MO Division of Workforce Development **Issued: August 1, 2012**
DWD Issuance 01-2012 **Effective: January 1, 2013**

Subject: **Procurement of Workforce Investment Act (WIA) Youth Program Activities**

1. Purpose: This Issuance is written to provide local Workforce Investment Area's (LWIA) guidance on competitive and non-competitive procedures for providing Youth activities under Title I of the WIA.

2. Background: Section 123 (29 U.S.C. 2843) of WIA requires the LWIA to identify eligible providers of Youth activities by awarding grants or contracts on a competitive basis, based on recommendations of the Youth Council and on criteria contained in the State Plan.

3. Substance: 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. Each region is expected to implement programs that address the goals and priorities of the local WIA Youth system as established by the Youth Council and local Workforce Investment Board (WIB); and at a minimum must make available the ten program elements identified in WIA 129(c)(2) to Youth participants. The providers of these Youth activities must be selected by awarding grants or contracts on a competitive basis based on recommendations of the Youth Council and on criteria contained in the State Plan. The only exception to this requirement is for the design framework component such as services for intake, objective assessment and development of the Individual Service Strategy (ISS), when these services are provided by the local grant recipient or fiscal agent (20CFR 664.405(a)(4).

   This competitive procurement requirement also applies to providers of Youth Occupational Skills Training. The cost of occupational skills training for WIA eligible youth participants may be paid to a training provider (such as a community college or vocational school) that has been competitively selected to provide training for eligible youth who receive individual referrals. Local WIBs are not limited to funding group-size training, but may provide vouchers or "fee-for-service" funds to community colleges, vocational schools, or other training providers, based on the participant's objective assessment and ISS.

One component of this procurement process requires the LWIA to place a public notice in the local newspapers and send a letter to all the occupational skill training providers in the area, as well as, WIA eligible and non-WIA eligible providers. The public notice and letter should state that funds are available to serve WIA Youth in skill training and if they want the opportunity to serve WIA Youth in skill training, it is preferred they be on the WIA Eligible Training Provider List.

Procurement and subgrant requirements for units of local government can be found in the Uniform Administrative Requirements(UAR) 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 be in compliance with the provisions of applicable federal, state, and local laws and regulations. To allow ample time for prospective bidders to submit proposals and budgets, it is recommended that bidders be given a minimum of 30 days to respond to any solicitation.

Training and Employment Guidance Letter (TEGL) No. 09-00 provides guidance from the U.S. Department of Labor (USDOL) on the competitive selection of Youth providers (including Youth Training providers) to ensure WIA guidelines are met. The TEGL indicates procurement must 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.

TEGL 35-10 (issued June 16, 2011) outlines relevant federal laws and regulations with which local WIBs must comply such as:

- "*Sunshine provision" regulations* for state WIBs (20 CFR 661.207) and local WIBs (20 CFR 661.307). Specifically, a state or 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.
- *UARs* for procurement (29 CFR 97.36 and 29 CFR 95.42). The UARs are government-wide standards around procurement that all federal grantees must follow, including standards for conflict of interest. The USDOL codified these UARs at 29 CFR Part 97 for governmental grantees and at 29 CFR Part 95 for non-governmental grantees. These UARs describe specific instances which would constitute a conflict of interest, the types of characteristics that should be considered when making awards to contractors, requirements for procurement protest procedures, and other requirements.
- 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 UARs described above, a state WIB member or 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.

As required by WIA section 112(b)(18)(B), the Division of Workforce Development (DWD) has also identified within the WIA State Plan minimum standards for which contracts should be awarded to providers of Youth services.

Contracts must be awarded based on the vendor's:

- Ability to deliver services to the targeted population in accordance with locally established guidelines;
- Experience in working with youth in similar programs and activities;
- Past performance record, including both programmatic and fiscal integrity;
- Understanding of and commitment to meeting goals and objectives; and
- Demonstration of understanding of and commitment to continuous improvement methods.

Local WIBs should also use these criteria to identify effective and ineffective Youth activities and providers of these activities.

4. Action: The process for which the local WIB selects Youth service providers must be included in the Local Plan of Services for WIA Youth. Contracts must be awarded based on the vendor's:

- Ability to deliver services to the targeted population in accordance with locally established guidelines;
- Experience in working with youth in similar programs and activities;
- Past performance record, including both programmatic and fiscal integrity;
- Understanding of and commitment to meeting goals and objectives; and
- Demonstration of understanding of and commitment to continuous improvement methods.

The contract must also include a clause which states that the contract may be canceled based on performance and or funding availability. All contracts must be reviewed annually to ensure compliance with program guidelines and to ensure performance guidelines are met.

Each WIB must, no later than June 30 of each year, provide DWD an updated listing of contracted service providers for their respective regions identifying the services which will be provided, the contract period, and contact information for the provider.

5. Contact: Direct questions or comments regarding this Issuance to Melissa Woltkamp, Manager, Adult and Youth Programs, 573.526-8241, melissa.woltkamp@ded.mo.gov.

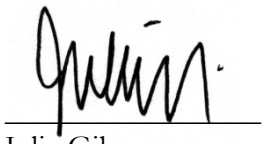
6. References:

1) WIA of 1998, Title I, subtitle B Sections 123, 112(b)(18)(B), 117(d)(2)(B), 117(h)(4)(B)(i)
2) TEGL 09-00 Competitive and Non-Competitive Procedures for Providing Youth Activities Under Title I (January 23, 2001)
3) TEGL 12-01 Clarification on Selected Activities and Issues under WIA (February 21, 2002)
4) TEGL 35-10 Transparency and Integrity in Workforce Investment Board Decisions
5) 20 CFR part 664, WIA Regulations part 664 (65 Fed. Reg. 49294, 49411, August 11, 2000)
6) 29 CFR part 95, 95.40 through 95.48 Procurement Standards
7) 29 CFR part 97, 97.36 Procurement and 97.37 Subgrants

7. Rescissions: DWD Issuance 03-2002, Workforce Investment Act (WIA) of 1998, Section 129-Competitive and Non-Competitive Procedures for Providing Occupational Skill Training to WIA Eligible Youth Under Title I, dated December 5, 2002.

DWD Issuance 13-2011, Procurement of Workforce Investment Act (WIA) Youth Program Activities, dated May 17, 2012.

8. Attachments: None



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