

SUBJECT: **Procurement Standards**

REFERENCE: Workforce Investment Act of 1998, Sec. 112, 117, 121, 123, 184; 20 CFR: 664.405, 664.610, 667.200; 29 CFR Parts 95, 97 and 98; State Workforce Investment Plan; TEGL 9-00; TEGL 31-04; LB 626 (Neb. Laws 2003); and LB 403 (Neb. Laws 2009).

BACKGROUND: The State, each local area, and every provider receiving funds under Title I of the Workforce Investment Act (WIA) shall comply with the appropriate uniform administrative requirements for grants and agreements applicable for the type of entity receiving the funds. Standards have been established to ensure fiscal accountability and prevent waste, fraud and abuse in all programs administered under the Act and its implementing regulations. In addition, the Act introduced changes in the way services for youth activities are obtained.

POLICY: I. **General Administration**

A. Procurement Processes at the State Level

All State level awards and grants shall follow procurement requirements of the State of Nebraska provided that the procurements conform to applicable Federal law. The State of Nebraska, Department of Administrative Services, Materiel Division (DAS) is responsible for purchases of personal property. The Department provides manuals and guidelines for the agencies to follow in order to comply with the state law and regulation: LB 626 and Section 81-161.103 of the Nebraska Revised Statutes (direct market purchase authority). The DAS manual *Procedures for the Procurement of Contractual Services* describes the processes for developing contracts. All agencies are required to use a standardized, open and fair process for the selection of contractual services.

All contracts must include the grievance/protest procedure in the specification package. The grievance/protest procedure shall include, at a minimum, these steps:

1. Within ten (10) calendar days after the intent to award decision is issued, grievances/protests are to be expressed in writing to the Executive Director. The letter should state the Service Contract Award (SCA) number and specific issues that are to be addressed.
2. A response shall be made by the Executive Director.
3. If the response from the Executive Director has not satisfied the grievance of the contractor, a meeting may be scheduled with the contractor and the agency to discuss the issues. *(Optional)*
4. A written response of the final decision by the Executive Director shall be sent to the contractor.

All State agencies including any State agency, board, or commission other than the University of Nebraska, the Nebraska State Colleges, the Legislature, Courts, and Constitutional officers are required to process and document all service contracts, no matter the dollar amount, through the procurement of services section of the Nebraska Information System (NIS).

Service procurements in excess of \$50,000 are required to be bid in a manner as prescribed by the Materiel Division Procurement Manual. Agencies can complete the bid process as per the Materiel Division's Procurement Manual or ask Materiel Division, State Purchasing Bureau for assistance including completing the bid process when needed. Agencies may request the Department of Administrative Services Director to approve an alternate process for the procurement of services. The alternate process needs to be agency or program wide and approved before the competitive bid process.

All service procurement in excess of \$50,000 that is bid at the agency level must have a review done by the Department of Administrative Services, Materiel Division, State Purchasing Bureau. If there is a change in the specifications that were originally reviewed by State Purchasing, the agency is required to have another review done by State Purchasing before the contract can be completed.

It is the agency's responsibility to insure appropriate public notice is given on all requests for services proposals that are in excess of \$50,000. This includes the requirement that

agencies submit the proposals to the Materiel Division to be placed on their web site.

Service contracts are subject to the following requirements:

1. Payment cannot be made until deliverables (based on the contract terms) are received.
2. Service contracts must have a time frame. Materiel Division recommends a time frame of 3-5 years for most service contracts.
3. Contracts cannot be structured to avoid the requirements of LB 626.

Unless exempted in Section 7 of LB 626 and in emergencies, all sole source services procurements in excess of \$25,000 must be pre-approved by the Materiel Division. The Deviation from Contractual Services Process is to be used. In the case of emergencies the agency Director or designee has three days to complete the Deviation for Contractual Services Process that justifies the emergency purchases.

On proposed service contracts that will be in excess of \$50,000 and that are replacing the current duties or duties performed in the last year by State employees covered by the classified personnel system or by any labor contract, agencies must complete a preprocess prescribed by the Materiel Division, the People Resource Management Guide.

LB 626 changed the dollar authority on the procurement of goods. Direct market purchase authority for the agencies has increased from \$5,000 to \$10,000. Informal competitive purchases are now between \$10,000 and \$25,000. Formal competitive purchases are \$25,000 or more. Any purchase for goods over \$10,000 must be processed by requisition through the Materiel Division.

