

Oklahoma Employment Security Commission

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OKLAHOMA EMPLOYMENT & TRAINING ISSUANCE #10 -2001

TO: WIA Grant Recipients

FROM: Eddie Foreman

DATE: February 12, 2001

SUBJECT: Guidance on Workforce Investment Act of 1998, Section 129 - Competitive and Noncompetitive Procedures for providing Youth Activities under Title I

PURPOSE: To transmit Training and Employment Guidance Letter 9-00. TEGL 9-00 provides clarifying information and guidance to State/local workforce investment area on procedures for providing local youth activities under title I, subtitle B of the Workforce Investment Act (WIA) of 1998:

- The Workforce Investment Act of 1998 (WIA), which repealed the Job Training Partnership Act (JTPA), introduced changes in the way services for youth activities are obtained and operated.
- Questions have been posed about administrative procurement procedures and about the extent to which providers of youth services, such as the program design framework component, the ten program elements, and youth services delivered in a One-Stop setting, must be competitively selected. This guidance addresses these questions and consolidates earlier issuances.

ACTION: Please make this information available to appropriate staff members.

INQUIRES: If you have any questions regarding this correction, please contact Randall Allen at 405/962-7561.

U. S. Department of Labor Employment and Training Administration Washington, D.C. 20210	CLASSIFICATION WIA/Youth
	CORRESPONDENCE SYMBOL OYS
	DATE January 23, 2001

TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 9-00

TO: ALL STATE WORKFORCE LIAISONS
 ALL STATE EMPLOYMENT SECURITY AGENCIES
 ALL STATE WORKER ADJUSTMENT LIAISONS
 ALL ONE-STOP CAREER CENTER SYSTEM LEADS

FROM: LENITA JACOBS-SIMMONS
 Deputy Assistant Secretary

SUBJECT: Workforce Investment Act of 1998, Section 129 - Competitive and Noncompetitive Procedures for providing Youth Activities under Title I

1. **Purpose.** To transmit policy guidance to State/local workforce investment area on procedures for providing local youth activities under title I, subtitle B of the Workforce Investment Act (WIA) of 1998.

2. **References.**

- A. Workforce Investment Act of 1998, title I, subtitle B (Pub. Law 105-220) 29 U.S.C. 2801 et seq.
- B. WIA Regulations, 20 CFR part 664 (65 Fed. Reg. 49294, 49411, Aug. 11,2000).
- C. Training and Employment Guidance Letter (TEGL) No. 3-99, Program Guidance for Implementation of Comprehensive Youth Services Under the Workforce Investment Act During the Summer of 2000, (dated January 31,2000).
- D. 29 CFR part 95, 95.40 through 95.48 Procurement Standards.
- E. 29 CFR part 97, 97.36 Procurement and 97.37 Subgrants.

3. **Background.** The Workforce Investment Act of 1998 (WIA), which repealed the Job Training Partnership Act (JTPA), introduced changes in the way services for youth activities are obtained and operated. Program Year 2000 is the first full year in which all local workforce

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investment areas (local areas) will operate programs that are more comprehensive, competitively select youth service providers, and reflect the principles of youth development. Under WIA, the focus shifts to longer term, comprehensive services for youth, including a requirement that ten program elements be made available for youth within each local area, and that follow up is provided for all youth participants for a minimum of twelve months.

The principles and practices of youth development determine the context for the success of WIA youth services. Youth development is a process in which young people have needs met, competencies built, and are prepared for adult life expectations. A youth development environment provides high expectations for participants, opportunities for input and involvement of caring adults in their lives.

Under WIA, comprehensive programming includes follow-up over time. This is a critical youth development principle, as it provides a sequenced link between learning and development within the youth services program and the world of work. Support is a critical dimension of youth development that concretely links direct help in a young person's life with ongoing connection to an adult who can guide them through the challenges of entering and succeeding in employment.

The newly established local youth councils under WIA section 117(h) (29 U.S.C. 2832) are integral to implementing successful local programs reflecting youth development principles. Youth Councils are appointed by the Local Workforce Investment Board (Local Board), in cooperation with the Chief Elected Official, (1) to develop strategies and goals for the portions of the local plan relating to eligible youth; (2) to recommend eligible providers of youth activities; (3) to conduct oversight of eligible youth providers; and (4) to coordinate youth activities; subject to the approval of the Local Board.

WIA, in section 123 (29 U.S.C. 2843), also requires the identification of eligible youth service providers by awarding grants and contracts on a competitive basis for youth activities and services. The competitive selection process under WIA provides Local Boards, with recommendations from the youth councils, an opportunity to select youth activities providers who can best serve local youth needs.

