

Mr. Carroll Gentry, Chair  
Western Virginia Workforce Investment Board  
C/o Tanglewood Estate Rentals  
Post Office Box 21171  
Roanoke, Virginia 24018

Dear Mr. Gentry:

Workforce Development Services (WDS) of the Virginia Community College System conducted a required compliance review for the American Recovery and Reinvestment Act (ARRA) Summer Youth Program for Local Workforce Investment Area III, the Western Virginia Workforce Development Board (WVWDB). The purpose of the review was to determine whether procedures were in place to ensure compliance with the ARRA, and to identify areas in which technical assistance is needed to ensure continuous improvement.

The review was primarily conducted at the office of the WVWDB located in Roanoke, Virginia with the assistance of Ms. Doloris Vest, President, and staff. The Summer Youth Program was reviewed at Goodwill, Total Action Against Poverty and Local Union 980. The report addresses administrative concerns that are issues which future federal and state reviews could determine as noncompliant and findings that are issues that have been determined out of compliance with local, state and federal policies and regulations.

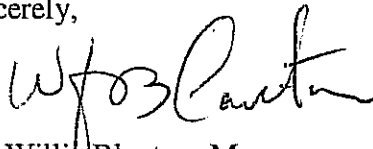
The response of the WVWDB for Finding Number 1 addressed the probability of future questioned costs associated with the PY2009 WIA contract, but fails to provide a proposed corrective action to ensure future compliance. The WVWDB disputes Finding Number 2 to which the State has responded refuting the Board's position based on the documented facts supporting the finding (see State's response). Additionally, the State also rejects what appears to be a proposed corrective action plan for Finding Number 2. The WVWDB must submit a revised corrective action plan to adequately address the findings where the WVWDB's proposed corrections have been determined to be insufficient, therefore rejected by the State. The revised corrective action plan must be submitted to Ms. Deborah Hensley within thirty days of receipt of this report. The revised corrective action plan will be reviewed upon receipt and the WVWDB will be advised whether the proposed action plan is sufficient to ensure future compliance with ARRA/WIA mandatory competitive procurement regulations.

Additionally, this report and all documentation regarding Finding Number 2 resulting in questioned costs will be resolved under the review and resolution process mandated by WIA/ARRA based on violation of the statutes, regulations, policies, or other requirements governing the use of WIA/ARRA funds with appropriate notification to the WWWDB. (20 CFR 667.500(a)).

If you have any questions or need further assistance regarding the report, please do not hesitate to contact Deborah Hensley, at (540) 674-3653 or via email at [dhensley@vccs.edu](mailto:dhensley@vccs.edu).

WDS is pleased to have had this opportunity to be of assistance in ensuring the continued success of the Western Virginia Workforce Development Board.

Sincerely,

A handwritten signature in black ink, appearing to read "W Blanton". The signature is fluid and cursive, with the first name "W" being particularly large and stylized.

Mr. Willie Blanton, Manager  
Workforce Development Services

Enclosure

cc:

Ms. Doloris Vest, President, WWWDB

Mr. Peter Blake, Vice Chancellor, Virginia Community College System

Ms. Deborah Hensley, WS Consultant

**American Recovery and Reinvestment Act of 2009 Review  
Summer Youth Program  
Local Workforce Area III  
Western Virginia Workforce Development Board  
Prepared by Deborah Hensley, Workforce Services Consultant  
(August 12-14, 2009)**

**BOARD YOUTH REVIEW**

A review of the Western Virginia Workforce Development Board's (WVWDB) implementation of the American Recovery and Reinvestment Act (ARRA) Summer Youth Program was conducted including implementation strategy and focus, outreach, recruitment, and worksite placement process, as well as expected registration/enrollment numbers for youth participants.

No deficiencies were noted.

**YOUTH SUMMER PROGRAM REVIEW**

The WVWDB executed a Memorandum of Understanding (MOU) as the mechanism for implementing the ARRA Summer Youth Program in LWIA III. The MOU is an agreement between the WVWDB and Goodwill Industries of the Valleys (Goodwill), Total Action Against Poverty (TAP), and Local Union 980 for provision of ARRA youth services.

Participants were selected and interviewed at multiple worksites with concurrent interviews with worksite supervisors to determine compliance with required regulations and policies. Information was collected to ensure compliance with the 5% income exempt criterion specified in Title 20 Code of Federal Regulations (CFR) Section 664.220. A sample of youth case files was selected for review from the Virginia Workforce Connection System (VaWC) to determine compliance with ARRA youth eligibility, services and performance requirements. The WVWDB implemented a pre-apprenticeship program which was featured in the U.S. Department of Labor ETA Newsletter and the Virginia Workforce Council's Newsletter.

