**WorkforceGPS**

**Transcript of Webinar**

**The Competitive Selection of One-Stop Operators: The Basics**

**Wednesday, March 8, 2017**

*Transcript by*

*Noble Transcription Services*

*Murrieta, CA*

JONATHAN VEHLOW: So without further ado I'd like to turn things over to our moderator today, Debbie Galloway, fiscal policy manager, at the Office of Grants Management. Debbie?

DEBBIE GALLOWAY: Thank you, Jon. Good afternoon everyone and happy Wednesday to you. Welcome to another WIOA Wednesday. This webinar will be on the competitive selection of One-Stop operators.

You will find the requirements for the competitive selection of One-Stop operators in the statute at Section 121; in the joint final rule at 678.600, so you will have to refer to the joint final rule and not the DOL final rule; as well as you may find information in the Uniform Guidance at 2 CFR 200. Additionally we have a TEGL, TEGL 15-16, that was published earlier in the year in which you can find additional information.

This webinar will discuss the intent of these requirements, the roles and functions of the operator, the entities that eligible to become an operator, and the general procurement standards that you must keep in mind when conducting a procurement. Later in the year, hopefully sometime in May, we will also conduct another webinar that will go into deeper detail on the actual competitive procurement process.

Again, my name is Debbie Galloway and I am the fiscal policy lead in the Office of Grants Management. I am joined by Chanel Castaneda, a grants management specialist also working in my office; and we are happy to announce we have a special guest. We have the deputy director/CFO of a local area in Ohio, Jay Bhattacharya, who will also be talking to us about her struggles and successes in issuing an RFP on One-Stop operator services.

Today we're going to begin our discussion on another WIOA hot topic, the competitive selection of One-Stop operators. We're going to take it slowly, and hopefully we're not going to be talking too fast, but we'll be covering the following things. We'll be discussing the "what" – the roles and functions of a One-Stop operator; the "who" – which entities will be eligible or are eligible to apply or bid for a One-Stop operator services; and the "why" – why is it necessary to do a competitive procurement.

Later after we complete the presentation, we will let Jay speak a little bit to talk about her struggles and successes in issuing an RFP recently in her local area, and then we will open it up for questions.

Now before we begin, let's take a look to see who's out there. So if you could look through your chat – Jon, did you get rid of the poll question? We wanted to see who was out there, what part of the country you're from.

MR. VEHLOW: Well, they can type it into that welcome chat that's up right now.

MS. GALLOWAY: Oh, okay. All right. Okay. So it looks like we have a well-rounded audience; a lot of people from the eastern part of the country as well as the central part of the country, so welcome.

All right. So now I'll turn it over to my colleague Chanel, who will talk about part one, the background, roles, and functions of the One-Stop operator competitive selection requirements.

CHANEL CASTANEDA: Thank you, Debbie. Hello, everyone. I'm going to begin this webinar with some basic background information.

Under the Workforce Investment Act of 1998, many local workforce investment boards served as One-Stop operators. One-Stop operators under WIA could be designated or certified through either a competitive process as a consortium of three or more partners, or grandfathered in from Job Training Partnership Act, or JTPA. Many of these entities have continued to be the operators since the inception of WIA.

Workforce Innovation and Opportunity Act – otherwise known as WIOA – requires that all One-Stop operators be selected through a competitive process. Unlike WIA, WIOA doesn't allow for the designation or certification of any organization as a One-Stop operator, including local workforce development boards, without a competitive process. WIOA also does not allow the grandfathering of existing One-Stop operators.

So keep in mind that this new requirement also applies to all One-Stop operators in the system including single state-local areas. And unlike other provisions in the joint rule, this provision is administered primarily by DOL even though it's contained in the joint rule; but because of the role of the operator it is an integral part of the operation in the American Job Network.

This provision is primarily administered by DOL. And like Debbie said, these requirements can be found in WIOA final joint rule, Section 678.600, and WIOA law, Section 121. And note that the requirements are only contained in WIOA joint final rule and WIOA law and not the WIOA-only final rule.

Competitively procuring the services of a One-Stop operator is important in achieving the program's vision of providing enhanced services. Now, let's talk about what needs to be in place to meet the deadline of July 1st, 2017.

So when is the deadline? As you know, the original deadline to install One-Stop operators using a competitive process was identified as July 1st, 2015. Through our transition authority we extended the deadline to July 1st, 2017, which also aligns with other important pieces to One-Stop operations such as the branding provisions.

The need to conduct periodic procurements is not only a requirement but a necessity. There are some local areas who have been with the same operator for the entire duration of WIA. Additionally the landscape of entities involved in workforce development has significantly changed over the years.

At the start of WIA there were not many for-profit companies in the workforce development system, and now they're involved as service providers for training and career services, fiscal agents, and One-Stop operators.

And lastly, another important reason to conduct periodic procurement is to allow a local board to gauge the current market and pricing to remain competitive. The environment that our local boards operate under has changed and grown, and WIOA and the American Job Center system has allowed for that evolution in the One-Stop delivery system.

Another question that may pop up is how often should competitive procurement be conducted. At a minimum, new competition must take place every four years. But if the state or local need a shortened timeframe, such as every two to three years, they have the flexibility to do so. Due to the statutory requirement, the competitive process for One-Stop operators in all local areas cannot be waived.

ETA realizes that the process to conduct a procurement may take some time and recognizes the length of such requirements. The joint rule clarifies a starting point. If not already in process, the joint rule – at 20 CFR 678.635 – identifies it as November 17th, 2016, in which every local board must demonstrate is it taking steps to prepare for the competition of its operator. This demonstration may include, but is not limited to, market research; requests for information; and conducting a cost and price analysis.

Competition provides the best method for ensuring the local board to examine their operator's effectiveness on a periodic basis. The re-competition of operators every four years is intended to promote efficiency and effectiveness by providing a mechanism for local boards to examine the performance and cost of its operators.

