

**WASHINGTON STATE
WORKFORCE TRAINING AND EDUCATION COORDINATING BOARD
MEETING NO. 199
April 20, 2016**

WIOA POLICY DISCUSSION

Background

Workforce Innovation and Opportunity Act Section 101(d) outlines 12 functions of the state workforce board related to coordinating and overseeing workforce development. Included among the Workforce Training and Education Coordinating Board's (the Board) federally required functions are:

- The review of statewide policies, of statewide programs, and of recommendations on actions that should be taken by the State to align workforce development; and
- The development of policies that promote statewide objectives for, and enhance the performance of, the workforce development system in the state.

The state statute creating the Board explicitly states the Legislature's intent for the Board to play a central role in the development of policies related to workforce efforts, reinforcing that the Board was created to hold a "preeminent role...in coordination and policy development of the state's workforce development efforts."¹ Other state laws further emphasize the Board's role in developing policies for the workforce development system, charging the Board with undertaking policy analysis for the state training system as one of its core purposes², and ensuring that the Board provides policy advice for federal acts pertaining to workforce development.³

At the February Workforce Board meeting, Employment Security Department (ESD) staff presented three workforce system policies (two in effect as of April, one in draft form and not yet published for public comment) related to the procurement of services at one-stops, and disputes that may arise during that process:

- System Policy 5404: Procurement and Selection of One-Stop Operators and Service Providers
- System Policy 5410: Dispute Resolution and Appeals
- Draft System Policy 5411: Segregation of Duties, Disclosure, and Recusal (ESD's draft internal "firewall" policy)

Jeanne Bennett, President of the Washington Workforce Association (WWA), presented the perspective of local WDCs on the above policy drafts. After discussion, the Board asked ESD to work with WWA and Board staff to see if an agreement could be reached between all parties on draft policy language.

¹ RCW 28C.18.070(2).

² See RCW 28C.18.030.

³ See RCW 28C.17.050.

One primary function of Draft System Policy 5411 is to create internal firewalls between the divisions of ESD responsible for policy development, workforce development strategic initiatives, program administration, labor market and performance analysis, financial and administrative services, the ESD internal audit unit, and the Commissioner's Office. At the February Board meeting, WWA President Bennett highlighted a particular concern of local boards in procurement-related disputes where ESD is a party to the dispute: appeals beyond the local board level are considered by the ESD Commissioner or their designee, per System Policy 5410. The Board discussed whether the draft firewall and dispute resolution policies could be modified to eliminate any question of conflict of interest where ESD is a party to a dispute arising from procurement. Representatives from ESD, Board staff, and the WWA were asked to meet and consider an alternative dispute resolution process.

On April 11, representatives of ESD, WWA, and Board staff met to discuss the policy drafts. The following Attachments contain the three policies addressed at that meeting, as amended:

- Tab 4, Attachment A - Draft System Policy 5410: The dispute resolution policy. In response to discussion at the February Board meeting, this policy has been amended so that a third-party mediator is chosen within 10 business days to resolve disputes that progress to the state level and involve ESD as a party. The ESD Commissioner may still reverse the holding of the mediator within five business days, but only under three circumstances: where the mediator had an undisclosed conflict of interest; where the mediator's decision is clearly unsupported by law; or where the mediator's decision is clearly unsupported by facts in the case. The Commissioner's decision is still appealable to the U.S. Department of Labor under WIOA Section 181(c).
- Tab 4, Attachment B - Draft System Policy 5411: The ESD "firewall" policy. New language has been added since the last Board meeting to clarify that ESD employees engaged as WIOA Title I subrecipients (youth, adult, and/or dislocated worker program service providers) and subcontractors (e.g., one-stop operators, National Dislocated Worker Grants, Governor's statewide contracts, etc.) are prohibited from communicating directly with ESD state oversight entities on issues, concerns, or findings identified in the course of monitoring and/or grants and contracts review. Communication in these matters will be coordinated by and through local Boards, which are responsible for overseeing and monitoring the activities of their subrecipients and subcontractors.
- Tab 4, Attachment C - Draft System Policy 5404: The state policy on procurement and selection of one-stop operators and service providers. The draft system policy closely aligns to WIOA law and the proposed regulations. However, representatives from ESD, WWA, and Board staff identified a policy issue to discuss with the Board regarding the procurement of youth services, that is further described below.

