



Employment Security Department

WASHINGTON STATE

Workforce Innovation and Opportunity Act Policy Employment System Administration and Policy

Washington envisions a nationally recognized fully integrated One-Stop system with enhanced customer access to program services, improved long-term employment outcomes for job seekers and consistent, high quality services to business customers. In order to achieve this vision, Employment System Administration and Policy sets a common direction and standards for Washington's WorkSource system through the development of WorkSource system policies, information memoranda, and technical assistance.

Policy Number: 5404, Revision 1

To: Washington WorkSource System

Effective Date: August 19, 2016

Subject: Procurement and Selection of One-Stop Operators and Service Providers

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).

Retroactive to the issuance of the WIOA Final Rules on August 19, 2016, all procurement processes must conform to the requirements in this policy. By July 1, 2017, all WIOA service delivery, whether through a competitively selected service provider or Local Workforce Development Board (LWDB), must have been selected in accordance with this policy.

2. Background:

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

WIOA sets the general expectation that LWDBs conduct open and competitive procurement processes to identify appropriate providers of one-stop operator and other services. Per WIOA Section 107(10)(E) and proposed 20 CFR 679.370(m), LWDBs work with the State to ensure that the amount and quality of providers is sufficient to meet the needs of the community. WIOA sets the expectation that LWDBs will serve as strategic entities and the Department of Labor further clarified that expectation in proposed 20 CFR 679.410 by citing "restrictions" on LWDBs (and LWDB staff) as one-stop operators and service providers and outlining the requirements of LWDBs that want to assume those roles.

3. Policy:

- a. LWDBs must have local procurement policies that adhere to applicable sections of federal law and regulations and state policy in selecting one-stop operators and service providers and awarding contracts under WIOA.
- b. LWDBs must document, in writing, (1) efforts to identify the availability of one-stop operators and service providers and (2) the allowable processes used to select one-stop operators and service providers and how they were followed, including procurement processes (including selection criteria by which bids were scored), where applicable. All of this documentation must be maintained and provided to the State upon request.
- c. Programmatic Requirements
 - i. Procurement of One-Stop Operators
 - A. One-stop operators must be designated and certified through a competitive procurement process. LWDBs must be able to document, in writing, that they made their board members and the public aware of the competitive process to be used. That includes providing at least 30-day public notice through media where prospective local, state, and national bidders typically identify such opportunities (e.g., local print newspapers, on-line newspapers, LWDB web sites, other community web sites, etc.). Solicitations must include the selection criteria to be used in the process and must be maintained as part of the documentation.
 - B. 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.
 - C. The allowable forms of competitive procurement processes are as follows:
 - 1. Sealed Bids
 - 2. Competitive Proposals
 - 3. Procurement by non-competitive proposals (sole source)
 - I. Sole source can be exercised as per local policies if it complies with federal procurement regulations at 2 CFR 200.320(f) and 20 CFR 678.610 and federal guidance in TEGl 15-16 and one or more of the following circumstances apply:
 - 1. The item or service is only available from a single source
 - 2. Public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation¹
 - 3. The Federal awarding agency or pass-through entity expressly authorizes non-competitive proposals in response to a written request from the non-Federal entity
 - 4. After soliciting a number of sources, competition is determined inadequate, whether for reasons of number or quality of proposals/bids²

- ¹ 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 contract period.
- ² Inadequate responses are those judged by a panel of impartial reviewers to score below a pre-determined minimum level on scoring criteria published as part of the solicitation.

Note: Section 12 of TEGL 15-16 cites Uniform Guidance at Section 200.318(i) that requires maintaining records that sufficiently detail the procurement history, which includes careful documentation of LWDB decisions to sole source one-stop operators. LWDBs must be able to demonstrate that they conducted sufficient research and outreach to justify using sole source procurement. Evidence of publishing Requests for Interest, Requests for Proposals, and Invitations for Bidding does not, by itself, sufficiently document the justification for sole source procurement. LWDBs must also document that the solicitation was publicized in a manner providing for full and open competition. DOL interprets WIOA sunshine provisions at Sections 101(g) and 107(e) as requiring LWDBs to present documentation and justification of their decisions to use sole source procurement at open LWDB meetings to provide transparency and perhaps attract additional offerors/bidders for the next competition.

