

NEGOTIATION AND PAYMENT OF PROFIT TO FOR-PROFIT SUBRECIPIENTS

Policy No. 2022-05-PROFIT

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INTRODUCTION

Awards for contracts are made to organizations which can provide services that are in the best interest of the local workforce area (the Counties of Kane, Kendall, and DeKalb) regarding service, price, and deliverables, regardless of organization classification. As such, the function of profit to foster exceptional contractor performance while considering the complexity of work and associated risks can be assessed, considered and negotiated contingent on the local area's funding availability.

This policy addresses the guidelines for the determination and payment of profit to for-profit entities seeking or holding a sub-recipient contract with Kane County under the Workforce Innovation and Opportunity Act (WIOA).

GENERAL GUIDELINES

In accordance with applicable requirements, Kane County will use a structured approach to negotiate the payment of profit as a separate element of the contract amount where an analysis is performed to establish a fair and reasonable profit amount. Specifically, the factors Kane County will consider in quantifying the opportunity to earn profit will include:

1. Contractor effort, which measures the complexity of the work and the resources required of the prospective contractor for contract performance.
2. Contractor cost risk, which measures the degree of cost responsibility that the contractor will assume.
3. Contractor investments, which measures the degree to which the contractor has reinvested past profits to improve its effectiveness and cost efficiency of its operations and develop service capacity in their WIOA programs.
4. Amount subcontracted.
5. Past accomplishments and performance, which measures the degree the contractor has consistently and efficiently achieved past contract goals.
6. Similar profit rates in the surrounding geographic area for similar work within the industry.

The maximum amount of profit shall not exceed five percent (5%) of the contract's estimated operational and direct costs, excluding "pass-through" funds such as those paid out by the contractor for supportive services, paid work experience, on-the-job training, customized/incumbent worker training or subcontracts for training. 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.

The issuance of profit payments will be dependent on an evaluation of contractor performance following the conclusion of the contract term and may be based on qualitative and/or quantitative measures. Contractors that merely satisfy the deliverables outlined in their contract will not be eligible for a profit payment.

NEGOTIATING PROFIT/FIXED FEES

For-profit organizations proposing profit must include an amount within the initial budget they submit to Kane County prior to the start of the contract term. Kane County will negotiate a fixed profit amount and establish performance standards and/or benchmarks that must be achieved during the contract term in order for the contractor to be eligible to receive the profit amount. The performance standards/benchmarks may or may not be weighted.

The fixed-fee-related performance standards/benchmarks, their weights (if applicable), and the total budgeted fixed fee amount will be identified in a Fixed Fee Contract Addendum that Kane County will send to the for-profit contractor. 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 contractor. Profit will be paid as a lump sum after completion of the contract term, pending the outcome of the subrecipient performance evaluation.

EARNING PROFIT

In order to be eligible for profit, the for-profit contractor must meet the performance/benchmark standards set forth in the Fixed Fee Contract Addendum. The fixed fee will be paid after the end of the contract term. The fixed fee should be requested on a separate Cost Claim from normal program expenditures, so that the process of gathering and analyzing performance data will not delay the payment normal program expenditures. Cost Claims requesting a profit payment must be submitted not later than fifteen (15) days after the end of the contract term. All program data including the exit of all eligible customers (both positive and negative exits) must be entered into IWDS and other accompanying systems (i.e. LaunchPad) not later than thirty (30) days following the end of the grant agreement or the fixed fee will be forfeited. Supplemental performance documentation where system entry is not permissible, must be submitted by the contractor within the same thirty (30) day timeframe. The subrecipient performance evaluation will be completed within sixty (60) days following the end of the contract term. 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.

BUDGET REVISIONS

At any time during the grant agreement period, or at the end of the grant agreement period, in the event that the contractor will not be able to earn the entire fixed fee amount, the contractor 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 contractor's available fixed fee amounts and fixed fee benchmark form may be modified at the discretion of Kane County.

REFERENCES

WIOA Final Rule 20 CFR 683.295

Uniform Administrative Requirements 2 CFR 200.323

Federal Acquisition Regulations 48 CFR 15.404-4

TEGL 15-16