

THE OREGON CONSORTIUM & OREGON WORKFORCE ALLIANCE
POLICY MEMORANDUM #WIA-43-10/07

DATE: July 1, 2007

SUBJECT: Profit and Fee Policy

REFERENCES: 48 FAR (Federal Acquisition Regulations), Subpart 31.2
48 FAR, Subpart 15.4
48 FAR, Subpart 16.3
29 CFR (Code of Federal Regulations), Part 95.45 and 95.46
29 CFR 97.36 (f)(2)
20 CFR 667.200 (c)(5)

PURPOSE:

To provide a consistent framework for the negotiation of profits or fees with entities identified as commercial or “for profit” and funded by federal employment and training resources including but not limited to the Workforce Investment Act.

BACKGROUND:

Entities identified as commercial or "for profit" and funded by federal funding streams are guided by federally established standard guidelines used for profit allowance. These standard guidelines have numerous factors that must be weighed before consideration for profit/fee allowance can be given. The following policy regarding profit and fees identifies the profit/fee analysis factors that will provide a framework in which The Oregon Consortium & Oregon Workforce Alliance (TOC/OWA) will negotiate.

In the federal procurement system, profit/fee may only be earned by “for profit” organizations. Nonprofit and governmental organizations are required to treat any revenue in excess of costs as program income, see TOC/OWA Policy #WIA-R20-09/04.

When contracts have a provision for a profit or fee in addition to reimbursement of costs it is a fixed amount, negotiated prior to the inception of the contract. However, a limitation as to fee paid is often included to cover those instances where the sub recipient or contractor has not provided the agreed upon services or met its contractual obligations. In addition to fee limitations the contract may also specify the manner in which the fee is to be paid. For example, a certain percentage of the total fee may be held back pending completion of the contract.

POLICY:

It is the policy of TOC/OWA to utilize a cost-plus-fixed-fee (CPFF) contract with “for-profit” entities. This contract type permits contracting for efforts that might otherwise present too great a

risk to sub recipients or contractors, but it provides the sub recipient or contractor only a minimum incentive. CPFF contracts shall comply with all limitations as outlined in FAR 15.404-4(c)(4)(i) and 16.301-3.

TOC/OWA may use various methods to determine the appropriate amount of profit or fee. TOC/OWA may compare similar types of procurements for like services or conduct a market analysis to determine that the profit is reasonable for the work to be performed and for the amount of risk assumed by the offeror. Lastly, TOC/OWA may utilize a weighted guidelines method which is a structured approach to establish a profit objective for negotiation of contracts where cost analysis is performed.

PROCEDURE:

There are different methods of determining the appropriate amount for profit or fee. TOC/OWA shall use the method or the combination of methods that will most likely result in a fair and reasonable profit or fee. Some methods that may be used are listed as follows.

- Where adequate price competition exists, contracts should be awarded to the responsible company which offers the best-value to TOC/OWA without regard to the amount of profit or fee.
- If the price is adequately justified by other price analysis methods, award may be made without regard to the amount of profit or fee.
- If the price is adequately justified by an established catalog or market price of, or based on, commercial items sold in substantial quantities to the general public, award may be made without regard to the amount of profit or fee.
- If the price is set by law or regulation, award may be made without regard to the amount of profit or fee.

For contracts where the elements making up the price are analyzed, TOC/OWA should develop a profit or fee objective. In developing the profit or fee objective, TOC/OWA should take into consideration of the risk involved and contribution of the Sub Recipient or Contractor to the effort. TOC/OWA may choose to determine a reasonable profit or fee by comparing similar types of procurement for like items or services or conduct a market analysis to determine that the profit is reasonable for work to be performed taking into consideration the amount of risk assumed by the Offeror.

Where cost analysis is required, TOC/OWA may justify the fee by considering the following factors and documenting the analysis and the importance TOC/OWA attaches to each.

- Sub Recipient or Contractor effort the complexity of the work, and the resources required by the Sub Recipient or Contractor for performance;
- How the Sub Recipient or Contractor's indirect costs and general and administrative expense contribute to contract performance;
- Sub Recipient or Contractor facility and equipment (age, undepreciated value, cost effectiveness, etc.); availability of operating capital, financial management practices, etc.;
- Independent development by Contractor of specialized processes, services or technology that will benefit the contract work;

- Profit or fee paid on previous contracts where an analysis has been done that documents the actual similarities and differences between the contracts and contract efforts used for comparison;
- Profit and fee rates for similar work under similar economic conditions in industry; and
- Any other relevant factor(s).