- II. LWDBs may be selected as one-stop operators under a sole source agreement only if they demonstrate adherence to appropriate internal controls and establish conflict of interest policies and procedures that identify appropriate internal controls and are approved by the Governor. 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).
- D. 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 a fair and 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. The SWDB and LWDBs may work together to establish a list of pre-qualified bidders for this role.
- ii. Procurement of Youth Service Providers
 - A. 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 the selection criteria to be used in this process and must be maintained as documentation of the process.

- B. LWDBs must be able to document, in writing, that they made their board members and the public aware of the competitive process to be used to identify youth service providers. This includes providing at least 30-day public notice through media where prospective local, state, and national bidders typically identify such opportunities (e.g., local print newspapers, on-line newspapers, LWDB web sites, other community web sites, etc.).
- C. 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.
- D. In accordance with USDOL regulations, design framework services (intake, objective assessment, development of individual service strategies, case management, follow-up services) may be exempted from a competitive process if LWDBs determine that they can more appropriately and efficiently perform these activities. However, LWDBs must receive approval of the Local Elected Official(s) and Governor to provide design framework services for youth program participants by submitting [Attachment D](#) (Request for Approval to Provide WIOA Youth Design Framework Services) to the SWDB.
- E. 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.
- F. LWDBs may serve as youth service providers 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.

iii. Procurement of Adult or Dislocated Worker Training Services

- A. LWDBs must select providers of adult and dislocated worker training services through a competitive procurement process. Allowable forms of competitive procurement include sealed bid, competitive proposals, and sole source (refer to Section 3.c.i.C.3.l). LWDBs must be able to document, in writing, that they made their board members and the public aware of the competitive process to be used. This includes providing at least 30-day public notice through media where prospective local, state, and national bidders typically identify such opportunities (e.g., local print newspapers, on-line newspapers, LWDB web sites, other community web sites, etc.). Solicitations must include the selection criteria to be used in this process and must be maintained as part of the documentation.
- B. LWDBs may serve as training service providers 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.

- C. LWDBs can provide Adult or Dislocated Worker training services if granted a written waiver by the Governor based on satisfactory and demonstrable evidence that:
1. The LWDB determined that there were an insufficient number of eligible providers with expertise in serving Adults or Dislocated Workers to meet local demand. LWDBs must have come to this determination after having either received no response to a Request for Qualifications (RFQ) or Request for Interest (RFI) or received no response to a Request for Proposal (RFP) or conducted a competitive procurement in which no bidders met the minimum criteria;
 2. The LWDB meets the requirements of an eligible training provider under WIOA Section 122;
 3. The LWDB's proposed training services prepare participants for in-demand industry sectors or occupations in the local area; and
 4. 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.
 5. LWDBs must complete [Attachment B](#) (Request for Waiver to Provide WIOA Adult and/or Dislocated Worker Training Services) and submit it to the SWDB.

iv. Procurement of Career Services

- A. LWDBs are encouraged to select providers of career services through a competitive procurement process, though WIOA law and proposed rules do not require this. Allowable forms of competitive procurement include sealed bid, competitive proposals, and sole source (refer to Section 3.c.i.C.3.I).
- B. LWDBs can provide basic and individualized career services by agreement of the local Chief Elected Official and Governor. LWDBs must complete [Attachment C](#) (Request for Approval to Provide WIOA Basic and/or Individualized Career Services) and submit it to the SWDB.

d. Procurement-Related Fiscal Requirements

- i. Subawards are not procurement actions governed by this policy or other procurement laws, rules or policies unless:
 - A. Required by statute;
 - B. Required by own policies and procedures; or

- C. Awarded on a competitive basis, in which instance the subaward 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 subrecipient for a subaward, it must be guided by:
 - A. Documented internal controls, including written procedures for employee conduct and conflict of interest provisions;
 - B. 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:
 - A. Performance requirements defined in measurable, mission-related terms;
 - B. Performance standards (e.g., quality metrics, required quantities, and timeliness) tied to performance requirements;
 - C. Quality assurance plan describing how the contractor's performance will be measured against performance standards; and,
 - D. Appropriate positive and negative incentives for performance standards critical to accomplishing agreement objectives.
- v. All other non-federal entities, including LWDBs, must:
 - A. Follow general procurement standards established through state law, rule and policy, as well as through 2 CFR 200.318-326;
 - B. 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;
 - C. Ensure full and open competition, where necessary;
 - D. Use the most economical approach to the procurement of goods and services;
 - E. Award only to responsible contractors;
 - F. Maintain oversight in order to monitor contractor performance regarding contract terms, conditions and specifications; and,

- G. 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.

