

Alabama Workforce Investment System

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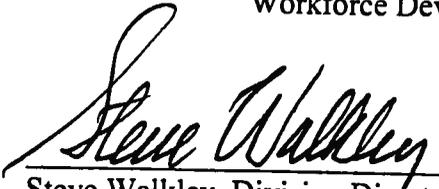
GOVERNOR'S WORKFORCE DEVELOPMENT DIRECTIVE NO. PY99- 2

SUBJECT: Statewide Workforce Investment Act (WIA) Procurement Procedures

- 1. Purpose.** To transmit the State's WIA Title I procurement procedures.
- 2. Discussion.** Section 667.200 of the implementing regulations for the Workforce Investment Act states that State and local organizations who receive funds under WIA title I must follow the *Common Rule* which is codified at 29 CFR part 97. The *Common Rule* states that grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations.

The Workforce Investment Act requires that the Governor establish procedures for use by local boards in the State in determining the initial eligibility of a provider to receive funds for a program of training services.

- 3. Action.** Each local workforce investment board shall develop written procurement procedures. These procedures must reflect applicable ADECA guidance on procurement.
- 4. Contact.** Any questions regarding this Directive should be addressed to Bill Hornsby, Workforce Development Division, at (334) 242-5847.



Steve Walkley, Division Director
Workforce Development Division

Attachment



Alabama
Workforce
Development

Statewide
Workforce Investment Act (WIA)
Procurement Procedures

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Alabama Department of Economic
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Workforce Development Division

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Statewide Workforce Investment Act (WIA) Procurement Procedures

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Statewide WIA Procurement Procedures

I. Governor's Procurement Procedures

This document, entitled the *Statewide WIA Procurement Procedures*, has been developed in accordance with the requirements of 29 CFR Part 97 and 29 CFR Part 95, *Uniform Administrative Requirements for State and Local Governments (Common Rule)*, and the cost principles contained in *OMB Circular A-87*. These procurement procedures are applicable to programs to include the State's Workforce Investment Board, the state administrative agency, Local Workforce Investment Areas/Substate Grantees, and local workforce investment boards (WIBs). Local boards of education, the State education agency, and any subrecipients or other service providers of the above entities, as applicable, are covered insofar as they receive WIA Title I funds. If an entity's own requirements are more restrictive than these procedures, the requirements that are more restrictive must be followed. All procurement should be planned, solicited, and effected in such a manner that the resulting costs will be made in accordance with the allowable cost criteria contained in the *Common Rule* and applicable OMB Circular. The ultimate objective is to ensure fiscal accountability and prevent waste, fraud, and abuse in the noted programs administered under the Act.

These procurement procedures become effective upon date of issuance, unless specifically noted otherwise. Initiation of a procurement, for purposes of this document, is considered to be either the award of a sole source grant/contract, the award of a small purchase contract or the issuance of an Invitation for Bid or Request for Proposal (RFP).

II. Background Discussion

Most of the procurement requirements in the Alabama workforce development system have been amplified based on OMB Circular or "*Common Rule*" language. In addition, the Alabama Department of Economic and Community Affairs (ADECA), which is the State's awarding agency for its Workforce Investment Act Title I funds, has adopted the "*Common Rule*". There are instances where the "*Common Rule*" requirements address things beyond the scope of the U. S. Department of Labor (USDOL) requirements. In those instances, the applicable "*Common Rule*" provisions are included as part of these procedures.

Procurement of workforce development activities is to be conducted in a manner providing full and open competition. The use of sole source procurement is to be minimized to the extent practicable. Procurement of workforce development activities should be conducted in such a manner as to prohibit either excess program income or excess profit. Commercial or for-profit WIA service providers are allowed a negotiated fee or profit. Cost plus contracts are unallowable. If fees or profit are included in the price, recipients and subrecipients are to **negotiate the fees or profit as a separate line item** on the agreement. These profits or fees should be in line with the industry average as excessive fees or profits are not allowed. Fees or profits **should not be concealed** in budgetary line items.

In specifying that the USDOL regulations and *Statewide WIA Procurement Procedures* flow through to subrecipients, the term "subrecipient" as used in the USDOL regulations does not apply to entities such as vendors or individuals enrolled in WIA programs. The standard Federal Government-wide

distinction between subrecipients and vendors that exists in the audit requirements of the Office of Management and Budget (OMB) Circular A-133, as well as the distinctions and definitions of the OMB "*Common Rule*" are applied. Requirements applicable to vendors are those requirements and conditions contained in the individual contract, purchase order, or other payment arrangements.

In making this distinction between a subrecipient and a vendor, there is a concern that some entities may attempt to use the "vendor" label inappropriately to avoid certain requirements including audits, cost classification, procurement and cost limitations. All recipients and subrecipients are encouraged to review carefully these distinctions to ensure that such distinctions are clear from an operational standpoint, and ensure the proper application of these terms.

