

	New Jersey Workforce Innovation Notice		WD-PY25-1
	Issued By:	Workforce Development, Division of Career Services	
	Approved By:	Yolanda Allen, Assistant Commissioner Workforce Development	
	Issued Date:	July 10, 2025	

**SUBJECT: Payment of Profit**

**PURPOSE:** This policy provides specific guidelines to Local Workforce Development Areas (LWDAs) and Local Workforce Development Boards (LWDBs) regarding the determination and payment of profit to for-profit entities seeking or holding a subrecipient contract with a Local Workforce Development Board (LWDB) in New Jersey under the Workforce Innovation and Opportunity Act (WIOA).

**BACKGROUND:** LWDBs must competitively procure certain subrecipients, including One Stop Operators, One Stop Career Services providers (WIOA Title I Adult and Dislocated Worker), and One Stop Youth providers (WIOA Title I Youth). These procurements must meet the criteria outlined in [20 CFR 678.605](#), [NJWIN WD-PY22-5.1 on the WIOA Competitive Procurement Policy](#), and this policy ensuring an efficient and effective process is in place for the selection of the subrecipient.

Awards for contracts are made to organizations which can provide services that are in the best interest of the LWDB regarding service, price, and deliverables, regardless of organization classification. The function of profit to foster exceptional subrecipient performance while considering the complexity of work and associated risks can be assessed, considered, and negotiated contingent on the LWDB's funding availability.

This policy articulates NJDOL's standards, process information, practices to be aware of, and other considerations deemed essential for a successful procurement with respect to profit provisions.

**EFFECTIVE DATE:** This New Jersey Workforce Innovation Notice is *effective immediately*.

**POLICY OVERVIEW**

**Allowability of Profit, Separation from Costs, and Cost & Price Analysis**

Profit is defined as the return that a for-profit entity earns after successfully achieving negotiated and validated performance goals. This policy is applicable to for-profit subrecipients only. The earning of profit must be tied to the reasonable and measurable delivery of the contract objectives. Profit may be approved for the provision of allowed services under WIOA and to WIOA eligible participants only.

Secs. 121(d), 122(a) and 134(b) of WIOA state that for-profit entities are eligible to be one-stop operators, service providers, and eligible training providers and that these for-profit entities may earn

profit. [20 CFR 683.295\(a\)\(2\)](#) of the WIOA Regulations further requires for-profit entities to follow the Uniform Guidance at [2 CFR 200.324](#) on earning a profit.

The Uniform Guidance at [2 CFR 200.403](#) outlines factors affecting the allowability of costs, and requires that costs be necessary, reasonable, and allocable for the performance of the award.

The subrecipient must not use the “cost plus a percentage of cost” and “percentage of construction costs” methods of contracting ([2 CFR 200.324\(c\)](#)).

The subrecipient *must* perform cost or price analysis (as described in [FAR 15.404-1](#)) for *every* procurement transaction, including contract modifications, in excess of the simplified acquisition threshold. The method and degree of analysis conducted depend on the facts surrounding the particular procurement transaction. For example, the recipient or subrecipient should consider potential workforce impacts in their analysis if the procurement transaction will displace public sector employees. **However, as a starting point, the recipient or subrecipient must make independent estimates before receiving bids or proposals.**

Price analysis is the process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit. Unless an exception from the requirement to obtain certified cost or pricing data applies under [FAR 15.403-1\(b\)](#), at a minimum, the contracting officer shall obtain appropriate data, without certification, on the prices at which the same or similar items have previously been sold and determine if the data is adequate for evaluating the reasonableness of the price. Price analysis may include evaluating data other than certified cost or pricing data obtained from the offeror or contractor when there is no other means for determining a fair and reasonable price. Contracting officers shall obtain data other than certified cost or pricing data from the offeror or contractor for all acquisitions (including commercial acquisitions), if that is the contracting officer’s only means to determine the price to be fair and reasonable. ([FAR 15.404-1\(b\)](#))

