

Mass Workforce Issuance

100 DCS 03.105.1

☒ Policy ☐ Information

To: Chief Elected Officials
Workforce Development Board Chairs
Workforce Development Board Directors
Title I Administrators
Career Center Directors
Title I Fiscal Officers
DCS Operations Managers

cc: WIOA State Partners

From: Alice Sweeney, Director
Department of Career Services

Date: July 6, 2017

Subject: **Competitive Selection of Operator/Service Provider of One-Stop Career Center**

Purpose: To notify Chief Elected Officials (CEOs), Local Workforce Development Boards (Local Boards), One-Stop Career Center Operators and other Local Workforce Development Partners of the requirements for the competitive selection of a One-Stop Career Center Operator/Service Provider under the Workforce Innovation and Opportunity Act (WIOA). **This policy document has been revised to clarify the term 'agreement of the CEO' within the selection process.**

Background: The Workforce Innovation and Opportunity Act (WIOA) requires that Local Boards, in agreement with the Chief Elected Official, select One-Stop Career Center Operators through a competitive process to be conducted not less than every 4 years. WIOA also requires that the Operator/Service Provider selected through the competitive process be in place and operating the Local One-Stop Career Center no later than July 1, 2017.

Policy: This policy outlines the requirements for the competitive selection of One-Stop Career Center Operators/Service Providers.

Action

Required: Local Boards must each conduct an open, transparent, procurement process to select one-stop operators in compliance with WIOA law and regulations,

applicable local procurement rules/policy and this policy. The selected One-Stop Operators must be in place and fully operational no later than **July 1, 2017**.

Effective: Immediately

Inquiries: Please email all questions to PolicyQA@MassMail.State.MA.US. Also, indicate Issuance number and description.

Reference: Workforce Innovation and Opportunity Act (PL 113-128); WIOA Sections 121(d), (e) and (h); 20 CFR 678.600, 678.605, 678.620, 678.625, 678.635; and MassWorkforce Issuance 100 DCS 01.102 (Procurement and Contracting); Uniform Guidance 2 CFR Part 200 (200.318 through 200.326)

Competitively Selecting a One-Stop Operator/Service Provider

WIOA §121 (d) (2) (A) requires that the local One-Stop Operator (OSO)/Service Provider be selected by the Local Board through a competitive process at least once every 4 years. In recognition of the fiduciary responsibility of the CEO, the CEO's fundamental liability for misuse of funds and the CEO designation of the Fiscal agent, contracting with the selected operator must be executed by the fiscal agent pursuant to the delegation of contracting/fiduciary responsibility to the fiscal agent by the CEO.

Process/Compliance (20 CFR 678.635)

By November 17, 2016, every Local Board must demonstrate that it is taking steps to prepare for competition of its one-stop operator. This must include adult and dislocated worker funds and, at local option, youth funding. Employment Service and Partner funding is not part of the RFP/bid process.

No later than July 1, 2017, competitively selected One-Stop Operators must be "in place and operating the one-stop center".

Who May Be Selected as Operator/Service Provider? (20 CFR 678.600)

The One-Stop Operator/Service Provider may:

1. Be a single entity (public, private, or non-profit) or a consortium of entities. If the consortium of entities is comprised of One-Stop Partners, it must include a minimum of three of the MA Core Program Partners described in 20 CFR 678.400: (WIOA Title I, Wagner Peyser/Employment Service, Adult Education and Literacy; Vocational Rehabilitation (MRC/MCB), Senior Community Service Employment Program (SCSEP) and Temporary Assistance for Needy Families (TANF)).
2. Operate one or more one-stop centers. There may be more than one one-stop center within a local area.

The types of entities that are eligible to be a One-Stop Operator/Service provider include:

1. An Institution of Higher Education;
2. An Employment Service State Agency established under Wagner-Peyser;
3. A community based organization, nonprofit organization, or workforce intermediary;
4. A private for-profit entity;
5. A government agency; (i.e. Municipality);
6. A Local Board, with approval of Local Chief Elected Official and Governor;
7. Another interested organization or entity capable of carrying out the duties of the One-Stop Operator/Service Provider (e.g. Chamber of Commerce, Business Organizations or Labor Organizations);
8. Non-traditional public secondary schools such as a night school, adult school, or an area Career and Technical Education School.

NOTE: Elementary schools and Secondary Schools are not eligible to be selected as the One-Stop Operator/Service Provider.