#### B. Procurement Processes at the Local Level

The contract procurement and subgrant requirements for units of local government can be found in the Unified Administrative Requirements for procurement by governmental entities 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 reflect applicable State and local laws and regulations, provided that the procurements conform to the applicable Federal laws and the stated administrative standards.

A basic tenet of the standards found at 29 CFR 95.42 and 97.36(b)(2) is that procurement 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 judgement and cause unfair competitive advantage. 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. If the existing governmental structure does not have the capabilities to exclude the sub-unit from the solicitation process, it must move the selection process to a higher-level governmental unit with oversight authority. Using guidelines set forth in this policy, the local grant recipient must document its competitive selection process.

## **II. Contracts and Agreements**

### **A. Administration System**

Grantees and subgrantees shall maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders including adequate and timely completion of all transactions. Awards shall be made only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. Subgrantees shall conduct and document oversight of contractor activity to ensure compliance with the procurement standards.

## B. Affirmative Steps

All necessary affirmative steps shall be taken to assure that small and minority firms, and women's business enterprises are used whenever possible.

Affirmative steps shall include:

- Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
- Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;
- Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and
- Requiring the prime contractor, if subcontracts are to be let, to take affirmative steps.

## C. Code of Conduct /Conflict of Interest

### • Issues Related to Employees

Grantees and subgrantees shall maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of Workforce Investment Act contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by WIA funds if a conflict of interest, real or apparent, would be involved.

Such a conflict would arise when:

1. The employee, officer or agent,
2. Any member of the individual's immediate family,
3. His or her partner, or
4. An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award.

The officers, employees or agents of the agency making the award will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value.

To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents.

- **Issues Related to Board and Council Members**

Every State or local Workforce Investment Board member in Nebraska, regardless of his or her occupation, is considered a public official. Consequently, they are subject to certain sections of the Nebraska Political Accountability and Disclosure Act. Those circumstances that would constitute a conflict of interest for all members of the State and local boards would include hiring of immediate family members, soliciting or accepting something of value, use of a public position for personal gain, use of public resources, and interests in contracts.

A State board member or a local board member or a youth council member must neither cast a vote on, nor participate in any decision-making capacity, on the provision of services by such member (or any organization which that member directly represents), nor on any matter which would provide any direct financial benefit to that member or the member's immediate family.

Neither membership on the State board, the local board, the youth council nor the receipt of WIA funds to provide training and related services, by itself, violates these conflict of interest provisions.

**D. Competition**

All procurement transactions shall be conducted in a manner providing full and open competition. Grantees and subgrantees shall be aware of barriers which may restrict or eliminate open competition. Some situations considered restrictive of competition include but are not limited to:

- Placing unreasonable requirements on firms in order for them to qualify to do business.
- Requiring unnecessary experience and excessive bonding.
- Noncompetitive pricing practices between firms or between affiliated companies.
- Noncompetitive awards to consultants that are on retainer contracts.
- Organizational conflicts of interest.
- Specifying only a “brand name” product instead of allowing “an equal” product to be offered.
- Overly restrictive specifications.
- Any arbitrary action in the procurement process.

Grantees and subgrantees will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts State licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

Written selection procedures shall be used for procurement transactions to ensure that all solicitations:

- Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equal” description may be used as a means to define the performance or other salient requirements of a procurement. The specified features of the named brand which must be met by offerors shall be clearly stated; and

- Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

Grantees and subgrantees 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 competition. Also, grantees and subgrantees will not preclude potential bidders from qualifying during the solicitation period.

#### E. Confidentiality and Non-Disclosure

The obtaining of confidential procurement information not made available to all offerors is strictly prohibited. In addition, improper communication with staff or board members to influence procurement decisions is not allowed.

#### F. Construction

Except for the circumstances identified below, WIA Title I funds must not be spent on construction or purchase of facilities or buildings.

Allowable exceptions include:

1. To meet a recipient's obligation to provide physical and programmatic accessibility and reasonable accommodation, as required by Section 504 of the Rehabilitation Act of 1973, as amended and the Americans with Disabilities Act of 1990, as amended;
2. To fund repairs, renovations, alterations and capital improvements of property, including SESA real property, (identified at WIA Section 193) using a formula that assesses costs proportionate to space utilized and previously JTPA owned property which was transferred to WIA Title I programs;
3. Job Corps facilities, as authorized by WIA Section 160(3)(B).
4. To fund disaster relief employment on projects for demolition, cleaning, repair, renovation, and reconstruction of damaged and destroyed structures, facilities, and lands located within a disaster area.

