WIOAPL 16-08 (Procurement of the OhioMeansJobs Center Operator and Provider of Career Services)

Workforce Innovation and Opportunity Act Policy Letter No. 16-08

February 24, 2017

To: Chief Elected Officials, Local Workforce Development Board Chairpersons, Local Workforce Development Board Directors, and OhioMeansJobs Center Operators

From: Cynthia C. Dungey, Director

Subject: Procurement of the OhioMeansJobs Center Operator and Provider of Career Services

I. Purpose

The purpose of this policy is to provide guidance and requirements for the competitive selection of OhioMeansJobs center operators and providers of career services under the Workforce Innovation and Opportunity Act (WIOA).

II. Effective Date

Immediately

III. Background

A. OhioMeansJobs Center Operator

OhioMeansJobs center operators (Operator) are the entities that will be selected by local workforce development boards (WDB) to operate OhioMeansJobs Centers and to coordinate the activities of the local partners and service providers.

Under the Workforce Investment Act (WIA), local WDBs were authorized to designate Operators without competition. However, this changes with the implementation of section 121(d) of WIOA and 20 C.F.R. 678.605 which require local WDBs to select operators through a competitive process that complies with: requirements and restrictions for Operators and Operator selection in WIOA and the WIOA Final Rules; federal, state and local procurement rules, policies and procedures; and state ethics laws and the local area code of conduct. WIOA does not allow for the “designation” or “certification” of any entity as an Operator without a competitive process. WIOA provides no explicit authority to “grandfather” in existing Operators.

Competition is intended to promote efficiency and effectiveness of the Operator by regularly examining performance and costs. It provides the best method of ensuring that local WDBs examine the Operator's effectiveness on a periodic basis.

Operator Role

Under 20 C.F.R. 678.620, at a minimum, Operators must coordinate the service delivery of local partners and service providers. WIOA provides local WDBs the discretion to define the Operator role and to assign additional responsibilities as appropriate. There are a number of factors to consider
when defining the Operator role. This section lists and describes many such
factors, but should not be viewed as an exhaustive list.

1. **Eligible Entities**

   a. The Operator may be a public, private or non-profit entity or a
      consortium of entities (located in the local workforce area).
   b. An entity that is a local partner may serve as the Operator,
      however, if a partner is serving as part of a consortium, the
      consortium must include at least three local partner entities.
   c. Elementary and secondary schools are not eligible to be certified
      as Operators, with the exception of nontraditional public
      secondary schools and area career and technical education
      schools.
   d. Per Workforce Innovation and Opportunity Act Policy Letter
      (WIOAPL) No. 15-18.1, Local Workforce Development Area
      Governance, a local WDB may not fulfill the Operator role.
   e. The types of entities that may be eligible to serve as Operators
      include:
      a. Institution of higher education;
      b. State Wagner-Peyser employment agency;
      c. Community-based organization, non-profit organization, or
         intermediary;
      d. Private, for-profit entity;
      e. Government agency; or
      f. Other interested organization or entity capable of fulfilling
         the role of the Operator, which may include a local
         chamber of commerce, business, or labor organization.

2. **Operator Restrictions**

   In defining the role and responsibility of Operators, local WDBs must
   keep in mind the restrictions on Operator functions under 20 C.F.R.
   678.620, which specify that an Operator may not:
   a. Convene system stakeholders to assist in the development of
      the local WIOA plan.
   b. Prepare and submit local WIOA plans.
   c. Be responsible for oversight of itself.
   d. Manage or significantly participate in the competitive selection
      process for an Operator.
   e. Select or terminate Operators, or providers of career or Youth
      services.
   f. Negotiate local performance accountability measures.
   g. Develop or submit a budget for activities of the local board.

3. **Strategic Vision**

   Each local area or planning region has specific industry sectors and
   clusters that drive economic growth. The workforce needs of employers
   in these industries and the training needs of job seekers in a local area
are the focal points of the local strategic vision of each local workforce development system or planning region that will be described in the regional and local plan.

Operators, by the nature of their position, are at the center of local workforce system activities and will have a key role in supporting the regional and local strategic vision. In defining the Operator role, local WDBs will need to decide how the Operator role can most effectively serve the needs of the local area.

4. Level of Local WDB Oversight

WIOA assigns local WDBs responsibility for oversight and management of Operators and the local workforce development systems in their respective local areas. Each local WDB will decide how much involvement to have in the activities and daily decisions of local OhioMeansJobs center(s) and how much responsibility to assign to the Operator.

Local WDBs will need to decide how much authority and discretion to give Operators with respect to administrative and operational functions, such as:

- The procurement of goods and services for the OhioMeansJobs Centers and/or the local workforce development system.
- Negotiation and execution of contracts, subcontracts, and other legally binding agreements.
- Monitoring of local service providers.
- Data collection and/or data security.