Procurement of Youth Services by Sole-Source Contract

Under WIOA, procurement of services within a one-stop may occur through three methods: by sealed bid, competitive bid, or through a sole-source contract where a local Board seeks a procurement bid from only one bidder (which could be a provider in the community or the local Board itself). Sole-source contracts may be pursued in procurement *only* if documented factors lead to a determination that: (1) only one entity could serve as an operator, (2) compelling circumstances outweigh the delay that would result from a competitive solicitation, or (3) results of a regular competitive procurement process are determined inadequate (the draft policy provides further guidance on applying these tests). Local Boards are additionally required to

publish 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.

Finally, local Boards that seek to procure services by sole-source contracts usually require agreement of the local Chief Elected Official (CLEO) and Governor (a responsibility delegated to the state Workforce Board). The exception is that local Boards *are not required* by law or the proposed WIOA regulations to obtain agreement of their CLEO or the state Workforce Board on sole-source contracts for youth services.

The Board will hear a presentation on the policy drafts that emerged from the April 11 meeting, and may approve the system policies or offer feedback and direction for future Board action on policies.

Action: Board action anticipated.



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: 5410, Revision 1
To: Washington WorkSource System
Effective Date: May 1, 2016
Subject: Dispute Resolution and Appeals

1. Purpose:

To communicate the requirement that Local Workforce Development Boards (LWDBs) have local WIOA dispute resolution policies and processes and to describe the process by which local WIOA disputes will be handled by the State in the event disputes cannot be resolved at the local level, including procedures to be followed when the State has a conflict of interest.

2. Background:

Disputes by LWDBs regarding contracts, allotments, monitoring and oversight outcomes, and administrative agreements and memoranda involving local and/or system partners may occur. Standardized policies and timely processes for addressing and resolving such disputes is required.

3. Policy:

- a. LWDBs must have local policies and procedures to resolve disputes at the lowest possible level. LWDBs must follow their local policies and procedures and appropriately document local actions and decisions relating to disputes that arise. Only after local policies and procedures have been exhausted can disputes be elevated to the state level.
- b. If the requirements of a local dispute resolution policy and process have been met and the parties to a dispute cannot reach agreement, they may appeal to the Employment Security Department (ESD) Commissioner for resolution. Decisions by the

Commissioner or his/her designee, as the representative of the Governor, will be made in consultation with appropriate local Chief Elected Official(s) and issued within 30 calendar days of receiving appeals.

- c. If the dispute involves ESD, either party to the dispute can request the services of an independent mediator or hearing officer.
 - i. The selection process for the mediator or hearing officer must be concluded within 10 business days and including the following:
 - A. Each party to the dispute will identify one representative.
 - B. From a list of three mediators/hearing officers identified through a mutually-agreed upon source (e.g., local dispute resolution councils, State Department of Enterprise Services, etc.), each representative will eliminate one individual with the remaining individual selected by that process of elimination.
 - C. Both parties to the dispute agree to share the cost of the mediator/hearing officer equally.
 - ii. The mediator or hearing officer will, within 30 calendar days of being retained, deliver a recommendation, in writing, to the ESD Commissioner.
 - iii. The ESD Commissioner has five business days to render a decision by accepting or rejecting the recommendation with the latter limited to three “just cause” allowances:
 - A. Undisclosed conflict of interest on the part of the mediator/hearing officer
 - B. Clear misapplication of the law and/or regulations
 - C. The finding does not fit the record or facts of the case
 - iv. If the ESD Commissioner rejects the mediator/hearing officer recommendation, either party to the dispute and Commissioner’s (rejection) decision can be appealed to the U.S. Department of Labor as described in WIOA Section 181(c).
- d. If one or more of the parties to the dispute is dissatisfied with the ESD Commissioner’s decision, the decision can be appealed to the U.S. Department of Labor as described in WIOA Section 181(c).

4. Definitions:

None.

5. References:

Public Law 113-128, Workforce Innovation and Opportunity Act of 2014, Section 181(c) – Grievance Procedure

6. Supersedes:

None.