ADA Requirement

Required by WIOA, all Career Center sites, Comprehensive, Affiliated or Specialized Centers are to be physically and programmatically accessible to individuals with disabilities. To ensure compliance with WIOA Section 188 nondiscrimination provisions and the Americans with Disabilities Act:

- If at any such time a new OSCC Operator/Service Provider is selected through the competitive selection process, WIOA Section 188 compliance must be completed prior to the opening of the facility. Items that lack compliance will result in the need for a corrective action plan.
- If a current OSCC Operator/Service Provider is selected through the competitive selection process, compliance must be completed within the first quarter of FY2018. If the operator has documentation that meets the criteria outlined within the Section 188 Disability Reference Guide and the compliance review was completed on or after January 1, 2016, that documentation will be accepted as compliance with WIOA Section 188 nondiscrimination provisions and the Americans with Disabilities Act.

What is the role of One-Stop Operator/Service Provider? (20 CFR 678.620)

The Commonwealth has determined that the local selection process will be conducted to competitively select an Operator that will also be the primary provider or provider of some of the services within the One-Stop Career Center.

The One-Stop Operator must coordinate the service delivery of required one-stop partners and service providers. Local Boards may establish additional roles of the One-Stop Operator including but not limited to: coordinating service providers within the OSCC and across the One-Stop system or coordinating service delivery in a multi-center area. The operator may perform

multiple roles and must take care to observe appropriate firewall internal control and conflict of interest rules in the exercise of these functions. (20 CFR 678.625)

A One-Stop Operator *may not* perform the following functions that are primarily the role of the Local Board:

1. Convene system stakeholders to assist in the development of the Local Plan;
2. Prepare and submit Local Plans;
3. Be responsible for oversight of the One-Stop it operates;
4. Manage or significantly participate in the competitive selection process for One-Stop Operator/Service Provider;
5. Select or terminate the One-Stop Operator/Service Provider; Career Services; and Youth Providers;
6. Negotiate local performance accountability measures;
7. Develop and submit a budget for the activities of the Local Board (unless selected as fiscal agent acting on behalf of Chief Elected Official (CEO)).

Who May Conduct the Selection Process for One-Stop Operator/Service Provider?

The Commonwealth of Massachusetts authorizes/empowers the 16 Local Workforce Development Boards (Local Boards) as the entities to conduct the competition to procure a One-Stop Career Center Operator/Service Provider within their Local Workforce Development Area (Local Area), pursuant to their responsibility under sec. 107(d)(10)(A); sec. 121(d)(2)(A) of the Workforce Innovation and Opportunity Act (WIOA); COFAR/Uniform Circular 2 CFR 200 and MassWorkforce Issuance 100 DCS 01-102 (Procurement and Contracting) <https://www.mass.gov/files/documents/2016/08/sy/01-102.pdf> .

This is a limited Local Board authorization to conduct the procurement of the operator only. It recognizes the Local Board's authority and negotiating and oversight roles, but does not empower local boards outside that authority and role to execute one-stop operator contracts or contracts for operator space nor relieve Local Boards from compliance with municipal rules and the CEO-designated authority of the Fiscal Agent. For example, MGL 30b imposes certain requirements on municipal Chief Procurement Officers which may require signoff or delegations. In addition, while the Local Board must be a signoff on the operator contract, the execution of the operator contract must be accomplished by the fiscal agent pursuant to the contracting role delegated to the fiscal agent by the CEO.

The Selection Process (20 CFR 678.605)

The Local Board in agreement with the Chief Elected Official must select the One-Stop Lead Operator/Service Provider through a competitive process at least once every 4 years.

It is the determination of the Department of Labor (DOL) that the term 'agreement' in the statute means 'confirmation.' Both section 107(d) and 121(d) state that the Local WDB, with the

agreement of the CEO, is authorized to choose an OSO consistent with section 121(d)(2) and (3). Section 121(d)(2) requires that the OSO be chosen through a competitive process.

This means that both the Local WDB and CEO's discretion in choosing an OSO is limited to choosing the operator that is identified through a competition. The CEO does not have the discretion to disrupt or override the results of the competitive process and neither party may outright veto the selected operator if they are unsatisfied with the result.

Employment and Training Legal Services (ETLS) believes that this reading of the statute [reconciles] the contradiction between the provisions that require the CEO's agreement and competition in the selection of the operator. This read also removes the possibility of a protracted impasse between the chief elected official and the Local WDB.

The Local Board must use a competitive process that fulfills the requirements of sec. 121(d)(2)(A) of WIOA while remaining consistent with the principles of competitive procurement set forth in the Uniform Administrative Guidance set out at 2CFR 200.318 through 200.326 and MassWorkforce Issuance 100 DCS 01-102 (Procurement and Contracting).

