

**2012 MODIFICATIONS TO
WORKFORCE FLORIDA, INC. CONTRACTING POLICY**

BACKGROUND:

The following policy was established in accordance with proviso language for Specific Appropriation 2214 of the 2010 General Appropriations Act and the 2010 Appropriations Implementation Bill and continued in accordance with Specific Appropriation 2006 of the 2011 General Appropriations Act.

The proviso language for Specific Appropriation 2006 prohibited the use of state or federal funds by a regional workforce board “for any contract exceeding \$25,000 between a regional workforce board and a member of that board that has any relationship with the contracting vendor, unless the contract has been reviewed by the Agency for Workforce Innovation and Workforce Florida, Inc.” The proviso language was incorporated into and made a part of this policy.

The policy was modified in 2011 to prohibit a contract between the board and a board member or other person or entity who may benefit financially from a contract (as defined in paragraph I(g) below), providing four exemptions to the prohibition to allow the workforce boards to provide statutorily-mandated services.

The current modifications result from the Legislature’s adoption of Chapter 2012-29, Laws of Florida, requiring contracts under \$25,000 to be reported to Workforce Florida, Inc. and requiring that contracts with workforce board employees’ relatives be approved by a 2/3 vote and go through the review and approval process.

POLICY:

I) Definitions.

For the purposes of this policy, the following definitions apply:

- a) “Board” means one of Florida’s twenty-four regional workforce boards or Workforce Florida, Inc.
- b) “Contract” means a written agreement funded by state or federal funds, to which a regional workforce board or Workforce Florida, Inc. (“WFI”) is one of the parties. It includes the initial contract and all amendments, renewals or extensions. For purposes of this policy, “contract” includes the proposed contract. This term does not include:
 - i) retail purchases for which no written contract is executed; and
 - ii) the purchase of utility services for use by a board.
 - iii) staff employment contracts (other than contracts with members of the board or relatives of board members)
 - iv) membership fees and sponsorships to professional organizations

- c) “Entire board” means the complete membership of the board at the time a contract is submitted to a vote. It includes the board member who has a relationship with the contracting vendor and who therefore must abstain on the vote on the contract. Membership of the board includes non-voting members.
- d) “Quorum” means that minimum number of members of the board required to be present in order for the board to transact business as established by the board’s bylaws (or, in the absence of bylaws, as has otherwise been established by the board.)
- e) “When a quorum has been established” means the contemporaneous meeting of a sufficient number of members to constitute a quorum, in person and/or through accepted electronic means.
- f) “has any relationship with the contracting vendor” means the member is an owner or a principal of the vendor, or a principal of the vendor has retained the member, or the parent organization or subsidiary of a corporate principal of the vendor has retained the member or a member’s known relative or member’s business associate is an owner of the vendor. For purposes of this policy, vendor, contractor and subrecipient are the same.
- g) “benefit financially from a contract” means the special private financial gain to a member, a special private financial gain to any principal which retains the member, the special private financial gain of the parent organization or subsidiary of a corporate principal which retains the member or the special private financial gain to any member’s relative or business associate or to a board employee or a board employee’s relative and such benefit is not remote or speculative. “Personally benefit financially” means a special private financial gain to a member only.
- h) “Owner” means any ownership interest in a privately owned contracting entity or a majority interest in a publicly held contracting entity.
- i) “Principal of a contractor” means an owner or high level management employee with decision making authority.
- j) “Employee” means a person employed full-time by a regional workforce board working in a managerial or supervisory capacity or who has direct contract management or direct fiscal involvement with the contract being voted on by the board.
- k) “Relative” means father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, or daughter-in-law. § 112.3143(1)(b), Fla. Stat.
- l) “Utility services” include telephone, cable, electricity, water, gas, waste and sewage services and other similar services.
- m) “federal, state or other governmental workforce programs” means Incumbent Worker Training (s. 445.003(3)(a)(3), F.S.), Quick Response Training (s. 288.047, F.S.), Employed Worker Training, On the Job Training, customized training and other One-Stop training provider services.