#### G. Contract Provisions

The grantee and subgrantee shall include at a minimum the following provisions or conditions in contracts and subcontracts.

1. *Compliance with WIA* – contracts shall contain provisions requiring compliance with the WIA, its implementing regulations, and State WIA policies including those pertaining to reporting.
2. *Compliance with LB 403 Lawful Presence in the U.S.* – all contracts shall certify that the Contractor has registered with and is using a federal immigration verification system as defined in section 7 of Nebraska Laws 2009, LB 403 to determine the work eligibility status of all new employees physically performing services within the State of Nebraska. Upon reasonable notice, the Contractor shall provide documentation to the Department of Labor which proves that the Contractor is or was at all times during the term of the agreement in compliance with this provision. If the Contractor is an individual or sole proprietorship, the Contractor shall complete the U.S. Citizenship Attestation Form, available on the Department of Administrative Services Website at [www.das.state.ne.us](http://www.das.state.ne.us). If the Contractor indicates on such attestation form that he or she is a qualified alien, the Contractor shall agree to provide the U.S. Citizenship and Immigration Services documentation required to verify the Contractor's lawful presence in the U.S. using the Systematic Alien Verification for Entitlements (SAVE) Program. The Contractor understands and agrees that lawful presence in the U.S. is required and the Contractor may be disqualified or the contract terminated if such lawful presence cannot be verified.
3. *Termination for Cause and for Convenience* – all contracts shall contain suitable provisions for termination by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000.)
4. *Termination for Default* – all contracts shall contain a suitable provision under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

5. *Equal Employment Opportunity* – all contracts awarded by the grantee or subgrantee shall assure compliance with the nondiscrimination and equal opportunity provisions of WIA, Section 188 and its implementing regulations.
6. *Copeland Anti-Kickback Clause* – all contracts and subcontracts for construction or repair shall include a provision for compliance with the Copeland “Anti-Kickback” Act (18 USC 874) as supplemented in Department of Labor regulations (29 CFR, Part 3). This Act provides that each contractor and subcontractor shall be prohibited from inducing, by any means, any person employed in the construction, completion or repair of public work, to give up any part of the compensation to which he/she is otherwise entitled.
7. *Labor Standard Provisions* – OJT construction contractors and other construction contractors involving the use of WIA funds shall have provisions requiring adherence with the Davis-Bacon Act and Sections 103 and 107 of the Contract Work Hours and Safety Standards Act as supplemented by Department of Labor regulations.
8. *Access to Contractor’s Records* – all negotiated contracts awarded by the grantee or subgrantee shall include a provision to the effect that the subgrantee, the State of Nebraska, the Office of Inspector General of the United States, the U.S. Department of Labor, or any other duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts, copies and transcriptions. Reasonable access to personnel for purposes of interviews and discussions related to such documents shall be permitted.
9. *Maintenance of Records* – a provision shall be included in the contract which shall require the contractors to maintain all required records for three (3) years after the grantees or subgrantees makes final payment and all other pending matters are closed. The records shall be sufficient enough to detail the significant history of a procurement. These records will include, but are not

necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

10. *Damages* – contracts other than small purchases shall contain provisions or conditions which will allow for administrative, contractual or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.
11. *State Energy Conservation Plan* - contracts shall recognize mandatory standards and policies relating to energy efficiency which are contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (PL 94-163).
12. *Patent Rights, Copyrights and Rights in Data* – contracts shall provide notice of awarding agency requirements and regulations pertaining to copyrights, rights in data, and patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract. Note: The U.S. Department of Labor reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for Federal government purposes: a) The copyright in any work developed under a grant, subgrant, or contract under a U.S. Department of Labor grant or subgrant; and b) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with U.S. Department of Labor grant support. [29 CFR 97.34] Under current Federal law, a state may not use Federal funds to pay royalty fees for any product developed with Federal funds unless the U.S. Department of Labor has waived its rights to the product. When U.S. Department of Labor funds are used to develop (or engage a vendor to develop) a product or to acquire ownership in a product, the Department automatically reserves the right to reproduce, publish, and otherwise use the work for Federal purposes. In addition, the Department may authorize others to use (but not reproduce or publish) the product for Federal purposes.

