



Missouri Department of Higher Education and Workforce Development

# OWD Issuance 15-2019

Release Number—Program Year

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Effective Date: January 09, 2020  
Expiration Date: Continuous, until further notice

**SUBJECT:**

**Selection or Designation of Service Providers, including One-Stop Operators, Training Providers, and Youth Providers by Local Workforce Development Boards**

**ATTACHMENTS:** (1)—None.

*This Issuance is Official Policy of the Missouri Department of Higher Education and Workforce Development*

**ISSUING AUTHORITY:**

Mardy Leathers  
Director  
Missouri Office of  
Workforce Development

**THIS ISSUANCE REQUIRES CREATION OR ALTERATION OF A CORRESPONDING LOCAL POLICY**

**KEYWORDS:**

Career Services; Conflict-of-Interest; Firewall; Internal Controls; Local Fiscal Agent; Procurement; One-Stop; Training Services; Workforce Innovation and Opportunity Act (WIOA); and Youth Services

**THIS ISSUANCE AFFECTS:**

Missouri One-Stop Delivery System (MJC/AJCs)  
WIOA Title I Local Areas/Local Boards/Local Plans  
WIOA Title I In-State Funding  
WIOA Title I Performance/Accountability  
WIOA Title I One-Stop Delivery/Service Providers  
WIOA Youth Workforce Investment Activities  
WIOA Fiscal/Administrative Procedures

**FOR THE ATTENTION OF:**

Chief Elected Officials  
Local Fiscal Agents  
Local WDB Chairpersons  
Local WDB Directors  
Local WDB Members  
One-Stop Operators  
One-Stop Functional Leaders  
Service Providers  
Local Equal Opportunity Officers  
Local Quality Assurance Monitors

**RESCISSIONS:**

DWD Issuance 01-2012, "Procurement of WIA Youth Program Activities," August 1, 2012.  
DWD Issuance 14-2017, "Selection or Designation of Service Providers, including Selection of One-Stop Operators, by the Local Workforce Development Board, and Functional Leadership Responsibilities of the One-Stop Operator," December 8, 2017.

**REFERENCES:**

U.S Department of Labor, Employment and Training Administration, Training and Guidance Letter ([TEGL](#)) [21-16](#), "Third Workforce Innovation and Opportunity Act (WIOA) Title I Youth Formula Program Guidance," March 2, 2017.  
[Uniform Guidance for Federal Awards, Procurement Standards, 2 CFR Parts 200.317–200.326.](#)  
[Workforce Innovation and Opportunity Act, 29 U.S.C. 3101 et seq.](#)  
[OWD Issuance 22-2015](#), "Policy on Designation of a Local Fiscal Agent by the Chief Elected Official," June 22, 2016.  
[OWD Issuance 19-2016](#), "Ethical Requirements for Chief Elected Officials and Local Workforce Development Boards," June 7, 2017.

## SUMMARY:

This Issuance transmits State policy to align with official guidance<sup>1</sup> released by the U.S. Department of Labor (DOL) regarding the procurement of service providers, including One-Stop Operators (OSO) and Youth service providers. A Local Workforce Development Board (LWDB) may directly designate some providers. It must competitively select others, including the OSO and Workforce Innovation and Opportunity Act (WIOA) Title I Youth service providers. A single entity may serve the LWDB in more than one service provider role.

## BACKGROUND:

### LWDB Authority to Select Operators and Providers

WIOA sec. 107(d)(10)<sup>2</sup> assigns the LWDB the role of selecting operators and providers. Section 107(f) gives the LWDB authority to hire a director and other staff to assist the LWDB in carrying out its functions. Therefore, there are at least five potential “hats” for one or more entities:

- OSO [competitive procurement required];
- LWDB support staff [noncompetitive award]<sup>3</sup>;
- Career Services provider [noncompetitive award];
- Youth Services (Youth Workforce Investment Activities) provider [competitive procurement required, unless services are provided by the LWDB per [20 CFR 681.400](#)]; and
- Training Services provider [noncompetitive, but provider must be on the state-approved [Eligible Training Provider List \(ETPL\)](#) if training is provided through the Individual Training Account (ITA) process].

Under the WIOA regulations, a LWDB may function as an OSO itself only with the prior approval<sup>4</sup> of the local Chief Elected Official (CEO) and OWD, who operates as the Governor’s designee in this instance. Obtaining such a waiver requires substantiating that there is an absence of qualified providers in the Local Workforce Development Area (LWDA), that the LWDB meets eligibility requirements, that the training is in demand locally, and that a public notice-and-comment “sunshine” process preceded the waiver request.

