

DIRECTIVE
WORKFORCE SERVICES

Number: WSD09-2

Date: July 30, 2009

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TO: WORKFORCE DEVELOPMENT COMMUNITY

SUBJECT: IMPLEMENTATION OF WIA SUMMER YOUTH PROGRAM
PROCUREMENT WAIVER

EXECUTIVE SUMMARY:

Purpose:

The purpose of this directive is to convey policy and procedural information pertaining to the waiver granted to the State of California under the Workforce Investment Act (WIA) of 1998, which relates to the procurement requirements for the American Recovery and Reinvestment Act (ARRA) funded summer youth program component. Specifically, this waiver allows local areas to conduct an expedited process for selecting youth service providers via limited competition, and further allows local areas to expand existing competitively procured contracts by up to 150 percent of the dollar amount of the original contract. This waiver is effective through September 30, 2009 and does not apply to any other aspect of the WIA program.

Scope:

This directive applies to the 49 Local Workforce Investment Areas (LWIA) and all other recipients of WIA funding (including ARRA).

Effective Date:

This directive is effective upon release.

REFERENCES:

- WIA Section 123
- ARRA of 2009
- Title 20 Code of Federal Regulations (CFR) 664.610
- Title 29 CFR Sections 95.41-48 and 97.36

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- USDOL TEGL 14-08, Guidance for Implementation of the Workforce Investment Act and Wagner-Peyser Act Funding in the American Recovery and Reinvestment Act of 2009 (ARRA) and State Planning Requirements for Program Year 2009 (March 18, 2009)
- Workforce Services Directive WSD08-5, Local Plan Modifications Program Year (PY) 2008-09 (September 24, 2008)

STATE-IMPOSED REQUIREMENTS:

This directive contains only State-imposed requirements.

FILING INSTRUCTIONS:

This directive finalizes Workforce Services Draft Directive WSDD-24, issued for comment on July 6, 2009. The Workforce Services Division received no comments during the draft comment period. Retain this directive until further notice.

BACKGROUND:

On June 15, 2009, the State of California received approval for its request to waive certain requirements under WIA Section 123 and Title 20 CFR 664.610. Under this section of the WIA and federal regulations, the Local Workforce Investment Boards (LWIB) are required to identify eligible providers of youth activities by awarding grants or contracts on a competitive basis. Additionally, Title 29 CFR 97.36 and 29 CFR 95.41-48, provide additional guidance regarding the requirements for the competitive bidding process for awarding grants and contracts.

The above referenced regulations represent a significant administrative burden to LWIAs attempting to comply with the intent of ARRA due largely to the fact that current procurement rules require extensive administrative processes for making awards to contractors. In addition, TEGL 14-08, Sections 16(A) and 16(B), contain language which strongly encourages states to use as much of the youth funding allocated under ARRA as possible to operate expanded summer youth employment opportunities during the summer of 2009, which runs from May 1, 2009, through September 30, 2009. This TEGL also advises the states that they may request certain waivers to facilitate the implementation of these funding provisions. Consistent with this guidance, the State sought a waiver in order to: (1) expedite the delivery of services under the WIA youth summer component of ARRA by conducting an expedited procurement process to select youth providers using limited competition; and (2) to expand existing competitively procured contracts by up to 150 percent of the dollar amount of the original awarded contract.

POLICY AND PROCEDURES:

California has been granted a waiver of the requirements under WIA section 123 and Title 20 CFR 664.610 which require that providers of summer youth employment opportunities be selected on a competitive basis. This approved waiver is effective for

~ I N A C T I V E 9/28/12 ~

the 2009 summer youth employment component of ARRA and does not apply to any other aspect of the WIA program.

ACTION:

Implementation of these waivers could affect locally established policies and procedures. If programmatic changes occur, local areas may need to modify the job training plan. Please follow instructions outlined in [WSD08-5](#), Local Plan Modifications PY 2008-09.

Please bring this directive to the attention of all relevant parties.

INQUIRIES:

If you have any questions, please contact your [Regional Advisor](#) at (916) 654-7799.

/S/ BOB HERMSMEIER
Chief
Workforce Services Division

Attachment

U.S. Department of Labor

JUN 15 2009

Employment and Training Administration
200 Constitution Avenue, N.W.
Washington, D.C. 20210



The Honorable Arnold Schwarzenegger
Governor of California
State Capitol
Sacramento, California 95814

Dear Governor Schwarzenegger:

The Employment and Training Administration (ETA) is pleased to be able to respond positively to your request for waivers of statutory and regulatory requirements under the Workforce Investment Act (WIA). This action is taken under the Secretary's authority to waive certain requirements of WIA Title I, Subtitles B and E, and sections 8-10 of the Wagner-Peyser Act. The requests are written in the format identified in WIA section 189(i)(4)(B) and 20 CFR 661.420(c), and appear to meet the standard for approval at 20 CFR 661.420(e). The following is the disposition of the State's submission (copy enclosed).

Requested Waiver: Waiver of the requirement under WIA section 123 and 20 CFR 664.610 regarding competitive selection of providers of youth activities.

The State has requested a waiver of the requirements under WIA section 123 and 20 CFR 664.610, stating that providers of summer youth employment opportunities must be selected by awarding a grant or contract on a competitive basis. The State seeks the waiver to allow local areas to use local procedures to: 1) expand existing competitively procured contracts; and 2) conduct an expedited, limited competition to select service providers.

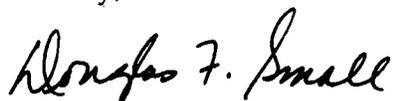
When submitting a waiver request, states must provide detailed justification for the waiver, describe reasonable accountability safeguards against unfair procurement practices, assure compliance with state and local procurement laws and policies, and describe how states will publicly announce summer employment providers, as indicated by the transparency provisions in the American Recovery and Reinvestment Act of 2009 (Recovery Act). See ETA Training and Employment Guidance Letter (TEGL) No. 14-08, Section 19, issued on March 18, 2009. The State's written request meets the ETA requirements outlined above. The waiver is intended to allow the State to select as quickly as possible the service providers necessary to develop and implement summer youth employment opportunities for the summer of 2009. The requested waiver is granted through September 30, 2009, to expand existing competitively procured contracts and conduct an expedited, limited competition to select service providers.

The waiver is only applicable to WIA Youth program funds made available through the Recovery Act, and only applies to the summer employment program element. If a limited competition is used to select service providers, the limited competition must be among service providers with proven records of success in providing youth services. The waiver is not to be construed as ETA approval of the process of selection, but rather approval under this waiver to use this procedure as a method of selecting summer youth employment providers, provided that the procedure meets Office of Management and Budget requirements (codified in 29 CFR Parts 95.40-95.48 and 97.36) and state and local procurement laws and policies.

The approved waivers are incorporated by reference into the State's WIA Grant Agreement, as provided for under paragraph 3 of the executed Agreement, and this constitutes a modification of the State Plan. A copy of this letter should be filed with the State's WIA Grant Agreement and the approved State Plan. In addition, we encourage the State to address the impact this waiver has had on the State's performance in the WIA annual performance report, due on October 1 of each year.

We look forward to continuing our partnership with you and achieving better workforce outcomes. If you have any questions, please do not hesitate to call me at (202) 693-2700, or contact your State's Federal Project Officer in the Regional Office.

Sincerely,



Douglas F. Small
Deputy Assistant Secretary

Enclosure

cc: Ralph Zackheim, Federal Project Officer for California, ETA San Francisco Regional Office