

ALABAMA WORKFORCE INVESTMENT SYSTEM

**Department of Commerce
Workforce Development Division
401 Adams Avenue
Post Office 304103
Montgomery, Alabama 36130-4103**

January 27, 2017

GOVERNOR'S WORKFORCE INNOVATION DIRECTIVE NO. PY2016-07

SUBJECT: Training and Employment Guidance Letter (TEGL) WIOA Competitive Selection of One-Stop Operators

1. Purpose. This transmits the following TEGL WIOA:

<u>Number</u>	<u>Date</u>	<u>Subject</u>
15-16	01/17/17	Competitive Selection of One-Stop Operators

2. Discussion. The purpose of TEGL WIOA No. 15-16 is to provide information on the requirements to designate or certify One-Stop Operators through a competitive process as set forth in Section 121(d)(2)(A) of the Workforce Innovation and Opportunity Act (WIOA). This describes the competitive process required for procuring One-Stop Operators.

WIOA and its implementing regulations require Local Workforce Development Boards (Local WDBs) to use a competitive process for the selection of a one-stop operator for the system, and to support continuous improvement through the evaluation of one-stop operator performance and the re-competition of operators every four years. Competition is intended to promote the efficiency and effectiveness of one-stop operators by providing a mechanism for Local WDBs to regularly examine performance and costs against original expectations.

Under the Workforce Investment Act of 1998 (WIA), many Local Workforce Investment Boards (WIBs) served as one-stop operators. One-stop operators could be designated or certified through three mechanisms: a competitive process; as a consortium of three or more partners; or "grandfathered" in from the Job Training Partnership Act (JTPA). Many of these entities have continued to be one-stop operators since the inception of WIA.

WIOA requires that all one-stop operators be selected or designated through a competitive process. WIOA does not allow for the "designation" or "certification" of any entity as a one-stop operator, including a Local WDB, without a competitive process. WIOA provides no explicit authority to "grandfather" in existing one-stop operators.

Competition provides the best method of ensuring that Local WDBs examine one-stop operator effectiveness on a periodic basis. Additionally, regular competition allows Local WDBs to make improvements based on their one-stop certification process, particularly in regard to the role of the operator and other service delivery performance and performance metrics that may shift or change as one-stop partners and the Local WDBs update their Memoranda of Understanding (MOUs).

In certain instances, the State agency or State Workforce Development Board (WDB) will carry out the one-stop competition for a Local WDB. Per the Uniform Guidance at 2 CFR 200.317, as well as 20 CFR 678.605(b), in administering the one-stop competition process, the State agency and the State WDB must follow the same policies and procedures that the State uses for procurement with non-Federal funds. These State policies and procedures may include additional or different procurement methods beyond those included in the Uniform Guidance. For example, State procurement policies may allow for a sole source selection. Additional information is in section 11 of the attached guidance, on how to avoid certain conflicts of interest that can arise when the State or State WDB is conducting the competition. If the State WDB is incorporated as a nonprofit organization, it must use a competitive process consistent with the Uniform Guidance.

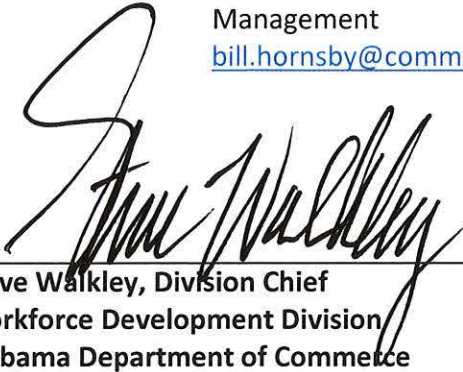
Under the transition authority given to the USDOL in WIOA Section 503, the USDOL extended the deadline for Local Areas to comply with the competition requirement from July 1, 2015, the statutory effective date, to July 1, 2017. As of July 1, 2017, all existing and new One-Stop Operators must have been selected using a competitive process. Starting on July 1, 2017, all contracts and agreements with One-Stop Operators must have been executed as a result of competitive process as required by the WIOA.

While the Local Workforce Development Board must select the One-Stop Operator through a competitive process at least once every four years, a Local Workforce Development Board may choose to implement, a competitive selection process more often than once every four years. The State Workforce Development Board is not requiring a competitive procurement of the One-Stop Operator more often than once every four years as agreements may be extended annually for a total period of four years.

3. Action.

Staff at the state level as well as Local Workforce Development Area staff and Local Workforce Development Boards should adhere to this policy.

4. Contact. Questions or comments concerning this Directive should be referred to Bill Hornsby, Supervisor, State Programs, Planning, and Divisional Budget Management Section at (334) 242-5847 or bill.hornsby@commerce.alabama.gov.



Steve Walkley, Division Chief
Workforce Development Division
Alabama Department of Commerce

1/27/2017
Date

Attachment
TEGL WIOA No. 15-16

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION WIOA Financial
	CORRESPONDENCE SYMBOL OGM and OWI
	DATE January 17, 2017

ADVISORY: TRAINING AND EMPLOYMENT GUIDANCE LETTER WIOA NO. 15-16

TO: STATE AND LOCAL STAKEHOLDERS IN THE
WORKFORCE INNOVATION AND OPPORTUNITY ACT
STATE WORKFORCE ADMINISTRATORS
STATE AND LOCAL WORKFORCE DEVELOPMENT BOARDS
AMERICAN JOB CENTERS DIRECTORS

FROM: PORTIA WU 
Assistant Secretary

SUBJECT: Competitive Selection of One-Stop Operators

- 1. Purpose.** This Training and Employment Guidance Letter (TEGL) provides information on the requirements to designate or certify one-stop operators through a competitive process as set forth in sec. 121(d)(2)(A) of the Workforce Innovation and Opportunity Act (WIOA).

