

PASSAIC COUNTY WORKFORCE DEVELOPMENT BOARD

Subject: WIOA Title I Pay for Performance

Effective Date: 05/08/26

PURPOSE

The WIOA authorization of Pay for Performance contracts allows workforce boards to develop more comprehensive services and deploy resources in increasingly outcomes-driven ways. Pay for Performance is a type of contract which allows government agencies the opportunity to pay only for outcomes achieved, rather than for services that may or may not result in positive outcomes.

BACKGROUND

Pay for performance is a contracting strategy tying payment to the achievement of specific, measurable outcomes rather than the delivery of services or hours worked. Unlike traditional time and materials contracts, these agreements prioritize impact over activity, ensuring that the WDB only pays for demonstrably effective results. The advantages include:

- **Accountability:** Creates a clear link between financial rewards and actual value delivered, reducing the risk of paying for ineffective services.
- **Incentive Alignment:** Service Level Agreements motivate providers to go beyond minimum requirements to achieve high-impact goals.
- **Data Driven:** Requires rigorous data collection and clear, fair measurement systems to avoid disputes or "creaming" which is the practice of only serving the easiest-to-help populations to secure quick payment.

The Workforce Innovation and Opportunity Act describe Pay for Performance contracting as a strategy where service providers are paid based on achieving outcomes rather than just providing services. The following guidance on contracting is provided:

- **Outcome-Based Payments:** Funds are only released after performance occurs and results (like job placement or retention) are independently validated.
- **Target Populations:** These contracts often focus on specific groups with barriers to employment, such as economically disadvantaged youth or justice-involved adults.

- **Bonus Payments:** Contracts may include bonuses for exceeding predefined performance levels. These bonuses must be used by the provider to expand their capacity for future training.

POLICY

The Workforce Development Board adopts and implements in the local area the following federal and State of New Jersey policies and guidance on Pay for Performance contracting.

NJDOL Competitive Procurement Policy

The WDB competitively procures subrecipients, including One Stop Operators, One Stop Career Services providers (WIOA Title I Adult and Dislocated Worker), and One Stop Youth providers (WIOA Title I Youth). The WDB adopts the procurement criteria outlined in the NJDOL NJWIN WD-PY22-5.1 Competitive Procurement of Title I One Stop Operator, Career Services and Youth Service. The adoption of this policy by WDB provides guidance in the local area for implementation of an efficient and effective process for the selection of subrecipients.

Pay for Performance Requirements for the WDB

The New Jersey Department of Labor and Workforce Development implements Pay for Performance policies primarily through its administration of Workforce Innovation and Opportunity Act (WIOA) funds and specific training grants. The WDB has adopted the NJDOL NJWIN WD-PY25-1 policy guidelines for the determination and payment of profit to for-profit subrecipients. To ensure exceptional performance rather than rewarding simple budget expenditure, the WDB uses at least one performance metric provided in the policy or request approval from NJDOL for alternative metrics. The WDB implements policy provided guidance on negotiating profit margins with private entities that provide workforce services. The guidance impacts organizations seeking or holding subrecipient contracts with the WDB under the Workforce Innovation and Opportunity Act.

- **Purpose:** Outlines the standards and processes for negotiating profit provisions in contracts to ensure they are efficient, effective, and in the best interest of the WDB.
- **Scope:** Applies to competitively procured subrecipients, such as One-Stop Operators, Career Services providers, and Youth providers.
- **Requirements:**
 - For-profit organizations must submit a performance matrix detailing proposed performance levels and requested profit amounts for each metric.

- Total profits cannot exceed the maximum profit cap established by the local board.
- Finalized profit amounts are documented in a Fixed Fee Contract Addendum.

The Workforce Development Board utilizes the guidelines regarding the determination and payment of profit to for-profit entities seeking or holding a subrecipient contracts. The standards and practices for awarding profit to for-profit organizations that hold subrecipient contracts, such as One-Stop Operators or youth service providers are aligned and the WDB awards profit based on:

- Complexity of work: The difficulty and resources required for contract performance.
- Risk borne: The degree of cost responsibility the subrecipient assumes.
- Subrecipient investment: How much the organization has reinvested past profits into improving service capacity and efficiency.

