

Workforce Innovation and Opportunities Act Policy 04-17

To: Local Workforce Development Boards (LWDBs), Chief Elected Officials, Regional Executive Directors

From: WorkForce West Virginia

Subject: PROCUREMENT AND SELECTION OF ONE-STOP OPERATORS AND SERVICE PROVIDERS

Effective Date: January 18, 2017

WV State Workforce Development Board Review Date: January 18, 2017

1) **Purpose:**

To communicate requirements for the procurement and selection of one-stop operators and service providers under the Workforce Innovation and Opportunity Act (WIOA) whose contracts are effective July 1, 2016 or later.

2) **Background:**

WIOA brought about changes to the law and rules governing procurement and selection of one-stop operators and service providers. Changes in procurement requirements also occurred with issuance of Office of Management and Budget (OMB) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (commonly known as the OMB Super Circular), which consolidated eight previous circulars into one Uniform Guidance document and introduced new requirements for performance-based contracting.

WIOA sets the expectation for Local Workforce Development Boards (LWDBs) to conduct open and competitive procurement processes to identify appropriate providers of one-stop operator and other services. LWDBs are required to determine whether the amount and quality of providers is sufficient to meet the needs of the community and to work with the Governor and others to increase the availability of service providers as part of their planning process.

3) Overview

At a minimum, the One-Stop operator is responsible for coordinating the service delivery of required one-stop partners and service providers. Their role may range from simply coordinating services provided to being the primary provider of services at the center. The competition for One-Stop Operator must clearly articulate the role.

One-Stop operators shall be selected through a competitive process following the principles of competitive procurement in the Uniform Administrative Guidance at Chapter II of 2 CFR (in particular 2 CFR 200.318 through 200.326). As with any local procurement, locally adopted procurement policies must also be adhered to.

To allow local areas sufficient time to prepare a competitive procurement including conducting market research, RFIs, cost and price analysis, and conduct competitions, the initial selection of a One-Stop Operator must be concluded, with the Operator selected, in place and operating no later than June 30, 2017.

Role of the One-Stop Operator

The LWDB must clearly articulate the role of the One-Stop Operator in their solicitation for bids. The LWDB has a great deal of discretion in defining the role of a One-Stop Operator to meet the unique needs of the local area.

At a minimum, the One-Stop Operator must coordinate the service delivery of the required one-stop partners and service providers.

At the discretion of the LWDB, the One-Stop Operator may also:

- Coordinate the service delivery of partners and providers
- Be the primary provider of service within a center
- Provide specific services within a center
- Provide other services, not otherwise prohibited

If the LWDB determines the role of One-Stop Operator includes the provision of service(s) or a provider of service(s) within the one-stop system is selected as the One-Stop Operator, the entity selected must have firewalls in place to ensure the operator is not conducting oversight of itself. There must also be proper internal controls and firewalls in place to ensure the entity, in its role as operator, does not conflict with its role as a service provider through a written agreement with the LWDB and Chief Elected Official(s) to clarify how the selected entity will carry out its roles and responsibilities while demonstrating compliance with WIOA, WIOA Regulations, relevant OMB circulars and Local and State Policies, particularly conflict of interest policies.

The One-Stop Operator role shall not include:

- Convening stakeholders to assist in the development of the local plan
- Preparing and submitting local plans (as required of the Local Board under sec. 107 of WIOA)
- Being responsible for oversight of itself
- Managing or significantly participating in the competitive selection process for one-stop operators
- Selecting or terminating one-stop operators, career service providers, or youth providers
- Negotiating local performance accountability measures
- Developing or submitting budget for activities of the LWDB

An entity selected as one-stop operator may perform some or all of these functions in another capacity it also serves when those roles are applicable to that other capacity provided it has established sufficient firewalls and conflict of interest policies in place to fully separate the functions of the multiple capacities. Additional safeguards for entities acting in more than one capacity includes a written agreement with the LWDB and Chief Elected Official(s) to clarify how the selected entity will carry out its roles and responsibilities while demonstrating compliance with WIOA, WIOA Regulations, relevant OMB circulars and Local and State Policies, particularly conflict of interest policies.

