**WorkforceGPS**

**Transcript of Webinar**

**Competitive Selection of One-Stop Operators Deep Dive**

**Thursday, May 4, 2016**

*Transcript by*

*Noble Transcription Services*

*Murrieta, CA*

JONATHAN VEHLOW: Welcome to today's WIOA Wednesday on Thursday webinar, "Competitive Selection of One-Stop Operators Deep Dive." I'd like to turn things over to our moderator today, Debbie Galloway, fiscal policy manager with the Office of Grants Management. Debbie?

DEBBIE GALLOWAY: Thank you, Jonathan. And welcome, everyone, to another WIOA Wednesday. We decided to change things up a little bit today and have this session on Thursday. My name is Debbie Galloway, and I am from the Office of Grants Management. And I'm the fiscal policy lead.

And joining me today is Chanel Castaneda who is working on my team in providing this training. And along with Chanel we will have a special guest, a local executive director who will be talking about her process in meeting these requirements for conducting a competitive procurement of a One-Stop operator.

So before we begin, I just wanted to let you know this is a continuation of a webinar series that began a few months ago. We had introduced the basic requirements of the competitive selection of One-Stop operators earlier this year. And you may find that archived webinar on the Innovation Opportunity Network, which is located at WorkforceGPS.org.

And just to give a plug to the WorkforceGPS.org – if you have not already become a subscriber to the WorkforceGPS or to the ION network, please do so after this webinar. The ION is the place you will find training resources, such as all of our WIOA Wednesday webinars. And you will find helpful technical assistance materials, including desk aids, for all of our WIOA programs, including many training resources that we've posted from the Office of Grants Management on the Uniform Guidance.

So I just also would like to make a plug to our collections page for the Office of Grants Management. And you may find that at the grants application and management collections page, which is also on the WorkforceGPS website.

Before we begin, I just wanted to talk a little bit about the handouts you see in the file share window. The first thing you'll have is a copy of the PowerPoint presentation. Next, you'll have a copy of the RFP in which our special guest will go over – it's an RFP that was issued from her organization – as well as two additional desk aids that we will eventually post to the ION network. One is a One-Stop operator competition arrow chart which outlines the five basic procurement – it outlines the five stages of a competitive procurement process.

And then lastly, we have a One-Stop operator procurement table, which outlines all of the requirements that you find in the Uniform Guidance at 2 CFR 200.317 through 326.

And lastly, you will see that there is a web link to five new FAQs that we recently posted to our doleta.gov web page. And these five FAQs deal with the topic that we will be discussing today. It will be talking about what happens if an RFP is issued with no monies attached to it. And what are the roles and responsibilities of organizations that are part of the procurement process. And so those FAQs are readily available on our doleta.gov website. And the link should be somewhere on this Adobe Connect website. And I'm not seeing it here. Jonathan, I don't know where that web link went. OK. We'll post it sometime during this next 90 minutes. OK.

So today we are going to talk about the five phases of the competitive procurement process, what elements or items that must be contained in each and every contract, agreement, or MOU that you have in place with a One-Stop operator, as well as how to avoid conflict of interest in building firewalls, especially when there are organizations that may want to participate or submit a bid or proposal to become the One-Stop operator.

So let's just take a minute to see who's out there. OK. So we had a polling question and we had some – Jonathan, can you put that back up as to who's out there right now – we had I think close to 800 people registered. Right now we have about 250 people attending. Let's see where everyone's coming from. So we have a bunch of people from the East Coast. So we have a variety of different organizations represented here today from a variety of different parts of the nation.

So now I will turn it over to Chanel. And she will talk about the five phases of the competitive procurement process. All right. Take it over, Chanel.

CHANEL CASTANEDA: Thank you, Debbie. So Part IV – which is, like Debbie said, a continuation of the basics that we had done a couple months ago – we'll start off with Part IV, which is the competitive procurement process of the selection of the One-Stop operator. So let's review the competitive procurement process.

Regardless if it is a procurement of goods or services, purchasing, policies, and procedures must have the following: They should be sound, efficient, fair, and cost effective. They should identify the different procurement methods and when to use those methods, such as small procurement purchasing policies and procedures should be used for supplies, and formal advertising be used for contract services.

For each of the procurement methods, they should also identify the stages of the procurement process. Also, they should include what needs to be maintained in the procurement history file, and what are their retention records for these documents. They must also identify the appropriate individuals who could authorize, initiate, approve, and modify contract actions. And lastly, ethical practices must be included, such as codes or standards of conducts.

