

## **LOCAL WORKFORCE DELIVERY SYSTEM – PA CAREERLINK® SYSTEM OPERATOR**

### **WORKFORCE SYSTEM POLICY**

Local Workforce Delivery System

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**Policy Owner:** *Pennsylvania Department of Labor & Industry Bureau of Workforce Development Administration*

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### **Purpose of the Policy**

The Workforce Innovation and Opportunity Act, or WIOA, requires local workforce development boards, or local boards, or LWDBs, to select their operator(s) through a competitive process. WIOA supports continuous improvement through the evaluation of operator performance and the requirement of operator procurement at least every four (4) years. WIOA, its final rules, and federal guidance provide clarity to the operator procurement process. To receive funds made available under WIOA title I, LWDBs must conduct an open and fair competitive procurement process.

This policy provides information on the purpose, selection, responsibilities, evaluation and oversight of the operator. This policy also reinforces required elements of competitive procurement, indicates the varied roles an operator may perform, lists eligible entities that may serve as an operator and identifies implications and conditions of selecting such entities.

### **Policy Statement**

WIOA established the American Job Centers, or AJCs, system network to provide job seekers and employers streamlined access to an array of education, training, employment and supportive services. WIOA requires certain programs and agencies to support and participate in PA CareerLink® that is the trademarked name of Pennsylvania's public workforce development service delivery system. The operator's singular required role is the service delivery coordination of one-stop partners and service providers.

WIOA requires each LWDB, with the agreement of the chief elected official, or CEO, to use competitive operator procurement principles found within Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance) at 2 CFR part 200, including the Department of Labor's, or DOL's, specific requirements at 2 CFR part 2900, and other applicable regulations and policies. Open and fair competition is intended to promote the efficiency and effectiveness of operators by providing a mechanism for local boards to regularly examine performance and costs against original expectations.

### **Scope**

This policy applies to the Office of the Governor, state agencies, local area CEOs, LWDBs, all entities participating in a local area's workforce delivery system as partners, whether required or additional, and third-party entities involved in the operator process.

### **Audience**

Pennsylvania CEOs, LWDB members and local board staff, local workforce administrative entities, fiscal agents, PA CareerLink® partners and other local workforce system stakeholders must adhere to the conditions of use and specifications as outlined in this policy and any supporting documents.

## **Related State Policies**

WSP No. 02-2015 Local Governance Policy

WSP No. 03-2015 Financial Management Policy

WSP No. 108-01 (C1) Regional/Local Planning – Multi-Year Plans (Change 1)

WSP No. 121-03 Memorandum of Understanding (MOU) of the One-Stop Delivery System

WSP No. 121-05 Local Workforce Delivery System – PA CareerLink® Certification and Continuous Improvement

## **Definitions**

**Chief elected official, or CEO**, is the chief executive officer of a unit of general local government in a local workforce development area. By legislation, the CEO is financially liable for workforce funds allocated to a local workforce development area. The CEO is responsible for appointing local workforce development board members, approving the local workforce development board budget and serving as the local grant recipient.

**Core programs** are the partner programs found in WIOA title I (Adult, Dislocated Worker and Youth); title II (Adult Education); title III (Wagner-Peyser); and title IV (Vocational Rehabilitation).

**Employer of record** is an entity that serves as a solely administrative party between such an entity and the individual(s) it employs, wherein no functional or supervisory relationship in part or in whole exists within the relationship.

**Firewall** is a type of internal control set within an organization to prevent conflict-of-interest situations while allowing for clear separation of duties between involved parties. Such firewall(s) serve as an ethical barrier between involved parties to prevent an exchange of information or communication that can lead to a conflict of interest or the perception thereof.

**Internal controls** are controls established as business practices, policies or procedures within an organization to create value while minimizing risk. These controls ensure the organization operates in compliance with all applicable laws, regulations, policies, procedures and agreements.

**Local one-stop delivery system** is the network of workforce-related products, programs, services, activities and service locations established to meet business and job-seeker needs in a local workforce area.

**Local one-stop delivery system operator**, or operator, is an entity (public, private or nonprofit) or a consortium of entities that, at a minimum, includes three or more of the required one-stop partners of demonstrated effectiveness in the local area and is designated or certified under WIOA sec. 121(d). The operator's singular required role is to coordinate service delivery among one-stop partners and service providers.

**Local workforce development area, or LWDA**, also referred to as a local area, serves as a jurisdiction for the administration of workforce development activities and execution of adult, dislocated worker, and youth funds allocated by the state. Such areas may be aligned with a region identified in WIOA sec. 106(a)(1) or may be components of a planning region, each with its own LWDB. The governor must designate local areas for the state to receive adult, dislocated worker, and youth funding under title I, subtitle B of WIOA.

Local areas are also the areas where LWDBs oversee their functions, including strategic planning, operational alignment, service-delivery design and a jurisdiction where workforce system partners align resources at a sub-state level to design and implement overall service-delivery strategies.

**Local workforce development board, or LWDB**, also referred to as local boards, are regional entities created to implement the Workforce Innovation and Opportunity Act of 2014 which authorizes and funds employment and training programs in the United States. The LWDB's main role is to direct federal, state and local funding to workforce development programs. Every community in Pennsylvania is associated with a LWDB. LWDBs develop workforce and regional strategies, as well as conduct and publish research on their regional economy's needs.

LWDBs also provide oversight and coordination of the workforce services provided in their region and the overall operation of the storefront delivery of these services at PA CareerLink® locations.

For each LWDB, a chief elected official (a county commissioner or the mayor of a major city) appoints members to the LWDB. These appointed positions are unpaid. A majority of a LWDB's membership must come from private businesses. There are also designated seats for representatives of labor and educational institutions, such as community colleges.

**Local Workforce Delivery System - Memorandum of Understanding, or MOU**, is the product of local discussion and negotiation, and is an agreement developed and executed between the LWDB and the one-stop partners, with the agreement of the chief elected official and the one-stop partners, relating to the operation of the one-stop delivery system in the local area. Two or more local areas in a region may develop a joint MOU if they are in a region that has submitted a regional plan under sec. 106 of WIOA.

**Operator evaluation** is a mechanism developed and used to assess an operator's performance and keep the local board apprised of such performance. The annual operator evaluation must include but is not limited to: collecting and reviewing contract provisions adherence, participating partner surveys, other performance measures developed by the local board and consistent with PA CareerLink® certification requirements. Such evaluations could include examples of:

- local one-stop center/system efficiency and effectiveness measures
- measures associated with the performance of the local one-stop system partner programs
- measures associated with the cost of the one-stop system
- continuous improvement

**Participating partner survey** is a document that allows each partner under an operator's purview to evaluate the operator's efficiency and effectiveness. The local board shall consider, at a minimum, the survey results whenever the operator is being evaluated as described herein.

**Pay for performance, or PFP**, is a contract strategy providing government funding streams for a fixed amount to an eligible service provider based on achieving of a specified level of performance for target populations as identified by a local board in accordance with the performance accountability system established by WIOA Sec. 116(b)(2)(A).

**Pennsylvania CareerLink® or PA CareerLink®** is the registered trademarked name of Pennsylvania's one-stop workforce development service-delivery system, including each one-stop and public-facing aspects of the online job-matching system used by individuals, job seekers, employers, program partners and providers, training providers and other stakeholders.

**Pennsylvania Department of Labor & Industry, or L&I**, is legally designated by the governor to serve as the state workforce agency.

**Procurement request** is the mechanism in the procurement process used to solicit a response from an entity (or entities) to provide a service or activity. For example, both a request for proposal, or RFP, and a request for quotes, or RFQ, are procurement requests.

**Required and additional partners** are entities that administer required programs or activities as described in WIOA Sec. 121(b)(1)(B) and 20 CFR § 678.400, or the additional programs as described in WIOA Sec. 121(b)(2)(B) and 20 CFR § 678.410 in a local area. Required programs and activities are mandated to be made available in the PA CareerLink® delivery system, while additional programs may be made available if approved by the CEO and the LWDB. All partners must enter into a MOU with the LWDB.

**Workforce delivery system committee, or WDS committee,** is an optional local board committee, and is required if a LWDB competes for and is selected as the operator. It is established to ensure partner involvement in local PA CareerLink® system operations and to use the experience and expertise of such individuals to provide information and recommendation to the local board and the local system operator with planning, implementing and other issues related to such workforce development operations.