WDB Pay for Performance Contracting Requirements

Under federal WIOA guidelines adopted by NJDOL, the Workforce Development Board is permitted to use up to 10% of their Adult, Dislocated Worker, and Youth funds for contract strategies based on performance:

The WDB follows specific steps to implement these contracts:

1. Feasibility Study: Boards must first conduct a study to identify the target population, desired outcomes, and estimated costs.
2. Funding Set-Aside: Local areas can set aside up to 10% of their annual WIOA allocation specifically for payments based on performance.
3. No-Year Funding: Funds committed to Pay for Performance contracts become "no-year funds," meaning they remain available until expended, even beyond the typical two-year WIOA funding cycle.
4. Profit Controls: If contracting with for-profit entities, the WDB must establish metrics where profit is earned only if performance improves by at least 5% compared to the previous year.

Allowable Services

Pay for performance strategies may be applied to:

- Adult and Dislocated Worker Services: Training services and individual training accounts (ITAs).
- Youth Programs: Work-based learning, apprenticeships, and incentive-based work experiences.
- On-the-Job Training (OJT): Reimbursing employers up to 50% (or sometimes 75%) of wages to offset training costs.

Allowability of Profit, Separation from Costs, and Cost & Price Analysis Profit is defined as the return that a for-profit entity earns after successfully achieving negotiated and validated performance goals. The policy is applicable to for-profit subrecipients only. The earning of profit must be tied to the reasonable and measurable delivery of the contract objectives. Profit may be approved by the WDB for the provision of allowed services under WIOA and to WIOA eligible participants only. Secs. 121(d), 122(a) and 134(b) of WIOA state that for-profit entities are eligible to be operators, service providers, and eligible training providers and that these for-profit entities may earn a profit.

Profit Guidelines

- Profit Cap: Profit is limited to 10% of a contract's estimated operational and direct costs.
- Exclusions: Certain "pass-through" funds—such as supportive services, paid work experience, and on-the-job training—are excluded when calculating the profit cap.
- Fixed Amount: Although the cap is a percentage, the final profit must be negotiated as a fixed dollar amount.
- Performance Requirement: Profit payments must be tied to specific performance metrics. The established performance level must represent at least a 5% improvement over the previous year's corresponding period.
- Frequency: The New Jersey Department of Labor (NJDOL) recommends paying profit quarterly, though Workforce Development Board adjusts this frequency to align with their performance monitoring.

The Workforce Development Board selects at least one performance metric to trigger profit payments to for-profit service providers.

Standard WIOA primary performance indicators (such as standard employment rates or median earnings) cannot be used for these specific profit-based performance metrics. Instead, the WDB selects or develop metrics that align with their local strategic goals.

Performance Metric Categories

While the policy requires the WDB to use metrics from a provided table or seek NJDOL approval for alternatives, the common types of metrics the WDB includes:

- Program Quality & Data Accuracy:
 - Data Collection Compliance: Ensuring timely and accurate entry of participant data into the state's tracking systems.
 - Case Management Milestones: Success in moving participants through specific phases of a service model.
- Targeted Enrollment & Service Delivery:
 - Specific Population Enrollment: Increasing the number of WIOA participants from high-barrier groups, such as those in Registered Apprenticeship programs.
 - Direct Service Spend: Meeting or exceeding the NJDOL recommendation to spend at least 40% of funds on direct participant support (e.g., ITAs or supportive services).
- Employer Engagement:
 - Employer Penetration Rate: The number of unique local businesses receiving services compared to the total businesses in the area.
 - Repeat Business Customers: The percentage of employers who return for services within a three-year period.
- Training Outcomes:
 - Credential Attainment Lag Measures: Progress toward specific certification goals for participants currently in training.
 - Work-Based Learning Success: Metrics related to the completion of on-the-job training or customized training programs.

Requirements for Selected Metrics

- 5% Improvement Rule: Regardless of the metric chosen, the target must represent at least a 5% improvement over the previous year's performance for that same period.
- Challenging yet Achievable: The WDB sets targets that push subrecipients toward exceptional performance rather than just meeting minimum contract requirements.