When performing a competitive procurement, the entity procuring the operator will start with a planning phase. This phase is when the local board or the assigned entity procuring the operator will assess the need – they'll conduct market research and issue the requests for information, or RFI, or the requests for qualifications, or the RFQ, to formulate an appropriate procurement solicitation.

Like many procurement actions, when identifying the need, it will guide the board in formulating a focused procurement solicitation that will ensure that qualified operators are likely to be responsive.

Boards are encouraged to use market research and to include a brief questionnaire in the request for a proposal, or the RFP, or the IFB, or the invitation for bid, when asking organizations to explain why it will or will not submit a proposal or bid in order to assist in the development of the procurement solicitation. Using this type of information will help to tailor the procurement solicitation to increase competition and cast a wide enough net to attract a reasonable number of bidders or offerors.

Boards would want to create a time frame for the procurement process to ensure sufficient time for all phases of procurement processes are carried out, as well as ensure efficient operations and fair treatment of offerors. Boards will also want to identify the amount of funds to be attached to the solicitation or at the very least a range of dollars. Boards – (inaudible) – issue a RFP or an IFB that includes no funding or only includes nominal funding, so please see the most recent FAQ on this that Jonathan has put up on the link.

An RFP or an IFB with no funding or nominal funding will restrict competition and will result in either no responses or a limited number of responses from entities already receiving Title I funds. Such an RFP or an IFB would violate the prohibition on noncompetitive pricing practices under 2 CFR 200.319(a). Boards can use market research, information gathered from RFIs, as well as historical information to formulate the amount they should attach to the solicitation.

Continuing with the planning phase is identifying the procurement method to use. When the board is considering the appropriate procurement solicitation method, it may consider the information that it has gathered for market research and RFIs to determine what would be best for them. The boards may use RFPs, IFBs, and other solicitations requiring formal advertising.

A common solicitation method for contract services are sealed bid methods and competitive proposals. Some best practices to ensure wide distribution include: sending the written solicitation to local, state, and national entities that will assist in the advertising of the competition, or allowing at least a 30-day response time for receipt of bids or proposals from the date of issuance of a solicitation.

These are just some ways that a board can increase competition and attract potential qualified operators to bid or submit to its solicitation. And remember, these costs are considered allowable costs under the Uniform Guidance. At this time, I will turn it over to Debbie to discuss the FAQs on RFPs.

MS. GALLOWAY: All right, Chanel. Let's just take a couple minutes to discuss one of the FAQs that we recently published yesterday. The very first one came in – and it was a question that has come in frequently from the field – whether it was through our regional offices or our state agencies – as to whether or not it would be acceptable to submit an RFP that had no monies attached to it or nominal funding. We consulted with our lawyers in ETA, and it was determined that issuing RFPs or invitation for bids that contained zero funding or very little funding would restrict competition.

And so if it restricts competition, thus, it would limit the number of proposals or bids that would eventually come in. So in these situations we ask that all RFPs do contain monies so that when the RFP is viewed or evaluated by potential bidders and venders that seek out this business, that they know what the level of playing field or the dollar amounts that they are working with in determining a fair price for their proposal or bid. So I'd like to then turn it back to Chanel.

MS. CASTANEDA: Thanks, Debbie. So let's go on to the next phase. The next phase is the release and evaluation phase. During this phase, it is almost always to a contracting entity's advantage to have a maximum competition for its contracts. Besides being good public policy, having competition increases the chances of obtaining new ideas and fresh approaches from contractors. It also helps ensure that there will be price competition.

There are no magic ways to increase competition. The most productive step that a contracting agency can take is to spread the information around about contracting opportunities. And this can be done through written materials sent to individual businesses, schools, community organizations, and to business, trade, and professional groups.

When publicizing the One-Stop operator solicitation, please be aware there may be some things that restrict competition. Certain restrictions on solicitations, such as advertising the solicitation for an unreasonable amount of time or unclear advertisement, will restrict competition and may result in unqualified proposals or maybe violate the local area's procurement policy.

While potential operators are drafting their proposals, the board may conduct a bidder's conference to answer questions about specifications in the publicized solicitation. To ensure that the competitive process is fair, the board should make questions and answers from the bidder's conference publicly available, like the board's website, so they can be accessible by all potential operators.

Also, at this time, the board may potentially amend its solicitation. When the board decides to amend, it should prepare an amendment and send it to every offeror that has received the original solicitation. The board should also check with every proposal submitted and received to ensure that it is based on the most current terms and conditions of the amended solicitation.

