



Employment Training Panel

Memorandum

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

CC: Executive Staff
Jessica Grimes, Executive Director
Peter Cooper, Assistant Director
Jaime Gutierrez, Chief Deputy Director

From: Elisabeth Testa, Policy Manager

Subject: ETP Policy Committee Meeting
Discussion Regarding Repeat Contracts

Date: December 14,
2023

I. Brief Issue Statement:

ETP often sees the same contractor (MEC or SE) return repeatedly for additional contracts. Panel has raised some concerns recently regarding some of the repeat contracts that have been coming before them. These concerns have to do with the timing of the second contract, the prior performance requirements of the contracts, data entry within the system, the appearance of a single contractor perhaps monopolizing ETP funds, the repetition of curriculum from one contract to the next, and the same trainees participating in successive contracts.

Panel has requested that the topic of repeat contracts come before Policy Committee for discussion, so that we can address some of these concerns.

II. Background Information:

Current Tools:

ETP currently has in place a Repeat Contractor Rule, which sets forth the conditions under which a contractor can return for a second contract. The Rule only applies to Single Employers, and states that the SE must wait until 18 months have passed on their current contract before they can apply for a second contract; the current contract must have reached a 75% potential earned performance rate in order for the second contract to not be 'right-sized' to the lower potential earned amount of the first contract; SE applicants can request an exemption from Executive Staff; and, since MECs (including JATCs) are exempt, they are only allowed to be awarded one contract per Fiscal Year (excepting

alternative fund projects if those guidelines permit), and they must have at least 4 Participating Employers in their projects.

ETP also has additional tools we can use when dealing with Repeat Contractors. First – we are able to raise and lower project caps to adjust for demand. In other words, if we keep seeing repeat contractors coming back and would like to limit this, we can raise the allowable caps for each project – thus allowing the applicant to have additional funds in one contract, rather than coming back for a second contract. This may be especially useful for those contractors who use much less than their full 24-month contract terms. Similarly, we can allow revision requests to increase the total funding value of each contract – again to provide more funds to the original contract, and perhaps limit the number or frequency of repeat contractors returning to ETP. Recently, we have had a moratorium on revision requests to increase funding, which was necessary as a fiscal control during a period of exceptionally high demand – the moratorium helps ensure that the funding is spread out among more contractors – and we can lift or implement that moratorium when and as needed. Additionally, we also have the Substantial Contribution regulation, which requires repeat contractors to contribute more to their training efforts – however, the Substantial Contribution regulation is extremely cumbersome to implement since it applies to the amount of funding earned *per location*, rather than per the contract as a whole. ETP has not been using the Substantial Contribution regulation in recent years because of this. Lastly, we have an excellent marketing team in our Economic Development Unit, and one of their tasks is to find new applicants for the ETP program.

ETP also does indicate some of the prior performance information in the Panel Proposals. This information includes, for contracts completed within the last 5 years: the prior contract numbers, the main locations of the prior contracts, the contract term dates of the prior contracts, the approved amounts of the prior contracts, and the amounts earned on the prior contracts. For contracts that are still active – in other words, granting an additional contract will result in the contractor having more than one contract active at the same time – the Panel Proposals show: the active contract number, the active contract term date, the active contract approved amount, the number of trainees estimated at the start of the contract term, the actual number of trainees placed so far, and the potential earned amount for the contract. Occasionally, additional information on active or completed projects that are showing a low earned amount is provided, to explain the reasons for the low earned amount.

A note on the difference between potential earned amount and earned amount: ETP is a performance-based program, not a grant program, and as such, the contractors must train their trainees for at least the minimum number of required hours, and the trainees must also successfully complete a retention period that consists of a period of time paid at a certain wage level. Funds are fully earned for each trainee once they meet all three of these requirements. The potential earned amount, however, is based upon the trainees who have completed the minimum hours of training, but who have not yet completed their retention periods. This means that the potential earned amount may not equal to the actual amount that the company may end up earning on their contract. They can earn more than the potential earned amount if more trainees complete more hours of training and their retention periods at their correct wage. They will earn less than the reported potential earned amount if any of those trainees fail to complete their retention

periods – either because they do not work enough hours or are not paid at a high enough wage during their retention period. Since active contracts have not yet been closed out, and are often still actively in the providing training stage of the contract, active contracts are listed on the Panel Proposal using the potential earned amount.