**Workforce Innovation and Opportunity Act, or WIOA,** superseded the Workforce Investment Act of 1998 (WIA) and amended the Adult Education and Family Literacy Act, the Wagner-Peyser Act and the Rehabilitation Act of 1973. To help businesses and job seekers meet their needs, the workforce system established under WIOA is integrated by design. WIOA envisioned connecting businesses with job seekers, through meaningful partnerships among workforce, education, human services and economic development entities, ensuring optimum results and resource leveraging. The law addresses job seekers' needs by establishing a workforce system delivering access to employment, education, training and support services to succeed in the labor market. Through the PA CareerLink® one-stop system, WIOA addresses employers' needs by connecting them with skilled workers able to compete in the global economy.

## **Procedures**

### **Action**

LWDBs must follow all federal, state and local selection competitive procurement requirements when selecting the operator. Additionally, LWDBs must incorporate the following items listed within this policy and supporting documents.

### **Who may be an operator in the PA CareerLink® Service Delivery System?**

- I. The operator must be either an entity (public, private, or nonprofit) or a consortium of entities. If the consortium of entities is one of the one-stop partners, it must at a minimum, include three (3) or more of the required one-stop partners of demonstrated effectiveness as described in WIOA section 678.400. All entities must sign the contract between the LWDB and the selected operator.
  
- II. Operator(s) may operate one or more PA CareerLink® service locations, or there may be multiple local area operators in a local workforce development area, or local area, or LWDA.

In a planning region (i.e., a region composed of two or more local workforce development areas) where there are multiple PA CareerLink® service locations, the CEOs and LWDBs that make up the planning region may consider a single operator for the region. Provision must be made that a planning region's local workforce delivery system Memorandum of Understanding, or MOU, is accounted for and includes the planning region's combined one-stop partners. CEOs representing each of the local areas must be signatories of the Planning Region MOU and the operator contract.

*Note:* LWDBs considering the option of a regional operator, must contact the Pennsylvania Department of Labor & Industry, or L&I, at the earliest opportunity to discuss a timeline for system of record changes and other administrative requirements.

- III. The types of entities that may be an operator include:
  - A community-based organization
  - Employment Service State agencies under Wagner-Peyser Act
  - A for-profit entity (e.g., a corporation, incorporated consultancy or agencies)
  - A government agency (e.g., state agency, local or county government, school district)
  - Indian Tribes or Tribal organizations
  - An institution of higher education
  - An interested organization capable of carrying out the duties of the operator (e.g., a chamber of commerce, an economic development corporation or a labor market organization)

- LWDBs under the following conditions: if the LWDB complies with this policy and associated guidance; if the LWDB complies with the competition requirements in 20 CFR §§ 678.605(c) and 678.615(a); and if after the competition process the LWDB is selected as the operator, the local CEO and the governor agree to the selection of the LWDB. See *Appendix D: Local Board as One-Stop Operator*
- A non-profit organization
- A nontraditional public secondary school (e.g., a night school, adult school or an area career and technical education school)
- A workforce intermediary (e.g., quasi-governmental bodies such as a county commission)

*Note:* Elementary schools and secondary schools are not eligible to be an operator.

- IV. Workforce development system structure exception requirements apply to any eligible entity (i.e., LWDB, county entity, commission or corporation) that has been, or will be, selected to perform more than one (1) of the following administrative or programmatic functions: LWDB, local area or planning region fiscal agent, staff to the LWDB, operator, or direct provider of workforce-related services or activities. Refer to L&I's Local Governance Policy for additional guidance if a workforce development system structural issue occurs.

#### Roles, Responsibilities and Limitations of the Operator.

The LWDB must seek out and consider the PA CareerLink® system program partners and service providers feedback during the procurement planning phase which will assist in defining operator role(s) and responsibilities. LWDBs maintain flexibility in defining these role(s) and responsibilities of their respective operator(s). Entities selected are sub-recipients of a Federal Award and thus, required to follow the Uniform Guidance.

Per Training and Employment Guidance Letter, or TEG, 15-16, *Competitive Selection of One-Stop Operators*, Jan. 17, 2017 once the LWDB has competitively selected a one-stop operator, the LWDB and the operator must execute a legally binding agreement which may take the form of a written contract or another type of agreement, such as an MOU. The legally binding agreement between a LWDB and an operator is different from the MOUs that are required between a LWDB and its one-stop partners. Additionally, the commonwealth requires the legally binding document between the LWDB and selected operator to contain the provisions, that at a minimum, would classify the agreement as a written contract.

*Note:* Both the Request for Proposal, or RFP, or Request for Quotes, or RFQ, and the resulting final contract must contain both the roles and the responsibilities of the operator in the local workforce service delivery system. By clearly articulating these roles and responsibilities in the RFP or RFQ, the partners in the local system will be fully aware of what the operator is required to do. In addition, the operator must fully comply with established internal controls and conflict of interest policies and procedures as specified in 20 CFR § 679.430.

- I. ***Required Role.*** Operators are required to coordinate the delivery of partner program services in the local service delivery system ensuring a seamless distribution of career services, training services and other employment-related services provided by required and additional partner programs offered in the local area.

To help ensure the coordination of program services, the operator is charged with the functional supervision of one-stop service locations. This may take the form of a service location manager (i.e. Site Administrator) or other means as determined effective. See subsection titled: *Additional Role – Managing PA CareerLink® Service Delivery Operations* for more information.

II. *Additional Role(s)*. LWDBs may specify additional roles which could include coordinating services across multiple PA CareerLink® service locations encompassing multiple designated workforce development areas, functioning as a direct service provider and managing day-to-day operations of the PA CareerLink® service locations.

- A. *Service Provision*. The operator may also be a service provider within the PA CareerLink® service delivery system except for an operator that is also the LWDB. Pursuant to 20 CFR § 678.625, the appropriate internal controls within the operator-service provider entity must be employed, as well as specific policies and procedures at the LWDB level regarding oversight, monitoring and evaluations of performance must be followed. Additionally, an entity, or entities, serving as an operator in conjunction with a different role within the local service delivery system, may perform some or all these functions when it is acting in its other role, if it has established sufficient internal controls and conflict of interest policies and procedures. Any entity that has been, or will be, selected as the operator and is a direct provider of workforce-related services/activities must develop a separate written agreement signed by the LWDB, CEO(s) and the entity fulfilling multiple roles that describe the roles and how it will abide by the established internal controls and conflict of interest policies and procedures. The agreement must be attached to the final contract with the LWDB and partners. The agreement must also demonstrate compliance with WIOA and its corresponding regulations and guidance, relevant Office of Management & Budget, or OMB, circulars and other federal regulations, as well as L&I's workforce system directives.

The LWDB must demonstrate appropriate internal controls and conflict of interest policies and procedures are in place that conform to the specifications in 20 CFR § 679.430. In addition, the LWDB must describe such arrangement in its WIOA local plan (and regional plan, if appropriate), as well as any modification to such plan(s). L&I will not approve plans that do not clearly demonstrate the implemented and appropriate internal controls and conflict of interest policies. It is expected that the final contract's operational elements be incorporated in the local workforce delivery system MOU.

- B. *Additional Role – Managing PA CareerLink® Service Delivery Operations*. The operator is responsible for ensuring that on-going and daily one-stop service location operations are accomplished. Duties must include, but are not limited to: organizing and coordinating all co-located partner staff by function in accordance with state personnel rules, collective bargaining agreements and state policy and guidance; establishing a customer flow model that is customizable to the needs of individual customers; developing operational procedures and protocols that promote effective, seamless service delivery ensuring that individual partner program performance and outcomes are not negatively affected; communicating workforce system policy, directions and information according to communication protocol; and establishing policies and procedures for situations such as inclement weather, holidays, breaks or time off, which account for relevant policies that may not be consistent across the partners.

The operator may designate a service location manager for each comprehensive center, affiliated site or network of service sites and specialized center as appropriate. A service location manager may be hired, selected from current partner staff, or by other alternative method to ensure functional supervision of day-to-day operations. A service location manager may also oversee multiple sites.

*Note:* If a service location manager is hired, the roles and responsibilities of the service location manager must not conflict with those of the operator and must be fully delineated from those roles and responsibilities of the operator proper. Such clarification must be provided in the procurement

request, resulting operator contract and local workforce delivery system MOU.

*Note:* Functional supervision does not supersede human resource provisions established by any staff(s) employer of record. For example, state employees must be governed by state personnel rules, collective bargaining agreements and applicable state policy.

III. Responsibilities of the Operator. The LWDB may assign any number of responsibilities to the operator. LWDBs should consider the following responsibilities, though this is not an exhaustive list, when determining the scope and depth of the operator's effect on the workforce system.