The Local Board must prepare written documentation explaining the determination concerning the nature of the competitive process to be followed in selecting a One-Stop Operator/Service Provider. The acceptable processes are:

- 1) Procurement by sealed bids;
- 2) Procurement by competitive proposals; or
- 3) Procurement by sole source permitted only if:
 - i. Analysis of market conditions and other factors lead to a determination that it is necessary to use sole-source procurement because:
 - A. There is only one entity that could serve as an operator; or
 - B. Unusual and compelling urgency will not permit a delay resulting from competitive solicitation or
 - ii. Results of the competition conducted were determined to be inadequate.

The local procurement policies should include provisions addressing both Sole Source Procurement and Failed Competition. Adherence to applicable local procurement policies/rules will be determined via annual state monitoring.

At the conclusion of the competitive process, the recommendation to award a contract to the selected One-Stop Lead Operator/Service Provider must be ratified by a quorum-vote of the full Local Workforce Development Board at a properly posted public meeting.

Preparing the Request for Proposal (State Rules & 20 CFR 678.600)

Local Boards must ensure that bidders:

1. Are entities that are certified in "Good Standing" with the Secretary of State's Office.

2. Are registered and issued a certificate of good standing with the Massachusetts Department of Unemployment Assistance (DUA). Are not subject to Federal debarment and suspension.
3. Disclose any potential conflicts of interest arising from the relationships of the operators with particular training service providers or other service providers.
4. Do not establish practices that create disincentive to providing services to individuals with barriers to employment who may require longer-term career and training services.
5. Comply with Federal regulations and procurement policies relating to the calculation and use of profits as defined in Uniform Guidance at 2CFR Chapter II, and other applicable regulations and policies.
6. Have no outstanding citations from the Office of the Attorney General, Fair Labor Practice or Consumer Protection Division within the prior 5 years.
7. Maintain an active workers' compensation insurance policy and not debarred via the MA Department of Industrial Accidents ([Businesses Issued Stop Work Orders by the Department of Industrial Accidents](#)).
8. Have a Certificate of Good Standing from the Massachusetts Department of Revenue.
9. Are not listed on the [Federal Government's Excluded Parties List System](#).
10. Are not listed on the [Division of Capital Asset Management and Maintenance Debarred Contractor's List](#).
11. Are not listed on the [Office of the Attorney General Vendor Debarment List](#).

Review & Evaluation of Bid Responses

Local Boards must ensure that bid review teams are properly representative of the required partners and business representation on the board. Review team process and composition must be negotiated with each partner considering such factors as time available and representative's review skills and allow partners the opportunity to participate, waive participation, be represented or review as a member of the Local Board. Partners with actual or apparent conflict of interest are not acceptable review representatives (e.g. DCS Board representatives who review bids will not be the same as staff negotiating MOU strategies, etc.).

All of the Massachusetts state-level partners have elected to participate in the review and evaluation of bid responses. While some of the state partners have designated the reviewers who will represent their organizations at the local review, others have opted to leave it to the boards to identify appropriate reviewers. Please refer to Attachment C, "Competitive Selection Bid Review Team Members" for this information. If a Local Board is already working with an agency representative who is different from the person listed on Attachment C and has a preference for that individual to be on the local bid team or, for MCB and SCSEP, the Board has difficulty identifying the appropriate local representative; DCS offers to broker the conversation regarding reviewer assignment. In either of those cases, please contact Diane Hurley, Diane.L.Hurley@Massmail.state.ma.us.

Additional Points to Consider

There are a number of answers and strategies utilized in the RFP that may affect the later release of information to all bidders and items important to note in the issuance of the RFP.

For example:

Organization Charts – Bidders may ask that an org chart for the current center be released to one or all bidders. The state and DOL do not view this as an issue centering on whether the org chart is proprietary. The question will be whether the org chart, in whatever form, was included in the RFP. If so, all bidders would have access to the same information. If not provided in the RFP but subsequently determined to be important information that all potential bidders should have, then an amendment to the original RFP should be publicized and circulated or addressed at the bidders conference and subsequently posted for all bidders.

Cost of Facilities - This information may not be included in the RFP but may also be requested later. Providing a selective guidance to one bidder would potentially create a conflict of interest and compromise the competitive process. If so determined by the Local Board, an amended RFP could be publicized and circulated among the potential bidders with this information, with reference to the location of the public information pertaining to budgeted costs or addressed via posted bidders conference responses. In all cases it is best that the cost of ADA-compliant facilities and all overhead costs should be factored into the allocation.

Career Center Certification Standards – As developed through Massachusetts WIOA Job Seeker and Employer Workgroups, the Career Center Certification Standards will form the basis for certification of career centers and must be added as an attachment to or woven into the requirements of each local RFP.

Attachments:

- A: Appeals Process
- B: Request for Proposal Template
- C: Competitive Selection Bid Review Team Members