

State Policy

Workforce Innovation and Opportunity Act (WIOA)

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One-stop Operator Competitive Selection

REFERENCE

Workforce Innovation and Opportunity Act of 2014 (WIOA) Secs. 101, 107, 121; Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR Part 200, including 2 CFR part 2900; 20 CFR § 677.150, 678.600, 678.605, 678.610, 678.615, 678.620, 678.625, 679.390, 679.430; TEGL 15-16

BACKGROUND¹

Each local workforce development boards (local board) must:

- use a competitive process for the selection of a one-stop operator for the local workforce delivery system; and
- ensure the recompetition of the one-stop operator occurs no less frequently than once every four (4) years.

WIOA does not allow for the “designation” or “certification” of any entity as a one-stop operator, including a local board, without a competitive process.

WIOA provides no explicit authority to “grandfather” in existing one-stop operators.

Records and supporting documentation on expenditure of Federal funds on grant activities, such as the competitive selection of the one-stop operators, must be retained² to sufficiently support the expenditures reported on the quarterly ETA-9130 form.

¹ 20 CFR § 678.605(a); TEGL 15-16

² 20 CFR § 678.605(d)

Record retention and recordkeeping requirements are also applicable to conflict of interest³ requirements and local board meetings.

ACTION

Each local board must insure that:

- its local plan addresses the requirements of this policy;
- its local procurement policies and procedures align with the requirements of this policy; and
- the one-stop operator for its local workforce development area (local area) is selected in accordance with the requirements of this policy.

This policy is final after a ten (10) day review period. Questions and comments must be submitted in writing to the WIOA policy mailbox at ndol.wioa_policy@nebraska.gov.

POLICY

This policy:

- establishes the minimum requirements for a local board’s competitive selection of a one-stop operator;
- identifies the essential elements of the local board’s contract with the selected one-stop operator; and
- identifies the basic requirements for monitoring of one-stop operators.

This policy is organized in seven (7) sections.

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³ Refer to NDOL’s current policy on conflict of interest, which is accessible on NDOL’s WIOA policies page at <http://dol.nebraska.gov/EmploymentAndTraining/LCRWP/WIOA/Policies>.

Section I. Competitive Selection Requirement⁴

Each local board must 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 at 2 CFR part 200 (commonly referred to as the Uniform Guidance), including the U.S. Department of Labor (Department) specific requirements at 2 CFR part 2900.

Competitive selection of the one-stop operator must comply with the timelines established in [Section IX](#) of this policy, in addition to all other requirements described in this policy.

Sole-source procurement of a one-stop operator is permissible only under certain circumstances, as described in [Section IV\(a\)\(vi\)](#) of this policy.

Section II. Eligible Entities⁵

The one-stop operator must be an entity (public, private, or nonprofit) or a consortium of entities that, at a minimum, includes three (3) 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 subrecipients⁶ of a Federal award and thus are required to follow the Uniform Guidance.

Entities eligible for selection as a one-stop operator, include, but are not limited to:

- 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 WIOA Title III;
- Indian Tribes, tribal organizations, Alaska Native entities, Indian-controlled organizations serving Indians, or Native Hawaiian organizations (collectively referred to herein as “Indian Tribes”);

⁴ WIOA Sec. 121(d)(2)(A); 20 CFR § 678.605 (a); TEGL 15-16

⁵ 20 CFR § 678.600(a) and (c); TEGL 15-16

⁶ *Subrecipient* means a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency [2 CFR § 200.93].

- educational institutions, such as:
 - institutions of higher education; and
 - 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;
- 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; and
- local boards, if approved by the Chief Elected Official (CEO) and the Governor (see [Section II\(a\)](#) of this policy).

(a) Local Boards as One-stop Operators⁷

While the entities listed above 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, a local board may compete for and be selected as a one-stop operator, as long as appropriate firewalls and conflict of interest policies and procedures are in place. These policies and procedures must conform to the specifications of 20 CFR § 679.430 for demonstrating internal controls and preventing conflict of interest.⁸ In addition, the local board must meet mandatory competition requirements described in this policy, WIOA and its implementing rules, and the Uniform Guidance including the U.S. Department of Labor (Department) specific requirements at 2 CFR part 2900.

