



# Community Resources

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November 4, 2014

**To:** All Contractors of the Orange County Workforce Investment Area

**From:** Andrew Munoz   
Community Investment Division Administrator/  
OC Workforce Investment Board Executive Director

**Subject:** Contractor Standards for Subcontracting  
Information Notice # 14-OCWDA-02  
Supersedes Information Notice No. OCWDA-03-09

**PURPOSE:**

This Information Notice provides combined federal, state and local guidance and parameters regarding the development of subcontracts under WIA and Non-WIA agreements/contracts with the County of Orange.

**REFERENCES:**

- Title 20 Code of Federal Regulations (CFR), WIA Final Rule, Section 667.200
- Title 29 CFR Part 97, Section 97.32, 97.33, 97.36 and 97.42
- Title 29 CFR Part 95, Sections 95.34, 95.35, 95.40 through 95.48, and 95.53 Procurement Institutions of Higher Education, Non-Profits and Commercial Organizations
- Title 41 CFR Part 02-85, Section 102-85.35
- Office of Federal Procurement Policy, 41 USC Chapter 7, Section 403 (Definitions)
- Office of Management and Budget (OMB) Circular A-21, Cost Principles for Educational Institutions (May 10, 2004)
- OMB Circular A-87, Cost Principles for State, Local and Indian Tribal Governments (May 10, 2004)
- OMB Circular A-122, Cost Principles for Non-Profit Organizations (May 10, 2004)
- EDD Directive WSD12-10, Procurement
- Orange County Contract Policy Manual, 2012
- OCWIB Information Notice # 12-OCWDA-13
- Orange County Cost Reimbursement Agreement (applicable terms and conditions on subcontracting)

**EFFECTIVE DATE:**

This notice is effective on the date of issuance.

**BACKGROUND:**

1. The Workforce Investment Act of 1998 (WIA) identifies the One-Stop System [now referred to as the America's Job Centers (OJC)] as the service delivery system for programs funded under the WIA and its partner programs. The Orange County Workforce Investment Board (OCWIB) is charged with both the responsibility to oversee funds and the activities of the workforce development system that aligns the County's diverse related funding streams (WIA and non-WIA). The America's Job Center of California (AJCC)/One-Stop Center (OSC) is a customer-driven



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workforce development system that serves employers and job seekers to ensure that employers have the skilled workers they need, and workers have jobs that provide economic self-sufficiency.

2. Services are provided through the Orange County AJCCs/OSCs that are operated by procured vendors. In addition, the County procures and contracts with vendors for additional workforce related services that complement the One-Stop System. Said vendors are performing services and activities on behalf of and at the sole discretion of the County and are referred to collectively as "Contractors" herein.

**DEFINITION:**

Contractor, for the purpose of this policy, is used to refer collectively to procured vendors that operate the Orange County AJCCs/OSCs and/or provide additional workforce related services that complement the One-Stop System.

Subcontractor is defined as any entity, agency, consultant, or person undertaking a portion of the work and responsibilities under the terms of the contract, by virtue of any agreement with the Contractor.

Agreement is the County of Orange Cost Reimbursement Agreement or contract with the Contractor.

County refers to County of Orange.

**POLICY AND PROCEDURE:**

For services and activities that are beyond the capacity or expertise of the Contractor, Contractor may subcontract with a qualified entity, agency, consultant, or person to execute said services and activities within the following parameters:

1. Contractor shall insure that all subcontracts for services and contracted staff are procured in a manner consistent with federal, state and local guidelines, as applicable to WIA and Non-WIA programs and projects. Amendments, revisions and additions to governing laws, regulations and policies will be binding on the Subcontractor.
2. No subcontract or assignment shall terminate or alter the legal obligations of the Contractor pursuant to the Agreement. Nothing contained in the subcontract agreement shall impair the rights of the County under the Agreement with the Contractor.
3. Nothing contained in the subcontract agreement shall create any contractual relationship between the Subcontractor and the County.
4. As provided for in the Assignment or Subcontracting Section of the Agreement, the Contractor shall ensure that:
  - a. The terms, covenants, and conditions contained in the Agreement with the Contractor shall apply to and bind the heirs, successors, executors, administrators and assigns of the parties.
  - b. Furthermore, neither the performance of the Agreement nor any portion thereof may be assigned or subcontracted by Contractor without the express written consent of County, if the subcontract amount is \$10,000 or over.
  - c. Any attempt by Contractor to assign or subcontract the performance or any portion thereof of the Agreement without the express written consent of County shall be invalid and shall constitute a breach of contract.