The level of local WDB involvement and the amount of authority that will be delegated to the Operator will affect the relationship and protocols for communication and interaction between the local WDB and the Operator. Each local WDB should choose a management structure that most accurately reflects the relationship it will have with the Operator. There are various options, for management structure, including:

- A top down management structure reflective of an employer/employee relationship.
- A partnership type structure with the Operator actively involved in decision-making processes and representing the local area with organizations in the region.
- An advisory role, providing direction to the Operator with the expectation that the Operator will fulfill assigned responsibilities and make decisions on day-to-day activities.
- Commitment of local board staff to maintain an active role in managing the Operator and being involved in daily and/or major decisions for which a management structure will need to be clearly defined.
- A combination of both advisory and active roles determined by activity or function.

The local WDB will also need to decide if the Operator role will be
primarily around management of OhioMeansJobs center(s) and coordination of partner activities or if the Operator will be involved in systemic activities. Examples of systemic activities include:

- Planning activities relevant to local outreach or service delivery.
- Delivery of basic career services (intake, assessment, and referral) for the Adult and Dislocated Worker programs.
- Business engagement, recruitment, management, and services, including fee for service activities.
- Training local partner staff.
- Monitoring service providers.
- Tracking performance.
- Maintaining a referral system.
- Solicitation of customer/participant feedback.
- Policy recommendations.

It is important to note that if an Operator will be assigned to provide career services, WIOA Final Rules have clarified that Operator and service provider are two separate roles and should be treated as such. Local WDBs must take measures to prevent any conflicts of interest in accordance with 20 C.F.R. 679.430, WIOAPL 15-18.1, and the conflict of interest provisions outlined in this section. If an Operator will also be a service provider, the solicitation and the resulting contract should specify how the Operator will fulfill dual roles with each role clearly defined and a clear description of how monitoring and oversight will be conducted for both roles.

5. **Local Area WIOA Memorandum of Understanding**

Under WIOA and the WIOA Final Rules, Operators are not identified as a party to the local Memorandum of Understanding (MOU) nor do Operators have a defined role with respect to MOU negotiations. However, the negotiated terms of the MOU significantly impact the role and responsibilities of Operators. In addition to the negotiation of shared costs, which is discussed later in this policy, the MOU describes how the partners will make services available at the OhioMeansJobs centers and identifies any shared services the partners will provide in the OhioMeansJobs centers. Therefore, a review of the current MOU is needed to identify:

- Any responsibilities assigned to the Operator (reminder: any career services must be distinguished from the Operator role as those of a service provider).
- Any responsibilities being performed by one or more partners that would otherwise be assigned to the Operator—including the number of staff and hours.
- Agreed upon hours of operation.
- Any agreed upon call-off procedures.
- Any local policies, operating procedures, or safety standards included as an addendum.

In addition, each local WDB should consider what role, if any, the
Operator will have with respect to negotiations of the new MOU. Although WIOA and the WIOA Final Rules do not assign Operators any role with respect to MOU negotiations, there is no prohibition on Operators taking part. However, because most Operator costs and costs for operating OhioMeansJobs centers are paid by local partners as a result of negotiations, local WDBs should ensure that the potential conflict of interest is addressed prior to assigning an Operator to participate in MOU negotiations.

In addition, local WDBs should consider whether to negotiate an amended MOU budget with local partners that includes Operator procurement costs. In such instances, local partners should be given the opportunity to participate in the Operator selection process, including planning.

6. Fiscal Responsibilities

Local WDBs will need to decide whether to assign any fiscal or budget-related responsibilities to the Operator or whether all such responsibilities will be solely those of the local fiscal agent. Examples of fiscal responsibilities that could be assigned to the Operator include:

- Tracking and managing the costs of the OhioMeansJobs center(s), including: personnel costs; infrastructure and other shared costs under the local MOU; and administrative and other costs that are not common costs to be shared by partners.
- Quarterly budget reconciliations of costs under the MOU.
- Making routine purchases of supplies and services for the OhioMeansJobs centers, such as printer paper and ink or equipment maintenance.
- Approving invoices for OhioMeansJobs center costs.
- Identification of new partners that may contribute to shared costs and/or funding resources.
- Revising the OhioMeansJobs center budget, such as increasing the spending line item or purchasing new items not identified in the budget.

7. OhioMeansJobs Centers

To define the role and responsibilities of the Operator with respect to the OhioMeansJobs center facilities, each local WDB should decide if the Operator will have the responsibility to:

- Execute or assume a lease agreement for the facilities (whether new or existing sites).
- Purchase/rent furniture or equipment and manage the inventory records for equipment as required in 2 C.F.R. 200.313(d).
- Secure insurance for the facilities or assume an existing policy.
- Coordinate activities to ensure accessibility for all local OhioMeansJobs center customers—including partner program participants and individuals with disabilities.
- Maintain technological resources such as the local system website, case management software, business networking...
software, or online testing sites.

Establish safety and security protocol.

Maintain safety and security standards—including reporting any hazardous conditions in accordance with the MOU.

Each local WDB will need to specify in the solicitation whether the OhioMeansJobs center(s) will remain at the existing site(s) or if the Operator will be tasked with choosing a new physical site. If the Operator chooses a new site, the local WDB must decide if competing entities should identify a site in their proposals or if site selection will take place after the selected entity assumes the role of Operator.