Questions have been posed about administrative procurement procedures and about the extent to which providers of youth services, such as the program design framework component, the ten program elements, and youth services delivered in a One-Stop setting, must be competitively selected. This guidance addresses these questions and consolidates earlier issuances. The following sections include:

Section	<u>Content</u>
4. <u>WIA Requirements</u>	Provides relevant statutory and regulatory requirements for the competitive selection of youth providers.
5. <u>Program Design Framework Component</u>	Describes the essential elements of the program design framework component and explain the

extent to which the competitive selection of providers applies.

6. Ten Program Elements Describes the ten program elements within the context of the four major themes, the provision of these elements within a local area, and the application of competitive selection for providers.
7. One-Stop Youth Services Explains how One-Stop operators can provide services to youth and how the competitive selection requirement applies to One-Stop operators as providers of the program design framework component.
8. Competitive Selection Explains the applicability of existing procurement regulations to the selection of eligible youth service providers.
9. Application of Competitive Selection to Statewide Funds Explains the applicability of the competitive procurement requirements for statewide funds.

4. WIA Requirements. The requirements for competitive selection of local youth activities affect Local Boards, youth councils, and potential service providers. The requirements are as follows:

- WIA section 123 (29 U.S.C. 2843), requires that eligible providers of youth activities 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;
- WIA section 112(b)(18)(B) (29 U.S.C. 2822), requires that the State Plan include information identifying the criteria to be used by the Local Boards in awarding grants for youth activities, including the criteria that the Governor and the Local Boards will use to identify effective and ineffective youth activities and providers of those activities;
- WIA section 117(d)(2)(B) (29 U.S.C. 2832), requires that Local Boards identify eligible providers of youth activities by awarding grants and contracts on a competitive basis; and
- Under WIA section 117(h)(4)(B)(i) (29 U.S.C. 2832), one of the principal duties of the youth council is to recommend eligible providers of youth activities in the local area to be awarded grants or contracts on a competitive basis by the Local Board consistent with WIA section 123 (29 U.S.C. 2843).

The Workforce Investment Act regulations describe the following exceptions to the youth provider selection requirements:

20 CFR 664.405(aX4), provides that the competitive selection requirements of WIA section 123, 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.

20 CFR 664.610, provides that 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.

5. Program Design Framework Component. The program design framework is an integral component (referred to as the “program design component” or “entry-level case management services”) of a local area’s youth services. WIA regulations (20 CFR 664.405) explain that the local grant recipient (or fiscal agent) may conduct the program design component without being competitively selected. The program design component creates an opportunity for a central access point to both determine eligibility and make appropriate referrals for the youth.

Local areas decide how to select the provider of the program design component and how to integrate this component into the overall program service plan. Local areas may use the local grant recipient (or its fiscal agent) to provide the program design component or use a competitive selection process. The competitive selection process allows the component to be provided either as part of the activities of the service provider or allows a separate provider of this component to be competitively selected.

The program design framework component is an essential ingredient in helping local areas develop comprehensive service strategies for youth based upon their individual needs. It consists of intake, an objective assessment, individual service strategy development, and information and referrals for youth participants (WIA section 129 (c)(1) (29 U.S.C. 2854).

- Intake activities may involve services such as registration, eligibility determination and collection of information to support verification of eligibility for services. It may also include pre-screening potential participants and general orientation to self-help services. Other activities include referrals to other services which may include providers of the ten program elements.
- The objective assessment is a process that identifies service needs, academic levels, goals, interests, skill levels, abilities, aptitudes, and supportive service needs, and measures barriers and strengths. It includes a review of basic and occupational skills, prior work experience, employability potential, and developmental needs. The result of an assessment is an individual service strategy.
- The individual service strategy is the plan which identifies the employment goals, educational objectives, and prescribes appropriate services for the participant. The individual service strategy plan should provide for:
 - (a) preparation for post secondary educational opportunities;

- (b) strong links between academic and occupational learning;
 - (c) preparation for unsubsidized employment opportunities in appropriate cases; and
 - (d) effective connections to intermediaries with strong links to the job market and local and regional employers.
- Individual service strategies should also include providing information on local youth activities and referrals to the providers of those services. Information and referrals are activities that any youth may receive, regardless of eligibility for youth activities. These activities may be funded by sources other than WIA.

It is appropriate to review service strategies with the participant periodically and make modifications when needed. In fulfilling its overall service strategy for youth, the entity providing the program design framework component may use a case management approach to determine whether goals in the individual service strategy are being met. This approach ensures that youth are actively engaged in receiving services from eligible service providers, and that participants receive follow-up services when exiting the program. These types of case management services may be provided directly by the local grant recipient without a competitive selection, as part of the overall activities provided by eligible service providers or may be competitively selected separately. For example, local areas may determine that case management is part of the services that are expected from competitively selected providers.

