

Chapter 16:

Youth Competitive Procurement of WIA Youth Program Activities

Issue Date/

Effective Date:

January 23, 2001 Updated November 30, 2011

Required Action

Action: To provide WSAs with guidance on competitive and non-competitive procedures for providing youth activities under Title I of the Workforce Investment Act (WIA), including the exceptions to the youth provider selection requirements outlined in WIA Regulations and the waiver approved by DOL/ETA on 11/16/11.

Who: All WSAs and youth service providers in the State of Minnesota.

Background: Section 123 (29 U.S.C. 2843) of WIA requires the identification of eligible youth service providers by awarding grants and contracts on a competitive basis. The competitive selection process under WIA requires Local Workforce Investment Boards (LWIBs) to select youth service providers who can best serve local youth needs, after considering recommendations from the local Youth Councils. WIA Regulations describe the following **exceptions** to the youth provider selection requirements:

- 20 CFR 664.405(a)(4), provides that the competitive selection requirements of WIA section 123, DO NOT apply to the **Program Design Framework** component which includes intake, assessment and development of the individual service strategy, when these services are provided by the local grant recipient or fiscal agent.
- 20 CFR 664.610, provides that providers of **summer employment** activities must be selected by awarding a grant or contract on a competitive basis, unless the grant recipient or the fiscal agent administers this program element.

In addition to the exceptions referenced above, Minnesota has secured a **waiver** for the competitive procurement of service providers for three of the ten youth program elements: **work experience, support and follow up services**. Under this waiver (see Attachment A), the fiscal agent/grant recipient is permitted to allow its WorkForce Centers or partner agencies to directly provide work experience, support services and follow up services. **In using this waiver, the State and WSAs must still meet Office of Management and Budget requirements (Codified in 29 CFR 95.40-95.48 and 97.36) and all local procurement laws and policies.**

TEGL 35-10 (dated June 16, 2011) provided additional guidance to WSAs/LWIBs on DOL/ETA's expectations regarding integrity, transparency and conflict of interest.

Policies and Procedures:

If the fiscal agent/grant recipient chooses to implement the exceptions to the youth provider selection requirements outlined in WIA Regulations and the waiver included as Attachment A, this information must be included in the WSA's Local Youth Plan.

WSAs may establish contracts with youth service providers for a duration of up to five years. There must be a clause in the contract that states that the contract may be canceled based on performance and or funding availability.

WIA section 123 (29 U.S.C. 2843), requires that eligible providers of youth activities be identified by awarding grants or contracts on a competitive basis, based on recommendations from the youth council and the criteria contained in the State Plan;

WIA section 112 (b)(18)(B) (29 U.S.C. 2822), requires that the State Plan include information identifying the criteria to be used by the Local Boards in awarding grants for youth activities, including the criteria that the Governor and the Local Boards will use to identify effective and ineffective youth activities and providers of those activities;

WIA section 117(d)(2)(B) (29 U.S.C. 2832), requires that Local Boards identify eligible providers of youth activities by awarding grants and contracts on a competitive basis; and

WIA section 117(h)(4)(B)(i) (29 U.S.C. 2832), one of the principal duties of the youth council is to recommend eligible providers of youth activities in the local area to be awarded grants or contracts on a competitive basis by the Local Board consistent with WIA section 123 (29 U.S.C. 2843).

TEGL 9-00 (dated 1/23/01) provides DOL guidance on the competitive selection of youth activities:

1. PROGRAM DESIGN FRAMEWORK COMPONENT

The program design framework is an integral component (referred to as the "program design component" or "entry-level case management services") of a local area's youth services. WIA regulations (20 CFR 664.405) explain that the local grant recipient (or fiscal agent) may conduct the program design component without being competitively selected. The program design component creates an opportunity for a central access point to both determine eligibility and make appropriate referrals for the youth.

Local areas decide how to select the provider of the program design component and how to integrate this component into the overall program service plan. Local areas may use the local grant recipient (or its fiscal agent) to provide the program design component or use a competitive selection process.

The program design framework component is an essential ingredient in helping local areas develop comprehensive service strategies for youth based upon their individual needs. It consists of intake, an objective assessment, individual service strategy development, and information and referrals for youth participants (WIA section 129(c)(1)) (29 U.S.C. 2854).

Intake activities may involve services such as registration, eligibility determination and collection of information to support verification of eligibility for services. It may also include pre-screening potential participants and general orientation to self-help services. Other activities include referrals to other services which may include providers of the ten program elements.