At the release and evaluation phase, if a sufficient number of proposals have not been submitted or if the submitted proposals did not result in a qualified operator based on criteria outlined in the solicitation, the board may have to resolicit with appropriate adjustments to the solicitation. If one bid was received from a qualified operator, then the board may proceed with a sole-source procurement.

Please keep in mind that documentation surrounding the decision to sole-source the operator should provide enough justification and demonstrate to DOL and the public that all competitive procurement actions were exhausted prior to the decision to proceed with a noncompetitive procurement. However, if a reasonable amount of proposals were received, the board may proceed to the scoring and evaluating the proposals. The factors used to evaluate proposals should be applied in an objective manner.

And here are some commonly used evaluation criteria: The board may take into account technical approach and methodologies, the qualifications of the personnel, the experience of the offeror, management and administration and their understanding of the requirements to be a One-Stop operator. In addition, a competitive range should have been developed prior to the receipt of proposals based on the need and requirements identified in the planning phase, a competitive range of ratings is established to differentiate between excellent proposals, to just good ones, at a fair and reasonable price.

After the evaluation of proposals receive, the board will enter the negotiation and selection phase. This is the phase where all details of the contract, agreement, or MOU will be negotiated an offer and acceptance of the conditions will be executed. Awarding of contracts, agreements, or MOUs should only be made to responsible organizations that possess the ability to perform successfully under the terms in conditions of the procurement.

When awarding a contract to an organization, consideration should be given to such matters as integrity, compliance with public policy, record of past performance, and financial and technical resources. These are also some of the same elements that the board should take into consideration during the scoring and evaluation step.

When dealing with for-profit organizations, the board must negotiate profit as a separate element of the contract price. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor or the contractor's investment – or in this case, the subrecipient or the One-Stop operator – the amount of subcontracting, the quality of its record of past performance, as well as taking into account industry profit rates in the surrounding geographical area for similar work.

If the board is the selected operator, the CEO, governor, and local board must sign the agreement, contract, or MOU outlining the specific roles, functions, and performance levels for the One-Stop operator. During the offer and acceptance step, both parties – the operator and the board – should be aware of their obligations, their rights, and their remedies.

To ensure a legal binding agreement, the contract document should be signed by the authorized agents of the two parties only if each knows and understands all of the terms and conditions included or referenced in the document. Once the legal document has been signed, the next phase is the implementation of the operator contract, agreement, or MOU. And just be aware when I say MOU, that this MOU is separate from the One-Stop partner's MOU.

During implementation of the contract, agreement, or MOU, the board must conduct oversight in monitoring of the operator. The board should have a monitoring tool in place to ensure that the operator is in compliance. For the situations when the board is the operator, it cannot monitor itself; so there must be sufficient firewalls in place to ensure that individuals monitoring the operator are not involved with its functions. One example of a firewall that can be used is having an alternate entity, such as a state agency, conducting the oversight and monitoring of the operator.

The contract should also contain a scheduled deliverables so that invoices and payments are timely. The board must ensure that invoices are issued timely and that performance measures are achieved before timely payments are made to the operator. We all know that there may be a need to have modifications to MOUs, agreements, and contracts. So it is in the best interests of both parties that the signed contract should contain the criteria to evaluate and improve contract modifications.

When all the phases of the contract are done and as the contract is being implemented, the last phase is the closeout phase. When the contract, agreement, or MOU is winding down, the board is responsible for closing it out. Some tasks that the board is responsible for is: to retain or transfer financial and participant records to the appropriate agency to ensure review and follow-up, perform an evaluation of the operator's performance and payments to ensure performance outcomes have been met or not have been met, and payments are made in accordance with the approved contract or agreement.

The board would also want to make sure that all information – participant and financial information – are secured and retained. And lastly, the board must tie up all loose ends by preparing closeout documents.

All right, guys. Sorry for the police sirens, but let's take a breather and do a quick quiz to see how much you've been listening. So which of the following is considered a step in the planning phase? So please enter your answer that best reflects you or your group's answer in the pop-out box that Jonathan just placed. We'll give it a couple seconds.

OK. So a majority of you had the right answer. And the answer is one, develop factors for evaluation or scoring. All right.

So here is just some key take-aways to take away from the competitive procurement process: The procurement policies and procedures must contain all elements outlined in this section that I just went over, and that phases that I just outlined are designed to ensure that the competitive procurement process is conducted in an open and transparent manner. So I will turn it over to Debbie who will talk about the essential contract elements.

MS. GALLOWAY: Thank you, Chanel. So the next section we're just going to talk a little bit as to what key elements must be contained in that executed contractor agreement that you have in place with the One-Stop operator.