In situations where the outcome of the competitive process is the selection of the local board as the one-stop operator, the Governor and the CEO must agree to the selection of the local board as required by WIOA sec. 107(g)(2).

Sole-source procurement of a local board as a one-stop operator is permissible only under certain circumstances, as described in [Section IV\(a\)\(vi\)](#) of this policy, and only with the agreement of the Governor and the CEO.⁹ If a local board is selected as the one-stop operator through sole-source

⁷ 20 CFR § 678.615(a); TEGL 15-16

⁸ 20 CFR § 678.615(a)

⁹ 20 CFR § 678.610(d)

procurement, the local board must establish sufficient conflict of interest policies and procedures and these policies must be approved by the Governor.¹⁰

(b) Competitive Selection of an One-stop Operator by NDOL¹¹

In the event that NDOL carries out the one-stop competition on behalf of a local board, NDOL must follow the same policies and procedures that the State of Nebraska 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.¹²

(c) For-profit Entities¹³

For-profit entities that are subrecipients of a Federal award as a one-stop operators must adhere to the Uniform Guidance, including any requirements identified by the Department under 2 CFR part 2900.

- 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.¹⁴
- 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 board's local plan.
- Conditions to consider in quantifying the opportunity to earn profit are referenced at 48 CFR 15.404-4.
- Local boards 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.

¹⁰ 20 CFR § 678.610(d)

¹¹ TEGL 15-16

¹² 2 CFR § 200.317; 20 CFR § 678.605(b)

¹³ TEGL 15-16

¹⁴ 2 CFR § 200.323(b)

(d) Other Entities¹⁵

All non-Federal entities, including Indian Tribes, nonprofit organizations, educational institutions that are not state agencies, 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.

Section III. One-stop Operator Responsibilities and Prohibited Functions¹⁶

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 board and the one-stop operator.

(a) Required Responsibilities¹⁷

At a minimum, the local board must ensure that, in carrying out this role, the one-stop operator must:

- coordinate the service delivery of required one-stop partners and service 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;
- disclose any potential conflicts of interest arising from the relationships of the one-stop operator with particular training service providers or other service providers, including but not limited to, career services providers; and
- comply with Federal regulations, and procurement policies, relating to the calculation and use of profits.

(b) Additional Responsibilities¹⁸

The local board 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.

¹⁵ WIOA Sec. 121(d)(4)(C); 20 CFR § 678.605(c); TEGL 15-16

¹⁶ 20 CFR § 678.620; TEGL 15-16

¹⁷ 20 CFR § 678.620(a); TEGL 15-16

¹⁸ 20 CFR § 678.620(a); TEGL 15-16

(c) Prohibited Functions¹⁹

The one-stop operator must not perform the following functions:

- convene system stakeholders to assist in the development of the local plan;
- prepare and submit local plans;
- be responsible for oversight of itself;
- manage or significantly participate in the competitive selection process for a one-stop operator;
- select or terminate a one-stop operator, career service providers, and youth providers;
- negotiate local performance accountability measures; or
- develop and submit budgets for activities of the local board.

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 board 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.²⁰

Section IV. Uniform Guidance and Procurement Standards

As the subrecipient of Federal funds, the one-stop operator 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 board has competitively selected a one-stop operator, the local board and one-stop operator must execute a legally binding agreement which may take the form of a written contract or another type of agreement, such as a memorandum of understanding (MOU). The contract, agreement, or MOU with one-stop operators is addressed in [Section V](#) of this policy.²¹

If NDOL is conducting the competitive process, NDOL must follow the same policies and procedures it uses for procurements with non-Federal funds. NDOL is expected to conduct a competitive process for the selection of a one-stop operator, with appropriate protections from conflict of interest, in accordance with procurement policies and procedures of the State of Nebraska.

All other non-Federal entities, including entities that receive funding from the State of Nebraska (such as the local board), must use a competitive process to select a one-stop operator that is

¹⁹ 20 CFR § 678.620(b)(1); TEGL 15-16

²⁰ 20 CFR §§ 678.620(b)(2) and 678.625

²¹ The use of an MOU to document the agreement between a local board and a one-stop operator is different from the MOUs that are required between the local board and its one-stop partners. An MOU between a local board and a one-stop operator must be in the form of a legal binding agreement [TEGL 15-16].

based on local procurement policies that are consistent with the procurement standards of the Uniform Guidance at 2 CFR 200.318 through 200.326.