The **objective assessment** is a process that identifies service needs, academic levels, goals, interests, skill levels, abilities, aptitudes, and supportive service needs, and measures barriers and strengths. It includes a review of basic and occupational skills, prior work experience, employability potential, and development needs. The result of an assessment is an individual service strategy.

The **individual service strategy** is the plan which identifies the employment goals, educational objectives, and prescribes appropriate services for the participant. The individual service strategy plan should provide for:

- preparation for post-secondary educational opportunities;
- strong links between academic and occupational learning;
- preparation for unsubsidized employment opportunities in appropriate cases; and
- effective connections to intermediaries with strong links to the job market and local and regional employers.

Individual service strategies should also include providing information on local youth activities and referrals to the providers of those services. Information and referrals are activities that any youth may receive, regardless of eligibility for youth activities. These activities may be funded by sources other than WIA.

It is appropriate to review service strategies with the participant periodically and make modifications when needed. In fulfilling its overall service strategy for youth, the entity providing the program design framework component may use a case management approach to determine whether goals in the individual service strategy are being met. This approach ensures that youth are actively engaged in receiving services from eligible service providers, and that participants receive follow-up services when exiting the program. These types of case management services may be provided directly by the local grant recipient without a competitive selection, as part of the overall activities provided by eligible service providers or may be competitively selected separately. For example, local areas may determine that case management is part of the services that are expected from competitively selected providers.

2. TEN PROGRAM ELEMENTS

Under WIA section 129(c) (29 U.S.C. 2854) and 20 CFR 664.410, comprehensive youth services consist of ten required program elements which can be grouped around four major themes:

- improving educational achievement (e.g. elements such as tutoring, study skills training, and instruction leading to secondary school completion; dropout prevention strategies, and alternative secondary school offerings);
- preparing for and succeeding in employment (e.g. summer employment opportunities, paid and unpaid work experience and internships, and occupational skills training);
- supporting youth (e.g. support services, providing adult mentoring, follow-up services, and comprehensive guidance and counseling); and

- offering services intended to develop the potential of young people as citizens and leaders (e.g. leadership development opportunities).

LWIBs must make all ten program elements available to all youth participants in the local area, although individual youth participants need not participate in all ten. Local areas have the discretion to determine the specific services provided to individual youth participants, based on each participant's objective assessment and individual service strategy. However, local grant recipients need not provide all ten program elements with WIA funds if certain services are already accessible for all eligible youth in the local area.

If an activity is not funded with WIA Title I funds, the local area must ensure that those activities are closely connected and coordinated with the WIA system. Ongoing relationships should be established with providers of non-WIA funded activities either through case management, memorandums of understanding, or some other vehicle as local service providers are still responsible for obtaining performance outcomes for all WIA participants. In conjunction with the Youth Councils, the local areas should identify the extent to which the ten program elements are available and/or already being provided in the local area through a combination of resource mapping, competitive selection of providers (including sole source justification in rare circumstances), or through community partnerships.

Resource mapping is a tool for identifying available services within the local area across funding streams and service providers. The local Youth Council may determine that some services, for example tutoring or mentoring, are so widely available that it would be a duplication of service and not fiscally sound to use WIA funds to pay for these services. A good guide to determining service availability is whether, in fact, it is universally accessible to any youth across the local area. Several factors may be used to determine the accessibility of a service, including: the geographic distance between the provider and youth, the accessibility of the service to disabled youth, and whether the provider only provides the service to youth in low-income households. When using resource mapping, Youth Councils may consider distance learning and services available through computer technology. If services are not readily accessible to all youth, the Youth Council must ensure that existing services can be expanded to serve all WIA eligible youth, or else the LWIB, with recommendations by the Youth Council, must competitively select providers to provide the services with WIA funds.

Occupational skills training for youth program participants may be provided by a training provider (such as a community college or vocational school) that has been competitively selected to provide training for eligible youth on an individual referral basis. Once a provider has been competitively selected, whether for skills training or other authorized activities, the grant or contract may stipulate whether the services will be provided on a group-size or per slot (i.e., individual referral) basis. States and local boards are not limited to funding group size training, but may provide vouchers or "fee-for-service" funds to community colleges, vocational schools or other service providers, based on the participant's objective and individual service strategy.