7. Website:

http://www.wa.gov/esd/1stop/policies/wioa_title1.htm

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:

None.

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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: 5411
To: Washington WorkSource System
Effective Date: May 1, 2016

Subject: Employment Security Department Segregation of Duties, Disclosure and Recusal

1. Purpose:

It is the policy of the Employment Security Department (ESD) that divisions and employees engaged in the administration, oversight, and operation of federal Workforce Innovation and Opportunity Act (WIOA) grant programs minimize organizational conflicts of interest through segregation of duties, disclosure, and recusal in order to foster public and partner confidence.

2. Background:

ESD's multiple roles under WIOA involve state administrative functions (fiscal, program, and administrative policy development; grants/contracts administration, oversight, and monitoring; data systems; federal performance reporting); mandated participation on state and local boards that develop strategic workforce direction and policies; and local grant/contract sub-recipients and service providers. These roles can create conflicts of interest.

3. Policy:

a. Segregation of Duties:

i. ESD will establish and maintain the following segregation of duties among its internal divisions as it relates to responsibilities under WIOA:

- 1. Financial and Administrative Services Division (FASD).** Responsible for advising on fiscal policy and allocating resources for grants and contracts with LWDBs, reimbursing expenditures related to those contracts, and monitoring those contracts for fiscal and programmatic compliance with the law; and submitting federal financial reports to the U.S. Department of Labor (DOL).
- 2. Labor Market and Performance Analysis (LMPA).** Responsible for producing labor market and workforce data and reports used by the agency, LWDBs, and others to analyze performance, apply for grants, and identify potential projects and for submitting

quarterly and annual performance reports to DOL.

3. **Workforce Development and Strategic Initiatives (WDSI).** Responsible for aligning agency activities with strategic goals and managing the agency's relationship with the State Workforce Development Board (SWDB) and LWDBs.
4. **Employment System Policy and Integrity Operations (ESPIO) Division.** Responsible for developing state WIOA, WorkSource System, and Unemployment Insurance policies and guidance for agency staff, LWDBs, and LWDB contractors as well as final approver of WIOA-related grants and contracts.
5. **Workforce and Career Development Division (WCDD).** Responsible for oversight and administration of agency workforce programs, management of the agency's field structure to deliver those programs, development of grant proposals, including those to provide services in response to requests for proposal issued by LWDBs, and development of contracts with LWDBs.
6. **Internal Audit Unit.** Responsible for assuring that divisions follow agency policies.

ii. **The following procedures will be implemented to further segregate duties and minimize conflicts of interest among the organizational entities cited above:**

1. **Separating Strategy and Administration:** WDSI will develop strategic initiatives in consultation with LWDBs; WCDD will review subsequent proposals and negotiate and recommend funding of LWDBs; ESPIO will serve as the approver of the WCDD recommendations; and WCDD will provide post-approval administration of grants and contracts, including performance-related corrective actions.
2. **Grant Proposals:** For grant applications/proposals developed on behalf of LWDBs, ESD will use criteria developed in collaboration with the Washington Workforce Association (WWA) to determine which LWDBs are included in the proposals.
3. **Data Sharing/Availability:** FASD and LMPA will make WIOA-related financial, participant, and performance data (including federal reports) available to all requesting entities (within the limits of [RCW 50.13](#) and other confidentiality provisions) when those entities are competing for the same contracts or grants.
4. **Signature/Approval Authority:** ESPIO will have signature/approval authority for all WIOA grants and contracts, including those for which WCDD is a local service provider.
5. **Grants Administration Protocol:** ESD staff responsible for administration of WIOA grants and contracts will only engage designated LWDB sub-grantees/contractors. They will not engage sub-sub-grantees/sub-contractors unless explicitly requested by LWDBs in writing.

b. **Disclosure:**

Potential conflicts of interest arise from ESD's required membership on the SWDB and LWDBs that establish strategic direction and policy and issue and approve competitive requests for proposals which ESD may pursue. It is the policy of the agency that employees who serve on such boards as members or proxy members do the following:

- i. Disclose conflicts of interest and recuse themselves from discussions or decisions related to these issues.

