

Appendix B: One-Stop Operator Procurement

General. Local workforce development boards, local boards, or LWDBs, must competitively procure their workforce system operator(s). This procurement must meet the criteria as outlined in 20 CFR § 678.605 and this policy ensuring an efficient and effective process is in place for the selection of the operator. LWDBs must consider what is necessary to assure program partners and service providers are effectively served by the operator(s) with special regard given to Workforce Innovation and Opportunity Act, or WIOA, identified core program partners input and ensuring consistency with a regional or local workforce delivery system memorandum of understanding, or MOU, as applicable, the WIOA regional and local plan(s), and the PA CareerLink® system certification process and requirements. This appendix articulates procurement standards, process information, practices to be aware of and other considerations deemed essential for a successful operator procurement.

Compliance. The LWDB process for competitively procuring operators must comply with the principles of competitive procurement. Competitive procurement processes must be conducted in a full and open competition that promotes efficiency and effectiveness; ensures regular consideration of operator performance and costs and evaluates operator performance helping to ensure continuous improvement. LWDB procurement policy, procedure, process and practices must comply and be consistent with all applicable federal law, regulation (20 CFR §§ 678.600-635 and associated preamble), guidance, Office of Management & Budget, or OMB, circulars and the Uniform Guidance (2 CFR § 200.318-§ 200.326), as well as state law, policy and technical assistance regarding all stages of procurement activity including awarding of contracts and post-award activity for any federally-funded activity or program. It is highly recommended that LWDBs review U.S. DOL Employment and Training Administration's (ETA) Training and Employment Guidance Letter (TEGL) No. 15-16 *Competitive Selection of the One-Stop Operator*.

WIOA workforce system stakeholders are provided general procurement guidance within Pennsylvania Department of Labor & Industry, or L&I's, [Workforce System Policy \(WSP\) No. 03-2015, Financial Management Policy](#) and its attachment *Financial Management Guide*, or FMG. LWDBs should review the FMG's Chapter 10: Procurement and use this information in concert with the following operator-specific procurement standards, process, practices and other considerations.

Operator Procurement Process. The stages or phases of the procurement process are organized in the general order that each phase is addressed. The procurement process is described in multiple federal-level resources including WIOA and its regulations, the Uniform Guidance and 29 CFR Part 97. Another key reference is L&I's Workforce System Policy (WSP) No. 03-2015, Financial Management Policy and its attached FMG's Chapter 10: Procurement.

1. *Planning Phase* may include identifying need(s), conducting research, determining key factors to base a procurement solicitation (e.g. Request for Proposal, or RFP), developing evaluation and scoring factors, identifying scoring team and determining signatory authority.
2. *Release and Evaluation Phase* may include publicizing solicitation, bidders conferencing, collecting proposals, and evaluating and scoring proposals.
3. *Negotiation and Selection Phase* may include negotiating operator roles and responsibilities/performance levels/fair and reasonable profit/payment details/contract term including inclusion of option years and gain approval of authority(s) if applicable, making offer and obtaining acceptance, protesting process, certifying/designating one-stop operator and executing contract.
4. *Implementation Phase* may include post-award administration activities such as conducting oversight and monitoring, issuing invoices, making payments, monitoring performance and deliverables and evaluating/approving any contract modifications.

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5. *Closeout Phase* may include reconciling costs/payments/performance goals with actual performance, securing/retaining participant and financial records and preparing closeout documents.

Selected Operator Procurement Phase Elements.

- A. Procurement Planning Phase.** LWDBs will conduct appropriate preparation prior to drafting an operator's RFP or request for quotes, or RFQ. Using one or more preparation methods to improve the likelihood of a successful procurement should be considered as detailed in the FMG. Key elements include documents/recordings of preparation efforts, research results and conclusions drawn for federal or state inspection.

Key factors to consider:

- *Local (and/or regional) workforce system operations vision.*
 - *Roles and responsibilities.* The LWDB must determine the role(s) and responsibilities of the operator as referenced in this policy's section titled: *Roles, Responsibilities, and Limitations of the Operator*. The LWDB should deconstruct (to the greatest extent possible) what the roles and responsibilities will entail and break-down, by cost type, which responsibilities are administrative or programmatic.
 - *Internal Controls.* A description of the LWDB's plan to establish adequate internal controls addressing at a minimum, where firewalls will exist relating to employer of record and governance-operations conflicts. The LWDBs will also ensure every part of the procurement process is consistent with federal, state and local laws, regulations, policies and procedures. This process must not hinder free and open competition, create a disincentive to the provision of services to individuals with barriers to employment, or unfairly advantage one local workforce system partner program or program provider over any other.
 - *LWDB's code of conduct and conflicts of interest policy.*
 - *Benchmark Timeline.* The timeline will include key deliverables.
 - *Budget.* Operator costs compose most of the procurement budget. Two elements that affect operator costs greatly are the operator's roles and responsibilities.
 - *Evaluation.* A description of the LWDB's plan to evaluate the operator's performance.
 - *Identify availability.* A description of efforts made to identify the availability of potential eligible entities with appropriate experience and capacity to satisfy the LWDB's requirements.
 - *Entity Financial Fitness.* Eligible entities must meet appropriate incorporation requirements, demonstrate financial and fiscal accountability and provide proof of liability insurance.
 - *Method of Procurement.* A determination of the best method based on key factors.
 - *Procurement processes and bid criteria.* A description of how the procurement will be conducted, which includes the RFP/RFQ announcement and notification process, and the bid scoring selection criteria.
- B. Methods of Procurement.** Each LWDB must determine the appropriate method for procurement and follow proper procurement practices consistent with all applicable federal and state law, regulation, guidance, policy and procedure regarding procurement and one-stop operators, awarding of contracts for any WIOA-related or federally-funded activity or program and this policy.