The WIA regulations, at 20 CFR 664.610, state that if the grant recipient/fiscal agent elects to directly provide subsidized summer employment opportunities for youth in the local area, then the competitive selection requirements do not apply for this program element. However, if other providers are used to provide subsidized summer youth employment opportunities, those providers must be selected through the award of grants or contracts on a competitive basis. Employers providing unsubsidized youth employment opportunities are excluded from the competitive selection process. Whether

summer employment opportunities are competitively selected or directly provided by the grant recipient, direct linkages to academic and occupational learning must be included.

3. ONE-STOP YOUTH SERVICES

The local grant recipient of the WIA youth funds is a required One-Stop partner and is subject to the requirements that apply to those partners as described in 20 CFR 664.700 and 20 CFR part 662.

If the One-Stop operator is the local grant recipient or sub-recipient (as designated by the chief elected official or the Governor, where the Governor serves as the local grant recipient) under WIA section 117(b)(3)(B)(i) (29 U.S.C. 2832), then the operator may conduct the program design component without competition. As both the One-Stop operator and the local grant recipient or sub-recipient, the One-Stop operator can also ensure program design consistency in the intake, objective assessment, individual service strategy development for youth, as well as uniformity in the provision of information and referrals to youth service providers for the ten program required elements. Existing One-Stop operators that are not the local grant recipients or sub-recipients under WIA section 117 (d)(3)(B) (29 U.S.C. 2932) may apply in any competitive selection process to provide the program design component where that component is not solely provided by the local grant recipient.

Connections between the One-Stop system and youth service providers facilitate the coordination and provision of youth activities, connections to intermediaries with links to the job market and employers, and access to information about WIA youth programs and other youth service providers. These connections facilitate providing services to both eligible and non-eligible youth.

4. COMPETITIVE SELECTION

The intent of WIA is to provide flexibility in the development and design of comprehensive youth services, and to create a market-based system which drives the quality of youth services. The contract procurement and subgrant requirements for units of local government can be found in the Uniform Administrative Requirements for procurement by government entities as codified at 29 CFR 97.36 (procurement) and 97.37 (subgrants). For all non-governmental organizations, the procurement standards can be found at 29 CFR 95.40 through 95.48. These provisions require that grantees and subgrantees use their own procurement procedures which must reflect applicable State and local laws and regulations, provided that the procurements conform to the applicable Federal laws and the stated administrative standards.

A basic tenet of the standards found at 29 CFR 95.42 and 97.36(b)(2) is that procurement be a process that provides for full and open competition and avoids even the appearance of a conflict of interest (either individually or organizationally). Procurement actions must be conducted in a manner that provides for full and open competition and prevents the existence of conflicting roles that might bias judgment and cause unfair competitive advantage, as described under regulations at 29 CFR 95.43 and 97.36(c). Such actions must assure separation of those who develop or issue the solicitation, or are involved in the selection process, from those who bid upon it. Accordingly, an identifiable sub-unit of the local government or non-governmental organization may not submit a bid or an offer on a grant or contract solicitation if that sub-unit is involved in the development of the solicitation, the review, evaluation and selection process, or the ongoing post award administration (including oversight) of the award.

The procurement regulations also require that supporting documentation of the significant history of each procurement action be maintained as described under 29 CFR 97.36(b)(9) and 95.46. Such documentation must include a rationale for: the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price. Such documentation also includes evaluation criteria or rating factors to support the provider's ability to perform successfully, with consideration given to integrity, compliance with public policy, record of past performance, in addition to financial and technical resources, that follow State and Federal guidelines.

The procurement regulations at 29 CFR 97.36(d) also identify the various methods of procurement that are allowable. When discussing non-competitive (sole source) procurement (29 CFR 97.36(d)(4)), the rules emphasize that this is only to be used when other methods are not feasible and the criteria set forth in the federal, state and local procurement procedures applies. Most government procurement systems identify the circumstances when sole source procurement actions may be allowed.

In addition to the requirements above, TEGL 35-10 (issued June 16, 2011) outlines additional laws and regulations with which local WIBs must comply:

- **“Sunshine provision” regulations** for local WIBs (20 CFR 661.307). A local WIB must conduct its business in an open manner and make activities of the board available to the public, including the development of specific policies and the minutes of formal board meetings upon request.
- **Conflict of interest regulation** for entities receiving WIA Title I funds (20 CFR 667.200(a)(4)). This part of the WIA regulations indicates that in addition to the uniform administrative requirements described above, a local WIB member or a Youth Council member must neither cast a vote, nor participate in decision-making, on the provision of services by that member or any organization which that member directly represents. The WIB member also must not cast a vote, nor participate in decision-making, on any matter which would provide any direct financial benefit to that member or a member of his or her immediate family. WIA regulations note that, by itself, neither membership on a WIB or Youth Council alone, nor the receipt of WIA funds to provide training and related services, violates these conflict of interest provisions.
- **The Hatch Act and its regulations**, for individuals paid with Federal funds (5 CFR 151). The Hatch Act restricts the political activity of individuals principally employed by state or local executive agencies and who work in connection with programs financed in whole or in part by Federal loans or grants. Covered state and local employees may not, among other things, use their official authority or influence to interfere with or affect the results of an election or nomination; or directly or indirectly coerce, attempt to coerce, command, or advise a state or local officer or employee to pay, lend, or contribute anything of value to a party, committee, organization, agency, or person for political purposes. More information about how the Hatch Act applies to state and local officials is available at http://www.osc.gov/documents/hatchact/ha_sta.pdf.

Reference Section:

Cites/References: Workforce Investment Act of 1998, Title I, subtitle B (Pub. Law 105-220) 29 U.S.C. 2801 et seq.

WIA section 123 (29 U.S.C. 2843), requires that eligible providers of youth activities be identified by awarding grants or contracts on a competitive basis, based on recommendations from the youth council and the criteria contained in the State Plan;

WIA section 112 (b)(18)(B) (29 U.S.C. 2822), requires that the State Plan include information identifying the criteria to be used by the Local Boards in awarding grants for youth activities, including the criteria that the Governor and the Local Boards will use to identify effective and ineffective youth activities and providers of those activities;

WIA section 117(d)(2)(B) (29 U.S.C. 2832), requires that Local Boards identify eligible providers of youth activities by awarding grants and contracts on a competitive basis; and

WIA section 117(h)(4)(B)(i) (29 U.S.C. 2832), one of the principal duties of the youth council is to recommend eligible providers of youth activities in the local area to be awarded grants or contracts on a competitive basis by the Local Board consistent with WIA section 123 (29 U.S.C. 2843).

Training and Employment Guidance Letter (TEGL) No. 9-00, Competitive and Non-Competitive procedures for providing Youth Activities Under Title I, (dated January 23, 2001).

Training and Employment Guidance Letter (TEGL) No. 12-01, Clarification on Selected Activities and Issues Under WIA (dated February 21, 2002).

WIA Regulations, 20 CFR part 664 (65 Fed. Reg. 49294, 49411, Aug. 11, 2000).

Training and Employment Guidance Letter (TEGL) No. 3-99, Program Guidance for Implementation of Comprehensive Youth Services Under the Workforce Investment Act During the Summer of 2000, (dated January 31, 2000).

29 CFR part 95, 95.40 through 95.48 Procurement Standards.

29 CFR part 97, 97.36 Procurement and 97.37 Subgrants.

Training and Employment Guidance Letter (TEGL) No. 35-10, Transparency and Integrity in Workforce Investment Board Decisions (dated June 16, 2011).

Youth Procurement Waiver approved by DOL/ETA on November 16, 2011 (see Attachment A).

Contacts:

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Youth website:

http://www.positivelyminnesota.com/All_Programs_Services/Office_of_Youth_Development

U.S. Department of Labor

Employment and Training Administration
200 Constitution Avenue, NW
Washington, D.C. 20210

NOV 16 2011

The Honorable Mark Dayton
Governor of Minnesota
130 State Capitol
75 Reverend Doctor Martin Luther King Jr. Boulevard
St. Paul, Minnesota 55155

Dear Governor Dayton:

We are pleased to be able to respond to your request for a waiver of statutory and regulatory requirements under the Workforce Investment Act (WIA) submitted on August 30, 2011. This request is written in the format identified in WIA Section 189(i)(4)(B) and 20 CFR 661.420(c), and appears to meet the standard for approval at 20 CFR 661.420(e). The following is the disposition of the State's submission (copy enclosed). This action is taken under the Secretary's authority to waive certain requirements of WIA Title I, Subtitles B and E, and Sections 8-10 of the Wagner-Peyser Act.

Waiver of WIA Section 123 that requires that providers of Youth program elements be selected on a competitive basis.

The State is requesting a waiver of the requirement for competitive procurement of service providers for three of the ten youth program elements: supportive services, follow-up services, and work experience. The State is granted this waiver through June 30, 2012. Under this waiver, the State is permitted to allow its One-Stop Career Centers or partner agencies to directly provide the above youth program elements. In utilizing this waiver, the State and local areas must still meet Office of Management and Budget requirements (codified in 29 CFR 95.40-95.48 and 97.36) and all state and local procurement laws and policies.

