I Have to Compete my One-Stop Operator. Now What?

Presented by the U.S. Department of Labor, Employment and Training Administration
Today’s Objectives

Competitive Selection of One-Stop Operators

- Purpose and important dates
- General procurement standards
- Five phases of a competitive procurement process
- Panel discussion
Applicable to one-stop operator competition:

- Workforce Innovation and Opportunity Act
  WIOA Sec. 121(d)
- Joint WIOA Final Rule
  20 CFR 678.600 - 678.635
- Training and Employment Guidance Letter (TEGL)
  TEGL No. 15-16
- Uniform Guidance Procurement Standards
  2 CFR 200.317-200.326
Important Dates

WIOA Sec. 121(d)(2)(A)  20 CFR 678.605  20 CFR 678.625

- As of **July 1, 2017**, all existing and new one-stop operators must have been selecting using a competitive process.

- Certification or designation must be the result of a competitive process.

- The competitive process must take place, **at least once every 4 years**.
Starting Now

20 CFR 678.635(b)

- By **November 17, 2016**, every Local WDB must have demonstrated steps taken to prepare for competition of its one-stop operator.
  - Steps can include, but not limited to:
    - Conducting market research
    - Sending out Requests for Information (RFIs)
    - Performing a cost and price analysis
States

- A State must follow the same policies and procedures that it uses for procurement with non-Federal funds (20 CFR 678.605(b) and 2 CFR 200.317).

**State (2 CFR part 200.90)**

- State means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any agency or instrumentality thereof exclusive of local governments.

- Other non-Federal entities, such as Local WDBs, Indian Tribes, must follow the principles of competitive procurement in the Uniform Guidance at 2 CFR Part 200, including DOL exceptions at 2 CFR Part 2900.
Basics

- Designation must be the result of a competitive procurement process.
- Firewalls must be in place when entities perform or act in more than one role or function.
- One-Stop Operators are considered subrecipients not contractors.
  - Entities selected and serving as one-stop operators are subrecipients of a federal award and thus are required to follow the Uniform Guidance.
- This includes for-profit organizations which is a non-Federal entity defined at 20 CFR 675.300 and 2 CFR 2900.2.
# General Procurement Standards

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Written Policies and Procedures:

- **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.

Full and Open Competition:

- No small purchase procurement process for contracts valued in excess of the simplified acquisition threshold (currently $150k).
- 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.
Prohibited Restrictions

- Geographic preferences beyond those requiring an operator be located within a Local Area;
  - Offerors and bidders may come from different zip codes and cities outside of the local area. However, one-stop operator must be located in the local area in order to carry out its functions and responsibilities as an operator.

- Outdated pre-qualified lists;
  - Pre-qualified lists are a result of a competitive procurement process. Review and updates to this list must be done frequently.

- Unreasonable requirements, such as unnecessary experience and excessive bonding;
Prohibited Restrictions

- Noncompetitive pricing practices;
  - A local or State WDB cannot issue an RFP or IFB that includes no funding or zero-funding.
- Noncompetitive contracts to consultants that are on retainer contracts;
- Conflicts of interest;
  - Individuals and organizations with conflict of interest should recuse themselves from the competitive process and document this decision.
- Specifying only a “brand name” produce instead of allowing an equal product to be offered;
- Any arbitrary action in the procurement process.
Written Standards of Conduct:

- Written standards of conduct to address conflict of interest must contain the following (2 CFR 200.318 & 200.319):
  - Procedures to address the following types of conflicts of interest:
    - Real
    - Apparent
    - Organizational
  - 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.
General Procurement Standards cont.

Written Standards of Conduct cont.:

- **Firewalls**
  - Establish to ensure the transparency and integrity of the procurement process. Demonstrate to the public that the selection process was **impartial** and **no preferential treatment** was given to the award recipient.
Recordkeeping:

- Documentation should be retained for all phases of the competitive procurement process.
  - The Uniform Guidance at 2 CFR 200.318(i) requires the maintenance of records sufficient to detail the history of procurement.

