



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
To: Washington WorkSource System
Effective Date: March 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) 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. 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(b) by stating that the "Local Board is designed to oversee the one-stop system and services, not provide them." However, WIOA and draft rules identify specific circumstances under which LWDBs may provide one-stop operator and other services.

3. Policy:

- 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. The specific processes by which such determinations are made are outlined in Sections 3(g)(i)(E), 3(g)(iii)(A)(5), and 3(g)(iv) of this policy.
- 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
 - A. One-stop operators must be designated and certified through a competitive procurement process.
 - 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, 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 3(g)(i)(C)(1-2) 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).
- 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 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

- 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 a rubric of 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 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.

- 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 provide these activities.
- 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.

iii. Procurement of Adult or Dislocated Worker Training Services

- A. LWDBs cannot provide Adult or Dislocated Worker training services unless 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 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;
 - 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 Basic Career Services

LWDBs can only provide (basic and individualized) career services by agreement of the local chief elected official and Governor. LWDBs must complete [Attachment C](#) (Request for Waiver to Provide WIOA Basic and/or Individualized Career Services) and submit it to the State Workforce Development Board (SWDB).

h. 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 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 subaward (see 2 CFR 200.92 - Subaward).

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 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 – a non-federal entity that receives a subaward 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 subrecipient may also be a recipient of other federal awards directly from a federal awarding agency.

5. **References:**

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

- Public Law 113-128, Workforce Innovation and Opportunity Act of 2014, Sections 107(g)(1), 121(d)(2)(A), 122, and 123
- Proposed 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:

- Public Law 113-128, Workforce Innovation and Opportunity Act of 2014, Sections 107(d)(10), 121(d)(1-2), 134(c)(2)(C), and 134(c)(3)(C)
- Proposed 20 CFR 678.600-615, 680.160 and 680.300
- [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 Waiver to Provide WIOA Basic and/or Individualized Career Services \(PDF\)](#)
- Attachment C – Request for Waiver 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, 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 3(g)(i)(C)(1-2) of this policy are determined inadequate.

Submit the completed waiver request 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:

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

ATTACHMENT C

Request for Waiver 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:

Basic Career Services Individualized Career Services

Basic Career Services (if applicable):

1. Describe the LWDB's competitive procurement and its outcome resulted in a determination that neither the one-stop operator nor contracted service providers could provide basic career services to WIOA participants. Attach supporting documentation.
2. Describe what basic career services the LWDB would provide and evidence that it is qualified to provide those services.
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.

Individualized Career Services (if applicable):

1. Describe the LWDB's competitive procurement and its outcome resulted in a determination that neither the one-stop operator nor contracted service providers could provide basic career services to WIOA participants. Attach supporting documentation.
2. Describe what basic career services the LWDB would provide and evidence that it is qualified to provide those services.
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.

Submit the completed waiver request to:

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