A. *Administration*

- Is fully cognizant of WIOA and its regulations, state and LWDB imposed policies or directives, and other applicable laws, regulations, rules or contracts to guide administrative requirements and efforts
- Is fully cognizant of and implements the negotiated MOU
- Develops procedures for one-stop service location operations in partnership with stakeholders
- Negotiates with partners and service providers regarding their one-stop service location roles, responsibilities, services and activities, staff complement and other operational particulars
- In concert with the LWDB and/or assigned local area staff, negotiates with partners and service providers regarding expenses related to space, occupancy, shared costs and other costs associated with the operator and one-stop delivery system
- Recommends, maintains and retires one-stop service locations' technologic tools and services
- Provides LWDB with programmatic and fiscal reports and other relevant operational information

B. *Coordination*

- Coordinates the provision of one-stop partners services and activities as reflected in the MOU
- Establishes and maintains relationships with one-stop partners and service providers to effect high degrees of partner collaboration and program integration
- Serves as an unbiased intermediary or liaison for all the one-stop partners and service providers
- Encourages one-stop partner and service provider engagement
- Organizes and leads periodic one-stop partner and service provider meetings
- Attends individual one-stop partner and service provider meetings
- Knows and understands the programmatic parameters of every partner and service provider
- Knows and understands one-stop partners' and service providers' performance measurement goals
- Ensures that an effective customer referral mechanism is in place and monitors usage
- Provides avenues of communication so that one-stop partners and services providers are informed of LWDB and other workforce development stakeholders' communiques or activities
- Communicates one-stop partners and service providers services and activities to the community
- Communicates local area stakeholder workforce development related community events

C. *Managerial*

- Provides operational management supervision across the PA CareerLink® service delivery system
- Plans, directs, reviews and provides functional supervision of PA CareerLink® staff
- Ensures compliance with federal and state issued policy and guidance, LWDB policies and local area operational manual(s) as may exist
- Reviews and enacts the LWDB's WIOA regional and local plan, policies and directives
- Reviews and helps ensure compliance with PA CareerLink® Certification policy and guidance. *If*

*the LWDB is selected as an operator, this responsibility is transitioned to the Pennsylvania Workforce Development Board.*

- For LWDBs that maintain PA CareerLink® operational and/or business plan(s), the operator, in partnership with stakeholders and as directed by the LWDB, will help develop and implement such plans
- Reviews and enacts the L&I's Non-Discrimination Plan, or NDP
- Plans and directs service delivery system and staff capacity building
- Implements customer satisfaction measurement and feedback mechanisms
- Seeks and remediates duplicated employment and training services and activities
- Monitors identified performance indicators and provides required performance reports

**D. Public Relations**

- Represents the local workforce development one-stop service delivery system to the community
- Communicates with education, economic development and community-based stakeholders
- Gauges current employment and training service provision and interacts with the local area's business community, employer base and job seeking populations to help define future demand

**IV. Limitations.** The operator may not perform the following functions:

- Manage or significantly participate in the competitive selection process for the operator
- Select or terminate an operator, career services and youth providers
- Develop and submit an Operating Budget for local activities but may provide financial records to the LWDB
- Be responsible for oversight of itself or other operators
- Negotiate local and/or regional performance accountability measures
- Convene system stakeholders to assist in the development of WIOA plans
- Prepare and submit WIOA plans
- LWDBs that serve as the operator will have additional limitations imposed

**Competitive Procurement.**

WIOA 20 CFR 678.605(a) requires that the LWDBs conduct a competitive process at least once every four (4) years to properly procure an operator. LWDBs may choose to implement a competitive selection process more than once every four (4) years. LWDBs are recommended to use the guidance provided for the operator procurement process which includes federal mandated procurement practices, internal controls and conflict of interest considerations, key contract elements and administrative factors as referenced in *Appendix B: One-Stop Operator Procurement*.

**Evaluation.**

The operator must be evaluated at least annually. Such evaluation must include but is not limited to contract provisions; participating partner surveys and other performance measures developed by the LWDB. The evaluation is to be consistent with PA CareerLink® certification requirements.

**Oversight and Monitoring.**

LWDBs are required to provide oversight and monitor the operator. Appropriate firewalls between staff providing administrative, governance and career services and staff responsible for oversight and monitoring of service delivery entities services must be established. Monitoring includes an attestation by the monitoring entity that it has examined compliance with WIOA requirements and its corresponding regulations, relevant OMB circulars and the terms and conditions of the operator contract. If a local board is selected as the one-stop operator, an outside entity or state agency must conduct the monitoring and report the monitoring results to the CEO in the local area. L&I reserves the right to review compliance monitoring.



## **Resources**

Supporting documents are found at the L&I website <https://www.dli.pa.gov/Businesses/Workforce-Development/Pages/Pennsylvania's-Workforce-System-Directives.aspx>, below the posting of this policy.

- Appendix A: Related References
- Appendix B: One-Stop Operator Procurement
- Appendix C: Workforce Delivery System Committee
- Appendix D: Local Board as One-Stop Operator
- Appendix E: Epilogue

## **Supporting Information**

- Workforce Innovation and Opportunity Act (Pub. L 113-128), July 22, 2014
- WIOA promulgating regulations including 20 CFR Part 678, Aug. 19, 2016
- Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Final Rule (also known as the *Uniform Guidance*), 2 CFR Part 200, Dec. 19, 2014
- Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards Technical Amendments, 2 CFR Part 2900, Dec. 30, 2015
- Training and Employment Guidance Letter, or TEGL, 15-16, Competitive Selection of One-Stop Operators, Jan. 17, 2017

## **Policy History**

The Workforce Investment Act of 1998, or WIA, introduced the entity known as one-stop operators. Operators could be designated or certified through three mechanisms: a competitive process; as a consortium of three or more partners; or “grandfathered” in from the Job Training Partnership Act. The operator’s singular required role was coordination of one-stop center services.

WIOA revised some of the requirements surrounding the operator. Local boards must procure an operator(s) through a competitive process at least every four (4) years. WIOA does not allow for the “designation” or “certification” of any entity as a one-stop operator without a competitive process. WIOA provides no explicit authority to “grandfather” in existing one-stop operators. This procurement must meet criteria ensuring an efficient and effective process is in place for the selection of the operator as outlined in federal statutory and regulatory requirements as well as this policy.

## **Summary of Changes**

<b>Revision Date</b>	<b>Author</b>	<b>Description</b>
12/9/2020	L&I’s BWDA	Packaged for public comment.
4/21/2020	L&I’s BWDA	Minor typographical and grammatical errors were corrected. Entire policy was reformatted; most content remained the same with the exception of appendices and necessary revisions stemming from publicly posted comments. Appendix B: <i>One-Stop Operator Procurement</i> was revised to provide guidance for local boards bidding to be an operator. References to a “ <i>Workforce Delivery System Committee</i> ” were added and are further clarified in Appendix C. Appendix D: <i>Local Board as One-Stop Operator</i> was added to provide regulation requirements and additional direction to LWDBs pursuing this option. Appendix E was added to provide responses/clarifications to the publicly posted comments submitted when this policy revision was first posted May 2019.

6/21/2017	L&I's BWDA	References to a "workforce delivery system standing committee" were removed as well as minor typographical and grammatical errors were fixed.
7/9/2015	L&I's BWDA	Provided initial guidance and actions required by the local board relating to the procurement of one-stop operators.

**Public Comment**

L&I in collaboration with the Pennsylvania Workforce Development Board, commonwealth agency partners and local workforce system stakeholders developed this policy. This policy was made available for public review and comment by LWDBs, authorized administrators of WIOA partner programs and service providers, system stakeholders and the general public at large on May 10, 2019. Refer to *Appendix E: Epilogue* for public comments received and L&I responses.

