

The following are questions and answers related to the revised WFI contracting policy. These answers are intended to offer guidance relative to the general understanding of the policy and should not substitute for your own independent review of particular contracting circumstances within your own workforce region. Please also note that current state and federal conflict of interest procedures continue to apply in all circumstances and that federal procurement requirements in 29 CFR 97.36 also continue to apply in all contracting situations.

1. *Where can I find a word version of the revised WFI contracting Policy?* See [attached](#) file.
2. *What is WFI's position about contracts already in place with companies that have workforce board members as employees that were not required to be submitted to AWI and WFI for review and approval (i.e., public agencies)? Are they grandfathered in? If so, for what period of time? If no grandfathering provisions are available, what action must be taken, if any, with these board member companies and contracts between now and the next scheduled board of directors meeting where the RWDB will discuss and decide whether to vote for any exemptions to WFI's new policy?* If the contract was in place before 8/18/11 when the revised WFI contracting policy was adopted, the previous WFI policy, and the s. 445.007, F.S. and WIA conflict of interest provisions apply. The federal procurement requirements in 29 CFR 97.36 (USDOL) and 45 CFR 74.42 (DHHS) also apply. If all of these provisions were followed, the contract may continue. However, if legal requirements were not followed, you should consult your legal counsel about appropriate steps to take.
3. *If the RWDB does not vote to exempt a board member with a current contract, does WFI/AWI recommend that the contract be cancelled?* We do not understand this question. The policy has no provision requiring that or referring to a board voting to exempt a board member from a current contract. See also response to 1 above in the event it applies.
4. *If so, what cancellation process we should follow and what contract close out costs are allowable? How immediate must the effective date be of this contract cancellation? What written guidance can you provide on this potential?* See response to 2 above.
5. *What expectations does WFI have in regard to the procedures and actions a RWDB must take to identify a board member's relative that might benefit financially from a procurement action by a RWDB? If staff are not aware of a potential conflict, what action(s) does WFI expect the RWDB to take to ensure compliance with your policy?* It is expected that the RWDB staff will follow established conflict of interest disclosure procedures that should require the board or staff member to fully disclose any conflict by themselves or a relative and to certify that disclosure. *Can we rely on a board member's self-disclosure if a contract comes before the board or must we be more proactive and collect names of relatives and places of employment on an annual basis?* Self-disclosure is acceptable. The disclosure document should be certified to by the board or staff member. It is recommended that training on these procedures be provided on a regular basis for both board and staff members.
6. *A response to the same questions posed in #5 is requested for family members of staff who could benefit financially from a contract.* See answer provided to question #5.
7. *The WFI policy defines the term "contract" to not include retail purchases for which no written contract is executed. Please clarify what WFI and AWI intend to include in "retail" purchases.* In general, retail means the sale of goods individually or in small quantities to consumers. In a retail sale situation there normally would not be a contract executed. An example might be purchasing a one-time need for a small quantity of copy paper at Wal-Mart or a local office supply company needed because the local one-stop center ran out. *Is it any item that is sold "off the shelf" to the general public?* No. "Off the shelf" is a term commonly used that

describes a product or service available to the general public and whose price has already been established by the market for that product or service. It does not mean or imply a “retail purchase”.

