WORKFORCE INVESTMENT BOARD OF TULARE COUNTY WORKFORCE INNOVATION AND OPPORTUNITY ACT TITLE I	**DATE:** **November 8, 2023** **ERRATA:** **October 6, 2026**
	SUBJECT: **Consultant Services and Pay**

WIB DIRECTIVE **TUL 23-02**

TO: WIB Subrecipients
WIB Staff

SUBJECT: **Consultant Services and Pay**

EXECUTIVE SUMMARY

This policy provides guidance and establishes the procedures regarding the use of and pay for consultant services. This policy applies to all Workforce Investment Board of Tulare County (WIB) subrecipients of *Workforce Innovation and Opportunity Act* (WIOA) funds and is effective immediately.

This policy contains some state-imposed requirements. All state-imposed requirements are indicated in ***bold, italic*** type.

This policy contains no WIB imposed requirements.

Retain this Directive until further notice.

Errata Chronology:

Errata #1 – On October 6, 2026, the following revisions were made to this Directive:

- Page 2 – Added Reference to include the following Workforce Services Informational Notice 25-17, Federal Adjustment of Dollar Amounts, and Rates.
- Page 2 – Background – Updated the Salary and Bonus Limitation set by TEGL 05-06 from $750 to $815 per day.
- Page 8 – DOL Consultant Fee – Updated that beginning October 1, 2024, the fees and limitations from $750 per day and $93.75 per hour to $815 per day and $101.88 per hour.
- Page8 – DOL Consultant Fee – Added that from Program Year 2021 to September 30, 2024, the fees and limitations were $750 per day and $93.75 per hour.

- Page 8 – DOL Consultant Fee – Updated the beginning date for DOL ETA Agreements and EDD Sub-agreements from Program Year 2021 to October 1, 2024.
- Page 8 – DOL Consultant Fee – Updated the Dollar Amount for sub-agreements from $750 to $815.

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 Principals, and Audit Requirements for Federal Awards (Uniform Guidance), Sections 200.22, 200.24, 200.51, 200.69, 200.74, 200.92, 200.93, 200.210, 200.318-200.326, 200.331, and 200.459
- Title 20 CFR WIOA Department of Labor (DOL); Final Rule, Sections 683.105(a) and 683.200
- Title 48 CFR Federal Acquisition Regulations System 31.205-33, Professional and Consultant Service Costs
- 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 WSD21-02, Salary and Bonus Limitations for 2021 (August 16, 2021)
- WSD18-06, Subrecipient and Contractor Distinctions (September 5, 2018)
- WSD17-08, Procurement of Equipment and Related Services (March 14, 2018)
- WSD16-16, Allowable Costs and Prior Written Approval (February 21, 2017)
- Workforce Service Directive WSD21-05, Consultant Services and Pay (March 3, 2022)
- Workforce Investment Board of Tulare County Directive TUL 23-01 Salary and Bonus Limitations for 2023
- Workforce Investment Board of Tulare County Directive TUL 17-04 Allowable Costs and Prior Written Approval
- Workforce Services Information Notice, WSIN25-17, Federal Adjustment of Dollar Amounts and Rates (January 23, 2026)

BACKGROUND:

This Directive provides WIB and WIB 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 Employment and Training Administration's (ETA) limit on consultant fees.

When used appropriately, consultants are an allowable cost and can be a very helpful resource. The WIB and WIB Subrecipients should give careful consideration when deciding if it is appropriate to hire a consultant and use consultants to complete specific tasks.

For example, a Local Area can hire a consultant to complete specific tasks such as (1) to transition its WIB executive staff from county staff to non-profit staff, (2) to conduct an economic impact study on the impacts of COVID-19, and (3) to draft the Local Area Plan required by the WIOA.

TEGL 05-06, Implementing the Salary and Bonus Limitations in Public Law 109-234, indicates compensation for consultants is an allowable cost, and the DOL ETA has the authority to apply terms and conditions to its grant awards. Effective Program Year 2021, the DOL ETA's current Consultant Fee Limitation, is set at $815 per day (representing an eight-hour work day), which could be subject to change by program year or grant.

When the Employment Development Department (EDD) receives a federal award from the DOL ETA (which includes all WIOA funds), that federal award includes the DOL ETA'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. The Consultant Fee Limitation is included in the terms and conditions outlined in the subrecipient's subgrant or award.