## Appendix A: Related References

- [Public Law \(Pub. L.\) 113-128, Workforce Innovation and Opportunity Act \(WIOA\)](#)
- [20 Code of Federal Regulations \(CFR\), WIOA Final Rules and Regulations](#)
- [29 CFR Part 97, Monitoring and Reporting Program Performance](#)
- [Office of Management and Budget, or OMB, circulars including 2 CFR Part 200 et al, known as the \*Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards\*](#)
- [USDOL Employment and Training Administration's \(ETA\) Training and Employment Guidance Letter \(TEGL\) No. 19-14, \*Vision for the Workforce System and Initial Implementation of the Workforce Innovation and Opportunity Act\*](#)
- [TEGL No. 27-14, \*Workforce Innovation and Opportunity Act Transition Authority for Immediate Implementation of Governance Provisions\*](#)
- [TEGL No. 37-14, \*Update on Complying with Nondiscrimination Requirements: Discrimination Based on Gender Identity, Gender Expression and Sex Stereotyping Are Prohibited Forms of Sex Discrimination in the Workforce Development System\*](#)
- [TEGL No. 41-14, \*Workforce Innovation and Opportunity Act \(WIOA or Opportunity Act\) Title I Training Provider Eligibility Transition\*](#)
- [TEGL No. 3-15, \*Guidance on Services Provided Through the Adult and Dislocated Worker Program under Workforce Innovation and Opportunity Act \(WIOA or Opportunity Act\) and Wagner-Peyser, as Amended by WIOA, and Guidance for Transition to WIOA Services\*](#)
- [TEGL No. 4-15, \*Vision for the One-Stop Delivery System under the Workforce Innovation and Opportunity Act \(WIOA\)\*](#)
- [TEGL No. 8-15, \*Second Title I WIOA Youth Program Transition Guidance\*](#)
- [TEGL No. 15-16, \*Competitive Selection of One-Stop Operators\*](#)
- [USDOL Employment and Training Administration's Training and Employment Notice \(TEN\) No. 1-15, \*Promising Practices in Achieving Universal Access and Equal Opportunity: A Section 188 Disability Reference Guide\*](#)
- [Pennsylvania Workforce System Policies](#)

## Appendix B: One-Stop Operator Procurement

**General.** Local workforce development boards, local boards, or LWDBs, must competitively procure their workforce system operator(s). This procurement must meet the criteria as outlined in 20 CFR § 678.605 and this policy ensuring an efficient and effective process is in place for the selection of the operator. LWDBs must consider what is necessary to assure program partners and service providers are effectively served by the operator(s) with special regard given to Workforce Innovation and Opportunity Act, or WIOA, identified core program partners input and ensuring consistency with a regional or local workforce delivery system memorandum of understanding, or MOU, as applicable, the WIOA regional and local plan(s), and the PA CareerLink® system certification process and requirements. This appendix articulates procurement standards, process information, practices to be aware of and other considerations deemed essential for a successful operator procurement.

**Compliance.** The LWDB process for competitively procuring operators must comply with the principles of competitive procurement. Competitive procurement processes must be conducted in a full and open competition that promotes efficiency and effectiveness; ensures regular consideration of operator performance and costs and evaluates operator performance helping to ensure continuous improvement. LWDB procurement policy, procedure, process and practices must comply and be consistent with all applicable federal law, regulation (20 CFR §§ 678.600-635 and associated preamble), guidance, Office of Management & Budget, or OMB, circulars and the Uniform Guidance (2 CFR § 200.318-§ 200.326), as well as state law, policy and technical assistance regarding all stages of procurement activity including awarding of contracts and post-award activity for any federally-funded activity or program. It is highly recommended that LWDBs review U.S. DOL Employment and Training Administration's (ETA) Training and Employment Guidance Letter (TEGL) No. 15-16 *Competitive Selection of the One-Stop Operator*.

WIOA workforce system stakeholders are provided general procurement guidance within Pennsylvania Department of Labor & Industry, or L&I's, [Workforce System Policy \(WSP\) No. 03-2015, Financial Management Policy](#) and its attachment *Financial Management Guide*, or FMG. LWDBs should review the FMG's Chapter 10: Procurement and use this information in concert with the following operator-specific procurement standards, process, practices and other considerations.

**Operator Procurement Process.** The stages or phases of the procurement process are organized in the general order that each phase is addressed. The procurement process is described in multiple federal-level resources including WIOA and its regulations, the Uniform Guidance and 29 CFR Part 97. Another key reference is L&I's Workforce System Policy (WSP) No. 03-2015, Financial Management Policy and its attached FMG's Chapter 10: Procurement.

1. *Planning Phase* may include identifying need(s), conducting research, determining key factors to base a procurement solicitation (e.g. Request for Proposal, or RFP), developing evaluation and scoring factors, identifying scoring team and determining signatory authority.
2. *Release and Evaluation Phase* may include publicizing solicitation, bidders conferencing, collecting proposals, and evaluating and scoring proposals.
3. *Negotiation and Selection Phase* may include negotiating operator roles and responsibilities/performance levels/fair and reasonable profit/payment details/contract term including inclusion of option years and gain approval of authority(s) if applicable, making offer and obtaining acceptance, protesting process, certifying/designating one-stop operator and executing contract.
4. *Implementation Phase* may include post-award administration activities such as conducting oversight and monitoring, issuing invoices, making payments, monitoring performance and deliverables and evaluating/approving any contract modifications.

## Appendix B: One-Stop Operator Procurement

5. *Closeout Phase* may include reconciling costs/payments/performance goals with actual performance, securing/retaining participant and financial records and preparing closeout documents.

### Selected Operator Procurement Phase Elements.

- A. Procurement Planning Phase.** LWDBs will conduct appropriate preparation prior to drafting an operator's RFP or request for quotes, or RFQ. Using one or more preparation methods to improve the likelihood of a successful procurement should be considered as detailed in the FMG. Key elements include documents/recordings of preparation efforts, research results and conclusions drawn for federal or state inspection.

Key factors to consider:

- *Local (and/or regional) workforce system operations vision.*
  - *Roles and responsibilities.* The LWDB must determine the role(s) and responsibilities of the operator as referenced in this policy's section titled: *Roles, Responsibilities, and Limitations of the Operator*. The LWDB should deconstruct (to the greatest extent possible) what the roles and responsibilities will entail and break-down, by cost type, which responsibilities are administrative or programmatic.
  - *Internal Controls.* A description of the LWDB's plan to establish adequate internal controls addressing at a minimum, where firewalls will exist relating to employer of record and governance-operations conflicts. The LWDBs will also ensure every part of the procurement process is consistent with federal, state and local laws, regulations, policies and procedures. This process must not hinder free and open competition, create a disincentive to the provision of services to individuals with barriers to employment, or unfairly advantage one local workforce system partner program or program provider over any other.
  - *LWDB's code of conduct and conflicts of interest policy.*
  - *Benchmark Timeline.* The timeline will include key deliverables.
  - *Budget.* Operator costs compose most of the procurement budget. Two elements that affect operator costs greatly are the operator's roles and responsibilities.
  - *Evaluation.* A description of the LWDB's plan to evaluate the operator's performance.
  - *Identify availability.* A description of efforts made to identify the availability of potential eligible entities with appropriate experience and capacity to satisfy the LWDB's requirements.
  - *Entity Financial Fitness.* Eligible entities must meet appropriate incorporation requirements, demonstrate financial and fiscal accountability and provide proof of liability insurance.
  - *Method of Procurement.* A determination of the best method based on key factors.
  - *Procurement processes and bid criteria.* A description of how the procurement will be conducted, which includes the RFP/RFQ announcement and notification process, and the bid scoring selection criteria.
- B. Methods of Procurement.** Each LWDB must determine the appropriate method for procurement and follow proper procurement practices consistent with all applicable federal and state law, regulation, guidance, policy and procedure regarding procurement and one-stop operators, awarding of contracts for any WIOA-related or federally-funded activity or program and this policy.

## Appendix B: One-Stop Operator Procurement

TEGL No. 15-16 specifies that LWDBs may choose one of the two (2) permissible procurement methods: sealed bids or competitive proposals. However, L&I recommends using competitive proposals (2 CFR § 200.320(D)) over sealed bids.

In operator procurement, a “total projected budget” is defined as the total value of the operator contract and potential contracts. “Potential contracts” are all contracts associated with the originating operator procurement whether the original contract is modified, extended or optioned. If the operator procurement includes other WIOA program services being performed by the same entity also performing as the operator, then the value of those services is added to the operator value to derive the total projected budget.

If a LWDB’s total projected budget is less than the simplified acquisition threshold (currently set at \$150,000 by 48 CFR § 2.1), the LWDB may be eligible to employ small purchases procurement in order to procure the local area system operator(s). The LWDB must provide documentation demonstrating procurement preparation efforts including expected operator roles and responsibilities, and any other specifications developed regarding procurement consideration and pre-approval by L&I for small purchases procurement. Additionally, LWDBs using small purchases procurement must obtain at least three (3) written quotes from qualified bidders for the operator selection to be considered valid. The LWDB must contact the Director of Bureau of Workforce Development Administration, or BWDA, to discuss further details.

Where certain dire criteria are met, including multiple attempts to use a method of procurement promoting full and open competition, the LWDB may apply to L&I for the right to employ the sole source method of procurement (no-competition) to select an operator. The LWDB must contact the Director of BWDA to discuss further details.

### **Operator Costs.**

WIOA mandates the competitive procurement of, and offers funding flexibility for, the one-stop operator. Due to the nature of the roles and responsibilities associated with an operator, WIOA presumes there are costs associated with such an entity. LWDBs have flexibility determining the funding source(s) to support the operator (e.g., shared cost spread among all partners, local government general revenue and/or philanthropic sources).