No deficiencies were noted.

**FINANCIAL REVIEW**

The City of Roanoke is the grant recipient and fiscal agent for LWIA III. The WVWDB's fiscal system was reviewed to ensure separate accounting for the ARRA grant. Cost principles, budget management, fiscal reporting, and procurement were reviewed. WVWDB has adopted the City of Roanoke's (Grant Recipient) procurement policy, which complies with WIA and the Virginia Public Procurement Act (VPPA).

ARRA financial transactions were reviewed for the Summer Youth Program and information was collected to ensure compliance with the 30% out-of-school youth requirements specified in 20 CFR Section 664.320, as well as documentation to support the appropriate management of incentive payments for youth, according to State Field Guidance Memorandum 05-03. The review resulted in the following findings.

**Finding Number 1**

The PY2008 WIA services contract was awarded through competitive procurement to Goodwill in the amount of \$810,000. The PY2008 contract for the period of July 1, 2008 through June 30, 2009 was for the One-stop Operator, adult, dislocated worker, and youth services. The WVVWDB has adopted the City of Roanoke's (Grant Recipient) Procurement Policy for administration of WIA. The WVVWDB requested and received technical guidance from the Roanoke City's Procurement Department that the existing contract could be increased up to 25% of the contract amount (award). On May 15, 2009, the WVVWDB increased the PY2008 contract to \$910,000 adding \$100,000 ARRA funds. On June 25, 2009, the WVVWDB renewed the WIA contact with Goodwill effective July 1, 2009 through June 30, 2010 increasing the existing \$810,000 contract by \$782,116 for a contract of \$1,592,116 for PY2009.

An increase of 25%, or \$202,500, to the PY2008 contract of \$810,000 was allowable; therefore, the \$100,000 increase was within the allowable limit and complies with WIA/ARRA requirements. The contract increase with the renewal of the existing \$810,000 contract effective July 1, 2009 in the amount of \$1,592,116 is a 96% increase exceeding the allowable 25% by \$579,616 ( $810,000 + 202,500 = 1,012,500$ ).

As of December 4, 2009, the total expenditures for the PY2009 Goodwill contract are \$662,487.76, according to WVVWDB financial documentation, and are within the allowable 25% limit, or \$1,012,500. All costs/expenditures exceeding the allowable limit for the PY2009 contract will be questioned costs.

**Criteria:**

**20 CFR Sec. 667.200 What general fiscal and administrative rules apply to the use of WIA title I funds?**

(a) Uniform fiscal and administrative requirements. (1) Except as provided in paragraphs (a)(3) through (6) of this section, State, local, and Indian tribal government organizations that receive grants or cooperative agreements under WIA title I must follow the common rule "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments" which is codified at 29 CFR part 97.

**29 CFR Part 97—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments-- Subpart C--Post-Award Requirements  
Sec. 97.36 Procurement**

(a) States. When procuring property and services under a grant, a State will follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Other grantees and subgrantees will follow paragraphs (b) through (i) in this section.

(b) Procurement standards. (1) Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.

**Virginia Public Procurement Act (VPPA)**

**§ 2.2-4309. Modification of the contract.** -- A. A public contract may include provisions for modification of the contract during performance, but no fixed-price contract may be increased by more than twenty-five percent of the amount of the contract or \$50,000, whichever is greater, without the advance written approval of the Governor or his designee, in the case of state agencies, or the governing body, in the case of political subdivisions. In no event may the amount of any contract, without adequate consideration, be increased for any purpose, including, but not limited to, relief of an offeror from the consequences of an error in its bid or offer.

**(WVWDB Adopted Policy)**

**Roanoke City Procurement Manual**

**Section 10.12 Modifications and Change Orders.**

A public contract may include provisions for modification of the contract during performance, but no fixed-price contract may be increased by more than 25% of the original amount of the contract or \$50,000, whichever is greater, without the advance written approval of the City Council {City Charter § 42; §2.2-4309(A),VPPA}. This limitation applies to the aggregate change orders in a contract. The modification of a purchase order or contract can only be authorized by the appropriate purchasing official. To change a purchase order, the department must contact the Purchasing Division. All change requests should be evaluated by the Buyer for contract validity and price reasonableness. A contractor shall not be notified that a change has been approved until that change has been authorized by the appropriate purchasing official. Contractors who deviate from the requirements of a purchase order/contract prior to receipt of an authorized change order do so at their own risk {§ 2.2-4309,VPPA}.

