



Operator Procurement Policy

Effective July 1, 2021

I. PURPOSE:

This policy communicates Workforce Solutions for North Central PA's methods for the procurement of a One Stop Operator (OSO) obtained with Workforce Innovation and Opportunity Act (WIOA) funds and sets forth the requirements provided by the Office of Management and Budget (OMB) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Final Rule Title 2 of the Code of Federal Regulations; 2 CFR 200 as well as required by §121(d)(2)(A) of WIOA.

II. BACKGROUND:

The Workforce Innovation and Opportunity Act changed the way in which one-stop operators are selected. The U.S. Congress envisioned an actual, not ethereal body to represent the one-stop operator given the important role it plays within the one-stop delivery system. Under this Act, local boards are required to select such operators through a competitive procurement process. WIOA, its final rules, and federal guidance, as well as the Office of Management and Budget (OMB), Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (a.k.a., "OMB," "Uniform Guidance," or "Super Circular") provided clarity and changes to the local system operator procurement process requirements. Such clarification established that, consistent with their statutory roles and responsibilities, and in order to receive funds made available under WIOA title I, local boards must conduct an open and competitive procurement process to select an appropriate system operator(s). Local boards will serve as a strategic entity to leverage resources and capacity; drive local workforce investment activity; and effectively use and manage funds in order to oversee the local workforce development system. To ensure the aforementioned responsibilities are accomplished and that the vision and goals of the governor are met, the Department has developed this policy, and required the actions provided herein.

In addition, the PA Department of Labor and Industry implemented Workforce Systems Policy (WSP) NO. 121-04 (Change 1) requiring local boards to have both general and one-stop operator-specific procurement policies.

Role of the Operator.

Key Roles. The singular mandatory role the system operator(s) is tasked with is the coordination of service delivery of one-stop partners and service providers in the one-stop delivery system. Workforce Solutions has established the following additional roles which are set forth in the local Memorandum of

Understanding (MOU) and fully comply with internal controls and conflict of interest policies and procedures.

- Serve in a professional and collaborative manner as an intermediary with all the one-stop partners.
- Know and understand, through resources provided by the partners and Workforce Solutions (WS), the parameters under which the partners provide services.
- Know and understand, through resources provided by the partners and WS, each partner's performance goals and method of measurement.
- Observe and monitor, using only methods approved by WDB staff, the partner referral mechanism to ensure effectiveness and focus on the customer, whether it is a job seeker or employer. Reports observations and recommendations for improvement to the WDS Committee and Workforce Solutions.
- Develop a mechanism for engagement with the CareerLink® System.
- Serve as an ambassador for the one-stop system to the community, positively and accurately sharing information about the variety of services provided through the Workforce Delivery System, while consistently reflecting the Vision, Mission and Goals of the Workforce Development Board in a professional, collaborative, and confidential manner.
- Monitor, through a standardized check list provided by WS, a minimum of three (3) of each of the PA CareerLink® Team meetings across the region, including Business Services, Job Seeker, Welcome/Referral, and Staff to ensure policy is achieved. Observations will then be reported to the WDS Committee.
- Seek out potential revenue-generating partnerships and report information to WDB staff. Upon written approval from Board staff that the potential partner is appropriate for the Workforce Delivery System, share the information with the appropriate Site Administrator(s) for further development. Follow up to determine outcome.
- Once the WDB establishes criteria, the Operator will assist, through observation and reporting to the WDS Committee, with the Department's and WDB's one-stop center certification process, which is essential for receipt of infrastructure funding.
- Ensure the Department's 'Methods of Administration' are enacted, maintained and adhered to, as well as ensuring that relevant equal opportunity and civil rights measures are properly posted and enforced by reporting concerns to the WDS Committee.
- Understand the partner Memorandum of Understanding (MOU).
- Understand the PA CareerLink® Operating Budgets.
- Foster professional and collaborative relationships with the Site Administrators.
- Recognize that the Operator may be privy to sensitive and confidential information; as such, the Operator will use discretion and consider all information confidential unless otherwise stated.

Limitations. A system operator(s) may not perform the following functions: convene system stakeholders to assist in the development of the local plan; prepare and submit local plans; be responsible for oversight of itself or other operators; manage or participate in the competitive selection

process for system operator(s); select or terminate system operator(s), career services, and youth providers; negotiate local and/or regional performance accountability measures; or develop and submit budget for activities of the local board in the local area or regional area.

Service Provision. The system operator may provide services. The requirements found at 20 CFR 678.625 must be employed (i.e., internal controls) within the operator-service provider entity, as well as specific policies and procedures at the local board level regarding oversight, monitoring, and evaluation of performance of the service provider are to be followed. Additionally, an entity (or entities) serving as a system operator, that also serves a different role within the one-stop delivery system, may perform some or all of these functions when it is acting in its other role, if it has established sufficient internal controls and conflict of interest policies and procedures are followed. (See 20 CFR 679.430)

III. POLICY:

Cost-Reimbursement Only [WIOA Sec. 184(a)(3)(B)]

Procurement transactions under this title between local boards and units of state or local governments shall be conducted on a cost-reimbursement basis only.