III. Definitions

The **Act** means the Workforce Investment Act of 1998.

Awarding Agency means (1) with respect to a grant, the Federal agency, and (2) with respect to a subgrant or contract, the party that awarded the subgrant or contract. In this respect, the USDOL is the awarding agency for the State, the State is the awarding agency for local workforce investment areas, and state level subrecipients, and local WIBs (or their designee) are the awarding agencies for local subrecipients.

Common Rule means the OMB document entitled "*Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments; Final Rule*".

Contractor means the organization, entity, or individual that is awarded a procurement contract under the recipient's or subrecipient's procurement procedures.

Designated region means a combination of local areas that are partly or completely in a single labor market area, economic development region, or other appropriate contiguous subarea of the State, that is designated by the State under the WIA Section 116(c).

Designated State agency means a State agency designated by the Governor to assist in carrying out WIA activities. The designated State agency in Alabama is the Workforce Development Division of ADECA.

Employment and training activity means a workforce investment activity that is carried out for a youth, an adult, incumbent worker or a dislocated worker.

Grant means an award of WIA financial assistance by the USDOL to an eligible WIA recipient.

Grantee means the direct recipient of grant funds from the USDOL. A grantee may also be referred to as a recipient.

LWIA means Local Workforce Investment Area that has been designated by the Governor in accordance with WIA Section 116.

LWIB means a Local Workforce Investment Board established under WIA Section 117, to set policy for the local workforce investment system.

LWIB grant recipient means the entity that receives WIA or Welfare-to-Work (WtW) funds for a local workforce investment area.

OMB means the U. S. Office of Management and Budget.

Participant means an individual who has registered under 20 CFR 663.105 or 20 CFR 664.215 and has been determined eligible to participate in and who is receiving services (except for follow-up services) under a program authorized by WIA Title I.

Procurement means the process which leads to any award of WIA funds.

Program income means income received by the recipient or subrecipient supported activity, or earned only as a result of the grant or subgrant.

Program of training services means one or more courses or classes that, upon successful completion, leads to: (1) a certificate, associate degree or baccalaureate degree, or (2) a competency or skill recognized by employers, or a training regimen that provides individuals with additional skills or competencies generally recognized by employers.

Recipient means an entity to which a WIA grant is awarded directly from the U. S. Department of Labor to carry out a program under Title I. The State is the recipient of funds awarded under WIA Sections 127(b)(1)(C)(I)(II), 132(b)(1)(B) and 132(b)(2)(B).

Secretary means the Secretary of the U. S. Department of Labor.

Service provider means any subrecipient, including a local workforce investment board, that is responsible for the delivery of training and/or supportive services directly to program participants. Awards to service providers may be made by subgrant, contract, subcontract, or other legal agreement.

Subgrant means an award of WIA financial assistance in the form of money, or property in lieu of money, made under a grant by a recipient to an eligible subrecipient. It also means a subgrant award of financial assistance by a subrecipient to a lower tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include procurement purchases from vendors nor does it include any form of assistance received by program participants.

Subrecipient means the legal entity to which a subgrant is awarded and which is accountable to the recipient (or higher tier subrecipient) for the use of the funds provided. For WIA purposes, distinguishing characteristics of a subrecipient include items such as determining eligibility of applicants, enrollment of participants, performance measured against meeting the objectives of the program, responsibility for programmatic decision-making, responsibility for compliance with program requirements, and use of the funds awarded to carry out a program or project, as compared to providing goods or services for a program or project (vendor). Depending on local circumstances, the LWIB local elected official, or administrative entity may be a subrecipient.

SWIB means the State Workforce Investment Board established under WIA Section 111.

USDOL means the United States Department of Labor.

Vendor means an entity responsible for providing generally required goods or services to be used in the WIA program. These goods or services may be for the recipient's or subrecipient's own use or for the use of participants in the program. Distinguishing characteristics of a vendor include items such as: providing the goods and services within normal business operations; providing similar goods or services to many different purchasers, including purchases outside the program; and operating in a competitive environment. A vendor is not a subrecipient and does not exhibit the distinguishing characteristics attributable to a subrecipient as defined. Any entity directly involved in the delivery of program services not available to the general public with the exception of an employer providing on-the-job training shall be considered a subrecipient rather than a vendor.

Workforce investment activities mean the array of services permitted under Title I of WIA, which include employment and training activities for adults, incumbent workers, dislocated workers and youth.

Youth activity means workforce investment activity that is carried out for youth.

IV. General

State and local government organizations that receive grants or cooperative agreements under WIA Title I must follow the "*Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments*" which is codified at 29 CFR part 97. Institutions of higher education, hospitals, and other non-profit organizations must, with the exception contained in paragraphs (a)(3) through (6) in 20 CFR Section 667.200, follow the *Common Rule* implementing OMB Circular A-110 which is codified at 29 CFR part 95.