It is important to note that employment service offices under the Wagner-Peyser Act are required to be co-located with OhioMeansJobs centers per section 121(e)(3) of WIOA.

8. Funding Options for Operator Costs

The solicitation for Operator services should explain the funding method and approximate dollar amount for each center, and/or for all the centers in aggregate, so potential bidders will understand their budget constraints. Further negotiation of these terms that would not have affected the bidding or selection decisions are permissible after the winning bidder is selected. Local WDBs have several options for structuring the Operator contract and managing the reimbursement process, including:

- Operator personnel costs only: Under this model, it is made known in the solicitation that funding for staff necessary to manage and operate each center and coordinate with the partners will be made available to the Operator. Another entity, such as the local WDB, fiscal agent, or partner, will need to pay for the infrastructure costs, collect contributions from the partners, and reimburse the Operator's actual personnel expenses through a contract with the Operator.

- Operator full reimbursement: This model requires the Operator to manage the center(s), coordinate with the partners, pay each center's infrastructure costs, and seek reimbursement of actual costs from the partners. The dollar amount in the solicitation should equal the budget in the OhioMeansJobs center MOU. The solicitation should explain that the receipt of the full funding will depend on actual costs and the Operator's successful collection of contributions from the partners. A quarterly advance of funding from the local WDB may be necessary to enable operation of the center(s) until the partners' reimbursements can be collected and a reconciliation of actual costs to the advanced funds can be completed.

- Local WDB award coupled with partner reimbursement: Under this blended approach, the local WDB will award to the Operator the portion of partner funding for the OhioMeansJobs centers the WDB manages—specifically the WIOA and Wagner-Peyser programs' share, as identified in the MOU. The Operator will be responsible for collecting the remaining funds from the other
partners. The solicitation should list both the amount of funding to be
awarded directly by the WDB and the approximate remainder
that the Operator will need to collect from the other partners. The
Operator will then be responsible for managing the center(s),
coordinating with the partners, and paying for infrastructure
costs.

B. Provider of Career Services

Per section 107(d)(10)(C) of WIOA, local WDBs have the responsibility to
identify eligible providers of career services for the WIOA Title I Adult and
Dislocated Worker programs. Local WDBs may assign Operators
responsibility for career services or may execute agreements with service
providers.

Providers of career services meet the definition of subrecipients in that the
services benefit a public purpose, the providers determine participant
eligibility, and directly serve those who are eligible. Competitive procurement
requirements under the Uniform Guidance and under state procurement
regulations are applicable to selection of entities to serve in a contractual role.
Since adult and dislocated worker career services provider is as a subrecipient
role, local WDBs do not have to conduct a competitive process to select
career services providers.

However, the local WDB may still make the decision to competitively procure a
provider for WIOA Title I Adult and Dislocated Worker career services. This
procurement may be completed in conjunction with the procurement for the
Operator or through a separate procurement process. The career services
provider is considered a subrecipient and the Operator is generally defined as
a contractor, so two separate agreements with the entity selected to perform
both roles may be necessary given that the requirements for a subaward
(defined in 2 C.F.R. 200.331) differ from the provision in a contract (defined in
2 C.F.R. 200.326). When making the decision whether to procure career
services, the local board should review the advantages and disadvantages of
selection through a competitive procurement.

Advantages for competitive procurement include:

1. Competitive procurement may allow the local WDB to select a provider
   at a lower cost, especially in local areas where there are a number of
   local organizations qualified to deliver the services.

2. Competitive procurement provides more incentive to meet performance
   measures so the provider is likely to be selected again in the future.

3. There is the potential to broaden the number of qualified organizations
   by issuing solicitation on a statewide or regional basis and to bring new
   organizations that have not been able to participate in the workforce
   system.

4. Competitive procurement filters underqualified organizations or
   underperforming providers.

5. Competitive procurement provides more transparency to bolster public
   confidence.

Disadvantages to competitive procurement include:
1. Conducting a competitive procurement is a time consuming process.

2. There is a cost to undergoing competitive procurement process, including but not limited to, the costs of staff, staff's time, advertisement, etc.

3. In an established local area where local WDBs interact with current Operators, local partners, and other stakeholders that may compete to serve as the Operator, it could be challenging to ensure that details of the solicitation and selection process are kept confidential for a fair and open competition.

4. Changing providers too frequently may create challenges in operations and cause confusion among customers over the consistency of service delivery.

C. Competitive Procurement

The selection process must be planned to maximize competition. The selection process must be conducted on an area-wide basis, i.e., there must not be a separate selection process conducted by each county in a local area as such a practice would be contrary to the WIOA vision for an integrated service delivery system. Further, such a practice is a hindrance to a fair and open competition in that entities interested in competing would be required to prepare and submit multiple proposals.

D. Procurement Considerations

A local WDB may choose from a variety of delivery methodologies. The primary examples include the following:

1. **Area-wide**: One organization is selected to be the Operator and/or provide career services across the local area.