A final quick note on the concurrent enrollment block: this prevents a single trainee from participating in more than one active Panel contract simultaneously. The contracts in question can be from the same contractor or between different contractors (ie: SE and MEC, or MEC and MEC). The concurrent enrollment block does not address repeat contractors in any way, however, it does ensure that each trainee can only be in one contract at a time, which helps prevent duplicative training and provides fiscal controls over these situations.

Problems Being Seen:

Frequency of Repeat Contracts: Panel has expressed concern in seeing the same contractors come back over and over again for new contracts. This may be because the contractor is on its 5th contract in the past 5 years (all closed with good performance), for example. In other words – just a high number of contracts going to a single contractor. This can also be the result of contractors returning for a second contract (or even sometimes a third) before their first contract has been finished – these contractors will show active contracts in their Panel Proposals.

Prior Performance Information: Even though some information is provided regarding the prior performance of earlier ETP contracts, there may not be enough information provided for the Panel to accurately and adequately assess the prior performance of the contractor. For example, no audit findings are currently shown in the Panel Proposals; only contracts from within the past 5 years are listed; no information is provided on any revisions the contract went through which could change important elements of the project as compared to what was originally approved by Panel; monitoring report information is not included; etc. Additionally, some of the information (for instance, the difference between earned amount and potential earned amount) may be somewhat confusing or not totally straightforward.

“Data Entry” Issues: Some contractors have expressed to Panel that the reason they are showing a low earned or potential earned amount is because of data entry issues in the system or staff delays in processing invoices and rosters. It is true that, if invoices (especially final invoices) are delayed in being finalized by staff, the potential earned and earned amounts can appear lower than they ‘actually’ are. However, since some of the trainees represented in those invoices may not finish retention successfully, the earned amount may not fluctuate to such an extreme degree. Additionally, in practice, what ETP is seeing involves contractors/subcontractors delaying data entry tasks until all training and even retention has been completed. Contractors do this for many reasons. They may delay data entry tasks in the ETP system in order to reduce their own workload – many prefer to complete all of their data entry tasks at once, for example, rather than continually logging into the system for more piecemeal data entry tasks. They also delay entering information for more strategic reasons, such as: not doing data entry for all trainees – but only for those that have been successful in completing retention; waiting

until close to the end of their contract term to see if they will require any revisions moving funding between job numbers to help ensure that they can earn the full value of their contracts; etc. The end result of these delay practices is that staff are then overloaded with invoices to process at the end of the contract term, when the contractor is trying to come back for a second contract – thus skewing the information in the Panel Proposals.

Repetition of Curriculum: Currently, no ‘comparison’ is provided between successive contracts to see if the curriculum is being repeated or not. One of Panel’s concerns is that companies are returning for ETP funds to simply repeat the same training programs they have completed previously. This does not show any sort of progression for the trainees participating, then. Repeat curriculum in MEC projects is perhaps not as problematic as within SE projects, since the MEC can recruit new and unique Participating Employers for subsequent projects – however, we are also not verifying or checking to see if the Participating Employer population repeats in successive contracts or not. Additionally, ETP funding is designed to supplement the company’s own training efforts – not to replace them entirely. If curriculum is repeated, then this brings up the question of how much of the company’s total training curriculum is ETP funding?

Repetition of Trainees: The concurrent enrollment block does prevent a single trainee from being trained in more than one contract at a time. However, there is nothing in place preventing a trainee being trained in successive contracts. Is this trainee receiving repeat training or new training? Are they advancing in their careers between one contract to the next? Have their wages increased from the first contract to the second? Again, ETP funding is designed to supplement a company’s full training budget – but when the same trainees come back time and again, it can bring this principle into question. And of course, no information on this is currently presented in the Panel Proposals.

Potential Solutions:

Altering the Repeat Contractor Rule: The Repeat Contractor Rule could be revised to make it more effective. For example, creating a Repeat Contractor Rule where no contractor can have a second contract until the first contract has been closed out. This type of change would have multiple benefits, including: making the Repeat Contractor Rule easier to apply; making decisions to approve repeat contracts with more accurate and applicable data involved (such as audit findings, accurate earned amounts, etc); eliminating the perception of contractors returning for more than their fair share of the funds; eliminating a fair amount of the concurrent enrollment issues we are seeing; providing adequate fiscal controls; reducing the labor needed from Regional Office and Fiscal staff when creating the Panel Proposals, when right-sizing projects, during monitoring, etc.; making the information in the Panel Proposals clearer for Panel; encouraging contractors to be more timely in their data entry requirements; encouraging contractors to be more specific in crafting proposals that will truly meet their needs, rather than creating generic proposals that they will potentially alter heavily during the actual contract term; etc.

