

**Kansas Department of Commerce
Workforce Development Division
Policy and Procedures Manual**

Policy Number: 5-36-00
(Replaces 3-25-00)

Originating Office: Legal Services

Subject: Local Area Contracts for Administrative Services

Issued: 08-02-2017

Program: Workforce Innovation and Opportunity Act

Purpose: Section 184; Fiscal Controls of the Workforce Innovation and Opportunity Act (WIOA), allows the State to establish fiscal control and fund accounting procedures for safeguarding the expenditure of funds.

References: Section 184 of the Workforce Innovation and Opportunity Act

Background: Every provider receiving funds under Title I of the Workforce Innovation and Opportunity Act (WIOA) shall comply with the appropriate uniform administrative requirements for grants and agreements applicable for the type of entity receiving the funds. Standards have been established to ensure fiscal accountability and prevent waste, fraud and abuse in all programs administered under the Act and its implementing regulations.

Public funds that are targeted toward societal improvement should be targeted as effectively as possible towards the designated need. Improving the welfare of program participants should be the primary objective of expenditures of these public funds. The incentive of receiving “profit” is the reward for taking a risk in the marketplace. When expenditures are paid in a cost reimbursement manner, the element of risk is eliminated. To increase the availability of administrative funds, and to safeguard the public trust, no profit, bonuses, or incentives will be paid for the delivery of administrative services associated with WIOA programs. All local area contracts for administrative services will be solely on a cost-reimbursement basis. As of this issuance, any extensions or addendums to existing agreements/contracts for administrative services must also be exclusively on a cost-reimbursement basis. All entities, whether chartered as Non-Profit, Profit, or Public are eligible to deliver administrative services under these parameters.

Action: Distribute to all interested parties. All local agreements for administrative services shall conform to the provisions of this policy.

Contact: Questions regarding this policy should be directed to Robert E. North, (785) 296-1913, TDD: 1-800-766-3777, rnorth@kansascommerce.com

Attachments: None.

Local Area Contracts for Administrative Services

Table of Contents

Definitions..... 1

Cost Reimbursement Method of Payment 1

State Policy Guidelines 2

Contract Minimum Provisions/Conditions 2-3

Local Area Contracts for Administrative Services

Definitions

Cost-reimbursement Contract

Cost-reimbursement of contracts provide for payment of allowable incurred costs, to the extent prescribed in the contract. These contracts establish an estimate of total cost for the purpose of obligating funds and establishing a ceiling that the sub-recipient may not exceed (except at its own risk) without the approval of the contracting officer.

Reasonable Costs

A cost may be considered *reasonable* if the nature of the goods or services acquired or applied, and the amount involved therefore, reflects the action that a prudent person would have taken under the circumstances prevailing at the time the decision to incur the cost was made. Major considerations involved in the determination of the reasonableness of a cost are:

1. Whether or not the cost is of a type generally recognized as necessary for the operation of the administrative services provided or the performance of the contract;
2. Restraints or requirements imposed by such factors as arm's-length bargaining, Federal and State laws and regulations, and terms and conditions of the contract;
3. Whether or not the individuals concerned acted with due prudence in the circumstances, considering their responsibilities to the sub-recipient, the Federal Government, and the public at large; and,
4. The extent to which the actions taken with respect to the incurrence of the cost are consistent with established policies and practices applicable to the work of the contracting entity, including other contracts and agreements.

Cost-Reimbursement Method of Payment

Cost-reimbursement contracts normally specify the results expected, but do not connect payment to achievement of particular outcomes. Payment is based on level-of-effort, which essentially means documenting hours worked by project staff (as well as documenting all other costs). The units being purchased when delivery of administrative services is sought are essentially units of **time**, rather than units of verifiable **achievement**. Thus, input/effort (hours worked), not output/performance (results achieved) is the most suitable basis for documenting payment for provision of administrative services.

In response to the objection that these kinds of services are regularly purchased in the private sector using fixed-price contracts, it is helpful to recall that expenditure of private funds need only satisfy their private source of origin. There is no requirement that procurement with private funds be competitive, be conducted as a transparent process, and be reasonably priced and structured in an appropriate form of agreement. For private funds there is no implicit public accountability expectation or code of conduct driven by the concept that “public service is a public trust.” The expectation of public accountability is a fundamental reason why governments do not operate like private businesses and why the delivery of publicly funded work is ordinarily subject to stringent verification consistent with the terms of its purchase.

For decision-makers who object to the seeming disconnect between payment and performance under this form of agreement, it is important to bear in mind that if the results expected and specified are not achieved, it is just as easy to cancel or to not renew a cost-reimbursement agreement as it is to not renew a fixed-price agreement.

Commencing with this issuance, all local area contracts for administrative services will be solely on a cost-reimbursement basis. As of this date, any extensions or addendums to existing agreements/contracts for administrative services must also be solely on a cost-reimbursement basis.

Because of the exceptionally low risk reflected by a compensation arrangement under which a loss is nearly impossible, and payment by the U.S. Treasury is guaranteed, any local area contract for administrative services shall not provide for any profit, fees, bonuses, or other incentive payments.

State Policy Guidelines

1. Contracts must be on a cost-reimbursement basis only. A contract for administrative services may provide that the subrecipient be reimbursed for allowable costs incurred in performing the contract, but shall not include any profit, fees, bonuses, or other incentive payments.
2. Contracts must be sufficiently specific to ensure that funds are used in compliance with all applicable Federal and State laws, policies, and regulations. Contracts must assure that costs are reasonable and necessary for performing the described administrative duties.
3. Contracts shall be awarded only to responsible sub-recipients possessing the ability to perform successfully under the terms and conditions of the procurement. Consideration shall be given to such matters as sub-recipient competence, experience, integrity, ability to comply with public policy, record of past performance, and financial and technical resources.

Contract Minimum Provisions/Conditions

At a minimum, the following provisions or conditions shall be addressed in the contract.

1. Compliance with WIOA - Contracts shall contain provisions requiring compliance with WIOA, its implementing regulations, and State WIOA policies, including those pertaining to reporting.
2. Termination for Cause and for Convenience - All contracts shall contain suitable provisions for termination by the grantee including the manner by which termination will be carried out and the basis for settlement.
3. Termination for Default - All contracts shall contain a suitable provision under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the sub-recipient.
4. Equal Employment Opportunity - All contracts shall assure compliance with the nondiscrimination and equal opportunity provisions of WIOA Section 188 and its implementing regulations.

5. Access to Sub-recipient's Records - Contracts shall include a provision to the effect that the Grantor, the State, the U.S. Office of Inspector General, the U.S. Department of Labor, or any other duly authorized representatives, shall have access to any books, documents, papers, and records of the sub-recipient that are pertinent to the specific contract for the purpose of making audit, examination, excerpts, copies, and transcriptions. The sub-recipient shall allow reasonable access to personnel for purposes of interviews and discussions related to such documents.
6. Maintenance of Records - A provision shall be included in the contract that requires the sub-recipient to maintain all required records for three years after the awarding entity makes final payment and all other pending matters are closed. The records shall be sufficient enough to detail the significant history of the procurement.
7. Damages - Contracts shall contain provisions or conditions that allow for administrative, contractual, or legal remedies, and provide for such sanctions and penalties as may be appropriate, in instances where the sub-recipient violates or breaches the contract terms.
8. Table of Contents – Contracts shall have a Table of Contents with pages consecutively numbered to ascertain the totality of the contracting instrument.