The WIOA Joint Rule for Unified and Combined State Plans, Performance Accountability, and the One-Stop System Joint Provisions (“WIOA Joint Final Rule”) was published in the Federal Register (FR) on August 19, 2016, with an effective date of October 18, 2016, at 81 FR 55791. This guidance has been reviewed by our Federal partners in the one-stop system, and is based on the statutory provisions of WIOA and its final implementing regulations.

2. References.

- Workforce Innovation and Opportunity Act (Pub. L. 113-128). July 22, 2014.
- Workforce Innovation and Opportunity Act (“DOL WIOA Final Rule”), at 81 FR 56072. August 19, 2016.
- WIOA Joint Rule for Unified and Combined State Plans, Performance Accountability, and the One-Stop System Joint Provisions (“WIOA Joint Final Rule”), at 81 FR 55791. August 19, 2016.
- Office of Management and Budget (OMB) CFR Chapter II, Part 200, et al. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards: Final Rule. December 26, 2013.

RESCISSIONS None	EXPIRATION DATE Continuing
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- Department of Labor CFR Chapter II, Part 2900 et al. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. December 19, 2014.
- OMB Information Control Number (ICR) 1205-461 for the ETA-9130 Financial Reports. April 13, 2016.

3. **Background.** WIOA and its implementing regulations require Local Workforce Development Boards (Local WDBs) to use a competitive process for the selection of a one-stop operator for the system, and to support continuous improvement through the evaluation of one-stop operator performance and the re-competition of operators every four years. Competition is intended to promote the efficiency and effectiveness of one-stop operators by providing a mechanism for Local WDBs to regularly examine performance and costs against original expectations.

Under the Workforce Investment Act of 1998 (WIA), many Local Workforce Investment Boards (WIBs) served as one-stop operators. One-stop operators could be designated or certified through three mechanisms: a competitive process; as a consortium of three or more partners; or “grandfathered” in from the Job Training Partnership Act (JTPA). Many of these entities have continued to be one-stop operators since the inception of WIA.

WIOA requires that all one-stop operators be selected or designated through a competitive process. WIOA does not allow for the “designation” or “certification” of any entity as a one-stop operator, including a Local WDB, without a competitive process. WIOA provides no explicit authority to “grandfather” in existing one-stop operators.

Competition provides the best method of ensuring that Local WDBs examine one-stop operator effectiveness on a periodic basis. Additionally, regular competition allows Local WDBs to make improvements based on their one-stop certification process, particularly in regards to the role of the operator and other service delivery performance and performance metrics that may shift or change as one-stop partners and the Local WDBs update their Memoranda of Understanding (MOUs).

The Information Collection Request (ICR) Control Number 1205-0461 for the ETA-9130 form supports WIOA sec. 184(c), 184(d), and 185 and 2 CFR parts 200 and 2900. WIOA sec. 185(a)(1) requires “recipients of funds under this title... keep records that are sufficient to permit the preparation of reports required by this title and to permit the tracing of funds to a level of expenditures adequate to ensure that the funds have not been spent unlawfully.” Records and supporting documentation on the expending of Federal funds on grant activities, such as the competitive selection of the one-stop operators, must be retained to sufficiently support the expenditures reported on the quarterly ETA-9130 form. Record retention and recordkeeping requirements are also applicable to the conflict of interest and Local WDB meetings. The gathering and maintaining of records to document the selection of a one-stop operator, as identified in this policy guidance, supports ICR Control Number 1205-0461.

4. **One-Stop Operator Competition Requirements.** The WIOA Joint Final Rule requires that States follow the same policies and procedures they use for procurement with non-Federal funds, and requires Local WDBs to use a competitive process based on local procurement

policies and procedures and the principles of competitive procurement in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance) at 2 CFR part 200, including the Department of Labor (Department) specific requirements at 2 CFR part 2900, which may be found at <http://www.ecfr.gov>.

In addition to the requirement to use a competitive process to select a one-stop operator, WIOA and its implementing regulations also strongly encourage the use of a competitive procurement process in the selection of providers for program activities and services. This TEGL addresses the competitive process of one-stop operators. However, advice relating to this competitive process may be useful to consider when procuring other program activities or services, including selection of a fiscal agent, or procuring elements of the youth program, career services, and/or training services.

5. **Timing.** Under the transition authority given to the Department in WIOA sec. 503, the Department is extending the deadline for Local Areas to comply with the competition requirement from July 1, 2015, the statutory effective date, to July 1, 2017. As of July 1, 2017, all existing and new one-stop operators must have been selected using a competitive process. This delayed implementation period should allow Local Areas sufficient time for all phases of the competitive procurement process to be carried out, in accordance with statutory and regulatory requirements, and to enable program continuity.

Some States and Local WDBs may have already awarded contracts or agreements to a one-stop operator through a competitive process that is consistent with the requirements of WIOA and the Uniform Guidance. For contracts or agreements that are currently in place but were not executed through a competitive process as required in WIOA and the Uniform Guidance, these contracts must be terminated no later than June 30, 2017. Starting July 1, 2017, all contracts and agreements with one-stop operators must have been executed as the result of a competitive process, as required by WIOA.

