

Administrative Manual WIA Title I Programs

Chapter 13.0 : Dislocated Worker Program Section 13.10: Projects and Competitive Process

Issue Date: February 21, 2006

Effective Date: February 21, 2006

Revised Date: N/A

Required Action: When the State determines a project is appropriate for providing Dislocated Worker services, interested service providers must go through a competitive process. A competitive process runs through an Employee-Management Committee (EMC), although the State is ultimately responsible for both ensuring a competitive process and awarding a public contract.

The State will ensure a fair competitive process for all projects. Service providers, when competing for or receiving contracts for Dislocated Worker services, shall abide by this process.

Action: Establish procedures for Projects and Competitive Process.

Who: WIA Title IB Dislocated Worker Program and Minnesota Dislocated Worker Providers and other appropriate WorkForce Center System Partners.

Background: In a layoff where the state Rapid Response team has determined that a project is appropriate (see [Policy 13.9, Rapid Response](#)), there is no presumed service provider. The State maintains the overall responsibility for the competitive process, and acts as steward both of an EMC-centered selection process and the grants that result. A competitive process maximizes the effectiveness and efficiency of the employment and training services needed to return the dislocated worker to a job, and puts more control of the process in the hands of that worker.

Policy and Procedures

I. THE PROCESS

The State, upon making a determination that a layoff event requires project-level resources (per [Policy 13.9, Rapid Response](#)) follows the process below:

1. EMC. This committee is formed as quickly as possible (and therefore may or may not meet at least once before the announcement step below). Such a committee, once created, automatically has the authority to solicit and oversee dislocated worker services for that individual event.

The State Rapid Response team has the authority to promote the formation of an EMC, to provide immediate assistance in establishing an EMC, to provide that EMC with technical advice and information on sources of assistance, and to assist in the selection of worker representatives if no union is present at the workplace. If a union is present at the workplace, that union should work with the business to select worker representatives.

For more on EMC policy, please refer to [13.9, Rapid Response](#).

- 2. Announcement.** Within 24 hours of making the project determination, the State informs all potential service providers (through rapid written communication, such as fax, e-mail, overnight mail, etc.) of the project, and solicits generic information from interested deliverers. A receipt of transmittal of information is maintained. State staff sets a deadline for receipt of expressions of interest. Any certified service provider who expresses interest by the deadline is considered eligible for the competitive process.

Information sent by service providers in response to this solicitation must be brief – no more than both sides of a single sheet of letter-sized (8.5" x 11") paper. The intent of this policy is to provide EMC members with a quick introduction to interested service providers. A brochure, a letter, a "fact sheet", or any other reasonable effort to communicate the basic purpose, philosophy, and services of the organization is acceptable.

- 3. Request for Further Information.** At a point determined by the EMC, the State invites interested service providers to provide more detailed service and organizational information through a response to the Request for Further Information (RFI). The RFI shall include basic background information on the event, history of Rapid Response actions conducted by the State, worker survey data, and questions for the service provider to answer. The State will make every attempt to ensure at least four working days between the expression of interest and the deadline for further information. Those who receive a RFI shall respond with a document of no more than four pages of letter-sized paper, exclusive of cover sheet.

This response shall focus upon information of the State and the EMC's choosing. At a minimum, the information supplied will include:

- Information on the service provider's experience;
 - A basic services plan;
 - Demonstrated knowledge of the area labor market and employers;
 - Demonstrated service provider strengths on this or similar projects; and
 - Contact information.
- 4. Interview and Other EMC Needs.** At its discretion, the EMC may or may not call in one or more service providers to interview. The State will work with the EMC to ensure a reasonable schedule, and the availability of service providers.

The EMC may take other reasonable steps, including follow-up on information requests, it deems necessary to make a clear and informed decision.

- 5. EMC Selection.** An EMC may choose to make a selection of a service provider at any point in the competitive process *after* four-page information packets have been received, for any reason(s) it deems relevant within the bounds of state and federal law and policy. The State has a duty to maintain a balance in guiding the EMC process both to keep the EMC on task and timely, and to ensure a deliberate decision-making process.

Once the EMC has made a selection, the State will notify all interested parties of the decision. If a service provider wishes to know the specific reasons behind an EMC decision, they may ask the State to work with the EMC, document those reasons, and pass them on to the service provider.

There is no appeal process for an EMC selection.

- 6. Early Readjustment Assistance Grants.** At the direction of the EMC, the selected service provider may request an Early Readjustment Assistance Grant (ERAG). The goal of an ERAG is to fund those immediate services required to help customers in mass layoffs, since the process for a Project-Specific Proposal can take some time. More information about ERAGs is available in Section 13.11.

- 7. Project-Specific Proposals (PSPs) and Approval of EMC Selection.** While the State has an interest in keeping decision-making as close to the affected workers as possible, it also has a duty of stewardship for public funds. A PSP is necessary to document the project budget and ensure compliance with state and federal laws and regulations. Therefore, no decision made by the EMC is considered final until the following three conditions are met:

- The State acknowledges the EMC selection and provides a request for a PSP with a deadline to the selected service provider;
- The selected service provider completes a PSP in response and submits it, along with all necessary financial and other materials required by the State; and
- The State reviews the PSP; determines the appropriate parameters of cost, numbers, and scope; and either approves the proposal as is or after modification.

Upon receipt of the PSP, The State follows through on all three of these steps as quickly as possible.

In virtually all cases, the service provider may proceed with the assumption that the State will approve the EMC selection. Service providers should begin delivery of services as quickly as possible after notification of EMC selection (item 5 above). The State will only overrule the EMC under extraordinary circumstances (refer to "Exceptions" below).