Cost analysis is the review and evaluation of any separate cost elements and profit or fee in an offeror’s or contractor’s proposal, as needed to determine a fair and reasonable price or to determine cost realism, and the application of judgment to determine how well the proposed costs represent what the cost of the contract should be, assuming reasonable economy and efficiency. ([FAR 15.404-1\(c\)](#))

To guide LWDBs in conducting cost or price analyses, NJDOL encourages LWDB’s to award profit based on the subrecipient’s efforts and risks in achieving a performance result that typically aligns with the performance measures outlined in the LWDB’s plan. NJDOL encourages LWDBs to consider the following conditions when quantifying the opportunity to earn profit:

1. Complexity of work performed: measures the complexity of the work and the resources required of the prospective subrecipient for contract performance.
2. Risk borne by subrecipient: measures the degree of cost responsibility the subrecipient will assume.
3. Subrecipient’s investment: measures the degree to which the subrecipient has reinvested past profits to improve its effectiveness and cost efficiency of its operations and develop service capacity in their WIOA programs.

4. Amount of subcontracting: As more of the work is being performed not by the primary subrecipient directly but by other subrecipient, then the primary subrecipient should be “earning” less profit.
5. Quality of past performance: measures the degree the subrecipient has consistently and efficiently achieved past contract goals.
6. Industry profit rate in surrounding area for similar work.

#### **Profit Limitations**

The maximum amount of profit allowable by NJDOL shall not exceed *ten percent (10%)* of the contract's estimated operational and direct costs, excluding "pass-through" funds such as those paid out by the subrecipient for supportive services, paid work experience, on-the-job training, customized/incumbent worker training, or subcontracts for training. This limit is intended to follow federal precedent described in [48 CFR 15.404-4](#). Although this cap is expressed as a percentage of budgeted costs, *the actual profit amount must be a fixed dollar amount that is separately negotiated and agreed upon.*

LWDBs may impose an additional cap on the maximum profit potential that could be earned by performance results within the approved budget *provided the resulting profit amount is less than the NJDOL maximum amount above.*

The earning of profit should not be based on total budget, expending of the budget, and/or pass through costs, such as tuition or fixed costs, that require minimal to no effort from the subrecipient nor directly achieve a performance goal.

#### **Negotiating Profit**

Negotiating with for-profit entities is not mandatory. LWDBs may choose to negotiate with for-profit entities who submit profit proposals that differ from the requirements laid out in the RFP and that align with cost or price estimates.

To award profits on a contract, LWDBs must establish performance metrics and levels of performance the subrecipient is required to meet or exceed in order to earn the pre-determined profit. LWDBs must use at least one of the metrics in the table below. LWDBs must request approval from NJDOL to use alternative metrics to what is provided in this policy.

NJDOL recommends that profit be paid on a quarterly basis. LWDBs may elect to pay profit on a more or less frequent basis (i.e., monthly, semi-annually, annually). The frequency profit is paid should align with the period used when calculating performance. The performance level established must represent a *minimum of a 5 percent (5%)* improvement in performance from the corresponding period in the prior year, regardless of who provided services during the prior year. LWDBs may set different targets for each performance metric selected, *provided that the resulting target is no less than the NJDOL minimum amount above.*

LWDBs are encouraged to select performance metrics that are relevant to their strategic goals and priorities, as well as establish performance targets that are challenging, yet achievable for subrecipients. WIOA performance measures cannot be used for these performance metrics. As previously mentioned, profit is a tool to foster exceptional subrecipient performance to support the LWDA's workforce system.

Category	Potential Metrics
Program Participation	<ul style="list-style-type: none"> <li>- Increase in employers served</li> <li>- Increase in participants served</li> <li>- Increase in low-income and/or low literacy individuals served</li> </ul>
Service Delivery	<ul style="list-style-type: none"> <li>- Increase in work-based learning opportunities provided</li> <li>- Increase in connections to supportive services</li> <li>- Increase in job search and placement supports</li> <li>- Increase in co-enrollments</li> </ul>
Program Performance	<ul style="list-style-type: none"> <li>- Increase in diversity of in-demand credential attainment</li> </ul>

When issuing Requests for Proposals (RFPs) for contracts where profit is allowable, the following information must be included in the RFP for procurement:

- The right of the LWDB and subrecipients to negotiate the performance metrics and profit amounts
- The frequency at which profit will be paid out
- The performance metric(s) used to award profit, including a clear description of how they will be calculated and the system(s) in which data will be tracked
- Prior year data for each performance metric being used to award profit, disaggregated to the frequency at which profit will be paid
- The minimum performance level for each performance metric to earn profit, disaggregated to the frequency at which profit will be paid
- The cap on maximum profit potential

For-profit organizations proposing profit must include a performance matrix and a fixed fee profit amount within the initial budget they submit to LWDBs in their proposal bid. This performance matrix should include the for-profit organization's proposed level of performance and the profit amount they are requesting for each performance metric, disaggregated to the frequency at which profit will be paid. The proposed level of performance must meet or exceed the minimum level established by the LWDB. Additionally, the total sum of proposed profits across performance metrics may not exceed the maximum profit cap established by the LWDB.

The for-profit organization is not required to bid for all performance metrics proposed by the LWDB. However, the LWDB should consider their strategic goals and priorities when evaluating the performance levels proposed and the associated profit levels in a bidder's performance matrix.

The final approved performance matrix and total budgeted fixed fee profit amount will be identified in a Fixed Fee Contract Addendum that the LWDB will send to the for-profit subrecipient. The addendum will serve as a supplement to the budget that is included in the contract. The fixed fee amount will be included in the total award to the subrecipient.

### **Payment of Profit**

Profit will be paid as a fixed fee after completion of each period, pending the outcome of the subrecipient's performance evaluation. In order to be eligible for profit, the for-profit subrecipient must meet the performance/benchmark standards set forth in the Fixed Fee Contract Addendum. If the subrecipient does not meet the performance/benchmark standards established for that period, the

profit for that period is forfeited and will be transferred from the fixed fee line item to the supportive services, paid work experience, customized/incumbent worker training, or professional and technical services (for subcontracts for training) line items.

The fixed fee should be requested on a separate Expense Claim from normal program expenditures, so that the process of gathering and analyzing performance data will not delay the payment of normal program expenditures. Expense Claims requesting a profit payment must be submitted no later than fifteen (15) days after the end of the period.

All program data related to the established performance metrics to earn profit must be entered into the required reporting systems no later than thirty (30) days following the end of the period or the fixed fee will be forfeited. Supplemental performance documentation where system entry is not permissible must be submitted by the subrecipient within the same thirty (30) day timeframe.

The subrecipient performance evaluation will be completed within sixty (60) days following the end of the period. In the case of the One-Stop Operator contract, the evaluation may include partner agencies. Pending the outcome of the evaluation, the fixed fee amount will be calculated per the terms outlined in the Fixed Fee Contract Addendum.

LWDBs may impose stricter submission timelines for Expense Claims, required data submissions, and performance evaluations.

### **Budget Revisions**

At any time during the grant agreement period, or at the end of the grant agreement period, in the event that the subrecipient will not be able to earn the entire fixed fee amount, the subrecipient may request a budget revision to reallocate funds from the fixed fee line item. However, these funds may only be transferred to the supportive services, paid work experience, customized/incumbent worker training, or professional and technical services (for subcontracts for training) line items. Whenever a budget revision is made for any reason during the grant agreement period, the subrecipient's available fixed fee amounts and fixed fee benchmark form may be modified at the discretion of the LWDB. LWDBs must create, or update if already in existence, profit and budget revision policies for their local areas that align with the guidance laid out in this policy.

**Contact us:** For any questions regarding this guidance, please contact [WIOAPolicy@dol.nj.gov](mailto:WIOAPolicy@dol.nj.gov).

### **References and Links:**

- [2 CFR 200.324](#), [20 CFR 678.605](#), [20 CFR 683.295](#), [48 CFR 15.403-1\(b\)](#), [48 CFR 15.404-1](#), [48 CFR 15.404-4](#), [48 CFR 2.101](#), [FAR 15.404-4 Profit](#), [TEGL 15-16](#), [WorkforceGPS - SMART 4.0 Grants Management Training](#)