4. **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 the fiscal agent, service provider, or subrecipient is committed to pay for goods, property, or services needed to accomplish the purposes of the contract or agreement. 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 subaward (see 2 CFR 200.92 - Subaward).

Contractor - An entity responsible for providing generally required goods or services related to the administrative support of the federal award. These goods or services may be for the recipient's or subrecipient's own use or for the use of participants in the program. Distinguishing characteristics of a contractor include:

- Providing the goods and services within normal business operations;
- Providing similar goods or services to many different purchasers;
- Operating in a competitive environment; and;
- Program compliance requirements do not pertain to the goods or services provided.

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 subrecipient.

Pass-through Entity - a non-federal entity that provides a subaward to a subrecipient to carry out part of a federal program.

Subaward - an award provided by a pass-through entity to a subrecipient for the subrecipient 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 subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.

Subrecipient – An entity that receives federal assistance passed through from a prime recipient or another subrecipient to carry out or administer a WIOA program. Distinguishing characteristics of a subrecipient include:

- Determining eligibility for assistance;
- Performance measured against meeting the objectives of the program;
- Responsibility for programmatic decision making;
- Responsibility for applicable program compliance requirements;
- Use of the funds passed through to carry out a program of the sub-entity as compared to providing goods or services for a program of the prime recipient.

5. References:

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

- 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:

- Public Law 113-128, Workforce Innovation and Opportunity Act of 2014, Sections 107(d)(10), 107(g)(1), 121(d)(1-2), 123, 134(c)(2)(C)
- 20 CFR 678.600-635, 679.370(l), 679.410, 679.430, 680.160, 680.300, and 681.400
- [Training and Employment Guidance Letter \(TEGL\) 15-16](#)
- [Training and Employment Guidance Letter \(TEGL\) 23-14](#), Section 8

6. Supersedes:

WIOA Title I Policy 5404

7. Website:

[Workforce Professionals Center](#)

8. Action:

Local Workforce Development Boards and their contractors, as well as Employment Security Regional Directors, must distribute this policy broadly throughout the system to ensure that WorkSource System staff are familiar with its content and requirements.

9. Attachments:

- [Attachment A](#) – Request for Waiver to Serve as One-Stop Operator (PDF)
- [Attachment A](#) – Request for Waiver to Serve as One-Stop Operator (Word version for local use)
- [Attachment B](#) – Request for Waiver to Provide WIOA Adult and/or Dislocated Worker Training Services (PDF)
- [Attachment B](#) – Request for Waiver to Provide WIOA Adult and/or Dislocated Worker Training Services (Word version for local use)
- [Attachment C](#) – Request for Approval to Provide WIOA Basic and/or Individualized Career Services (PDF)
- [Attachment C](#) – Request for Approval to Provide WIOA Basic and/or Individualized Career Services (Word version for local use)
- [Attachment D](#) – Request for Approval to Provide WIOA Youth Design Framework Services (PDF)

- [Attachment D](#) – Request for Approval to Provide WIOA Youth Design Framework Services
(Word version for local use)

Direct Programmatic Inquiries To:

*Employment System Administration and Policy Unit
Employment System Policy and Integrity Division
Employment Security Department
P.O. Box 9046
Olympia WA 98506-9046
SystemPolicy@esd.wa.gov*

Direct Fiscal Inquiries To:

*Contracts and Procurement
Employment Security Department
P.O. Box 9046, MS 6000
Olympia, WA 98507-9046
ESDGPGrantsOffice@esd.wa.gov*

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 3.c.i.C.3* of WIOA Title I Policy 5404, Revision 1, including why the LWDB was unable to secure any one-stop operator bids in response to its solicitation or did not find qualified bidders during the review process, 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. Provide copies of the local policies and procedures that describe the internal controls, firewalls, and conflict of interest mitigation 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 approved the waiver request.

* Sole source can be exercised as per local policies if it includes published notice 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 and complies with federal procurement regulations at 2 CFR 200.320(f) in which one or more of the following circumstances apply:

- The item is only available from a single source
- Public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation¹
- The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity
- After soliciting a number of sources, competition is determined inadequate²

¹ 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.