**20 CFR Sec. 667.705 Who is responsible for funds provided under title I of WIA?**

(a) The recipient is responsible for all funds under its grant(s).

(b) The political jurisdiction(s) of the chief elected official(s) in a local workforce investment area is liable for any misuse of the WIA grant funds allocated to the local area under WIA sections 128 and 133, unless the chief elected official(s) reaches an agreement with the Governor to bear such liability.

**Recommendations:** The PY2009 contract increase exceeds the allowable 25% limit and does not comply with WIA and ARRA competitive procurement requirements. The WVWDB must implement a corrective action plan to ensure future compliance with WIA and ARRA competitive procurement requirements.

The total expenditures for the PY2009 contract as of December 4, 2009 are \$662,487.76 and are within the allowable limit. All expenditures exceeding the allowable \$1,012,500 will be questioned costs and will be evaluated during the upcoming PY2009 State monitoring cycle.

**WVWDB's (Agency) Response:** *In renewing its PY2008 WIA services contract with Goodwill Industries of the Valleys for PY2009, the Western Virginia Workforce Development Board, referenced the "contract renewals and extensions" section of its*

*procurement policies. This section provides for exceptions if contained in the original contract. The original based renewal funding on funding availability. This report indicates the renewal was instead governed by procurement policies pertaining to "contract modifications."*

*Corrective Action The WIA services contract with Goodwill Industries of the Valleys (effective July 1, 2008 and renewed effective July 1, 2009) was capped at \$1,012,500 effective Jan. 8, 2010. On Jan. 12 the board issued a Request for Proposals to provide WIA services in concurrence with appropriate local, state and federal regulations commencing on or about February 1, 2010. On February 10, 2010, the board awarded a new contract for \$709,082 to Goodwill Industries of the Valleys to provide WIA services February 1 – June 30, 2010.*

State's Response to WVVWDB's Response: The response states that the WVVWDB based the contract increase on the "contract renewal and extension" procurement policy section and the "renewal funding on funding availability" clause in the original contract rather than the contract modification procurement section cited in the finding. In the interest of clarification, a State response is warranted.

Sections 10.13 "Renewal and Extension" and 13.3 "funding availability" policy sections used by the WVVWDB stipulate that no additional consideration (price increase) shall be made unless included in the original contract and that contracts that contain an option for renewal must contain the "availability of funds" clause unless the multi-year contracts are fully funded at award.

The WVVWDB's WIA contract does not specify price increases or price adjustment criteria, such as CPI or PPI, as required in both policy sections; therefore, the contract could not be increased under this criterion. The "availability of funding" clause is required when a contract is issued with a renewal clause and the multi-year contracts (renewal option) are not "fully" funded at award, which is common for WIA contracts due to allocation cycles. This clause has no bearing on contract increases and does not specify that an existing contract (award amount) can be increased with all of the funds that the WIB has available at the time of contract renewal.

The finding of fact supports that the 96% increase to the existing contract of \$810,000 was not a price adjustment but an increase in the volume/quantity of services purchased, or contract increase, resulting in a "contract modification" that must comply with the contract increase limit in Section 10.12. Also, the evidence provided during the review supports that WVVWDB's 96% increase to the PY2009 contract occurred after receipt of guidance from the Roanoke's Procurement Department that an increase to the PY2008 contract was limited to 25%.

A 96% increase to an existing contract without another solicitation (RFP) for competition clearly violates the WIA/ARRA competitive contract requirement and reflects a deficiency in knowledge and/or acceptance of the basic principle of competitive procurement required for ARRA and WIA.

The WVVWDB's corrective action on the PY2009 contract has adequately addressed the issue of possible future questioned cost associated with this contract; however, the Board did not provide a proposed corrective action to ensure future compliance.

#### City of Roanoke Procurement Manual

10.13 Contract Renewal and Extension. a. Renewal. A term contract may contain a renewal clause describing the conditions under which it may be renewed for a stipulated period of time. However,

no contract may be renewed and no additional consideration may be paid unless specifically provided for in the original contract. Often indices such as the applicable Consumer Price Index (CPI) or Producer Price Index (PPI) are used as a benchmark in pricing renewal options and assist in determining price reasonableness. Price increases should not be given automatically at renewal. It is the responsibility of the contractor to request a price increase, if desired, up to the amount authorized by the index referenced in the contract. The Purchasing Division, together with the end user department, may then negotiate the amount of the increase up to the indexed amount. b. Extension. The City may extend the term of an existing contract for services (or goods) to allow completion of any work undertaken but not completed during the original term of the contract. No additional consideration exceeding the contracted price may be paid to the contractor. This action should be taken in writing prior to the expiration of the current contract. {§ 2.2-4309 (B and C), VPPA}

