

3500POL Procurement

Effective Date: July 2017

Last Modified: November 2017

Purpose:

To communicate requirements for the procurement and selection of one-stop operators and service providers under the Workforce Innovation and Opportunity Act (WIOA).

Effective immediately, all new procurement processes must conform to the requirements in this policy. Effective July 1, 2017, all WIOA service deliveries must have been selected in accordance with this policy.

Background:

WIOA changed the law and rules governing procurement and selection of one-stop operators and service providers. The Office of Management and Budget (OMB) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (commonly known as the OMB Super Circular) also changed procurement requirements, consolidated eight previous circulars into one Uniform Guidance document, and introduced new requirements for performance-based contracting.

WIOA sets the general expectation that Local Workforce Development Boards (LWDBs) conduct open and competitive procurement processes to identify appropriate providers of one-stop operator and other services. Per WIOA Section 107(10)(E) and proposed 20 CFR 679.370 (m), LWDBs work with the State to ensure that the amount and quality of providers is sufficient to meet the needs of the community. WIOA sets the expectation that LWDBs will serve as strategic entities and the Department of Labor further clarified that expectation in proposed 20 CFR 679.410 by citing “restrictions” on LWDBs (and LWDB staff) as one-stop operators and service providers and outlining the requirements of LWDBs that want to assume those roles.

Policy:

It is the policy of the Olympic Consortium (OC) that all WIOA recipients must conform to specific policies and procedures which ensure the safeguarding of public assets and that ensures competition is conducted in a fair and open manner, as is feasible. The extent of competition should be consistent with the dollar amount of the award.

All contract procurement is conducted in a fair and open process. To the extent possible, small, minority, disabled and women-owned businesses will be provided the maximum opportunity to compete in all goods and services. To that end, all procurement must be open, available for the public to respond and all procurement decisions completely and thoroughly documented.

It is the policy of the OC that WIOA recipients will not discriminate in the procurement and award process against any bidders based on federal, state, and local laws governing nondiscrimination and equal opportunity, including that of WIOA.

1. Requirements

WIOA recipients must have written procurement procedures to ensure that each procurement (1) Contains a clear and accurate description of the technical requirements (including quantities), (2)

Identifies all requirements that must be fulfilled, and (3) States what factors will be used for evaluation.

There must be a written code of conduct for the procurement, award and administration of contracts. To the extent permitted by state or local law or regulation, the code of conduct shall contain penalties, sanctions or other disciplinary action for violations of the code of conduct. The code of conduct must ensure that no one in a decision-making capacity has any real or apparent conflict of interest in the selection, award, or administration of contracts or sub-grants. No procurement will occur that commits the OC to amounts in excess of funds available. Procurement standards shall ensure fiscal accountability and prevent waste, fraud, and abuse in WIOA programs.

Officers, employees, or agents of a service provider or contractor may not accept or solicit gratuities, favors, or anything of monetary value from anyone intending to respond to a proposal, who has responded to a proposal, or who has received an award.

WIOA recipients may only accept gifts when, a) they are unsolicited; b) they are unconnected with anyone who is intending to respond to a proposal, has responded to a proposal, or who has received an award, and c) the value is nominal (interpreted by the WDC as \$50).

2. Programmatic Requirements

a. Procurement of One-Stop Operators

- i. One-stop operators are designated and certified through a competitive procurement process. LWDBs must be able to document, in writing, that they made their board members, and the public aware of the competitive process to be used. That includes providing at least 30-day public notice through media where prospective local, state, and national bidders typically identify such opportunities (e.g., local print newspapers, on-line newspapers, LWDB web sites, other community web sites, etc.). Solicitations must include the selection criteria to be used in the process and will be maintained as part of the documentation.
- ii. The competitive process used by LWDBs to procure one-stop operators must be conducted at least once every four years and follow the principles of competitive procurement set forth in Uniform Administrative Guidance at 2 CFR 200.318-326.
- iii. The allowable forms of competitive procurement processes are as follows:
 1. Sealed Bids
 2. Competitive Proposals
 3. Sole Source
 - A. Sole source can be exercised as per local policies that comply with state and federal procurement laws and regulations and only if documented factors, including published notice(s) of intent made available to the public for at least 30 days in media where prospective local, state, and national bidders typically identify such opportunities, lead to a determination that only one entity could serve as an operator, compelling circumstances outweigh the delay that would result from a competitive solicitation, or results of the competition conducted per Section 3(c)(i)(C)(1-2) of this policy are determined inadequate, and only with the agreement of the local Chief Elected Official and Governor.

