



Workforce Issuance

100 DCS 03.114

☒ **Policy** ☐ **Information**

To: Chief Elected Officials
MassHire Workforce Board Chairs
MassHire Workforce Board Directors
MassHire Career Center Directors
MassHire Fiscal Officers
MassHire DCS Operations Managers

cc: WIOA State Partners

From: Alice Sweeney, Director
MassHire Department of Career Services

Date: September 29, 2020

Subject: **Competitive Selection of Career Center Operator or Career Center Operator/Service Provider - REVISED**

Purpose: To notify Chief Elected Officials (CEOs), MassHire Workforce Boards (MWB), Career Center Operators and other Local Workforce Development Partners of the continuing requirements for the competitive selection of a Career Center Operator or Operator/Service Provider under the Workforce Innovation and Opportunity Act (WIOA).

This policy has been revised to extend the October 15th date for beginning action toward the Competitive Selection process to October 23rd.

Examples of actions that comprise “taking steps for competitively selecting a Career Center Operator or Operator/Service Provider” may include:

- Discussion of options
- Drafting a timeline
- Scheduling meetings to Introduce the process

Background: The Workforce Innovation and Opportunity Act (WIOA) requires that the Career Center Operator be selected through a competitive process that is conducted not less than every 4 years. WIOA required that the Operator selected through the initial competitive process be in place and fully operational no later than July 1, 2017.

WIOA does not link One-Stop Operator competition with competition of providers of services within the Career Center. In addition, WIOA allows the MassHire Department of Career Services (MDCS), as the State Workforce Agency (SWA) to determine whether a competitive process is required for the provision of WIOA services.

MDCS authorizes MassHire Workforce Boards (MWB) to determine whether they will conduct a competitive selection process for Operator (only) or Operator/Service Provider.

Policy: This policy outlines the continuing requirement for the competitive selection of the Career Center Operator or Operator/Service Provider at least every 4 years.

Action

Required: Local Boards (MWBs) must conduct an open procurement process to select an Operator in compliance with WIOA law and regulations and this policy. Operators must be in place and fully operational no later than the 4th year following the prior competition.

If the current Career Center Operator contract is less than 4 years old, it is not necessary to procure at this time.

Effective: Immediately

Inquiries: Please email all questions to PolicyQA@detma.org; indicate issuance number and description.

Reference: Workforce Innovation and Opportunity Act (PL 113-128);
WIOA Sections 121(d) (2) (A), (e) and (h);
20 CFR 678.600, 678.605, 678:620, 678:625, 678.635;
TEGL 15-16, January 17, 2017
MassWorkforce Issuance 100 DCS 01.102 (Procurement and Contracting); and
Uniform Guidance 2 CFR Part 200 (200.318 through 200.326)

POLICY GUIDANCE

Process/Compliance (20 CFR 678.635)

No later than October 23, 2020, MWBs must demonstrate that they are taking steps to prepare for competitively selecting a Career Center Operator or Operator/Service Provider.

Examples of actions that comprise “taking steps for competitively selecting a Career Center Operator or Operator/Service Provider” may include:

- Discussion of options
- Drafting a timeline
- Scheduling meetings to introduce the process

Specifically, MWBs with Operator contracts in place from July 1, 2017 to June 30, 2021 must begin the process for competitive selection no later than October 23, 2020 and the competitively selected Operator or Operator/Service Providers must be in place and fully operational no later than July 1, 2021.

Who May Be Selected as the Operator or Operator/Service Provider?

The Commonwealth has established that the local selection process may be conducted to competitively select an Operator or an Operator/Service Provider that will be provider of some or all services in the Career Center.

The competitive selection process for an Operator or Operator/Service Provider is subject to the following:

1. The MWB may make the determination to conduct a competitive procurement for an Operator only or Operator/Service Provider.
2. The Operator may be a single entity (public, private, or non-profit) or a consortium of entities, if the consortium of entities is one of State WIOA Core Partners, it must include a minimum of three of the MA Core Program Partners: (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)).
3. The Operator may act as Operator for one or more one-stop centers. There may be more than one one-stop Center within a local area and/or region.

What is the role of the Operator?

The basic role of an Operator is to coordinate the service delivery of required MassHire partners and service providers.

MassHire Boards may establish additional roles for the Operator including, but not limited to coordinating service providers within the MassHire Career Center and across the One-Stop service delivery system or coordinating service delivery in a multi-center area or region.

