



Oklahoma Office of Workforce Development
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OKLAHOMA WORKFORCE DEVELOPMENT ISSUANCE #03-2017

TO: Chief Local Elected Officials
Workforce Development Board Chairs
Workforce Development Board Staff
Workforce Development Fiscal Agents

FROM: Erin E. Risley-Baird, Executive Director

DATE: April 17, 2017

SUBJECT: Oklahoma Works One-Stop Operator Procurement Instructions

PURPOSE: The Oklahoma Office of Workforce Development (OOWD) as the Governor's chosen Workforce Innovation and Opportunity Act (WIOA) administrative entity provides this issuance to communicate Oklahoma's guidance for the procurement and selection of the local Oklahoma Works One-Stop Operator under the Workforce Innovation and Opportunity Act (WIOA).

REFERENCES:

- Workforce Innovation and Opportunity Act, Section 121(d), WIOA Sections 117(f)(1)(B) and 117(f)(2).
- Workforce Innovation and Opportunity Act; Joint Rule for Unified and Combined State Plans, Performance Accountability, and the One-Stop System Joint Provisions; Final Rule 20 CFR 678.600 through 678.635, 34 CFR 361.600 through 361.635, 34 CFR 463.600 through 463.635
- 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.
- 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.
- Training and Employment Guidance Letter 15-16, *Competitive Selection of One-Stop Operators*
- Training and Employment Guidance Letter 16-16 -- *One-Stop Operations Guidance for the American Job Center Network*

RESCISSIONS None	EXPIRATION DATE Continuing
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BACKGROUND: WIOA changed the law and rules governing procurement and selection of one-stop operators, as it does not allow for the “designation” or “certification” of any entity as a one-stop operator, including a Local Workforce Development Board (Local WDB), without a competitive process, and provides no explicit authority to “grandfather” in existing one-stop operators. WIOA and its implementing regulations require Local WDBs to use a competitive process for the selection of one-stop operator(s), and to support continuous improvement through the evaluation of one-stop operator performance and for the re-procurement of operator(s) every four years.

Competition promotes the efficiency and effectiveness of one-stop operators by providing a mechanism for Local WDBs to regularly examine performance and costs against original expectations. It also ensures 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(s) 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).

MESSAGE: This Oklahoma Workforce Development Issuance (OWDI) provides guidance to the local workforce boards to ensure each local area appropriately procures and selects its Oklahoma Works One-Stop Operator(s).

OKLAHOMA WORKS ONE-STOP OPERATOR ROLES: At a minimum, the Oklahoma Works One-Stop Operator (OSO) is responsible for coordinating the service delivery of partners and service providers. Specifically, the OSO(s) must coordinate service delivery among partners, including individual and business services, among physical and electronic sites and services, and across the local area system. Additionally, the OSO(s) must manage partner responsibilities as defined in MOUs, coordinate outreach and recruitment of voluntary partners, submit OSO annual staffing and operational budgets, follow federal and state regulations pertaining to the handling of EEO responsibilities, customer complaints, and physical and programmatic accessibility, implement local WDB policies, and report to the local board on operations, performance accountability, and continuous improvements. Local WDBs *may* establish *additional roles* for the one-stop operator(s), including the following:

- being the primary provider of services within the center (including basic and/or individualized Career Services under the WIOA Adult and Dislocated Worker Programs, Youth Program services, and/or other services ;
- providing **some** of the services within the center;
- coordinating and/or providing fee for service activities;
- providing outreach and recruitment of customers (individuals and businesses);
- providing staff and partner training;
- being a member of and/or participating with local associations and workgroups;
- entering into lease agreements for the physical sites; and,
- managing other specialized site functions such as functionally supervising service providers’ staff, managing technological resources such as websites, case management

systems or information, business networking software, and/or on-line testing sites within the center and across the one-stop system.

NUMBER OF OKLAHOMA WORKS ONE-STOP OPERATORS WITHIN A LOCAL AREA

20 CFR 768.600(b) states: “The one-stop operator may operate one or more one-stop centers. There may be more than one one-stop operator in a local area.” In local areas where there is more than one center, there may be separate operators for one or more center(s), or one operator for multiple centers. The local WDB determines whether there will be one or more One–Stop Operator(s) in the local area, and if more than one Operator is selected for the local area, how those multiple One-Stop Operators will work together collaboratively to create an overall local Oklahoma Works one-stop system. The details must be articulated clearly in all phases of the procurement process, as well as in the legally binding agreement between the Local WDB and the one-stop operator(s).

