

COMPETITIVE SELECTION OF ONE-STOP OPERATORS



“The Basics”

Office of Grants Management

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UNITED STATES DEPARTMENT OF LABOR

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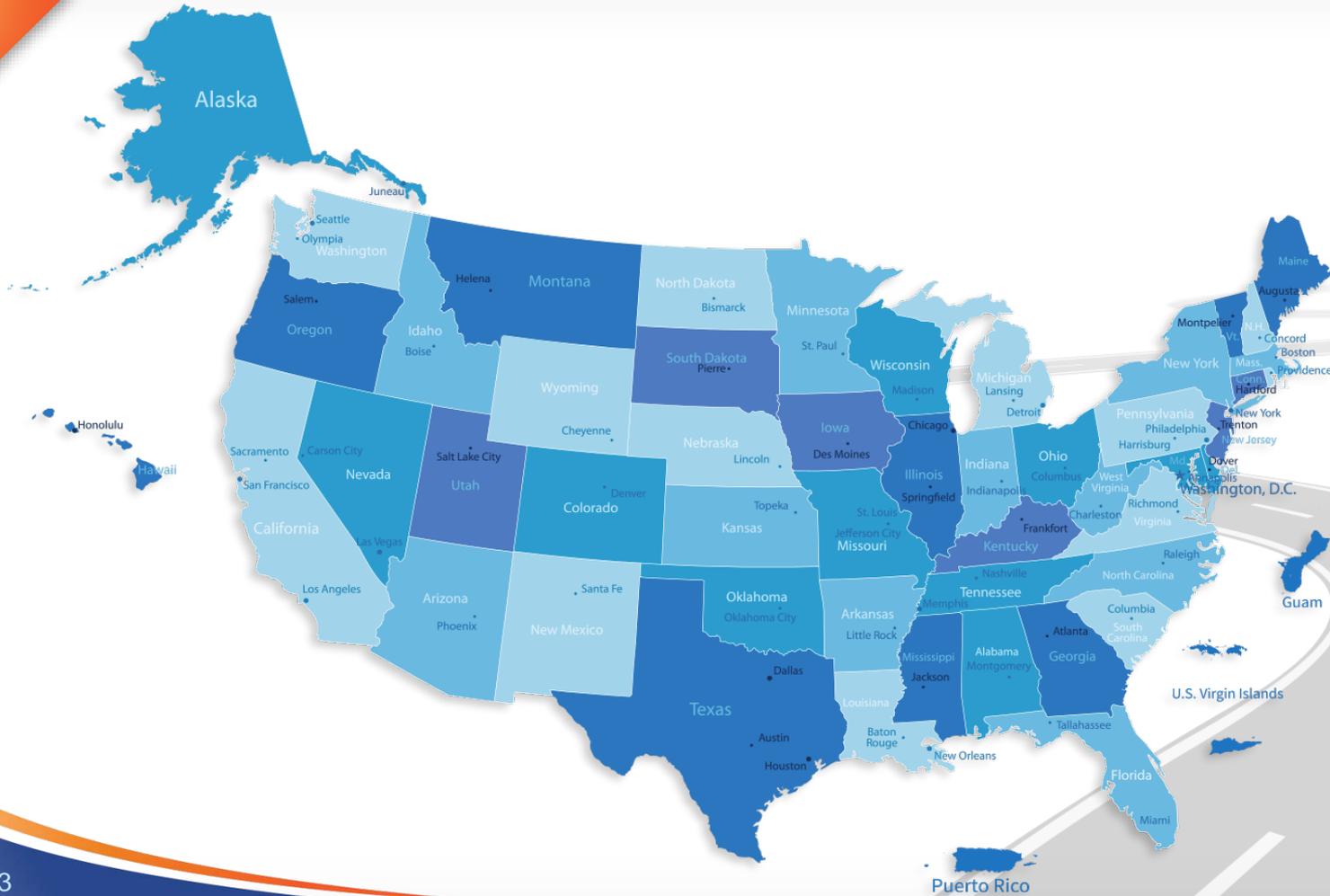
Today's Presenters

- ◆ **Debbie Galloway**
Fiscal Policy Manager
Office of Grants Management
- ◆ **Chanel Castaneda**
Grants Management Specialist
Office of Grants Management

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Part I: Background, Roles, and Functions

Competitive Selection of One-Stop Operators

Background

WIA

- ❖ Under WIA, one-stop operators could be designated or certified through three mechanisms:
 - ◆ A competitive process;
 - ◆ As a consortium of three or more partner entities; or
 - ◆ As an entity that was “grandfathered” in from JTPA.