(a) General Procurement Requirements²²

Under WIOA, and consistent with the Uniform Guidance, the general procurement requirements include:²³

(i) Written Policies and Procedures

Written general and one-stop operator specific procurement policies and procedures must be consistent with the Uniform Guidance. The preparation of written documentation explaining the determination concerning the nature of the competitive process to be followed in selecting a one-stop operator.²⁴ 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 (4) 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 boards) 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 board. 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);²⁵ and
- b. competitive proposals, such as a request for proposals (RFP).²⁶

In addition, where certain criteria are met, a one-stop operator may be selected by noncompetitive proposals (sole source).²⁷

(iii) Full and Open Competition²⁸

All procurement transactions must be conducted using full and open competition.²⁹ 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

²² TEGL 15-16

²³ TEGL 15-16

²⁴ 20 CFR § 678.605(d)

²⁵ 2 CFR § 3200.320(c)

²⁶ 2 CFR § 200.320(d)

²⁷ 2 CFR § 200.320(f); refer to [Section IV\(a\)\(vi\)](#) of this policy for information of sole-source procurement.

²⁸ Refer to [Section IV\(c\)](#) of this policy for more information on full and open competition.

²⁹ 2 CFR § 200.319(a)

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. Situations considered to be restrictive of competition include, but are not limited to:³⁰
 - i. placing unreasonable requirements on firms in order for them to qualify to do business;
 - ii. requiring unnecessary experience and excessive bonding;
 - iii. noncompetitive pricing practices between firms or between affiliated companies;
 - iv. noncompetitive contracts to consultants that are on retainer contracts;
 - v. organizational conflicts of interest;
 - vi. 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
 - vii. 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. Another 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

The local board must have written standards of conduct,³¹ 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.* 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

³⁰ 2 CFR § 200.319(a)

³¹ 2 CFR §§ 200.318 and 200.319

employ any of the parties indicated has a financial or other interest or a tangible personal benefit from a firm considered for a contract.³²

- b. *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 board who disclose a real or apparent conflict of interest.³³
- c. *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.³⁴
- d. *Confidentiality.* 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's or bidder's advantage and to prevent collusive bidding.
- e. *Firewalls.* Firewalls that will mitigate conflict of interest are required.
- f. *Ineligibility.* No entity that develops or drafts specifications, requirements, statements of work, IFBs or RFPs, and evaluation of proposals may compete under that procurement.³⁵

(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 meetings³⁶ and made available to auditors and Federal reviewers. Such information may include minutes from local 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 the local board is required to make available to the public includes, but is not limited to, the local board's written conflict of interest policy, the local board'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.

³² 2 CFR § 200.318(c)(1)

³³ WIOA Sec.121(d)(4)(A)

³⁴ 20 CFR §§ 678.610(c) and 679.430

³⁵ 2 CFR § 200.319(a)

³⁶ WIOA Secs. 101(g) and 107(e)

- 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.³⁷ A local board 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.³⁸ The Uniform Guidance requires that past performance be an evaluation factor when it is time to re-procure the one-stop operator.³⁹

(vi) **Sole-source Procurement (noncompetitive proposals)**

The Uniform Guidance identifies procurement by noncompetitive proposals as permissible in certain circumstances discussed below. 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.⁴⁰

Non-Federal entities, including subrecipients (such as local boards) 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 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.⁴¹

- 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.
- d. After solicitation of a number of sources, competition is determined inadequate, whether for reasons of number or quality of proposals/bids.

³⁷ 2 CFR § 200.318(h)

³⁸ 2 CFR § 200.213

³⁹ 2 CFR § 300.318(h)

⁴⁰ 20 CFR § 678.605(c)

⁴¹ 2 CFR § 200.320(f)

(vii) Recordkeeping

All entities must prepare written documentation explaining the determination concerning the nature of the competitive process to be followed in selecting a one-stop operator.⁴² Local boards must also maintain records sufficient to detail the history of procurement.⁴³ These records must include, but are not limited to:

- a. all proposals/bids received;
- b. ratings of those proposals;
- c. rationale for the method of procurement;
- d. selection of agreement or contract type;
- e. selection or rejection of proposals/bids;
- f. appeals and disputes; and
- g. the basis for the contract price.