Regular competition allows local boards to make continuous improvements of their One-Stops, including operators and other performance metrics. For example, performance metrics for local areas may shift or change as One-Stop operators and local boards update their memorandum of understanding, resulting in changes to the operator's performance goals.

Ultimately the intent of competitively procuring the One-Stop operators allows local boards to assess if their operator is providing the best possible service at a competitive price. It is a new day and a new program, and WIOA has raised the bar to achieve quality service through our partners and One-Stop operators.

I just want to bring to everyone's attention that the requirement to use a competitive process to select a One-Stop operator is required. DOL also strongly encourages that the system use a competitive process for the selection of other important One-Stop functions, such as the fiscal agent, career and training service, and One-Stop use providers. Even though this presentation only addresses the competitive selection of One-Stop operators, some of these elements may be useful to keep in mind when procuring other programs, activities, or services.

So what is the role of a One-Stop operator? The basic role of a One-Stop operator is to coordinate the service delivery of participating One-Stop partners and service providers. The slide lists potential additional roles an operator may take on in a local area. Some examples of other potential roles include a One-Stop operator acting as a manager; overseeing the entire operations of a local delivery system; as well as managing the day-to-day operations of each center.

Or One-Stop operators may also serve as a liaison to the community, partner agencies and employers for the workforce system community, or partner relations. In these examples the One-Stop operator is fulfilling multiple roles at a local area, as the operator is a combination of a coordinator, manager, and service provider.

To ensure that the One-Stop operator is fulfilling its role as an operator, the operator's functions and responsibilities must be clearly articulated in all phases of the procurement process as well as in the legal binding agreement between the local board and the operator. This includes during the solicitation process as a role and function of the One-Stop operator should be expressly laid out in the procurement assurance being published, whether it's an RFP – request for proposal – or an invitation for bid.

In addition, states and local boards must ensure they're carrying out the role. One-Stop operators must do the following. They must disclose any potential conflicts of interest; must refrain from establishing practices that may create disincentives to provide services to individuals with barriers to employment who may require long-term services; and they must comply with federal regulations and procurement policies.

In the next slide we'll see what are some prohibitive functions of a One-Stop operator.

This slide includes all the functions and roles of the local board. The One-Stop operator is prohibited from performing these functions, as it may create conflicts of interest. Note that the functions listed here are the roles and responsibilities of the board. The bottom line to remember is that the One-Stop operator cannot take on the roles or functions of the board.

When the One-Stop operator is also serving in a different role within the One-Stop delivery system, the operator may perform some or all of these functions. For example, the operator is also the career service provider for the center. This is allowable under WIOA; however, only if established sufficient with firewalls and conflicts of interest policies and procedures are in place.

The possibility that a conflict of interest may arise is inherent when an entity or entities are performing or seeking to perform multiple functions within the workforce development system. We'll talk more in-depth about firewalls and avoiding conflicts of interest in our second webinar series.

So that's a lot of information to digest, so let's take a quick quiz or poll that we have here and see how much you guys were paying attention.

So the question is, we all know there are limitations as to what a One-Stop operator can do, so let's see how much you remember.

"Which of the following functions are prohibited for a One-Stop operator to perform?" One, negotiate local performance and accountability measures; two, perform oversight or monitoring or itself; three, develop and submit budgets for activities of the local board; or four, all of the above. So I'll give everyone a couple seconds. Looks like it's an overwhelming all of the above, so it looks like you guys were paying attention. All right.

So here is a quick summary – (crosstalk) – here is just a quick summary before we move on to the second part just in some important dates we want everyone to remember. Just remember by November 17, 2016 every board must take steps to prepare the One-Stop competition, and we talked about what steps these can include, including market research, request for information, or conducting price or cost analysis.

Another important date everyone should remember is July 1st, 2017. All One-Stop operators must have selected your competitive process. Any One-Stop contracts that were not competitively procured may continue until June 30th of 2017; but after that, a One-Stop operator must be competitively procured – must be in place.

And very important, the operators are prohibited from performing any functions or roles or responsibilities that are reserved for the local board.

So we're going to continue on to part two, which is eligible entities. For this part of the webinar we'll talk about all the eligible entities for the One-Stop operator. Let's begin.

So WIOA defines a One-Stop operator as one or more entities designated or certified through a competitive process. The One-Stop operator must be an entity, either 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.

Now, you may ask, what does "demonstrated effectiveness" mean? It's the One-Stop operator's ability to achieve the local planned performance deliverables and measures that are usually found in the local plan.

For many fiscal staffers that are listening to this session, you may have wondered if One-Stop operators are considered either contractors or subrecipients, and that's a great question. Remember, it is not the legal instrument or written agreement that defines whether an operator is a subrecipient or a contractor, but it is the purpose or function of that role that will determine the designation.

Because of the role of the operator they're responsible for achieving performance goals and therefore must be considered a subrecipient. You can find more on what and how one is deemed a subrecipient in the Uniform Guidance at 2 CFR 200.330.

So what this all means is that One-Stop operators including for-profit or commercial operators are subrecipients of a federal award; and thus, are required to follow the Uniform Guidance at 2 CFR 200 as well as DOL's exceptions at 2 CFR Part 2900; as well as WIOA law and regulations. Further clarification on what is required of a for-profit organization acting in the capacity of a One-Stop operator is discussed in the next slide.

This slide contains all the eligible entities that may be considered One-Stop operators as prescribed by WIOA. Some examples of eligible entities include local or county government, school districts, state agencies, federal WIOA partners, institutions of higher learning, nontraditional public secondary schools such as night schools or area career and technical education schools; local chambers of commerce or other business organizations or labor organizations; and even the local workforce development board if approved by the chief elected official – the governor – can be an eligible entity as a One-Stop operator.