13.3 Contract Period. Term contracts normally cover a 12-month period or cite a specific time for completion for the project or service. A solicitation for a multi-year contract, or one that includes an option to renew the contract for an additional period, may be advantageous and should be considered; however, in determining the value of the contract and procurement method, all possible renewal periods must be included. Multi-year programs are usually subject to availability of funds, and each solicitation covering a multi-year period must contain an availability of funds clause unless it is fully funded. If price adjustments are to be permitted during the contract period, the conditions under which they are authorized must be specified in the original solicitation and resulting contract. Departments should review all multi-year contracts at least annually to determine if the goods or services are still required, if prices are fair and reasonable based on the current market conditions, and if performance is satisfactory. Multi-year contracts including options to renew normally should not exceed five (5) years.

**Finding Number 2:**

On May 15, 2009, the WWWDB executed a MOU as the mechanism for implementing the ARRA Summer Youth Program. The MOU between the WWWDB, and Goodwill, TAP, and Local Union 980 outlines the services to be provided for the ARRA Summer Youth Program. The MOU specifies that costs for services provided by TAP and Local Union 980 will be reimbursed through the existing WIA contract with Goodwill and the WWWDB will reimburse Goodwill. The WWWDB has not awarded TAP or Local Union 980 competitive contracts and TAP and Local Union 98 are not subcontractors providing youth services under the existing PY2008 and PY2009 competitive contracts with Goodwill.

The MOU does not meet the competitive contract requirements for ARRA. (WIA Sec. 123; 20 CFR §667.200 & §664.405; Title 29 CFR Part 97;VPPA). Payments to TAP of \$25,956.75 and payments to Local Union 980 of \$12,016.02 as of February 1, 2010 are not allowable. The total questioned costs under this agreement are \$37,972.77.

On October 1, 2009, a second MOU was executed between Goodwill and TAP for the period of October 1, 2009 through March 31, 2010 for the extended Summer Youth Program for older youth. The MOU outlines the partnership between Goodwill and TAP specifying the services each partner will provide. The MOU is not signed by the WWWDB; however, the Board minutes dated

September 24, 2009 record, under the Staff Report, the Board's knowledge of the ARRA services provided after September 1, 2009 for the extended ARRA Summer Program. The January 28, 2010 Board minutes record the vote of the Executive Committee to reimburse Goodwill for all payments made to TAP under this agreement.

The second MOU also does not meet the competitive contract requirements for ARRA. The WVWDB has not awarded TAP a competitive contract and TAP is not a subcontractor in the PY2009 competitive youth contract with Goodwill. Payments to TAP as of February 1, 2010 of \$5,947.85 are not allowable. The total costs of \$43,920.62 for the two agreements are questioned costs.

The WVWDB's PY2008 and PY2009 youth contracts with Goodwill specify summer youth employment services; therefore, the youth services provided by Goodwill funded by ARRA are allowable.

**Criteria:**

**P.L. 105-220 (WIA) SEC. 123. IDENTIFICATION OF ELIGIBLE PROVIDERS OF YOUTH ACTIVITIES.**

From funds allocated under paragraph (2)(A) or (3) of section 128(b) to a local area, **the local board for such area shall identify eligible providers of youth activities by awarding grants or contracts on a competitive basis**, based on the recommendations of the youth council and on the criteria contained in the State plan, to the providers to carry out the activities, and shall conduct oversight with respect to the providers, in the local area.

**U.S. Department of Labor Training and Employment Guidance Letter 14-08, March 18, 2009- Guidance for ARRA Implementation**

**D. Procurement**

Per WIA regulations at 20 CFR 664.610 chief elected officials and LWIBs are responsible for ensuring that the local youth program provides summer employment opportunities to youth. The chief elected officials are the grant recipients for local youth funds, unless another entity is chosen to be the grant recipient or fiscal agent. **The grant recipient/fiscal agent has the option of administering summer youth employment opportunities themselves. If providers other than the grant recipient/fiscal agent are used to provide summer employment, these providers must be selected by awarding a grant or contract on a competitive basis.** If necessary, states and local areas should explore expedited or emergency procurement processes that may be available under current state and local law, provided that these processes comply with OMB requirements codified in 29 CFR Parts 95.40-95.48 and 97.36.