The WIOA Joint Final Rule requires that a competitive process be conducted at least once every four years. The requirement to use a competitive process for one-stop operator selection is set forth in WIOA sec. 121(d)(2)(A). Due to this statutory requirement, the competitive selection process for one-stop operators in all Local Areas cannot be waived. While the Local WDB must select the one-stop operator through a competitive process at least once every four years, a State may require, or a Local WDB may choose to implement, a competitive selection process more often than once every four years.

6. **One-Stop Operator Eligible Entities.** WIOA sec. 3(41) defines one-stop operator as one or more entities designated or certified under WIOA sec. 121(d). Such designation or certification must be through a competitive process. 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.

Such entities may include the following:

- Government agencies or governmental units, such as: Local or county governments, school districts, State agencies, and Federal WIOA partners;
- Employment Service State agencies under the Wagner-Peyser Act, as amended by title III of WIOA;
- Indian Tribes, tribal organizations, Alaska Native entities, Indian-controlled organizations serving Indians, or Native Hawaiian organizations (collectively referred to herein as “Indian Tribes”);
- Educational institutions, such as: institutions of higher education, nontraditional public secondary schools such as night schools, and area career and technical education schools (however, elementary and other secondary schools are not eligible to become a one-stop operator);
- Community-based organizations, nonprofit entities, or workforce intermediaries;
- Other interested organizations that are capable of carrying out the duties of the one-stop operator, such as a local chamber of commerce, other business organization, or labor organization;
- Private for-profit entities;
- Local WDBs, if approved by the Chief Elected Official (CEO) and the Governor as required in WIOA sec. 107(g)(2).

A. Local WDBs. While the above entities are eligible to serve as one-stop operators, an entity’s eligibility to be the one-stop operator in a specific Local Area is affected by the nature of the procurement process, particularly as it relates to conflict of interest and avoiding “less-than arms-length” relationships. As stated above, Local WDBs can serve as one-stop operators. However, Local WDBs must still compete to be the one-stop operator in the Local Area and meet mandatory competition requirements in 20 CFR 678.605(c) and 678.615(a). In situations in which the outcome of the competitive 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 as required by WIOA sec. 107(g)(2). Further information on the competition requirement when the Local WDB is competing to be the one-stop operator is found in section 11 of this guidance.

B. Single State Local Areas. WIOA sec. 106(d)(2) requires that in Single State Local Areas, 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. The State WDB may, at its discretion, hire an outside entity to conduct the competition or delegate the responsibility to another State agency, as described in section 11 of this guidance.

- C. States.** In certain instances, the State agency or State WDB will carry out the one-stop competition for a Local WDB. Per the Uniform Guidance at 2 CFR 200.317, as well as 20 CFR 678.605(b), in administering the one-stop competition process, the State agency and the State WDB must follow the same policies and procedures that the State uses for procurement with non-Federal funds. These State policies and procedures may include additional or different procurement methods beyond those included in the Uniform Guidance. For example, State procurement policies may allow for a sole source selection. Additional information is provided below, in section 11 of this guidance, on how to avoid certain conflicts of interest that can arise when the State or State WDB is conducting the competition. If the State WDB is incorporated as a nonprofit organization, it must use a competitive process consistent with the Uniform Guidance.
- D. For-profit entities.** For-profit entities that are recipients and subrecipients of a Federal award, including as a one-stop operator, must adhere to the Uniform Guidance at 2 CFR part 200, including any requirements identified by the Department under 2 CFR part 2900. The DOL-specific requirement at 2 CFR 2900.2 expands the definition of ‘Non-Federal entity’ to include for-profit entities. All non-Federal entities, including grant recipients and subrecipients, must adhere to the Uniform Guidance.

Consistent with WIOA sec. 121(d)(2)(B)(iv), under 20 CFR 683.295(a)(1), a for-profit entity may be a one-stop operator. In 20 CFR 683.295(a)(2), consistent with WIOA sec. 121(d)(4)(C), the Department requires private for-profit entities that are one-stop operators to adhere to the requirements of 2 CFR 200.323 concerning earning and negotiating 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 costs (2 CFR 200.323(b)). Negotiation with for-profit entities entitled to earn profit must separate amounts intended to pay for costs from amounts intended to pay for profit. Contract price equals costs plus profit. Profit should be based on the contractors’ efforts and risks in achieving a performance result that typically aligns with the performance measures outlined in the Local WDB’s plan. Conditions to consider in quantifying the opportunity to earn profit are referenced at 48 CFR 15.404-4. Local WDBs are allowed to cap the maximum profit potential that could be earned per performance results within the approved budget. The earning of profit should not be based on total budget, expending of the budget, and/or pass through costs, such as tuition or fixed costs, that require minimal to no effort from the contractor nor directly achieve a performance goal.

For programs authorized by other sections of WIOA, 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.

- E. Other entities.** Consistent with WIOA sec. 121(d)(4)(C), 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.

7. **One-Stop Operator Roles and Prohibited Functions.** The basic role of a one-stop operator is to coordinate the service delivery of participating one-stop partners and service providers. At a minimum, States and Local WDBs must ensure that in carrying out this role, one-stop operators do the following:

- Disclose any potential conflicts of interest arising from the relationships of the one-stop operators with particular training service providers or other service providers, including but not limited to, career services providers;
- In coordinating services and serving as a one-stop operator, refrain from establishing practices that create disincentives to providing services to individuals with barriers to employment who may require longer-term services, such as intensive employment, training, and education services; and
- Comply with Federal regulations, and procurement policies, relating to the calculation and use of profits.

Local WDBs may establish additional roles for the one-stop operator, including the following: being the primary provider of services within the center; providing some of the services within the center; coordinating service providers within the center and across the one-stop system; and coordinating 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, as well as in the legally binding agreement between the Local WDB and the one-stop operator.