WIOA

- ❖ Under WIOA, there is no option to designate or certify a one-stop operator separate from the competitive selection requirements.
- ❖ Further, under WIOA, there is no authority to grandfather in current one-stop operators.



Requirements

- ❖ Local Workforce Development Boards (WDB) must use a competitive process for the selection of one-stop operators for the American Job Center (AJC) system that is in place by:

July 1, 2017

- ❖ Local WDBs must support continuous improvement through:
 - ◆ Regular evaluation of one-stop operator performance, and
 - ◆ Re-competition of operators every four years.



WIOA sec. 121(d)(2)(A)

20 CFR 678.605

20 CFR 678.625

Regulations

◆ 20 CFR 678.605(a)

Consistent with paragraphs (b) and (c) of section 678.605, the Local WDB must select the one-stop operator through a competitive process, as required by sec. 121(d)(2)(A) of WIOA, **at least once every 4 years.**

A State may require, or a Local WDB may choose to implement, a competitive selection process more than once every 4 years.



Regulations

◆ *20 CFR 678.635(b)*

“By **November 17, 2016**, every Local WDB must have demonstrated it is taking steps to prepare for competition of its one-stop operator.”



Intent

- ❖ Competition provides the best method of ensuring that Local WDBs examine operator **effectiveness** on a regular basis.
- ❖ Additionally, regular competition allows Local WDBs to make **improvements** based on their one-stop certification process.



ATTENTION

- ❖ When applicable, procurement of youth service providers must follow the procurement standards contained in 2 CFR 200, the Uniform Guidance.
- ❖ **This presentation series only addresses the competitive process of one-stop operators** and ETA strongly encourages the use of such process when selecting fiscal agents, services providers, or training services.



One-Stop Operator Roles and Functions

Minimum

- ◆ The one-stop operator must coordinate the service delivery of participating one-stop partners and service providers.

Potential Additional Roles

- ◆ Coordination of service providers within the center and across the one-stop system;
- ◆ Primary provider of services within the center;
- ◆ Provision of some of the services within the center; or
- ◆ Coordination of service delivery in a multi-center area, which may include affiliated sites.

The role of the one-stop operator must be clearly articulated in all phases of the procurement process.

Local Board Roles and Functions

- ◆ Convene system stakeholders to assist in the development of the Local plan;
- ◆ Prepare and submit Local plans;
- ◆ Oversight of the one-stop operator(s);
- ◆ Management of the competitive selection process for one-stop operators;
- ◆ Selection or termination of one-stop operators, career services, and youth providers;
- ◆ Negotiation of Local performance accountability measures; and
- ◆ Development and submission of budgets for activities of the Local Board in the Local Area.

One-stop operators are prohibited from performing these functions!



ATTENTION

- ❖ An **exception** to these prohibitions is when the entity serving as the one-stop operator is also serving in a different role within the one-stop delivery system.
- ❖ In such an instance, the one-stop operator may perform some or all of these functions when it is acting in its other role, but only if it has established sufficient firewalls and conflict of interest policies and procedures.



Poll



Which of the following functions are prohibited for a one-stop operator to perform?

Choose the answer that best reflects you (or your group):

1. Negotiate Local performance accountability measures.
2. Perform oversight of or monitor itself.
3. Develop and submit budgets for activities of the Local Board.
4. All of the above.



Part I: Background, Roles, and Functions

Summary

- ❖ By **November 17, 2016**, every Local Board must demonstrate that it has taken steps to prepare for competition.
- ❖ By **July 1, 2017**, all one-stop operators must have been selected or designated through a competitive process.
- ❖ The one-stop operator is prohibited from performing functions that are reserved for the Local Board.

