Dear Colleague,

As you may know, the U. S. Department of Education, Office of Career, Technical, and Adult Education (OCTAE) published a Federal Register notice inviting applications for the Perkins Innovation and Modernization Grant program on April 15, 2019. Since that time, our office has received numerous questions from potential applicants regarding the definition of “Eligible Entity” as defined in section 3(19) of the Carl D. Perkins Career and Technical Education Act of 2006, as amended by the Strengthening Career and Technical Education for the 21st Century Act (Perkins V or the Act). We are sharing our responses to those questions so that all potential applicants can be sure they understand the requirements for an Eligible Entity under this program. Additionally, we are providing some information about the procurement flexibilities permitted by the Department for required data collection, evaluation and essential services.

As a reminder, the application period closes on June 14, 2019. If you have any questions, please send an email to PerkinsIandMGrants@ed.gov.

Best –

The Perkins Innovation and Modernization Grant Team

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1. Who may apply for a Perkins Innovation & Modernization Grant as an Eligible Entity?

As noted in the Notice Inviting Applications for the Perkins Innovation and Modernization Grant Program published in the Federal Register on April 15, 2019 (NIA), the term “Eligible Entity” is defined in section 3(19) of the Carl D. Perkins Career and Technical Education Act of 2006, as amended by the Strengthening Career and Technical Education for the 21st Century Act (Perkins V or the Act). This definition states:

“Eligible Entity means a consortium that includes the following:

(a) Representatives of not less than 2 of the following categories of entities, 1 of which shall serve as the fiscal agent for the consortium:
   (i) An LEA or a consortium of such agencies.
   (ii) An educational service agency serving secondary school students.
   (iii) An area CTE school or a consortium of such schools.
   (iv) An Indian Tribe, Tribal organization, or Tribal educational agency.
   (v) An IHE whose most common degree awarded is an associate degree, or a consortium of such institutions.
   (vi) An IHE whose most common degree awarded is a bachelor’s or higher degree, or a consortium of such institutions.
   (vii) An SEA.
(b) One or more business or industry representative partners, which may include representatives of local or regional businesses or industries, including industry or sector partnerships in the local area, local workforce development boards, or labor organizations.

(c) One or more stakeholders, which may include—

(i) Parents and students;

(ii) Representatives of local agencies serving out-of-school youth, homeless children and youth, and at-risk youth (as defined in section 1432 of the ESEA (20 U.S.C. 6472));

(iii) Representatives of Indian Tribes and Tribal organizations, where applicable;

(iv) Representatives of minority serving institutions (as described in paragraphs (1) through (7) of section 371(a) of the HEA (20 U.S.C. 1067q (a)), where applicable;

(v) Representatives of Special Populations;

(vi) Representatives of adult CTE providers; or

(vii) Other relevant community stakeholders.”

Each applicant applying as an Eligible Entity must ensure it meets the consortium requirements outlined in the definition and include required membership from each of the three subcategories in Perkins section 3(19)(a), 3(19)(b), and 3(19)(c). Please note that the fiscal agent for the consortium must be an eligible party from subgroup (a). (See Perkins section 3(19)(a)).

Furthermore, in section III (1) under Eligibility Information, the NIA notes that an Eligible Entity must comply with the regulations in 34 CFR 75.127 through 75.129, which address group applications. Notably, 34 C.F.R. 75.127(a) specifies that in such group application, which includes a consortium, “eligible parties may apply as a group for a grant.” Therefore, in order to meet the requirements under Perkins section 3(19)(a) when applying as a consortium of LEAs, area CTE schools, or IHEs, the consortium must only include the eligible entities itself as otherwise defined in Perkins V (i.e., LEAs (see Perkins section 3(3)), area CTE schools (see Perkins section 3(31), IHEs (see Perkins section 3(30)).

However, additional representatives and stakeholders (e.g., State community college systems, State Workforce Boards, and other non-profit organizations) may be included in the consortium to meet the requirements in Perkins V section 3(19)(b) and (c) for business or industry representative partners and stakeholders, but — as noted earlier- the representatives from 3(19)(b) and (c) may not be the fiscal agent. Please note that, under 34 C.F.R. 75.128, applicants who submit an application as an Eligible Entity must also submit a group agreement with their application which: “1. Details the activities that each member of the group plans to perform; and 2. Binds each member of the group to every statement and assurance made by the applicant in the application.” Furthermore, 34 C.F.R. 75.129 details the legal responsibilities of each member of the Eligible Entity consortium.

2. What procurement flexibilities exist when an applicant proposes to contract with implementation sites, implementation partners or specific service providers for data collection, analysis and evaluation in its Perkins Innovation and Modernization Grant Application?
In 2015, the Department in 34 C.F.R. 75.135 established specific exceptions to procurement requirements which permits applicants for competitive grant programs to identify in their applications implementation sites, implementation partners or those entities with which they would contract for data collection, data analysis, evaluation services, or essential services, where these activities are required by the program if certain requirements are met.

**Exception for implementation sites or partners**

This flexibility in 34 C.F.R. 75.135(a) specifies, “When entering into a contract with implementation sites or partners, an applicant is not required to comply with the competition requirements in 2 CFR 200.320(c) and (d), if -

1. The contract is with an entity that agrees to provide a site or sites where the applicant would conduct the project activities under the grant;
2. The implementation sites or partner entities that the applicant proposes to use are identified in the application for the grant; and
3. The implementation sites or partner entities are included in the application in order to meet a regulatory, statutory, or priority requirement related to the competition.”

If the applicant relies on this exception, consistent with 34 C.F.R. 75.135(c), the applicant must “certify in its application that any employee, officer, or agent participating in the selection, award, or administration of a contract is free of any real or apparent conflict of interest.”

**Exception for contract for data collection, data analysis, evaluation services or essential services**

This flexibility in 34 C.F.R. 75.135(b) specifies, “When entering into a contract for data collection, data analysis, evaluation services, or essential services, an applicant may select a provider using the informal, small-purchase procurement procedures in 2 CFR 200.320(b), regardless of whether that applicant would otherwise be subject to that part or whether the evaluation contract would meet the standards for a small purchase order, if -

1. The contract is with the data collection, data analysis, evaluation service, or essential service provider;
2. The data collection, data analysis, evaluation service, or essential service provider that the applicant proposes to use is identified in the application for the grant; and
3. The data collection, data analysis, evaluation service, or essential service provider is identified in the application in order to meet a statutory, regulatory, or priority requirement related to the competition.”

Please note that essential service is defined in 34 C.F.R. 75.135(f) as “a product or service directly related to the grant that would, if not provided, have a detrimental effect on the grant.”

If the applicant relies on this exception, consistent with 34 C.F.R. 75.135(c), the applicant must “certify in its application that any employee, officer, or agent participating in the selection, award, or administration of a contract is free of any real or apparent conflict of interest” and, that the applicant “used small purchase procedures to obtain the product or service.”