II) Prohibition Against A Board Contracting With Its Board Member

No workforce board (Workforce Florida, Inc. or a regional workforce board) shall enter into a contract with one of its own board members, with an organization represented by its own board member or with any entity where a board member has any relationship with the contracting vendor.

At a board's discretion, the following may be exempted from the above paragraph:

- a) A contract with an agency (as defined in s. 112.312(2), including, but not limited to, those statutorily required to be board members) when said agency is represented by a board member and said member does not personally benefit financially from such contracts;
- b) A contract with a board member or a vendor (when a board member has any relationship with the contracting vendor) when the contract relates to the member's appointment to the board under Pub. L. No. 105-220, ("Workforce Investment Act") Title I, s. 117(b)(2)(A)(vi) ["representatives of the one-stop partners].
- c) A contract with a member receiving a grant for workforce services under federal, state or other governmental workforce programs.
- d) A contract between a board and a board member which is not exempted under paragraphs II(a), II(b) or II(c) where the board documents exceptional circumstances and/or need and the board member does not personally benefit financially from the contract. Based upon criteria developed by WFI, DEO shall review the board's documentation and assure compliance.

Each contract which is exempted from the general prohibition in paragraph II must meet the requirements set forth in paragraph III below, including, but not limited to, the requirements of the Workforce Investment Act of 1998 "conflict of interest" provisions. However, since the proviso language for Specific Appropriation 2006 requires WFI to perform the review and approval process pertaining to regional workforce board contracts, WFI contracts shall not be subject those provisions of this policy pertaining to review and approval processes.

III) Requirements of Section 445.007.

A board must comply with all requirements of section 445.007 prior to contracting with a board member or other person or entity who could benefit financially from a contract (as defined in paragraph I(g) above). These requirements are:

- a) All contracts between the board and a board member or other person or entity who may benefit financially from a contract (as defined in paragraph I(g) above) must be approved by a two-thirds vote of the board when a quorum has been established and the approval of such contracts shall not be delegated to staff or committees.
- b) The fact that a board member or other person or entity could benefit financially from the contract (as defined in paragraph I(g) above) must be disclosed in the meeting, and made part of the minutes of the meeting before the vote is taken. The board member's absence from the meeting does not relieve the board from the disclosure and 2/3 vote requirements. All other known conflicts must be disclosed before the

vote. If a board member or employee discovers a conflict of interest after the vote, then the conflict must be disclosed in a procedure consistent with s. 112.3143(4)(b). Board members who could benefit financially from the contract or who have any relationship with the contracting vendor (as defined in paragraph I(f) above) must abstain from voting on the contract. A board member's designee cannot vote in the place of a board member who is required to abstain.

- c) Board contracts equal to or greater than \$25,000 shall not be executed prior to the written approval of WFI.
- d) The board must submit all contracts equal to or greater than \$25,000 with board members or other persons or entities who could benefit financially from the contract to the Department of Economic Opportunity ("DEO") along with documentation, as specified by this policy, demonstrating compliance with section 445.007.
- e) A contract under \$25,000 between a regional workforce board and a member of that board or between a relative of a board member or of an employee of the board is not required to have the prior approval of Workforce Florida, Inc. but must be approved by a two-thirds vote of the board, a quorum having been established, after full disclosure with the member's abstention and must be reported to DEO and WFI within 30 days after approval.
- f) Contracts with a board member or other persons or entities who could benefit financially from the contract (as defined in paragraph I(g) above) in which the board is receiving monies or other compensation (such as a board member paying rent to the board or paying for board services) are exempt from this policy.
- g) The term "contract" includes the initial contract and all amendments, renewals, or extensions. Renewals or extensions of contracts with a board member or persons or entities who could benefit financially from the contract must be approved under the same procedure as if the renewal or extension were an original contract. Any amendments to a contract which could benefit financially a board member or another person or entity (as defined in paragraph I(g) above) must be approved under the same procedure as if the amendment were an original contract. Any amendments which do not benefit financially a board member or other person or entity (as defined in paragraph I(g) above) may be approved by a regular majority vote where there is a quorum according to board rules and/or bylaws.
- h) All other requirements of section 445.007(1) must be met. For example, a board member must continue to disclose any conflict of interest in a manner that is consistent with the procedures outlined in s. [112.3143](#).
- i) In order to comply with the requirements of section 445.007, a board's policy shall advise and require board employees to disclose known conflicts of interest and notify the board of any contracts which may benefit them personally or their relatives. In order to comply with the requirements of section 445.007, a board's policy shall advise and require all parties to a contract to disclose all known conflicts of interest

and notify the board of all board members or other persons or entities known to benefit financially from the contract (as defined in paragraph I(g) above).