In addition to the requirements at 29 CFR 95.48 or 29 CFR 97.36(i) (as appropriate), all procurement contracts and other transactions between local boards and units of State or local governments shall be conducted only on a cost-reimbursement basis. No provisions for profit are allowed. (WIA Section 184(a)(3)(B)).

When procuring property and services, each recipient shall follow the same policies and procedures it uses for procurement from its non-Federal funds, provided that the recipient's (State's) procurement procedures also comply with the minimum requirements of 29 CFR 97.36. In addition, each subrecipient shall use its own procurement procedures, which reflect applicable State and local laws and regulations, provided that the subrecipient's procurement procedures also comply with the requirements of these procedures as established by the Governor.

Recipients and subrecipients shall not use funds provided under WIA to duplicate facilities or services available in the area (with or without reimbursement) from Federal, State, or local sources, unless it is demonstrated that the applicable program-funded alternative services or facilities would be more effective or more likely to achieve performance goals. The effectiveness of the alternative service or facility must be documented.

Each recipient and subrecipient shall have written procedures for procurement transactions. These procedures shall ensure that all solicitations:

- ▶ Incorporate a clear and accurate description of the technical requirements of material, product, or service to be procured. Such description shall not, in competitive procurement, contain features which unduly restrict competition; and
- ▶ Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

Written procedures do not have to be overly burdensome; but, they do have to accurately reflect the procedures to be followed - without deviation or arbitrary action.

Each recipient and subrecipient shall ensure that all prequalified lists of persons, firms, or other organizations, which are used in acquiring goods and services, are current and include sufficient numbers of qualified sources to ensure maximum open and free competition.

V. Customer Choice

Training services, whether under Individual Training Accounts (ITAs) or under contract, must be provided in a manner that maximizes informed customer choice in selecting an eligible service provider. Each local board, through the local area Alabama (one-stop) career center, must make available to the customers the State list of eligible providers required in WIA Section 122(e). The list includes a description of the programs through which the providers may offer the training services, the information identifying eligible providers of on-the-job training and customized training required under WIA Section 122(h) (where applicable), and the performance and cost information about eligible providers of training services described in WIA Section 122(e) and (h).

VI. Local Board as One-Stop Operator/Service Provider

A local board may not directly provide core services, or intensive services, or be designated or certified as a one-stop operator, unless agreed to by the chief elected official and the Governor. A local board is prohibited from providing training services, unless the Governor grants a waiver in accordance with the provisions in WIA Section 117(f)(1). The waiver shall apply for not more than one year and may be renewed for not more than one additional year. The restrictions on the provision of core, intensive, and training services by the local board, and designation or certification as a one-stop operator, also apply to the staff of the local board.

VII. One-Stop Operators

The one-stop operator is the entity that may range between simply coordinating the service providers within the Alabama (one-stop) career center to being the primary provider of services within the center. The local board, with the agreement of the chief elected official, is authorized to designate or certify one-stop operators and to terminate for cause the eligibility of such operators. To be eligible to receive funds made available under Title I of WIA to operate a one-stop center referred to in Section 134(c) in the WIA, an entity shall be designated or certified as a one-stop operator-

- ▶ Through a competitive process; or
- ▶ In accordance with an agreement reached between the local board and a consortium of entities that, at a minimum, includes three or more of the one-stop partners described in Section 121(b)(1) of WIA; and
- ▶ May be a public or private entity, or consortium of entities of demonstrated effectiveness, located in the local area, which may include-

- a postsecondary educational institution;
- an employment service agency established under the Wagner-Peyser Act on behalf of the local office of the agency;
- a private nonprofit organization (including a community-based organization);
- a private for-profit entity;
- a government agency; and
- another interested organization or entity.

Traditional elementary schools and secondary schools are not eligible for designation or certification as one-stop operators. Nontraditional public secondary schools and area vocational education schools, however, may be eligible for such designation.

If a one-stop delivery system has already been established in a local area prior to August 7, 1998, the date of enactment of the Act, the local board, the chief elected official, and the Governor may agree to certify that system as a one-stop operator.