### Using the Same Provider for Multiple Roles

The regulations<sup>5</sup> implementing WIOA allow LWDBs to contract with a single entity to fulfill more than one service provider role in its One-Stop Delivery System. Any service provider performing more than one function, such as local fiscal agent, LWDB staff, OSO, or direct provider of services must develop a written agreement with the LWDB and Chief Elected Official (CEO). This written agreement<sup>6</sup> must clarify how the organization will carry out its responsibilities while demonstrating compliance with WIOA and corresponding regulations, relevant Office of Management and Budget circulars, and the State’s conflict of interest policy.<sup>7</sup> The CEO must determine whether to designate the local fiscal agent (if one is used) to be the LWDB itself or an entity that is already serving the LWDB in other capacities.<sup>8</sup>

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<sup>1</sup> U.S. Department of Labor (DOL), Employment and Training Administration (ETA), Training and Employment Guidance Letter ([TEGL 15-16](#)), “Comprehensive Selection of One-Stop Operators,” January 17, 2017 and (TEGL) 16-16, “One-Stop Operations Guidance for the American Job Center Network,” January 18, 2017.

<sup>2</sup> [29 U.S.C. 3122\(d\)\(10\)](#).

<sup>3</sup> Recruiting costs for LWDB staff are allowable per the Uniform Guidance at [2 CFR 200.463](#) “Recruiting,” but must be consistent with the non-federal entity’s *existing* cost-accounting practices and policies.

<sup>4</sup> [20 CFR 678.600\(c\)\(6\)](#).

<sup>5</sup> [20 CFR 678.620\(b\)](#) and [20 CFR 678.625](#).

<sup>6</sup> [20 CFR 679.430](#).

<sup>7</sup> [OWD Issuance 19-2016](#), “Ethical Requirements for Chief Elected Officials and Local Workforce Development Boards,” June 7, 2017.

<sup>8</sup> [20 CFR 679.420](#).

## **LWDB Responsibility for Youth Service Providers**

LWDBs have the option to provide directly some or all youth services. If the LWDB chooses to award grants or contracts to youth services provider to carry out some or all of the youth services, the LWDB must award such grants or contracts on a competitive basis.<sup>9</sup>

## **LWDB Responsibility for Training Providers**

Providers of training services under Title I of WIOA must meet the eligibility requirements of the law,<sup>10</sup> be approved by State agencies and under the criteria as described in the State Plan, and be approved by the LWDB to provide services in the Local Workforce Development Area (LWDA).

### **SUBSTANCE:**

## **LWDB Responsible for Internal Controls**

The LWDB must avoid conflicts of interest and ensure performance accountability when one entity performs two or more One-Stop Delivery System roles. “Firewalls” should be sufficiently rigorous, to the satisfaction of the LWDB and the CEO.

Nothing in WIOA or the regulations prohibits a LWDB from issuing a competitive Request for Proposal (RFP) requiring the awardee to perform multiple functions (any combination of LWDB staff, OSO, Career Services provider, Youth Services, or Training Services provider). If a single entity *does* perform two or more of these roles (and possibly LFA as well—if appointed by the CEO), WIOA and the regulations require statutory and regulatory assurances to avoid conflicts of interest<sup>11</sup>.

## **Designating LWDB Staff**

- The LWDB chooses its staffing entity at its own discretion without a competitive process.
- Neither the LWDB staff, an OSO, nor any other services provider, may *manage* a services competition (drafting proposal specifications, evaluating bids, selecting the awardee, etc.) in which it will be a competitor. The LWDB must establish “robust” policies and firewalls to avoid any inherent conflict of interest.<sup>12</sup> The Uniform Guidance<sup>13</sup> also requires disclosure of all potential conflicts of interest *in writing* to the federal awarding agency or to the pass-through entity (OWD). LWDBs also should require such disclosures from their own providers.

## **Selecting the OSO**

- WIOA charges the LWDB with competitively **selecting** OSOs,<sup>14</sup> empowers them to terminate an OSO “for cause,”<sup>15</sup> and requires the consent of the CEO for hiring and firing an OSO.
- All contracts and agreements with OSOs must be executed as the result of a competitive process, as required by WIOA and as directed by the regulations and DOL guidance.<sup>16</sup>
- An OSO may be a single entity (public, private, or nonprofit) or a consortium of at least three of the Required One-Stop Partners.<sup>17</sup>

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<sup>9</sup> [20 CFR 681.400](#).