But also note that elementary and other secondary schools are not eligible to become a One-Stop operator. In the list of eligible entities, you'll notice that private for-profit entities are eligible to be an operator. As a final note, an entity's eligibility to be the One-Stop operator in a local area is affected by any possible conflicts of interest and less-than-arms-length relationships.

So this is just something I want you to keep in mind when you're putting together your solicitation, and we'll discuss this for what it means.

This slide, as I said in a previous slide, that for-profit entities are considered subrecipients, DOL obtained approval by OMB through its Uniform Guidance exception at 2 CFR 2900.2 that expands the definition of "nonfederal entity." The definition of nonfederal entity includes commercial for-profit organizations and foreign entities.

What this all means is that all nonfederal entities who are recipients and subrecipients of a DOL award must follow the provisions contained in the Uniform Guidance, including the single audit requirements and the record retention requirements. This chart that we've put together depicts the applicability of the Uniform Guidance for private for-profit entities and other nonfederal entities.

If the for-profit entity receives a DOL award or a DOL subaward, then both the for-profit and other nonfederal entities must follow the Uniform Guidance, which as I stated earlier includes provisions such as single audit and record retention. For other federal awards or subawards, the for-profit entity should consult the federal agency making the award or subaward to see if they are to adhere to the Uniform Guidance. In the next couple slides we'll highlight some special conditions for these certain entities.

As I previously said, local boards can actually serve as the One-Stop operator. However, they must still compete to be the operator in the local area. The law requires that all nonfederal entities including local areas must use a competitive process that is consistent with the procurement standards contained in the Uniform Guidance.

If the results of a required competitive procurement yields a selection of the local board itself as the One-Stop operator, the governor and/or the chief elected official must agree to this selection. All precautions must be taken by the local area to ensure that conflict of interest is avoided and proper firewalls are enacted.

Proper firewalls must be in place to ensure the transparency and the integrity of the procurement process and demonstrate to the public as well as to ETA that the selection process was impartial and that no preferential treatment was given to the awardees. Some examples of firewalls may include an outside entity conducting the competition; or alternatively, the state board or a state agency to conduct the competition.

Outsourcing the entire procurement to an alternative entity would be the best practice to avoid conflicts of interest. Please note that all these costs and activities would be allowable under WIOA.

We previously talked about one condition that would lead a state board to carry out the One-Stop competition for a local board. Another condition that may lead a state agency or a state board to carry out the functions of the local board is if the local board is being reconstituted under the governor's reorganization plan.

If the local board has not been determined in time to run the competition, then the state board may carry out the competition for the operator in that local area. In the certain condition the state agency or the state board must follow the same policies and procedures that the state uses for procurement of nonfederal funds. These state policies and procedures may be different than the procurement standards found in the Uniform Guidance.

Please keep in mind that if the state board is not an arm of the state or is incorporated as a nonprofit organization, it must use a competitive process that is consistent with the Uniform Guidance.

The last special condition that would lead a state board to carry out the functions of a local board is for single state-local areas. Because of the nature of single state-local areas, WIOA requires that in these states the state board will act in place of a local board. This includes the responsibility to administer the competition to select a One-Stop operator.

In single state-local areas, the state agency is eligible to compete for and be selected as an operator by the state board as long as the appropriate firewalls and conflicts of interest policies are in place and followed for the competition. As mentioned earlier, a state agency can use its own procurement procedures as long as those same procedures as used when purchasing goods and services using nonfederal funds.

Some ways that the state board can avoid conflicts of interest with the following firewalls. One way is for the state board to put in place a committee with members that do not have conflicts of interest that would disqualify them from selecting the operator. Another way to avoid conflicts of interest is to delegate the responsibility to another state agency that is not competing to be the One-Stop operator, such the office of the state auditor or the office of the state inspector general, to administer the competitions.

And the last approach – or third approach – is to outsource the entire process of conducting the competition to an outside independent entity. All three approaches are appropriate ways to avoid conflicts of interest when a state agency would like to compete as a One-Stop operator and is also acting on behalf of the local board.

Now, let's turn our attention to two other special considerations that I would like to highlight.

Consistent with WIOA, a for-profit entity may be a One-Stop operator. In WIOA regulations law, ETA requires that for-profits selected as operators must follow the Uniform Guidance on the earning and negotiation of a fair and reasonable profit. The Uniform Guidance requires that profit is reasonable and fair, and that the entity conducting the competition negotiate profit separately from cost.

Therefore, the contract price for operation of the One-Stop equals cost plus profit. Profit should be based on the competitor's efforts and risk in achieving performance measures outlined in the local board's plan. Considerations to consider when quantifying the opportunity to earn profit are reference in the federal acquisition regulations, otherwise known as the FAR.

Local boards are allowed to cap the maximum potential profit that can be earned in accordance with the performance results. And lastly, for-profit entities that are operators are subrecipients of a federal award and must adhere to the Uniform Guidance as well as DOL exceptions, including any requirements identified by DOL's exceptions, and this includes the provisions of audit and access to records requirements.

The Uniform Guidance at 2 CFR 200.400(G) prohibits earning and retaining of profit on federal assistance unless expressly authorized by the terms and conditions of the federal award. Because WIOA law and regulations allow for-profit entities to be eligible to compete as One-Stop operators, they're able to earn and retain profit on federal awards.

WIOA regulations go on further to say that income earned by all other entities except for-profit is considered program income and may be retained only if such income is used to carry out allowable program activities.

And the last special condition I just wanted to highlight is to consider that all nonfederal entities, including Indian tribes, nonprofit organizations, educational institutions that are not the state, community-based organizations, and other entities are considered subrecipients of federal awards and must adhere to the Uniform Guidance at 2 CFR 200; including any requirements under DOL's exception when acting as a One-Stop operator.

So I know that's a lot of information to digest, so let's take a poll question to see how well you guys were listening. So the question reads, "Which of the following is not a condition under which it would be allowable for a state board to carry out the One-Stop competition for a local board?" And your choices are, one, the local board would like to compete to become the One-Stop operator; two, the local board is being reconstituted under the governor's reorganization plan; three, a for-profit organization is submitting a proposal to be the One-Stop operator and the state is not a single state-local area; or four, the state is a single state-local area.