One-stop operators may not perform the following functions: convene system stakeholders to assist in the development of the local plan; prepare and submit local plans (as required under WIOA sec. 107); be responsible for oversight of itself; manage or significantly participate in the competitive selection process for one-stop operators; select or terminate one-stop operators, career service providers, and youth providers; negotiate local performance accountability measures; or develop and submit budgets for activities of the Local WDB in the Local Area.

When the entity serving as the one-stop operator is also serving in a different role within the one-stop delivery system (as, for example, when a Local WDB serves as the one-stop operator), the one-stop operator may perform some or all of these functions, but only if it has established sufficient firewalls and conflict of interest policies and procedures as described in section 11 of this guidance.

8. **Uniform Guidance – Procurement Standards.** As stated earlier, WIOA, unlike WIA, requires Local WDBs to competitively procure one-stop operators following the procurement standards in the Uniform Guidance. As subrecipients of Federal funds, one-stop operators must follow the Uniform Guidance at 2 CFR part 200, including the contractual provisions in 2 CFR 200.326 and 2 CFR part 2900. Once the Local WDB has competitively selected a one-stop operator, the Local WDB and the operator must execute a legally binding agreement which may take the form of a written contract or another type of agreement, such as an MOU. The contracts, agreements, or MOUs with one-stop operators are further addressed in section 10 of this guidance.

The use of an MOU to memorialize the agreement between a Local WDB and a one-stop operator is different from the MOUs that are required between the Local WDB and its one-stop partners, as discussed elsewhere in the WIOA and its final implementing regulations. An MOU between a Local WDB and a one-stop operator must be in the form of a legal binding agreement.

- A. **States.** In instances in which a State is conducting the competitive process, the State must follow the same policies and procedures it uses for procurements with non-Federal funds. States are expected to conduct a competitive process for the selection of a one-stop operator, with appropriate protections from conflict of interest, per the State's own procurement policies and procedures.
- B. **All other non-Federal entities.** All other non-Federal entities, including entities that receive funding from a State (such as Local WDBs), must use a competitive process to select a one-stop operator that is based on local procurement policies that are consistent with the procurement standards of the Uniform Guidance at 2 CFR 200.318 through 200.326.

Under WIOA, and consistent with the Uniform Guidance, the general procurement requirements include:

- i. Written Policies and Procedures. Written general and one-stop operator specific procurement policies and procedures must be consistent with the Uniform Guidance. WIOA regulations at 20 CFR 678.605(d) require the preparation of written documentation explaining the determination concerning the nature of the competitive process to be followed in selecting a one-stop operator. These written policies must outline a timetable to ensure that the selection of a one-stop operator through a competitive process is conducted every four years. These written policies must also address the settlement of all contractual and administrative issues arising out of procurements, such as protests, appeals, and disputes.
- ii. Methods of Procurement for Competitions. Non-Federal entities (such as Local WDBs), are required to use the methods of procurement described at 2 CFR 200.320 when selecting a one-stop operator. The method selected will vary by the particular circumstances of the Local WDB. The following methods of procurement are permissible to select a one-stop operator through a competitive process:
 - a. Sealed bids (formal advertising), such as an invitation for bids (IFB) (2 CFR 200.320(c)); and
 - b. Competitive proposals (2 CFR 200.320(d)), such as a request for proposals (RFP).

In addition, where certain criteria are met, a one-stop operator may be selected by noncompetitive proposals (sole source) (2 CFR 200.320(f)).

- iii. 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 would not unduly restrict competition. Pre-qualified lists must be current and include enough qualified sources to ensure open and free competition and must not preclude bidders and offerors from qualifying during the solicitation period. Additionally, the following conditions apply:

- a. Procurements that are in excess of the simplified acquisition threshold (currently set at \$150,000 by 48 CFR 2.1) require a procurement process by means other than a small purchase procurement. Two such permissible procurement methods are the use of sealed bids (formal advertising) and competitive proposals. These procurement methods must be outlined in a written procurement policy, so that all parties involved in any stage of the process are familiar with their roles, functions, and responsibilities.
- b. Entities performing a competitive procurement must ensure that the proposed costs of the one-stop operator are allowable, meaning that they are reasonable, necessary, and allocable, as required in the Uniform Guidance at 2 CFR part 200.
- c. As stated in the Uniform Guidance at 2 CFR 200.319(a), situations considered to be restrictive of competition include, but are not limited to:
 - Placing unreasonable requirements on firms in order for them to qualify to do business;
 - Requiring unnecessary experience and excessive bonding;
 - Noncompetitive pricing practices between firms or between affiliated companies;
 - 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 and describing the performance or other relevant requirements of the procurement; and
 - Any arbitrary action in the procurement process.

For example, although WIOA requires the one-stop operator to be located in the Local Area, unnecessarily limiting the bids/proposals to companies or businesses located in a certain zip code would restrict competition. For example, a RFP or IFB may specify the addresses of the American Job Centers in which the one-stop operators will be located, but it could not specify that bids/proposals may only come from companies physically located in those same zip codes.