- WIOA regulations at 20 CFR 678.605(d) require entities conducting the competition to prepare written documentation explaining the determination concerning the nature of the competitive process to be followed in selecting the one-stop operator.
  - Local or State Boards have to document carefully the decision to select or not select a proposal.
Recording Keeping cont.: 

- Documentation is **key** to ensure that the procurement process is transparent and objective.
- Standards for documentation are **high** if the procurement results in a sole source selection.

- Procurement history file should contain, at a minimum:
  - All proposals/bids received
  - Ratings of those proposals
  - Rationale for the method of procurement
  - Selection of agreement or contract type
  - Selection or rejection of proposals/bids
  - Appeals and disputes
  - And the basis for the contract price
Sole-Source Selection:

- Non-federal entities may select an operator through sole source selection (2 CFR 200.320) if the following conditions apply.

- One or more of the following conditions must apply (2 CFR 200.320(f)):
  - The item or service is available only from a single source
  - Public exigency or 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
These five (5) phases are designed to ensure that the competitive procurement process is conducted in an open and transparent manner and may include the following:

- Planning Phase
- Release and Evaluation Phase
- Negotiation and Selection Phase
- Implementation Phase
- Closeout Phase
1 - Planning Phase

- **Identify Need**
  - What are the activities or services to be provided?
  - Who is the target audience and what program outcomes are to be achieved?

- **Conduct Market Research**
  - Utilize market research, such as Request for Information or Qualifications (RFI or RFQ).
  - Use information to tailor procurement solicitation to increase competition and to cast a wide net.

- **Establish Parameters for Timeframes and Monies**

- **Identify Procurement Method**
  - Request for Proposals (RFP) or Invitation for Bids (IFB).
Planning Phase cont.

- Develop Requirements for One-Stop Operator
  - Based on identified need
  - Will be used to develop Statement of Work (SOW)
- Develop Procurement Solicitation (e.g., RFP or IFB)
  - Based on the information gathered, what is the best procurement solicitation to address the identified need(s)?
- Develop Factors for Evaluation/Scoring
  - Based on the identified need(s) and requirements for the one-stop operator
- Identify Panel and Signatory Authority
  - Prepare and sign conflict of interest statements
2 - Release and Evaluation Phase

- Promote Competition
- Publicize Procurement Solicitation
  - Solicit on State websites
- Prepare Proposals/Bids
  - Offerors prepare proposals/bids based on the requirements of the solicitation
- Host Bidders Conference
  - May increase awareness of the opportunity
Collect Proposals/Bids
- Have a system in place to receive proposals/bids
  - Internal controls
  - Documentation

Score or Evaluate Proposals
- Develop factors and scoring procedures
- Assign reviewers
- Conduct the evaluation
- Develop competitive range
- Document results

Must award to **RESPONSIBLE** entities
KEEP IN MIND - Awards must be made only to responsible entities that possess the ability to successfully perform under the terms and conditions of the proposed procurement.

- When selecting the operator, consider the following (2 CFR 200.318(h)):
  - Integrity
  - Compliance with public policy
  - Record of past performance
  - Financial stability
  - Financial and technical resources

- Entities must not be debarred, suspended or otherwise excluded from or made ineligible for participation in Federal programs/activities (2 CFR 200.213).
3 - Negotiation and Selection Phase

- Negotiate Performance Levels
  - Outline in the SOW or schedule of deliverables
- Negotiate Reasonable Profit, if applicable
  - 2 CFR 200.323(b)
  - For-profits only
    - Cost + Profit = Price
    - The Federal Acquisition Regulation (FAR) recommends that profit level reflect several factors:
      - Contract effort
      - Contract cost risk
      - Past performance
Negotiation and Selection Phase cont.

- **Negotiate Payment Details and Frequency**
  - Type of payment (advance or reimbursement)
  - Frequency (monthly vs quarterly)
  - Supporting documentation

- **Negotiate Duration and Modification Process**
- **Obtain Local WDB, CEO, and Governor approval, if applicable**

- **Make Offer and Obtain Acceptance**
  - Both parties need to know their:
    - Obligations
    - Rights
    - Remedies
Negotiation and Selection Phase cont.