Whatever the means used to determine profit or fee, the rationale for determining profit must be well documented in the contract file, reflect the best professional judgment of TOC/OWA, and shall not exceed the maximum allowable profit or fees as specified in FAR 15.404-4(c)(4)(i).

TOC/OWA may use the Weighted Guidelines Analysis Method which provides a vehicle for performing the analysis to develop a profit/fee objective and provides a format for summarizing profit amounts, subsequently negotiated as part of the contract price.

The profit/fee objective should be determined prior to negotiations regardless of method used. In cases where contract changes or modifications call for a substantial change in price or specifications or risk, then the basic contract profit and the Contractor's effort may be radically changed and a detailed analysis of the profit/fee factors would be a necessity.

For contract changes, the addition of new work should not affect the fee or profit for the existing work, unless the overall nature of the work has been significantly changed.

The following are factors and ranges used in the determination of the total profit/fee. Application of the various listed factors as a percentage of the total contract amount shall be used in determining a reasonable profit/fee amount. It is possible the percentage rate may vary or increase, dependent upon contract circumstances.

PROFIT FACTORS	PERCENTAGE RANGES
CONTRACTOR EFFORT	
1.0 Expertise	0 to 2%
1.1 Degree or credentialed staff required	0 to .5%
1.2 Experienced staff available	0 to .5%
1.3 Number of years in existence	0 to .5%
1.4 Management required for subcontracts	0 to .5%
2.0 Staff or Labor Hours	0 to 1.5%
2.1 Number of subcontracts and fiscal duties	.75
2.2 Contractors in-kind costs contributing to performance of contracted scope of work	.75
3.0 Contract Risk (Contract Type)	0 to 0.5%
3.1 Cost-Plus-Fix Fee	0 to 0.5%
INVESTMENT/INNOVATIVE PROGRAM	
4.0 Investment	0 to 4%
4.1 Materials acquisition for start up	0 to 2.5%
4.2 Contractor to implement innovative program	0 to .75%
4.3 Complexity of work to be performed	0 to .75%
PERFORMANCE	

5.0 Past Performance	-2 to 2%
5.1 Previous successful program within last five years in the Consortium	-.5% to .5%
5.2 Demonstrated capacity for success with limited resources	-.5% to .5%
5.3 Shown ability to take on new and difficult programs with positive outcomes for performance	-.5% to .5%
5.4 Demonstrated ability to improve performance with experience	-.5% to .5%

The table above lists those factors which are given consideration for profit/fee determination in all cases in which profit/fee is to be specifically negotiated using a weighted analysis method. The following paragraphs discuss these factors and provide guidance on how they should be evaluated.

Expertise

This applies to the difficulty of the work to be performed and takes into consideration the effort required for positive performance. The rate of profit/fee shall consider the degree of expertise or management skills required for performance of the contract. For example, do positions require credentialed or degreed staff? Does the contractor have years of experience in the field of services offered? Is the contractor starting this program from an existing foundation, or is it a whole new experience for the contractor and contractor staff?

Staff or Labor Hours

Hours and diversity of staff required to implement the services shall be reviewed, and the rate of profit shall be determined on the amount and quality of supervision and coordination necessary to perform contract tasks. This shall take into consideration the existence of subcontractors and the management responsibilities entailed. Consideration should be given to the amount of time actually spent on the contract in relation to indirect costs. Does the cost merit only limit profit/fee consideration because of routine nature?

Contract Risk

A Sub Recipient or Contractor’s risk associated with costs to perform under a TOC/OWA contract is generally minimal under Cost-Reimbursement-type contracts. How great is the risk for the contractor to provide services, especially if time and performance are elements?

Investment/Innovative Program

The level of Sub Recipient or Contractor’s investment in start-up material acquisition that should lead to efficient and economic contract performance will be considered in determining an appropriate rate of profit/fee. Additionally, the uncertainties in providing new and innovative services or programs are significant factors and may also lead to a higher level of management complexity. All of which may be considered in determining a profit/fee percentage.

Prior Performance

Consideration for profit/fee shall be given to service providers who, within the last 5 years, have previously demonstrated successful program outcomes and a capacity to undertake new and difficult programs and/or demonstrate a significant improvement in outcomes in numbers as well

as in quality of program.

ACTION:

The TOC/OWA administrative office and regional sub grant recipients shall follow this policy. This policy will remain in effect from the date of issue until such time that a revision is required.

INQUIRES:

Inquiries should be addressed to the TOC/OWA Chief Administrative Officer at 1-866-888-4TOC.

Kris Latimer
Chief Executive Officer

Approved by The Oregon Consortium Board of Directors – October 26, 2007