General Procurement Standards (2 CFR 200.318)

Workforce Solutions will use documented procurement procedures that reflect State and local laws and regulations, provided that the procurements conform to applicable Federal law and standards identified in 2 CFR Parts 200.317 through 200.326.

Workforce Solutions will maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

Workforce Solutions' Conflict of Interest Policy provides standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real, perceived or potential conflict of interest. Conflicts of interest must be disclosed in writing when known in advance or announced to the voting body. The party must excuse themselves from any further discussion and/or vote on the matter in question. Violations of such standards are subject to disciplinary actions provided in Workforce Solutions' Conflict of Interest Policy.

Workforce Solutions' procurement procedures will avoid acquisition of unnecessary or duplicative items and promote cost-effective use of shared services by entering into state and local intergovernmental agreements for procurement or use of common or shared goods and services where appropriate. Workforce Solutions will use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

Workforce Solutions will award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as:

- Contractor integrity,
- Compliance with public policy,
- Record of past performance, and
- Financial and technical resources.

Workforce Solutions will maintain records sufficient to detail the history of procurement. These records will include, but are not limited to:

- Rationale for the method of procurement,
- Selection of contract type,
- Basis for contractor selection or rejection, and
- The basis for the contract price.

Competition (2 CFR 200.319)

Procurement of a One Stop Operator (OSO) will be implemented in a manner that provides a full and open competition consistent with the standards provided in section 200.319 of 2 CFR 200. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work or invitations for bids or requests for proposals must be excluded from competing for such procurements. Procurement of the OSO will be conducted no less than every 4 years. (§678-605).

Workforce Solutions procurement transactions will contain no requirements that unduly restrict competition as specified in 200.319(a) and (b).

Workforce Solutions procurement procedures will ensure that all solicitations:

- Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured in a manner that does not unduly restrict competition; and
- Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

Workforce Solutions will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free completion. Workforce Solutions will not preclude potential bidders from qualifying during the solicitation period.

Competitive Proposals The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded.

It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

- a. Purchases over \$150,000 must be approved by the Executive Committee or the Workforce Development Board.
- b. Requests for proposals must be sent to all entities on Workforce Solutions Bidders List, as appropriate and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical; c. Proposals must be solicited from an adequate number of qualified sources;
- d. Contracts will be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and
- e. Workforce Solutions may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms (2 CFR 200.321)

Workforce Solutions will take necessary affirmative steps to ensure that minority businesses, women's business enterprises, and labor surplus firms are used when possible.

Contract Cost and Price (2 CFR 200.323)

1. Workforce Solutions will perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold (\$150,000). The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, Workforce Solutions will make independent estimates before receiving bids or proposals.
2. Where applicable, Workforce Solutions will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.
3. Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for Workforce Solutions under Subpart E – Cost Principles-of the Uniform Administrative Guidance 2 CFR Part 200. Workforce Solutions may reference its own cost principles that comply with the Federal cost principles.

4. The cost plus a percentage of cost and percentage of construction cost methods of contracting are not allowable.

Leasing or Renting Non-Expendable Personal Property

Where appropriate, Workforce Solutions will complete an analysis of lease/rental versus purchase alternatives to determine which approach is most economical. Leasing may be preferable to purchase depending on administrative requirements. Leasing with an option to purchase may be preferable to straight leasing. Lease-purchase items will be treated as non-expendable personal property (equipment) and Workforce Solutions will obtain approval from Labor and Industry if the total acquisition cost is at \$5,000 or more. These purchases will be tagged, reported and disposed of in accordance with Labor and Industry's non-expendable personal property.

Procurement Review (2 CFR 200.324)

1. Workforce Solutions will make available, upon request by the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition.
2. Workforce Solutions will make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates when the circumstances detailed in 200.323(b) apply.
3. Workforce Solutions is exempt from the pre-procurement review if the Federal awarding agency or pass-through entity determines that its procurement systems comply with this part.
 - a. Workforce Solutions may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third party contracts are awarded on a regular basis.
 - b. Workforce Solutions may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from Workforce Solutions that it is complying with these standards. Workforce Solutions must cite specific policies, regulations, or standards as being in compliance with these requirements and have its system available for review.

Bonding Requirements (2 CFR 200.325)

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold (currently \$150,000), the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-federal entity provided that the Federal awarding agency or

pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the requirements of 200.325(a) – (c) must be followed.

Contract Provisions (2 CFR 200.326)

Workforce Solutions' contracts must contain the applicable provisions described in 2CFR Appendix II to Part 200 – "Contract Provisions for non-Federal Entity Contracts Under Federal Awards".