In addition, description of the intended method of procurement must be included as part of the budget in the Agreement. Contractor shall itemize all subcontractor and contracted staff costs in the budget so it is clear how the funds will be allocated and spent by each subcontractor. By entering into the Agreement, Contractor agrees that it is the direct provider of services. Within 30 days of execution, Contractor shall submit to the County copies of all subcontracts for services and contracted staff, and other agreements as well as documentation indicating the approving authority's approval that related to the Agreement.

5. The County, through the OCWIB, retains full authority to direct the Contractor in all matters pertaining to subcontractors, including cancellation of subcontractor agreement.
6. Contractor is solely responsible for enforcing performance standards, regulatory requirements and fiscal compliance with subcontractors.
7. Subcontractors must be competitively procured. Procurements must be open and public procurements and must follow the mandated federal, state, and local or County of Orange requirements and guidelines. This includes applicable provisions of 29 CFR 97.36 governing contract cost and price.
8. Sole sourced subcontracts must have thorough documentation reflecting justification for sole source and the associated cost analysis as detailed in federal, state, and local or County of Orange requirements and guidelines. This includes applicable provisions of 29 CFR 97.36 governing contract cost and price.
9. Subcontract budgets may not be greater than 50% of the Contractor's Agreement with the County.
10. It is the Contractor's sole responsibility to execute contracts that are legal and allowable under federal, state and local laws. The County does not provide any written, spoken or implied legal counsel on said contracts; and does not provide any type of, implied or otherwise, approval of the content in said contracts.
11. The County, the OCWIB and/or any individual employee or representative of the County and/or OCWIB shall not be named as a party to any subcontract.
12. It is the Contractor's sole responsibility to monitor all subcontractors on an annual basis for program performance, fiscal compliance and all other regulatory requirements.
13. Contractor's expenses related to subcontracts that do not meet any (in part or in whole) of the above parameters, conditions and policies will not be reimbursed by the County.

#### Subcontracts less than \$10,000

The OCWIB provides approval for subcontracts less than \$10,000 as long as the following conditions are met:

- a. All subcontracts are procured in a manner consistent with federal, state and Local guidelines.
- b. A written agreement is executed between the Contractor and the subcontractor.
- c. All subcontractors performing work on behalf of Contractor pursuant to the County Agreement with the Contractor shall obtain insurance subject to the same terms and conditions as set forth in that Agreement for Contractor.
- d. All subcontracts must include clauses required in contracts that receive federal funds per federal regulations.

- e. A copy of the executed subcontract including appropriate documentation of cost analysis and, if applicable, profit analysis, is submitted to the OCWIB within 30 days of execution.

**Subcontracts of \$10,000 or over**

Subcontracts at or over \$10,000 must meet the conditions for subcontracts less than \$10,000 and the Contractor must receive written authorization from the OCWIB to subcontract any activities totaling \$10,000 or greater. Requests for authorization must be sent to the Director of the OCWIB on company letterhead, and must include specific dates, subcontract amounts and a description of subcontracted activities.

Subcontracts shall not be intentionally split or divided among multiple subcontractors hence reducing total contract budget amounts in an effort to avoid approval by the OCWIB.

In addition, prior to subcontract execution the Contractor shall provide the OCWIB office with the drafted subcontract which shall include:

- a. A written narrative of services to be provided and how the services will fit into the overall goals and performance of the Contractor's existing project and statement of work with the County;
- b. An itemized budget breakdown of services and staff time dedicated to the project that is aligned with and substantiated by a statement of staff qualifications;
- c. A statement of subcontractor references and written evidence of successful past WIA and/or workforce related performance, if applicable.

OCWIB staff will review the documentation and request further clarification from the Contractor, if necessary. Approvals will be provided in writing and may be sent via email.

It is further understood that any work performed without the approval of the OCWIB is solely at the risk of the Contractor.

**ACTION:**

Distribute to all appropriate staff.

**INQUIRIES:**

If you have any questions regarding this policy, please contact the Contract Administrator by calling 714-480-6500.

**ATTACHMENT:**

None