The Consultant Fee Limitation applies to all contracted consultants, and the Salary and Bonus Limitation applies to all salaried and hourly individuals who are employees of the non-federal entity or subrecipient when charging these costs to the DOL ETA grant funds. Both of these limitations apply to individuals who are contracted by the non-federal entity or employed by the non-federal entity.

POLICY AND PROCEDURES:

Definitions:

Consultant – A consultant is an individual with specialized skills who, although not on the subrecipient's payroll as an employee, provides personal services to the subrecipient under an agreement which establishes an employer-employee relationship between the subrecipient and the individual providing the services. Consultants are typically individuals who are experts with excellent qualifications and are usually regarded as authorities or practitioners of unusual competence and skill by other individuals engaged in the same profession. An employer-employee relationship may be found to exist when the subrecipient selects the individual based on expertise in a particular field, directs the individual's work, and exercises day-to-day control of the individual's activities.

Consulting firm – A commercial entity whose regular business activity is to provide services similar to those proposed under the current project.

Consulting Services – Refers to the services performed under a consulting services contract, which is defined as a contract that is of an advisory nature; provides a recommended course of action or personal expertise; and has an end product that is basically a transmittal of

information, either written or oral, that is related to the functions of a subrecipient and is obtained by awarding a contract, a grant, or other payment of funds for the services above.

Consultant services contracts – A services contract of an advisory nature that provides a recommended course of action or personal expertise. (California Public Contract Code Section 10335.5)

Contract – A legal instrument by which a non-federal entity purchases property or services needed to carry out the project or program under a federal award. The term as used in this part does not include a legal instrument, even if the non-federal entity considers it a contract, when the substance of the transaction meets the definition of a federal award, subaward, or subgrant as defined in this section.

Contractor – An entity that receives a contract as defined above. The Uniform Guidance replaced the word "vendor" with the word "contractor." Contractors are governed by Uniform Guidance Section 200.319 (Competition) and follow procurement requirements.

Grant or Grant Agreement – A legal instrument of financial assistance between a federal awarding agency and a non-federal entity that, is used to enter into a relationship the principal purpose of which is to transfer anything of value from the federal awarding agency to carry out a public purpose authorized by a federal law, and not to acquire property or services for the federal awarding agency's direct benefit or use. Grant agreement does not include an agreement that provides only direct federal government cash assistance to an individual, a subsidy, a loan, a loan guarantee, or insurance It is distinguished from a "cooperative agreement" in that it does not provide for substantial involvement between the federal awarding agency or pass-through entity and the non-federal entity in carrying out the activity contemplated by the federal award.

Non-Federal entity – A state, local government, Indian tribe, institution of higher education (IHE), for-profit entity, foreign public entity, foreign organization or nonprofit organization that carries out a federal award as a recipient or subrecipient. (Uniform Guidance Section 200.69)

Pass-through entity – A non-federal entity that provides a subaward to a subrecipient to carry out part of a federal program. (Uniform Guidance Section 200.74) The EDD is the pass-through entity for WIOA Title I Adult, Dislocated Worker, and Youth programs, and other federal grant awards.

Subaward or Subgrant – An award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract. (Uniform Guidance Section 200.92)

Subrecipient or Subgrantee – A non-federal entity that receives a subaward or subgrant from a pass-through entity to carry out part of a federal program, but does not include an individual that is a beneficiary of such program. A subrecipient or subgrantee may also be a recipient of other

federal awards directly from the federal awarding agency. (Uniform Guidance Section 200.93) Local Areas are the subrecipients of WIOA funds and other federal grant awards.

Consulting Services

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:

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).

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

Consultant vs Contractor

Consulting services may cover a range of disciplines that include, but are not limited to, management, strategic-planning, financial, legal, marketing, communications, human resources, etc. When determining whether DOL’s Consultant Fee Limitation applies, it is critical to determine if the individual or business entity is a consultant or a contractor, as different limitations apply to each. Consultants are considered a sub-set of contractors that are allowable under Uniform Guidance Section 200.459 (Professional service costs) and further defined in the Federal Acquisition Regulations (FAR) at 48 CFR Section 31.205-33 (Professional and consultant service costs).

