



MAR 23 2010

The Honorable Chris Christie
Governor of New Jersey
State Capitol
Trenton, New Jersey 08625

Dear Governor Christie:

We are responding to your request for a waiver of statutory and regulatory requirements under the Workforce Investment Act (WIA) submitted on February 8, 2010. The request is written in the format identified in WIA section 189(i) (4) (B) and 20 CFR 661.420(c). The following is the disposition of the State's submission (copy enclosed).

Requested Waiver: Waiver of WIA Section 123 that requires that providers of Youth program elements be selected on a competitive basis.

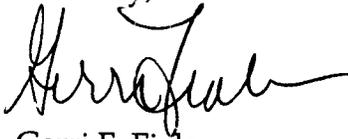
The State is requesting a waiver of the requirement for competitive procurement of service providers for occupational skills training for older youth. The State has a waiver allowing local areas to provide older and out-of-school youth with Individual Training Accounts (ITAs), and wishes to non-competitively procure class-size occupational training for older youth as an alternative to ITAs. When carried out in accordance with state procurement policies and the Uniform Administrative Requirements codified in 29 CFR 97.36, a waiver to perform sole source procurement for class-sized occupational skills training is not required. Training and Employment Guidance Letter (TEGL) No. 09-00 provides clarification on the requirements of WIA regulations and the Uniform Administrative Requirements published by the Office of Management and Budget (OMB) related to the competitive and non-competitive procurement procedures for providing youth activities under WIA title I. Section 8 of TEGL No. 09-00 clarifies that OMB procurement regulations at 29 CFR 97.36(d) allows sole-source procurement only when other methods are not feasible and when the state follows state and local sole-source procurement policies. OMB procurement regulations also require that states document the method of procurement; the State should document why sole-source procurement was necessary.

The State's waiver request details the process for sole source procurement under New Jersey law. In keeping with the requirements of OMB procurement regulations and TEGL 9-00, local areas may enter into direct negotiations to non-competitively procure

occupational skills training for older youth when sole-source procurement is permitted by federal, State, and local competitive procurement laws and policies. When the competitive procurement process fails under the standards established in New Jersey law and policies, the State can non-competitively procure services to fulfill all other youth program elements.

We look forward to continuing our partnership with you and achieving better workforce outcomes. If you have any questions related to the issues discussed above, please contact Holly O'Brien, the Acting Regional Administrator for Region I, at (617) 788-0170 or Obrien.Holly@dol.gov.

Sincerely,



Gerri F. Fiala
Deputy Assistant Secretary

Enclosure

cc: Tom Dalton, Federal Project Officer for New Jersey, ETA Boston Regional Office
Holly O'Brien, Acting Regional Administrator, ETA Boston Regional Office



State of New Jersey

Request for Waiver

Direct Negotiation of Older Youth Programs in order to utilize Classroom-size Training.

Identify the statutory or regulatory requirements for which a waiver is requested and the goals that the State or local area, as appropriate, intends to achieve as a result of the waiver and how these goals related to the Strategic Plan goals:

Pursuant to Section 189 (l) (4) (B) and WIA Regulations 661.420 (c) New Jersey is requesting a waiver of the statutory and regulatory requirements at WIA Regulations Section 123, IDENTIFICATION OF ELIGIBLE PROVIDERS OF YOUTH ACTIVITIES. The local boards, as per WIA requirements, have awarded grants or contracts on a competitive basis based upon the recommendations of the youth council and the criteria in the State plan, and conduct oversight with respect to the providers. These processes comply with OMB requirements codified in 29 CFR Parts 95.40-95.48 and 97.36.

Describe the actions that the State or local area, as appropriate, has undertaken to remove State or local statutory or regulatory barriers:

There are no existing State or local statutory or regulatory barriers to implementation of this waiver request.

Describe the goals of the waiver and the expected programmatic outcomes if the request is granted:

The goal of the waiver is to give the local workforce investment areas greater flexibility and access to the training providers when the competitive process has been exhausted.

Describe the individuals affected by the waiver:

The waiver will positively impact services available to WIA eligible older youth. Local areas will be able to obtain quality services for these youth even when there is a lack of eligible providers for this population. New Jersey is requesting that a process be instituted in the event the competitive procurement process for identifying these providers has been exhausted. Such process would provide that local areas directly negotiate with public entities, such as community colleges, to design effective programs to meet the local needs for youth

services in the event that procurement does not produce the services deemed essential for demand growth occupations. The ability for local boards to negotiate directly with public entities that provide the required training will promote increased flexibility at the local level and support the development of demand-driven programs for youth. The process to be adopted is to be consistent with New Jersey Local Public Contracts Law at N.J.S.A. 40A11-5 which states the process by which exceptions can be made to the requirement for competition. N.J.S.A. 40A 11-5 Section (3) reads as follows:

(3) Bids have been advertised pursuant to section 4 of P.L.1971, c.198 (C.40A:11-4) on two occasions and (a) no bids have been received on both occasions in response to the advertisement, or (b) the governing body has rejected such bids on two occasions because it has determined that they are not reasonable as to price, on the basis of cost estimates prepared for or by the contracting agent prior to the advertising therefor, or have not been independently arrived at in open competition, or (c) on one occasion no bids were received pursuant to (a) and on one occasion all bids were rejected pursuant to (b), in whatever sequence; any such contract may then be negotiated and may be awarded upon adoption of a resolution by a two-thirds affirmative vote of the authorized membership of the governing body authorizing such contract; provided, however, that:

i) A reasonable effort is first made by the contracting agent to determine that the same or equivalent goods or services, at a cost which is lower than the negotiated price, are not available from an agency or authority of the United States, the State of New Jersey or of the county in which the contracting unit is located, or any municipality in close proximity to the contracting unit;

(ii) The terms, conditions, restrictions and specifications set forth in the negotiated contract are not substantially different from those which were the subject of competitive bidding pursuant to section 4 of P.L.1971, c.198 (C.40A:11-4); and

(iii) Any minor amendment or modification of any of the terms, conditions, restrictions and specifications, which were the subject of competitive bidding pursuant to section 4 of P.L.1971, c.198 (C.40A:11-4), shall be stated in the resolution awarding such contract; provided further, however, that if on the second occasion the bids received are rejected as unreasonable as to price, the contracting agent shall notify each responsible bidder submitting bids on the second occasion of its intention to negotiate, and afford each bidder a reasonable opportunity to negotiate, but the governing body shall not award such contract unless the negotiated price is lower than the lowest rejected bid price submitted on the second occasion by a responsible bidder, is the lowest negotiated price offered by any responsible vendor, and is a reasonable price for such goods or services.

The State of New Jersey's public procurement law allows for non-competitive selection under "sole-source" conditions as per the terms of N.J.S.A. 40A 11-5 Section (3). The State will review the process undertaken by each local WIB to determine that services cannot be procured competitively prior to final procurement. The documentation provided by the WIBs must adhere to the requirements as stated in 40A 11-5 Section (3) above.

The following evidence will be required to establish failure of competitive procurement:

- A description of the local area's procurement process must be in place. This process is part of the local area WIA State Plan as required by WIA Section 118 (9).
- The local areas will forward copies of the Notice of Availability advertised in a newspaper (as required by N.J.S.A. 40A:11-4.5 (a) and 29 CFR 97.36 (d) (3) (i)) to the Department of Labor and Workforce Development and either a) copies of proposals determined to be insufficient with an explanation of why they are insufficient or b) a letter stating that no proposals were received.
- The results of the local area procurement process will be reviewed annually in the Monitoring and Compliance Unit (MCU) Procurement and Contracting Review to determine if the process has been followed with any findings and/or recommendations issues in a final report forwarded to the local area.
- A description of the local resolution of a related issue will be submitted to the State. This will also be reviewed annually in the MCU Procurement and Contracting Review.
- Verification of receipt, review, and approval of the above items will be sent to local areas by the Department of Labor and Workforce Development's Division of One-Stop Coordination and Support.
- The local area will adhere to the terms and conditions as in N.J.S.A. 40A 11-5 Section (3). A formal communication will be developed to notify the local areas regarding the terms and conditions of the approved waiver.

The following conditions would determine the need for classroom size training for older youth who could not receive proper training through the ITA system:

- Based upon a cost-analysis, the cost-effectiveness has been determined as appropriate for the classroom training. In order to establish justification for the classroom training a cost analysis is required prior to release of a Request for Proposal.
- Specific social and/or developmental activities must be embedded in the classroom training in order to meet the goals of the individuals' education/training development plan.

Describe the processes used to:

Monitor the progress in implementation the waiver:

The process of acquiring valid data will be monitored by the State Employment and Training Commission (SETC) and the New Jersey Department of Labor and Workforce Development, Division of One-Stop Coordination and Support utilizing the Department of Labor and Workforce Development's and SETC's existing monitoring procedures.

Provide notice to any Local Board affected by the waiver:

The local Workforce Investment Boards will have an opportunity to comment concerning the waiver request at the monthly scheduled meeting hosted by the State Employment and Training Commission.

Provide any local board affected by the waiver an opportunity to comment on the request:

The local Workforce Investment Boards will have an opportunity to comment concerning the waiver request at the monthly scheduled meeting hosted by the State Employment and Training Commission.

Ensure meaningful public comment, including comment by business and organized labor on the waiver:

Business and labor are represented on the State Employment and Training Commission and the local Workforce Investment Boards. Information about the waiver request will be disseminated through these Boards to the necessary groups.