Part II: Eligible Entities

*Competitive Selection of
One-Stop Operators*

Eligible Entities

- ❖ WIOA sec. 3(41) defines one-stop operator as one or more entities **designated or certified under WIOA sec. 121(d)** (i.e., through a competitive process).
- ❖ Per WIOA 121(d)(2)(B), the one-stop operator must be an entity (public, private, or nonprofit) – or a consortium of entities that, at a minimum, includes three or more of the required one-stop partners – of **demonstrated effectiveness** located in the Local Area.
- ❖ Entities selected and serving as one-stop operators are subrecipients of a federal award and thus are **required to follow the Uniform Guidance**.



Eligible Entities ...continued

- ❖ Government agencies or governmental units;
- ❖ Employment Serv. State agencies under the Wagner-Peyser Act;
- ❖ Indian Tribes;
- ❖ Educational institutions;
- ❖ Community-based organizations, not-for-profit entities, or workforce intermediaries;
- ❖ Other interested organizations that are capable of carrying out the duties of the one-stop operator;
- ❖ Private for-profit entities; and
- ❖ Local WDBs.



Applicability of the Uniform Guidance

Is the Uniform Guidance Applicable to?	For-Profit Entities	Other Non-Federal Entities
DOL Award or DOL Sub-award	Yes ¹⁾	Yes
Other Federal Awards or Sub-awards	Maybe ²⁾	Yes

1) Please refer to 2 CFR 2900.2. This also includes adherence to the Single Audit provisions.

2) Need to consult the Federal agency issuing the award.

Eligible Entities - Special Conditions

1

Local Workforce Development Boards

- ❖ If Local WDBs desire to serve as one-stop operators, they must still compete and meet mandatory competition requirements in 20 CFR 678.605(c) and 678.615(a).
- ❖ In situations in which the outcome of the competitive selection process is the selection of the Local WDB itself as the one-stop operator, the Governor and the CEO must agree to the selection of the Local WDB.



Eligible Entities - Special Conditions

2 States

- ❖ In certain instances, the State WDB will carry out the one-stop competition for a Local WDB.
- ❖ For example, if a Local WDB is being reconstituted under a Governor's reorganization plan per WIOA sec. 184(b)(1), the State WDB will carry out the procurement for a one-stop operator.



Eligible Entities - Special Conditions

3 Single State Local Areas

- ❖ In single-area States, the State Workforce Development Board (State WDB) carries out the functions of the Local WDB.
- ❖ This includes the responsibility to administer the competition to select a one-stop operator, as stated in WIOA sec. 106(d)(2).
- ❖ The State WDB may, at its discretion, hire an outside entity to conduct the competition or delegate the responsibility to another State agency.

Eligible Entities - Special Conditions

4 Private For-profit Entities

- ❖ The DOL-specific requirement at 2 CFR 2900.2 expands the definition of “non-Federal entity” to include for-profit entities.
- ❖ In 20 CFR 683.295(a)(2), the Department requires for-profit entities that are one-stop operators to follow 2 CFR 200.323 on earning and negotiating a profit.
- ❖ The entity conducting the competition must follow 2 CFR 200.323 to ensure that the entity’s charges for profit are reasonable and fair.

All Entities except For-Profits

- ❖ 2 CFR 200.400(g) **prohibits earning and retaining profit** on Federal financial assistance unless expressly authorized by the terms and conditions of the Federal award.
- ❖ **Exception:** 20 CFR 683.295 clarifies that for-profit agencies are eligible to earn profit as awardees of Federal financial assistance, such as one-stop operators.



Eligible Entities - Special Conditions

5 Other Entities

- ❖ All non-Federal entities, including Indian Tribes, nonprofit organizations, educational institutions that are not the State, community-based organizations, and other entities, must adhere to the Uniform Guidance at 2 CFR part 200, including any requirements identified by the Department under 2 CFR part 2900, when acting as a one-stop operator.