VIII. Contract for Training Services

Contracts for training services may be used instead of Individual Training Accounts (ITAs) only when one of the following three exceptions applies:

- ▶ When the services provided are on-the-job training (OJT) or customized training;
- ▶ When the local board determines that there are an insufficient number of eligible training providers in the local area to accomplish the purpose of a system of ITAs. The local plan must describe the process to be used in selecting the providers under a contract for services. This process must include a public comment period for interested providers of at least 30 days; or
- ▶ When the local board determines that there is a training services program of demonstrated effectiveness offered in the area by a community-based organization (CBO) or another private organization to serve special participant populations that face multiple barriers to employment, as described in 20 CFR part 663.430(b). The local board must develop criteria to be used in determining demonstrated effectiveness, particularly as it applies to the special participant population to be served. The criteria may include:
 - financial stability of the organization;
 - demonstrated performance in measures appropriate to the program including program completion rate; attainment of the skills, certificates or degrees the program is designed to provide; placement after training in unsubsidized employment; and retention in employment; and
 - how the specific program relates to the workforce investment needs identified in the local plan.

IX. Small Purchase Procedures (\$7,500 or less)

The Workforce Development Division will utilize the ADECA procedures regarding small purchases. Each local workforce investment area must develop written small purchase procedures. No procurement shall be made for the purpose of circumventing the provisions of this requirement. For example, invoices shall not be split so that the smaller amounts do not apply to the more stringent requirements.

X. History of Procurement

Each recipient and subrecipient shall maintain records sufficient to detail the significant history of a procurement. These records shall include, but are not necessarily limited to, the following: rationale for the method of procurement, the selection of contract type, contractor selection or rejection, and the basis for the contract price.

The history of procurement for a multi-year agreement, beginning in the second year of the agreement, shall include, at a minimum, documentation that the service provider submitted verifiable program-specific performance information consisting of the program and training information identified in Section XIII. Subsection C. "Subsequent Eligibility", in these procurement procedures.

The Request For Proposals for multi-year funding awards should clearly state: 1) that procurement is for a multi-year cycle, 2) the procedures that will be followed in approving funding for subsequent years in the funding cycle, and 3) the program and performance information that the service provider will be required to submit, prior to approval for subsequent funding.

Verbal descriptions of procurement history do not document the actions and are unacceptable. Important procedures that must be documented are the **written method** of procurement and the selection of service providers. If any arbitrary selections are made by any person or group during the procurement process, such procurement is not acceptable.

XI. Program Income

In addition to the requirements at 29CFR 95.48 or 29CFR 97.36(i) (as appropriate), all procurement contracts and other transactions, under Title I of WIA, between local boards and units of State or local governments must be conducted only on a cost reimbursement basis (WIA Section 184(a)(3)(B)). No provision for profit is allowed. Income under any program under this title administered by a public or private nonprofit entity may be retained by such entity only if such income is used to continue to carry out the program. Income subject to this requirement includes (WIA Section 195(8)(B)(iii)-

- ▶ Receipts from goods or services (including conferences) provided as a result of activities funded under this title;
- ▶ Funds provided to a service provider under this title that are in excess of the costs associated with the services provided; and
- ▶ Interest income earned on funds received under this title.

Each entity receiving financial assistance under this title shall maintain records sufficient to determine the amount of such income received and the purposes for which such income is expended. When entering into an agreement with a private-for-profit provider the records should reflect the following:

- ▶ The complexity of the work to be performed;
- ▶ The risk borne by the contractor;
- ▶ The contractor's investment;
- ▶ The amount of subcontracting;
- ▶ The quality of the contractor's record of past performance;
- ▶ Industry profit rates in the surrounding geographical area for similar work; and

- ▶ Market conditions in the surrounding geographical area.

On a fee-for-service basis, employers may use local area service facilities, or equipment funded under Title I of WIA to provide employment and training activities to incumbent workers:

- ▶ When the services, facilities, or equipment are not being used by eligible participants;
- ▶ If their use does not affect the ability of eligible participants to use the service facilities, or equipment; and
- ▶ If the income generated from such fees is used to carry out programs authorized under this title.

All recipients and subrecipients must follow the Federal allowable cost principles that apply to their kind of organizations. Section 667.200(c) WIA states that 29 CFR 95.27 and 29 CFR 97.22 identify the Federal principles for determining allowable costs which each kind of recipient and subrecipient must follow. The applicable Federal principles for each kind of recipient are:

- ▶ Allowable costs for State and local government organizations must be determined under OMB Circular A-87, “*Costs Principles for State, Local and Indian Tribal Governments*”;
- ▶ Allowable costs for non-profit organizations must be determined under OMB Circular A-122, “*Costs Principles for Non-Profit Organizations*”;
- ▶ Allowable costs for institutions of higher education must be determined under OMB Circular A-21, “*Cost Principles for Educational Institutions*”;
- ▶ Allowable costs for commercial organizations and those non-profit organizations listed in Attachment C to OMB Circular A-122 must be determined under the provisions of the *Federal Acquisition Regulation (FAR)*, at 48 CFR part 31; and
- ▶ In addition to the allowable costs provisions identified above, the cost of information technology, computer hardware and software, will only be allowable under WIA Title I grants when such computer technology is “Year 2000 compliant.”