It should be noted that simply maintaining contact with a participant, while s/he is enrolled in the WIA youth program, is not considered a type of follow-up service (providers of which must be competitively selected) because the contact occurs during program participation, whereas follow-up services occur when the participant exits the program and is no longer enrolled in an activity as described in TEGLE 7-99 which describes the requirements of the WIA title I performance accountability system. WIA youth follow-up requirements are more fully described in 20 CFR 664.450.

6. Ten Program Elements. Under WIA section 129(c) (29 U.S.C. 2854) and 20 CFR 664.410, comprehensive youth services consist of ten required program elements which can be grouped around four major themes:

- *Improving educational achievement* (including elements such as tutoring, study skills training, and instruction leading to secondary school completion; drop out prevention strategies, and alternative secondary school offerings);
- *preparing for and succeeding in employment* (including summer employment opportunities, paid and unpaid work experience, and occupational skills training);
- *supporting youth* (including supportive services, providing adult mentoring, follow-up services, and comprehensive guidance and counseling); and

- *offering services intended to develop the potential of young people as citizens and leaders* (including leadership development opportunities).

Local Boards must make all ten program elements available to all youth participants in the local area, although individual youth participants need not participate in all ten. Local areas have the discretion to determine the specific services provided to individual youth participants, based on each participant's objective assessment and individual service strategy. However, local grant recipients need not provide, all ten program elements with WIA funds if certain services are already accessible for all eligible youth in the local area. If an activity is not funded with WIA title I funds, the local area must ensure that those activities are closely connected and coordinated with the WIA system. Ongoing relationships should be established with providers of non-WIA funded activities either through case management, memorandums of understanding, or some other vehicle as local program operators are still responsible for obtaining performance outcomes for all WIA participants. In conjunction with the Youth Councils, the local areas should identify the extent to which the ten program elements are available and/or already being provided in the local area through a combination of resource mapping, competitive selection of providers (including sole source justification in rare circumstances), or through community partnerships.

Resource mapping is a tool for identifying available services within the local area across funding streams and service providers. The local Youth Council may determine that some services, for example tutoring or mentoring, are so widely available that it would be a duplication of service and not fiscally sound to use WIA funds to pay for these services. A good guide to determining service availability is whether, in fact, it is universally accessible to any youth across the local area. Several factors may be used to determine the accessibility of a service, including: the geographic distance between the provider and youth, the accessibility of the service to disabled youth, and whether the provider only provides the service to youths in low-income households. When resource mapping, Youth Councils may consider distance learning and services available through computer technology. If services are not readily accessible to all youth, the Youth Council must ensure that existing services can be expanded to serve all WIA eligible youth, or else the Local Board, with recommendations by the Youth Council, must competitively select providers to provide the services with WIA funds.

The costs of occupational skills training for participants may be paid to a training provider (such as a community college or vocational school) that has been competitively selected to provide training for eligible youth who receive individual referrals. Once a provider has been competitively selected, the grant or contract may stipulate whether training will be provided on a group-size or per slot (i.e., individual referral) basis. States and Local Boards are not limited to funding group-size training, but may provide vouchers or "fee-for-service" funds to community colleges, vocational schools, or other training providers, based on the participant's objective assessment and individual service strategy.

The WIA regulations, at 20 CFR 664.6 10, state that if the grant recipient/fiscal agent elects to directly provide subsidized summer employment opportunities for youth in the local area, then the competitive selection requirements do not apply for this program element. However, if other providers are used to provide subsidized summer youth employment opportunities, those

providers must be selected through the award of grants or contracts on a competitive basis. Employers providing unsubsidized youth employment opportunities, are excluded from the competitive selection process. Whether summer employment opportunities are competitively selected or directly provided by the grant recipient, direct linkages to academic and occupational learning must be included.

7. One-Stop Youth Services. The local grant recipient of the WIA youth funds is a required One-Stop partner and is subject to the requirements that apply to those partners as described in 20 CFR 664.700 and 20 CFR part 662. One-Stop Centers can serve as the entry points for all youth in the local area. They are the gateways to services provided for WIA eligible youth and to services funded from other sources for both WIA eligible and non-eligible youth.