Examples of compelling circumstances that outweigh delays that would result from competitive solicitations include the need to avoid a break in services if an operator is terminated for cause or is unable to continue providing services through the end of the contact period.

Inadequate responses are those judged by a panel of impartial reviewers to score below a pre-determined minimum level on scoring criteria published as part of the solicitation.

- B. LWDBs may be selected as one-stop operators under a sole source agreement only if they demonstrate adherence to appropriate internal controls and establish conflict of interest policies and procedures that identify appropriate internal controls and are approved by the Governor. LWDBs must complete Attachment A of the state's Washington WorkSource System Policy 5404 Rev. 1 – Procurement and Selection of One-Stop Operators and Service Providers, Request for Waiver to Serve as a One-Stop and submit it to the State Workforce Development Board (SWDB).
 - iv. LWDBs may serve as one-stop operators in the region for which they are designated if they are determined to be the successful bidder in a solicitation that conforms to the principles of competitive procurement set forth in Uniform Administrative Guidance at 2 CFR 200.318-326, and only if approved internal control and conflict of interest policies are followed. Internal controls include the requirement that the solicitation and scoring process be managed by a fair and impartial third party free of conflicts of interest and that OC staff and the agency that employs such staff cannot develop the solicitation for proposals, facilitate the scoring process, or score proposals. The SWDB and OC may work together to establish a list of pre-qualified bidders for this role.
- b. Procurement of Youth Service Providers.
- i. LWDBs must competitively award grants/contracts for eligible providers of youth workforce investment activities, except in the case of sole-source awards/contracts, and only then if there is satisfactory and demonstrable evidence that there are insufficient number of providers with the expertise required for serving in-school or out of school youth. Bid solicitations must include the selection criteria to be used in this process and will be maintained as documentation of the process.
 - ii. LWDBs must be able to document, in writing, that they made their board members and the public aware of the competitive process to be used to identify youth service providers. This includes providing at least 30-day public notice through media where prospective local, state, and national bidders typically identify such opportunities (e.g., local print newspapers, on-line newspapers, OC web sites, other community web sites, etc.).
 - iii. LWDBs must establish and use criteria, including the ability of service providers to meet performance accountability measures based on common measures, as well as full and open competition consistent with 2 CFR parts 200 and 2900 in addition to applicable state and local procurement laws to procure eligible providers of youth workforce investment activities.

- iv. In accordance with USDOL regulations, design framework services (intake, objective assessment, development of individual service strategies, case management, follow-up services) may be exempted from a competitive process if LWDBs determine that they can more appropriately and efficiently perform these activities. However, LWDBs must receive approval of the Local Elected Official(s) and Governor to provide design framework services for youth program participants by submitting Request for Approval to Provide WIOA Youth Design Framework Services (see Attachment D of WIOA Policy 5404 Rev. 1) to the SWDB.
 - v. LWDBs must establish local policies and procedures to assess the ability of youth program providers to meet performance accountability measures based on the primary federal indicators of performance for the youth program.
 - vi. LWDBs may serve as youth service providers if they are determined to be the successful bidder in a solicitation that conforms to the principles of competitive procurement set forth in Uniform Administrative Guidance at 2 CFR 200.318-326, and only if approved internal control and conflict of interest policies are followed. Internal controls include the requirement that the solicitation and scoring process be managed by an impartial third party free of conflicts of interest and that LWDB staff and the agency that employs such staff cannot develop the solicitation for proposals, facilitate the scoring process, or score proposals.
- c. Procurement of Adult or Dislocated Worker Training Services
- i. LWDBs must select providers of adult and dislocated worker training services through a competitive procurement process. Allowable forms of competitive procurement include sealed bid, competitive proposals, and sole source. LWDBs must be able to document, in writing, that they made their board members and the public aware of the competitive process to be used. This includes providing at least 30-day public notice through media where prospective local, state, and national bidders typically identify such opportunities (e.g., local print newspapers, on-line newspapers, LWDB web sites, other community web sites, etc.). Solicitations must include the selection criteria to be used in this process and must be maintained as part of the documentation.
 - ii. LWDBs may serve as training service providers if they are determined to be the successful bidder in a solicitation that conforms to the principles of competitive procurement set forth in Uniform Administrative Guidance at 2 CFR 200.318-326, and only if approved internal control and conflict of interest policies are followed. Internal controls include the requirement that the solicitation and scoring process be managed by an impartial third party free of conflicts of interest and that LWDB staff and the agency that employs such staff cannot develop the solicitation for proposals, facilitate the scoring process, or score proposals.
 - iii. LWDBs can provide Adult or Dislocated Worker training services if granted a written waiver by the Governor based on satisfactory and demonstrable evidence that:
 1. The LWDB determined that there were an insufficient number of eligible providers with expertise in serving Adults or Dislocated Workers to meet local demand. LWDBs must have come to this determination after having either received no response to a