Eligible Entities for One-Stop Operator

One-Stop Operators may be a single entity or a consortium of entities. Types of entities that may be a One-Stop Operator include:

- An institution of higher education
- A State Employment Service agency established under the Wagner-Peyser Act
- A community based organization, nonprofit organization, or workforce intermediary
- A private for-profit entity
- A government agency
- A local Board, with the approval of the chief elected official and the Governor
- Another interested organization or entity capable of carrying out the duties of one-stop operator
 - Local chamber of commerce
 - Business organization
 - Labor organization

If the consortium of entities is a consortium of one-stop partners, it must include three of the one-stop partners. A consortium of one-stop partners is a minimum of three separate entities, each responsible for at least one of the following programs and activities in the local area:

- Programs authorized under title I of WIOA:
 - Adults
 - Youth
 - Dislocated Workers (DW)
 - Job Corps
 - Youth Build
 - Native American Programs
 - Migrant and seasonal farmworker programs (MSFW)
- Employment services authorized under the Wagner-Peyser Act (W-P)
- Adult education and literacy authorized under title II of WIOA (AEL)
- Vocational Rehabilitation program authorized under title I of the Rehabilitation Act of 1973 (VR)
- Senior Community Service Employment Program authorized under title V of the Older Americans Act
- Career and technical education programs at the post-secondary level authorized under the Carl D. Perkins Career and Technical Education Act of 2006
- Trade Adjustment Assistance activities authorized under chapter 2 of title II of the Trade Act of 1974 (TAA)
- Jobs for Veterans State Grants programs authorized under chapter 41 of title 38, U.S.C.
- Employment and training activities carried out under the Community Services Block Grant (CSBG)
- Employment and training programs carried out by the U.S. Department of Housing and Urban Development (HUD)
- Programs authorized under State Unemployment Compensation Laws (UI)
- Programs authorized under the Second Chance Act of 2007
- Unless specifically exempted by the Governor, Temporary Assistance for Needy Families (TANF) authorized under Part A title IV of the Social Security Act.

Any entity, including a current operator or LWDB, competing to become the One-Stop must have adequate firewalls and conflict of interest policies and procedures in place to prevent them from being involved in the planning or execution of the competitive process. Such involvement would be an inherent conflict of interest.

4) Policy

Selection of One-Stop Operator(s)

One-Stop operators shall be selected through a competitive process following the principles of competitive procurement in the Uniform Administrative Guidance at chapter II of 2 CFR (in particular 2 CFR 200.318 through 200.326) and any applicable locally adopted procurement policies.

Maintenance of records regarding the procurement process including, but not limited to, documentation of the local determination of the competitive procurement process to be followed as well as the specific details of that process and its results are crucial to demonstrating compliance in the selection of the one-stop operator.

Acceptable processes include:

- Procurement by sealed bid
 - Procurement by competitive proposal, and
 - Under limited conditions, procurement by sole-source, only with the approval of the CEO and Governor after
 - Rigorous analysis of market conditions and other factors lead to a determination sole-source procurement is necessary due to:
 - There is only one entity that could serve as the one-stop operator, or
 - An unusual and compelling urgency exists that will not permit a delay resulting from a competitive solicitation, or
 - The results of the competitive procurement were determined to be inadequate.
- a) LWDBs must adhere to applicable sections of the law and regulations and state policy in selecting one-stop operators and service providers and awarding contracts under WIOA.
- b) LWDBs should only serve as one-stop operators and/or provide services as a default, when other options will not effectively meet local needs.
- c) LWDBs must inventory the availability and quality of service providers as part of their planning processes. LWDBs may choose a number of approaches to determine if there are insufficient service providers, including, but not limited to, conducting a Request for Information or asset mapping with stakeholders and community partners.
- d) LWDBs must procure one-stop operator and other services through open and competitive processes. This includes providing sufficient public notice of the intent to procure services to board members and the community. Public notice must be provided for at least 30 days in media where prospective local, state, and national bidders typically identify such opportunities (e.g., local print newspapers, on-line newspapers, LWDB web site, other community web sites, etc.)