   Benefits of area-wide selection:
   
   - **Fosters consistency of services**: The same staff training, processes, procedures, and menu of services are provided across the local area, promoting uniformity.
   - **Streamlines management**: Area-wide management rather than center-based hierarchies are utilized, providing cost savings that can be reinvested into client services.
   - **Reduces administrative burden**: A single selection of one resulting contract is employed, reducing the local WDB's administrative burden of overseeing multiple Operators and/or service providers.
   - **Encourages more robust competition**: Funding is consolidated into a single, larger procurement, potentially attracting a wider field of respondents to choose from, including those with best practices and experiences from outside of the local area that are interested in establishing a presence in or relocating to serve the local area.

2. **Center-based**: Different organizations are selected to be the Operator and/or provide career services on a center-by-center basis. If this methodology is chosen, the local WDB must still competitively select...
the Operator for each center and may opt to procure the career services provider. The selection process must not be delegated to an individual county. When considering this methodology, a local WDB must consider whether there have been challenges in the past in the selection of an Operator and/or career services provider for a specific OhioMeansJobs center or county, in which case, this methodology may not be appropriate.

Benefits of center-based methodology with respect to service providers:

- **Encourages local expertise**: Center-based selections typically attract county-based entities, resulting in responses from organizations with specific knowledge and expertise of the local area.
- **Hedges performance outcomes**: In a local area with multiple service providers, if one service provider is doing poorly, another may be doing well, resulting in a potential safety net for performance outcomes.

3. **Service-Based (appropriate for service providers only)**: Multiple organizations are selected to provide career services based on a particular expertise. These service providers may be selected to serve an entire local area, or on a center-by-center basis.

A benefit of the service-based methodology is that each service provider is selected to provide a specific service based on skills and expertise that could substantially improve outcomes for the participants served by such providers.

The three models are examples of primary methods that local WDBs may consider for the Operator and/or career services providers. However, it should be noted that these methods are not mutually exclusive of one another and may be combined. For example, a local WDB may use an area-wide provider selection process that allows respondents to subcontract for a particular service, thus encouraging local expertise.

Overall, a local WDB should carefully weigh all options and identify the methodology (or combination of methodologies) that best serves local area needs.

E. **Procurement Process**

The local WDB must support full and open competition in the process it utilizes to select the Operator and/or career services provider, and the local WDB must comply with federal procurement principles prescribed in the Uniform Guidance (2 C.F.R. 200.318 to 200.326), with state procurement rules listed in rule 5101:9-4-07 of the Administrative Code, and with local procurement policies and procedures. The entire procurement process must be performed under a process that promotes transparency and responsibility. The process must be documented, include a written explanation of the nature of the procurement process, and be made available to the public on a regular basis through electronic means and open meetings. The information that local WDBs are required to make available to the public includes, but is not limited to:
A number of factors must be considered to plan a competition for Operator selection, or Operator/career services provider selection (as applicable). Careful thought and planning are required to ensure that any potential conflicts of interest are addressed, that the selection process follows federal, state, and local procurement guidelines, and that the Operator's role and responsibilities align with state, local and regional plans, and the local WIOA Memorandum of Understanding.

1. **Conflicts of Interest**

To ensure a fair and open competitive process, all potential conflicts of interest in the procurement, management, and oversight of the Operator and/or provider of career services must be identified and addressed before planning and implementation of the selection process. Local WDBs should issue an inquiry to the current Operator, local fiscal agent, local service providers, and local partners to determine if any of those parties will compete to serve as Operator and/or provider of career services.

Until the solicitation is released to the public, it must be kept confidential to ensure that no individual or entity that will compete to serve as Operator and/or provider of career services has an unfair advantage over other competing individuals or entities.

Further, no local WDB board member or other individual involved in the planning and the development of the solicitation should respond to inquiries from any individual or entity that will compete. All such inquiries should be directed to a special email box or online address where all questions and responses can be seen by all competitors through a question and answer (Q&A) process.

Paragraph (B) of section 102.03 of the Revised Code prohibits current and former public officials and employees from disclosing or using confidential information acquired in the course of official duties as public officials or employees when the confidential designation is set by statute or otherwise warranted because of the circumstances under which the information was received and preserving confidentiality is necessary to the proper conduct of government business. With respect to procurement, any individual with knowledge of the selection process or solicitation must not disclose the information to ensure that the competitive process is fair and open to all.
Policies and procedures must be put in place to effectively address any real or apparent conflicts of interest. Policies and procedures must comply with state and local conflict of interest rules, including section 2921.42 of the Revised Code, and state and local ethics rules, including Chapter 102 of the Revised Code.

Organizational structures must be reviewed and reorganized if necessary to ensure that monitoring, oversight, and evaluation responsibilities are separated from responsibility for the performance of daily activities and routine functions.

Each local area is required to maintain written standards of conduct for acquisition and procurement per Uniform Guidance (2 C.F.R. 200.318 (c)(1)) and rule 5101:9-4-04 of the Administrative Code. All existing standards should be reviewed in consideration of WIOA requirements and updated as necessary.

