

SELECTION OF AJCC OPERATORS AND CAREER SERVICES PROVIDERS

EXECUTIVE SUMMARY

This policy provides the guidance and establishes the procedures regarding the selection of America's Job Center of CaliforniaSM (AJCC) Operators and *Workforce Innovation and Opportunity Act* (WIOA) Adult and Dislocated Worker Career Services Providers. This policy applies to all Local Workforce Development Boards (Local Board), and is effective on date of issuance.

This policy contains no state-imposed requirements.

This Directive finalizes Workforce Services Draft Directive, Selection of AJCC Operators and Career Services Providers (WSDD-207), issued for comment on January 24, 2020. The Workforce Development community submitted two comments during the draft comment period. A summary of comments is provided as Attachment 3.

This Directive supersedes Workforce Services Directive *Selection of AJCC Operators and Career Services Providers* (WSD16-14), dated December 19, 2016.

Retain this Directive until further notice.

REFERENCES

- WIOA (Public Law 113-128)
- Title 2 *Code of Federal Regulations* (CFR) Part 200: "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" (Uniform Guidance)
- Title 2 CFR Part 2900: "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" (Department of Labor Exceptions)
- Title 20 CFR WIOA, "Department of Labor; Final Rule"
- Title 34 CFR WIOA, "Joint Rule for Unified and Combined State Plans, Performance Accountability, and the One-Stop System Joint Provisions; Final Rule"
- Training and Employment Guidance Letter (TEGL) 15-16, Subject: *Competitive Selection of One-Stop Operators* (January 17, 2017)

The EDD is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities.

BACKGROUND

The AJCC locations are the core of California's workforce system. The AJCC Operators and Adult and Dislocated Worker Career Services Providers play a critical role to ensure that AJCCs are serving as all-inclusive access points to education and training programs for a wide range of customers.

Local Boards are required to conduct an open and competitive process to select their AJCC Operators (WIOA Section 121[d][2][A]). The Local Board, with the agreement of the Chief Elected Official and the Governor, may provide Adult and Dislocated Worker Career Services, or by awarding contracts. Although not required by statute, Local Boards are encouraged to use a competitive process to select their Adult and Dislocated Worker Career Services Providers, similar to the AJCC Operator, to promote efficiency and effectiveness of these roles by regularly examining performance and costs.

POLICY AND PROCEDURES

The AJCC Operators and the Adult and Dislocated Worker Career Services Providers fulfill two distinct and separate roles within the local AJCC system. These roles may be filled by the same entity or different entities based on the Local Board's determination to meet the needs of its customers and demographic area, however the roles must be clearly articulated as part of the competitive procurement and selection processes.

In California, AJCC Operators are responsible for coordinating service delivery among all AJCC partners and service providers within the Local Workforce Development Area (Local Area). By having the AJCC Operator act as the local service delivery coordinator, it allows Local Boards to focus on strategic planning and developing partnerships at the local and regional level.

Roles and Responsibilities

The role of the AJCC Operator includes:

- Coordinating the service delivery of required AJCC partners and service providers.
- Ensuring the implementation of partner responsibilities and contributions agreed upon in the Memorandum of Understanding.

The role of the Adult and Dislocated Worker Career Services Provider includes:

- Providing basic career services including but not limited to participant intake, orientations, initial assessments, employment services, and referrals to other partners and services.

- Providing individualized career services including but not limited to comprehensive and specialized assessments, case management, individual employment plans, career planning, and vocational counseling.
- Managing the daily operations in coordination with local fiscal agents for the lease, utilities, and other property activities in support of AJCC premises.
- Managing the hours of operation for AJCCs.

The responsibilities of both the AJCC Operator and Adult and Dislocated Worker Career Services Provider includes:

- Reporting to Local Boards on operations, performance, and continuous improvement recommendations.
- Implementing policies established by Local Boards.
- Adhering to all applicable federal and state guidance.

Local Boards may also choose to regionally select an AJCC Operator or Adult and Dislocated Worker Career Services Provider to align regional planning efforts, if operational conditions make it feasible. Selecting one AJCC Operator or Adult and Dislocated Worker Career Services Provider for all of the Local Boards in a Regional Planning Unit may help align, coordinate, and integrate programs and services on a regional basis.