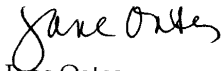
Waiver of WIA Section 136(b)(2)(A) to exclude participants in demonstration projects from performance measures and the collection of participant data.

The State has withdrawn this waiver request.

The approved waiver is incorporated by reference into the State's WIA Grant Agreement, as provided for under paragraph 3 of the executed Agreement, and it constitutes a modification of the State Plan. A copy of this letter should be filed with the State's WIA Grant Agreement and the approved State Plan. In addition, as described by TEGL No. 09-10, the State should address the impact its waivers have had on the State's performance in the WIA annual performance report, due on October 1 of each year.

We look forward to continuing our partnership with you and achieving better workforce outcomes. If you have any questions related to the issues discussed above, please contact Byron Zuidema, the Regional Administrator for Region V, at (312) 596-5403 or Zuidema.Byron@dol.gov.

Sincerely,



Jane Oates
Assistant Secretary

Enclosure

cc: Carl Stahlheber, Federal Project Officer for Minnesota, ETA Chicago Regional Office
Byron Zuidema, Regional Administrator, ETA Chicago Regional Office

**STATE OF MINNESOTA
WORKFORCE INVESTMENT ACT – WAIVER REQUEST
COMPETITIVE PROCUREMENT OF YOUTH PROGRAM ELEMENTS**

The State is requesting a waiver to allow the fiscal agent/grant recipients of Minnesota Workforce Service Areas (WSAs) flexibility in the procurement of certain youth program elements. The three program elements that this waiver will apply to are: paid and unpaid work experience, supportive services, and follow-up services. This waiver is being requested to ensure coordination, continuity, ease of administration, and cost effectiveness in providing youth activities.

The WIA Youth program operates on the premise of long-term participation, during which time strong relationships are likely to be formed between youth participants and youth service provider staff. Strong relationships between the staff and youth are a key factor in youth success. When a different youth provider is sought through a competitive process, services may be disrupted and these relationships may be severed. The established relationship may not continue to exist and youth are more likely to leave the program because of instability.

In some areas of the state, there are not enough service providers to make a selection on a competitive basis, and the administrative costs associated with the formality of a competitive process reduce the already limited resources available to serve the neediest youth. This waiver would give the fiscal agent/grant recipient the option of providing the three program elements above directly or through partner agencies.

This waiver request adheres to the format provided in WIA Section 189(i)(4)(B) and WIA Regulations 20 CFR 661.420(c).

1) Specific Statutory/Regulatory Requirement to be Waived:

Minnesota requests the waiver of WIA Section 123, which requires the competitive selection of eligible providers of youth activities.

2) State or Local Statutory or Regulatory Barriers:

There are no state or local barriers to implementing the requested waiver.

3) Goals to be Achieved by the Waiver:

This waiver request supports the following overarching goals pertaining to the delivery of youth services in Minnesota:

- Continuity and efficiency of service delivery
- Minimize duplication of effort
- Maximize public investment
- Improve services to the neediest youth
- Leverage and coordinate resources

Through co-enrollment, Minnesota WSAs integrate the delivery of WIA youth services with services funded by other federal (e.g. TANF) and state (e.g. Minnesota Youth Program)

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resources. More flexibility in the procurement process will facilitate continued co-enrollment and integration.

4) Expected Programmatic Outcomes:

If this waiver is approved, expected outcomes include:

- Effective case management and follow-up services
- Reduce the movement of youth participants among multiple service providers
- Longer participation of youth
- Maximize the use of limited resources to best meet the needs of participants
- Reduce administrative costs of providing services when there are not enough providers in a region to warrant a competitive process
- Longitudinal tracking of data to better evaluate program outcomes

5) Individuals Impacted by the Waiver:

Eligible youth, youth service providers and fiscal agents/grant recipients in the WSAs will benefit from this waiver.

6) Process for Monitoring Implementation of the Waiver and Gathering Input:

Local boards, staffs, and grant recipients/fiscal agents have been notified of the waiver request and are being given a direct opportunity to comment on this specific waiver. Both the general public and stakeholders will have access to the waiver request on DEED's website.

Local areas wishing to implement this waiver are required to state so in their Local WIA Plan. State staff review the implementation of this waiver during the annual on-site review of WIA youth programs.

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