Request for Qualifications (RFQ) or Request for Interest (RFI) or received no response to a Request for Proposal (RFP) or conducted a competitive procurement in which no bidders met the minimum criteria;

2. The LWDB meets the requirements of an eligible training provider under Section 122;
3. The LWDB's proposed training services prepare participants for in-demand industry sectors or occupations in the local area; and
4. The LWDB subjected its waiver determination and request to a minimum 30-day public comment period and included all comments received in the final waiver request.
5. LWDBs must complete the Request for Waiver to Provide WIOA Adult and/or Dislocated Worker Training Services form (see Attachment B of WIOA policy 5404 Rev. 1) and submit it to the SWDB.

d. Procurement of Career Services

- i. LWDBs are encouraged to select providers of career services through a competitive procurement process, though WIOA law and proposed rules do not require this. Allowable forms of competitive procurement include sealed bid, competitive proposals, and sole source.
- ii. LWDBs can provide basic and individualized career services by agreement of the local Chief Elected Official and Governor. LWDBs must complete Attachment C of the state's WIOA Policy 5404 Rev. 1 – Procurement and Selection of One-Stop Operators and Service Providers, (Request for Approval to Provide WIOA Basic and/or Individualized Career Services) and submit it to the SWDB.

3. Procurement-Related Fiscal Requirements

- a. Subawards are not procurement actions governed by this policy or other procurement laws, rules, or policies unless:
 - i. Required by statute;
 - ii. Required by own policies and procedures; or
 - iii. Awarded on a competitive basis, in which instance the subaward will be governed by procurement rules detailed in 2 CFR 200.318-326.
- b. When a competitive procurement process is not used in the selection of a subrecipient for a subaward, it must be guided by:
 - i. Documented internal controls, including written procedures for employee conduct and conflict of interest provisions;
 - ii. The service provider's track record, considering past record of performance, cost principles, record of compliance and audit and monitoring results.
 - iii. Procurement standards must ensure fiscal accountability and prevent waste, fraud, and abuse in WIOA programs. Where applicable, standards must support fair and competitive procurement of goods and services.
 - iv. Wherever possible and where required, all agreements must be performance-based, as defined in Federal Acquisition Regulations (FAR) 37.6, and include the following minimum requirements:
 1. Performance requirements defined in measurable, mission-related terms;

2. Performance standards (e.g., quality metrics, required quantities, and timeliness) tied to performance requirements;
 3. Quality assurance plan describing how the contractor's performance will be measured against performance standards; and
 4. Appropriate positive and negative incentives for performance standards critical to accomplishing agreement objectives.
- v. All other non-federal entities, including LWDBs, must:
1. Follow general procurement standards established through state law, rule and policy, as well as through 2 CFR 200.318-326;
 2. Develop and document their own procurement policies, procedures and standards that reflect applicable state law, rule and policy and conform to federal law and standards of OMB Uniform Guidance;
 3. Ensure full and open competition, where necessary;
 4. Use the most economical approach to the procurement of goods and services;
 5. Award only to responsible contractors;
 6. Maintain oversight in order to monitor contractor performance regarding contract terms, conditions and specifications; and
 7. Maintain records detailing the history of the procurement, including the rationale for the selected method of procurement, selection of contract type, basis for contractor selection or rejection, and basis for contract price.

4. **Methods of Procurement**

- a. Reasonableness of costs and prices are determined for large procurement through a Request for Proposal process. Smaller procurements are documented through County procurement procedures. *Reference: Kitsap County Code Chapter 4.116 Purchasing Procedures.*

OC will document, in writing, that their board members and the public were made aware of the competitive process used to identify the One-Stop Operator and WIOA services providers. This includes providing at least 30-day public notice through media where prospective local, state, and national bidders typically identify such opportunities. Solicitations must include the selection criteria to be used in this process and must be maintained as part of the documentation.

