



**MID-CAROLINA
WORKFORCE & TALENT
DEVELOPMENT**

Policy Letter #17

TO: All Mid-Carolina Staff and Board Members

FROM: Matthew Fowler, Director

SUBJECT: Conflict of Interest Requirements for Workforce Development Boards (WDBs) and Staff

PURPOSE

In compliance with the NCWorks Commission Policy Statement CPS 05-2022 (dated May 11, 2022), this policy provides guidance regarding conflict of interest requirements for Workforce Development Boards (WDBs) and Staff, to include North Carolina's General Statute that prohibits public officers or employees from benefitting from public contracts. Potential scenarios that relate to Workforce Development Board Members and NCGS 14-234 are included as a guide. Additional guidance for procurements and conflicts of interest can be found in 2 C.F.R. § 200.318, Public Law 113-128 Workforce Innovation and Opportunity Act Section 107(h), and North Carolina General Statute §§ 14-234 – 14-234.3.

BACKGROUND

Consistent with Workforce Innovation and Opportunity Act (WIOA) Section 121(d)(4)(A) and (C), any organization or entity that has been selected to perform multiple functions in a Local Area must develop a written agreement with the Local Workforce Development Board (WDB) and the Chief Local Elected Official (CLEO) to clarify how the organization will carry out its responsibilities while demonstrating compliance with WIOA and corresponding regulations, the Uniform Guidance, and Conflict of Interest policies of both the state and the organization or entity performing multiple functions.

ACTION

All CLEOs, WDBs, and staff (including Service Providers) must follow and be aware of all applicable federal, state, and local conflict of interest requirements when providing services (directly or indirectly) funded by Workforce Innovation and Opportunity Act (WIOA) resources. CLEOs, Workforce Development Board members and staff must be committed to maintaining the highest standards of ethical conduct and to guard against problems arising from real, perceived, or potential conflicts of interest.

POLICY

The purpose of the Conflict of Interest Policy is to protect the interest of the Mid-Carolina Workforce Development Board (WDB) as a public body charged with the oversight of federal

and/or state funds, when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer, staff, WDB Member, WDB Director or might result in a possible excess benefit transaction. This includes persons and entities involved in the competitive selection processes to identify service providers and award funding using federal funds which must be free of conflicts of interest: real, apparent, or organizational. This policy is intended to supplement, but not replace, any applicable state and federal laws governing conflicts of interest applicable to organizations responsible for maintaining the public trust for the use of federal, state, and other grant funds for the purpose of carrying out goals and program requirements, including the responsibility to maintain the reputation and integrity of the entity, organizations, and agencies and programs.

I. Boards

It is the policy and expectation of the Workforce Development Board (WDB) that its Members will fulfill the fiduciary duties applicable to their service as Members of the WDB. Due to the legal and statutory structures of the WDB, it is expected that conflicts of interest may arise, and this policy is intended to provide a framework that will allow the work of the WDB to be achieved without the fact of or appearance of impropriety. Where this document references "Member" it shall mean any agent, WDB employee, officer, service provider contractor, and Board Member. The WDB, Chief Local Elected Official (CLEO), and all other agencies receiving direct financial assistance through the Workforce Innovation and Opportunity Act (WIOA) shall avoid conflict of interest, real or apparent.

It is the responsibility of each Member to govern the actions of all other Members in compliance with the Conflict of Interest Policy. If a Member thinks there is a possibility of a conflict of interest, real or apparent, on the part of another Member, it is his or her affirmative responsibility to immediately bring the matter to the attention of the WDB Director. Therefore, no WDB Member will discuss, present proposals, or vote on any issue as to which the Member has an economic interest unless specifically questioned by the other Members as part of a scheduled opportunity for all interested parties to present information. A Member may vote on and may discuss any matter what would not have any impact on the Member.