Policies and procedures must be established to ensure that proper firewalls are in place to address any real and apparent conflicts of interest. Potential conflicts include, but are not limited to:

- Local stakeholders competing to serve as Operator.
- Assignment of additional roles to Operator, such as provider of career services.
- Operator procurement of subcontractors, if local WDB assigns such authority.
- Operator participation in local WIOA Memorandum of Understanding negotiations with local partners.

**Local Stakeholder to Compete**

Any local entity that will compete for the opportunity to serve as an Operator must not take part in the development of the solicitation or in the procurement process. This includes, but is not limited to: the local fiscal agent, the current Operator, a local partner, a consortium that includes three or more local partners, or an entity that is a direct provider of career services in the local area.

Section 102.03(A)(1) of the Revised Code prohibits former public officials or employees from representing a client or acting in a representative capacity for any person on any matter on which the former public official or employee participated through decision, approval, disapproval, recommendation, rendering of advice, or other substantial exercise of administrative discretion for a period of 12 months after exiting public employment.

As defined in the statute, “represent” includes any formal or informal appearance before, or any written or oral communication with, any public agency on behalf of any person. “Matter” includes any case, proceeding, application, determination, issue, or question.

Therefore, any individual who currently, or has within the last 12 months, served on a local WDB or served as local WDB staff and is employed by or is a representative of an entity that will bid to serve as Operator and/or career services must not have any involvement in the
development or submission of a proposal in response to the solicitation for Operator and/or provider of career services. Any proposals developed with input or information from current or former local WDB members or local WDB staff members must be disqualified and not considered for award.

If a local fiscal agent, local partner, consortium that includes three or more local partners, or direct provider of services are competitively selected to serve as the Operator, or if the Operator will serve a dual role as a provider of WIOA Title I Adult and Dislocated Worker career services, the selected entity must execute a written agreement with the local WDB and CEO, per 20 C.F.R. 679.430 and WIOAPL 15-18.1, that clarifies the manner in which the selected entity will fulfill each role and separate responsibilities to remain in compliance with WIOA, the WIOA Final Rules, the Uniform Guidance, and with state and local conflict of interest policies. The agreement must include a table of organization to demonstrate a clear separation between those responsible for carrying out program activities from those responsible for oversight.

When there is uncertainty as to whether a conflict exists or whether policies and procedures will effectively address any conflicts, Local WDBs may submit requests for opinions to the Ohio Ethics Commission and/or to the Ohio Attorney General. Ohio Ethics Commission Advisory Opinions, Ohio Attorney General Opinions, and instructions on how to request opinions can be found on their websites:
http://www.ethics.ohio.gov/advice/ and

2. Procurement Planning

Initial steps are to choose the competitive procurement method and to plan the selection process in accordance with federal, state, and local procurement rules, regulations, policies and procedures.

Although local WDBs are required to ensure that Operators are competitively selected, local WDBs may delegate responsibility for selection to another entity, such as a local fiscal agent or a third party contractor as long as the delegation does not present a conflict of interest.

Procurement Method

A competitive process must be conducted at least once every four years per 20 C.F.R. 678.605. The Operator selection process must support full and open competition and comply with federal procurement principles prescribed in the Uniform Guidance (2 C.F.R. 200.318 to 200.326), with state procurement requirements listed in rule 5101:9-4-07 of the Administrative Code, and with local procurement policies and procedures.

The Uniform Guidance (2 C.F.R. 200.320) and rule 5101: 9-4-07.1 of the Administrative Code identify and describe the types of procurement methods that may be used. For purposes of Operator selection and/or career services provider, the three acceptable methods are
procurement by competitive sealed bids, procurement by competitive proposals, and procurement by non-competitive proposals.

A competitive sealed bidding process is appropriate when selection can be made primarily on the basis of price and the contract can be a firm, fixed price contract. For this process, an Invitation to Bid document must be developed and include a comprehensive, clear, and complete description of needed services. All bids will be opened at the same time. The responsive and responsible bidder with the best price will be selected.

Procurement by competitive proposals is appropriate when selection is based on factors other than price (e.g., qualifications, experience, past performance, etc.). A request for proposals (RFP) document must be developed and must contain a comprehensive, clear and complete description of the services needed, as well as a description of the selection process and evaluation factors to be used for scoring.

Procurement by non-competitive proposals is procurement through solicitation of a proposal from only one source. Although the Uniform Guidance (2 C.F.R. 200.320(f)) and state procurement rules allow non-competitive proposals in certain circumstances, WIOA Final Rules clarify that all references to “non-competitive proposals” should be read as “sole-source procurement” for Operator selection. No other non-competitive method is allowable. WIOA does not give the State authority to approve waivers of competition for Operator selection.

A true sole-source situation is the only exception to the requirement for competitive selection of an Operator, meaning there is only one entity qualified to fulfill the role of Operator in the local area. Written documentation of the entire selection process must be maintained and must demonstrate that sufficient market research and outreach was conducted to justify sole source selection. A cost and/or cost price analysis must be conducted and documented as well.