Before we begin, I just want to remind people that the information that we're discussing here today comes out of the regulations as well as TEGL 15-16, which is the competitive selection of One-Stop operators. As contained in the TEGL, we want to remind folks that as One-Stop operators they are considered subrecipients and not contractors in the sense of what they need to do and what they need to adhere to when they perform the functions of a One-Stop operator.

As a subrecipient of grant funds, they are required to adhere to the Uniform Guidance at 2 CFR 200 and our DOL exceptions at 2 CFR 2900. Additionally, with the elements that we're going to talk about, the vehicle in which a local area can execute to outline the delivery of services that a One-Stop operator will perform can take many forms. It can be in the form of a contract. It can be in the form of an agreement, or as Chanel had indicated earlier, in the form of an MOU.

And so when we talk about MOUs for the purposes of this webinar, it is the MOU related to One-Stop operators' functions and responsibilities, and not the MOU that we traditionally think of when we're talking about the delivery of services among the One-Stop partner programs. So let's begin.

Essential contract elements. All too often we see through our site visits and monitoring visits that one or more of these key elements are missing when executing contracts or agreements with subrecipients or contractors. So the few things to keep in mind to make sure that each party is fully aware of their duties and responsibilities is to have the following: one, a statement of work which would outline the services that are expected to be performed by each party. So this would also include possibly a payment schedule. It would identify the performance goals or program objectives that is expected to be achieved during the period of performance.

Additionally, the contract, agreement, or MOU must be executed by authorized officials. And what does that mean? That means it is a person that is signing this contract, agreement, or MOU has the responsibility and the authority to enter into legal binding agreements.

And the purpose should be identified in the contract, agreement, or MOU. And that purpose should be a legal purpose outlined in either the statute, the regulations, or in other documents. Additionally, there should be additional contract terms and conditions. And these are similar to the terms and conditions you would have to adhere to as the pass-through entity or as a subrecipient of grant funds. So you would have to make sure that the One-Stop operator adheres to the equal opportunity requirements, the antidiscrimination requirements, lobbying requirements, and so forth.

Additionally, under the Uniform Guidance, they also must certify that they are aware of any situation in which a person who will be operating or performing any function has violated or did violate any of the kickbacks or bribery provisions that are specified in the Uniform Guidance.

Additionally, one thing to keep in mind is to make sure that the signatures of both parties are provided somewhere on that document. All too often we find that these contracts are missing one or more of the signatures. And simple enough but easy to miss is the period of performance. A contract should identify the beginning date of that contract as well as the ending date.

Now moving on to the statement of work. So just to further enhance what I just spoke of in terms of the statement of work, this is the heart of the contract. This specifies the services to be performed. It is the what – what kind of services will be provided? The where – it will identify the location in which those services are to be provided so you can, in fact, have one or more One-Stop operators in a particular local area. And so it is definitely important to identify where those services are going to be rendered – will it be in the comprehensive American Job Centers, the affiliated centers, the satellite centers?

And the when. Often we know that there are many American Job Centers out there that have extended hours depending on what is going on in that local area. So it is important to identify when those services are expected to be rendered. And then how is performance going to be measured? So what are the levels of meeting and exceeding performance, as well as will performance be tied to payment or reimbursement?

And then who. Who will be served through this One-Stop operator? So this should be the identification of what type of services will be provided to what populations and whether or not the local area has identified a priority of service for a particular population.

Schedule of deliverables. Deliverables are the products or services that the operator will produce and submit to the board. Deliverables should be specified in the statement of work or elsewhere in the contract. The deliverables should identify what is to be delivered and when it is to be delivered. This section of the contract, agreement, or MOU will be particularly useful when monitoring the One-Stop operators.

And payment terms – the conditions under which the board will make payments or partial payments to the operator must be clearly stated. Included here should be the budget or benchmark for payments, the frequency in which payments are to be made, whether or not an advance or reimbursements will be used. It should also address where and when invoices should be submitted and how payments will be rendered – will they be issued electronically or in a paper form of a check? The board should ensure that the payment terms are clearly stated so that there are no issues when it comes time to pay the operator or at the time of closeout.

One kind of mistake that we do find during our monitoring site visits is if the local board has provided an initial advance to that one One-Stop operator. The liquidation of that advance should take place during the period of performance and not wait until the final days of that contract so that that advance is liquidated.

Authorized officials and purpose – again, this is very important that the individuals that are signing the contract have the authority to enter into legal binding agreements. The contract should identify the signatory official for not only the operator, but for the board. It is essential that the operator be aware of who has the authority to issue certain orders, to make modifications so that there is no misinterpretation or direction from the operator or from the board.