WDB Pay for Performance Strategy Steps

There are basic requirements adopted by the WDB for implementing contracts:

- Feasibility Study
A local area conducts a feasibility study or determination to identify the problem the program will address, the population that will be targeted, the services that will be provided, and the performance outcomes that will be used as criteria; and to estimate the acceptable cost associated with achieving the projected performance outcomes.
- Contract Negotiation
The Local area begins the program, including negotiating and awarding a performance-based contract.
- Contract Delivery
Recruitment of participants by the contracted provider and delivery of services.
- Validation
An independent validator determines if the provider has achieved the contracted outcomes.
- Payment
The WDB pays for any outcomes as identified in the contract. If outcomes have not been achieved, the WDB does not pay for outcomes.

Federal Policies on Pay for Performance

Federal policies on pay for performance are primarily governed by the Federal Acquisition Regulation (FAR) Subpart 32.10, which defines Performance-Based Payments which is a preferred method of contract financing for fixed-price contracts because it aligns payments with the successful achievement of specific, measurable milestones rather than just the passage of time or costs incurred.

Core Principles of Performance-Based Payments

- Preferred Financing Method: Federal agencies are directed to use performance as the primary financing method whenever indicated, provided the contractor agrees.
- Basis of Payment: Payments are triggered by objective, quantifiable methods, such as the accomplishment of defined events, milestones, or other measurable results specified in the contract.
- No "Partial" Performance: Contracting officers are prohibited from approving a payment until the specified event or performance criterion has been successfully accomplished in accordance with the contract terms.

Regulatory Frameworks

- FAR 52.232-32: This mandatory contract clause outlines the contractor's obligations for requesting performance-based payment and the government's right to verify successful performance before paying.
- FAR 15.404-4 outlines the policies and procedures for establishing the profit or fee portion of a pre-negotiation objective. It ensures that profit is used as a motivator for efficient contract performance while remaining within statutory limits
- Prompt Payment Act (5 CFR Part 1315): Performance based payments are considered contract financing and not subject to standard prompt payment interest penalties, agencies still aim for accelerated payments to support contractor cash flow.
- Ineligible Contracts: Performance based payments cannot be used for cost-reimbursement contracts or sealed bid procedures.
- Contractor Qualifications: Before authorizing performance-based payments, a vendor's past performance record, financial strength, and the adequacy of their internal controls must be evaluated.
- Exclusions: No payments will be made to any vendor with active exclusions listed on SAM.gov.

Procurement must also align with the following citations concerning Federal procurement standards and cost analysis requirements for grants and contracts under the Workforce Innovation and Opportunity Act 20 CFR 678.605, 2 CFR 200.324, 20 CFR 678.605, 20 CFR 683.295, 48 CFR 15.403-1(b), 48 CFR 15.404-1, 48 CFR 15.404-4, 48 CFR 2.101.

One-Stop Selection and Costs (Title 20 CFR)

- 20 CFR 678.605: Mandates that Local Workforce Development Boards select one-stop operators through a competitive process at least once every four years.
- 20 CFR 683.295: Clarifies that for-profit entities are eligible to be one-stop operators or service providers and may earn a profit, provided they follow Federal cost principles.

Uniform Guidance (Title 2 CFR)

- 2 CFR 200.324: Requires recipients of Federal awards to perform a cost or price analysis for every procurement transaction exceeding the simplified acquisition threshold.
 - It prohibits the use of "cost plus a percentage of cost" contracting.
 - Agencies must make independent estimates before receiving any bids or proposals.

Federal Acquisition Regulation (Title 48 CFR)

- 48 CFR 2.101: Provides definitions for key terms such as "simplified acquisition threshold" and "certified cost or pricing data".
- 48 CFR 15.403-1(b): Lists exceptions to the requirement for certified cost or pricing data, such as when prices are based on adequate competition.
- 48 CFR 15.404-1: Outlines proposal analysis techniques, distinguishing between "price analysis" (used when competition is present) and "cost analysis" (a detailed review of individual cost elements).
- 48 CFR 15.404-4: Establishes the policies for determining a profit objective, ensuring it is fair and reasonable based on the complexity and risk of the work

WIOA Guidance: Supporting and Related Training and Employment Guidance Letters (TEGLs) addressing Pay for Performance

- TEGL 08-20: Outlines how state and local boards can implement contract strategies to pay for results rather than just services and provides the framework for WIOA Title I (Adult, Dislocated Worker, and Youth) programs. Provides formal policy guidance on using pay for performance contract strategies, including the 10% limitation on set-aside funds.
- TEGL 14-18, Change 1: Outlines general performance reporting requirements for all WIOA participants.
- TEGL 10-16, Change 1: Provides foundational guidance on performance accountability under WIOA.