II. PARTNERSHIPS AND SUBCONTRACTORS

1. **Partnerships.** Service providers may partner with each other when responding to this and other parts of the EMC process. Such partnerships may form at any time, without specific State approval. However, no service provider may represent itself more than once to a given EMC.

A partnership may dissolve during the competitive process. In such cases, all members of that partnership should immediately contact the State and the EMC with advice on how each component partner would like to proceed. The State and EMC reserve the right to ask providers in these cases to repeat any steps of the process necessary to make a clear and informed decision.

A partnership that dissolves after the competitive process is complete (i.e., after the State has approved a formal proposal) but before service delivery is complete will require a contract modification. The lead agency will have the responsibility to fulfill its contract with the State, unless the lead agency obtains the State's approval for other arrangements.

Refer to the **Communication During Process** section below for policy on proper representation of a partnership.

2. **Subcontractors.** The EMC must be aware of and specifically approve subcontractors for all dislocated worker discretionary services. This is in addition to a separate and formal State approval of such subcontractors. Service providers will supply complete information about any anticipated subcontractors in their response to an RFI, and in the formal proposal to the State.

III. COMMUNICATION

Until a service provider has been approved by the State through a formal PSP process, all service providers – whether formally engaged in the competitive process or not – shall abide by the following policies.

1. **Contact with EMC.** Because the EMC has influence over the recommended expenditure of public dollars, all service providers and other parties must follow common sense ethical guidelines when attempting to contact EMC members. From the time a dislocation event begins to the time the State approves a PSP from a provider, no service provider or paid representative of such a provider should make any private, unauthorized contact with an EMC member: (a) after the EMC makes a selection and a specifically chosen service provider begins early services while waiting for State approval of the PSP; and (b) when the State determines that a local Workforce Service Area must assign staff to represent the interests of local elected officials at an informational event for workers, where EMC members may be present.

A service provider may contact the EMC as long the contact is part of the public bidding process described in this process – e.g., the EMC invites a service provider to communicate with the entire committee for interview or other informational purposes.

2. **Accuracy.** While service providers have freedom of expression in the materials they provide, the State does have a duty to ensure information given to the EMC fairly represents the capabilities of each service provider. Service providers may make claims of past, present, or future service in their material to EMC members. However, the State reserves the right to correct any data it determines are inaccurate or misleading; to hold service providers accountable for promises made to EMC members as part of the selection process; and to share information given to the EMC with other service providers, upon request, once the competitive process is complete.
3. **Openness.** All communication from a competing service provider shall include the full, legal name of that provider. Any competing partnership of service providers shall provide the full, legal names of all providers contained within that partnership. This information shall be in a font type and size equivalent to that used in the overall description of services.
4. **The State Role.** State staff and its contractors or representatives may not intentionally influence the selection process except as specifically noted elsewhere in this policy. Furthermore, such staff must take every reasonable precaution to ensure EMC members do not receive any indications as to a preference for one service provider over another. Wherever possible, the State should prefer to let service providers speak for themselves and not give information about providers from the State point of view. However, the State may supply the EMC with already public and objective performance data the committee requests regarding the past performance of any provider.

In general, the State should limit itself to facilitating the EMC discussions, supplying information provided by service providers to the EMC, and coordinating any activities required by the EMC to make their selection.

IV. EXCEPTIONS

On rare occasions, the State may opt *not* to have a competitive process for a Dislocated Worker project, or to interrupt a competitive process with a decision of its own. The State will have limited discretion in such cases, and will only award a public contract to a service provider for a project when one of the following conditions has been fully met and documented:

1. **Existing Formula Situation.** In an *existing formula* situation, four things happen: (1) an employer has laid off workers who are eligible for the Dislocated Worker and/or Trade Adjustment Assistance program, (2) the State has determined that formula funds can meet the needs of the workers from that layoff, (3) some customers have begun to receive documented Dislocated Worker services and/or Trade Adjustment Assistance benefits from the relevant service provider(s) using formula funds, and (4) the employer *then* lays off more workers in sufficient numbers to make a project necessary. In these cases, the time between the decisive layoff and the previous layoff cannot be longer than six months.

2. **Failure of the EMC Process.** In cases where the EMC cannot come to a clear selection of a single service provider, the State must advise the EMC that failure to select will put the decision in State hands. If the EMC still fails to make a clear selection, the State shall choose a provider from the list of those still in contention when the EMC came to its impasse. The State shall provide the EMC and all competing providers with the reasons for its decision.

Another case of failure in the EMC process may arise where there is an insufficient number of EMC members and there appears to be a need for project funding. In such cases, the State must make every reasonable attempt to recruit sufficient EMC members before announcing process failure. The State will then be responsible for initiating and managing a competitive process of its own, using State staff and/or designated representatives to follow as closely as possible the same steps outlined in this policy.

3. **Violation of Law or Policy by Provider.** If, while in competition for a project, a service provider violates a law or policy governing the Dislocated Worker program, the State has the authority to disqualify them from the EMC process for a given layoff. In such cases, the State might in effect select a service provider where the only other competitor(s) are disqualified. Such violations must be significant and speak directly to the service provider's (1) ability to provide effective service to customers, and/or (2) intent to injure or deceive the State, another service provider, or the EMC's process. The State reserves all due authority given by federal or state law to disqualify a service provider permanently for continuous or repeated violations. In all cases, service providers will be accorded due process.

Reference Section:

Cites/References:

Worker Adjustment and Retraining Notification (WARN), 20 CFR Part 639

Dislocated Worker statutes in Minnesota Statutes 116L.17

Minnesota Job Skills Partnership authority throughout Minnesota Statutes 116L

Contact:

Anthony Alongi

Voice: (651) 259-7528 or 1-866-213-1422

TTY/TDD: (651) 296-3900 or 1-800-657-3973

Fax: (651) 215-3842

E-mail: Anthony.Alongi@state.mn.us