- Costs associated with the system operator(s) will be both administrative and programmatic in nature. The contractual agreement between the LWDB and the operator must clearly identify the functions that are either administrative or programmatic regardless of the mechanism used in the procurement process. Additionally, such contracts must also include applied funding source(s).
- Administrative costs are defined as the allocable portion of the costs associated with specific functions and not related to the “direct provision of workforce investment services, including services to participants and employers” as detailed in 20 CFR § 683.215(b). Such costs are subject to the administrative cost limits (i.e., 10 percent of the WIOA program’s annual program year allocation).
- A LWDB cannot issue an RFP or RFQ that includes no funding or only includes nominal funding. An RFP or RFQ with no funding or nominal funding will restrict competition and will result in either no responses or a limited number of responses from entities already receiving Title I funds. Such an RFP or RFQ would violate the prohibition on noncompetitive pricing practices under 2 CFR § 200.319(a) and 29 CFR § 97.36(c)(1)(iii).
- The possibility of a purely “non-financial” operator does not exist; however, the LWDB may consider options to achieve the lowest operator cost possible given the goals and strategies the LWDB desires to

## Appendix B: One-Stop Operator Procurement

implement. LWDBs control the cost of an entity serving in the capacity of an operator by determining the scope of the operator's roles and responsibilities. A cost reduction strategy that may be used, in part, is the proposed employment of one-stop partner "in-kind" contributions to help fund the operator.

- LWDBs are required to develop a MOU with each of the one-stop partners. The MOU addresses the services to be provided by each partner program, as well as the shared costs (including infrastructure costs) associated with providing such services through the PA CareerLink® service delivery system. The MOU must include a summary of the operator(s) roles and responsibilities, a description of all cost associated with the operator(s) and how such costs will be funded.
- Operator shared service costs must be allocated according to the proportion of benefit received by each of the partners, consistent with the Federal law authorizing the partner's program, and consistent with all other applicable legal requirements, including Federal cost principles found in the Uniform Guidance or any corresponding similar regulation or ruling requiring that costs are reasonable, necessary and allocable.
- The Operating Budget, or OB, also formerly referred to Resource Sharing Agreement Budget, or RSAB, is a component of the MOU that articulates how the costs of the operator(s) will be apportioned amongst partner parties.
- Operator shared service costs must be periodically reconciled against actual costs incurred and adjusted accordingly. L&I reserves the right to request source documentation such as operator personnel timesheets and travel receipts to justify operator shared service costs identified on the quarterly OB-Financial Status Reports, or OB-FSR.
- LWDB(s) have the responsibility of operator procurement and evaluation. LWDB(s) are responsible for the costs/expenses incurred which may derive from procurement and evaluation processes, LWDB staff salary and expenses, and third-party involvement in the procurement. LWDB staff must provide L&I a detailed cost and price analysis to recoup one-stop operator procurement costs; contact BWDA Fiscal Services unit for more information.
- The entity that claims employer of record status for employees assigned to and/or associated with the roles and responsibilities of the operator(s) must assume the costs, expenses and salary of the employee. It is noted all costs, expenses and salary of such employees are a shared cost within the local workforce delivery system.

### Contracts.

- LWDBs must select the one-stop operator through a competitive process at least once every four (4) years. LWDBs are encouraged to award an initial one (1) year contract with an option to renew the duration, as well as other variables of the contract, up to a total of four (4) years.
- LWDBs must address each of the following operator specific elements in the final contract and the MOU:
  - Identify the entity/individual that will provide the operator roles and responsibilities
  - Identify the funding source(s) used for operator personnel expenses
  - List the roles and responsibilities of the operator, and
  - Appropriate placement of internal controls/firewalls and how they will be enforced
- All contracts or agreements between the operator and the LWDB must include the essential elements of a legally executed and binding written contract (i.e., Statement of Work, Authorized Officials and

## Appendix B: One-Stop Operator Procurement

Purpose, and additional contractual terms and conditions). LWDBs should review both Federal and state guidance for further information regarding required contracts elements.

- Contracts must address the operator evaluation and its key assessment elements such as the participating partner survey, statutory or regulatory requirements, aforementioned L&I requirements, or any other requirements developed by the LWDB or the Pennsylvania Workforce Development Board.
- LWDBs considering performance-based (i.e., *pay for performance*) contracts must provide written communication of interest to L&I prior to issuance of the request for proposal. This communication must meet requirements set forth at 20 CFR Part 683, Subpart E, *Performance-Based Contracting*, as well as Commonwealth financial policy.

### **Documentation and Record Keeping.**

The LWDB, or assignee, must retain and make available appropriate procurement process records and documentation. Federal and/or state reviewers must have access to documentation and associated records related to the actions taken to prepare for and execute each phase of the operator procurement process.

Documentation is required for several steps in the procurement process and is key for ensuring transparency. WIOA regulations at 20 CFR § 678.605(d) requires the entities conducting the procurement to prepare written documentation explaining the determination concerning the nature of the competitive process to be followed in selecting the one-stop operator(s). Furthermore, as referenced in Uniform Guidance (2 CFR § 200.318(i)), the entity must maintain sufficient records detailing the history of procurement. Such resources, as well as L&I's FMG, provide guidance on maintaining appropriate documentation of all procurement transactions. These records must include, but are not necessarily limited to the following:

- All proposals/bids received
- Ratings of those proposals
- Rationale for method of procurement
- Selection or rejection of proposals/bids
- Appeals and disputes
- The basis for the contract price

Record keeping requirements, as specified at 2 CFR § 200.333, are typically three years from the date of submission of the final expenditures report. LWDBs that make a sole source selection must prepare and maintain written documentation of the entire process as per 20 CFR § 678.610(b). Consistent with this policy, record keeping must include documentation of the LWDB's establishment of model-specific internal controls, with specific regard to firewalls and mechanisms, created to prevent real or perceived conflicts of interest. L&I reserves the right to review LWDB's record keeping ensuring internal controls are in place.

### **Operator Procurement Considerations.**

- LWDBs are required to have written policies and procedures. General and specific one-stop operator procurement policy and procedures must be consistent with WIOA, the Uniform Guidance and other similar federal regulations, L&I's Financial policy and this policy. The procurement practices must be deemed to satisfy the parameters of an open and fair competition and free of conflicts of interest.
- LWDBs must describe the expected roles, responsibilities and deliverables of the operator in the procurement request, proposals, and resulting contract(s).



## **Appendix B: One-Stop Operator Procurement**

- The procurement requests, proposals, and resulting contract(s) between the LWDB and the entity or entities selected to serve as the system operator(s), must describe the deliverables required of the system operator(s) demonstrating the efforts taken on behalf of all partners in the local system.
- Procurement practices such as “joint requests” for procuring operator(s) and WIOA title I-B service providers, use of the different methods of procurement, and detailing reasonable expectations, responsibilities and deliverables in the procurement request are detailed within the FMG.
- Although LWDBs may issue joint requests for procuring the operator, as well as WIOA title I-B services provider(s), L&I highly recommends separate procurement transactions.
- If a joint procurement transaction is elected and that transaction results in the selection of one entity serving as both the operator and a provider of WIOA title I-B services, then the LWDB must award separate contracts for each of the services to be provided (i.e., one contract for each operator(s) and different contracts for any provider(s) of services).

## Appendix C: Workforce Delivery System (WDS) Committee

The **Workforce Delivery System (WDS) Committee** is considered a best practice and it is recommended the practice be implemented by all local workforce development boards, or LWDBs. Workforce development system operations requires the cooperation of partners working together to help affect the LWDB's vision and goals. The committee is established to help ensure partner involvement in local PA CareerLink® system operations and use the experience and expertise of such individuals to provide the LWDB and the local system operator with information and recommendations. There are many local workforce delivery system topics and issues committee members can speak to with the proper level of authority. Some of the subjects the WDS committee are tasked with will create conflict of interest concerns; in these instances, affected committee members must remove themselves from the discussion and abstain from making recommendations or voting on the subject in question.

*Note:* If the LWDB desires to compete for and be selected as the one-stop operator, a WDS committee is required to be established and maintained per the guidance that follows.

*Note:* The following takes precedence over corresponding policy language, as appropriate.

**Membership.** The WDS committee must include a member of the LWDB who chairs the committee. A member of the WDS committee who is not a LWDB member must be selected as vice chair. The committee must include representation from the WIOA core programs, however other required partners may be asked to join the committee. WIOA core program partners and required partners must comprise a majority of the membership. WIOA Title I (Adult, Dislocated Worker, and Youth) must be represented by a member of the LWDB, not the service provider. Entities that are directly affiliated with the operator and staff to the LWDB and/or fiscal agent may not serve on the committee, but they may be called upon to offer information, reports, recommendations and consultation.