- **Certify or Designate One-Stop Operator**
  - Ensure that all essential and/or required clauses and provisions are included

- **Execute Contract, Agreement, or MOU***
  - Identify person(s) with signatory authority
  - If person(s) with modification authority is different, identify those person(s)
  - Identify special clauses and conditions

*(Memorandum of Understanding is a form of a legal binding agreement and is not intended to be the MOU that is agreed upon by partner programs)*
Essential Elements of a Contract, MOU, or Agreement:

- All written contracts or agreements between the one-stop operator and Local WDB or State must include the essential elements of a legally executed and binding agreement.
  - **Statement of Work (SOW)**
  - **Schedule of Deliverables**
  - **Payment Terms**
  - **Authorized Officials and Purpose**
  - **Additional Terms and Conditions**

- A contract should be well organized and easily understood.
- May include:
  - Elements of the solicitation
  - Measurable performance goals
Statement of Work (SOW):

- The “**heart of the agreement/contract/MOU**”
- The SOW specifies the services to be performed. Should identify:
  - “**What**” they must do - Schedule of deliverables, records to be maintained, and reports to be submitted
  - “**When**” – Period of performance, hours of operation, payment terms
  - “**Where**” - Identify AJCs locations
  - “**How**” – Budget and Performance measures to reach satisfactory levels
  - “**Who**” - Participants to be served
Schedule of Deliverables:

- May include an itemized list of program deliverables expected to be delivered.
- Coordinate with other service providers and partner programs.

Payment Terms:

- Outlines:
  - Type – advance or reimbursement
  - Frequency
  - Submission of supporting documentation
  - Other payment-related information
Authorized Officials and Purpose:

- Authorized officials are persons authorized to enter into and sign legally binding agreements and **must be on record** as the signatory official.
- Where the persons administering the contract are not the same ones who can take contract actions, such as modifying the contract, then the person who has this authority should be **separately identified**.
- Signatures of the offeror and offeree must be contained as part of the written contract.
Additional Terms and Conditions:

- Either required by the State, local area, or the Federal agency as National, State, or local policy requirements.
- Identify that the one-stop operator is a subrecipient of Federal funds.
- Include terms that adhere to requirements found in:
  - WIOA
  - Uniform Guidance (2 CFR part 200)
  - OMB’s approved exceptions for DOL (2 CFR part 2900)
4 - Implementation Phase

- Conduct Oversight and Monitoring
  - Use of monitoring tool/guide
  - Contract administration
  - Must ensure that operator is in compliance with:
    - The requirements of WIOA
    - The Uniform Guidance at 2 CFR part 200 and 2 CFR part 2900
    - Activities per the SOW
    - Performance reporting requirements
    - Timely invoices and payments
    - The terms and conditions of the contract/agreement with the one-stop operator
Implementation Phase cont.

- Timely Review and Payment of Invoices
- Achieve Performance and Service Deliverables
- Evaluate and Approve MOU/Contract Modifications
  - All should have been outlined in the MOU/contract/agreement
5 - Closeout Phase

- Reconcile Costs and Payments
  - Includes advances
- Reconcile Performance Goals with Actual Performance
- Ensure Participant and Financial Records are Secured and Retained
  - Safeguard personally identifiable information (PII)
  - Record retention requirements apply
- Prepare Closeout Documents
KEEP IN MIND - Procurement/Purchasing Policies and Procedures must:

- Be sound, efficient, fair, and cost-effective;
- Identify the different procurement methods;
- Identify the phases or stages of a procurement process;
- Outline history and recordkeeping requirements;
- Define individuals with authority to initiate and approve actions; and
- Outline ethical practices.
Introduce the Panel

Let’s continue this conversation and talk to our panelists:
Any Questions?
Contact Information

For questions regarding the information in presentation, send an email to*:

DOL.WIOA@dol.gov

*Please use One-Stop Operator Competition as the subject line.
Thank you!