A request for review of the sole source documentation may be submitted to the Ohio Department of Job and Family Services, Office of Contracts and Acquisitions, prior to the execution of the contract. The Deputy Director will assess whether the documentation demonstrates that sufficient efforts were taken by the local WDB to support a sole-source determination.

Small purchase procedures - Under Ohio procurement regulations (rule 5101:9-4-07.1 of the Administrative Code), if a procurement by competitive sealed bids or by proposals to an adequate number of qualified sources is deemed a failed procurement, local WDBs have the option to select a vendor using small purchase procedures.

Any entity selected on a sole source basis must have the qualifications and capacity to effectively fulfill the role of Operator.

As mentioned, per WIOAPL 15-18.1, local WDBs are prohibited from fulfilling
the role of Operator—including under a sole source.

As noted in the second to last paragraph of section III.E.1, Conflicts of Interest, any entity that will fulfill more than one role in a local workforce development system must execute a written agreement with the local WDB and CEOs per 20 C.F.R. 679.430 and WIOAPL No.15-18.1.

IV. Definitions

Career services: Services that must be provided through the local workforce development system to adults or dislocated workers as authorized under each local partner’s program.

Chief elected officials (CEO): The chief elected executive officers of the units of general local government in a local area.

Contract: Defined in the Uniform Guidance (2 C.F.R. 200.22), and reiterated in 20 C.F.R. 675.300, a legal instrument by which a non-federal entity purchases property or services needed to carry out a project or program under a federal award. The term as used in 20 C.F.R. 675.300 does not include a legal instrument, even if the non-federal entity considers it a contract, when the substance of the transaction meets the definition of a federal award or subaward as defined in this section.

Fiscal agent: An entity appointed by a local area’s CEO to be responsible for the administration and disbursement of funds allocated under WIOA for workforce development activities in the local area. Section 107(d)(12)(B)(i)(II) of WIOA maintains that designation of a fiscal agent does not relieve the chief elected officials from liability for misuse of funds.

Infrastructure costs: Nonpersonnel costs necessary to operate an OhioMeansJobs center, including rent, utilities, maintenance, supplies, equipment, technology to facilitate access, and outreach activities.

Local area memorandum of understanding (MOU): Required under section 121(c) of WIOA, it is an agreement negotiated and entered into by the local WDB and local partners in agreement with the CEO in a local area. The MOU describes how the parties will provide services and share costs through the local workforce development system.

Local partners: The entities referred to in section 121(b) of WIOA as “Required” and “Additional” partners that carry out workforce programs and activities through a local area workforce development system.

Local plan: The local workforce development plan developed by the local WDB in cooperation with the CEO pursuant to section 108 of WIOA that describes the local workforce development system, the programs and services delivered through the system, an analysis of the local area workforce, workforce needs, and the strategies to align service delivery among core programs in a manner consistent with the state plan that will achieve performance goals.

Local workforce development area (local area): The geographic area of the state designated by the Governor in accordance with section 106 of WIOA that serves as a jurisdiction for the administration of workforce development activities delivered through a local workforce development system.

Local workforce development board: Per section 107 of WIOA, the entity established to set policy and be responsible for the administration and oversight of the local...
workforce development system.

**Local workforce development system:** The system established in accordance with section 121 of WIOA through which programs funded under WIOA and other workforce programs and services are delivered in a local area.

**OhioMeansJobs center:** Referred to as “one-stop center” in WIOA and the WIOA Final Rules, it is a physical site in which the programs, services, and activities of the local workforce development system are made available to individuals and to employers in accordance with section 121(e) of WIOA.

**OhioMeansJobs center operator:** One or more entities competitively procured and certified in accordance with section 121(d) of WIOA to operate an OhioMeansJobs center and to coordinate the service delivery activities in the local workforce development system.

**Regional plan:** A four-year action plan, developed by the local WDBs and CEOs in a planning region, that will serve to develop, align, and integrate the region and local area’s job driven workforce development systems, and provides the platform to achieve the local area’s visions and strategic and operational goals.

**Solicitation:** The written procurement document (e.g., Request for Proposals, aka “RFP”) that provides potential bidders with details on the role, responsibilities, requirements, and restrictions of a potential grant or contract award.

**Subrecipient:** An entity that receives an award from a federal grant recipient to carry out an activity for a public purpose as part of a federal program.

**Uniform guidance:** The commonly used abbreviation for the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards codified in 2 C.F.R. Part 200, et seq.

V. **Local Workforce Development Area Requirements**

A. **Written Policies and Procedures**

   The local WDB must have written general and one-stop operator specific procurement policies and procedures which are consistent with the Uniform Guidance. Local WDBs must consult with CEOs and review local procurement policies and procedures to ensure compliance with local requirements.

B. **Selection Planning and Process**

   **Local WDB Decisions Regarding Procurement of Career Services**

   The local WDB must decide if career services for the WIOA Title I Adult and Dislocated Worker program will be identified by an agreement with a local service provider, assigned via the Operator’s contract, or awarded through a competitive process.