**Conflict of Interest.** If the LWDB is bidding on the operator role or is acting as the operator, then all WDS committee members who are also LWDB voting members must abstain from activities that are a conflict of interest or are a perceived conflict of interest. In these instances, the vice chair will assume the chair's responsibilities.

**Amended Definitions.** If the WDS Committee or a similar committee accounts for essential responsibilities described in this guidance is enacted in a local area, the following definitions are amended:

**Operator Evaluation** is a mechanism that is developed and used to assess an operator's performance and keep the LWDB apprised of such performance. The WDS committee consults during the development of the operator evaluation and reviews initial evaluation results offering the LWDB recommendations. The annual operator Evaluation must include but is not limited to collecting and reviewing contract provisions adherence; participating partner surveys; other performance measures developed by the LWDB and be consistent with PA CareerLink® certification requirements. Such evaluations could include examples of:

- Local one-stop center/system efficiency and effectiveness measures
- Measures associated with the performance of the local one-stop system partner programs
- Measures associated with the cost of the one-stop system; and
- Continuous improvement

**Participating partner survey** is a document allowing each partner within an operator's purview to evaluate the efficiency and effectiveness of the operator. The WDS committee helps develop the survey. The WDS committee will present the participating partner surveys results along with recommendations to the LWDB.

## Appendix C: Workforce Delivery System (WDS) Committee

The LWDB shall consider the survey results and committee recommendations, at a minimum, whenever the operator is being evaluated as described herein.

**Multiple operators in a single local workforce development area.** A LWDB in consultation with the chief elected official(s), or CEO(s), may develop a strategy that includes more than one operator for the local area. All operators within a local area must collaborate with each other to ensure uniformity of services and achievement of local goals throughout the local area. The rationale used to employ such a strategy must be approved and ratified by a majority vote of attending WDS Committee members.

**Workforce Delivery System (WDS) Committee Responsibilities.** On behalf of the LWDB, key responsibilities of the committee are to oversee operator activities and performance; ensure greater partner engagement and help resolve partner concerns; increase partner participation in activities such as local area planning, one-stop certification, implementation and delivery of program services and continuous improvement efforts. The WDS committee provides the LWDB insight and recommendations revolving around workforce delivery system operation oversight and operator procurement responsibilities. This committee must:

- Hold regular (Monthly and/or Quarterly) meetings
- Record summary notes of meeting proceedings and submit for full LWDB review (full LWDB is operationally defined as “all voting members of the local workforce development board”)
- At the behest of the LWDB Chair, present reports, information and recommendations to the full LWDB
- Analyze information provided by the federal and state entities regarding the workforce delivery system in order to develop recommendations
- Consider state-level and local area workforce delivery system issues and trends and makes recommendations if warranted
- Consider, develop and recommend local one-stop center certification criteria and requirements to the LWDB. If the LWDB is selected as an operator, this responsibility is transitioned to the Pennsylvania Workforce Development Board. Review components of the local workforce delivery system memorandum of understanding, or MOU, and helps resolve issues arising from the negotiation, modification and implementation of the MOU
- Consult with the entity charged with procuring the operator, provide procurement process recommendations and perform limited oversight of the operator procurement process by:
  - Collaborating with the CEO or his/her proxy and the entity charged with the operator procurement process to help determine funding sources and amounts as well as set financial and budget limits
  - Helping to define procurement variables such as operator roles and responsibilities, associated costs of the operator proper and other associated valuations such as operator staff costs prior to the drafting of a request for proposal, or RFP, or a request for quotes, or RFQ
  - Collaborating with the procurement entity to write and prepare the RFP or RFQ
  - Apprising RFP or RFQ timeline benchmark progress and procurement process progress
  - Collaborating with the procurement entity to craft responses to potential bidders’ questions
  - Completing other operator procurement responsibilities as deemed necessary by the LWDB Chair
- Present and review relevant reports that include but are not limited to: PA CareerLink® foot traffic reports that include referral information; customer (participant and employer) survey results; participating partner surveys; operator performance reports and the operator evaluation report

## Appendix C: Workforce Delivery System (WDS) Committee

- Review partner or service provider program goals and outcomes, local area performance accountability reports and other information to help gauge workforce delivery system efficacy
- Consider, develop and recommend corrective actions regarding operator, partner, service provider and/or delivery system deficiencies

The LWDB may charge this committee with additional responsibilities related to the operation and oversight of the service delivery system as necessary. Additional responsibilities must align with this policy and include firewall provisions designed to prevent an exchange of information or communication that can lead to a conflict of interest or the perception of a conflict. The following list of additional responsibilities is not exhaustive:

- Collaborate and participate in WIOA regional and local area planning
- Consider, develop and recommend one-stop center operational plans such as outreach plans
- Help draft the local workforce delivery system MOU
- Review the MOU's Infrastructure Funding Agreement and offer recommendations
- Review reports indicating the generation and expenditure of local area program income
- Review updates to the Operating Budget and completed Operating Budget Financial Status Reports
- Recommend the selection or termination an operator or career services provider

## Appendix D: Local Board as One-Stop Operator

*Note:* The following takes precedence over corresponding policy language, as appropriate.

### **General**

A local workforce development board, or local board, or LWDB, if approved by the governor and chief elected official, or CEO, as required in the Workforce Innovation and Opportunity Act, or WIOA, section 107(g)(2), may be eligible to be an operator. To help ensure the LWDB maintains the vision and strategic objectives as articulated in Pennsylvania's WIOA Combined Plan, as well as the LWDB's approved WIOA local plan, LWDB membership is required to consider and vote on a measure allowing the LWDB to make itself available for operator selection. LWDBs must still compete to be the one-stop operator in the local area and meet mandatory competition requirements in 20 CFR §§ 678.605(c) and 678.615(a), if appropriate fire walls and conflict of interest policies and procedures are in place. These policies and procedures must conform to the specifications of 20 CFR § 679.430 for demonstrating internal controls and preventing conflict of interest. In situations in which the outcome of the competitive process is the selection of the LWDB itself as the one-stop operator, the governor and the CEO must agree to the selection of the LWDB as required by WIOA sec. 107(g)(2).

### **Stipulations**

In cases where a LWDB desires to be the operator, WIOA requires the LWDB be held responsible and liable for all procurement-related costs that arise due to the LWDB participating in the procurement process. The LWDB must secure a qualified third-party entity to conduct the full competitive procurement process including selection and contract negotiation.

If the LWDB decides to participate in the procurement process used to select system operators, the LWDB is required to first establish a Workforce Delivery System (WDS) Committee. This committee provides procurement-related information and recommendations such as planning, development of the operator roles, responsibilities and criteria employed in the request and procurement implementation. Further information on the WDS Committee is presented in *Appendix C: Workforce Delivery System Committee*.

In cases where the LWDB is selected as the operator, WIOA and its regulations require limitations to certain statutory and regulatory roles and responsibilities accorded to the LWDB. The LWDB is held solely responsible and liable for costs that arise due to the LWDB's acceptance of performing the roles, responsibilities and duties of the operator and not being able to perform the duties normally accorded the LWDB. For example, the LWDB or its staff are not eligible to certify the local area's one-stop centers (§ 678.800(a)(3) and § 679.410(a)(3)). Another duty accorded the LWDB is the annual operator evaluation. This will need to be accomplished by a qualified third-party.

If the LWDB is selected to serve as the operator, the LWDB must modify the WIOA local plan to include:

- LWDB's strategic reasoning for why it chooses to be involved with the operational aspect of the local workforce system and the benefits it envisions for the local area
- Description of all operator roles, responsibilities and other duties
- Descriptions of internal control and conflict of interest measures
- Description of how the LWDB will ensure certain roles and responsibilities via statute and regulations accorded to the local board, but are no longer within the purview of the LWDB, will be accomplished by procured qualified third parties and/or the Pennsylvania Workforce Development Board as applicable.

There are three situations that will null and void the operator contract when a LWDB is selected as the operator: failure to comply with the contents of the request letter sent to the governor; failure to abide by any of the stipulations and conditions articulated within this policy; or if a valid sanction is imposed. The voiding of an operator contract triggers the commencement of a new operator procurement process.

## Appendix D: Local Board as One-Stop Operator

LWDBs interested in serving as the operator must gain the governor's approval by providing written communication of such interest to Pennsylvania Department of Labor & Industry, or L&I, no later than 90 days prior to the commencement of the operator procurement process. The request letter must include approval of the local area CEO demonstrated by inclusion of his/her signature within the letter. In circumstances where there is more than one local area included or more than one CEO, the letter must contain all necessary signatures.