- Scope of work describing the good(s) and/or service(s) being procured;
- Federal and state employer's tax identification number and nature of the company (non-profit, profit, local government);
- Certifications, assurances, clauses, and conditions required by USDOL, state, or local policies;
- Required budget;
- State of financial, capability-certified financial statements or single A-133 audit report;
- Required performance measures;
- Reporting requirements;
- Applicability and compliance with required statute and/or regulations;
 - Equal Employment Opportunities;
 - Copeland Anti-Kickback Act;
 - Davis Bacon Act;
 - Compliance with all applicable standards, orders, or requirements issued under the Clean Air Act, Clean Water Act, and the Environmental Protection Agency regulations for contracts/grants exceeding \$100,000;
 - Mandatory standards and policies relating to energy efficiency that are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act;
 - Patent rights;
 - Copyrights and rights to data;
 - Byrd Anti-Lobbying Amendment; and
 - Debarment and suspension requirements.
- Administrative, contractual, or legal remedies for violations, default, and/or breach of contract;
- Termination for cause and for convenience;
- Ownership and access to records and retention requirements;
- Audit requirements;
- Access by the grantee, federal, and state personnel or any of their duly authorized representatives to any books, documents, papers, and records of the contractors that are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions; and
- Modifications.

Subrecipient and Contractor Determinations (2 CFR 200.330)

Workforce Solutions will make a case-by-case determination whether each agreement it makes for the disbursement of Federal program funds casts the party receiving the funds in the role of a subrecipient or a contractor (see Subrecipient and Contractor in the Definitions section of this policy).

In determining whether an agreement between Workforce Solutions and another non-Federal entity casts the latter as a subrecipient or a contractor, the substance of the relationship is more important than the form of agreement. Workforce Solutions will use judgment in classifying each agreement as a subaward or a procurement contract.

In compliance with 2 CFR 200.330, Workforce Solutions will classify eligible providers of WIOA Adult, Dislocated Worker and Youth services as sub recipients.

Post–Award Administration (WSP No. 03-2015, Financial Management Policy, Financial Management Guide (FMG) 201, 10-6 and 7)

Workforce Solutions will provide technical assistance to all sub recipients when appropriate and upon request of a sub recipient. Workforce Solutions will also provide programmatic monitoring, careful analysis of performance, and the review of documentation and reports.

Procurement File Standards – Record Retention

Workforce solutions will maintain records and files for all large purchases and shall include at a minimum: a) the basis for subrecipient selections; b) justification for lack of competition when competitive bids or offers are not obtains; and c) a cost or price analysis.

Procurement records will be retained for three (3) years after final payment on a contract and all other matters are closed. Records shall detail the significant history of procurement. These records may include, but are not necessarily limited to, the following:

1. Identification of Service and Supporting Need Documentation
2. Proof of Publication
3. Identification of Potential Providers
4. Request for Proposal
5. Bidder’s Conference
6. Responses to Requests for Proposal
7. Evaluation of Responses
8. Requests for Additional Information
9. Related Correspondence
10. Letters of Status Determination
11. Recommendations by Staff
12. Determination by Board

The following section was included in our procurement policy:

Selection of One-Stop Operators [WIOA Sec. 121(d)]

Workforce Solutions, with the agreement of the chief elected official, is authorized to designate or certify one-stop operators and to terminate for cause the eligibility of such operators. To be eligible to receive funds made available under this subtitle to operate a one-stop center, an entity:

1. Shall be designated or certified as a one-stop operator through a competitive process; and
2. Shall be an entity (public, private, or nonprofit), or consortium of entities (including a consortium of entities that, at a minimum, includes 3 or more of the one-stop partners described in subsection 121(b)(1)), of demonstrated effectiveness.

Workforce Solutions will ensure that in carrying out activities under this title, one-stop operators-

1. Disclose any potential conflicts of interest arising from the relationships of the operators with particular training service providers or other service providers;
2. Do not establish practices that create disincentives to providing services to individuals with barriers to employment who may require longer-term services, such as intensive employment, training and education services; and
3. Comply with Federal regulations, and procurement policies, relating to the calculation and use of profits.

Grievance and Complaint Procedures

Disputes arising out of any procurement conducted by Workforce Solutions shall be settled at the lowest level of protest as agreed upon by the protesting agent and in accordance to the Workforce Solutions Grievance/Complaint Process. Under this process, WIOA staff, program applicants, participants, recipients of grant awards, contracts, labor unions, service providers, etc., may file complaints alleging violations of the Act, or other federal and state rules. This process may also be used to cover most not covered by Equal Opportunity complaint process. Complaints under this process must be in writing and must adhere to the timelines specified. Complaints for the process must be submitted to:

Workforce Solutions for North Central Pennsylvania
North Central Workforce Development Board
Attention of: Ms. Pamela Streich, Executive Director
425 Old Kersey Road
Kersey, PA 15846
Email: pstreich@ncwdb.org

Complaints may be filed with the Executive Director and appealed to the WDB Chairman or his/her designee within 180 days of the award date and allow 90 days from Notice to Final Action.

Suspension and Debarment (2 CFR 2900)

Non-federal entities and contractors are subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 CFR part 180. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs or activities.

IV. INQUIRIES:

Questions shall be directed to:

Pamela Streich, Executive Director at pstreich@ncwdb.org; or

Donna Hottel, Strategic Planning and Project Manager at dhottel@ncwdb.org

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Auxiliary aids and services are available upon request to individuals with disabilities.

Equal Opportunity Employer/Program