



Employment Training Panel

Memorandum

To: ETP Policy Committee
Gretchen Newsom, Chair
Rebecca Bettencourt, Member
Rick Smiles, Member

Date: August 8, 2023

cc: Executive Staff
Peter Cooper, Assistant Director
Jaime Gutierrez, Chief Deputy Director
Tara Armstrong, Deputy Director

From: Erich Shiners, Acting Executive Director & Chief Counsel

Subject: ETP Policy Committee Meeting.
Discussion Regarding Out-of-State Vendors, Regulation 4421

I. Brief Issue Statement:

ETP Regulation 4421 requires that ETP-funded training be provided by vendors located in California (with one narrow exception). ETP has not been enforcing this requirement since 2018. Recently, Panel members have raised concerns about several proposals listing out-of-state training vendors. This item is being brought to Policy Committee to discuss: (1) a timeline for returning to enforcement of the Regulation's requirements and (2) possible amendments to the Regulation.

II. Background Information:

ETP Regulation 4421 provides:

“(a) Except as otherwise provided, the Panel shall not reimburse an employer or contractor for any costs associated with an out-of-state vendor, either through a budget or the Fixed Fee Rate Table, if those costs are for services, such as training.

“(1) For purposes of this section, an out-of-state vendor is defined as an entity which has not maintained an office in California with one or more California employees for more than six months prior to the start date of the Panel contract.

“(2) If an out-of-state vendor meets the definition in paragraph (1), costs attributable to the California office and California employee(s) shall be reimbursable.

“The Panel may authorize reimbursement for the cost of services provided by an out-of-state vendor which does not have a California office and employees only if the Panel finds that such services are unique to the need of the employer or contractor and are unavailable in California.”

On June 18, 2018, ETP sent the following clarification notice to all staff:

“Clarification Notice – Out-of-State Vendor/Sub-Contractor

“Effective Date: Immediately

“In an effort to streamline and simplify program requirements, out-of-state vendor (OSV)/sub-contractor requirements are modified. *CCR 4421. Out-of-State Vendors* will be revisited in the future to reflect these changes. In the interim, the requirement to report all vendors/subcontractors remains. However, **no** justification/approval is necessary for use of an OSV/Subcontractor.”

Despite the language in the Clarification Notice, the Panel has not revisited ETP Regulation 4421, and has continued to allow use of out-of-state vendors without justification.

III. Discussion Points:

a. Timeline to Return to Enforcing Out-of-State Vendor Requirements

To come into compliance with Regulation 4421, ETP must return to enforcing the Regulation’s limitation on out-of-state vendors. This return cannot occur immediately, however, because (1) Cal-E-Force will need to be updated to capture the necessary information, (2) ETP staff will need to be trained in analyzing whether the Regulation’s requirements are met, and (3) applicants and contractors will need to adjust their procedures to provide the necessary justification.

The first discussion point is: **when should ETP return to enforcing the requirements of Regulation 4421?**

b. Possible Amendments to ETP Regulation 4421

Panel has three options regarding Regulation 4421:

- (1) Retain the current regulation with no changes
- (2) Repeal the current regulation in its entirety
- (3) Amend the current regulation

Some issues to consider for option (3):

- (a) ETP Regulation 4421 took effect in 1995 and has not been amended since. In the intervening 28 years, and in particular over the last decade, online training has become much more prevalent. In light of this change in the training landscape,

Panel may wish to consider revising the Regulation to account for online training provided by an out-of-state vendor.

- (b) Many proposals that come before Panel do not list a training vendor, and thus staff or Panel cannot consider the Regulation's out-of-state vendor limitation before the proposal is approved. But it is not clear that Regulation 4421's requirements apply when a contractor adds a training vendor after Panel has approved the proposal. The Regulation could be amended to specifically address this situation by, e.g., clarifying that its requirements apply to mid-term addition of an out-of-state vendor, that addition of an out-of-state vendor may only be accomplished by a contract amendment that must be approved by Panel, etc.
- (c) The 2018 Clarification Notice said no justification would be required to use an out-of-state subcontractor. Unlike for an out-of-state vendor, Regulation 4421 does not currently require justification for use of an out-of-state administrative subcontractor, but Panel could amend the Regulation to require it.

These are just a few potential amendments to Regulation 4421 suggested by recent concerns from Panel and staff. We welcome thoughts on other potential changes to Regulation 4421 not addressed here.

The second discussion point is: **what amendments, if any, should be made to Regulation 4421?**

IV. Recommendation

No action items beyond soliciting and receiving feedback from the Policy Committee, staff, contractors, stakeholders, and the public concerning the timeline for return to compliance with ETP Regulation 4421 and any possible amendments to the Regulation that may be desired.