So I'll give everyone a second. Just remember, which is not a condition under which is it allowable for the state board to carry out the competition on behalf of the local board? (Pause.)

So it looks like most everyone's selecting number three. And if you select number three you are correct. A proposal from a for-profit entity should not prevent the local board from performing its duties to administer the competitive procurement process. The three remaining answers are special conditions that would lead the state board to carry out the competition for a local board.

So now I'll turn it over to Debbie Galloway – oh, sorry. Sorry, I forgot about our summary slide.

So let's just summarize part two of this webinar series. Eligible entities to be the operator must be public, private, or nonprofit entities or a consortium of entities. There are three special conditions that we highlighted in which a state board would carry out the competitive process on behalf of the local board. And lastly, WIOA allows the earning and retaining of profit of for-profits, but remember, it must be negotiated separately from the contract price.

Now I'll turn it over to Debbie Galloway and she'll talk about general procurement standards for the last part of this webinar series.

MS. GALLOWAY: All right. Thank you, Chanel.

So as Chanel had indicated, this is the last part of our webinar before we turn it over to Jay and talk to her about her real-life experience with conducting a One-Stop operator.

So where do you find the procurement standards? Where can you get information on procurement standards, and what can you do to update your procurement procedures and policies to ensure that you're in compliance with the WIOA requirements as well as the Uniform Guidance?

So first I would suggest turning to the TEGL – TEGL 15-16 – which is available on our DOLETA.gov website as well as the Uniform Guidance, which may be found in the Electronic Code of Federal Regulations – ECFR.gov – by just querying it by 2 CFR 200 or 2 CFR 2900. So let's begin with the procurement standards.

For all contracts or agreements that are currently in place but were not executed through a competitive process, these contracts or agreements must be terminated no later than June 30th, 2017. By July 1st, 2017 all contracts and agreements with your One-Stop operators must have been executed as a result of a competitive process. As Chanel had indicated earlier, there is no grandfathering-in of existing operators.

The WIOA joint final rule and the Uniform Guidance does allow states to follow the same policies and procedures that they use for the procurement or purchasing of goods and services using nonfederal funds. So states would include all 50 states plus the territories.

For state agencies these policies may be different than the procurement standards outlined in the Uniform Guidance. Please refer to 2 CFR 200.317.

This provision does not apply to local boards or other nonfederal entities. The local boards and other nonfederal entities must use a competitive process that is consistent with the Uniform Guidance as outlined in 2 CFR 200 and 2 CFR 2900. The specific provisions regarding procurement standards may be found in Section 200.318 through 200.326.

So what are some of the general procurement requirements? Under WIOA and consistent with the Uniform Guidance, the general procurement standards and your policies and procedures must include or address the following. Any procurement procedures or policies you have in place must be in a written form. It must outline how you promote full and open competition. It also must address written standards of conduct which would address conflict of interest of anybody who is participating in the procurement process, and this may include board members.

Any procurement procedures and policies must also address how you're going to promote transparency and address the sunshine provision. It also must include language or criteria in ensuring that the One-Stop operators that you will be selecting will be to responsible entities.

Such policies also must identify the criteria that will be used in order to select a sole source or using a noncompetitive requirement. I'll talk about that in a little bit more detail in some upcoming slides.

And lastly, it is also important that your procurement procedures and policies identify the recordkeeping requirements. It is expected that you document the full procurement history in some type of file at your agency.

Just as important having written procurement and purchasing policies is the buy-in of managers and board members. The board and program managers must be able to enforce and apply these rules whenever they're conducting a procurement.

Additionally, training is essentially is making sure that these policies are correctly applied. Training should be provided to board members or staff persons that will be participating in some form or fashion in any phase of the procurement process. I'll talk about each of these requirements in the next few slides.

The WIOA regulations require that there is written documentation and written procurement policies and procedures on the competitive procurement process. This process should be outlined or addressed as it relates to the selection of One-Stop operators. These written policies and procedures must be consistent with the Uniform Guidance.

It is also suggested that these policies include a timetable to ensure that the selection of a One-Stop operator is conducted at a minimum every four years, and that there is enough time to go through the entire cycle itself.

And lastly, these written policies and procedures must address the settlement of any contractual or administrative issues that may arise out of a procurement, and may also include the steps one would take in addressing any protest, appeals, or disputes.

Additionally, written policies should address how payments or invoices will be processed to ensure that they're timely as well as the closeout of the contracts with the One-Stop operator.

So once these written policies and procedures are in place, the next is determining which method the procurement will be used in selecting a One-Stop operator. The procurement standards in the Uniform Guidance outline a variety of different competitive processes in 2 CFR 200.

Here's some permissible competitive processes – sealed bids, or otherwise known as formal advertising for competitive procurement, such as invitation for bids, IFBs; as well as other competitive processes such as issuing requests for proposals. And then the last procurement process is the noncompetitive, or sole source, process.

Again, as we had indicated earlier, states are allowed to select an operator through sole source only if those same policies and procedures are used for procurement using nonfederal funds. Again, this is only applicable to states and is only applicable if those same policies and procedures are applicable to other procurements using nonfederal funds.

Now let's move on to promoting a full and open competition. All procurement transactions of any federal award or using federal funds must be conducted in a manner that promotes full and open competition. As indicated earlier, all these procedures must be in written format, so they should be part of your procurement handbook, your purchasing handbook, or in some other standard operating procedure.

These procedures should also outline the phases of a procurement process, which is also outlined in TEGL 15-16. The process must be transparent so as to avoid or restrict competition, and we'll talk a little bit about ways a competition can be restricted and the things you want to avoid.