XII. Contract Contents

Each recipient and subrecipient contract will clearly specify deliverables and the basis for payment and contain clauses that provide for:

- ▶ Compliance with the WIA regulations (subrecipients only);
- ▶ Compliance with the *Statewide WIA Fiscal Procedures Manual*;
- ▶ For contracts other than small purchases, administrative, contractual, or legal remedies in instances where contractors violate or breach contract items, which shall provide for such sanctions and penalties as may be appropriate;
- ▶ Notice of WIA requirements pertaining to patent rights;
- ▶ Notice of WIA requirements pertaining to copyrights and rights in data;
- ▶ For all contracts in excess of \$10,000, termination clause and for convenience by the awarding agency, including the manner by which the termination will be effected and the basis for settlement;
- ▶ Access by the State, the recipient, the subrecipient, the U. S. Department of Labor, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records (including computer records) of the contractor or subcontractor which are directly pertinent to the administration of the contract, in order to conduct audits and examinations, and make excerpts, transcripts, and photocopies: this

- right also includes timely and reasonable access to contractor's and subcontractor's personnel for the purpose of interviews and discussions related to such documents (vendor contracts);
- ▶ Notice of awarding agency requirements and regulations pertaining to reporting;
 - ▶ Audit rights and requirements found in 29 CFR part 667.200(b);
 - ▶ Payment conditions and delivery terms;
 - ▶ Process and authority for contract changes;
 - ▶ Provisions against assignment;
 - ▶ Compliance by all WIA Title I grant recipients and subrecipients with the non-discrimination & equal opportunity provisions of WIA Section 188;
 - ▶ A clear statement of work to be performed by the contractor;
 - ▶ A brief description of the services the subrecipient will provide;
 - ▶ Compliance with the restrictions found on lobbying found at 29 CFR part 93; and
 - ▶ Compliance with governmental-wide debarment and suspension, and governmental-wide drug-free workplace requirements found at 29 CFR part 98;
 - ▶ Compliance with the ADECA six-year retention period for all required program and financial records and documents;
 - ▶ Compliance with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act, Section 508 of the Clean Water Act, Executive Order 11738, and Environmental Protection Agency regulations;
 - ▶ Compliance with the mandatory standards and policies relating to energy efficiency which are contained in the Energy Policy and Conservation Act.

XIII. Identification of Eligible Training Providers

Service providers selected for funding for WIA programs shall be selected in accordance with the provisions contained in these procedures, WIA Section 122, applicable OMB Circulars, and the *Common Rule*.

The workforce investment system established under WIA emphasizes informed customer choice, system performance, and continuous improvement. The eligible provider process is a part of this strategy for achieving these goals. Local boards, in partnership with the State, identify training providers whose performance qualifies them to receive WIA funds to provide training to eligible participants.

The ability of providers to successfully perform, the procedures State and local boards use to establish eligibility, and the degree to which information on those providers is made available to customers eligible for training services, are key factors affecting the successful implementation of the statewide workforce investment system.

Each recipient and subrecipient shall maintain documentation of the information considered during the determination of eligibility process for each service provider identified as an eligible provider of services.

A. Initial Determination of Provider Eligibility

The local board shall place on a list providers submitting an application under WIA Section 122(b)(1) (postsecondary educational institutions and entities carrying out apprenticeship programs) and

providers determined to be subsequently eligible under WIA Section 122(b)(2) (Other Eligible Providers), and retain on the list providers determined to be subsequently eligible under WIA Section 122(c) (Subsequent Eligibility Determination), to receive WIA Title I funds for the provision of training services in the local area by the local board. The list of providers shall be accompanied by any performance information and program cost information submitted by the provider.

It is the responsibility of local boards to develop written procedures to be used by potential service providers in making an application to be determined eligible to provide services funded under Title I of WIA. The local board must specify the timing, manner, and contents of the required application. At a minimum, these procedures shall include:

- ▶ Requirement for a submission of an application to the local board at such time and in such manner as may be determined, which contains a description of the program of training services;
- ▶ If the provider delivers a program of training services on the date of application, the procedures must require that the application include an appropriate portion of the performance information and the program cost information described in 20 CFR Part 663.540, and that the program meet appropriate levels of performance; and
- ▶ If the provider does not provide a program of training services on that date, the procedures must require that the provider meet appropriate requirements specified in the procedures. (WIA Section 122(b)(2)(D)).

Other factors that **must** be considered in determining eligibility are:

- ▶ The specific economic, geographic, and demographic factors in the local areas in which providers seeking eligibility are located; and
- ▶ The characteristics of the populations being served by providers seeking eligibility, including the demonstrated difficulties in serving these populations, where applicable.