<sup>10</sup> WIOA Section 122(a)(2) [[29 U.S.C. 3152\(a\)\(2\)](#)].

<sup>11</sup> [20 CFR 679.430](#).

<sup>12</sup> DOL preamble narrative for 20 CFR 678.615 ([81 FR 55897–55898](#)) and [2 CFR 200.319](#) “Competition.”

<sup>13</sup> [2 CFR 200.112](#) “Conflict of Interest.”

<sup>14</sup> WIOA sec. 121(a)(2) [[29 U.S.C. 3151\(a\)\(2\)](#)].

<sup>15</sup> WIOA sec. 121(d)(1) [[29 U.S.C. 3151\(d\)\(1\)](#)].

<sup>16</sup> U.S. Department of Labor, Employment and Training Administration, Training and Guidance Letter ([TEGL 15-16](#)), “Competitive Selection of One-Stop Operators,” January 17, 2017.

<sup>17</sup> WIOA sec. 121(b)(1) [[29 U.S.C. 3151\(b\)\(1\)](#)].

- The competitive process must be in accord with the LWDB By-Laws (procurement policy). It also must concur with the Local Plan, any policies of the CEO consortium or local government that may apply, and any relevant stipulations in the Memorandum of Understanding for the local One-Stop Delivery System. Beyond this locally required diligence, and adherence to the Uniform Guidance for federal awards,<sup>18</sup> **the State imposes no additional requirements** on how the LWDB, with CEO consent, will manage the “competitive process.” The Title 2 Part 200 sections of Uniform Guidance relating to procurement<sup>19</sup> must be followed except in situations where they conflict with specific provisions in WIOA or in the WIOA regulations.
- WIOA requires<sup>20</sup> LWDBs to ensure that OSOs:
  - Disclose potential conflicts of interest with training or service providers;
  - Avoid practices that create disincentives for services to individuals with barriers to employment; and
  - Comply with federal regulations and procurement policies relating to calculation and use of profits.
- State staff can continue to perform functions and activities in a One-Stop Center regardless of whether the OSO is a government, private, or non-profit entity. The continued use of State staff for the provision of Wagner-Peyser services, or services from other programs with merit staffing requirements [e.g., Trade Act] must be included in the competition for [i.e., bid requirements or RFP specifications], and final contract with, the OSO when such services are being provided.<sup>21</sup> Likewise, local government staff also may work in the One-Stop Center, regardless of the operator, if they are responsible for delivering a One-Stop Partner program’s services.<sup>22</sup> The LWDB and the OSO establish a system for management of merit staff in accordance with State policies and procedures.<sup>23</sup>
- The OSO may operate one or more One-Stop Centers. There can be more than one OSO in an LWDA.<sup>24</sup>
- The LWDB must conduct a competitive process to select the OSO **at least once every four years**. The LWDB may choose to set a shorter interval for the competitive-selection process.<sup>25</sup> OWD strongly encourages LWDBs to award contracts for only one-year terms, with renewal options.
- An OSO *may not*<sup>26</sup>:
  - Convene system stakeholders to assist in the development of the Local Plan;
  - Prepare and submit Local Plans;
  - Be responsible for oversight of itself;
  - Manage or participate in the competitive selection process for OSOs;
  - Select or terminate other OSOs, Career Services, or Youth Services providers;
  - Negotiate local performance-accountability measures; or
  - Develop or submit budgets for activities of the LWDB.

Nevertheless, **separate** parts of an entity that provides OSO services *may* perform some or all of these functions **if the organization also serves the LWDB or the CEO in another role**.<sup>27</sup> However, in that other capacity, there must be a written agreement with the LWDB and the CEO documenting how internal controls and conflict of interest policies will dissociate those activities from the operation of the One-Stop.<sup>28</sup>

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<sup>18</sup> 2 CFR Parts [200](#) and [2900](#).

<sup>19</sup> [2 CFR Parts 200.317–200.326](#).

<sup>20</sup> WIOA sec. 121(d)(4) [[29 U.S.C. 3151\(d\)\(4\)](#)].

<sup>21</sup> [20 CFR 678.630](#).

<sup>22</sup> DOL and ED *Notice of Proposed Rulemaking* preamble narrative for 20 CFR 678.600–678.635, Subpart D—OSOs, [80 FR 20603](#).

<sup>23</sup> [20 CFR 678.630](#).