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TEGL No. 15-16 specifies that LWDBs may choose one of the two (2) permissible procurement methods: sealed bids or competitive proposals. However, L&I recommends using competitive proposals (2 CFR § 200.320(D)) over sealed bids.

In operator procurement, a “total projected budget” is defined as the total value of the operator contract and potential contracts. “Potential contracts” are all contracts associated with the originating operator procurement whether the original contract is modified, extended or optioned. If the operator procurement includes other WIOA program services being performed by the same entity also performing as the operator, then the value of those services is added to the operator value to derive the total projected budget.

If a LWDB’s total projected budget is less than the simplified acquisition threshold (currently set at \$150,000 by 48 CFR § 2.1), the LWDB may be eligible to employ small purchases procurement in order to procure the local area system operator(s). The LWDB must provide documentation demonstrating procurement preparation efforts including expected operator roles and responsibilities, and any other specifications developed regarding procurement consideration and pre-approval by L&I for small purchases procurement. Additionally, LWDBs using small purchases procurement must obtain at least three (3) written quotes from qualified bidders for the operator selection to be considered valid. The LWDB must contact the Director of Bureau of Workforce Development Administration, or BWDA, to discuss further details.

Where certain dire criteria are met, including multiple attempts to use a method of procurement promoting full and open competition, the LWDB may apply to L&I for the right to employ the sole source method of procurement (no-competition) to select an operator. The LWDB must contact the Director of BWDA to discuss further details.

Operator Costs.

WIOA mandates the competitive procurement of, and offers funding flexibility for, the one-stop operator. Due to the nature of the roles and responsibilities associated with an operator, WIOA presumes there are costs associated with such an entity. LWDBs have flexibility determining the funding source(s) to support the operator (e.g., shared cost spread among all partners, local government general revenue and/or philanthropic sources).

- Costs associated with the system operator(s) will be both administrative and programmatic in nature. The contractual agreement between the LWDB and the operator must clearly identify the functions that are either administrative or programmatic regardless of the mechanism used in the procurement process. Additionally, such contracts must also include applied funding source(s).
- Administrative costs are defined as the allocable portion of the costs associated with specific functions and not related to the “direct provision of workforce investment services, including services to participants and employers” as detailed in 20 CFR § 683.215(b). Such costs are subject to the administrative cost limits (i.e., 10 percent of the WIOA program’s annual program year allocation).
- A LWDB cannot issue an RFP or RFQ that includes no funding or only includes nominal funding. An RFP or RFQ with no funding or nominal funding will restrict competition and will result in either no responses or a limited number of responses from entities already receiving Title I funds. Such an RFP or RFQ would violate the prohibition on noncompetitive pricing practices under 2 CFR § 200.319(a) and 29 CFR § 97.36(c)(1)(iii).
- The possibility of a purely “non-financial” operator does not exist; however, the LWDB may consider options to achieve the lowest operator cost possible given the goals and strategies the LWDB desires to

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implement. LWDBs control the cost of an entity serving in the capacity of an operator by determining the scope of the operator's roles and responsibilities. A cost reduction strategy that may be used, in part, is the proposed employment of one-stop partner "in-kind" contributions to help fund the operator.

- LWDBs are required to develop a MOU with each of the one-stop partners. The MOU addresses the services to be provided by each partner program, as well as the shared costs (including infrastructure costs) associated with providing such services through the PA CareerLink® service delivery system. The MOU must include a summary of the operator(s) roles and responsibilities, a description of all cost associated with the operator(s) and how such costs will be funded.
- Operator shared service costs must be allocated according to the proportion of benefit received by each of the partners, consistent with the Federal law authorizing the partner's program, and consistent with all other applicable legal requirements, including Federal cost principles found in the Uniform Guidance or any corresponding similar regulation or ruling requiring that costs are reasonable, necessary and allocable.
- The Operating Budget, or OB, also formerly referred to Resource Sharing Agreement Budget, or RSAB, is a component of the MOU that articulates how the costs of the operator(s) will be apportioned amongst partner parties.
- Operator shared service costs must be periodically reconciled against actual costs incurred and adjusted accordingly. L&I reserves the right to request source documentation such as operator personnel timesheets and travel receipts to justify operator shared service costs identified on the quarterly OB-Financial Status Reports, or OB-FSR.
- LWDB(s) have the responsibility of operator procurement and evaluation. LWDB(s) are responsible for the costs/expenses incurred which may derive from procurement and evaluation processes, LWDB staff salary and expenses, and third-party involvement in the procurement. LWDB staff must provide L&I a detailed cost and price analysis to recoup one-stop operator procurement costs; contact BWDA Fiscal Services unit for more information.
- The entity that claims employer of record status for employees assigned to and/or associated with the roles and responsibilities of the operator(s) must assume the costs, expenses and salary of the employee. It is noted all costs, expenses and salary of such employees are a shared cost within the local workforce delivery system.