Any contract changes should be made by the authorized official and should go through the modification or amendment process that should also be outlined in the contract, agreement, or MOU. If the authorized officials who administer the contract on behalf of an organization are different from individuals that are authorized to modify these contracts, then these individuals should be separately identified in the contract, agreement, or MOU.

The last essential contract element is additional contractual terms and conditions. All agreements should contain standard terms and conditions that are either required by the state or the Federal agency and must include national, state, and local policy requirements. In addition, these terms and conditions should ensure that the operator is placed on notice that they are considered a subrecipient of Federal funds and thus, must follow the Uniform Guidance.

This holds true for One-Stop operators who are also for-profit organizations. The reason for this is through our OMB approved exception at 2 CFR 2900.2, the Department of Labor has expanded the definition of nonfederal entity to include for-profit organizations and foreign entities.

Now let's take a quick check-in on the next question. Let's take a quick polling question. Polling question: Individuals who are administering the contract are not the same individuals responsible for contract modifications and they do not have to be separately identified. True or false? All right. Seems like everyone has been paying attention. We have close to 100 percent accuracy rates. And the answer is false. There can be a situation in which the person who is the signatory authority or the person signing the contract may be different from the persons that execute future modifications or amendments.

So what are the key takeaways for the essential contract elements? A contract should be well organized and easily understood. It should contain the who, the what, the where, when, and how. And a fully executed contract should be kept on file at both the local board and at the One-Stop operator's location.

Now we will move on to the next section, avoiding conflict of interest. Before I begin, I'd just like to highlight that the five recently published FAQs on One-Stop operator competition also addresses the need for firewalls, especially when we have fiscal agents, local boards that may want to not only participate in the procurement process, but also may want to submit a bid or proposal. So please look at those after this presentation.

So let's begin. A conflict of interest arises when actions are taken or may appear to be taken that may affect a person or an organization's ability to perform an action objectively and without bias. There may be actions that have the potential to undermine the impartiality of a person because the possibility of a clash between the person's own interests or the professional or public interest. The possibility that a conflict of interest may arise is inherent when the local board is the organization administering the procurement but also would like to submit a proposal or bid to become the operator.

WIOA allows organizations to perform multiple roles in the workforce development's workforce delivery system. For example, local board may solicit and procure the One-Stop operator in a local area. And if it wants to become the operator, it must be ensure that there is firewalls in place so that both of those functions are not performed simultaneously.

Due to the nature of the action, the local board cannot evaluate and rate its own proposals objectively; thus, there is the need for a firewall. Even if a conflict of interest does not exist in this scenario, it would give the appearance that the local board's interest has appeared or appears to be in conflict with its other roles and functions.

There are three types of conflict of interest that are outlined in the Uniform Guidance that are further detailed in the TEGL 15-16. They are real, apparent, and organizational.

A real conflict of interest exists when an employee in his or her official capacity participates in a decision-making process that has a direct effect on the financial interest of his or her business interest or a member of his or her family. We have included some examples on the slide that would be considered a real conflict of interest: A person on the review panel for procurement of a One-Stop operator has the financial interest in one of the bidder's organization. Or the spouse of a panelist is the director of an organization that has submitted a bid. These are both real conflicts of interest.

Now moving on to apparent conflict of interest – an appearance of a conflict exists when a reasonable person would think the professional judgment of an employee has been compromised because the circumstances presented as such. Existing situations or relationships may give the appearance of a conflict of interest even though in actuality there may not be one.

For example, if there's no public disclosure that a board member recused him- or herself or did not sign a conflict of interest statement during the review panel of an operator, then this particular board member has a financial interest or a relative working at a potential bidder's organization, then this may give the appearance to ETA or the public that there is a conflict of interest.

If the public does not have full confidence that an action taken from the board was made objectively and with integrity, it undermines the impartiality of the board, and the public may question the actions of the board.

Now moving on to organizational conflict of interest. The last type of conflict of interest is organizational conflict of interest. Organizational conflict of interest means that because of other activities or relationships with other entities, the organization is unable to render impartial decisions and cannot perform their fiduciary duties in an objective way. Some examples include the local board that is also interested in being the One-Stop operator in a local area. Since the board is charged with the selection of the operator, there is a conflict of interest. As the board reviews and scores its own proposal, thus, again, the need for a firewall.

So when we talk about conflict of interest as is specified in the Uniform Guidance, it is important that there is a record of a conflict of interest statement or a financial interest statement on file for any person who is involved in the procurement process. And those should be regularly updated and should align with the time frame in which procurements are performed.