<sup>24</sup> [20 CFR 678.600\(b\)](#).

<sup>25</sup> [20 CFR 678.605\(a\)](#).

<sup>26</sup> [20 CFR 678.620\(b\)](#).

<sup>27</sup> [20 CFR 678.620\(b\)\(2\)](#).

<sup>28</sup> [20 CFR 679.430](#).

- The LWDB must make information publicly available, by electronic means and open meetings, regarding the selection of OSOs.<sup>29</sup> (Minutes of contract *negotiations* are not public records and do not have to be posted.<sup>30</sup>)
- Personnel responsibilities, particularly regarding partner staff and State staff, will remain with the WIOA partners or OWD Supervisors. OSOs should only have access to personnel information or disciplinary actions for staff under their direct, formal supervision.

### **Designating or Selecting the Career Services Provider**

- There is an assumption in WIOA that most OSOs will serve the LWDA in more than one function, and be the providers of Career Services.<sup>31</sup> [“If the OSO does not provide Career Services described in Section 3174(c)(2) of this title in a LWDA, the LWDB shall identify eligible providers of those Career Services in the LWDA by awarding contracts.”<sup>32</sup>]
- Whether the LWDB chooses to make the provision of Career Services part of the OSO competition, or chooses to designate the OSO (or some third party) as the Career Services awardee (before or after the OSO is competitively selected), is left to the LWDB’s discretion, with the advice and consent of the CEO. Standing alone, the Career Services contract does not have to be awarded through a competitive process.
- A LWDB may act as a provider of career services only with the agreement of the CEO and OWD, acting as designee on behalf of the Governor.

### **Selecting the Adult/Dislocated Worker Training Services Provider**

- LWDBs are prohibited from providing training services, unless the Governor grants a waiver that aligns with the provisions in WIOA Sec. 107(g)(1).<sup>33</sup>
- Training Services<sup>34</sup> are typically provided by training providers who are paid through Individual Training Accounts (ITA) and who are listed on the State’s Eligible Training Provider System (ETPS). Please refer to OWD’s most current Local ETPS Selection Policy<sup>35</sup> for more information.
- A LWDB may impose limits (dollar amount or time) on ITAs.<sup>36</sup>
- Contracts for service may be used instead of ITAs only when one or more of the following five exceptions apply, and the local area has fulfilled the consumer choice requirements.<sup>37</sup> Additionally, the Local Plan must describe the process to select the providers under a contract for services.
  - Services provided are on-the-job training (OJT), customized training, or transitional jobs.
  - LWDB determines that there are an insufficient number of eligible training providers in the local area to accomplish the purpose of ITAs. \*Requires a public comment period for interested providers of at least 30 days, and be described in the Local Plan.
  - LWDB determines that there is a training program of demonstrated effectiveness offered in the area by a community-based organization or another private organization to serve individuals

<sup>29</sup> WIOA sec. 107(e) [[29 U.S.C. 3122\(e\)](#)] and [20 CFR 679.390](#).

<sup>30</sup> [RSMo 610.010–610.035](#); [Mo. AG Opinion 83-2009, April 16, 2009](#).

<sup>31</sup> WIOA sec. 134(c)(2) [[29 U.S.C. 3174\(c\)\(2\)](#)] and [20 CFR 678.430](#).

<sup>32</sup> WIOA sec. 107(d)(10)(D) [[29 U.S.C. 3122\(d\)\(10\)\(D\)](#)].

<sup>33</sup> [20 CFR 679.410](#).

<sup>34</sup> [20 CFR 680.200](#).

<sup>35</sup> [OWD Issuance 11-2018](#), “Local Eligible Training Provider Selection Policy,” June 25, 2019.

<sup>36</sup> [20 CFR 680.310](#).

<sup>37</sup> [20 CFR 680.340](#).

with barriers to employment.<sup>38</sup> \*Requires the LWDB to develop criteria to define “demonstrated effectiveness”.<sup>39</sup>

- LWDB determines that a contract with a training provider is most appropriate to facilitate the training of multiple individuals in in-demand sectors or occupations, provided that the contract does not limit consumer choice.
- LWDB is entering into a Pay-for-Performance contract consistent with 20 CFR 683.510.