- i. Price quotations (*4.116.030 Attachment 9(A)*):

1. Whenever practical, price quotations from at least three vendors shall be solicited for purchases of leases of supplies, materials, or equipment in amounts not exceeding \$3,500.00 in a single transaction. Records of quotations obtained shall be maintained and open to public inspection.
2. Price quotes will be solicited from at least three and up to five vendors for purchase of leases of supplies, materials, or equipment in amounts from \$3,500.00 to \$25,000.00 in a single transaction. Records of quotations obtained shall be maintained and open to public inspection.

- ii. Human Services and computer services (*4.116.100 Attachment 9(A)*):

Human services and computer services may be procured using the competitive bidding process or the request for proposal process. When procuring computer services, the agency

shall specify in the request for proposal that cost shall be a significant, but not necessarily the major, evaluation factor. The information services and purchasing division shall review all proposed procurement of data processing hardware, software, data telecommunications, and automated records storage systems, and all contracts for computer services.

iii. Bid specifications, deposits, and awards (4.116.070 Attachment 9(A)):

1. In developing specifications for bids or proposals, all reasonable efforts shall be made to ensure that a variety of vendors shall be capable of fulfilling the stated requirements of the county. Performance considerations shall be included in the specifications. However, nothing in this section shall be construed to limit the county from pursuing sole source procurement where adequate justification has been presented that such procurement is in the best interests of county operations.
2. When the amount of any contract purchase or lease exceeds \$25,000.00, the purchasing office shall be responsible for the review and preparation of invitations to bid pursuant to provisions in this chapter.
3. All bid specifications for public works, leases, or purchases prepared under the provisions of this chapter shall be in writing and placed on file for public inspection.
4. An advertisement that written specifications are on file and available for public inspection shall be published in the official county newspaper. Advertisements shall be published at least once thirteen days prior to the last date upon which bids will be received and may be published for as many additional publications as shall be considered in the county's best interest. Such advertisement shall state:
 - A. The date after which bids will not be received;
 - B. The character of the work to be done, or the materials, equipment, or services to be purchased; and
 - C. Where the specifications may be seen.
5. Should the bidder to whom the contract is awarded fail to enter into the contract or fail to furnish the contractor's bond within 10 days (exclusive of the bid date notice) after notice of the award, the amount of the bid deposit shall be forfeited to the county. If there is a forfeit, the award shall be made to the next lowest responsive responsible bidder. The bid deposit of an unsuccessful bidder (if their bid deposit has not been forfeited) shall be returned after the required contractor's bond of the successful bidder has been accepted.
6. Bids received shall be opened and read in public on the date named in the advertisement for bids, or such adjourned time as may then be publicly announced.
7. After opening, all bids shall be reviewed and referred to the requisitioning department for recommendation of award by the purchasing office.
8. After opening and award, all bids shall be filed for public inspection and available by telephone inquiry.
9. Any or all bids may be rejected for good cause. If all bids are not rejected, the award shall be to the lowest responsive responsible bidder. In determining which is the lowest

responsive responsible bidder, the county may take into consideration the bidder's responsiveness to the county's requirements the quality of the articles to be purchased or leased, availability of parts and service, delivery time, and prior dealings with the vendor.

10. The county may issue requests for proposals for services, or for technologically complex equipment, including but not limited to, computers, software, or telephone systems. If all proposals are not rejected, the award shall be to the highest rated proposal taking into account the selection criteria published in the request for proposals.
 11. The county may award multiple bidders for the same commodity or service when the bid specifications provide for special circumstances in the determination of which vendor is truly the lowest price to the county. Special circumstances may include differences in ability to deliver, delivery time, availability of material, special loading or unloading conditions, total cost including transport or labor if not included with bid item, performance of the delivered material, location of the source and proximity to the delivery point.
 12. Contracts may be administratively amended in accordance with the procedures prescribed in Chapter 3.56 of this code.
- iv. Consideration will be given to small, minority, disabled, and women-owned businesses in the procurement process.
 - v. Contracts will only be awarded to contractors that demonstrate the technical expertise to successfully operate such contracts.
 - vi. Contracts with successful bidders shall contain at a minimum:
 1. Price or estimated cost;
 2. Method of payment;
 3. Scope and extent of work;
 4. Period of performance;
 5. Signature of authorized officials;
 6. Provisions that allow for administrative, contractual, or legal remedies if the contractor violates or breaches terms of the contract;
 7. A provision for termination because of circumstances beyond the control of the WDC (the provision shall include conditions under which termination actions will be taken, the manner of taking such actions, and the basis for settlement);
 8. A provision that the contractor shall maintain adequate participant, financial and administrative records under the contract and make those records available to the WDC or any duly authorized representative, as specified by the WDC;
 9. A provision that subcontracts must contain selected paragraphs of 29 CFR parts 31 and 32 implementing the nondiscrimination and equal opportunity provisions of Title VI of the Civil Rights Act of 1964, as amended;
 10. A provision that qualified small minority and women's businesses have the maximum practicable opportunity to participate in the subcontract performance; and
 11. Include the appropriate provisions as specified by the funding source.