- e) LWDBs must document, in writing, (1) efforts to identify the availability of providers and (2) the allowable procurement process used and how it was followed, including the selection criteria by which bids were scored to award a contract. All of this documentation must be maintained and provided to the State upon request.
- f) The Governor must approve a waiver for LWDBs to provide one-stop operator and/or other services. The appropriate forms for making such requests are referenced in each section below and provided as attachments to this policy.
- g) Procurement Related Programmatic Requirements
 - i) Procurement of One-Stop Operators
 - (1) One-stop operators must be designated and certified through a competitive procurement process.
 - (2) The competitive process used by LWDBs to procure one-stop operators must be conducted at least once every four years and follow the principles of competitive procurement set forth in Uniform Administrative Guidance at 2 CFR 200.318-326.
 - (3) The allowable forms of competitive procurement processes are as follows:
 - (a) Sealed Bids
 - (b) Competitive Proposals
 - (c) Sole Source, only if documented factors, including published notice(s) of intent made available to the public for at least 30 days in media where prospective local, state, and national bidders typically identify such opportunities, lead to a determination that only one entity could serve as an operator, compelling circumstances outweigh the delay that would result from a competitive solicitation, or results of the competition conducted per Section 4(g)(i)(3)(a-b) of this policy are determined inadequate, and only with the agreement of the local Chief Elected Official and Governor.
 - (i) LWDBs may serve as one-stop operators under a sole source agreement for no more than the completion of the contract period or the completion of the program year, whichever comes first.
 - (ii) LWDBs must have in place and demonstrate adherence to appropriate internal controls and conflict of interest policies and procedures that are approved by the Governor. Such policies must identify the appropriate internal controls.
 - (iii) Inadequate responses are those judged by a panel of impartial reviewers to score below a pre-determined minimum level on the scoring criteria published as part of the solicitation.
 - (iv) Examples of compelling circumstances that outweigh delays that would result from competitive solicitations include the need to avoid a break in services if an operator is terminated for cause or is unable to continue providing services through the end of the contact period.
 - (v) LWDBs must complete [Attachment A](#) (Request for Waiver to Serve as a One-Stop Operator) and submit it to the State Workforce Development Board (SWDB).

- (4) LWDBs may serve as one-stop operators in the region for which they are designated if they are determined to be the successful bidder in a solicitation that conforms to the principles of competitive procurement set forth in Uniform Administrative Guidance at 2 CFR 200.318-326, and only if approved internal control and conflict of interest policies are followed. Internal controls include the requirement that the solicitation and scoring process be managed by an impartial third party free of conflicts of interest and that LWDB staff and the agency that employs such staff cannot develop the solicitation for proposals, facilitate the scoring process, or score proposals.

ii. Procurement of Youth Service Providers

- (1) LWDBs must competitively award grants/contracts for eligible providers of youth workforce investment activities, except in the case of sole-source awards/contracts and only then if there is satisfactory and demonstrable evidence that there are an insufficient number of providers with the expertise required for serving in-school or out of school youth. Bid solicitations must include a rubric of the selection criteria to be used in this process and must be maintained as documentation of the process.
- (2) LWDBs must be able to document, in writing that they have made their board members and the public aware of the competitive process that will be used identify youth service providers. This includes providing at least 30-day public notice through media where prospective bidders typically identify such opportunities.
- (3) LWDBs must establish and use criteria, including the ability of service providers to meet performance accountability measures based on common measures, as well as full and open competition consistent with 2 CFR parts 200 and 2900 in addition to applicable state and local procurement laws to procure eligible providers of youth workforce investment activities.
- (4) Design framework services (intake, objective assessment, development of individual service strategies, case management, and follow-up services) may be exempted from a competitive process if LWDBs determine that they can more appropriately provide these activities.
- (5) LWDBs must establish local policies and procedures to assess the ability of youth program providers to meet performance accountability measures based on the primary federal indicators of performance for the youth program.

iii. Procurement of Adult or Dislocated Worker Training Services

- (1) LWDBs cannot provide Adult or Dislocated Worker training services unless granted a written waiver by the Governor based on satisfactory and demonstrable evidence that:
 - (a) The LWDB determined that there were an insufficient number of eligible providers with expertise in serving Adults or Dislocated job seekers to meet local demand.
Note: LWDBs must have come to this determination after having conducted competitive procurement described in Section 3(g)(i)(C) of this policy;
 - (b) The LWDB meets the requirements of an eligible training provider under Section 122;
 - (c) The LWDB's proposed training services prepare participants for in-demand industry sectors or occupations in the local area; and