Under the Uniform Guidance at 2 CFR 200.318 through 200.319, the board must have written standards of conduct and it must cover the following: It must specify that persons and entities involved in the procurement process using Federal funds are free of apparent and real conflict of interest, public disclosure of real or apparent conflict of interest – whether individual or organizational – is made and is disclosed.

Written standards must identify the process for recusal of individuals or organizations. A description of the use of firewalls should also be identified in order to mitigate conflict of interest. And this may include but is not limited to situations where there is one organization performing multiple functions or roles in that local delivery system.

All information contained in proposals submitted by potential bidders should be maintained in a manner that is confidential to avoid the use of the information to be used by another bidder or to prevent collusive bidding. And lastly, written standards of conduct should also cover that no entity that develops or drafts the specifications of an RFP or IFB is also involved in the submission and development of a proposal or bid.

So moving on to firewalls. Proper firewalls must be in place to ensure the transparency and integrity of the procurement process. Using firewalls and documenting those firewalls will demonstrate to the public and to ETA that the selection process of the One-Stop operator was impartial and that no preferential treatment was given to the final awardee. We will talk a little bit later about some firewalls.

Consistent with WIOA, an organization that has been selected to perform multiple functions in the local area must develop a written agreement to clarify how the organization will carry out the responsibilities of that particular function and role. This agreement must be a collaboration with the board and the chief elected official. The written agreement must clarify that while performing its responsibilities, it must demonstrate compliance with WIOA, its regulations, the Uniform Guidance, and the conflict of interest policies that are required at both the local level and the state level.

We will now discuss some of the firewalls that can be in place to ensure that the selection of the operator was unbiased and independent. The possibility that a conflict of interest may arise is inherent when entities are performing or seeking to perform multiple functions. Listed in this slide are some possible ways to avoid conflict of interest. Some of these ways may be recusal of members of the board, boards using other state agencies or outside entities to assist in the procurement process, as well as public disclosure.

One preventative measure that a board may use to avoid conflict of interest is recusal of members of the local board. If the board finds that it has members on the board with conflicts of interest, these individuals must disclose those conflicts and recuse themselves during that procurement process.

Another way to establish a firewall is to outsource parts of the procurement process. And that would be to seek out the assistance of a state agency or the state workforce development board. WIOA also permits the states and local agencies may compete for and be selected as the operator. As stated in this slide, using an outside entity to assist or conduct the competition is an effective way to avoid conflict of interest. The board can contract out to an outside independent organization to conduct the entire competitive process.

The recently published FAQs states that staff to the board or the administrative entity cannot procure a One-Stop operator as well as bid on it. There must be sufficient firewalls in place in any of those situations. Additionally, if a fiscal agent wants to bid to become the One-Stop operator, it cannot be involved in drafting the solicitation or be involved in the evaluation of the solicitation. Again, there must be sufficient firewalls in place.

Now let's talk about avoiding conflict of interest when it comes to single state local areas. Due to the nature of single state local areas, the state board carries out the functions of the local board. Therefore, the competition is conducted by the state board. In these states, a state agency is eligible to compete for and be selected as an operator as long as appropriate firewalls are in place. Using on outside independent entity or using another state agency is a practical option in incidences when a state board wants to compete.

Another alternative process that the state board can use when it wants to compete to be the operator in single state local areas is to select a committee to run the competition on behalf of the state board and keep those committee members separate from the members of the board that are running the competition.

In this alternative process, documentation is key to demonstrate to the public and to ETA that there is a complete separation between the committee running the competition and those who are applying to be the operator. Note that these costs and activities would be an allowable expense under WIOA and would effectively demonstrate to the public and ETA that the conflict of interest has been mitigated with proper firewalls in place.

If a local or state board chooses to have an outside organization conduct part or its competition in its entirety, please keep in mind that the outside organization must also meet certain requirements. The outside organization must be an independent organization that is capable of exercising professional and ethical judgment and must also be required to submit a conflict of interest statement.

The organization must also publicly disclose any conflicts of interest, real or apparent, and recuse any member that may have a real or apparent conflict of interest. Regularly public disclosure provides transparency to stakeholders and ensures that the competitive process is independent and is consistent with the requirements of the law.

Now let's take a quick break and do a quick polling question. We're almost to the top of the hour. Which one of these is not an example of a firewall? The individual is in a position to derive personal benefit from the actions or decisions made. The board uses the state auditors to assist in the procurement process. The board publicly discloses that a member of the review panel is married to the CFO of a potential bidder. And in this example, Mr. Adams recuses himself from the review panel because he had a financial interest in a potential bidder.