#### H. Cost Analysis

Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent of the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting and architectural engineering services contracts. A cost analysis shall be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

Grantees and subgrantees 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.

Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles.

The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

#### I. Debarred and Suspended Parties

No subgrantee shall make any subgrants or permit any contract or subcontract at any time to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs in accordance with 29 CFR Part 98.

#### J. Documentation and Awarding Agency Review

Grantees and subgrantees must make available, upon request of the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase.

All steps of the procurement process must be documented including solicitations, selection process, contract negotiations and award.

In addition, all documents (e.g. proposal review forms, cost analysis work papers, etc.) developed during the procurement process must be maintained as required in the record keeping and maintenance provisions of the regulations. If a procurement requires state approval, a copy of that approval must also be retained. For competitive procurement through RFPS the following must be documented:

1. The name and title of the individual initiating the procurement process;
2. The date the procurement process was begun (i.e., the date of decision to procure);
3. Information relating to the amount and source(s) of available funds;
4. The description of the supplies, property or services to be procured;
5. A list of service providers who received direct solicitations, and any publications which were made, or for RFQs where verbal solicitations were conducted, the name of the individual contacted and the name of the individual making the contact;
6. The prices or proposals received;
7. For RFPS, a copy of the request which was released, a copy of all proposals received and the evaluations of proposals received;
8. The name(s) of offeror(s) selected for award;
9. When the lowest price offer is not accepted, additional justification for the selection;
10. The name, title and signature of the individual with final approval authority.

#### K. Economy and Efficiencies

Proposed procurement shall be reviewed to avoid purchase of unnecessary or duplicative items. Consideration shall be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services. When feasible, Federal excess and surplus property shall be used in lieu of purchasing new equipment and property.

When contracting for construction projects, value engineering clauses shall be considered for appropriateness in reducing costs. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

#### L. Methods of Procurement

##### 1. Small Purchase Procedures

If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.

##### 2. Sealed Bids (Formal Advertising)

Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price.

In order for sealed bidding to be feasible, the following conditions should be present:

- A complete, adequate, and realistic specification or purchase description is available;
- Two or more responsible bidders are willing and able to compete effectively and for the business; and

- The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

If sealed bids are used, the following requirements apply:

- The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;
- The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;
- All bids will be publicly opened at the time and place prescribed in the invitation for bids;
- A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of, and
- Any or all bids may be rejected if there is a sound documented reason.

### 3. 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:

- Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;
- Proposals will be solicited from an adequate number of qualified sources;
- Grantees and subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;
- Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

- Grantees and subgrantees 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.

#### 4. Noncompetitive Proposals

Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

- The item is available only from a single source;
- The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- The awarding agency authorizes noncompetitive proposals; or
- After solicitation of a number of sources, competition is determined inadequate.

Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits, is required.

Grantees and subgrantees may be required to submit the proposed procurement to the awarding agency for pre-award review.

#### M. Monitoring of Local Procurement Practices

The State shall conduct on an annual basis onsite monitoring of each local area to ensure compliance with the uniform administrative requirements for grants and agreements applicable for the type of entity receiving the

funds according to the circulars of the Office of Management and Budget. If problems are identified, corrective action will be required.

N. Protest Procedures

Subgrantees shall have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency. A protestor must exhaust all administrative remedies with the grantee and subgrantee before pursuing a protest with the Federal agency. Reviews of protests by the Federal agency shall be limited to:

- Violations of Federal law or regulations and the standards in the circulars; and
- Violations of the grantee's or subgrantee's protest procedures for failure to review a complaint or protest.

Protests received by the Federal agency other than those specified above shall be referred to the grantee or subgrantee.

O. Transactions between Units of Government

Procurement transactions between Local Boards and units of State or local governments shall be conducted only on a cost-reimbursable basis. No provision for profit is allowed.