- iv. Written Standards of Conduct. Under the Uniform Guidance at 2 CFR 200.318 and 200.319, the Local WDB must have written standards of conduct, and the Department interprets the requirement to compete the one-stop operator as requiring fairness and

objectivity during all phases of the procurement process. The ethical standards of persons with fiduciary responsibility for public funds are expected to be above reproach and such that they are able to withstand any public scrutiny. Written standards of conduct must address the following:

- a. Persons and entities involved in the competitive process to select a one-stop operator using Federal funds must be free of apparent or real conflicts of interest. Under the Uniform Guidance at 2 CFR 200.318(c)(1), conflicts of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated has a financial or other interest or a tangible personal benefit from a firm considered for a contract.
- b. Consistent with WIOA sec. 121(d)(4)(A), disclosure of any real or apparent conflict of interest, whether individual, or organizational. Written standards of conduct must identify the process for recusal of individuals or organizations that are members of the Local WDB who disclose a real or apparent conflict of interest.
- c. As specified in 20 CFR 678.610(c) and in conformity with 20 CFR 679.430 for demonstrating internal controls and preventing conflict of interest, the written standards of conduct must include a description of the use of firewalls to mitigate conflict of interest in circumstances including, but not limited to, situations where an entity acts in more than one role in the one-stop delivery system or performs more than one function in the procurement process, as well as situations where the non-Federal entity uses a sole source selection.
- d. Information contained in the proposals submitted by offerors/bidders is maintained in a manner that is confidential, to avoid the use of the information to another offeror/bidder's advantage and to prevent collusive bidding.
- e. No entity that develops or drafts specifications, requirements, statements of work, IFBs or RFPs, and evaluation of proposals may compete under that procurement (2 CFR 200.319(a)).

As required by WIOA, firewalls that will mitigate conflict of interest are also required and are addressed in section 11 of this guidance.

- v. Transparency and Responsibility. The entire procurement process must be performed under a process that promotes transparency and responsibility from the planning phase to the closeout phase.
 - a. Sunshine Provisions. Information about the selection and certification of the one-stop operators must be made available to the public on a regular basis through electronic means and open meetings (WIOA secs. 101(g) and 107(e)) and made available to auditors and Federal reviewers. Such information may include minutes from Board meetings in which the decision on selection and certification is made. This provides an opportunity for public comment and

participation in the process as appropriate. Making information available to the public includes regularly posting information to a website and responding promptly to written or electronically submitted requests for information.

The information that Local WDBs are required to make available to the public includes, but is not limited to, the Local WDB's written conflict of interest policy, the Local WDB's written procurement policies, the procurement solicitation itself, a listing of the entities that have submitted bids or proposals, an abstract of those bids or proposals, the identity of the selected one-stop operator, and total award amount and duration of the contract with the one-stop operator.

- b. Responsible Entities. When selecting a one-stop operator, the non-Federal entity must award 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)). A Local WDB must also ensure that any entity to be selected as a one-stop operator is not debarred, suspended, or otherwise excluded from or made ineligible for participation in Federal assistance programs or activities (2 CFR 200.213).

For example, a Local WDB may examine an entity's past record of non-compliance with Uniform Guidance requirements and WIOA requirements by looking at findings contained in its Single Audits and monitoring reports. The Uniform Guidance requires that past performance be an evaluation factor when it is time to re-procure the one-stop operator (2 CFR 300.318(h)).

- vi. Sole Source Procurement (noncompetitive proposals). The Uniform Guidance identifies procurement by noncompetitive proposals as permissible in certain circumstances discussed below. As noted in 20 CFR 678.605(c), the Department interprets references to "noncompetitive proposals" in the Uniform Guidance at 2 CFR 200.320(f) to be read as sole source procurement for purposes of competitively selecting a one-stop operator.

Non-Federal entities, including subrecipients of a State (such as Local WDBs) may select a one-stop operator through sole source selection when consistent with local procurement policies and procedures which conform to the Uniform Guidance set forth at 2 CFR 200.320.

The Uniform Guidance states, at 2 CFR 200.320(f), that procurement by noncompetitive (sole source) proposals is procurement through solicitation of a proposal from only one source which may be used only when one or more of the following circumstances apply:

- a. The item or service is available only from a single source;

- b. The public exigency or emergency for the item or service will not permit a delay resulting from competitive solicitation;
 - c. The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or
 - d. After solicitation of a number of sources, competition is determined inadequate, whether for reasons of number or quality of proposals/bids.
- vii. Recordkeeping. All entities must prepare written documentation, in accordance with 20 CFR 678.605(d), explaining the determination concerning the nature of the competitive process to be followed in selecting a one-stop operator. States and Local WDBs must also maintain records sufficient to detail the history of procurement in accordance with 2 CFR 200.318(i). These records must include, but are not necessarily limited to the following: 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. Record retention requirements, as specified at 2 CFR 200.333, are typically three years from the date of submission of the final expenditures report.

Entities that make a sole source selection must prepare and maintain written documentation of the entire process of making a sole source selection (20 CFR 678.610(b)). Documentation must be retained and must clearly identify the review process in a Single State Local Area. 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.

9. **Formal Competitive Procurement Process**. A formal competitive process may generally include RFPs, IFBs, and other solicitations requiring formal advertising. As noted above, processes commonly used to select one-stop operators are sealed bids (formal advertising) procurement methods, as described in 2 CFR 200.320(c), and competitive proposals, as described in 2 CFR 200.320(d). Any of these formal competitive processes may include the following phases and steps, which may take place concurrently with others.

These phases and steps are designed to ensure that the competitive procurement process is conducted in an open and transparent manner and may include the following:

A. Planning Phase.

The planning phase may include the following steps for the Local WDB:

- i. Identify need. This step must specify all parameters to be negotiated with the one-stop operator and outlined in the subsequent contract, agreement, or MOU (e.g., duties, budget, performance levels, duration);
- ii. Conduct market research;

- iii. Issue Requests For Information (RFIs);
- iv. Identify procurement method;
- v. Develop requirements for one-stop operator;
- vi. Develop procurement solicitation (e.g., RFP or IFB);
- vii. Develop factors for evaluation/scoring; and
- viii. Identify panel and signatory authority.