When an entity serving as a 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 a one-stop operator), the one-stop operator may perform some or all of these functions except where prohibited by law or regulations, but only if it has established sufficient firewalls and conflict of interest policies and procedures.

ELIGIBLE ENTITIES FOR OKLAHOMA WORKS ONE-STOP OPERATOR(S): Any Oklahoma Works 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. 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;
- 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 (see Training and Employment Guidance Letter 15-16 for more guidance on the requirements of earning and negotiating a fair and reasonable profit separate from costs); and,
- Local WDBs, if approved by the Chief Elected Official (CEO) and the Governor as required in WIOA sec. 107(g)(2). Local WDBs must 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).

A Local WDB must award only to responsible entities that possess the ability to perform successfully under the terms and conditions of the proposed procurement. The selected entity must exhibit integrity, be compliant with public policy and have a record of past performance, and have the financial and technical resources (2 CFR 200.318(h)) to perform effectively. 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). 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)).

OKLAHOMA WORKS ONE-STOP OPERATOR PROHIBITED FUNCTIONS: One-stop operators shall 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 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.

Again, when the entity serving as a 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 a one-stop operator), the one-stop operator must not participate in the above activities, and sufficient firewalls and conflict of interest policies and procedures must be established.

OKLAHOMA WORKS ONE-STOP OPERATOR COMPETITION REQUIREMENTS:

- A. Competitive Procurement** - WIOA, unlike WIA, requires Local WDBs to *procure competitively* one-stop operators following the procurement standards in the Uniform Guidance. The competition requirements, if followed effectively, will ensure receipt of more than one entity submitting a qualified proposal, and, there will be adequate time to complete the competitive procurement process. Therefore, sole source procurement of a one-stop operator will not be necessary. Sole source procurement is only allowable in exigent circumstances and with prior approval from the State.
- B. Addressing Conflict of Interest** - If the Local WDB intends to submit a bid to be a One-Stop Operator, the Chief Elected Official/Local Elected Officials will determine who will conduct the procurement process. (Any Chief Elected Official and/or Local Elected Official who is a member of the WDB, will recuse him/herself from determining who will conduct the procurement process.) Outside entities, a State agency, or the Governor's Council may be some of the entities considered among those that are determined to have no conflict of interest in providing this role. Any agency selected to do the procurement must follow federal, state and local procurement rules.

Even if the Local WDB is not interested in submitting a bid to be a One-Stop Operator, consistent with the Local WDB's recusal policies and WIOA sec. 107(h), the Local WDB

must recuse from the one-stop operator competition any individuals who have conflicts of interest. Such individuals must include those individuals with financial or other interests in the entities applying to be the one-stop operator. If the number of recused members deprives the Local WDB of their established quorum, the Local WDB must follow an alternative process and outsource the selection to an outside entity or to a State agency or the Governor's Council.

If the Local WDB chooses to have an outside entity conduct part of, or the entire one-stop operator competition, the outside entity must be an independent organization capable of exercising professional and ethical judgment, and must submit a conflict of interest statement. Payment for coordination of the competitive process is an allowable cost under WIOA.

As per WIOA sec. 107(e) and 20 CFR 679.390, the Local WDB must publicly disclose any conflicts of interest, real or apparent, and any recusal of individuals or organizations with real or apparent conflicts of interest, through the Local WDB's website, WDB meetings, and/or publication in newspapers.