Many if not all One-Stop operators will have exceeded the simplified acquisition threshold of $150,000. If the contract agreement with the One-Stop operators does exceed $150,000, then it is expected that the formal competitive process is conducted, using either an invitation for bid or an RFP process. And like all federal costs, entities performing a competitive procurement must ensure that the proposed costs that are contained in its bid or proposal are always reasonable, necessary, and allocable.

There are additional mechanisms that the states and local boards can put in place to also ensure full and open competition. States and local boards may opt to retain an outside organization to conduct an objective review of the proposals; and that may include asking for participation from the state purchasing office or some other state agency that is comfortable or knowledgeable of the procurement process.

The WIOA regulations also require that the competition must be documented, and so that must include the factors that will be used to rate or score the proposals or bids. Documentation is key to ensuring that there is transparency in the competitive process.

If the organization conducting the competitive procurement determines that there were defects in the process, the organization must recompete the selection of a One-Stop operator. Some examples of some defects may be that the formal advertising of the solicitation or the procurement opportunity was not widely disseminated to attract a reasonable number of potential operators; or the timeframe was not sufficient in allowing bidders or proposers to submit a complete and accurate proposal.

Now, moving on to some prohibited restrictions. These are restrictions that would limit competition and we want you to avoid those. Although WIOA requires that operators are to be located in a local area, unnecessarily limiting the bid proposals from companies that are physically located in a certain zip code would be restrictive. Essentially, you should be able to expand your reach – ask for bids from agencies that are not located in that local area. But again, as we had indicated, it is expected that the One-Stop operator is located in the local area when performing its duties and functions as a One-Stop operator.

Prequalified lists are allowable to be used; however, documentation must be made available to show how these sources were identified. The list must be current and contain enough qualified sources to ensure free and open competition. It must not preclude bidders from qualifying during the solicitation period. If an operator is not selected from a prequalified list, other competitive procurement means must be conducted to select the One-Stop operator.

And just for further clarification, any prequalified list must be the result of doing some form of competitive procurement process.

Some other restrictions – something that we've always seen is you cannot identify brand names which would not necessarily apply to the selection of a One-Stop operator or any other (things ?) that would sway or put the specifications in favor of one particular bidder versus another.

Now, moving on to the written standards of conduct. This is where we address conflict of interest. Persons that are responsible for using public funds are expected to maintain ethical integrity standards when conducting procurement actions. Under the Uniform Guidance the local board must have written standards of conduct that must address the following: the Uniform Guidance has expanded this section of standards of conduct, and it now addresses conflicts of interest that may be real, apparent, or organizational conflicts of interest.

Policies and procedures must be in place to recuse an individual or organization that may have a possible conflict of interest. Typically what we see is that there are conflicts of interest of financial disclosure statements made available or on file of any person who's participating in that procurement process. Additionally, any written standards of conduct policies must identify the use of firewalls to mitigate any conflict of interest when an entity wants to perform more than one function or role.

Lastly, procedures on how to keep information regarding the competitive pricing of proposals must be secured and they must be maintained in a confidential manner. This is done in order to prevent one bidder from having an unfair advantage from another.

Now, moving on to transparency. The entire procurement process must be performed under a process that promotes transparency and responsibility from the very first phase – the planning phase to the closeout phase. DOL interprets the WIOA sunshine provisions to require that information, selection, and certification of the One-Stop operator be made available to the public on a regular basis and to auditors and federal reviewers.

This section also provides an opportunity for the public to comment and participate in the process. The information that local boards are required to make available to the public include but are not limited to: a copy of the local board's conflict of interest or standards of conduct policy; their written purchasing or procurement policies; a copy of the actual solicitation, whether it's a request for proposal or invitation for bid; a listing of all the organizations that have submitted bids or proposals; and an abstract of those bids or proposals. It's not that the entire proposal or bid needs to be shared, but just the abstract.

Additionally, the board meeting minutes in which the decision on the selection and certification was made must be available. Also, the identification of who actually was selected as the One-Stop operator must be made available; and the total award amount and duration of that contract between that organization and the One-Stop operator must also be made available.

Now, moving on to responsible entities. When considering a One-Stop operator, a local board must take into account the entity who is bidding, taking into account its integrity, compliance with public record, past performance, financial stability, and anything else that the local board deems as responsible entities.

Responsible entities are entities that possess the ability to successfully perform under the terms and conditions of that agreement and according to the specifications of that solicitation. Boards must ensure that they're awarding contracts or agreements to responsible entities.

In addition, the local board must also ensure that entities that are selected are not debarred, suspended, or excluded from participation or securing federal assistance funds or programs.

Now, moving on to sole source procurements. When certain criteria is met, an operator may be selected to a sole source procurement. This form of procurement may only be used when one or more circumstances as outlined in this slide apply.

These are: one, that the item or service is available from one single source – and as we all are aware, there are many agencies out there that are able to provide the services of a One-Stop operator; (two ?), public emergency. This is where there's an emergency or disaster that would prevent you from conducting a timely competitive procurement. This does not, however, meet – delaying the procurement until the very last minute does not constitute a public emergency.

The federal awarding agency expressly authorizes noncompetitive proposals in response to a written request. At this time, the Department of Labor requires that all One-Stop operators are selected through a competitive process.

And the the last criteria is after the solicitation of a number of sources, competition is determined inadequate. And this is, of course, after the board determines what the defects of that solicitation was, and if they went back and rebid or reissued their RFP and it still resulted in receiving only one bid or less, than that would be qualified as a sole source procurement.

Now, recordkeeping. For all procurement actions from beginning to end, documentation is key in order to ensure that the procurement process is transparent and objective. All organizations must maintain files in accordance with the WIOA regulations, including what factors were used in selecting an operator. State and local boards must maintain records to detail the history of the procurement.

