**Section 2630.105 Fixed Unit Price Contracting**

a) Fixed Unit Price/Performance Based Contracts

1) Fixed unit price/performance based contracts are allowable provided the costs are charged to the cost category benefiting from such costs. The requirements specified in (a)(2), as a minimum, must be met for each contract.

2) Fixed unit price contracts are required to outline all elements of the contract. Each fixed unit price contract must list and separately price each program activity included. Comprehensive service contracts are acceptable as long as each program activity is outlined and has a separate unit price. Minimally acceptable requirements for each activity must be developed at the local level and identified in contracting procedures. Any program activity under the Act is allowable as a deliverable under such contracts.

b) Payments to Subrecipients Under Fixed Unit Price Contracts

1) When seeking reimbursements from the grantee, a subgrantee must submit the following reports:

A) A performance report which identifies the participant's name, the social security number of participants, the program activities, the benchmarks achieved and the total reimbursement claim for the performance.

B) An expenditure report which identifies the various costs and the categories to which that total claim is to be charged.

2) Full payment of the fixed unit price contract is made only upon completion of a program activity.

3) Benchmark payments may be under fixed unit price contracts only after the participant has received some level of properly documented service. The criteria required to document the attainment of such benchmarks must be specified in the contractual agreement. Payment of benchmarks may not be more than the estimated cost of all activity increments and the subtotal of all benchmark payments prior to completion of the activity must be not more than the total costs associated with the operation of the contract.

4) In order to qualify as a fixed unit price contract, a minimum level of contract performance to be attained must be specified in the contractual agreement. A level of performance below this threshold would constitute a failed contract and the profits (excess revenues) attributed to the agreement must be paid back to the grantee.

c) Revenue in Excess of Costs or Profits for Public or Private Non-Profit Contractors

1) Revenues earned by public or private non-profit subgrantees which are in excess of costs must be treated as program income. These funds must be used in accordance with the provisions of 627.450 of the JTPA regulations. Subrecipients must comply with accounting and recordkeeping requirements specified in the Act and the JTPA federal regulations so that the amount of the program income can be determined.

2) Fixed unit price contracts must identify the costs of program activity, the amount of program income allowable, and the method of disposition of the program income. Program income recaptured by the grantee must follow the guidelines of 627.450 of the federal JTPA regulations. Program income must be treated the same as other funds in a contractual agreement and are subject to the same audit requirements. Program income may be used to pay for required audits.

3) Purchases of non-expendable personal property are allowable only if agreed upon in the contract negotiations and contract budget and are specific as to amount and type of cost. The State retains title to all personal property purchased with program income.

4) For-profit subsidiaries of not-for-profit organizations which enter agreement pursuant to the requirements of this Section shall be considered wholly owned subsidiaries of and maintain the same not-for-profit status as the parent organization.

5) When program income (or revenues in excess of costs) is earned by a subgrantee, the grantee may allow the subgrantee to retain the profits and utilize profits to further JTPA objectives in accordance with an established contract, or require that all program income earned by the subgrantee be returned to the grantee. Following are recordkeeping and accounting requirements for each of these options.

A) The grantee may allow the program income to be retained by the subgrantee. The subgrantee may use these profits to conduct additional fixed unit price contract activities or non-fixed unit price type of contracting activity in accordance with provisions of this Section, the Act and U.S. DOL regulations.

i) All program income must be accounted for separately, by contract, program year, and title, at the subrecipient level. At the end of the contract, the program income must be reported to the grantee.

ii) At the end of the program year, contract period, or the grantee's established close-out date, whichever is appropriate, a "contract close-out" showing the amount of program income earned must be submitted to the grantee for each contract. Subsequently, audited financial statements must be obtained by the grantee to confirm the final expenditures as reported on the close-out. The audits must be performed in accordance with "Government Auditing Standards, Standards for Audit of Governmental Organizations, Programs, Activities, and Functions" (1988 revision, issued by the Comptroller General of the United States, United States General Accounting Office and for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20401, stock number 020-000-00243-3) and the "Compliance Supplement for Single Audits of State and Local Governments" (April 1985, issued by the Executive Office of the President, OMB and for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402).

iii) Before proceeding to expend program income, the subgrantee must receive written permission from the grantee under the provisions of a contract.

iv) The program income may be expended by the subgrantee on an ongoing basis throughout the term of the original contract or in accordance with grantee policy. However, in any case, the provisions of 20 CFR 627.450 must be met. If the subgrantee is allowed to expend the program income on an ongoing basis, the original contract must specify the scope of work to be achieved by the expenditure of the program income.

v) At the subgrantee level, GAAP fund accounting practices must be followed. Costs that benefit more than one contract (cost objective) must be allocated between the benefitting contracts according to the provisions of this Part. All costs charged against the original contract or the expenditure of the program income must be in accordance with the provisions of the Act, this Part, and applicable policies.

vi) The grantee must implement a tracking mechanism that will identify and track the amount of program income earned and the amounts expended by each subgrantee, by contract and by title.

vii) If a subgrantee that generated the program income is not selected to provide services in a subsequent program year, the unexpended program income must be returned to the grantee.

viii) The program income earned by subgrantee on a fixed unit price contract is to be reported to the Department by the grantee in the grant close-out report.

ix) All program income must be expended in accordance with 20 CFR 627.450 and Section 165(d)(2) of the Act.

x) All non-expendable property procured with the program income will be JTPA property, to be tagged with Department tags. Property records must be maintained by the grantee.

xi) All participants served with the expenditure of program income must be tracked according to the management information system reporting requirements established by the Department.

B) With regard to program income or losses at a particular non-profit subgrantee:

i) Losses incurred on one contract may not be offset by program income from another contract, regardless of title.

ii) Program income or losses incurred on any contract in a particular program year may not be offset by losses or program income in a different program year.

iii) Program income or losses incurred by a non-profit service provider may not be offset by losses or program income incurred by another service provider.

iv) Costs that are not entirely known at contract close-out, such as audit costs and legal costs, can be paid, as governed by existing State policies.

v) Program income earned on all failed contracts must be returned to the grantee.

(Source: Amended at 18 Ill. Reg. 9935, effective June 17, 1994)