- (d) The LWDB subjected its waiver determination and request to a minimum 30-day public comment period and included all comments received in the final waiver request.
- (e) LWDBs must complete [Attachment B](#) (Request for Waiver to Provide WIOA Adult and/or Dislocated Worker Training Services) and submit it to the State Workforce Development Board (SWDB).

h) Procurement Related Fiscal Requirements

- i) Sub awards are not procurement actions governed by this policy or other procurement laws, rules or policies unless:
 - (1) Required by statute'
 - (2) Required by own policies and procedures; or
 - (3) Awarded on a competitive basis, in which instance the sub award will be governed by procurement rules detailed in 2 CFR 200.318-326
- ii) When a competitive procurement process is not used in the selection of a sub recipient for a sub award, it must be guided by:
 - (1) Documented internal controls, including written procedures for employee conduct and conflict of interest provisions;
 - (2) The service provider's track record, considering past record of performance, cost principles, record of compliance and audit and monitoring results.
- iii) Procurement standards must ensure fiscal accountability and prevent waste, fraud, and abuse in WIOA programs. Where applicable, standards must support fair and competitive procurement of goods and services.
- iv) Wherever possible and where required, all agreements must be performance-based, as defined in Federal Acquisition Regulations (FAR) 37.6, and include the following minimum requirements:
 - (1) Performance requirements defined in measurable, mission-related terms;
 - (2) Performance standards (e.g., quality metrics, required quantities, and timeliness) tied to performance requirements;
 - (3) Quality assurance plan describing how the contractor's performance will be measured against performance standards; and,
- v) All other non-federal entities, including LWDBs, must:
 - 1) Follow general procurement standards established through state law, rule and policy, as well as through 2 CFR 200.318-326;

- 2) Develop and document their own procurement policies, procedures and standards that reflect applicable state law, rule and policy and conform to federal law and standards of OMB Uniform Guidance;
- 3) Ensure full and open competition, where necessary;
- 4) Use the most economical approach to the procurement of goods and services
- 5) Award only to responsible contractors;
- 6) Maintain oversight in order to monitor contractor performance regarding contract terms, conditions and specifications; and,
- 7) Maintain records detailing the history of the procurement, including the rationale for the selected method of procurement, selection of contract type, basis for contractor selection or rejection, and basis for contract price.

5) **Definitions:**

Conflict of interest – Conflict between the official responsibilities and the private interests of a person or entity that is in a position of trust. A conflict of interest would arise when an individual or organization has a financial or other interest in or participates in the selection or award of funding for an organization. Financial or other interest can be established either through ownership or employment.

Contract - a legal instrument by which a non-federal entity purchases property or services needed to carry out the project or program under a federal award. The term as used in this policy does not include a legal instrument, even if the non-federal entity considers it a contract, when the substance of the transaction meets the definition of a federal award or sub award (see 2 CFR 200.92 - Sub award).

Contractor - an entity that receives a contract as defined in 2 CFR 200.22 (Contracts).

Non-Federal Entity - a state, local government, Indian tribe, institution of higher education (IHE), or nonprofit organization that carries out a federal award as a recipient or sub recipient.

Pass-through Entity - a non-federal entity that provides a sub award to a sub recipient to carry out part of a federal program.

Sub award - an award provided by a pass-through entity to a sub recipient for the sub recipient to carry out part of a federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a federal program. A sub award may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.

Sub recipient – a non-federal entity that receives a sub award from a pass-through entity to carry out part of a federal program, but does not include an individual that is a beneficiary of such program. A sub recipient may also be a recipient of other federal awards directly from a federal awarding agency.

6) **References:**

All fiscal policies and guidance letters published for WIOA are governed, as appropriate, under:

- Workforce Innovation and Opportunity Act of 2014, Sections 107(g)(1), 121(d)(2)(A), 122, and 123
- 20 CFR 678.605, 678.610, 678.615, 679.410, 679.430, 680.300 and 681.400
- Title 2, Subpart A, Chapter 11 CFR 200.317-326
- OMB Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

Programmatic policies, rules, and guidance:

- Workforce Innovation and Opportunity Act of 2014, Sections 107(d)(10), 121(d)(1-2), 134(c)(2)(C), and 134(c)(3)(C)
- 20 CFR 678.600-615, 680.160 and 680.300

7) **Website:**

<http://www.workforcewv.org>

8) **Action:**

Local Workforce Development Boards and their contractors, as well as WorkForce West Virginia, must distribute this policy broadly throughout the system to ensure that staff are familiar with its content and requirements.