   Local WDBs that choose not to select a provider through a competitive process must document all factors considered for choosing not to compete such as, availability of career services providers, any pertinent local WIOA MOU terms, etc. An analysis must be conducted regardless of whether the provider was competitively selected.

   **Documentation**

   Local WDBs must maintain documentation of the selection process from...
planning through selection and the execution of a contract. Documentation must include:

1. A written description of the procurement method chosen and the factors that were considered.
2. Copies of local procurement policies and procedures.
3. A copy of any conflict of interest policies and procedures.
5. A copy of the local area code of conduct.
6. Documentation of the roles and responsibilities to be assigned to the Operator and/or provider of career services, including a description of how the local WDB determined which roles to assign.
7. Documentation of a cost and/or price analysis.
8. A copy of the timeline.
9. A copy of the solicitation (or, if applicable, a copy of the documentation to support sole source selection).
10. A copy of all questions and responses from the Q&A process.
11. Copies of all proposals submitted.
12. Copies of the scoring or proposal review documents.

Timeline

Prior to planning the Operator and/or provider of career services selection process, local WDBs must develop a timeline of a duration sufficient for a fair and open competitive process as well as negotiation and execution of a contract with the selected Operator and/or career services provider. It is recommended that local WDBs project a date for the selected Operator to begin work and develop the timeline backwards from that date. Although Operators must begin work no later than July 1, 2017, a starting date of 30 to 60 days prior to that is recommended if it is anticipated that a new Operator will be selected. It is important to ensure that a transition from one Operator to another does not disrupt service delivery. Timelines should include:

1. Time for selection process planning.
2. Development and approval of the solicitation (check local policies to determine what local approvals are needed).
3. The date the solicitation will be released to the public.
4. A question and answer period for prospective vendors.
5. A final deadline for proposal submission.
6. A time period for proposal review and scoring.
7. A date for notice of award/denial.
8. A protest period.

9. Initiation of the contract process (consider chief elected officials’ meeting schedules if the local board isn’t authorized to execute contracts/agreements).

10. Estimated date of contract execution.

11. Date for performance to begin under the contract.

Funding
Identify all local resources available to fund Operator costs and, if applicable, to fund WIOA Title I Adult and Dislocated Worker career services, in addition to the resources available to fund the costs to operate the local workforce development system, including, but not limited to: the WIOA Adult And Dislocated Worker funds allocated to the local area, the funds provided by local partners under the local MOU, and any other local resources, whether leveraged or in-kind.

MOU Budget
The MOU not only identifies the infrastructure and other costs to operate local OhioMeansJobs centers, it identifies other costs common among the partners in the operation of the local workforce development system. Local WDBs must identify any costs of the Operator or the operation of local OhioMeansJobs centers that are not covered under the MOU as a shared cost or that have arisen since the last MOU was negotiated.

C. Selection Process

Solicitation
The solicitation must be developed in accordance with the Uniform Guidance (2 C.F.R. 200.319(c)) and paragraph (B)(3) of rule 5101:9-4-07 of the Administrative Code, as well as local procurement policies. A description of the local workforce development system and the role(s), responsibilities, and requirements for the Operator must be clearly articulated in the solicitation. If the Operator will serve a dual role as a provider of WIOA Title I Adult and Dislocated Worker career services, the solicitation must define and distinguish the role and responsibilities of the Operator from the role and responsibilities of the career services provider.

Roles, responsibilities, and requirements may include, but are not limited to:

1. The role of the Operator as defined by the local WDB and described in WIOA and the Final Rules.

2. The number of physical comprehensive and affiliate OhioMeansJobs Centers the Operator will manage, including the hours of operation and locations, and whether new facilities must be secured or if operation can continue at the existing site(s).

3. OhioMeansJobs center certification criteria, including any additional organizational experience or criteria the local WDB may want to include.

4. A description of the management structure between the local
5. A description of the authority that will be assigned to the Operator.

6. A clear description of each responsibility that will be assigned to the Operator. If the Operator will provide career services for the WIOA Title I Adult and Dislocated Worker programs, responsibilities must be listed separately and distinguished from those for the Operator role. A description of the Operator's role, if any, in preparing the budget for the center(s), paying for infrastructure costs, collecting contributions from partners, and/or reconciling actual costs to the budget.

7. Number of staff required to operate the local system, identifying:
   - The number of any partner staff fulfilling some responsibilities under the local MOU.
   - Any classifications/positions considered “key personnel” that competing entities must identify in their proposals.
   - Qualifications (education and/or experience) that key personnel or other staff must have.

8. The requirements under WIOA for co-location of Wagner-Peyser employment service offices and for state merit staff to provide services in local OhioMeansJobs Centers.

9. Clarification that the Operator does not have authority over partner staff.

10. A copy of the local MOU as an addendum.

11. The number of local partner staff and service providers that deliver services in the OhioMeansJobs center(s)—including the state merit staff requirements.