**III. Designation and Certification of One-Stop Operators**

A. An entity (which may be a consortium of entities) shall be designated or certified as a one-stop operator through:

1. a competitive process or
2. through a non-competitive process when these conditions are met:
  - in accordance with an agreement reached between the local board and a consortium of entities that, at a minimum, includes 3 or more of the required one-stop partners; and
  - may be a public or private entity, or consortium of entities, of demonstrated effectiveness, located in the

local area, which may include a postsecondary educational institution; an employment service agency established under the Wagner-Peyser Act on behalf of the local office of the agency; a private, nonprofit organization (including a community-based organization); a private for-profit entity; a government agency; and another interested organization or entity, which may include a local chamber of commerce or other business organization.

**B. Exception**

Elementary schools and secondary schools shall not be eligible for designation or certification as one-stop operators, except that nontraditional public secondary schools and area vocational education schools shall be eligible for such designation or certification.

**IV. Youth Activities**

**A. Competitive Selection Requirements**

1. Eligible providers of youth activities shall be identified by awarding grants or contracts on a competitive basis, based on recommendations from the Youth Council and the criteria contained in the State Plan.
2. Criteria in the State Plan

The State will expect the local areas to include criteria that identify effective and ineffective youth activities when awarding grants. Such criteria will be determined by the local Workforce Investment Boards and youth councils, but should include, but not be limited to:

- Success rates based on enrollments and completions;
- Provision of accommodations for special needs populations;
- Involvement of local employers, business, and community resources;
- Consideration of assessed needs;
- Attainment of employment and academic goals;
- Leading to credentials, diplomas, and equivalents;

- Improving educational and skill competencies;
- Ensuring youth of opportunities for positive adult mentoring experiences;
- Providing training opportunities to eligible youth;
- Strengthening leadership, youth developments, decision-making, citizenship, and community service.

In addition, the local Workforce Investment Boards shall identify eligible providers of youth activities by awarding grants or contracts on a competitive basis, based on the recommendations of the youth council and on the criteria listed below.

The primary consideration in selecting agencies or organizations to deliver youth services shall be the effectiveness of the agency or organization in delivering comparable or related services based on demonstrated performance. This determination shall be in writing and take into consideration such matters as whether the organization has:

- The ability to meet the program design specifications at a reasonable cost, as well as the ability to meet performance goals;
- Adequate financial resources or the ability to obtain them;
- A satisfactory record of past performance (in job training, basic skills training, youth activities), including demonstrated quality of training; reasonable dropout rates from past programs;
- The ability to provide, or arrange for, appropriate supportive services as specified in the individual employment plan;
- The ability to provide services that can lead to the achievement of competency standards for participants with identified deficiencies;
- A satisfactory record of integrity, business ethics, and fiscal accountability;
- The necessary organization, experience, accounting, and operation controls; and
- The technical skills to perform the work.

## **B. Exceptions to the Competitive Selection Requirements**

Competitive selection requirements do not apply to the program design framework component which includes intake, assessment and development of the individual service strategy, when these services are provided by the local grant recipient or fiscal agent.

Providers of summer employment activities must be selected by awarding a grant or contract on a competitive basis unless the grant recipient or the fiscal agent administers this program element.

State reserve funds used for required or allowable youth activities at the State level are not subject to the competitive selection procedures at Section 123. Statewide funds used to provide additional assistance to local areas with high concentrations of eligible youth are likewise exempt. However, they are subject to any applicable State procurement rules. If portions of the 15% statewide funds are allocated by formula to all local areas that augment funds to conduct youth activities described in Section 129, those funds become local area funds and the competitive selection procedures are applicable.

## **V. Waiver Authority for In-House Programs**

Except under waiver authority, no Local Board (or their staff) may provide training services. However, local boards may submit a proposed request for a waiver of training prohibition to the Governor to become an eligible provider of training services. The local board's request must include:

- Satisfactory evidence that there is an insufficient number of eligible providers of such training services to meet the demand in the local area;
- Information demonstrating that the board meets the requirements as an eligible provider of training services;
- And information demonstrating that the program of training services prepares participants for an occupation that is in demand in the local area.

The local board must also make the proposed request available to eligible providers of training services and other interested members of the public for a public comment period of not less than 30 days. The local board must then submit the request with the information and evidence listed

above, as well as information from the public comments received. Local boards may apply for a waiver that does not exceed one year in length. It may be renewed for additional periods not to exceed one year if they again follow the procedures listed above.

The waiver may be revoked if the State determines that the local board involved has engaged in a pattern of inappropriate referrals to training services operated by the local board.