- ii. Ensure that disclosures of conflict of interest made during board meetings be documented in meeting proceedings and in approved minutes.
- iii. Contact ESD's Internal Audit Unit with questions regarding possible conflicts of interest.

c. Recusal/Abstention:

- i. Local Board Activities: ESD employees who serve as members or proxy members of the SWDB or LWDBs must recuse themselves from involvement in discussions or decisions in which the agency has a conflict of interest. It is the policy of the agency that employees who serve on such boards do the following:
 - 1. Abstain from offering motions and/or voting on matters wherein ESD has disclosed a conflict of interest, to include physically leaving the room when such discussions are underway so as not to influence deliberations.
 - 2. Abstain from activities that could unduly influence the outcome of the award process (e.g., participating in board discussion, development of RFPs, serving on RFP review and scoring panels or committees).
- ii. State Oversight Activities: ESD employees engaged as WIOA Title I subrecipients (youth, adult, and/or dislocated worker program service providers) and subcontractors (e.g., one-stop operators, National Dislocated Worker Grants, Governor's statewide contracts, etc.) are prohibited from communicating directly with ESD state oversight entities on issues, concerns, or findings identified in the course of monitoring and/or grants and contracts review. Communication in these matters will be coordinated by and through LWDBs, which are responsible for overseeing and monitoring the activities of their subrecipients and subcontractors.

d. Nondisclosure:

ESD employees who serve as members or proxy members of the SWDB or LWDBs are prohibited from sharing with their organization any advanced, non-public information related to RFPs that will be issued by those boards and for which ESD may be a respondent to avoid providing an unfair advantage to the agency in the RFP process.

e. Reporting and Resolving Conflicts of Interest:

ESD employees who identify a possible violation of this policy must report it to their direct supervisor and division director (if they are not the same) and ESD's Internal Audit Unit. The division director will work with the Internal Audit Unit to resolve the conflict. The Internal Audit Unit will render a determination and recommend corrective action if a conflict exists and the policy has been violated.

f. Annual Disclosure and Compliance Statements:

ESD employees who serve as members or proxy members of the SWDB or LWDBs and/or are WIOA Title I subrecipients must annually sign a statement ([Attachment A](#)) affirming that they:

- i. Received a signed and dated copy of this policy
- ii. Read and understand this policy
- iii. Agree to comply with this policy

The signed documents will be retained by ESD's Internal Audit Unit.

g. Annual Audit:

The Internal Audit Unit will audit this policy to ensure compliance by reviewing annual statements, reviewing information gathered by the Workforce Monitoring Unit, and taking such other actions as are necessary for effective oversight.

If at any time during the year, the information in an annual statement changes materially, ESD employees must disclose such changes and revise their annual disclosure forms.

The Internal Audit Unit will review this policy annually and provide a report to the ESD Executive Leadership Team that identifies violations of the policy, resolution of those violations and recommendations for updating or strengthening the policy as needed.

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.

5. References:

- Proposed 20 CFR 697.430
- Proposed 20 CFR 679.430 - Entities performing multiple functions
- Proposed 20 CFR 683.200(c)(5) - Administrative Rules, Costs, Limitations – WIOA Title I and Wagner-Peyser
- 29 CFR 97.36(3)
- [2 CFR 899 Part 200 and Part 2900](#) - Office of Management and Budget Uniform Guidance on administrative, cost, and audit provisions for federal grants
- [Revised Code of Washington \(RCW\) 42.50](#) - Ethics in Public Service
- [WIOA Title I Policy 5405 – Conflict of Interest](#)

6. Supersedes:

N/A

7. Website:

http://www.wa.gov/esd/1stop/policies/wioa_title1.htm

8. Action:

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

9. Attachments:

[Attachment A](#) – WIOA Title I Policy 5411 (Segregation of Duties, Disclosure, and Recusal) Acknowledgement Form

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ATTACHMENT A

Employment Security Department

WIOA Title I Policy 5411 - Segregation of Duties, Disclosure, and Recusal

By my signature, I acknowledge the following:

- I have read and understand this policy.
- I understand that I will be provided with a signed and dated copy of this policy.
- I have been given the opportunity to discuss this policy with my supervisor and/or the Director of Internal Audit.
- I have had the opportunity to ask any questions I have about the policy and those questions have been answered.
- I agree to adhere to the standards and requirements set forth in this policy.