12. A description of the local workforce development system structure.

13. Links to state, regional, and local WIOA plans.

14. Technological resources, such as the Ohio Workforce Case Management System (OWCMS), OhioMeansJobs.com, any local systems, business networking software, or online testing sites that the Operator will use.

15. Description of how the Operator will be responsible for coordination of local partner activities under the MOU and the role the Operator will have in the MOU negotiation process.

16. Precluded activities for the Operator and/or provider of career services.

17. Accessibility requirements—including those under WIOA Section 188 and state EEO and ADA requirements.

18. Procurement requirements and restrictions (if the Operator will be assigned to procure any goods or services). An Operator is subject to the same federal, state, and local procurement rules,
regulations, and policies that the local WDB is subject to under WIOA and the Uniform Guidance. Therefore, the Operator must enlist a competitive process to procure any subcontractors.

19. Pursuant to section 502 of WIOA, agreement that the Operator and/or provider of career services will comply with sections 8301 through 8303 of Title 41 of the United States Code, which is commonly known as the Buy American Act.

20. Safety and security policies and procedures.

21. Federal and state conflict of interest laws, regulations, and policies, as well as the local code of conduct.

22. Local performance measures if any have been defined for the Operator and its centers.

23. Reporting requirements, including expectations of the local WDB to receive updates and information.

24. Federal and state confidentiality laws and regulations as well as local data security procedures.

25. Requirement for affirmations that vendors are not debarred under federal law and are qualified to conduct business in the State of Ohio.

26. Any caveats, including the prohibitions in section 121(d) of WIOA:

   The Operator must disclose any potential conflicts of interest that arise from the relationships of the Operator with particular training service providers or other service providers.
   The Operator must not establish practices that create disincentives to provide services to individuals with barriers to employment who may require longer-term services; and
   The Operator shall comply with federal regulations and procurement policies relating to the calculation and use of profits.

**Budget Guidelines**

Identify budget line items based on the roles and responsibilities that will be assigned to the Operator and/or provider of career services. Budget costs must be consistent with Uniform Guidance, with section 184 of WIOA, and 20 C.F.R. Part 683.

**Cost and/or Price Analysis**

Under both federal and state procurement guidelines, a cost and/or price analysis must be conducted for every procurement that exceeds the federal small purchase acquisition threshold (currently $150,000) and for every selection made on a sole-source basis.

At a minimum, local WDBs must conduct market research and develop estimates of costs before issuing the solicitation. Research can include a
review of current and previous actual costs for an Operator and, if applicable, a provider of career services.

A template should be provided for competing entities to use for the submission of their cost proposals to ensure consistency with the MOU budget template. Non-profit entities will be required to treat any income in accordance with 20 C.F.R. 683.295(c), as well as any other applicable laws, regulations and policies, and the terms of any negotiated agreement. For-profit entities must negotiate any profit as a separate cost item for transparency.

**Essential Contract Elements**

All contracts between the Operator and the local WDB must include the essential elements of a legally binding written agreement, and contain at a minimum the following:

1. **Statement of Work (SOW):** The SOW specifies the period of performance or the start and end date of the contract. It also specifies the services to be performed.

2. **Authorized Officials and Purpose:** Authorized officials are persons authorized to enter into and legally sign binding agreements and must be on record as the signatory official.

3. **Additional contractual terms and conditions:** Contracts, agreements, and MOUs must include such standard terms and conditions as are required by federal, state, or local law, regulation or policy. The contract must identify that the Operators are subrecipients of Federal funds.

**VI. State Requirements**

A. The State, in consultation with CEOs and local WDBs will establish objective criteria and procedures that local WDBs will use to assess the effectiveness and continuous improvement of OhioMeansJobs centers per section 121(g) of WIOA.

B. The State has established WIOAPL No. 15-18.1 that includes provisions to address conflicts of interest and multi-function agreements.

C. The State will review procurement policies, codes of conduct, and related procedures upon request, to assess compliance and to make recommendations for revisions, as appropriate.

D. The State will conduct and provide technical assistance to local WDBs, as needed (e.g., training) for the procurement of Operators and/or career services providers.

**VII. Monitoring**

Oversight and monitoring is an integral function of the local WDBs to ensure that the Operator complies with the requirements of WIOA, the activities in the SOW, performance reporting requirements, and the terms and conditions of the contract governing the Operator. At the local level, the policies and procedures developed to address conflicts of interest should include mechanisms for monitoring and oversight of the procurement process and of the conduct of the Operator and/or provider of career services when fulfilling more than one role in a local workforce development
In addition to routine monitoring and oversight, local WDBs are encouraged to include a review of procurements and performance of Operators fulfilling additional roles as part of the recertification assessment for OhioMeansJobs centers.

VIII. **Technical Assistance**

Ongoing support, guidance, training and technical assistance on the development of the workforce system are available to all local areas.

Requests for technical assistance may be sent to the Grants Unit at ODJFS, Office of Workforce Development: OWDGRANTS@jfs.ohio.gov.

IX. **References**


O.R.C. §§ 102.03, 124.57.