Title 20 CFR Section 683.200(a)(2) specifies that commercial organizations, for-profit entities, and foreign entities that are contractors or subcontractors must follow the FAR including 48 CFR Part 31 (Contract Costs and Principles). Title 48 CFR Section 31.205-33 defines professional and consultant services as those services rendered by persons who are members of a particular profession or possess a special skill and who are not officers or employees of the contractor. Examples include those services acquired by contractors or subcontractors in order to enhance their legal, economic, financial, or technical positions. Professional and consultant services are generally acquired to obtain information, advice, opinions, alternatives, conclusions, recommendations, training, or direct assistance, such as studies, analyses, evaluations, liaison with Government officials, or other forms of representation.

Below are considerations to determine whether the individual or business entity is a consultant or a contractor.

Consultant	**Contractor**
• Salary or wage based and/or fee based on hours spent which is provided and outlined in a consultant rate proposal. • Provision of guidance, support, or completion of work items. • May be a subject matter expert that provides guidance on the direction of projects/programs or helps to lead a project/program. • May fill a staff-like role on an as needed or intermittent basis. • May have a defined and ongoing role in a project/program or in support of the Local Area. • Often an individual, rather than a business entity (although the individual may be a representative from a business entity).	• Fee based. • Fee is based on market value of goods and services provided. • Provision of goods and/or services to multiple customers as part of their routine business operations. • Provides a pre-determined good or service for a pre-determined time period. • Not necessarily engaged in the implementation of a project or Local Area services, provides the good or service needed. • More likely a business entity, rather than an individual (though may be structured as a sole-proprietorship).

An individual or business entity that would be identified as a consultant providing consultant services, and would be subject to the Consultant Fee Limitation, includes, but is not limited to the following:

- A service in which the primary outcome is a detailed analysis of a particular subject or situation.
- A service in which the primary outcome is a suggestion or a recommendation about the best course of action, or information about a fact or situation in a formal or official way.
- A service performed by an individual that ordinarily identifies themselves as, or whose firm ordinarily identifies that individual as, a "consultant," with respect to their performance of that service.
- A service that the person or firm providing the service ordinarily identifies as a "consulting service."
- A service that the associated solicitation, quote, offer, or contract identifies as a "consulting service."

Consultant Fee Limitation Application

The Statement of Work (SOW) when seeking services or products is crucial when determining if a consultant is subject to the Consultant Fee Limitation. If the non-federal entity requires an individual who possesses a unique skill, requires a credential or, or a specialized license, then the Consultant Fee Limitation would apply. However, if the SOW requests a service or product that is readily available in the public marketplace and requires that service or product be provided by an individual, then this would be considered a general procurement of services or products, not subject to the Consultant Fee Limitation.

Additionally, the Consultant Fee Limitation would apply to a contract awarded to a firm with one or more persons that is justified on the basis of the qualifications of a designated individual with specialized skills. If the terms of the contract requires the firm to provide the non-federal entity with the services at an hourly or daily rate of compensation and the non-federal entity will exercise direction and control over that individual in the performance of the contract, then the Consultant Fee Limitation would apply.

Procurement of Consultants and Contractors

When obtaining consultant services, subrecipients must comply with all federal procurement standards listed in Uniform Guidance Sections 200.318 and 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. The Consultant Fee Limitation applies anytime an individual or business entity is hired as a consultant to perform a service, activity, or duties defined in the agreement or SOW. For more information regarding procurement, refer to WSD17-08, Procurement of Equipment and Related Services.

DOL Consultant Fee

Beginning in October 1, 2024, the daily Consultant Fee Limitation is $815 per day, and $101.88 per hour based on an eight-hour workday. From Program Year 2021 through September 30, 2024, the daily Consultant Fee Limitation was $750 per day, and $93.75 per hour based on an eight-hour workday. Prior to Program Year, 2021, the daily Consultant Fee Limitation was $710 per day, and $88.75 per hour based on an eight-hour workday. Subrecipients must check the amount listed in the sub-grant agreement to determine whether the $815 or $710 daily Consultant Fee Limitation applies.

Beginning October 1, 2024, the DOL ETA grant agreements and the EDD subgrant agreements contain the following language: "For the purpose of this grant award, the ETA's Grant Officer has determined that fees paid to a consultant who provides services under a program shall be limited to $815 a day (representing an eight-hour workday). Such costs must be reasonable, allocable and allowable to the program. Any fees paid in excess of this amount cannot be paid without prior approval from the Grant Officer."

ACTION:

Please bring this Directive to the attention of all WIB Subrecipients and WIB Staff.

INQUIRIES:

Please direct inquiries regarding this Directive to the WIB at (559) 713-5200.

Jennie C. Bautista
Executive Director

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