**20 CFR Sec. 667.200 What general fiscal and administrative rules apply to the use of WIA title I funds?**

**29 CFR Part 97—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments-- Subpart C--Post-Award Requirements  
Sec. 97.36 Procurement**

**WIA Subtitle E—Administration Section 181 Requirements and Restrictions**

(b) Labor Standards (7) No impact on union organizing.--Each recipient of funds under this title shall provide to the Secretary assurances that none of such funds will be used to assist, promote, or deter union organizing.

**Recommendation:** Memorandums of Understanding do not meet the ARRA competitive procurement requirements for the purchase of Summer Youth services. The WVVWDB must implement a corrective action plan to ensure future compliance with mandatory competitive procurement requirements. The WVVWDB is advised that the CLEOs are responsible for compliance with ARRA/WIA and bear the ultimate liability for any ARRA costs. The WVVWDB may wish to consider utilizing the City of Roanoke's (Grant Recipient) Procurement Department or at a minimum the Board must acquire the necessary technical expertise to comply with ARRA/WIA competitive contract requirements.

As of February 1, 2010, the total costs of \$43,920.62 are questioned costs. All payments to TAP after February 1, 2010 will result in additional questioned costs and will be reviewed during the PY2009 State monitoring cycle.

WIA Section 181(b) (7) specifying that funds cannot be used "to assist, promote, or deter union organizing" is provided for future guidance to the WVVWDB.

**WVVWDB's (Agency) Response:** *At the behest of the Western Virginia Workforce Development Board, staff worked with Goodwill Industries of the Valleys, TAP This Valley Works and Labor Local #980 to provide ARRA Youth Summer Employment Services. During implementation staff failed to ensure Goodwill adhered to appropriate competitive procurement for subcontracted services with TAP and Local #980.*

**Corrective Action:** *This mistake occurred through lack of attention to detail. The board assures the state that there was no intent to circumvent procurement processes in conducting the ARRA summer youth program. An internal review of every expenditure and/or transaction shows no funds were used in any manner inconsistent with those allowed by the program. This was confirmed by the state monitor.*

*The summer programs proved to be extremely successful with more than 125 participants, including 12 in a construction pre-apprenticeship program. Ten percent of participants gained unsubsidized employment at the end of the program period.*

*The board assures the state that such problems will not be repeated. Staff will seek technical assistance from City of Roanoke, the Commonwealth of Virginia and the U.S. Department of Labor as appropriate to ensure proper procurement processes are followed. Additionally the Board's program manager attended a U.S. Department of Labor fiscal policy training conference Jan. 25-27 in Philadelphia to enhance staff knowledge and understanding of procurement. Staff will share as necessary and appropriate technical assistance to any and all contractors concerning proper execution of its contract and agreements.*

**State's Response to the WVVWDB's Response:** The WVVWDB refutes the finding stating that "During implementation staff failed to ensure Goodwill adhered to appropriate competitive procurement for subcontracted services with TAP and Local #980". The WVVWDB's written

response to the finding contradicts the verbal agreement with the finding by the Executive Committee during the exit conference conducted on February 3, 2010.

The existence of the two MOUs and the documentation from the review do not support the WVVWDB's response to the finding as factual. The finding of fact supports that although the WVVWDB is not the grant recipient and fiscal agent, the Board administered the ARRA Summer Youth Program by executing a MOU (agreement) specifying the purchase of ARRA youth services from three service providers using the existing WIA contract, rather than direct payment from the Board, as the payment mechanism for payments to TAP and the Local Union 980. The youth services provided by Goodwill as one of the ARRA service providers specified in the MOU are allowable by default because the existing WIA contract with Goodwill is a "competitive" youth contract meeting the contract requirement of ARRA (within the contract increase limit specified in Finding Number 1). The evidence compiled during the review does not support the WVVWDB's position that competitive procurement of ARRA services by Goodwill under the existing WIA contract was the mechanism utilized by the Board for the purchase of ARRA youth services. The questioned costs are not costs associated with or the result of the Goodwill WIA contract, but are cost incurred under the MOUs (agreements) that fail to meet the competitive procurement requirements of ARRA/WIA.

The WVVWDB refutes the facts upon which the finding is based but provides what appears to be a corrective action plan. This includes staff attendance at one federal training session and staff seeking technical assistance "as appropriate" from Roanoke City, the State and the DOL to ensure future compliance. Extensive technical assistance was provided to the WVVWDB by the State as part of the ARRA implementation in Virginia and technical assistance was sought and provided by Roanoke City for the WIA PY2008 and PY2009 WIA contract increases with ARRA funds, but neither resulted in compliance with WIA/ARRA. The proposed corrective action is insufficient to ensure future compliance with the mandated competitive procurement requirement in both Finding number 1 and Finding number 2.