C. Competition Process – Under WIOA, and consistent with the Uniform Guidance, the general procurement requirements include:

- 1) **Written Policies and Procedures.** WIOA regulations at 20 CFR 678.605(d) require the preparation of written policies and procedures explaining the competitive process for selecting one-stop operator(s). They must outline a timetable to ensure the selection of one-stop operator(s) through a competitive process is conducted every four years, and the effectiveness of each operator is reviewed at the two-year mark to determine if new procurement is warranted prior to the four-year date. These written policies must also address the settlement of all contractual and administrative issues arising out of procurements, such as protests, appeals, and disputes. Local WDBs must ensure the proposed costs of one-stop operator(s) are allowable, meaning that they are reasonable, necessary, and allocable, as required in the Uniform Guidance at 2 CFR, part 200.
- 2) **Methods of Procurement for Competitions.** Local WDBs are required to use the methods of procurement described at 2 CFR 200.320 when selecting one-stop operator(s). The method selected will vary by the particular circumstances of the Local WDB, and include either sealed bids (formal advertising), such as an invitation for bids (IFB) (2 CFR 200.320(c)), or competitive proposals (2 CFR 200.320(d)), such as a request for proposals (RFP).
- 3) **Procurement Phases and Steps.** 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 the competitive procurement process is conducted in an open and transparent manner and may include the following:

- a. Planning Phase - During the planning stage, the Local WDB will identify its need to procure a one-stop operator(s) and prepare for the competition and selection. 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(s) 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(s);
 - vi. Develop procurement solicitation (e.g., RFP or IFB);
 - vii. Determine whether the WDB will procure one One-Stop Operator for the entire system and all centers, multiple Operators (one for each center), or, some combination of the two options;
 - viii. Develop factors for evaluation/scoring; and
 - ix. Identify panel and signatory authority.
- b. Release and Evaluation Phase - The steps for the Local WDB in the release and evaluation phase may include:
 - i. Publicize procurement solicitation for a reasonable amount of time to increase competition;
 - ii. Host bidders conference to ensure clarity of requirements;
 - iii. Collect proposals/bids; and
 - iv. Score or evaluate proposals/bids in an objective manner, which would allow a bidder/offeror to view its score in order to improve its proposal/bid during the next procurement cycle.
- 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.
- d. Implementation Phase -The steps for the Local WDB in the implementation phase include:
 - i. Conduct oversight and monitoring (In situations where the Local WDB is a 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, an alternative entity may conduct such 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.
- 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.

4) **Full and Open Competition.** All procurement transactions must be conducted using full and open competition (2 CFR 200.319(a)) including:

- 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.
- b. 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.
- c. Not placing unreasonable requirements on firms in order for them to qualify to do business, such as requiring unnecessary experience, excessive bonding, and noncompetitive pricing practices between firms or between affiliated companies;
- d. Removing organizational conflicts of interest;
- e. By describing the performance/outcomes desired instead of specifying the approach thus allowing “an equal” approach to be offered to meet the performance or other relevant requirements of the procurement; and
- f. No arbitrary action in the procurement process. For example, although WIOA requires a 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 one-stop operator(s) will be located, but it could not specify that bids/proposals may only come from companies physically located in those same zip codes.

5) **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 that are fair and objective 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(s) 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)).
- 6) **Transparency and Sunshine Provisions.** The entire procurement process must be performed under a process that promotes transparency from the planning phase to the closeout phase. Information about the selection and certification of the one-stop operator(s) 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(s); and,
- total award amount and duration of the contract with the one-stop operator(s).

D. Recordkeeping. In addition to the written procurement policies and procedures, the Local WDB must maintain records sufficient to detail the history of the One-Stop Operator(s) 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.

ONE-STOP OPERATOR AGREEMENT REQUIREMENTS: Once the Local WDB has competitively selected a one-stop operator(s), the Local WDB and the operator(s) must execute a legally binding agreement, which may take the form of a written contract or another type of agreement, such as an MOU. All contracts, agreements, or MOUs between the one-stop operator(s) and Local WDB must include the essential elements of a legally executed and binding written agreement, and contain at a minimum the following:

- **Statement of Work (SOW)** - Specifying the:
 - period of performance (the start and end dates) of the contract; and,
 - services to be performed (as outlined in the procurement process) including measurable performance goals to be delivered under the contract, agreement, or MOU.
- **Authorized Officials and Purpose** - Persons authorized to enter into and sign legally binding agreements who are on record as the signatory official. Signatures of the offeror/bidder and Local WDB and CLEOs must be obtained and retained as part of the written contract.
- **Additional Contractual Terms and Conditions** - Including 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, such as identifying the one-stop operator(s) are subrecipients of Federal funds, and those terms and conditions as outlined in the executed subaward agreements between the State and the LWAs.

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.