Providing Additional Information in Panel Proposals: Panel has expressed the desire to understand more of what happened during the initial contracts when they are weighing their decisions on whether or not to approve subsequent projects. Audit results could be

included in the Panel Proposals. All prior contracts could be listed (not only those from the more recent 5-year past). Information could be provided on how many revisions to the original contract were made, and what the result of those revisions were. Information could be provided on the repetition or non-repetition of curriculum content and trainee or Participating Employer populations. Highlights from monitoring visits and reports can be included. Information on the number of certificates earned by trainees in the prior contract, or wage comparison data, or occupation change/promotional information could be included. More qualitative type data could be included as well, such as results of trainee interviews on the effectiveness of the training that was provided. Some of these items are easier to implement than others.

Implementing Additional Administrative Controls: For example, implementing a time limit for tracking and data entry in the system – either from the date of training or from the completion of training, etc.; implementing time limits for the submission of invoices, or for how many invoices can be submitted at a time, or for the content of the invoices that could make both submitting the invoices by the customers and processing the invoices by the staff a smoother, more streamlined and efficient process; similarly, putting more guidelines in place regarding the timing of revision requests, especially for large revision requests that are submitted extremely close to the end of the contract term; etc. Perhaps not allowing a request for a second contract while revisions are still pending on the first. Additionally, when developing repeat contracts, ETP will often ‘right-size’ the contract value for the second contract based on the earned amount of the prior contract. In the case of an existing active contract, however, the second contract is ‘right-sized’ to the potential earned amount, since the earned amount is not yet known. We could decide to ‘right-size’ second contracts with an active first contract based only upon the actual amount earned so far in the first contract. Granted – this is most likely not the best option, as the second contracts would end up being extremely small – but perhaps instituting some kind of limit that a certain percentage of the contract must be fully earned, rather than potentially earned, before applying for a second contract would be more feasible.

Raising Caps and Allowing Funding Increase Revisions: As noted above, these are tools already in our toolbox that we can use to help to address this issue. If contractors are able to either initially request more funding with a higher cap, or are able to request additional funding via a revision request up to the higher cap, this may help to alleviate some of the repeat contractor issues we are seeing. These higher caps and funding revisions can be adjusted as needed every year based on the state of demand for the ETP program, and on projected tax collection amounts for the Employment Training Fund (ETF).

Increased Marketing and Priority for First-Time Customers: If the concern is that a limited number of contractors are using up too large of a share of ETP funds, ETP can increase marketing efforts to find new applicants. Additionally, each year when setting the funding priorities for the upcoming fiscal year, Panel can make first-time customers a priority by giving them processing order priority, for example.

Re-Activating the Substantial Contribution Requirement: ETP can again begin to use the substantial contribution regulation, which assesses a funding reduction based on how much was earned in prior contracts at specific locations. Since we have not been applying

this for some time, we would most likely need to program some additional formulas into the ETP system to help with this. Additionally, the substantial contribution requirement is extremely cumbersome to implement in its current state, and would most likely benefit from a rulemaking package to amend it to be applied per contractor rather than per location.

Final Notes:

ETP conducted a study a few years ago of how repeat contractors are handled within the workforce training programs of other states. Please note that such a comparison is slightly flawed to begin with, given that the next largest state program is only one-third the size of the ETP program, and that many of the programs in other states are grant programs, not performance-based programs. That being said, in many other states, repeat contractors are prohibited anywhere from 1-5 years after their first contract ends before they can apply for a second, or are assessed an additional funding limitation as a repeat contractor, or some other such more restrictive practice.

The repeat contract issue is expansive, and touches upon many aspects of the ETP program. Prior performance, contract timing, application timing, staff processes, customer processes, revisions, audits, eligibility, development of the Proposals, monitoring, rulemaking – it is a large issue that can have ripple effects into nearly all areas of the ETP program. Most likely, we will not be able to address all of these related issues simultaneously. Some solutions will be easier to implement than others, as well. This is an important issue that touches upon fiscal controls, meeting our mission, serving our trainees and California companies, and more, so it is a valuable discussion to have at this time.

III. Recommendation

No action items beyond soliciting and receiving any feedback from the Policy Committee, contractors, stakeholders, and public concerning Repeat Contracts.