An Operator **may not** perform the following functions that are primarily the role of the MWB:

1. Convene system stakeholders to assist in the development of the Local Plan;
2. Prepare and submit Local Plans (as required under sec. 107 of WIOA);

3. Be responsible for oversight of the MassHire center it operates. Firewalls would need to be established if Operator also provided some or all of the services. The same person or department cannot both provide services and oversee the provision of those services.
4. Manage or significantly participate in the competitive selection process for Operator or Operator/Service Provider;
5. Select or terminate Operator or Operator/Service Provider; Career Services; and Youth Providers;
6. Negotiate local performance accountability measures;
7. Develop and submit budget for activities of the Local MassHire Board (unless selected as fiscal agent acting on behalf of Chief Elected Official (CEO))

MWB decisions with regard to selecting an Operator that is not a service provider:

1. Identify the funding to be used to support the Operator.
2. MassHire Workforce Boards may partner with another MWB to provide funding to support an Operator.
 - Collaboration across areas is permitted, but in all cases, firewalls must be maintained, and it is suggested that a lead area be designated to maintain fiscal continuity.

Operator/Service Provider:

An Operator can also be the primary provider of services within the center or provide some of the services within the center. In all cases, there must be appropriate firewalls in place regarding the competition, and subsequent oversight, monitoring and evaluation of the performance of the service provider(s).

Funding for the Operator/Service Provider must include adult and dislocated worker funds, and at local discretion, may include youth funding. Wagner-Peyser* and Partner funding is not part of the bid process.

** Exception: the four workforce areas with the DOL waiver*

An Operator cannot develop, manage, or conduct the competition of a service provider in which it intends to compete.

In cases where the Operator is also a service provider, there must be firewalls (679.430) and internal controls within the Operator/Service Provider entity as well as specific policies and procedures at the MWB level regarding oversight, monitoring and evaluation of the performance of the service provider.

In accordance with WIOA sec. 107(d), the Local MWB in partnership with the chief elected official has oversight authority of youth workforce investment activities authorized under WIOA sec. 129(c), adult and dislocated worker employment and training activities under WIOA secs. 134(c) and (d), and the entire one-stop delivery system in the local area and will have the responsibility of oversight of Operator/Service Provider activities.

Who Can Bid?

The types of entities that are eligible to be an Operator or 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 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 Operator or 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:

When an Operator or 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.

Who May Conduct the Selection Process for Operator or Operator/Service Provider?

The Commonwealth of Massachusetts authorizes/empowers the 16 MWBs as the entities to conduct the competition to procure a Career Center Operator or 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 MDCS 01-102 (Procurement and Contracting) <https://www.mass.gov/files/documents/2016/08/sy/01-102.pdf>.

This is a limited MWB authorization to conduct the procurement of the Operator or Operator/Service Provider only. It recognizes the MWB's authority and negotiating and oversight roles, but does not empower local boards outside that authority and role to execute 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 that may require

signoff or delegations. In addition, while the MWB must be a sign off 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

The MWB must select the Operator or Operator/Service Provider, with agreement of the chief elected official for the local area, 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 Board, with the agreement of the CEO, is authorized to choose an Operator consistent with section 121(d)(2) and (3). Section 121(d)(2) requires that the Operator be chosen through a competitive process.

This means that both the MWB and CEO’s discretion in choosing an Operator 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.

The Division of Employment and Training Legal Services (ETLS) provides legal advice, rulemaking, and litigation services to the US DOL Employment and Training Administration (ETA) on a wide variety of employment and training programs. 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 MWB.

The MWB 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 MDCS 01-102 (Procurement and Contracting).

The MWB must prepare written documentation explaining the determination concerning the nature of the competitive process to be followed in selecting an Operator or 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.

- 4) 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.
- 5) At the conclusion of the competitive process, the recommendation to award a contract to the selected Operator or Operator/Service Provider must be ratified by a quorum-vote of the full MassHire Workforce Board at a properly posted public meeting.

Note: the procurement instrument must specify whether the board is seeking an Operator *or* an Operator/Service Provider and include a statement of work that describes the role/responsibilities of that entity.

Bidders must also be notified of the process to appeal the determination of an award. Please refer to Attachment A: Appeals Process.

Preparing the Request for Proposal

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

MWBs 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

MWBs 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 MWB. Partners with actual or apparent conflict of interest are not acceptable review representatives (e.g. MDCS Board representatives who review bids will not be the same as staff negotiating MOU strategies, etc.).

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 MWB, 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 approved by the MassHire State Board, the Career Center Certification Standards 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.

Transition Costs - MWB must be cognizant that should a new Operator or more importantly Operator/Service Provider be selected, there will be transition costs pertaining to the selection. As such, MWBs must work with local fiscal agent (if MWB is not fiscal agent) to identify current budget resources to support reasonable and allowable costs of transition.

Attachments:

A: Appeals Process

B: Request for Proposal Template for Operator/Service Provider (note: a different template will need to be developed/adapted if local board elects to procure stand-alone operator)

C: Career Center Operator Statement of Work (SOW) Examples from Other States