8. *It appears that WFI’s new policy modification no longer defines purchase order as a contract; is that an oversight or intentional?* WFI has advised that the omission of purchase order in the definition of “contract” was intentional. However, please be mindful that federal procurement requirements as well as state and federal conflict of interest provisions would still apply. Procurement through the use of purchase orders should not be used to avoid state and federal requirements applicable to procurement and contracting.
9. *This policy requires RWDBs to refrain from contracting with companies that have board members or board member relatives as employees (those that can benefit financially from a contract) but does not address what actions must be taken if there is a conflict of a staff member or a staff member’s relative. Is a self-declaration of this conflict and removal from the selection and contract management process sufficient or does this apparent or potential conflict requires the RWDB to refrain from contracting with that company?* The revised WFI contracting policy does not prohibit contracting with a staff member or a staff member’s relative. Conflict of interest requirements apply and the staff member must fully disclose any conflict and not participate in any procurement, selection, or contracting procedures or contract management process associated with the contract for which there is a conflict. Federal procurement requirements as well as state and federal conflict of interest provisions would still apply.
10. *If a Board Member is a subcontractor to an entity that has a contract with the board, does that create an issue with the Member being on the board?* The revised WFI policy effective 8/18/11 does not require that board members resign from the board. It prohibits certain contracts; not board membership. If a member has “any relationship with the contracting vendor”, the contract is prohibited unless an exemption applies. A subcontractor would have a relationship with the vendor. Thus, the board cannot enter the contract unless an exemption applies. See II)a)-d) of the WFI Revised Contracting Policy.
11. *If Board Member's Employer is responding to a current RFP, does he or she need to step off the board before sending in a proposal?* See answer above. Employment is a relationship with the vendor. Contract is allowable only if an exemption applies. If exemption a), b) or d) applies to allow the contract, the board member could not personally benefit financially from the contract. The board member would need to disclose the relationship, abstain, and refrain from any participation in the procurement.
12. *How does a Workforce Board establish a "board member does not personally benefit from" a contract?* We recommend a sworn certification from the vendor and the member that the member will not personally benefit from the contract.
13. *We submitted our contract with the School Board. Is the review of that contract not required because the contract was submitted before July 1, although the effective date of the contract is July 1, 2011- 2012?* If the contract was in place before 8/18/11 when the revised WFI contracting policy was adopted, the previous WFI policy, and the s. 445.007, F.S. and WIA conflict of interest provisions apply. The previous WFI contracting policy exempted contracts with an “agency” as defined by section 112.312 (2), Florida Statutes from the 2/3 vote requirement. The federal procurement requirements in 29 CFR 97.36 (USDOL) and 45 CFR 74.42 (DHHS) also apply. If all of these provisions were followed, the contract may continue and the board member may remain on the board. However, if legal requirements were not

followed, you should consult your legal counsel about appropriate steps to take. Under the revised contracting policy, which became effective August 18, 2011, contracts with an “agency” as defined by section 112.312 (2), Florida Statutes, are allowed at the board’s discretion, as an exception from the general prohibition against contracting with a board member. If the board exercises its discretion to enter into a contract with an “agency,” such contract would be subject to the disclosure, abstention, and 2/3 vote requirements outlined in the policy. And if the contract is equal to or greater than \$25,000, it must be submitted to AWI for review and WFI for approval.

14. *The Board enters into what basically is a non financial agreement with all schools. It spells out how schools will be paid, drop policies, performance and other requirements. However we never know how much money will be spent at any school because of customer choice. Do you feel these agreements fall under the contract policy of WFI requiring state approval (although actually the state has to approve every school and course on the ETPL because of other WIA requirements).* The WFI contracting policy does not exclude agreements with training/educational institutions that regional workforce boards enter into with a training/educational institution included on the local Eligible Training Provider List and for which eligible applicants choose from when selecting a training/educational provider. Although we understand that there is no way to determine the total amount of funds that may eventually be paid to the provider, we would recommend that these agreements that are with a related party on your board be subjected to the 2/3 vote requirement and submitted to the Department of Economic Opportunity for review.
15. *The Regional Board has no “contract” but intends to make a number of purchases, each purchase being less than \$25,000, from a vendor by a form identified on the contract information form as a “Purchase Requisition.” Although each purchase may be less than \$25,000, the total amount of purchases from this vendor for this fiscal year are expected to exceed the \$25,000 threshold.* Since the planned purchases with this vendor, which are to be made through written purchase requisitions, are expected to exceed the threshold of \$25,000 and do not meet one of the exclusions to the definition of “contract” listed in the WFI Contracting Policy, the purchase would be subject to the 2/3 vote requirement and review by the Department and WFI.