These records must include but are not limited to the following: copies of the proposal or bids must be maintained or kept; ratings of each of the proposals must be maintained and kept; the rationale for the method of procurement must be described or maintained – and that would determine whether or not you're using a RFP or invitation for bid; documentation to justify the selection or rejection of proposals and bids must also be maintained; documentation outlining the steps to submit an appeal and resolve an appeal or dispute must also be maintained; and the justification for the contract price.

As you know, the record retention requirements as specified in the Uniform Guidance are typically three years from the date of the submission of the last final expenditure report. And also, if there are any existing disputes or complaints, that three-year timeclock would be extended until the resolution of that has been completed.

The Uniform Guidance requires that the history of the procurements be maintained. Here are some things that we want you to pay special attention to when you document your procurement process. Local boards should be careful to document its decision to select or not select potential operators or to sole source. The documentation for this is particularly high when entities are making a sole source selection; because as we have indicated in an earlier slide, there is basically only four factors which would constitute or allow a sole source procurement.

In single state-local areas, due to the nature of a single local area, state boards are eligible to be the operator. Since the state board carries out the functions of the local board, documentation standards for the state boards to compete as operators is also high. State boards must document how there is appropriate firewalls and conflict of interest policies in place to demonstrate that being selected as an operator is impartial. We'll go deeper into firewalls and conflict of interest in the next set of webinars.

So that was a lot on procurement standards. We're right at the top of the hour, so we want to do a quick polling question before we turn it over to Jay for open discussion on her actual process in conducting a competitive procurement of a One-Stop operator.

So the question, the quiz right here, is, "Which of the following is not considered to be restrictive of competition?" One, outdated prequalifying lists; organizational conflicts of interest; the use of an outside organization to administer the procurement process; or posting an invitation for bid or request for proposal for only a 24-hour period? (Pause.)

Okay. So good, seems like everyone has been listening. The answer is three. The use of an outside organization to administer the procurement process actually acts as a firewall and helps avoid any conflicts of interest, and thus would not be restrictive of competition.

Okay. Before we turn it over to Jay and ask her a few questions about what she had done in her local area, we just wanted to summarize what was just discussed in that last and final section.

As indicated earlier, the Uniform Guidance at2 CFR 200.317 allows state agencies to use the same competitive processes that they use for nonfederal funds. For all other nonfederal entities including local boards, the procurement process must be consistent with the Uniform Guidance and the procurement standards outlined in the Uniform Guidance.

Okay. So let's turn it over to Jay, and we're going to just have her – well, let's welcome Jay. Jay, are you on the line?

JAYANTI BHATTACHARYA: Yes. Good afternoon.

MS. CASTENEDA: Thank you, Jay.

MS. BHATTACHARYA: Thank you. This is Jayanti Bhattacharya. I'm the deputy director and chief financial officer for Workforce Area Three in Ohio. It's the combined area of Cleveland and Cuyahoga County.

MS. CASTENEDA: So Jay, can you tell us just a little bit about your local area as to how many American Job Centers you have in your local area and what did you recently do to ensure or to meet this requirement of conducting a competitive procurement process in order to select a One-Stop operator?

MS. BHATTACHARYA: Sure. So we are a combined area of city of Cleveland and Cuyahoga County. Initially both Cleveland and Cuyahoga County were two different service delivery areas, but when the redesignation was done during WIA, they were combined and we now have a combined area that consists of both the city of Cleveland and Cuyahoga County.

In the state of Ohio we have 20 workforce delivery areas. The city of Cleveland and Cuyahoga County work together under an intergovernmental agreement by which the city is the administrative entity and county is the fiscal agent. We have a combined workforce development board of 34 members, and these members are appointed by both city and county, equal numbers. The required members are appointed jointly and then we have equal numbers of city and county board members appointed.

We have two full-service One-Stop centers – American Job Centers – and we also have a couple of satellite offices. These satellite offices are in conjunction with the local job and family services, so they're called neighborhood service centers, and our presence is also there in those satellite offices.

Recently we also started – our presence is also there in some local libraries, both the city of Cleveland library system and the county library system. I think we have six county libraries and three city libraries that currently we do have our staff located in those areas.

The mayor of the city of Cleveland and the Cuyahoga County executive are the chief elected officials who jointly govern the workforce development program. That is, as I've mentioned earlier, through an intergovernmental agreement.

Now, when talking about our request for proposal and our procurement of the One-Stop operator, we have been procuring – we have been conducting this RFP, so we go through an RFP process. This has been going on for at least last 10 years, and that's when we had the merged city of Cleveland and Cuyahoga County system. Prior to that the city was doing their own procurement of One-Stop operator and the county was doing its own procurement of One-Stop operator. But I'll talk to you about the combined selection for the One-Stop operator.

MS. CASTENEDA: Yes. So Jay, can you just briefly tell us how long it takes you from beginning to end to go through a procurement process; in particular, for the One-Stop operators? How many months, years does it take?

MS. BHATTACHARYA: Sure, sure. So for us we do try to make sure that we have a contract we have negotiated and have avoided a contract (sic) and it is in place by July 1st. So when we do the RFP, we start working actually in November, so that it takes us about two months, two to three months to put together our RFP documentation and all the required – talk about what are the things that we want our One-Stop operator to do. So in our area our One-Stop operator does not just do – it's not just the operations. They just don't do the full-service operations. They're also involved in the delivery of the WIOA career services.

We started working – so we have the RFP, we do it for a three-year period, and what we do is we award the contract for one year with the options to renew or amend for two additional years based on the performance and the management of the One-Stop. We start working on the RFP in November-December, sometime around that time. We issue the RFP for one month, in the month of February, so mid-March we receive all the proposals. We do the review in the month of April and submit it to the board for approval.

The recommendation from the review committee is given to the board in the month of May. Once it is approved by the board, it then has to go before the county executive and the county counsel. Because county is the fiscal agent, we have to follow the procurement process put in place by the Cuyahoga County administration.

So that's the amount of time we take. We start in November and get the contract signed and in place definitely by June 30th.