If the One-Stop operator is the local grant recipient or sub-recipient (as designated by the chief elected official or the Governor, where the Governor serves as the local grant recipient) under WIA section 1 17(b)(3)(B)(i) (29 U.S.C. 2832), then the operator may conduct the program design component without competition. As both the One-Stop operator and the local grant recipient or sub-recipient, the One-Stop operator can also ensure program design consistency in the intake, objective assessment, individual service strategy development for youth, as well as uniformity in the provision of information and referrals to youth service providers for the ten program required elements. Existing One-Stop operators that are not the local grant recipients or sub-recipients under WIA section 1 17(d)(3)(B) (29 U.S.C. 2832) may apply in any competitive selection process to provide the program design component where that component is not solely provided by the local grant recipient.

Connections between the One-Stop system and youth service providers facilitate the coordination and provision of youth activities, connections to intermediaries with links to the job market and employers, and access to information about WIA youth programs and other youth service providers. These connections facilitate providing services to both eligible and non-eligible youth. It should be noted that eligible providers of youth activities shall ensure that an eligible applicant who does not meet the enrollment requirements of the particular program or who cannot be served shall be referred for further assessment, as necessary, and referred to appropriate programs to meet the basic skills and training needs of the applicant as described in WIA section 129(c)(3)(B) (29 U.S.C. 2834). Non-eligible youth may also receive services at One-Stop Centers. Services for non-eligible youth may include basic labor exchange services funded under the Wagner-Peyser Act and other self-help activities such as job searches, career exploration, use of career center resources, and should be referred for further assessment by partners, as necessary, and given referrals to other youth providers of services for which they may be eligible.

8. Competitive Selection. The intent of WIA is to provide flexibility in the development and design of comprehensive youth services, and to create a market-based system which drives the quality of youth services. A variety of providers establishes a mixed set of youth development services competitively selected to meet the needs of local communities and encourages youth service providers to do more with their resources. Local areas may consider the development of solicitations that group certain youth services tailored to fit youth and community needs, such as

selection of providers that provide educational attainment, preparation and success in employment, supportive services, or youth development. This option focuses on the selection of providers with strengths in those particular areas and eliminates duplication of services and activities by multiple providers.

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, as described under regulations at 29 CFR 95.43 and 97.36(c). Such actions must assure separation of those who develop or issue the solicitation, or are involved in the selection process, from those who bid upon it. Accordingly, an identifiable sub-unit of the local government or non-governmental organization may not submit a bid or an offer on a grant or contract solicitation if that sub-unit is involved in the development of the solicitation, the review, evaluation and selection process, or the ongoing post award administration (including oversight) of the award. For example, if a governmental unit, such as a Department of Employment Services (DES), runs a solicitation for subgrant awards, it cannot involve any existing sub-units at the DES that are WIA youth service providers in the development of that solicitation, subsequent 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 youth service provider 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 by the State, the local grant recipient must document its competitive selection process for youth services, including the program design framework component or summer employment opportunities should it elect not to provide them.

The procurement regulations also require that supporting documentation of the significant history of each procurement action be maintained as described under 29 CFR 97.36(b)(9) and 95.46. Such documentation must include a rationale for: the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price. Such documentation also includes evaluation criteria or rating factors to support the provider's ability to perform successfully, with consideration given to integrity, compliance with public policy, record of past performance, in addition to financial and technical resources, that follow State and Federal guidelines.

The procurement regulations at 29 CFR 97.3 6(d) also identify the various methods of procurement that are allowable. When discussing non-competitive (sole source) procurement (29

CFR 97.3 6(d)(4)), the rules emphasize that this is only to be used when other methods are not feasible and the criteria set forth in the federal, state and local procurement procedures applies. Most governmental procurement systems identify the circumstances when sole source procurement actions may be allowed.

9. Application of Competitive Selection to Statewide Funds. Under WIA Section 128(a) (29 U.S.C. 2853), the Governor of a State is authorized to reserve up to 15% of each of the amount of funds allocated for youth, adult and dislocated worker activities to carry out Statewide workforce investment activities. The Governor may use the reserved funds ,to carry out required and allowable Statewide workforce investment activities described in 29 CFR 665.200 and 665.210, respectively.

State reserve funds used for required or allowable youth activities, including those described in section 129(c), 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(c), those funds become local area funds and the competitive selection procedures described in Section 123 are applicable.

10. Action Required. States should: (a) ensure compliance with this policy guidance; (b) transmit this guidance to the Local Workforce Investment Boards as expeditiously as possible; (c) instruct local areas to provide guidance on relevant State procurement requirements to local grant recipients and program operators; and (d) provide technical assistance to local areas through the dissemination of best practices.

11. Inquiries. Questions concerning this Training and Employment Guidance Letter should be directed to your appropriate Regional Office.