It is important to note that there are certain restrictions Local Boards must adhere to when defining the AJCC Operator role. Within the defined roles and responsibilities, the AJCC Operator may not perform any of the following:

- Convene system stakeholders to assist in the development of the local plan.
- Prepare and submit local plans.
- Be responsible for oversight of itself.
- Manage or significantly participate in the competitive selection process for AJCC Operators.
- Select or terminate AJCC Operators, Adult and Dislocated Worker Career Services Providers, and Youth Service Providers.
- Negotiate local performance accountability measures.
- Develop and submit budget for activities of the Local Board in the Local Area.

If the entity serving as the AJCC Operator also serves in a different capacity within the AJCC service delivery system (e.g. Local Board support), it may perform some or all of the functions listed above only when acting in its other role as long as there are clearly established firewalls and conflict of interest policies and procedures in place that conform with Title 20 CFR Section 679.430 (Title 20 CFR Section 678.620).

Definitions

For the purposes of this directive, the following definitions apply:

Conflict of Interest – An employee, officer, agent, or any member of the organization that has interest in a financial gain or tangible benefit and who participates in the selection, award, or administration of a contract supported by a federal award (Uniform Guidance Section 200.318[c][1]).

Firewall – An established policy or procedure that acts as a barrier or protection against an undesirable influence, outcome, or authority. Examples of firewalls include but are not limited to organizational arrangements that provide clear separation of duties and responsibilities, reporting hierarchy of managers and staff that provide clear separation between job duties and responsibilities, and conflict of interest/confidentiality/disclosure agreements.

Administrative Entity – a unit of local government, corporation, or agency designated by a Chief Elected Official (CEO) to oversee and administer WIOA in the Local Area.

Internal Control – A process designed to provide reasonable assurance regarding the achievement of objectives in the following categories:

- Effectiveness and efficiency of operations.
- Reliability of reporting for internal and external use.
- Compliance with applicable laws and regulations.
(Uniform Guidance Section 200.61)

Selection of AJCC Operator

Local Boards must select their AJCC Operator through a competitive process at least once every four years (WIOA Section 121[d][2][A]). As part of that competitive process, Local Boards are required to clearly articulate the expected role(s) and responsibilities of the AJCC Operator (Title 20 CFR Section 678.620[a]).

AJCC Operators may be a single public, private, or non-profit entity or consortium of entities. However, if a consortium of entities consists of AJCC partners, it must include a minimum of three of the required AJCC partners listed in WIOA Section 121(b)(1).

The types of entities eligible to be an AJCC Operator include:

- An institution of higher education.
- An employment service state agency established under the *Wagner-Peyser Act*.
- A community-based organization, nonprofit organization, or workforce intermediary.
- A private for-profit entity.
- A government agency or governmental unit, such as, local or county governments, school districts, state agencies, and federal WIOA partners.
- Another interested organization or entity, which may include a local chamber of commerce or other business organization, or a labor organization.
(WIOA Section 121[d][2][B])

Local Boards must ensure that, in carrying out WIOA programs and activities, AJCC Operators adhere to the following (Title 20 CFR Section 678.600):

- Disclose any potential conflicts of interest arising from the relations of the AJCC Operator with particular training service providers or other service providers in accordance with Uniform Guidance Section 200.318.
- Do not establish practices that create disincentives to providing services to individuals with barriers to employment who may require longer-term services, such as intensive employment, training, and education services.
- Comply with federal regulations and procurement policies relating to the calculation and use of profits as outlined in Uniform Guidance.
- Adhere to any applicable firewalls or internal controls.

Procurement Standards

When selecting an AJCC Operator, Local Boards are required to fully adhere to the federal procurement standards outlined in Uniform Guidance Sections 200.318-200.326, as well as their local procurement policies.

Although the intent of WIOA is for all Local Boards to procure their AJCC Operators through a full and open competitive process, the Uniform Guidance allows for very limited instances in which alternate procurement methods may be allowed, if substantial justification is provided.

The following are allowable procurement processes under Uniform Guidance.

- Sealed Bid – Uniform Guidance Section 200.320(c).
- Competitive Proposals – Uniform Guidance Section 200.320(d).
- Sole Source – Uniform Guidance Section 200.320(f):
 - The AJCC Operator services are only available from a single source.
 - The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation.
 - After solicitation from a number of sources, competition is determined to be inadequate.

Whichever procurement method is used, Local Boards must retain extensive written documentation explaining the determination of the competitive process followed in selecting an AJCC operator. (20 CFR 678.605[d] and 678.610[b]).

Local Boards must also make available to the public, through electronic means and open meetings, information regarding their selection of AJCC Operators (WIOA Section 107[e]).