The most productive way to increase competition is to widely disseminate and communicate the upcoming procurement opportunity in a manner that will cast a wide enough net to attract a reasonable number of bidders or offerors. This can be done by sending the written solicitation to local, State, and national entities that will assist in advertising the competition. Best practices also include allowing at least a 30 day response time for receipt of bids or proposals from the date of issuance of a solicitation in widely circulated publications and websites, including, but not limited to, the State WDB's website, as well as the Local WDB's website, if one exists. Advertising of the one-stop competition is an allowable cost under the Uniform Guidance. During the planning stage, the Local WDB will identify its need to procure a one-stop operator. In accordance with 20 CFR 678.635(b), the Local WDB or the entity assigned to perform the procurement must prepare for competition of its one-stop operator. As required in 20 CFR 678.635(b), by November 17, 2016, every Local WDB must be able to demonstrate that it is taking steps to prepare for a competition which include, but are not limited to: conducting market research, such as researching organizations locally that perform similar functions to one-stop center operator; sending out a RFI; and conducting a cost and price analysis.

B. Release and Evaluation Phase.

The steps for the Local WDB in the release and evaluation phase may include:

- i. Publicize procurement solicitation;
- ii. Host bidders conference to ensure clarity of requirements;
- iii. Collect proposals/bids; and
- iv. Score or evaluate proposals/bids.

During the release and evaluation phase, the Local WDB publicizes its solicitations, such as a RFP or IFB. Certain restrictions on solicitations, such as advertising the solicitation for an unreasonable amount of time or unclear solicitation, will impede competition and are not in compliance with the Uniform Guidance.

The use of fair selection procedures is aimed to help promote competition. The factors used to evaluate proposals/bids should be applied and tabulated in an objective manner that would allow a bidder/offeror to view its score in order to improve its proposal/bid during the next

procurement cycle. Some entities include a brief questionnaire in its RFP or IFB asking each organization to explain why it will or will not submit a proposal or bid. Obtaining this information is a good and inexpensive way to test the market's response to the agency's solicitations.

Based on the information presented in the solicitation, such as an RFP or IFB, bidders and offerors will begin drafting their proposals/bids. The Local WDB may conduct bidders' conferences during this time to answer questions about the specifications in the publicized solicitation. The Local WDB will collect and evaluate the proposals based on factors established during the planning stage. At this time, if a sufficient number of proposals/bids have not been submitted (for example, fewer than two, in the case of sealed bids, though a Local WDB may determine an alternate, higher, threshold), or if the submitted proposals/bids do not reach an awardable score based upon the evaluation criteria, a Local WDB may identify an operator and develop an award under a sole source method consistent with 2 CFR 200.320(f).

C. Negotiation and Selection Phase.

The steps in the negotiation and selection phase for the Local WDB may include:

- i. Negotiate performance levels;
- ii. Negotiate fair and reasonable profit, if applicable (2 CFR 200.323(b));
- iii. Negotiate payment details and frequency;
- iv. Negotiate duration of contract, MOU, or agreement;
- v. Obtain Local WDB, CEO, and Governor approval, if applicable;
- vi. Make offer and obtain acceptance;
- vii. Certify or designate one-stop operator; and
- viii. Execute contract, MOU, or agreement.

An offer and acceptance of the conditions will be executed in a legally binding document. The Uniform Guidance requires that the awarding of contracts is only made to responsible entities that possess the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration should be given to such matters as integrity, compliance with public policy, record of past performance, and financial and technical resources (2 CFR 200.318(h)). If the Local WDB is the selected operator, the CEO, Governor, and Local WDB must sign the agreement outlining the specific roles, functions, and performance levels for the operator (20 CFR 678.610(d)). All one-stop operators, including for-profits, nonprofits, educational organizations, and State or Local governments are considered subrecipients and must adhere to 2 CFR part 200 and 2 CFR part 2900.

D. Implementation Phase.

The steps for the Local WDB in the implementation phase include:

- i. Conduct oversight and monitoring;
- ii. Issue timely invoices;
- iii. Make timely payments;
- iv. Monitor performance of the one-stop operator in accordance with performance and service deliverables; and
- v. Evaluate and approve contract or MOU modifications.

During implementation of the contract or agreement, the Local WDB must conduct oversight and monitoring of the one-stop operator. In situations where the Local WDB is the one-stop operator, there must be sufficient firewalls in place to ensure that the individuals monitoring the one-stop operator are not associated or involved with one-stop operator functions. Alternatively, another entity, such as the State, may conduct such oversight and monitoring.

Payments and authorized budget modifications to the one-stop operator must be timely and consistent with payment requirements under 2 CFR part 200 and 2 CFR part 2900. Likewise, invoices from the one-stop operator must be submitted timely and contain the documentation outlined in its contract or agreement. The Local WDB must measure, track, and monitor performance, service deliverables, and achievement of program or performance measures.

E. Closeout Phase.

The steps for the Local WDB in the closeout phase include:

- i. Reconcile costs and payments;
- ii. Reconcile performance goals with actual performance;
- iii. Ensure participant and financial records are secured and retained; and
- iv. Prepare closeout documents.

During closeout, the Local WDB must retain or transfer financial and participant records to the appropriate agency to ensure the ability for future review and follow-up. The transfer and retention of such records must ensure that personally identifiable information (PII) is reasonably safeguarded. The Local WDB must perform an evaluation or reconciliation of the one-stop operator's performance and payments to ensure they are made in accordance with the approved contract or agreement. To avoid untimely payment requests, the Local WDB should submit, and keep on file, a closeout notice or letter.