TIMELINE AND FREQUENCY: As of July 1, 2017, all existing and new one-stop operators must be selected using a competitive process. For local WDBs that have already awarded contracts or agreements to one-stop operator(s) through a competitive process that is consistent with the requirements of WIOA and the Uniform Guidance, no additional procurement must be done at this time. Contracts or agreements currently in place but not executed through a competitive process as required in WIOA and the Uniform Guidance, must be terminated no later than June 30, 2017, with a new competitive process procurement conducted and concluded.

One-Stop Operator procurement and selection are required every four years. At the end of the first two years of the four-year period, the Local Board, in partnership with the CLEO(s), must review the effectiveness and efficiency of the One-Stop Operator(s) to determine if a new procurement is necessary for the following two years.

TECHNICAL ASSISTANCE: Ongoing support, guidance, training and technical assistance on One-Stop Operator procurement and selection is available to all local areas. Requests for technical assistance may be sent to the Workforce System Coordinator.

ACTION REQUIRED: This OWDI is to become a part of the permanent records of all local Workforce Development Boards and shared with all appropriate staff.

INQUIRIES: If you have any questions about this issuance, please contact workforce system staff in the Oklahoma Office of Workforce Development. Contact information can be found at <http://www.oklahomaworks.gov/about/>.

ATTACHMENTS:

Attachment A: Oklahoma Works One-Stop Operator Procurement At-A-Glance

Operator Role Required under WIOA

- Coordinate Service Delivery among partners including individual and business services
- Coordinate Service Delivery among Physical and Electronic sites and services
- Coordinate Services across Local Area System
- Manage daily operations through appropriate coordination and resources
- Manage partner responsibilities as defined in MOU
- Outreach and recruitment of voluntary partners
- Submit Operator annual staffing and operational budgets
- Follow federal and state regulations pertaining to handling of EEO responsibilities, customer complaints, and physical and programmatic accessibility
- Implement local WDB policies
- Report to Board on operations, performance accountability, and continuous improvements

Additional Functions that may be considered for the Operator during procurement

- Provision of Basic and/or individualized Career Services under the WIOA Adult and Dislocated Worker Programs
- Provision of Youth Program Services
- Provision of Other Services
- Fee for Service Activities
- Outreach and Recruitment of customers (individuals and businesses)
- Staff and partner training
- Membership and/or participation with local associations and workgroups
- Entering into lease agreements for the physical sites
- Specialized site management

Functions the Operator may not Perform

- Convene System Stakeholders to assist in the development of the local/regional plan
- Prepare and Submit local plans
- Be responsible for oversight of itself
- Manage or participate in the Competitive Selection Process for Operators
- Select or Terminate One-Stop Operators, Career Service providers, Youth providers, and other service providers
- Negotiate Local Performance Measures
- Develop and Submit Budgets for Activities of the Local Board



One-Stop Operator Procurement

Based on the Local Workforce Development Board vision, resources, planning, and partnerships, the board must certify through a competitive process the Oklahoma Works (One-Stop) Operator for the local area system. Based on the size of the local area, this may include one operator overseeing the system or multiple operators coordinating together. The board must also consider whether the competitive process will include other services that the board may desire the operator to perform.

Considerations

- Conflict of Interest and Firewalls – If the Operator has multiple functions there must be clear delineation of duties via written agreement (and demonstrated in everyday operations) with the Chief Elected Official(s) and the Local WDB
- Universal Services – the operator may not create disincentives to serving those with barriers

Who MAY BE an Operator?

- A public, private, or non-profit entity
- A consortium of entities that must include at least three (3) or more required partners
- A local workforce development board
- An institution of higher education
- A State Wagner-Peyser Employment Agency
- Indian Tribes, tribal organizations, Indian-controlled organizations serving Indians, Alaska Native entities, or, Native Hawaiian organizations
- A Community-based, nonprofit, or intermediary organization
- A Private for profit entity
- A Government Agency
- Interested Organizations such as a local Chamber of Commerce, business or labor organization

Who MAY NOT be an Operator?

- An Elementary or Secondary School, except non-traditional public secondary schools and area career and technical education schools

Local WDBs must use the most restrictive procurement policy applicable to the procuring entity. Sole source is not necessary, and **only allowable in exigent circumstances with prior approval** from the State.