Once the competitive process is completed and an AJCC operator is selected, the operator must execute a legally binding agreement. All contracts, agreements, or Memorandums of Understanding must include at a minimum the following elements:

- Statement of Work
- Authorized Officials and Purpose
- Additional contractual terms and conditions

All AJCC Operators must be in place and operating in the AJCCs no later than **July 1, 2021**.

Conflict of Interest and Firewalls

A Local Board or administrative entity who seeks to compete to be the AJCC Operator must arrange for a neutral third party to conduct the competitive process. The third party may be a consultant, professional, outside government agency, or other independent entity. The Local Board must ensure that the third party does not participate in the competition by bidding, competing, or having any financial interest in the outcome of the procurement.

Local Boards who use a third party to conduct the competitive process must create a firewall in its procurement policy that only allows the Local Board to contribute the necessary and relevant federal, state, and local procurement requirements to the third party for them to conduct the competitive process. This information must be furnished to the third party prior to the start of the procurement process. It is imperative to note that the Local Board is prohibited from drafting specifications, developing contract requirements, statements of work, or other procurement related documents.

Local Board Request for Approval to be an AJCC Operator

If a Local Board or administrative entity competes to serve as the AJCC Operator and is selected through an appropriate procurement process, the Local Board may be designated as an AJCC Operator only with the agreement of the CEO and the Governor (WIOA 107[g][2]). In order to be considered by the Governor for designation as an AJCC Operator, the CEO must submit a Request for Approval to be an AJCC Operator (Attachment 1) application along with the required supporting documentation to the California Workforce Development Board (CWDB) by **March 1, 2021**, through the following method:

Email: CWDBPolicyUnit@cwdb.ca.gov

Subject line: AJCC Operator Application

The local CEO will be notified in writing by **May 1, 2021**, regarding the approval or denial of the proposed Request for Approval. If approved, the designation will be effective immediately.

Selection of Adult and Dislocated Worker Career Service Providers

Local Boards are responsible for identifying eligible Adult and Dislocated Worker Career Services Providers. The WIOA Section 107(d)(10)(D) states that if the AJCC Operator does not provide the Adult and Dislocated Worker Career Services described in Section 134(c)(2), the Local Board must identify eligible providers through awarding contracts.

If an AJCC Operator wishes to also serve as the Adult and Dislocated Worker Career Services Provider they must have appropriate firewalls in place between the staff providing services, the staff responsible for oversight and monitoring of services, and the Local Board. The firewalls must conform to Title 20 CFR Section 679.430 for demonstrating internal controls and preventing conflicts of interests.

A Local Board may avoid a conflict of interest by establishing appropriate firewalls such as a requirement for an outside entity or third party to conduct the competition. Outsourcing the entire process to an alternate entity would be the best practice in this circumstance to avoid a conflict of interest.

All Adult and Dislocated Worker Career Services Providers must be in place and operating in the AJCCs no later than **July 1, 2021**.

Request for Approval to be Adult and Dislocated Worker Career Services Provider

A Local Board or administrative entity may be designated as an Adult and Dislocated Worker Career Services Provider only with the approval of the CEO and the Governor (WIOA Section 107[g][2] and Title 20 CFR Section 679.410[b]). Approval under this provision would serve as the agreement by the Governor and would exempt the Local Board from selecting Adult and Dislocated Worker Career Service Providers through the awarding of contracts by allowing them to fulfill the role themselves. In line with the time period of selecting of AJCC Operators, if a Local Board receives approval to provide Adult and Dislocated Worker Career Services, that approval will be valid for a maximum of four years, after which time another request must be submitted.

If a Local Board wants to provide Adult and Dislocated Worker Career Services, the local CEO must submit the Request for Approval to be an Adult and Dislocated Worker Career Services Provider application (Attachment 2) and the required supporting documentation to the CWDB by **March 1, 2021**, through the following method.

Email: CWDBPolicyUnit@cwdb.ca.gov
Subject line: Career Services Provider Application

The local CEO will be notified in writing by **May 1, 2021**, regarding the status of the request. If approved, the designation will be effective immediately.

ACTION

Please bring this Directive to the attention of the Local Board and other relevant parties.

INQUIRIES

If you have any questions, contact your [Regional Advisor](#).

/s/ JAIME L. GUTIERREZ, Chief
Central Office Workforce Services Division

Attachments are available on the internet:

1. [Request for Approval America's Job Center of CaliforniaSM Operator](#)
2. [Request for Approval Adult and Dislocated Worker Career Services Provider](#)
3. [Summary of Comments](#)
4. [Errata Chronology](#)