OK. So the answer is one. It appears that everyone is listening. The individual that is in a position to derive a personal benefit from an action or decision made appears that there is no firewall in place, so that is not an example of a firewall.

So what are the key takeaways as it relates to avoiding conflict of interest or establishing firewalls? First, there are three different types of conflict of interest. There are real, apparent, and organizational conflict of interests, that there needs to be written standards of conduct or codes of conduct in place, that there should be a regular update to the disclosure statements for any individual that is participating in the procurement process.

And when an entity plans to perform multiple functions, that there needs to be sufficient firewalls in place to ensure the transparency and integrity of that procurement process. Now I will turn it over to Chanel for the last part of our presentation before we hand it over to our special guest. Take it over, Chanel.

MS. CASTANEDA: All right. Thanks, everyone. We are in the final stretch. This is the last part, I promise. For this last part, we'll discuss the implementing and monitoring of the One-Stop operator contract, agreement, or MOU.

So a lot of this will just be a reminder. We just want to remind the folks out there in case you don't know. Under the transition authority given to DOL, DOL had extended the deadline for local areas to comply with the competition requirement from July 1, 2015 to July 1, 2017. This delayed implementation period was to allow our 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.

For the implementations, boards must competitively select an operator no later than July 1, 2017. Therefore, actions right now for these requirements must take place in order to accommodate partner programs, timetables, and other commitments to meet this deadline.

And as a reminder, WIOA does not allow for the designation or certification of any organization as a One-Stop operator, including local workforce development boards, without a competitive process. And in addition, WIOA does not allow the grandfathering of existing One-Stop operators.

So for any contracts or agreements or MOUs that are currently in place but were not executed through a competitive process, these contracts or legal documents must be terminated no later than July 30 of 2017, and that starting July 1 of this year, all contracts, agreements, and MOUs with One-Stop operators must be executed as a result of a competitive process as required by WIOA.

So if you haven't done so already, we strongly encourage that local and state boards work diligently to ensure that this requirement is met. We also encourage that states assist their local areas if they're having difficulties in any aspects of the competitive procurement process. So if you're a local area and you're having trouble, please reach out to your states who will hopefully help you in the process.

Also – and this is just one last reminder – that at a minimum, new competition must take place every four years. But if the state or local area needs a shortened time frame, such as every two to three years, they have the flexibility to do so. So you want to make sure you're ready for every time you do the competitive procurement process.

Like Debbie said before, any entity that's selected or serving as One-Stop operators are subrecipients of a Federal award and are thus required to follow the Uniform Guidance. WIOA requires the local board to conduct monitoring of its operators. Oversight in monitoring is an integral part of managing of the operators.

So boards must monitor to ensure that its operators are in compliance with the requirements of WIOA, the Uniform Guidance at 2 CFR part 200 as well as DOL's exceptions at 2 CFR part 2900, the activities that are outlined in the statement of work, the performance reporting requirements, as well as any terms and conditions of the contract, agreement, or MOU that's governing the One-Stop operator.

Here's just another reminder that compliance with the law, regulations in the Uniform Guidance is required for all entities serving as the One-Stop operator, including for-profit organizations. Private for-profit entities are required to adhere to Uniform Guidance at 2 CFR Part 200, as well as DOL's exceptions at 2 CFR Part 2900.

And this is so because DOL has an exception at 2 CFR 2900.2 that Debbie alluded earlier that expands the definition of nonfederal entity to include for-profit entities as well as. Therefore, any private for-profit entity that is a direct grant recipient or subrecipient of a DOL award must adhere to the Uniform Guidance.

This is also just another reminder. Because WIOA allow law and regulations for for-profit entities to be eligible to compete as One-Stop operators, they are able to earn and retain profit on Federal awards. Just keep in mind when you're dealing with for-profit organizations, that you must negotiate profit as a separate element of the contract price. And the Uniform Guidance requires that profit is reasonable and fair.

As previously stated, WIOA requires monitoring of its One-Stop operators in situations when the local or state board are the operators. The board cannot, once again, effectively monitor itself. So just keep in mind if you're going to involve outside organizations, either as part of the competitive procurement process or part of the contract administration, the outside organizations must be an independent organization that is capable of exercising professional and ethical judgment.

All right. So this is our last poll. Here's our last quiz question. Debbie says it's a trick question. So monitoring of the One-Stop operator includes an attestation that it is in compliance with the following except one, the Uniform Guidance at 2 CFR part 200 and 2 CFR part 2900; two, activities per the statement of work; three, the state's combined plan; or four, the terms and conditions of the MOU, contract, or agreement with the One-Stop operator. So just select the answer in the pop-out box. Most people are picking the state's combined plan.