To be eligible to receive funds under the WIA, the provider shall be:

- ▶ A postsecondary institution that is eligible to receive Federal funds under Title IV of the Higher Education Act of 1965 and provides a program that leads to an associate degree, baccalaureate degree, or certificate;
- ▶ An entity that carries out programs under the National Apprenticeship Act; or
- ▶ Another public or private provider of training services.

Programs of training services provided by postsecondary educational institutions that do not lead to an associate or baccalaureate degree or certificate and apprenticeship programs that are not registered under the National Apprenticeship Act must be determined initially eligible under the provisions of 20 CFR part 663.515(c)(4).

B. Individual Training Accounts (ITAs)

The ITA was established in the Act on behalf of the participant. Individual Training Accounts allow WIA Title I adult and dislocated workers to purchase training services from eligible providers they select in consultation with the case manager. Individual Training Accounts are not allowed for youth participants. However, individuals age 18 and above, who are eligible for training services under the

adult and dislocated worker program, may receive ITAs through that program. Contracts for services may be used instead of ITAs only when one of the following three exceptions applies (20CFR 663.430(a)):

- ▶ When the services provided are on-the-job training (OJT) or customized training;
- ▶ When the local board determines that there are an insufficient number of eligible service providers in the local area to accomplish the purpose of a system of ITAs (the local plan must describe the process to be used in selecting the providers under a contract for services and provide for a public comment period of at least 30 days for interested providers);
- ▶ When the local board determines that there is a training services program of demonstrated effectiveness offered in the area by a community-based organization (CBO) or another private organization to serve special participant populations that face multiple barriers to employment.

Payments for ITAs may be made in a variety of ways, including the electronic transfer of funds through financial institutions, vouchers, or other appropriate methods. Payments may also be made incrementally; through payment of a portion of the costs at different points in the training course (WIA Section 134(d)(4)(G)).

The State or local board may impose limits on ITAs, such as limitations on the dollar amount and/or duration (20CFR 663.420). Limits to ITAs may be established in different ways:

- ▶ There may be a limit for an individual participant that is based on the needs identified in the individual employment plan; or
- ▶ There may be a policy decision by the State Board or Local Board to establish a range of amounts and/or a maximum amount applicable to all ITAs.

Limitations on ITAs established by local board policies must be described in the local plan. Any limitations should be consistent with the Act's requirement that training services are to be provided in a manner that maximizes customer choice in the selection of an eligible training provider (20CFR 663.420(c)).

The local board must develop criteria to be used in determining demonstrated effectiveness, particularly as it applies to the special participant population to be served. The criteria may include: 1) financial stability of the organization; 2) demonstrated performance in measures appropriate to the program including program completion rate; attainment of the skills, certificates or degrees the program is designed to provide; placement after training in unsubsidized employment; and retention in employment; and 3) how the specific program relates to the workforce investment needs identified in the local plan. See GOVERNOR'S WORKFORCE DEVELOPMENT DIRECTIVE NO PY99-09, Individual Training Accounts (ITAs).

C. State Service Provider List

The local board must include providers that meet established procedures on a local list and submit the list to the Workforce Development Division (WDD) of ADECA. The list of providers submitted to the State must be accompanied by required performance information and program cost information submitted by the providers. The WDD has 30 days to verify the information relating to the providers. After the WDD verifies that the provider meets the criteria for initial eligibility, or 30 days have elapsed, whichever occurs first, the provider is initially eligible without State review (WIA Section

122(e)). If the WDD determines, within 30 days after the submission, that the provider does not meet the performance levels described in WIA Section 122(c)(6) for the program (where applicable) the WDD may remove the provider from the list for the program. The WDD may not remove from the list an agency submitting an application under WIA Section 122(b)(1)). Any provider who is placed or retained on the list by the local board and not removed by the WDD, shall be identified as an eligible provider of services.

The WDD shall compile a single list of the eligible providers identified from all local areas in the State and disseminate such list, and the performance information and cost information provided by the local areas, to the one-stop delivery system within the State. Such list and information shall be made widely available to participants in employment and training activities and others through the one-stop delivery system. Individuals eligible to receive training under WIA Section 134(d)(4) shall have the opportunity to select any of the eligible providers, from any of the local areas in the State, that are included on the list to provide services. The State list must also be made available to customers whose training is supported by other one-stop partners. All training providers must submit performance information and meet performance level annually in order to remain eligible providers. The list and information will be updated at least annually.

If the WDD, after consultation with the local board involved, subsequently determines that an eligible provider or individual supplying information on behalf of the provider intentionally supplied inaccurate information, the WDD shall terminate the eligibility of the provider to receive WIA Title I funds for any program for a period of time, but not less than two years.

If the WDD, or local board working with the WDD, determines that an eligible provider substantially violates any requirements under this Act, the WDD, or local board working with the WDD, may terminate the eligibility of the provider to receive WIA Title I funds for the program involved or take other such action as the WDD or local board determines to be appropriate.