- 10. Essential Contract Elements.** All contracts, agreements, or MOUs between the one-stop operator and Local WDB, State WDB, or State must include the essential elements of a legally

executed and binding written agreement, and contain at a minimum the following:

- Statement of Work (SOW). The SOW specifies the period of performance or the start and end date of the contract. It also specifies the services to be performed including measurable performance goals to be delivered under the contract, agreement, or MOU.
- 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. Signatures of the offeror/bidder and offeree (Local WDB, State WDB, or State) must be contained as part of the written contract.
- Additional contractual terms and conditions. Contracts, agreements, and MOUs must include such standard terms and conditions that are either required by the State, Local Area, or the Federal agency as national, State, or local policy requirements. The contract, agreement, or MOU must identify that one-stop operators are subrecipients of Federal funds, as set forth in section 8 of this TEGL.

11. Avoiding Conflicts of Interest. Consistent with WIOA sec. 121(d)(4)(A) and (C), any organization or entity that has been selected to perform multiple functions in a Local Area must develop a written agreement with the Local WDB and the CEO to clarify how the organization will carry out its responsibilities while demonstrating compliance with WIOA and corresponding regulations, the Uniform Guidance, and conflict of interest policies of both the State and the organization or entity performing multiple functions.

A conflict of interest can arise when actions are taken or may appear to be taken by any entity involved in more than one role, such that the performance of that entity in one role affects its interest in its other role, thereby making it difficult for the entity to perform the procurement process objectively and impartially. Therefore, proper firewalls must be in place to ensure the transparency and integrity of the procurement process and demonstrate to the public and to the Department that the selection process was impartial and that no preferential treatment was given to the awardee.

The possibility that a conflict of interest may arise is inherent when entities are performing, or seeking to perform, multiple functions within the workforce development system. Listed below are some possible ways to avoid certain conflicts of interest that can arise in the one-stop operator competition process.

Recusal of Members of the Local WDB – Consistent with the Local WDB’s recusal policies and WIOA sec. 107(h), the Local WDB must recuse individuals who have conflicts of interest from the one-stop operator competition. Such individuals must include those individuals with financial or other interests in the entities applying to be the one-stop operator. Recusal of individuals with conflicts of interest is a way to avoid conflicts of interest when a small number of decision makers have conflicts of interest. However, if the number of members who must be recused deprives the Local WDB of quorum, the Local WDB must follow an alternative process and outsource the selection to an outside entity or to a State agency or the State WDB. Best practice also requires Local WDB procurement policies and procedures to define the requirements for quorum for decisions of the Local WDB.

- a. Local WDB would like to compete to be the one-stop operator – WIOA sec. 121(d)(2)(A) requires a Local WDB to select the one-stop operator through a competitive process. However, WIOA and its implementing regulations also permit the Local WDB to compete for and be selected as the one-stop operator. In this case, 20 CFR 678.615(b) requires the Local WDB to have appropriate firewalls and conflict of interest policies and procedures in place which must conform to 20 CFR 679.430.

One way to avoid a conflict of interest is to establish effective conflict of interest policies and maintain appropriate firewalls that apply when the Local WDB competes to be the one-stop operator. This may include, for example, a requirement for an outside entity to conduct the competition. For example, the Local WDB could contract with a separate and independent outside entity to conduct the competition. Outsourcing the entire process (including development of requirements, drafting the RFP or IFB, evaluation of proposals/bids, and identification of best entity) to an alternate entity would be the best practice in this circumstance to avoid a conflict of interest. These costs and activities would be allowable under WIOA.

Alternatively, the State WDB or a State agency could conduct the competition where a Local WDB is competing to be the one-stop operator.

- b. Competition in Single State Local Areas – In Single State Local Areas, the State WDB carries out the functions of the Local WDB; therefore, the competition is conducted by the State WDB. In these States, a State agency is eligible to compete for and be selected as an operator by the State WDB, as long as the appropriate firewalls and conflict of interest policies are in place and followed for the competition. One way to meet the requirement to have appropriate firewalls in place is to select a committee to run the competition from the State WDB and keep the committee members separate from the remaining members of the State WDB as they are running the competition. Additionally, consistent with WIOA sec. 101(f), these committee members must not have perceived or actual conflicts of interest that would disqualify them from selecting the operator. Another way to avoid conflicts of interest would be for a separate State agency that is not competing to be the one-stop operator, such as the office of the State auditor, or office of the State inspector general, to run the competition. A third approach would be to outsource the entire process of conducting the competition to an outside entity.

Outside Entity. If the Local WDB or State WDB chooses to have an outside entity conduct part of, or the entire one-stop operator competition, the outside entity must meet certain requirements. The outside entity must be an independent organization that is capable of exercising professional and ethical judgment. The outside entity must also be required to submit a conflict of interest statement. Payment for running the competition would be an allowable cost under WIOA.

Public Disclosure. The Local WDB or State WDB must publicly disclose any conflicts of interest, real or apparent, and any recusal by individuals or organizations with real or apparent conflicts of interest. Regular public disclosure provides transparency to stakeholders in the

procurement process for the selection of the one-stop operator. Best practice, consistent with the public disclosure requirements of WIOA secs. 107(e) and 20 CFR 679.390, is to publicly disclose any conflicts of interest and recusals on the Local WDB's website, or, if the Local WDB lacks a website, the State WDB's website. Additional methods, such as publication in newspapers, may also be used to ensure full and regular public disclosure.