No official or employee of the WDB or contracting agency authorized in their official capacity to negotiate, make, accept, or approve, or to take part in the negotiating, making, accepting, or approving any contract or subcontract in connection with a project shall have directly or indirectly any financial or personal interest in any such contract or subcontract. It shall be against the policy of the WDB or contracting agency for any employee or volunteer to directly or indirectly ask, demand, exact, solicit, accept, receive, or agree to receive anything of value for themselves or any other person or entity in return for:

- Being influenced in the performance of their job or position;
- Being influenced to commit or aid in committing, or to collude in, or allow, any fraud, or to make opportunity for the commission of any fraud on the WDB or contracting agency; or
- Being induced to do or admit to any act in violation of their official duties.

Each Member shall annually confirm a statement that affirms such person:

1. Has received a copy of the Mid-Carolina Workforce Development Board Conflict of Interest Policy;
2. Has read and understands the policy; and
3. Has agreed to comply with the policy.

II. Discovery of an Actual or Potential Conflict of Interest

Upon the assertion of a possible violation of this policy, the WDB Chair or Vice Chair will appoint an ad hoc committee to review the circumstances, report their findings to the Board for discussion and vote, and recommend a course of action in the event a Member is found to be in violation. Action may include, but is not limited to, a declaration that the Member be removed from the Board position and a request to the Consortium Board to make a new appointment.

III. Procurement

All negotiations of a contract for or with potential contractors/service providers must be conducted with arm's length negotiations. The definition of an arm's length negotiation is An agreement made by two parties freely and independently of each other, and without special relationship, such as being a relative, having another deal on the side or one party having complete control of the other. It becomes important to determine if an agreement was freely entered into to show that the price, requirements, and other conditions were fair and real.

No WDB Member (whether compensated or not) shall engage in any activity, including participation in the selection, award, or administration of a sub-grant or contract supported by WIOA funds in a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

- (i) the individual,
- (ii) any Member of the individual's immediate family,
- (iii) the individual's partner, or
- (iv) an organization that employs, or is about to employ any of the above, has a financial interest in the form or organization selected for the award.

No WDB Member, Member of his/her immediate family, officers, employees, or agents of the WDB Member's agency or business shall neither solicit nor accept gratuities, favors, or anything of value from contractors, potential contractors, or parties to sub-agreements.

A WDB Member shall not cast a vote, or participate in, any decision making capacity on the provision of services by such Member (or any organization which that Member directly represents), nor on any matter which would provide any direct financial benefit to that Member.

No WDB Members shall participate in a governmental decision including voting on a matter (including recommendations, appointments, obligating, or committing the WDB to a course of action) when such action influences a decision or exercises judgment in making a decision. Any Member with a potential or actual conflict of

interest shall comply with requirements for public disclosure and recusal.

IV. Work Experience Placements

The Division of Workforce Solutions (DWS) strongly discourages the practice of placing participants in workforce training located at the Board office, NCWorks Career Center, or administrative entity due to the potential of conflicts of interest. Placement at these locations should only be allowed where there is specific documentation in the participant file that the particular experience meets the participant's career goals and skills needs *and* there is no other placement opportunity available.

V. Service Providers/Contractors

Although the WIOA program is not an entitlement program, it should be accessible to any individual, in any local area, who is eligible and suitable for available services subject to Local Workforce Development Board policies and procedures. However, when applicants have a close relationship with WIOA staff Members, management, and other specific stakeholders of the Workforce Development System, access to program services should not be based on such relationships or based on political influence. It is possible that even without any intention to misuse WIOA funds, a decision to enroll an individual in the program could be perceived as improper. Such a perception could cause noncompliance with state and/or federal law.

General authorization for providing funds to participants will comply with the standards of conduct for maintaining the integrity of the program and avoiding any conflict of interest in its administration. Local Chief Elected Officials, Local Workforce Development Board, designated fiscal agent, and administrative officials must help meet the objectives of WIOA through effective policies, procedures, and safeguards that ensure the integrity of these public funds. Throughout the Local Workforce Development Area, safeguards must be in place ensuring that all those served in the program are not only eligible and suitable but also detached from being part of the perception of impropriety or conflict of interest.

In the event a service provider/contractor is related to a WDB staff Member or officer, appropriate firewalls must be in place to ensure the staff member/officer does not directly monitor, supervise, or provide oversight. An alternate staff Member/officer must be identified to assume the oversight responsibilities.