Any provider whose eligibility is terminated for intentionally supplying inaccurate information or who substantially violates any requirement under this Act shall be liable for repayment of all WIA Title I funds received for the program during any period of noncompliance.

For information regarding the appeal and/or grievance process at the local workforce investment area level, please consult the procedures developed by the respective local board. For information regarding the state-level appeal and/or grievance process, see Section XIV, under "Appeal Procedures" of these procedures. These procedures shall be construed to provide remedies and penalties that supplement, but do not supplant, other civil and criminal remedies and penalties.

XIV. Conflict of Interest

Each recipient and subrecipient shall maintain a written code of standards of conduct governing the performance of persons engaged in the award and administration of WIA contracts and subgrants.

A State Board member or a local board member or youth council member (whether compensated or not) must neither cast a vote on, nor participate in, any decision-making capacity on the provision of services by such member (or any organization which that member directly represents), nor on any matter which would provide any direct financial benefit to that member or a member of his immediate family. A conflict of interest, real or apparent, may arise when:

- ▶ The individual.
- ▶ Any member of the individual's immediate family,
- ▶ The individual's partner(s), or
- ▶ An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm or organization selected for award.

An apparent conflict carries the same weight of regulation as a real conflict. Care must be taken to identify potential apparent conflicts and written procedures must be developed and followed to ensure compliance with this provision. See GOVERNOR'S WORKFORCE DEVELOPMENT DIRECTIVE NO. PY99-05, Conflict of Interest Policy for guidance.

Neither membership on the State Board, the local board, or youth council nor the receipt of WIA funds to provide training and related services shall be construed, by themselves, to violate these conflict of interest provisions.

The officers, employees, or agents of the board making the award will neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subagreements. States and subrecipients may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value.

To the extent permitted by State or local law or regulation, such standards of conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the awarding agency's officers, employees, or agents, or by contractors or their agent. Any existing penalty, sanction, or other disciplinary action should be cited and/or quoted as an accompaniment to the entity's written procurement procedures.

XV. Appeal/Grievance Procedures

Each local workforce investment area must establish and maintain written procedures for dealing with appeals and grievances resulting from the local board's procedures for the determination of an offeror's initial and subsequent eligibility to provide services. At a minimum these procedures must allow:

- ▶ An opportunity for an informal resolution and a hearing to be completed within 60 days of the filing of the grievance or complaint; and
- ▶ An opportunity for a local level appeal to a State entity when:
 - no decision is reached within 60 days; or
 - either party is dissatisfied with the local hearing decision.

A protester shall exhaust all administrative remedies with the subrecipient before pursuing a protest at a higher level. Violations of law will be referred to the U. S. Department of Labor, Office of the Inspector General and other appropriate local and State authorities having proper jurisdiction. An offeror for the delivery of training and/or services may appeal an adverse consideration by a local board or the designated State agency to the Division Director of the Workforce Development Division. A letter of intent to appeal must be received by the WDD Division Director within seven calendar days after the receipt of a notification by the local board or designated State agency of:

- ▶ Termination of provider eligibility; or
- ▶ Denial of eligibility as a provider.

At a minimum, this letter should contain the reason for appeal. Within 15 days of filing the initial appeal notification, the formal appeal must be filed with the WDD Division Director for formal review. Based upon the results of the review, if the offeror is not satisfied, he/she may request within ten calendar days, a review of the WDD Director's decision by the ADECA Director (or his designee). At a scheduled time for the review of the appeal, the offeror may present any additional information for consideration. The ADECA Director will issue a final decision within three calendar days after the meeting is adjourned. A decision by the ADECA Director may not be appealed to the Secretary (20CFR part 667.630(b)(3)).

XVI. Prohibition of Subawards to Debarred and Suspended Parties

All WIA Title I grant recipients must comply with the governmental-wide debarment and suspension, and governmental-wide requirements for a drug-free workplace codified at 29 CFR part 98.

XVII. Oversight

The Secretary is authorized to monitor all recipients and subrecipients of all grants awarded and funds expended under WIA Title I to determine compliance with the Act and the regulations contained in 20 CFR part 652, et al. and may investigate any matter deemed necessary to determine such compliance. Federal oversight is conducted primarily at the recipient level.

Each recipient and subrecipient must continuously monitor grant-supported activities in accordance with the uniform administrative requirements at 29 CFR parts 95 and 97, as applicable, including the applicable cost principles indicated at 29 CFR 97.22(b) or 29 CFR 95.27 for all entities receiving WIA Title I funds. For governmental units, the applicable requirements are at 29 CFR part 97. For non-profit organizations, the applicable requirements are at 29 CFR part 95. Each workforce investment area must conduct an annual review of its procurement activities. The review must be documented and the results of the review be made available for review by State or USDOL staff.