9) **Attachments:**

- Attachment A – Request for Waiver to Serve as One-Stop Operator
- Attachment B – Request for Waiver to Provide WIOA Adult and/or Dislocated Worker Training Services

Direct Inquiries To:

WorkForce West Virginia
112 California Ave.
Charleston, WV 25305
(304) 558-7024

ATTACHMENT A

Request for Waiver to Serve as a One-Stop Operator

Date:

Local Workforce Development Board

(LWDB): Contact Person/Title:

Phone:

E-mail Address:

Mailing

Address:

Please indicate the one-stop site(s) for which the LWDB is requesting a waiver to serve as the one-stop operator:

- 1.
- 2.
- 3.

Note: Add sites if needed.

The LWDB must provide the following information for each site for which it is requesting a waiver to serve as the one-stop operator:

1. Provide written documentation of the entire process for making a sole-source selection consistent with Section 4(g)(i)(3)(c) of WIOA Policy 4-17, including why the LWDB was unable to secure any one-stop operator bids in response to its solicitation, what the LWDB's qualifications are to be a one-stop operator, and how the LWDB will balance its role as strategic coordinator of the local one-stop system with the role of one-stop operator.

2. Describe the internal controls, firewalls, and conflict of interest policies and procedures the LWDB will impose upon itself as the operator of the one-stop site.
 3. Attach documentation (signed and dated letter) that the local Chief Elected Official reviewed the information prepared for the waiver request (items 1 and 2 above) and approves of the waiver request.
- * *Sole Source, only if documented factors, including published notice(s) of intent made available to the public for at least 30 days and directed to prospective local and national non-profit, for-profit, and governmental bidders, lead to a determination that only one entity could serve as an operator, compelling circumstances outweigh the delay that would result from a competitive solicitation, or results of the competition conducted per Section 4(g)(i)(3)(a-b) of this policy are determined inadequate.*

Submit the completed waiver request to:

WorkForce West Virginia
112 California Avenue
Charleston, WV 25305

ATTACHMENT B

Request for Waiver to Provide WIOA Adult and/or Dislocated Worker Training Services

Date:

Local Workforce Development Board (LWDB):

Contact Person/Title:

Phone:

E-mail Address:

Mailing Address:

Please indicate the program(s) for which the waiver request is being submitted:

Adult Program

Dislocated Worker Program

Adult Program (if applicable):

1. Describe the LWDB's competitive procurement conducted as per WIOA Section 3(b)(i)(C) and how its outcome resulted in a determination that there were insufficient eligible providers with expertise in providing training services to Adult participants to meet local demand. Attach supporting documentation.
2. Describe how the LWDB meets the requirements of an eligible training provider under WIOA Section 122.
3. Describe how the LWDB's proposed training services prepare Adult participants for in-demand industry sectors or occupations in the local area.

4. Describe the means by which the LWDB subjected its waiver determination and request to a minimum 30-day public comment period. Attach supporting documentation, including all comments received during the comment period.
5. Attach documentation (signed and dated letter) that the local Chief Elected Official reviewed the information prepared for the waiver request (items 1-4 above) and approves of the waiver request.

Dislocated Worker Program (if applicable):

1. Describe the LWDB's competitive procurement conducted as per WIOA Section 3(b)(i)(C) and how its outcome resulted in a determination that there were insufficient eligible providers with expertise in providing training services to Dislocated Worker participants to meet local demand. Attach supporting documentation.
2. Describe how the LWDB meets the requirements of an eligible training provider under WIOA Section 122.
3. Describe how the LWDB's proposed training services prepare Dislocated Worker participants for in-demand industry sectors or occupations in the local area.
4. Describe the means by which the LWDB subjected its waiver determination and request to a minimum 30-day public comment period. Attach supporting documentation, including all comments received during the comment period.
5. Attach documentation (signed and dated letter) that the local Chief Elected Official reviewed the information prepared for the waiver request (items 1-4 above) and approves of the waiver request.

Submit the completed waiver request to:

WorkForce West Virginia
112 California Avenue
Charleston, WV 25305

112 California Avenue • Charleston, WV 25305

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