

Mountain Area Workforce Development Board

Policy Statement: PS 2021-02

Effective Date: May 25, 2021

Subject: To Transmit a Local Policy Regarding the Requirement for the Mountain Area Workforce Development Board (the MAWDB) to Use a Competitive Selection Process to Procure Training Providers and One-Stop Operators.

Purpose: To outline a competitive procurement process to select providers of Workforce Innovation and Opportunity Act (WIOA) Adult, Dislocated Workers and Youth Services, as well as, for the operators of local, certified NCWorks Career Centers in the Mountain Area Region using the Workforce Innovation and Opportunity Act (WIOA) Final Regulations and to allow the one-stop operator selection process to align with the Mountain Area competitive procurement process for selection of providers of Adult, Dislocated Worker and Youth Services, which requires the local area to undertake a request for proposal process to competitively procure programs and to contract with Board-approved providers for up to three-years, with the initial contract period being one-year, with two extensions of one-year each, based on annual Board approval.

Additionally, this policy outlines the Mountain Area's process to request a waiver from the Division of Workforce Solutions (DWS) in the event of a failed procurement process to competitively procure Adult, Dislocated Worker or Youth Services. (Attachment I)

Background: The MAWDB competitively procures Adult, Dislocated Worker and Youth Training Services as provided for by Section 107(g)(1)(A) of WIOA, which mandates that local WDBs shall not provide training services to customers. This requirement is reiterated in 20 Code of Federal Regulations (CFR) Final Rule §679.410(b). The MAWDB provides oversight to the one-stop system in the four-county region and does not act as a direct provider of services. The MAWDB competitively procures training services in compliance with all state and federal regulations. In addition, Section 107(g)(1)(B) of WIOA

provides limited authority for the DWS to waive these procurement requirements. (Attachment I)

One-Stop Operators: The MAWDB follows requirements for the competitive procurement of one-stop operators, which are set forth in 20 CFR §678.605, requiring the one-stop operator to be selected through a competitive process. Although applicable regulations allow a local WDB to be the one-stop operator in limited circumstances, the DWS opposes such an arrangement because the WDB's principal role is to provide strategic direction and oversight to service delivery.

Section 121(d)(2)(A) of WIOA and 20 CFR §678.605(a) requires the one-stop operator to be selected through a competitive process at least once every four (4) years. However, the MAWDB aligns competitive procurement of the one-stop operator within the request for proposal (RFP) process for the procurement of Adult and Dislocated Worker Services, which allows for an up-to three-year contractual relationship with Board-selected providers of Adult and Dislocated Worker Services through an initial one-year contract with two additional one-year contract extensions, as approved annually by the MAWDB, based in part on effective and efficient financial management and programmatic compliance with the Act, its rules and regulations as provided through the Employment and Training Administration of the USDOL and the DWS through the NC Department of Commerce, in addition to local policies and procedures.

Additionally, the MAWDB follows the applicable regulations (20 CFR §678.615), which also allows a one-stop operator to be a service provider so long as there are proper internal controls and firewalls in place to ensure that the entity's dual roles as operator and service provider do not conflict. The MAWDB guards against possible conflicts of interests through the use of internal controls and firewalls, which ensures that the operator is not overseeing itself as a service provider. The MAWDB, through its Administrative Entity, conducts annual programmatic and financial monitoring of competitively procured providers of Adult, Dislocated Worker and Youth Services, ensuring that the selected service provider is not conducting oversight of itself.

The MAWDB exercises extreme care to ensure that strategic direction is provided to operators and service providers and maintains an arm's length relationship in the day-to-day delivery of services to Career Center customers.

Action: Adult, Dislocated Worker and Youth Training Services: The MAWDB competitively procures Adult, Dislocated Worker and Youth Training Services and maintains a very clear and distinct firewall between the WDB and the services delivered to customers through strategic oversight and annual financial and programmatic monitoring.

If the MAWDB experiences a failed competitive procurement process, the MAWDB may seek other non-competitive options for the first year or request a waiver through the DWS to allow it to provide training services directly to customers. All waiver requests to the DWS must be approved by the MAWDB in compliance with the Waiver of Training Prohibition guidelines (Attachment I) and would be submitted to the Board's Planner at the DWS within thirty (30) days of the failed procurement.

One-Stop Operators: The MAWDB competitively procures operators for the certified NCWorks Career Centers at least once every three-years.

The MAWDB follows all applicable federal, state, and local procurement requirements in selecting service providers and one-stop operators to deliver services funded by WIOA resources.

Federal requirements include, but are not limited to:

- 1) Sections 200.317 through 200.326 of 2 CFR Part 200 (the United States Office of Management and Budget (OMB) Uniform Administrative Requirements, Cost Principles, Audit Requirements for Federal Awards); (Procurement Procedures) which establishes principles and standards for determining costs for all federal awards carried out by state and local governments;
- 2) 20 CFR Sections 678.605(a) and 678.610; and
- 3) DWS PS 21-2017 - North Carolina Division of Workforce Solutions' Procurement and Contracting Policy Statement.

The MAWDB understands that DWS will provide oversight of compliance through:

- 1) Reviewing the Local Area Plan responses outlining procurement procedures;
- 2) Monitoring activities including direct site visits; and
- 3) Oversight summary reports.

Effective Date: May 25, 2021

Expiration: Indefinite

Contact: Nathan Ramsey, Local Area Director

nathan@landofsky.org

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Attachment I: Waiver of Training Prohibition

Waiver of Training Prohibition

Background: The Workforce Innovation and Opportunity Act (WIOA) section 107(g)(1)(A) indicates that local Workforce Development Boards (WDBs) may not provide training services to customers. The Act does, however, allow an opportunity for a waiver of this provision.

Required Process for Waiver of Competitive Procurement Requirement: When the MAWDB wishes to directly provide training services to customers through its staff or through the staff of the local WIOA administrative entity/grant recipient or experiences a failed competitive selection process, the Local Area would submit a waiver request to the DWS that contains the following:

- (I) based upon a failed competitive procurement, satisfactory evidence that there is an insufficient number of eligible providers of such a program of training services to meet local demand in the local area;
- (II) information demonstrating that the MAWDB meets the requirements for an eligible provider of training services under WIOA section 122;
- (III) information demonstrating that the program of training services prepares participants for an in-demand industry sector or occupation in the local area; and
- (IV) a description of the clear and distinct firewall between the MAWDB and the services delivered to customers.

The MAWDB would make the proposed waiver 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 final request to DWS for the waiver would also include the evidence and information described in the list I - IV above, as well as the comments received during the public comment period.

Duration: A waiver granted to MAWDB by DWS shall apply for a period that shall not exceed one year. The waiver may be renewed for additional periods based

upon evidence submitted to the DWS, but only if the MAWDB continues to meet the requirements of the provisions stated above.

Revocation: The MAWDB understands that the DWS shall have the authority to revoke the waiver during the appropriate period described in the preceding paragraph if it determines the waiver is no longer needed, the MAWDB has engaged in a pattern of inappropriate referrals to training services, which it operates, or there were irregularities in the competitive procurement process.

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