- 12. Additional Mechanisms to Provide for a Full and Open Competition.** There are additional steps that Local WDBs and State WDBs can take in furtherance of a full and open competition for a one-stop operator. Some of the steps below are generally applicable requirements, while others are practices that may be appropriate in certain circumstances. Depending on the particular circumstances, the Local WDBs and State WDBs must combine multiple mechanisms, as appropriate, to avoid conflicts of interest or the appearance of conflicts of interest.

Examination of competition processes by an outside party. State WDBs and Local WDBs may opt to retain an outside entity to conduct an objective review of the competition process, or parts of the competition process, such as: whether the RFP/IFB was unduly restrictive or whether the selection process was properly and fairly conducted. Likewise, State WDBs and Local WDBs may opt to retain an outside entity to conduct an objective review of other aspects of the competition process, including a review of the entities selected as a one-stop operator, such as: past performance; compliance with Federal requirements and policies; financial systems; internal control framework; and policies to perform and manage the one-stop operator services in accordance with WIOA. Such a review of the competition process by an outside entity could help monitor whether the process remains equitable and transparent. The outside entity conducting such a review could be an independent organization, as described above, or a separate State agency, such as the office of the State auditor, or office of the State inspector general. If the results of the review process find weaknesses or barriers to effectively managing the competition or contract, the State agency and Local WDB must work together to establish special conditions/criteria to monitor those barriers and to achieve timely or effective resolution.

Documentation. WIOA regulations at 20 CFR 678.605(d) require the 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. As explained in several other parts of this guidance, documentation is required for several steps in the competition process. Documentation is key for ensuring transparency in the competition process.

Section 200.318(i) of the Uniform Guidance requires the maintenance of records sufficient to detail the history of procurement. This requires the Local WDB to carefully document its decision to select or not select offerors or bidders, or to sole source the one-stop operator. Such documentation could include, but is not limited to, documentation regarding the number of potentially qualified offerors/bidders in the Local Area, the degree of interest shown in information requests submitted, documentation that there were an insufficient number of proposals/bids received that met the Local WDB's stated evaluation criteria, documentation explaining the

disqualification or ineligibility of offerors/bidders, documentation showing the reasons why any offerors/bidders were selected or not selected, and documentation comparing proposals/bids relative to past competitions. If the Local WDB chooses to use a sole source procurement, the Local WDB must be able to demonstrate it conducted sufficient research and outreach to justify using sole source procurement. Note; however, that evidence of publishing and promulgating RFIs, RFPs, and/or IFBs is not, on its own, sufficient documentation to justify sole source procurement (including selection of the Local WDB as one-stop operator). The Local WDB must also retain evidence to demonstrate that the solicitation was publicized in a manner providing for full and open competition.

The Department interprets the WIOA sunshine provisions at secs. 101(g) and 107(e) to require the Local WDB to present documentation and justification of its decision to use sole source procurement at an open Local WDB meeting in order to provide transparency and perhaps attract additional offerors/bidders for the next competition. Furthermore, the Local WDB is required to retain this detailed documentation, which must be made available to auditors, State and Federal reviewers, and the public. Record retention requirements are found at 2 CFR 200.333.

If the Local WDB included a RFI questionnaire (as described earlier in this guidance) in its solicitation, the results of any RFI questionnaire should also be made available.

Revision of the original procurement solicitation (e.g. the RFP/IFB) or re-competition of the one-stop operator. If the entity conducting the competition determines there were defects in the competition process, the entity must re-compete the selection of the one-stop operator. Defects in the competition process include violation of the WIOA Joint Final Rule, Uniform Guidance, and/or failure to follow the Local WDB's procurement policies and procedures. The competition process may also be defective if the policies and procedures do not provide for a full and open competition, or if the procurement solicitation issued was inadequate to generate full and open competition. However, if the entity conducting the competition identifies defects in the procurement solicitation before the conclusion of the solicitation period, the entity must revise the procurement solicitation and extend the timeframe for the solicitation.

- 13. Monitoring of One-Stop Operators.** Oversight and monitoring is an integral function of the States and Local WDBs to ensure the one-stop operator's compliance with the requirements of WIOA, the activities per the SOW, performance reporting requirements, and the terms and conditions of the contract or agreement governing the one-stop operator. Monitoring includes an attestation by the monitoring entity that it has examined compliance with the requirements of WIOA, the Uniform Guidance at 2 CFR part 200 and 2 CFR part 2900, and the terms and condition of the contract/agreement with the one-stop operator.

WIOA requires the Local WDB to conduct monitoring of its one-stop operator. When the Local WDB is the one-stop operator, there is an inherent conflict of interest in that the Local WDB cannot effectively monitor itself. In such circumstances, an outside entity or a State agency, such as a State auditor or inspector general, must conduct the monitoring and report the monitoring results to the CEO. If the State agency is selected as the operator, in a State that is

not a Single State Local Area, an independent State agency, like an auditor or inspector general, should conduct the monitoring.

For Single State Local Areas where a State agency is the operator, there often is an inherent conflict of interest in that a State agency cannot effectively monitor itself. In such circumstances, an outside entity must conduct the monitoring. The outside entity could be a State auditor who does not have real or apparent conflicts of interest. However, in circumstances where sufficient independence exists between the State WDB and the State agency selected as the one-stop operator (such as may occur when a State WDB is incorporated as a nonprofit, the State WDB could effectively monitor the State agency serving as one-stop operator.

14. Inquiries. Questions may be directed to the appropriate ETA Regional Office.