See also Policy #18, Serving Immediate Family Members, Close Acquaintances, and Other Stakeholders in WIOA Training Programs.

VI. Code of Conduct

A written set of standards (Code of Conduct) governing the performance of the WDB and its employees, officers, or agents related to real or apparent conflicts of interest is a requirement of 29 CFR 95.42.

Reference Attachment A: Mid-Carolina Code of Conduct

VII. Firewalls

Proper firewalls must be in place to ensure the transparency and integrity of the procurement process and demonstrate to the public and to the Department of Labor (USDOL) that the selection process was impartial and that no preferential treatment was given to the awardee. A “firewall” is 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, including confidentiality and disclosure agreements.

No entity or individual that has any role in the issuance of a solicitation may compete or submit a proposal under that procurement action, including the development of requirements, drafting the Request for Proposals (RFP) or Letter of Intent for Bid (IFB), evaluation of proposals/bids, and identification of the best entity.

Reference CPS 05-2022, Conflict of Interest Requirements for Workforce Development Boards (WDBs) and Staff, and attachments

Attachment A- Mid-Carolina Workforce Development Board Code of Conduct

Creation Date

July 2022



**MID-CAROLINA
WORKFORCE & TALENT
DEVELOPMENT**

**MID-CAROLINA WORKFORCE DEVELOPMENT BOARD
CODE OF CONDUCT**

***NO WORKFORCE DEVELOPMENT BOARD MEMBER,
PROGRAM OPERATOR, CHIEF LOCAL ELECTED OFFICIAL, OR
STAFF MEMBER SHALL:***

- a. Accept any financial benefit, direct or indirect, from any source other than their employing agency as a result of their performance of official duties under Workforce Innovation and Opportunity Act activities.
- b. Accept any position, whether compensated or uncompensated, which will impair the independence of judgment in the exercise of official duties.
- c. Accept any position or engage in any business which will require the disclosure of confidential information gained by reason of official position.
- d. Disclose confidential information acquired during the performance of official duties or use such information to further personal gain.
- e. Use or attempt to use official position to secure personal privileges or exemptions or which would give the appearance of such.
- f. By conduct, writing, or other communication, give a reasonable person the impression that official duties may be improperly influenced.
- g. Violate any Workforce Development Board (WDB) conflict of interest (as defined in (l) below), or federal, state or local statute, or law governing conflicts of interest, including 2 CFR § 200.318, WIOA § 107(h), and NCGS §§ 14-234 – 14-234.3.
- h. Take part in any political activities in violation of the federal Hatch Act.
- i. Take part in any religious or anti-religious activity in the discharge of official responsibilities.
- j. Promote or oppose unionization in the discharge of official duties.
- k. Participate in any effort to violate any other applicable federal, state, and local laws and regulations.

1. Conflict of Interest – It shall be a breach of ethical standards for any of the aforementioned parties to participate directly or indirectly in a procurement when the party knows that:
 - (1) The aforementioned parties or any member of their immediate family has a financial interest pertaining to the procurement;
 - (2) A business or organization in which the aforementioned parties or any member of their immediate family has a financial interest pertaining to the procurement; or
 - (3) Any other person, business, or organization with whom the aforementioned parties or any member of their immediate family is negotiating or has any arrangement concerning prospective employment is involved in the procurement.

- m. Discovery of Actual or Potential Conflict of Interest. Upon discovery of an actual or potential conflict of interest, the aforementioned parties shall immediately notify his or her supervisor and withdraw from further participation in the transaction involved. Further, should any of the aforementioned parties reasonably believe an undisclosed conflict or potential conflict exists for another staff member, it is the duty and obligation of that person to make the matter known immediately to their supervisor, the Workforce Development Board Director, or other appropriate official.

Violations of any provision of this Code of Conduct by any of the aforementioned parties may be cause for immediate dismissal. All are subject to any penalties, sanctions, or other disciplinary measures set forth in applicable federal, state, or local laws.

By my signature below, I acknowledge that I have received a copy of Policy #17: Conflict of Interest Requirement for Workforce Development Boards and Staff, and this Code of Conduct, have reviewed the same, and understand the provisions contained therein.

Printed Name

Signature

Date