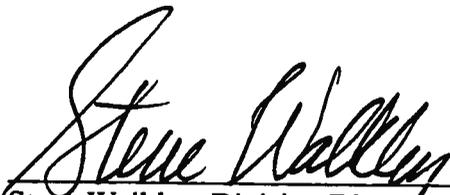
The State must conduct an annual review of the procurement activities of each workforce investment area. The results of this review will be provided to the appropriate local board.

XVIII. Audits

All governmental and non-profit organizations must follow the audit requirements of OMB Circular A-133. These requirements are found at 29 CFR 97.26 for governmental organizations and at 29 CFR 95.26 for institutions of higher education, hospitals, and other non-profit organizations (20 CFR 667.200(b)(1)). Commercial organizations which are recipients under WIA Title I and which expend more than the minimum level specified in OMB Circular A-133 (\$300,000 as of April 15, 1999) must have either an organization-wide audit conducted in accordance with A-133 or a program specific financial and compliance audit (20 CFR 667.200(b)(2)(ii)). All such audit requirements are incorporated in the *ADECA Audit Policy* manual, as amended on March 16, 1999.

XIX. Other Administrative Requirements

- ▶ Each program under this title shall provide employment and training opportunities to those who can benefit from, and are most in need of, such opportunities. In addition, efforts must be made to develop programs which contribute to occupational development, upward mobility, development of new careers, and opportunities for nontraditional employment.
- ▶ Funds provided under this title shall only be used for activities that are in addition to those that would otherwise be available in the local area in the absence of such funds.
- ▶ No person or organization may charge an individual a fee for the placement or referral of the individual in or to a workforce investment activity under this title.
- ▶ Any local area may enter into an agreement with another local workforce investment area to pay or share the cost of educating, training, or placing individuals participating in programs assisted under this title, including the provision of supportive services. Such agreement shall be approved by each local board providing guidance to the local area and shall be described in the local plan under WIA Section 118.
- ▶ On-the-Job training contracts under this title shall not be entered into with employers who have received payments under previous contracts and have exhibited a pattern of failing to provide on-the-job training participants with continued long-term employment as regular employees with wages and benefits (including health benefits) and working conditions at the same level and to the same extent as other employees working a similar length of time and doing the same type of work.
- ▶ Title I funds shall not be provided for any program that involves political activities.
- ▶ Each local board shall maintain records with respect to programs and activities carried out under this title that identify (1) any income or profits earned, including such income or profits earned by subrecipients; and (2) any costs incurred (such as stand-in costs) that are otherwise allowable except for funding limitations.



Steve Walkley, Division Director
Workforce Development Division-ADECA

2/15/00
Date

Alabama Workforce Investment System

Alabama Department of Economic and Community Affairs
Workforce Development Division

401 Adams Avenue
Post Office Box 5690

Montgomery, Alabama 36103-5690

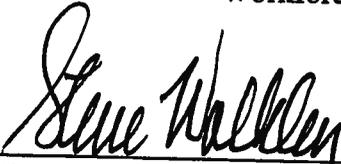
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GOVERNOR'S WORKFORCE DEVELOPMENT DIRECTIVE NO. PY99- 12

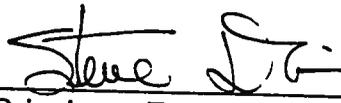
SUBJECT: Statewide Workforce Investment Act (WIA) Procurement Procedures

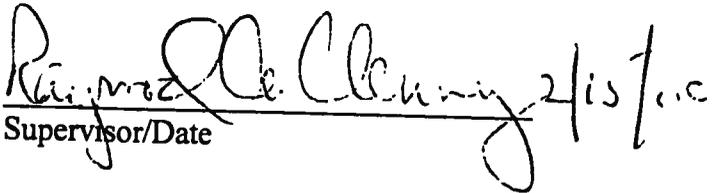
- 1. Purpose.** To transmit the State's WIA Title I procurement procedures.
- 2. Discussion.** Section 667.200 of the implementing regulations for the Workforce Investment Act states that State and local organizations who receive funds under WIA title I must follow the *Common Rule* which is codified at 29 CFR part 97. The *Common Rule* states that grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations.

The Workforce Investment Act requires that the Governor establish procedures for use by local boards in the State in determining the initial eligibility of a provider to receive funds for a program of training services.
- 3. Action.** Each local workforce investment board shall develop written procurement procedures. These procedures must reflect applicable ADECA guidance on procurement.
- 4. Contact.** Any questions regarding this Directive should be addressed to Bill Hornsby, Workforce Development Division, at (334) 242-5847.


Steve Walkley, Division Director
Workforce Development Division

Attachment

 2/9/00
Originator/Date

 2/15/00
Supervisor/Date