Contracts.

- LWDBs must select the one-stop operator through a competitive process at least once every four (4) years. LWDBs are encouraged to award an initial one (1) year contract with an option to renew the duration, as well as other variables of the contract, up to a total of four (4) years.
- LWDBs must address each of the following operator specific elements in the final contract and the MOU:
 - Identify the entity/individual that will provide the operator roles and responsibilities
 - Identify the funding source(s) used for operator personnel expenses
 - List the roles and responsibilities of the operator, and
 - Appropriate placement of internal controls/firewalls and how they will be enforced
- All contracts or agreements between the operator and the LWDB must include the essential elements of a legally executed and binding written contract (i.e., Statement of Work, Authorized Officials and

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Purpose, and additional contractual terms and conditions). LWDBs should review both Federal and state guidance for further information regarding required contracts elements.

- Contracts must address the operator evaluation and its key assessment elements such as the participating partner survey, statutory or regulatory requirements, aforementioned L&I requirements, or any other requirements developed by the LWDB or the Pennsylvania Workforce Development Board.
- LWDBs considering performance-based (i.e., *pay for performance*) contracts must provide written communication of interest to L&I prior to issuance of the request for proposal. This communication must meet requirements set forth at 20 CFR Part 683, Subpart E, *Performance-Based Contracting*, as well as Commonwealth financial policy.

Documentation and Record Keeping.

The LWDB, or assignee, must retain and make available appropriate procurement process records and documentation. Federal and/or state reviewers must have access to documentation and associated records related to the actions taken to prepare for and execute each phase of the operator procurement process.

Documentation is required for several steps in the procurement process and is key for ensuring transparency. WIOA regulations at 20 CFR § 678.605(d) requires the entities conducting the procurement to prepare written documentation explaining the determination concerning the nature of the competitive process to be followed in selecting the one-stop operator(s). Furthermore, as referenced in Uniform Guidance (2 CFR § 200.318(i)), the entity must maintain sufficient records detailing the history of procurement. Such resources, as well as L&I's FMG, provide guidance on maintaining appropriate documentation of all procurement transactions. These records must include, but are not necessarily limited to the following:

- All proposals/bids received
- Ratings of those proposals
- Rationale for method of procurement
- Selection or rejection of proposals/bids
- Appeals and disputes
- The basis for the contract price

Record keeping requirements, as specified at 2 CFR § 200.333, are typically three years from the date of submission of the final expenditures report. LWDBs that make a sole source selection must prepare and maintain written documentation of the entire process as per 20 CFR § 678.610(b). Consistent with this policy, record keeping must include documentation of the LWDB's establishment of model-specific internal controls, with specific regard to firewalls and mechanisms, created to prevent real or perceived conflicts of interest. L&I reserves the right to review LWDB's record keeping ensuring internal controls are in place.

Operator Procurement Considerations.

- LWDBs are required to have written policies and procedures. General and specific one-stop operator procurement policy and procedures must be consistent with WIOA, the Uniform Guidance and other similar federal regulations, L&I's Financial policy and this policy. The procurement practices must be deemed to satisfy the parameters of an open and fair competition and free of conflicts of interest.
- LWDBs must describe the expected roles, responsibilities and deliverables of the operator in the procurement request, proposals, and resulting contract(s).

- The procurement requests, proposals, and resulting contract(s) between the LWDB and the entity or entities selected to serve as the system operator(s), must describe the deliverables required of the system operator(s) demonstrating the efforts taken on behalf of all partners in the local system.
- Procurement practices such as “joint requests” for procuring operator(s) and WIOA title I-B service providers, use of the different methods of procurement, and detailing reasonable expectations, responsibilities and deliverables in the procurement request are detailed within the FMG.
- Although LWDBs may issue joint requests for procuring the operator, as well as WIOA title I-B services provider(s), L&I highly recommends separate procurement transactions.
- If a joint procurement transaction is elected and that transaction results in the selection of one entity serving as both the operator and a provider of WIOA title I-B services, then the LWDB must award separate contracts for each of the services to be provided (i.e., one contract for each operator(s) and different contracts for any provider(s) of services).