- j) A contract which is initially subject to the requirements of s. 445.007 due to a board member's, an employee's, an employee's relative's or another person's or an entity's conflicts of interest at the time of approving the contract is not subject to these procedures after the departure of the member from the board membership, the departure of the employee from the board's employ or other actions has removed the conflicts of interest.
- k) The above requirements do not eliminate or diminish the board's obligations to comply with Section 117(g) of the Workforce Investment Act of 1998 (Public Law 105-220) ("WIA") "Conflict of Interest" procedures.

IV) Review criteria.

Contracts equal to or greater than \$25,000 with a board member or other person or entity who could benefit financially from the contract (as defined in paragraph I(g) above) must be reviewed by DEO to ensure that these requirements have been met:

- a) The contract met one or more of the exemptions to the prohibition under Paragraph II
- b) The board approved the contract with a two-thirds vote of the board when a quorum has been established;
- c) Board members who could benefit financially from the contract or board members who have any relationship with the contracting vendor disclosed any such conflicts prior to the board vote on the contract; and
- d) Board members who could benefit financially from the contract or board members who have any relationship with the contracting vendor abstained from voting.

V) Required Documentation.

For each contract equal to or greater than \$25,000, the board must electronically submit after the board's approval of the contract a completed contract information form certified by the board chair as correct and true to workforcecontract.review@deo.myflorida.com containing the following information:

- a) Identification of all parties to the contract.
- b) Description of goods and services to be procured.
- c) Value of the contract, contract renewal or contract extension.
- d) Contract term
- e) Contract number or identifying information, if any
- f) Identification of board member or employee whose conflict of interest required the board's approval of the contract by 2/3 vote.
- g) The nature of the conflict of interest in the contract.
- h) A certified board membership roster listing all members on the board at the time of the vote on the approval of the contract with a vote tally indicating attendance or

absence at the meeting and for those in attendance, the affirmative and negative votes and abstentions for each member.

- i) Dated and executed conflict of interest forms, which are consistent with the procedures outlined in s. 112.3143, submitted at or before the board meeting, for board members who have any relationship with the contracting vendor (as defined in paragraph I(f) above)
- j) Other information as specified on the contract information form.

DEO and WFI will review this documentation to ensure compliance with the statutory requirements listed in paragraph III above. Failure to timely provide all required documentation or failure to complete the form shall result in immediate disapproval of the contract and require resubmission of documentation and form. DEO will electronically submit in writing to WFI within five (5) business days of receiving all of the required documentation its recommendation whether the statutory requirements were met. WFI will then electronically transmit in writing within three (3) business days after receipt of the DEO's written recommendation its approval or disapproval . The board may not execute the contract until WFI approves the contract.

VI) Request for Review When Contract Approval Is Denied.

A party to the contract may request a review of WFI's disapproval of a contract. Strict compliance with the following procedures is required.

- k) The request for review must be in writing, must state specific grounds for review, and must provide all information required for review of the stated grounds. Failure to state specific grounds may be cause for denial of the request without further review.
- l) The request for review must be received by WFI not later than ten (10) calendar days from the date of WFI's denial and may be submitted electronically to [identify name of electronic mailbox] or by any other means of delivery, i.e. mail service, hand delivery or facsimile. Any request for review that is not received by WFI within this timeframe will be rejected without further consideration.
- m) Within seven (7) calendar days of receipt, the WFI President or designee will issue a final decision on the request for review. The Chair of Workforce Florida or its Board of Directors may direct the President to present such reviews to the Executive Committee. No review under this policy will be presented to the WFI Board of Directors unless, at the discretion of the Chair, such full board review is deemed to be necessary.