### **Governor's Request Letter Requirements**

The request letter must address concerns and agree to certain stipulations as detailed below:

- Ensure LWDB compliance with the structural restriction conditions found in L&I's Local Governance policy
- Describe the LWDB's strategic objective(s) for assuming the role(s) of the operator and the benefits this will bring to the local area
- Describe how the local board will ensure open operator procurement and fair competition
- Provide the identity, credentials and point of contact information of a third-party entity selected to conduct the operator procurement and contract negotiation process
- Describe the measures, including internal controls and conflict of interest management, designed to ensure administrative and operational compliance, if selected
- Describe how one-stop center daily management will be accomplished, including conflict of interest and resolution processes, between partners and the operator, if selected
- Describe how the LWDB will ensure certain roles and responsibilities via statutes and regulations accorded to the local board (that are no longer within the purview of the LWDB) will be accomplished by procured third-parties as well as the expected additional cost associated with the local board bidding for the operator role and continuing cost if LWDB is selected as an operator, if selected
- Describe how the LWDB's oversight and monitoring of the one-stop delivery system will be enacted, if selected
- Describe how operator oversight and evaluation responsibilities will occur, if selected
- Indicate acceptance of the governor's approval conditions:
  - The LWDB, as operator, may have paid staff to act as PA CareerLink® center site administrators only. The operator will solely be held responsible and liable for any other staff costs thereby absolving the state, its agencies and assignees, the PA Workforce Development Board, and all entities party to the local workforce delivery system Memorandum of Understanding, or MOU, from providing financial and other contributions to support additional operator staff.
  - The third-party contractor conducting operator procurement must have an understanding of the local workforce development area required program partners to inform the drafting of an RFP/RFQ. The LWDB will organize, but not attend, a public meeting between the third-party contractor and required partners to gain a better understanding of the partner program goals and service coordination expectations.

### **Governor's Approval**

L&I will review the request letter and any additional information submitted upon receipt. A LWDB may be informed of the governor's final decision using two (2) potential methods. A decision will be rendered and

## **Appendix D: Local Board as One-Stop Operator**

communicated to the LWDB no later than 90 days after receipt of the request letter. Or, the LWDB's request may be presumed approved if at least 90 days has passed since the receipt of the request without receiving any decision or communication from L&I.

## Appendix E: Epilogue

The following public comments and Pennsylvania Department of Labor & Industry, or L&I, responses are borne from the posting of proposed changes to Workforce System Policy (WSP) No. 121-04, PA CareerLink® System operator for a public comment period commencing on May 10, 2019. The WSP provided additional guidance on the requirements for the selection of one-stop system operator(s). The public comments warranted conversations with those that submitted the public comments to L&I. Many of the concerns were incorporated into the proposed policy while other comments led to re-evaluating the proposed policy's various undesired implications. In the interim, L&I explored possible avenues to create a balanced policy that serves as many stakeholders as possible. The revised proposed policy reflects collaboration amongst key stakeholders including LWDBs, program partners and L&I leadership. To respect and honor the stakeholders that submitted public comments that helped to inform the newly revised proposed policy, L&I is publishing the comments and responses below. It is noted that the submitted public comments are organized to reflect the new proposed policy.

L&I appreciates the local workforce system stakeholders who contributed comments, and later, their time to collaborate with L&I.

### General Comment.

**Comment:** A commenter stated that it “would first like to express our support for revisions to the policy that provide additional flexibility for local boards to develop one-stop operator models tailored to the needs of their local areas. As an example, the revised WSP 121-04 removes Appendix D – Operator Categories and Models. [We] commend the Department for this change that will enable local boards to explore a wider range of potential operator models and be less confined to a prescribed list within this policy.”

**Response:** L&I appreciates the commenter's validation.

**Page 4. Who May be an Operator in the Local PA CareerLink® Service Delivery System, Subsection I –** *“The operator must be either an entity (public, private, or nonprofit) or a consortium of entities that, at a minimum, includes three or more of the required one-stop partners of demonstrated effectiveness as described in WIOA section 678.400. All entities that are party to the composition of the entity designated as the operator must sign the contract between the LWDB and the selected operator.”*

**Comment:** A commenter stated, “The revised WSP 121-04 says that the Operator may be a “single entity or a consortium of entities.” Further, the policy states that “if a consortium of entities is composed of PA CareerLink® partners, it must include a minimum of three (3) of the required partners in the local PA CareerLink® system.”

While [we] recognize the potential value of a consortium operator model of PA CareerLink® partners, the Department's exclusion of LWDBs on the list of eligible entities who can compete to be the Operator would likely prohibit the required Title I Adult/Dislocated Worker (DW) partner in a local area from participating in the consortium. In Pennsylvania, local boards, not the Title I Adult/DW service provider, are generally the required partner for Title I Adult/DW programs.

[We] recommend the Department reconsider policy that would permit a consortium of WIOA partners to serve as the one-stop operator while prohibiting the Title I Adult/DW partner from participating in this consortium.”

**Response:** L&I disagrees with the commenter's recommendation. 20 CFR 678.600(a) explains, “One-stop operators may be a single entity (public, private, or nonprofit) or a consortium of entities. If the consortium of entities is one of one-stop partners, it must include a minimum of three of the one-stop partners described in § 678.400”. Additionally, the commonwealth acknowledges the LWDB as the WIOA Title I Adult and Dislocated Worker programs' required partner, as such, the LWDB Chair, LWDB member or a designated proxy may



## Appendix E: Epilogue

represent the programs. No change was made to this portion of the policy.

### **Page 4. Who May be an operator in the Local PA CareerLink® Service Delivery System, Subsection III – “The types of entities that may be an operator include....”**

**Comment:** A commenter wrote, “The revised WSP 121-04 states “Local workforce development boards...are not eligible to be an Operator.” However, per WIOA Final Rule § 679.410, the local board may be selected as a one-stop operator through sole source procurement or through successful competition, noting that “the chief elected official in the local area and the Governor must agree to the selection”. Circumstances exist in which this type of operator model could be cost-effective and reduce administrative burden within one-stop centers. Such a model may also make the most sense for workforce areas with a limited number of entities competing to be the operator.

While [we] recognize such requirements are not imposed arbitrarily, setting broad restrictions on one-stop operator procurement hampers the ability of local boards to explore or pilot different program models that make the most sense for their unique workforce area. [We] also understand that decisions to implement such models should be made in cooperation and with the approval of the Governor and our local elected officials. Though potential conflict of interest risks may exist in situations where the local board serves as the Operator, federal guidance also affirms that these challenges can be resolved. TEGL 15-16 says, “When the entity serving as the one-stop operator is also serving in a different role within the one-stop delivery system (as, for example, when a Local WDB serves as the one-stop operator), the one-stop operator may perform some or all of these functions, but only if it has established sufficient firewalls and conflict of interest policies and procedures.”

[We] recommend that, rather than prohibiting local boards from competing to be the one-stop operator in all instances, the Department should engage local boards in a process to establish the criteria, firewalls, and conflict of interest procedures that must be in place prior to approving this model.”

**Response:** L&I concluded allowing the LWDB to bid on the operator role and perform the role if selected as a result of the procurement is a lawful activity under WIOA. The practice had not been permitted to date due to repeated conflict of interest and internal control concerns that have taken place. Additionally, some PA CareerLink® partners are of the belief that local workforce delivery systems as a whole, and the partners in particular, would not be served well if the LWDB were to be the operator. Despite these concerns, L&I has put into place an avenue for a LWDB to bid upon, and to serve, as an operator. L&I has revised multiple sections of the proposed operator policy accordingly. In addition, *Appendix C: Workforce Delivery System Committee* and *Appendix D: Local Board as One-Stop Operator* were added to provide additional guidance and technical assistance in the event a LWDB considers bidding for the operator role and if selected perform suitably as the operator.

### **Page 5. Who May be an Operator in the Local PA CareerLink® Service Delivery System, Subsection IV – “Workforce development system structure exception requirements apply to any eligible entity (i.e., LWDB, county entity, commission or corporation) that has been, or will be, selected to perform more than one (1) of the following administrative or programmatic functions: LWDB, local area or planning region fiscal agent, staff to the LWDB, operator, or direct provider of workforce-related services or activities. Refer to L&I’s Local Governance Policy WSP No. 02-2015 for additional guidance if a workforce development system structural issue occurs.”**

**Comment:** A commenter wrote, upon “reviewing WSP No. 02-2015, December 18, 2015 page 5 F.2. “the chief elected official(s), in collaboration with the local workforce development board, must submit a written request for a structure exception to the Department. This must happen every two years in conjunction with the

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development of the Local Plan or Local Plan modification.” Does a separate request need to be submitted by the CEO & the WDB when the structure exemption is fully described in the local plan (submitted every four years) or as modified (every two years)?”