- vii. Contracts to provide core and intensive services are authorized under WIOA Title IB as specified in the MOA or resource sharing agreement, between partners and the WDC.
- viii. All work performed as part of a contract shall be monitored periodically by the WDC to determine compliance with the contract requirements.
- ix. The WDC will select One-Stop Operators through designation or certification through a competitive bid process, or under an agreement between the local council and a consortium of entities that include at least three or more of the required One-Stop partners.
- x. Subdivision of purchases prohibited (*4.116.140 Attachment 9(A)*):
 - 1. No contract or purchase shall be subdivided to avoid the requirements of this chapter. Dollar limits will be determined, not per item, but per purchase event. To determine the full cost of an item(s), the following criteria are applicable: (a) cost is determined before any trade-in allowance; (b) cost includes shipping; (c) cost does not include sales taxes, if any.
 - 2. Simultaneous purchases of supplies or services which are unrelated or otherwise not constituent parts of a larger item or service do not constitute “subdivisions” or “purchase events” for purposes of this section.
- xi. Amendment to chapter (*4.116.170 Attachment 9(A)*): The board reserves the exclusive right to alter, amend, rescind, abrogate, delete, supersede, or replace the provisions of this chapter or any part thereof, in any manner not inconsistent with state law. Whether or not the county takes action, the provisions of this chapter shall be deemed automatically altered, amended, or superseded to conform to any mandatory state administrative ruling or statute, as of the effective date of any such enactment appertaining to the matters covered in this chapter, to the effect that the provisions of this chapter shall at all times conform to, and never conflict with, said state laws and regulations.

5. **Bidders List**

A Bidder’s list will be established. Such List will be continually open for prospective bidders who will be added as received. The list will be by type of goods and/or services identified by the Bidder as its area of interest or expertise.

To the extent possible, small, minority, disabled and women-owned businesses will be in bidder’s lists, and will be targeted for mailings and advertised procurement.

If mail sent to a Bidder is returned undeliverable, they will be removed from the list. Similarly, the WDC will periodically purge its list and request bidders to reapply.

6. **Vendors List**

Based upon responses received from procurement actions, the WDC may establish pre-approved vendor lists for staff use. The vendor lists may detail several pre-approved vendors/consultants that may be used.

7. **Waivers**

The OC Director, or designee, may waive the procedural requirements for a specific RFP or contract under the following circumstances:

- i. The OC Director, or designee, finds that compliance with these procurement requirements would create an undue burden and risk on the WDC.

References

Grants and Agreements, Office of Management and Budget Guidance for Grants and Agreements, Title 2, Subtitle A, Chapter II [Part 200 and 290](#)

Nondiscrimination in Federally Assisted Programs of the Department of Labor, Code of Federal Regulations Title 29, Subtitle A, [29 CFR Parts 31 -32](#)

Performance-Based Acquisition, Federal Acquisition Regulation (FAR), Subchapter F, [Subpart 37.6](#)

Procurement and Selection of One-Stop Operators and Service Providers, [Workforce Innovation and Opportunity Act Policy 5404 \(Rev1\)](#)

Purchasing Procedures, Kitsap County Code Title 4 Revenue and Finance, [Kitsap County Code 4.116](#)

Service Contracts-General, Federal Acquisition Regulation (FAR), Subchapter F, [Subpart 37.1](#)

Statewide and Local governance of the Workforce Development System under Title I of the WIOA, Code of Federal Regulations Title 20, Chapter V-I1 [20 CFR §679](#)

Title VI of the Civil Rights Act of 1964, The United States Department of Justice, [§2000d et esp.](#)

Uniform Administrative Requirements, Cost Principles, and Audit Requirements, OMG [82 FR 22609](#)

WIOA Selection of Operators and Providers, Workforce Innovation and Opportunity Act Final Law H.R. 803 (113-128) [§107\(10\)\(e\)](#)

WIOA Youth Program Transition, Training and Employment Guidance Letter, [TEGL 23-14, Section 8](#)