limitation is applicable to all subrecipients of WIOA funding and is included in the terms and conditions outlined in a subrecipient's subgrant or award. Any fees in excess of the daily or hourly rate specified in the ETA's grant agreement cannot be paid without prior written approval from the federal grant officer.

### **Procurement**

When obtaining consultant services, subrecipients must comply with general procurement policy requirements identified in *Procurement of Equipment and Related Services* (WSD17-08), as well as all federal procurement standards listed in Uniform Guidance Sections 200.318 through 200.326. 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**

Compensation for consultant services must be reasonable and consistent with that paid for similar services in the marketplace (Title 5 CFR Section 304.104). Reasonableness is not only based 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.

Finally, after following the required procurement procedures and considering the rate of pay, the current consultant fee limitation remains at \$710 per day and is applicable to all subrecipients of WIOA funding.

## **ACTION**

---

---

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

## **INQUIRIES**

---

---

If you have any questions, please contact your [Regional Advisor](#) or [Project Manager](#).

/s/ JAIME L. GUTIERREZ, Chief  
Central Office Workforce Services Division