**Response:** Despite being described in the WIOA local plan, a local workforce development area, or LWDA, desiring a structural exception must provide the commonwealth a separate request if the exception is active. The commonwealth requires a separate written request for a workforce development system structure exemption for different reasons. Most importantly, specific terms and conditions are created and memorialized during the negotiation between L&I and the requesting LWDA. It is through the separate request that the commonwealth and LWDA can review for potential modification the aforementioned terms and conditions. Local Governance Policy WSP No. 02-2015 provides detailed guidance for the necessity of a structural exception as well as instruction for its attainment. As a condition of maintaining the structural exception, the LWDA CEO and LWDB agree to communicate to stakeholders the existence of a structural exception, what the exception permits and how the LWDA is composed by way of an organizational chart through the WIOA local plan; detailed terms and conditions are not communicated.

**Page 6. Roles, Responsibilities and Limitations of the Operator, Subsection II. Additional Role(s), B) Additional Role- Managing PA CareerLink® Service Delivery Operations {formerly paragraph 4—but was removed} – “If the one-stop center is assigned an on-site center manager then the operator’s functional supervision role is assumed by the one-stop center manager; or if deemed required by the operator and local board, a temporary on-site center manager assumes the functional supervision role. The individual serving as an on-site center manager must have the respect of the program partners. If a majority of the partners that are party to the MOU deem the individual selected to be the on-site center manager unacceptable the local board and the operator must mutually select another individual.”**

**Comment:** A commenter stated, “Not all partners contribute equally to the shared costs of the (PA) CareerLink® and therefore a simple “majority rule” does not reflect the level of commitment of the various partners. We strongly believe that this oversight responsibility should be a local board decision based on input from all partners. Such local oversight is a major function of Local Workforce Development Boards. This responsibility should be a local board decision based on input from all partners. Language to this effect should be included in all related agreements, including the MOU.”

**Response:** L&I agrees with the commenter’s statement that LWDBs are tasked the oversight function for the local area workforce delivery system, hence, the one-stop operator as well [see 20 CFR 679.370(i)]. L&I further agrees that the LWDB should make decisions based, in part, from input from the partners and language to this effect should be included in the MOU. L&I has removed policy language that would have granted partners the ability to require the LWDB and operator to replace an on-site center manager.

It should be noted that L&I disagrees with commenter’s argument that one-stop partners are not equal, or a partner’s funding contribution should equate to a partner’s scale of accommodation given. The one-stop partners [see 20 CFR 678.400 through 678.410] are signatories to the MOU [see 20 CFR 678.500]. partners contribute to one-stop infrastructure funding and shared costs [see 20 CFR 678.755 and 760] in a manner consistent to each partner in proportion to its use of the one-stop center, relative to benefits received, and as delineated in the MOU. In other words, equality is based on a partner’s contribution relative to its proportionate use and relative benefit derived from the local area’s one-stop system; not the overall amount a partner contributes. It is recognized that some program partners are more active in the one-stop center and contribute greater funds; however, all one-stop program partners are considered equal as each partner provides appropriate contributions accordingly.

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### Page 7. Roles, Responsibilities and Limitations of the Operator, Subsection III. Responsibilities of the Operator, Administration.

**Comment:** Regarding the third bullet, a commenter requested, “please define *annual one-stop center operation plan*.”

**Response:** L&I once maintained a one-stop certification policy that included many elements that are no longer articulated in the current one-stop certification policy. One of those eliminated elements was the creation and maintenance of a one-stop center operation plan. It is still considered a best practice for the operator, in concert with the partners, service providers and other stakeholders, to develop and maintain a one-stop center operational plan. The proposed operator policy has been revised to read: “*Develops procedures for one-stop service location operations in partnership with stakeholders.*”

**Comment:** The fifth bullet, “*Negotiates with Partners and service providers regarding expenses related to space, occupancy, shared costs and other costs associated with the Operator and one-stop delivery system.*” A commenter suggested, “Wouldn’t such negotiations be conducted by the WDB’s fiscal agent, not the Operator?”

**Response:** L&I appreciates the commenter’s clarifying question. The proposed operator policy lists many additional responsibilities the operator may be tasked with by the LWDB. The LWDB is responsible for the development, negotiation and maintenance of the MOU. It is recognized LWDBs rely upon the expertise of the local board staff, and if designated, the fiscal agent, to assist in the MOU process. Operators are uniquely situated to assist the LWDB during the MOU process due in large part to the fact that the operator coordinates the one-stop partners and service providers program services. The operator’s knowledge and expertise goes beyond the coordination of program services. Pertaining to one-stop center space, occupancy, shared and other costs the operator is a valuable resource for the LWDB when it is engaged in the MOU process. Many LWDBs have tasked the operator to be involved in the MOU process, including negotiating directly with partners. In light of this comment, L&I has edited the proposed policy for greater clarity: “*In concert with the LWDB and/or assigned local area staff, negotiates with partners and service providers regarding expenses related to space, occupancy, shared costs and other costs associated with the operator and one-stop delivery system*”.

### Page 7. Roles, Responsibilities and Limitations of the Operator, Subsection III. Responsibilities of the Operator, Coordination.

**Comment:** The ninth bullet, “*Insures that an effective customer referral mechanism is in place and monitors usage*”. A commenter inquired, “How is the Operator to monitor referrals from OVR and Title II when they are not using the CWDS referral system?”

**Response:** L&I thanks the commenter for this question. The proposed operator policy lists many additional responsibilities the operator may be tasked with by the LWDB. The operator’s lawful mandatory role is the coordination of one-stop program services. The commenter identifies the commonwealth’s public workforce development system of record (i.e. CWDS) and its customer referral function; the commenter also specifies some partners do not employ the customer referral function. L&I acknowledges some partners are unable to use the referral function for various reasons such as a limitation in the program’s authorizing language or the requirement to employ a different system of record. Nonetheless, the operator is tasked with the responsibility for on-going and daily one-stop center operations; this responsibility includes ensuring that customers receive seamless program services to the best ability of all concerned. Seamless program services is best achieved

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through effective referral mechanisms that supplement the CWDS referral function. Each local area must accept the challenge to devise appropriate referral methods to accomplish the goal of seamless program services.

### **Page 8. Roles, Responsibilities and Limitations of the Operator, Subsection III. Responsibilities of the Operator, Managerial.**

**Comment:** The seventh bullet, *“Helps ensure L&I’s ‘Discrimination Plan’ is enacted and maintained, as well as ensuring that relevant equal opportunity and civil rights measures are enforced.”* A commenter suggested, *“Shouldn’t this be Non-Discrimination Plan? And, when will that plan be final and distributed to the local areas?”*

**Response:** L&I concurs with the commenter that the phrase “Discrimination Plan” was mistakenly listed. The proposed policy narrative was edited to reflect the proper terminology: *“Reviews and enacts the L&I’s Non-Discrimination Plan, or NDP”*. The commenter may contact L&I’s Office of Equal Opportunity, or OEO, and request a copy of the NDP.

**Page 8. Roles, Responsibilities and Limitations of the Operator, Subsection IV. Limitations –** *“The operator may not perform the following functions: convene system stakeholders to assist in the development of the WIOA local plan; prepare and submit WIOA local plans; be responsible for oversight of itself or other operators; manage or participate in the competitive selection process for the operator; select or terminate an operator, nor WIOA career services, and youth providers; negotiate local and/or regional performance accountability measures; or develop and submit an operator budget, but may provide requested financial records to the LWDB.”*

**Comment:** A commenter inquired if an operator budget was the RSAB.

**Response:** Yes, L&I concurs and is using the WIOA term “operating budget” in lieu of “resource sharing agreement budget”. “Operating budget” has also been incorporated into the updated memorandum of understanding policy as well as other related policies and supporting documents. Incidentally, the former proposed operator policy mistakenly used “operator budget” instead of the correct term “operating budget”. The current proposed operator policy has corrected the term.

**Page 14. Appendix B: One-Stop Procurement, Operator Costs. 9<sup>th</sup> bullet point –** *“LWDB(s) have the responsibility of operator procurement and evaluation. LWDB(s) are responsible for the costs/expenses incurred which may derive from procurement and evaluation processes, LWDB staff salary and expenses, and third-party involvement in the procurement. LWDB staff must provide L&I a detailed cost and price analysis to recoup any one-stop operator procurement costs.”*

**Comment:** A commenter requested clarification, “How and from whom would a local area recoup procurement costs?”

**Response:** Thank you for your question. For detailed guidance on recouping expenses associated with the procurement of the operator it is recommended LWDBs contact L&I’s Bureau of Workforce Development Administration Fiscal Services Unit.