Poll



*Which of the following is **NOT** a condition under which it would be allowable for a State WDB to carry out the one-stop competition for a Local Board?*

Choose the answer that best reflects you (or your group):

1. The Local WDB would like compete to become the one-stop operator.
2. The Local Board is being reconstituted under the Governor's reorganization plan.
3. A for-profit organization is submitting a proposal to be the one-stop operator and the State is not a Single State Local Area.
4. The State is a Single State Local Area.



Part II: Eligible Entities

Summary

- ❖ One-stop operators must be public, private, or nonprofit entities or a consortium of entities that, at a minimum, includes three or more of the required one-stop partners and are located in the local area.
- ❖ There are 3 special conditions under which it is admissible for a State Board to carry out the functions of the Local Board:
 - ◆ Local Board wants to compete
 - ◆ Local Board is being reconstituted
 - ◆ Single State Local Areas
- ❖ The earning of profit is permissible for for-profit entities under WIOA but must be negotiated separately.



Part III: Procurement Standards

*Competitive Selection of
One-Stop Operators*

Procurement Standards

- ❖ States must follow the same competitive process they use for non-Federal funds.
- ❖ Local WDBs must follow the principles of competitive procurement that conform with the Uniform Guidance at 2 CFR 200, including the DOL Exceptions at 2 CFR 2900.
- ❖ Other non-Federal entities must use a competitive process that is based on local procurement policies (consistent with the Uniform Guidance at 2 CFR 200.318 through 200.326).

KNOW THE RULES!



General Procurement Requirements

Written Policies and Procedures	Transparency and Responsibility
Methods of Procurement	Sole Source Procurement
Full and Open Competition	Record Keeping
Written Standards of Conduct	



General Procurement Requirements

Written Policies and Procedures

- ❖ Policies and procedures must be consistent with the Uniform Guidance.
- ❖ 20 CFR 678.605(d) requires the preparation of written documentation explaining the determination concerning the nature of the competitive process to be followed in selecting a one-stop operator.
- ❖ The policies should outline a timetable to ensure that the selection of a one-stop operator through a competitive process is conducted every four years.



General Procurement Requirements

Methods of Procurement

- ❖ Sealed bids (formal advertising) such as:
 - ◆ Request for Proposals (RFP), or
 - ◆ Invitation for Bids (IFB)
- ❖ Competitive proposals such as RFPs
- ❖ Noncompetitive proposals (sole source)

2 CFR 200.320(c), (d), and (f)

General Procurement Requirements

Full and Open Competition

- ❖ All procurement transactions must be conducted using full and open competition. (2 CFR 200.319(a))
- ❖ Written procedures must allow for sufficient time for all phases of the procurement process to be carried out in a manner that does not unduly restrict competition.
- ❖ No small purchase procurement for contracts valued in excess of the simplified acquisition threshold (currently \$150,000).
- ❖ Proposed costs of the one-stop operator must be reasonable, necessary, and allocable.



General Procurement Requirements

Full and Open Competition...continued

- ❖ There are additional steps Local WDBs and State WDBs can take in furtherance of a full and open one-stop operator competition.
- ❖ Depending on the particular circumstances multiple mechanisms may be combined, as appropriate, to avoid conflicts of interest or the appearance of conflicts of interest. Examples include:
 - ◆ Examination of competition processes by an outside party;
 - ◆ Documentation; or
 - ◆ Revision of the original procurement solicitation (e.g. the RFP/IFB) or re-competition of the one-stop operator.

Prohibited Restrictions

- ❖ Geographic preferences beyond those requiring an operator be located within a Local Area
- ❖ Outdated pre-qualified lists
- ❖ Unreasonable requirements such as unnecessary experience and excessive bonding
- ❖ Noncompetitive pricing practices
- ❖ Noncompetitive contracts to consultants that are on retainer contracts
- ❖ Organizational conflicts of interest
- ❖ Specifying only a “brand name” product instead of allowing an equal product to be offered
- ❖ Any arbitrary action in the procurement process



General Procurement Requirements

Written Standards of Conduct

The Local WDB must have written standards of conduct (2 CFR 200.318 and 200.319) that address:

- ◆ Disclosure of any real, apparent, individual, or organizational conflict of interest.
- ◆ The process for recusal of individuals or organizations that have a conflict of interest.
- ◆ Confidentiality of all information revealed in the procurement process.
- ◆ Prohibition of competition participation for individuals or organizations who are in any way involved in the procurement process.

