

WEST VIRGINIA WORKFORCE DEVELOPMENT BOARD
One Stop Operator Procurement Policy – March 2023

TO: WorkForce West Virginia (WFWV) staff and partners; West Virginia Workforce Development Board (WVWFDB), Local Workforce Development Board (LWDB) directors

FROM: WorkForce West Virginia

PURPOSE: This policy provides guidance on requirements for agreements between local workforce development boards (LWDBs) and operators of one-stop centers under the Workforce Innovation and Opportunity Act (WIOA), including information on avoiding conflicts of interest. WIOA sec. 3(41) defines a one-stop operator as one or more entities designated or certified under WIOA sec. 121 (d). WorkForce West Virginia (WFWV) oversees 7 local workforce regions, with includes 13 comprehensive one-stop centers. Each LWDB in West Virginia must follow and include this policy in its own policies and procedures.

ACTION: WFWV administrators, WFWFB directors, and LWDB directors will ensure that all employees and applicable partners are aware of and receive copies of this policy.

EXPIRATION: One Stop Operator Procurement Policy March 3, 2023 will replace the current WorkForce West Virginia One Stop Operator Procurement Policy 4-17

QUESTIONS: Acting Commissioner, Scott Adkins, WorkForce West Virginia

Selection of One-Stop Operator

Designation or certification of one-stop operators must be through a competitive process. The one-stop operator must be an entity 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 Region. Entities selected and serving as one-stop operators are subrecipients of a federal award and thus are required to follow the Uniform Guidance (2 CFR Part 200).

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;
- LWDBs, if approved by the Chief Local Elected Official (CLEO) and the Governor (WIOA sec. 107(g)(2)).

LWDBs

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 Region 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, LWDBs can serve as one-stop operators. However, LWDBs must still compete to be the one-stop operator in the Region and meet mandatory competition requirements in 20 CFR 678.605(c) and 678.61 S(a).

In situations in which the outcome of the competitive process is the selection of the LWDB itself as the one-stop operator, the Governor and the CLEO must agree to the selection of the LWDB, as required by WIOA Sec. 107(g)(2).

States

In certain instances, the State agency or State Workforce Development Board (SWDB) will carry out the one-stop competition for a LWDB. In administering the one-stop competition process, the State agency and the SWDB must follow the same policies and procedures that the State uses for procurement with non-Federal funds. (2 CFR 200.317, 20 CFR 678.605(6)). These State policies and procedures may include additional or different procurement methods beyond those included in the Uniform Guidance.

If the SWDB is incorporated as a nonprofit organization, it must use a competitive process consistent with the Uniform Guidance.

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, including any requirements identified by the U.S. Department of Labor (DOL) under 2 CFR part 2900. The DOL specific requirement (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.

DOL 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(6)). 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 LWDB's plan.

Conditions to consider in quantifying the opportunity to earn profit are referenced at 48 CFR 15.404-4. LWDBs 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.

Other entities

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

One-Stop Operator Selection

A one-stop operator is the entity or consortium of entities that coordinates the service delivery of required one-stop partners and service providers, and that is selected consistent with the requirements of section 121(d) of WIOA (20 CFR 678.600 through 678.635, 34 CFR 361.600 through 361.635, 34 CFR 463.600 through 463.635).

WIOA requires the selection of a one-stop operator through a competitive process, consistent with the Uniform Guidance. Competition provides the best method of ensuring that LWDBs examine operator effectiveness on a periodic basis. Additionally, regular competition allows LWDBs 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 LWDBs update their Memoranda of Understanding (MOUs).

WIOA requires LWDBs to use a competitive process consistent with the Uniform Guidance, DOL-specific requirements, and the LWDBs' local procurement policies and procedures. While the LWDB must select the one-stop operator through a competitive process at least once every four years, a State may require, or a LWDB may choose to implement, a competitive selection process more often than once every four years.

One-Stop Operator Roles and Prohibited Functions

The one-stop operator carries out the following activities:

- Facilitates integrated partnerships that seamlessly incorporate services for the common customers served by multiple program partners of the one-stop center.
- Develops and implements operational policies that reflect an integrated system of performance, communication, and case management, and uses technology to achieve integration and expanded service offerings.
- Organizes and integrates one-stop services by function (rather than by program), when permitted by a program's authorizing statute and, as appropriate, through coordinating staff communication, capacity building, and training efforts. Functional alignment includes having one-stop staff who perform similar tasks serve on relevant functional teams.
- Service integration focuses on serving all customers seamlessly (including targeted populations) by providing a full range of services staffed by relevant functional teams, consistent with the purpose, scope, and requirements of each program.

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.

LWDBs 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 LWDB 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; nor
- Develop and submit budgets for activities of the LWDB in the Region.

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 LWDB 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.

Avoiding Conflicts of Interest

Any organization or entity that has been selected to perform multiple functions in a Region must develop a written agreement with the LWDB and the CLEO 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 WFWV and the organization or entity performing multiple functions (WIOA sec. 121(d)(4)(A) and (C)).

In accordance with 2 CFR 200.318(c), LWDBs must maintain the following standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a federal award if he or she has a real or apparent conflict of interest. Such a conflict 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 herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.

The officers, employees, and agents of the LWDB may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts, unless the gift is an unsolicited item of nominal value.

LWDBs must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization. (2 CFR 200.318(c)(2)).

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 DOL 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 LWDB

The LWDBs must recuse individuals who have conflicts of interest from the one-stop operator competition (WIOA sec. 107(h)). 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 LWDB of a quorum, the LWDB must follow an alternative process and outsource the selection to an outside entity or to a State agency or the SWDB. WFWV also requires LWDB procurement policies and procedures to define the requirements for quorum for decisions of the LWDB.

LWDB Would Like to Compete to be the One-stop Operator

The LWDB must select the one-stop operator through a competitive process. However, WIOA and its implementing regulations also permit the LWDB to compete for and be selected as the one-stop operator. In this case, 20 CFR 678.615(6) requires the LWDB 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 LWDB 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 LWDB could contract with separate and independent outside entity to conduct the competition. Outsourcing the entire process (including development of requirements, drafting the request for proposals or invitation for bids, 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 SWDB or a State agency could conduct the competition where a LWDB is competing to be the one-stop operator.

Outside Entity

If the LWDB or SWDB 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 LWDB or SWDB 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. WDBs must publicly disclose any conflicts of interest and recusals on the LWDB's website, or, if the LWDB lacks a website, the SWDB's website. Additional methods, such as publication in newspapers, may also be used to ensure full and regular public disclosure.

In accordance with 2 CFR 200.112, LWDBs must also disclose all real or apparent conflicts to WFWV in writing, in a timely manner.