MS. CASTENEDA: So Jay, can you just speak a little bit as to what is involved in drafting an RFP and what are the key things that must be contained in each of the RFPs that you issue?

MS. BHATTACHARYA: The main thing that we look to ensure that in RFP the specs include the scope of work – that the scope of work is detailed and it details the number of American Job Centers that we have that will be operated; the number of people that have been served in the prior years; and what other services that are to be delivered at the One-Stop.

We do provide them – we do ask them – we do tell them what the deliverables are and what the WIIA outcomes have to be. One of the most important things that we do include in our specification is that the prospective vendor or proposer should give information about their prior experience and also have their financial stability. They need to let us know what their financial status is and what is the budget requirement for operating our One-Stops.

MS. CASTENEDA: So Jay, then, you're looking for evidence of past performance as well as financial stability to determine if they're responsible entities?

MS. BHATTACHARYA: Yes. We definitely look into the past performance and we do ask them to submit to us their annual financials, their audits, or any financials so that we can have a better understanding of their financial status. Because it's just – we do have a large area. We get about $9 million here – we got about 9 million (dollars) with our WIOA funds, of which 3 million (dollars) were for youth but the remaining 6 million (dollars) is for the adult and dislocated worker.

And we serve about – we touch close to 35,000 people either online, in person, in any of the ways – or by phone that they can contact – they may contact us. So we definitely need to make sure that the prospective One-Stop operator has financial stability plus they have the ability to perform based on their prior experience.

MS. CASTENEDA: Okay. Thank you.

So for everybody that is listening in on the webinar, Jay was kind enough to share with us her RFP. So if you look in the file share box at the bottom middle of your screen you'll see a copy of the PowerPoint presentation as well as a copy of her RFP. This is the actual RFP that Cuyahoga County released for this past procurement cycle in they selected a One-Stop operator.

So Jay, there's a lot of questions surrounding firewalls and conflicts of interest. What is your organization's policy regarding conflict of interest, and what steps do you take to ensure that there isn't any conflict; and if there's necessary – what are the necessary ways to ensure that all those appearance or real conflicts of interest are transparent and that they're made known, and that anyone who has a conflict of interest recuses themselves from either being on the panel, rating those applications, or sitting in a meeting and actually voting on the selection of that One-Stop operator?

MS. BHATTACHARYA: All right. So as far as the conflict of interest and transparency is concerned, all our board members and our employees have to sign a conflict of interest form. That is a requirement through our ethics, through our inspector general's office, that all employees, all board members have to sign – they have to attend an ethics training and sign a conflict of interest form.

While we're doing – when we do these RPFs, whether it's for the youth or whether it's for the One-Stop operations or the services to the jobseekers, when we do the evaluation of these proposals we do have in our review committee members from the board and members from the outside – other workforce-related agencies.

Prior to them attending, starting the evaluation process we do ask everybody to submit to us the conflict of interest form saying that they do not have any – they have no conflict of – they do not have any interest in any of the proposers that have submitted a proposal. If there is any that has a conflict, they will recuse themselves and they will not be a part of the evaluation team.

When the recommendations are taken to the board for approval, at that time also if any of the board members have any relationship, any connection, if they're on the board of any organization that is being recommended, they all recuse themselves from voting.

MS. CASTENEDA: Thank you, Jay. So if we could just go back to the start. So you've drafted the RFP; what does your organization do to generate interest in order to collect as many bids or proposals as possible? Did you conduct – what forms or avenues did you use to promote or publicize the solicitation and what other things did your organization do to help answer questions or try to attract a lot of entities to come in and submit a bid or proposal?

MS. BHATTACHARYA: Sure. So we used to - in the past we used to publish a public notice about the RFP, but this year – so our last RFP was conducted in 2016 for PY '16. And during that time we decided to not go out and do a public notice in the newspaper. Instead, we put the RFP on our county's website. So the county's purchasing department has a page on which all of the current RFPs and current department orders and requests are posted, so we went ahead and posted it on that website. We also sent our RFP to the Workforce Directors Association so that they could go ahead and post it on their website.

We also – our office of procurement has a standing list where everybody who is interested in – any time when they contact us and say that they're interested in either youth services or providing One-Stop operation or providing services to our jobseekers, we tell them to go ahead and put their name on our county's list of interested vendors. So we have that list also that we provide to the office of procurement and diversity to go ahead and send out the RFPs to all those vendors who have shown interest.

In addition to that we also have, I think it's like two weeks or 10 days after the RFP is let out or advertised, we have what we call a technical assistance session where we invite everybody who is interested in proposing for these services – can come in and get their questions answered. We give them the details of what we are looking for. If for some reason it was not clear on the proposal or specs that we had put together, that we could answer questions. So that's another thing that we do to increase the interest and to have a better participation.

MS. CASTENEDA: Thank you, Jay. This is all very helpful.

And for those audience members that have yet to begin the process or that they're in the planning phase, what tips or advice can you give them?

MS. BHATTACHARYA: For those who are in the planning stage, it's like – I mean, depending on what type of organization you are, what type of a board you are, whether you are a nonprofit or a public entity, you do need to start working on this right away because we don't have time to have something in place by June 30th. So that's something that I definitely want people to keep in mind.

One thing that we did have – that we did learn from the process that we had and working for all these years with our One-Stop operators, one thing that we do need to kind of pay more attention to – which we will do in our next proposal that we do – is to be clear on what type of service we want, because when the vendors received the proposals they were like all over the place. As far as cost, they were all over the place. One was like 100,000 (dollars); another one was $1 million.

I think the reason was it probably was not very clear as to what services are we really asking them to assist us with and what is their role in this whole process. Because when we advertised, when we went out with the RFP it was not just for the operation. It was also to provide the intensive career services. So that's something that they need to make sure you specify what exactly are you looking for.