² Inadequate responses are those judged by a panel of impartial reviewers to score below a pre-determined minimum level on scoring criteria published as part of the solicitation.

Submit the completed waiver request and documentation to:

Workforce Training and Education Coordinating Board
P.O. Box 43105
Olympia, WA 98504-3105
Workforce@wtb.wa.gov

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 (check all that apply):

Adult Program

Dislocated Worker Program

Adult Program (if applicable):

1. Provide evidence (e.g., failed competitive procurement, no response to Request for Proposal, no response to Request for Qualifications, or no response to Request for Interest) that there are 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 members of the LWDB reviewed the information prepared for the waiver request (items 1-4 above) and approved the waiver request in a public meeting.
6. Attach documentation (signed and dated letter) that the local Chief Elected Official reviewed the information prepared for the waiver request (items 1-5 above) and approved the waiver request.

Dislocated Worker Program (if applicable):

1. Provide evidence (e.g., failed competitive procurement, no response to Request for Proposal, no response to Request for Qualifications, or no response to Request for Interest) that there are 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 members of the LWDB reviewed the information prepared for the waiver request (items 1-4 above) and approved the waiver request in a public meeting.
6. Attach documentation (signed and dated letter) that the local Chief Elected Official reviewed the information prepared for the waiver request (items 1-5 above) and approved the waiver request.

Submit the completed waiver request and documentation to:

Workforce Training and Education Coordinating Board

P.O. Box 43105
Olympia, WA 98504-3105
Workforce@wtb.wa.gov

ATTACHMENT C

Request for Approval to Provide WIOA Basic and/or Individualized Career Services

Date:

Local Workforce Development Board (LWDB):

Contact Person/Title:

Phone:

E-mail Address:

Mailing Address:

Please select the type of services for which Governor's approval is being requested (check all that apply):

Basic Career Services Individualized Career Services

1. What factors went into the LWDB's decision to submit this request to provide basic and/or individualized career services, including those that led the LWDB to believe that participants will be better served by providing these services directly rather than through a competitive procurement process?

2. Describe the basic and/or individualized career services the LWDB plans to provide, including its prior experience providing those services and how long it has done so.

3. Provide the WDA's state and federal performance outcomes, cost per participant, and cost per employment for its Adult and Dislocated Worker programs for each of the last five years and describe how those outcomes compare to other WDAs in the state.

4. Provide evidence that the LWDB is qualified to provide basic and/or individualized career services, including any local testimonials that speak to the effectiveness and efficiency with which the LWDB has provided or can provide those services. Attach supporting documentation.

5. Attach documentation (signed and dated letter) that the members of the Local Workforce Development Board reviewed the information prepared for the request (items 1-4 above) and approved the request in a public meeting.
6. Attach documentation (signed and dated letter) that the local Chief Elected Official reviewed the information prepared for the request (items 1-5 above) and approved the request.

Submit the completed request and documentation to:

Workforce Training and Education Coordinating Board
P.O. Box 43105
Olympia, WA 98504-3105
Workforce@wtb.wa.gov

ATTACHMENT D

Request for Approval to Provide WIOA Youth Design Framework Services

Date:

Local Workforce Development Board (LWDB):

Contact Person/Title:

Phone:

E-mail Address:

Mailing Address:

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1. What factors went into the LWDB's decision to submit this request to directly provide youth framework services, including those that lead the LWDB to believe that youth participants will be better served by providing these services directly rather than through a competitive procurement process?
 2. Describe the youth design framework services the LWDB plans to provide, including its prior experience providing those services and how long it has done so.
 3. Provide the WDA's state and federal performance outcomes, cost per participant, and cost per employment for the Youth program for each of the last five years and describe how those outcomes compare to other WDAs in the state.
 4. Provide evidence that the LWDB is qualified to provide youth design framework services, including any local testimonials that speak to the effectiveness and efficiency with which the LWDB has provided or can provide those services. Attach supporting documentation.
 5. Attach documentation (signed and dated letter) that the members of the Local Workforce Development Board reviewed the information prepared for the request (items 1-4 above) and approved the request in a public meeting.

6. Attach documentation (signed and dated letter) that the local Chief Elected Official reviewed the information prepared for the request (items 1-5 above) and approved the request.

Submit the completed request and documentation to:

Workforce Training and Education Coordinating Board
P.O. Box 43105
Olympia, WA 98504-3105
Workforce@wtb.wa.gov