Record retention requirements, as specified at 2 CFR 200.333, are typically three (3) 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.⁴⁴ 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.

(viii) 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 methods⁴⁵ and competitive proposals.⁴⁶

(b) Avoiding Conflicts of Interest⁴⁷

Any organization or entity that has been selected to perform multiple functions in a local area must develop a written agreement with the local board and 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.⁴⁸

⁴² 20 CFR § 678.605(d)

⁴³ 2 CFR § 200.318(i)

⁴⁴ 20 CFR § 678.610(b)

⁴⁵ 2 CFR § 200.320(c)

⁴⁶ 2 CFR § 200.320(d)

⁴⁷ TEGL 15-16

⁴⁸ WIOA Sec. 121(d)(4)(A) and (C)

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.

(i) **Recusal of Members of the Local Board**⁴⁹

The local board 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 board of quorum, the local board must follow an alternative process and outsource the selection to an outside entity. Best practice also requires local-board procurement policies and procedures to define the requirements for quorum for decisions of the local board.

- **Local Board as One-stop Operator.** If the local board competes for and is selected as the one-stop operator, the local board must have appropriate firewalls and conflict of interest policies and procedures in place which must conform to 20 CFR 679.430.⁵⁰

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 board 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 board 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.

- **Outside Entity.** If the local board 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 board 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 is to publicly disclose any conflicts of interest and recusals on the local board website.⁵¹ Additional

⁴⁹ WIOA Sec. 107(h)

⁵⁰ 20 CFR § 678.615(b)

⁵¹ WIOA Sec. 107(e); 20 CFR § 679.390

methods, such as publication in newspapers, may also be used to ensure full and regular public disclosure.

(c) Additional Mechanisms to Provide for a Full and Open Competition

There are additional steps that the local board 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 board 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. Local boards 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, local boards 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 board must work together to establish special conditions/criteria to monitor those barriers and to achieve timely or effective resolution.

- Documentation. The entities conducting the competition must prepare written documentation explaining the determination concerning the nature of the competitive process to be followed in selecting the one-stop operator.⁵² 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.
- Revision of the original procurement solicitation (e.g. the RFP/IFB) or recompetition 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 board's procurement policies and

⁵² 20 CFR 678.605(d)

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.

Section V. Essential Contract Elements⁵³

All contracts, agreements, or MOUs between the one-stop operator and local board 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 board or NDOL) 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 NDOL, the local board, 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.

Section VI. Monitoring of One-stop Operators

Oversight and monitoring is an integral function of the local board to ensure the one-stop operator's compliance with the:

- requirements of WIOA;
- activities defined under the SOW;⁵⁴
- performance reporting requirements; and
- terms and conditions of the contract or agreement governing the one-stop operator.

⁵³ TEGL 15-16

⁵⁴ Refer to [Section V](#) of this policy for information on the SOW.

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 board to conduct monitoring of its one-stop operator. When the local board is the one-stop operator, there is an inherent conflict of interest in that the local board 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, an independent state agency, like an auditor or inspector general, should conduct the monitoring.

Section VII. Timelines⁵⁵

Effective July 1, 2017:

- all existing and new one-stop operators must have been selected using a competitive process; and
- all contracts and agreements with one-stop operators must have been executed as the result of a competitive process, as required by WIOA.

The statutory requirement for the selection of the one-stop operation through the competitive selection process cannot be waived.

Some local boards 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.

Each local board must conduct a competitive process for one-stop operator selection no less frequently than once every four (4) years. NDOL reserves the right to require the competitive selection of one-stop operators more frequently.

A local board may choose to implement a competitive selection process that occurs more often than once every four (4) years.

DISCLAIMER

This policy is based on NDOL's reading of the applicable statutes, regulations, rules and guidance released by the U.S. Government and the State of Nebraska. This policy is subject to change as revised or additional statutes, regulations, rules and guidance are issued.

⁵⁵ 20 CFR § 678.635(a); TEGL 15-16