- TEGl 23-19, Change 3: Specifically addresses the validation of required performance data submitted by grant recipients.
- TEGl 08-22: Focuses on evaluation standards and technical advice for program effectiveness, which overlaps with the validation requirements.

Role of the County Government in Contracting

The County Commissioners are awarded WIOA funding annually and the County Government and the Workforce Development Board administer the funds used in the local area. The County government does not have a Pay for Performance Policy. Instead, the County manages vendor performance and payments through a combination of state mandates, local purchasing ordinances, and specific contract terms.

Core Performance & Payment Mechanisms- Passaic County Government

The following policies and regulations collectively govern how vendors are paid based on their performance:

- Performance Bonds & Guarantees: For many contracts, successful bidders must submit a Performance Bond (often 100% of the bid amount) as security for the "faithful performance" of the contract. If a vendor fails to perform, the County can use this bond to cover the costs of completing the work.
- Liquidated Damages: Standard Passaic County bid specifications often include a liquidated damages clause. For example, if a vendor fails to deliver equipment or services as specified, they may be charged a set fee (e.g., \$150.00 per day) for each day of non-performance.
- Prompt Payment Act (NJ): Under state law, the County must pay contractors within 30 days of receiving a completed invoice. However, if the County intends to withhold payment due to defective work or incomplete performance, they must provide a written explanation within 20 days.

Compliance & Administrative Requirements

To be eligible for payment, vendors must strictly adhere to the following:

- Purchase Order (PO) Requirement: No services should be rendered without an approved PO. Payment is typically issued only after receipt of an invoice and confirmation that the goods or services were accepted as specified.

- Pay to Play Laws: Contracts exceeding \$17,500 require a specific Council or Commissioner Resolution. Vendors must also disclose political contributions to remain eligible for payment.
- Business Registration: All vendors must maintain a valid New Jersey Business Registration Certificate (BRC) for the County to legally process payments.

Common milestones in federal performance-based contracts are designed to be objective and measurable events that demonstrate progress toward the final goal. Under the Federal Acquisition Regulation (FAR) Subpart 32.10, these milestones must be quantifiable and are typically used to trigger Performance-Based Payments (PBPs).

Service Delivery Milestones

Contracts often use deliverable-based milestones to manage complexity.

- Project Initiation: Project Plan, and Quality Management Plan.
- Delivery Cycles: Successful completion of a deliverable and documentation of the outcomes data for payment

New Jersey Government Contracting and Procurement Policies Followed by County Government

The State of New Jersey uses performance-based payments to ensure accountability in public spending, particularly for grants and complex service contracts.

- Milestone-Based Payments: State agencies may use performance-based payments that are triggered by the accomplishment of defined events or objective, quantifiable results rather than simple time-based progress. These are often preferred over traditional cost-reimbursement methods for non-commercial purchases.
- Incentive-Based Value Systems: For certain sectors like home health care, the Department of Human Services has proposed or established systems where payments are scaled based on absolute performance levels or demonstrated improvement in service quality.
- Results-Oriented Accountability: Following federal Uniform Guidance revisions, New Jersey agencies are shifting toward performance-based payments using unit cost rates to improve stewardship of federal funds.

Regulatory Oversight

- Office of the State Comptroller (OSC): Updated regulations effective February 3, 2025, (NJAC 19:71.1) clarified reporting requirements for entities under OSC oversight to ensure integrity in how state funds—including performance-linked ones—are managed.

POLICY REVISION

The WDB Workforce Innovation and Opportunity Act (WIOA) policies are reviewed amended annually by the WDB to remain in compliance with all federal mandates and state-level policy changes issued by the New Jersey Department of Labor and Workforce Development. Partners will be notified of any policy revisions.