The ethical standards of persons with fiduciary responsibility of public funds are expected to be above reproach that will withstand any public scrutiny.



General Procurement Requirements

Transparency

Sunshine Provisions

- ◆ Requirement to make all information available to the public, auditors, and Federal reviewers. (WIOA secs. 107(e) and 101(g))
- ❖ **Public Disclosure**
 - ◆ The Local and State WDB must publicly disclose any conflicts of interest, real or apparent, and any recusal by individuals or organizations due to conflict of interests. (WIOA sec. 107(e) and 20 CFR 679.390)

General Procurement Requirements

Responsibility

❖ Responsible Entities

- ◆ Awards must be made only to responsible entities that possess the ability to successfully perform under the terms and conditions of the proposed procurement.
- ◆ Consideration must be given to the entity's integrity, compliance with public policy, record of past performance, and financial and technical resources. (2 CFR 200.318(h))
- ◆ Entities must not be debarred, suspended, or otherwise excluded from or made ineligible for participation in Federal assistance programs or activities. (2 CFR 200.213)



General Procurement Requirements

Sole Source Procurement

One or more of the following circumstances must apply (2 CFR 200.320(f):

- ◆ The item or service is available only from a single source
 - ◇ Identifying a 'qualified' or 'high quality' operator is not sufficient justification in meeting a sole source requirement.
- ◆ Public exigency or emergency
 - ◇ Delaying a procurement or performing the procurement at the final hour does not constitute an emergency.
- ◆ The Federal awarding agency expressly authorizes noncompetitive proposals in response to a written request
- ◆ After solicitation of a number of sources, competition is determined inadequate
 - ◇ Due to defects, boards may re-compete or reissue the RFP/IFB, if the competition is determined inadequate.



General Procurement Requirements

Recordkeeping

- ❖ States and Local WDBs must maintain records sufficient to detail the history of procurement. (2 CFR 200.318(i))
- ❖ Records must include, but are not limited to the following:
 - ◆ All offers/bids
 - ◆ Rating factors
 - ◆ Ratings/scores
 - ◆ Rationale for the method of procurement
 - ◆ Selection of agreement or contract type
 - ◆ Selection or rejection
 - ◆ Appeals and disputes
 - ◆ Basis for the contract price



ATTENTION

- ❖ Entities that make a sole source selection must prepare and maintain **written documentation of the entire process.** (20 CFR 678.610(b))
- ❖ Documentation must be retained and clearly **identify the review process** in a Single Area State.
- ❖ The documentation should provide evidence that the review was performed by an **impartial entity** and detail the **firewalls** that were in place during the review of the proposals.



Poll



*Which of the following is **NOT** considered to be restrictive of competition?*

Choose the answer that best reflects you (or your group):

1. Outdated pre-qualified lists.
2. Organizational conflicts of interest.
3. The use of an outside organization to administer the procurement process.
4. Posting a IFB/RFP for only a 24 hour period.



Part III: Procurement Standards

Summary

- ❖ States must follow the same competitive process they use for non-Federal funds.
- ❖ Local WDBs and other non-Federal entities must use a competitive process that conforms to the Uniform Guidance.



Technical Assistance



The following will be discussed at the **Virtual Learning Session**

Competitive Selection of One-Stop Operators “Deep Dive”

- ❖ Competitive Procurement Process
- ❖ Essential Contract Elements
- ❖ Avoiding Conflict of Interest
- ❖ Transition, Implementation, & Monitoring

Sign up at <https://www.workforcegps.org/events>.

Q & A

- ❖ Roles & Functions
- ❖ Eligible Entities
- ❖ Procurement Standards