Printed employee name	Employee's signature	Date
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By my signature, I acknowledge that I have discussed this policy with this employee and have answered his/her questions. I am satisfied that the employee understands this policy.

Supervisor/manager signature	Title	Date
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Division/office



Workforce Innovation and Opportunity Act Policy Employment System Administration and Policy

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Policy Number: 5404
To: Washington WorkSource System
Effective Date: July 1, 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).

Effective immediately, all new procurement processes must conform to the requirements in this policy. Effective 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. Sole Source
 - I. Sole source can be exercised as per local policies that comply with state and federal procurement laws and regulations and 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 circumstances¹ outweigh the delay that would result from a competitive solicitation, or results of the competition conducted per Section 3(g)(i)(C)(1-2) of this policy are determined inadequate², and only with the agreement of the local Chief Elected Official and Governor.

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.

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.

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. 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. LWDBs do not need the approval of the Local Elected Official or Governor to provide design framework services for youth program participants.

- 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. 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 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 State Workforce Development Board (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.
- 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 State Workforce Development Board (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/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 subrecipients 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)
- Proposed 20 CFR 678.600-635, 679.370(l), 679.410, 679.430, 680.160, 680.300, and 681.400
- [Training and Employment Guidance Letter \(TEGL\) 23-14](#), Section 8

6. Supersedes:

WIA Title I-B Policy 3405 and WIA Title I-B Policy 3465

7. Website:

<http://www.wa.gov/esd/policies/title1b.htm>

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)

Direct Programmatic Inquiries To:

*Employment System Administration and Policy Unit
Employment System Policy and Integrity Operations Division*

*Employment Security Department
P.O. Box 9046
Olympia WA 98506-9046
(360) 902-9666
SystemPolicy@esd.wa.gov*

Direct Fiscal Inquiries To:

*John Mattes
Contracts and Procurement
Employment Security Department
P.O. Box 9046, MS 6000
Olympia, WA 98507-9046
(360) 902-9686
jmattes@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(b)(i)(C)(3)* of WIOA Title I Policy 5404, 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. 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 approved 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 circumstances¹ outweigh the delay that would result from a competitive solicitation, or results of the competition conducted per Section 3(d) of this policy are 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 indicate the type(s) of services for which permission is being requested (check all that apply):

Basic Career Services

Individualized Career Services

Basic Career Services (if applicable):

1. Describe the LWDB's prior core services under WIA and/or basic career services under WIOA, including how long the LWDB has previously provided such services. Demonstrate that the LWDB's adult and dislocated worker programs delivered superior results as compared to all LWDBs in the state, including performance outcome data on required federal and state measures, cost per participant, and cost per employment. This information must make a clear case as to why it was not necessary for the LWDB to conduct competitive procurement. Attach supporting documentation.

2. Describe the basic career services the LWDB would provide and evidence that it is qualified to provide those services, including any local testimonials that speak to the effectiveness with which the LWDB provided the services.

3. Attach documentation (signed and dated letter) that the members of the Local Workforce Development Board reviewed the information prepared for the request (items 1 and 2 above) and approved the request in a public meeting.
4. Attach documentation (signed and dated letter) that the local Chief Elected Official reviewed the information prepared for the request (items 1-3 above) and approved the request.

Individualized Career Services (if applicable):

1. Describe the LWDB's prior experience providing intensive services under WIA and/or individualized career services under WIOA, including how long the LWDB previously provided such services. Demonstrate that the LWDB's adult and dislocated worker programs delivered superior results as compared to all LWDBs in the state, including performance outcome data on required federal and state measures and cost per participant, and cost per employment. Attach supporting documentation.
2. Describe what individualized career services the LWDB would provide and evidence that it is qualified to provide those services, including any local testimonials that speak to the effectiveness with which the LWDB provided the services.
3. Attach documentation (signed and dated letter) that members of the Local Workforce Development Board reviewed the information prepared for the request (items 1 and 2 above) and approved the request in a public meeting.
4. Attach documentation (signed and dated letter) that the local Chief Elected Official reviewed the information prepared for the request (items 1-3 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