### **Selecting the Youth Services Provider(s)**

- Grant recipients/fiscal agents have the option to provide directly some or all of the youth workforce investment activities.
- If a LWDB chooses to award grants or contracts to youth service providers, to carry out youth workforce investment activities it must:
  - Identify youth service providers based on criteria established in the State Plan;
  - Take into consideration the ability of the provider to meet performance accountability measures;
  - Award such grants or contracts on a **competitive basis** and in accordance with the Procurement Stands found at Uniform Guidance at 2 CFR parts 200 and 2900; and
  - If the service provider (entity) selected fulfills another role in the local area, the LWDB must provide a signed written agreement<sup>40</sup> with the LWDB and CEO which clarifies expectations for those roles and describes a clear method of tracking effective execution and accountability for the distinct roles.<sup>41</sup>
- If the LWDB has a standing youth committee<sup>42</sup> it may assign the committee the function of making provider recommendations and/or selecting grants or contracts.
- *Exception*—a LWDB may award sole-source contracts if it determines an insufficient number of providers exist in the local area.<sup>43</sup>

DOL expects LWDBs to use youth service providers best positioned to provide program elements resulting in strong outcomes, and encourages LWDBs to award contracts to youth service providers using a competitive procurement process, when local areas have access to experience and effective youth service providers.<sup>44</sup>

### **LFA—Contracting for Other Duties with the LWDB**

- The employment of an LFA to assist with the fiduciary duties related to the CEO’s role as the grant subrecipient for the LWDA is not within the purview of the LWDB.<sup>45</sup> Therefore, the LWDB *cannot bundle the LFA duties into an RFP*. Once the LWDB fills the roles of the LWDB staff, OSO, Career Services, Youth Services, and Training Services, the CEO (or the CEO consortium) *may* choose to contract with one of those entities to be the LFA, or may select an entirely different entity, including the LWDB itself. The *administrative duties* (including those affecting policy and **service delivery**) of a CEO are not delegable to the LFA.<sup>46</sup> Because

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<sup>38</sup> [20 CFR 680.320\(b\)](#).

<sup>39</sup> [20 CFR 680.320\(3\)](#).

<sup>40</sup> [20 CFR 679.430](#).

<sup>41</sup> [TEGL 21-16](#), “Third Workforce Innovation and Opportunity Act (WIOA) Title I Youth Formula Program Guidance,” March 2, 2017.

<sup>42</sup> [20 CFR 681.100](#).

<sup>43</sup> Section 107(d)(10) [[29 U.S.C. 3122\(d\)\(10\)](#)] and [Section 123\(b\)](#).

<sup>44</sup> [TEGL 21-16](#).

<sup>45</sup> WIOA sec. 107(d)(12)(B)(i)(II) [[29 U.S.C. 3122\(d\)\(12\)\(B\)\(i\)\(II\)](#)]; [20 CFR 679.420](#); and [OWD Issuance 22-2015](#), “Policy on Designation of a LFA by the CEO,” June 22, 2016.

<sup>46</sup> [20 CFR 679.420](#).

of this, DOL has explicitly said<sup>47</sup> appointment as an LFA does not automatically permit that LFA to provide Youth Services directly (without a competitive process) under 20 CFR 681.400.

**ROLES, RESPONSIBILITIES, and REQUIRED ACTIONS:**

All LWDBs are directed to have competitively selected OSOs in place and actively operating One-Stop Centers. All LWDBs must document and have publicly available a description of the competition-and-selection process that was used to select the OSO, document and have publicly available the firewall and internal control provisions that eliminate conflicts of interest in situations where a contracted entity is performing two or more functions.

These procedures remain in place for competitive selections for subsequent contract renewals, which must occur a minimum of once every four years. A LWDB may choose to hold a competitive selection process more than once every four years.<sup>48</sup>

If an entity provides more than one function in a LWDA, then the LWDB must develop “firewalls” and adequately describe them in a Local Conflict of Interest policy or in a separate Firewall policy and provide a written agreement signed by the LWDB and CEO as described in this policy.

**TIMELINE:**

**All Missouri Workforce System Staff**—Implementation of these rules.....**Immediate and Continuous**

**INQUIRIES:**

Please direct all questions or comments regarding this Issuance document to [dwdpolicy@dhewd.mo.gov](mailto:dwdpolicy@dhewd.mo.gov). All active Issuances are available at [jobs.mo.gov/dwdissuances](http://jobs.mo.gov/dwdissuances). Expired/rescinded Issuances are available on request.

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<sup>47</sup> DOL preamble discussion for WIOA Final Rules 20 CFR 679.420 at [81 FR 56105](#).

<sup>48</sup> [20 CFR 678.605\(a\)](#).