MS. CASTENEDA: Okay. Thank you, Jay. So we just have a few minutes and there's a lot of questions that have come in from the audience. One of the questions that came in is, "You had indicated earlier that the RFP was not only for generic One-Stop operator services but also as a service provider. When bidders or proposers submitted their application, did they provide a single budget or did you require them to separate out the budget between their One-Stop operator functions and as a service provider?"

MS. BHATTACHARYA: In the current year's proposal that we did, we asked them to provide us with a single budget that would cover everything – employer services and the jobseeker services as well as the One-Stop operation.

MS. CASTENEDA: Okay. Another question came in. "How do you monitor their performance?"

MS. BHATTACHARYA: We have a monitor who monitors them on an annual basis. And because we also – because this One-Stop operator is also providing the intensive services we get monitored by the state of Ohio when they come out to monitor our performance, and our performance is basically what the One-Stop operator's performance is.

So if on the state side, if we are meeting or exceeding our performance standards at the state level, then the One-Stop provider is meeting or exceeding the performance standard.

MS. CASTENEDA: Okay. All right. One other question that came in, Jay, from the audience is, "Do you require the applicants to complete a conflict of interest or if they have some kind of relationship with your organization, do they make that known in their application?"

MS. BHATTACHARYA: Yes. We do have – I think there is one that is non-collusion affidavit. I think that is the one, so there are forms. If you look into the proposal that you have posted, there are forms there where they have to sign the certification regarding lobbying; they have to sign the non-collusion affidavit. So there are – all these forms are there for them to sign and submit to us before – when they submit to us the proposal.

MS. CASTENEDA: Okay. Great. And Jay, that is all part of the RFP document that you shared with us?

MS. BHATTACHARYA: Yes.

MS. CASTENEDA: Thank you.

MS. BHATTACHARYA: So it's on page 42, there is a thing called proposal checklist and it's says everything. It even has a certification on debarment suspension and eligibility. There's non-collusion affidavit and standard of conduct and everything.

MS. CASTENEDA: Okay. Thank you, Jay. So we just have a few minutes left. We appreciate your insights, Jay, and your practical experience in conducting an RFP.

Now, looking at some of the comments that are coming in, one person said, oh, this process seems very difficult. What can you say to that?

MS. BHATTACHARYA: Excuse me. Can you repeat the question again?

MS. CASTENEDA: Some of the questions that have come in from the audience, one person had indicated, well, this procurement process seems difficult. What would your response be to that?

MS. BHATTACHARYA: Well, the procurement, it is difficult if it is – I wouldn't say it is difficult. It is a lengthy process, and it's a lengthy process because of what our local government is requiring us to do. It depends on what entity – what type of entity you are and how you want – the document is not difficult to do.

It's just the process. And because at our end we have to make sure there are certain things that are adhered to, there are certain requirements that have been put on us by our county administration that we have to adhere to that make this a difficult process. But I don't think it is that difficult for the rest of the country.

MS. GALLOWAY: Okay. Thank you, Jay. All right.

So we just have a few more questions that we want to answer before the end of the webinar. One question that came in is, "Is this requirement only applicable to One-Stop operators of a competitive One-Stop or does it include the affiliated sites?" The law is clear, that all One-Stop operators must be selected using a competitive process.

It does not make a distinction between comprehensive One-Stop and affiliated sites. It's clear that the One-Stop operators – all One-Stop operators – must be selected using a competitive process.

Let's see what other questions we have coming in. Let's see. "Did you just say 'foreign entities'?" So DOL's exception at 2 CFR 2900.2 expands the definition of "nonfederal entity" to not only include commercial or for-profit organizations, and it includes foreign entities. And the reason for that is this exception is Department of Labor-wide. We have a sister organization, the International Labor Affairs Organization, that in fact procures and grants awards to foreign entities. That's why that is included in that exception.

Let's see. Let's take one more question before we wrap it up. (Pause.)

Okay. "In a large state, can a local workforce board conduct a sole source bid process?" Just to be clear, any entity that isn't a state agency must conduct a competitive procurement process that is consistent with the procurement standards in the Uniform Guidance.

The default is not sole source; it is a competitive process. And it's only when that competitive process does not result in an adequate number of proposals and that the organization looks back at its solicitation to see if there's any defects, there's a possibility that you would reissue that RFP. But Uniform Guidance is clear, that there's only certain situation that we would recognize as a sole source procurement.

Those are public emergencies where there's only one source available, and a couple of other things. So when that happens, the evidence of that needs to be documented. And as indicated earlier, the Department of Labor feels very strongly about this requirement; that it is expected that all of our One-Stop operators that are operating any One-Stop centers – American Job Centers – after July 1st have been selected through a competitive process.

And so even when the roles have changed, anybody who is in place and performing as a One-Stop operator, there needs to be evidence in place that they were selected, that they were contracted using a competitive procurement process.

Okay. So that wraps up the hour and a half that we have on this very first webinar. We hope again in the near future – hopefully sometime in the spring, either April or May – that we will do a second webinar that will be on the deep dive. We will go into the five phases of a procurement process, and those five phases are mentioned in TEGL 15-16.

It'll also talk about different ways to avoid conflicts of interest as well as establishing firewalls. And finally it will talk about what needs to be done in order to ensure that you're monitoring the performance and activities of that One-Stop operator.

And so please, if you have not already, please sign up to the WorkforceGPS website. This is where you will get the invitation for the next set of webinars. And so we would just to wrap it up now, and if you have any questions you can feel free to email Chanel and I. Our email address – Jon, can you put that up for us? It's Galloway.Debra@dol.gov.

Please refer to our DOLETA.gov website. If you go to the advisory section or if you simply go to Google and search "TEGL 15-16," the competitive selection of One-Stop operator training and employment guidance letter should pop up. Make that available for your board members to read.

So thank you for joining us this last hour and a half. Hopefully this was some good information for you in moving forward and meeting these requirements in selecting One-Stop operators using a competitive process. Thank you.

(END)