VII) Effective Dates of Policy

- a) These modifications shall be in effect upon WFI's adoption at its May 24, 2012 Board of Directors meeting.

CONTRACT INFORMATION FORM

This form is to seek approval of a contract valued at \$25,000 or more involving a conflict of interest of board members or employees. All requested information is required. Failure to provide complete information may result in disapproval of the contract.

I, _____, hereby certify the following information regarding a contract that came before the _____ (Regional Workforce Board).

a. Identification of all parties to the contract: _____

b. Description of goods and services to be procured: _____

c. Value of the contract/renewal/extension: _____

d. Contract term: _____

e. Contract number or other identifying information, if any: _____

f. Identification of board member or employee whose conflict of interest required the board's approval of the contract by 2/3 vote.

g. The nature of the conflicting interest in the contract: _____

h. The board member with the conflict of interest was/was not present when the board voted to approve the contract.

i. A certified board membership roster listing all members on the board at the time of the vote on the approval of the contract with a vote tally indicating attendance or absence at the meeting and for those in attendance, the affirmative and negative votes and abstentions for each member.

j. Dated and executed conflict of interest forms, which are consistent with the procedures outlined in s. 112.3143, submitted at or before the board meeting, for board members who have any relationship with the contracting vendor (as defined in paragraph I(f) of the Workforce Florida, Inc. contracting policy.)

I certify that the information above is true and correct.

Date filed

Signature of Board Chair*
or designee of the Board

* Must be certified and attested to by the Board Chair or designee of the Board.

**DISCLOSURE OF BOARD MEMBER’S OR EMPLOYEE’S
CONFLICT OF INTEREST IN THE CONTRACT**

I, _____, am a board member / an employee of the board (circle one). I hereby disclose that:

I could benefit financially from the following contract (provide name of parties to contract and description of the contract):

I could benefit financially from the contract in the following manner:

“Benefit financially from a contract” means the special private financial gain to a member, a special private financial gain to any principal which retains the member, the special private financial gain of the parent organization or subsidiary of a corporate principal which retains the member or the special private financial gain to any member’s relative or business associate or to a board employee and such benefit is not remote or speculative.

Date filed

Signature of Board Member/Employee

NOTICE: CONFLICTS OF INTEREST REGARDING BOARD MEMBERS AND BOARD EMPLOYEES MUST BE DISCLOSED PRIOR TO THE BOARD’S VOTING TO APPROVE THE CONTRACT; BOARD MEMBERS WHO BENEFIT FINANCIALLY OR WHO HAVE A RELATIONSHIP WITH THE CONTRACTING VENDOR MUST ABSTAIN FROM THE VOTE, AND THE CONTRACT MUST BE APPROVED BY A 2/3 VOTE OF THE BOARD WHEN A QUORUM HAS BEEN ESTABLISHED. COMPLETION OF THIS FORM DOES NOT IN ANY WAY SUPERCEDE OR SUBSTITUTE FOR COMPLIANCE WITH CONFLICT OF INTEREST DISCLOSURE REQUIREMENTS OF SECTION 112.3143, FLA. STAT. OR SECTION 117(g), WIA.

CONTRACTOR DISCLOSURE AND CERTIFICATION

For purposes of the contract between _____ (Regional Workforce Board) and _____ (contractor), the following disclosure is made:

The principals* and owners** of the contracting entity:

____ have no relative who is a member of the board;

____ have a relative who is a member of the board, whose name is _____.

There is / is not (circle one) a principal or owner who is a member of the board. If applicable, the principal's or owner's name is _____.

There is / is not (circle one) a principal or owner who is an employee of the board. If applicable, the principal's or owner's name is _____.

* "Principal" means an owner or high level management employee with decision-making authority.

**"Owner" means a person having any ownership interest in the contractor.

I hereby certify that the information above is true and correct.

Date filed

Signature of Authorized Representative

Printed Name

Title