

## **Compliance Note: Removal of “Superior Service Provision” Clause for For-Profit Entities in Future RFPs**

### **Purpose of This Note**

This compliance note documents why the clause:

“For-profit agencies will be considered for funding if their proposals demonstrate superior service provision over non-profit applicants.”

should be **removed** from future Mercer County Workforce Development Board (WDB) solicitations, including WIOA Youth procurements.

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### **1. The clause is *not* required by WIOA or federal regulation**

Neither the WIOA statute nor its implementing regulations (20 CFR Parts 681, 683, and 200.320) contain any requirement or preference that for-profit entities must demonstrate “superior service provision” compared to nonprofits.

Federal rules require:

- **full and open competition,**
- **non-restrictive evaluation criteria,** and
- **equal treatment of all eligible entities.**

The clause introduces a **non-federal preference** that is not grounded in WIOA or Uniform Guidance.

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### **2. The clause conflicts with Uniform Guidance procurement standards**

Under **2 CFR 200.319–200.320**, recipients must avoid procurement practices that:

- “unduly restrict competition,”
- create “unreasonable requirements,” or
- impose “arbitrary actions in the procurement process.”

Requiring for-profits to meet a higher threshold than nonprofits creates a **two-tiered evaluation standard**, which may be interpreted as:

- **a restrictive condition,**

- an **unfair competitive barrier**, or
- a **non-compliant local preference**.

This exposes the WDB to **audit findings** under both NJDOL monitoring and federal oversight.

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### **3. The clause does not appear in Mercer County procurement rules**

Mercer County's procurement framework—rooted in the **Local Public Contracts Law (LPCL)**—does not contain any rule or policy that:

- distinguishes between nonprofit and for-profit vendors, or
- requires for-profits to demonstrate superior performance to be eligible.

LPCL requires evaluation based on **price and other factors**, not organizational tax status.

Including a preference not supported by County policy creates **inconsistency** between WDB solicitations and County procurement standards.

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### **4. The clause creates unnecessary legal and operational risk**

#### **a. Risk of bid protest**

A for-profit respondent could argue that the clause:

- imposes a discriminatory standard,
- lacks statutory authority, or
- violates full and open competition.

#### **b. Risk of monitoring findings**

NJDOL monitors for:

- equal access to competition,
- transparent evaluation criteria, and
- alignment with Uniform Guidance.

A preference for nonprofits is not defensible under those standards.

#### **c. Risk of award defensibility**

If a for-profit scores highest but a nonprofit is selected, the clause could be misinterpreted as a justification for **non-competitive award decisions**, which is not permissible.

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## **5. The clause is unnecessary because evaluation criteria already measure quality**

The RFP already evaluates:

- program design,
- past performance,
- staffing,
- fiscal capacity, and
- alignment with WIOA elements.

These criteria naturally differentiate high-quality providers without imposing a structural preference.

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## **6. Recommended Action**

### **Remove the clause entirely in future RFPs.**

Replace it with standard, compliant language such as:

“For-profit, nonprofit, educational, governmental, and labor organizations are eligible to apply. All proposals will be evaluated based on the criteria outlined in this RFP in accordance with WIOA, Uniform Guidance, and Mercer County procurement requirements.”

This ensures:

- full and open competition,
- alignment with federal and state procurement rules,
- defensibility of award decisions, and
- reduced audit and protest risk.