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DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 686

RIN 1205-AB96

Procurement Roles and Responsibilities for Job Corps Contracts

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rule.

SUMMARY: In this final rule, the Department of Labor (Department) makes two procedural changes to its Workforce Innovation and Opportunity Act (WIOA) Job Corps regulations to enable the Secretary to delegate procurement authority as it relates to the development and issuance of requests for proposals for the operation of Job Corps centers, outreach and admissions, career transitional services, and other operational support services. The Department is taking this procedural action to align regulatory provisions with the relevant WIOA statutory language and to provide greater flexibility for internal operations and management of the Job Corps program.

DATES: This final rule will become effective on [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Heidi M. Casta, Deputy Administrator, Office of Policy Development and Research, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N-5641, Washington, D.C. 20210; telephone (202) 693-3700 (this is not a toll-free number).

Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

The Department is amending two provisions of 20 CFR part 686, which implements subtitle C of title I of WIOA. Through these amendments, the Department is aligning these regulatory provisions with the language in WIOA by broadening the authority to issue contract solicitations from the Employment and Training Administration (ETA) to the Secretary of Labor. The Department is making this procedural change to the WIOA regulation to provide greater flexibility in the management and operation of the Job Corps program by allowing the Secretary of Labor to designate the component of the Department that is authorized to issue solicitations for the operation of Job Corps centers, outreach and admissions, career transitional services, and other operational support services. This change will provide the Department with the flexibility to more efficiently manage the Job Corps procurement process, which will in turn allow greater economies of scale and operational efficiencies. This rule is consistent with the President's Management Agenda Cross-Agency Priority (CAP) Goal Number 5—Sharing Quality Services. The Department is implementing this CAP, in part, via the Department's Enterprise-Wide Shared Services Initiatives whose primary goals are as follows:

1. Improve human resources efficiency, effectiveness, and accountability;

2. Provide modern technology solutions that empower the DOL mission and serve the American public through collaboration and innovation;

3. Maximize DOL's federal buying power through effective procurement management; and

4. Safeguard fiscal integrity, and promote the effective and efficient use of resources.

This rule will assist the Department's implementation of its Enterprise-Wide Shared Services Initiative.

This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

II. Summary of Final Rule

Sec. 147(a) of WIOA authorizes the Secretary of Labor to enter into agreements with eligible entities to operate Job Corps centers and to provide activities to a Job Corps center. Two provisions in the regulation implementing subtitle C of Title I of WIOA implement section 147(a). Title 20 CFR 686.310(a) broadly states that the Secretary selects eligible entities to operate contract centers on a competitive basis in accordance with applicable statutes and regulations, and 20 CFR 686.340(a) states that the Secretary selects eligible entities to provide outreach and admission, career transition, and operational support services on a competitive basis in accordance with applicable statutes and regulations. However, both provisions also specifically require ETA to develop and issue solicitations for these Job Corps contracts. These provisions are inconsistent with section 147(a) and constrain the Department's ability to assign the authority to develop and issue solicitations to whichever component of the agency determined appropriate to

further the important goals of selecting the appropriate entities to support the Job Corps program.

This final rule amends §§ 686.310(a) and 686.340(a) by replacing “ETA” with “the Secretary.” Through this final rule, the Department is aligning the text of sections 686.310(a) and 686.340(a) with the statutory language in section 147(a) of WIOA, eliminating the inconsistency between the regulation and the statute. This change affords the Department greater flexibility to manage and oversee the Job Corps procurement process in a manner that it determines appropriate.

III. Discussion of Public Comments

The Department invited written comments on all aspects of the proposed rule from interested parties for consideration prior to issuing a final rule (84 FR 45449). The written comment period closed on September 30, 2019. The Department received two significant adverse comments. The Department also received one comment that was outside the scope of the rulemaking.

One commenter that represents a national association expressed a concern that decentralization of procurement authority outside of ETA would result in “the further separation of Job Corps’ programmatic, budget, and procurement authorities which could negatively impact Job Corps center operations, students, and taxpayers.” The commenter opined that the proposal, if implemented, would place Job Corps’ procurement function under a different agency, with different political leadership, different goals and priorities, and different measures of performance success. This, according to the commenter, could potentially negatively impact Job Corps students. The commenter suggested that because of the interrelation between program, budget, and contracting, all Job Corps contracting

functions should be consolidated under a single political official or, ideally, within the Office of Job Corps, but regardless suggested that the Department establish performance measures for contracting officials related to student outcomes.

The second commenter opined that the proposed change would affect how contracts for outreach and admission, career transition and operational services would be awarded. Specifically, the commenter expressed concern that the change would politicize the awarding of Job Corps contracts, in contravention of OMB's Uniform Guidance, rather than awards being made on the basis of an offeror's technical ability to provide the services.

No change to the proposal is being made in response to these comments. This change aligns the Job Corps regulation with the statutory language and affords the Department greater flexibility in managing the Job Corps procurement functions. The Department disagrees that this change will adversely impact the operation of the Job Corps program. The Department and ETA will continue to support Job Corps and its programmatic needs and interests, including ensuring that there is appropriate coordination and consultation during the various phases of the procurement process. ETA program and budget staff will continue to work closely with the assigned procurement staff to develop and review, as appropriate, solicitations for Job Corps operation and support contracts. Similarly, these changes do not involve or limit the evaluation of proposals or quotations submitted in response to solicitations. Additionally, the Department disagrees that this change will politicize the awarding of Job Corps contracts. The Department will continue to conduct all Job Corps procurements in accordance with the relevant provisions of the Federal Acquisition Regulations, which,

contrary to the commenter's assertion, governs the development and award of all Job Corps contract solicitations and awards, as well as in compliance with all of the WIOA statutory and regulatory requirements and the evaluation and selection criteria announced in Department solicitations. Regarding the commenter's suggestion to establish performance measures for contracting officials related to student outcomes, the Department does not tie performance measures for contracting officials related to either formation or administration of contracts to program outcomes. Successful program outcomes are the responsibility of the office administering the program, in this case the Office of Job Corps, and the contractors directly serving students.

Therefore, the Department is finalizing the regulatory text as proposed.

IV. Rulemaking Analyses and Notices

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review)

Executive Order 12866 requires that regulatory agencies assess both the costs and benefits of significant regulatory actions. Under the Executive Order, a "significant regulatory action" is one meeting any of a number of specified conditions, including the following: Having an annual effect on the economy of \$100 million or more; creating a serious inconsistency or interfering with an action of another agency; materially altering the budgetary impact of entitlements or the rights of entitlement recipients, or raising novel legal or policy issues. The Department has determined that this final rule is not a "significant" regulatory action and a cost-benefit and economic analysis is not required. This regulation merely makes a procedural change to allow flexibility to manage and oversee the Job Corps procurement process in a manner that the Department determines appropriate.

Executive Order 13563 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility to minimize burden.

This rule makes only a procedural change to allow flexibility to manage and oversee the Job Corps procurement process in a manner that the Department determines appropriate. Therefore, this rule is not expected to have any regulatory impacts.

Regulatory Flexibility Act/Small Business Regulatory Enforcement Fairness Act

The Regulatory Flexibility Act (RFA), at 5 U.S.C. 603(a), requires agencies to prepare and make available for public comment an initial regulatory flexibility analysis, which describes the impact of the final rule on small entities. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the final rule is not expected to have a significant economic impact on a substantial number of small entities. This final rule does not affect small entities as defined in the RFA. Therefore, the Department certifies that the final rule will not have a significant economic impacts on a substantial number of small entities.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the Department consider the impact of paperwork and other information collection burdens imposed on the public. The Department has determined that this rule does not alter any information collection burdens.

Executive Order 13132 (Federalism)

Section 6 of E.O. 13132 requires Federal agencies to consult with State entities when a regulation or policy may have a substantial direct effect on the States, the relationship between the National Government and the States, or the distribution of power and responsibilities among the various levels of government, within the meaning of the E.O. Section 3(b) of the E.O. further provides that Federal agencies must implement regulations that have a substantial direct effect only if statutory authority permits the regulation and it is of national significance.

This final rule does not have a substantial direct effect on the States, the relationship between the National Government and the States, or the distribution of power and responsibilities among the various levels of government, within the meaning of the E.O. This final rule merely makes a procedural change for internal Departmental operations and management for Job Corps procurement.

Unfunded Mandates Reform Act of 1995

This regulatory action has been reviewed in accordance with the Unfunded Mandates Reform Act of 1995 (the Reform Act). Under the Reform Act, a Federal agency must determine whether a regulation proposes a Federal mandate that would result in the increased expenditures by State, local, or tribal governments, in the

aggregate, or by the private sector, of \$100 million or more in any single year. This final rule merely makes an administrative change regarding the Departmental entity authorized for Job Corps procurement responsibilities. Therefore, the relevant requirements the Reform Act do not apply

Executive Order 13175 (Indian Tribal Governments)

The Department has reviewed the final rule under the terms of EO 13175 and DOL’s Tribal Consultation Policy, and have concluded that the changes to regulatory text which are the focus of the final rule would not have tribal implications, as these changes do not have substantial direct effects on one or more Indian tribes, the relationship between the Federal Government and Indian tribes, nor the distribution of power and responsibilities between the Federal Government and Indian tribes. Therefore, no consultations with tribal governments, officials, or other tribal institutions were necessary.

List of Subjects in 20 CFR Part 686

Employment, Grant programs-labor, Job Corps.

Amended Regulatory Text

For the reasons stated in the preamble, the Department amends 20 CFR part 686 as follows:

PART 686—THE JOBS CORPS UNDER TITLE I OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT

1. The authority citation for part 686 continues to read as follows:

Authority: Secs. 142, 144, 146, 147, 159, 189, 503, Pub. L. 113-128, 128 Stat. 1425 (Jul. 22, 2014).

2. Amend § 686.310 by revising paragraph (a) to read as follows:

§ 686.310 How are entities selected to receive funding to operate centers?

(a) The Secretary selects eligible entities to operate contract centers on a competitive basis in accordance with applicable statutes and regulations. In selecting an entity, the Secretary issues requests for proposals (RFPs) for the operation of all contract centers according to the Federal Acquisition Regulation (48 CFR chapter 1) and Department of Labor Acquisition Regulation (48 CFR chapter 29). The Secretary develops RFPs for center operators in consultation with the Governor, the center workforce council (if established), and the Local WDB for the workforce development area in which the center is located.

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3. Amend § 686.340 by revising paragraph (a) to read as follows:

§ 686.340 How are entities selected to receive funding to provide outreach and admission, career transition and other operations support services?

(a) The Secretary selects eligible entities to provide outreach and admission, career transition, and operational services on a competitive basis in accordance with applicable statutes and regulations. In selecting an entity, the Secretary issues requests for proposals (RFP) for operational support services according to the Federal Acquisition Regulation (48 CFR chapter 1) and Department of Labor Acquisition Regulation (48 CFR chapter 29). The Secretary develops RFPs for operational support services in consultation with

the Governor, the center workforce council (if established), and the Local WDB for the workforce development area in which the center is located.

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John Pallasch,
Assistant Secretary for Employment and Training, Labor.
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