MS. GALLOWAY: The state has to attest that the board – OK. So the trick answer is that – well, the answer that we propose is the state's combined plan is the expectation that the states monitor – well, locals have their own plans that then get combined with the state's combined plan. So it is a trick question. If we had identified that there were some key component in the local plan, that would not have been an ideal answer. So we try to mix things up just a little bit.

MS. CASTANEDA: Yeah. In our last slide. All right. So we are going to introduce our special guest. Our guest is Melissa Robbins. She is the executive director from the South Central Workforce Investment Board in the state of Missouri. She'll share her local area's experience of procuring a One-Stop operator. Melissa was actually one of our panelists in the Dallas WIOA convening. And we thought the message that she put out there should be heard nationwide. So we wanted to share some of her inside knowledge while her local area was procuring its One-Stop operator. So Melissa, are you on the phone?

MELISSA ROBBINS: I am.

MS. CASTANEDA: Oh. Hi, Melissa.

MS. ROBBINS: Hello.

MS. CASTANEDA: Hi. So if I could take a minute or two, if you kind of could explain your local area – where is it situated in Missouri? Do you guys get a lot of funds as a local area? Just explain the structure and the set-up of your local area so people can get an idea of what are some – as you're talking through the process – some of the struggles that you may have had as a local area to procure your One-Stop operator.

MS. ROBBINS: Sure. Our region is in the South Central portion of Missouri. We are made up of 12 counties. On a yearly basis, we get anywhere from 900,000 (dollars) to $1 million in combined adult and dislocated worker formula funds. So we would consider ourselves a fairly rural area. We only have three local board staff. So our chief elected official is actually the elected chair of the consortium of the 12 presiding commissioners. Our board in the fiscal agent is the 501(c)(3). So that's the way that we're set up.

We have been bidding out our One-Stop operator and service providers for quite some time. But we decided that when WIOA was passed, we would go ahead – the state of Missouri has done I think a really good job in working quickly to start implementing all of the things that were required under WIOA. We didn't have the regulations. And although that was scary, we all knew that whatever was going to come out in the regulations wasn't going to change what was in the law. It was just going to further clarify.

So when we put together our RFP, we did that in the summer of 2015. And we really just took the frame work for what the law required. And we wanted to make sure that we had as much competition as possible. In our region, we're rural. We don't have an abundant supply of providers. So we've always struggled with that. And some things that we took into account to try to increase the competition – we didn't put a lot of unnecessary local requirements that would make it difficult for bidders to bid on the program.

Like I said, we took what was required in the law. We left it really an open frame work. And we did see a lot of innovative ideas. But I think if we would have put a lot of local requirements, we might not have seen the innovation that we did. We allowed our bidders to attend our bidder's conference via conference call, which did open that up to people who weren't in – physically located right then in our region, in our state. We really had to make an effort to not be afraid of profit, so that was something that was new for our region.

And we are one of those areas that because of our limited funding, we combine our One-Stop operator with our adult and dislocated worker service provision. And so we are one of those that had to set up a policy related to the internal controls and firewalls because of that specific relationship. So that's kind of the overall view of our region and how we put together our RFP. Do you want me to just go ahead and stay on the line for questions?

MS. CASTANEDA: Sure. No. We have a couple questions for you, Melissa. "So where are you in the RFP process?"

MS. ROBBINS: We actually completed the RFP process back in October of 2015. Our policy allows for three years – one initial contract year with two extensions. So every three years we'll go back out for bid. We just did our second extension, which will go July 1, '17 through June 30, '18. And so we will start our second RFP process here in the next few months so we have adequate time.

MS. CASTANEDA: OK. So Melissa, "How many proposals did you receive?"

MS. ROBBINS: We have two American Job Centers in our 12-county region. Geographically, it's a large area. And so we bid out those two job centers and their service delivery area separate. And we did get two or three on each American Job Center, which for us was quite a bit historically. We had only had bids from the local community action agencies in our region. So having more than one or two respond to each job center was great.

MS. GALLOWAY: Melissa, did you do anything different in terms of publicizing RFP to generate additional interest?

MS. ROBBINS: We did. We really relied heavily on our website. Like I said, we allowed potential bidders to attend the bidder's conference via conference call, which helped for people who were not in the area. And then we really tried to beef up our bidders list. So we keep a bidders list or an interest list. We reached out to all of those who were on that list, as well as operators in neighboring service delivery areas in our state and in adjoining states and people that we had made contact with through attending training and things like that to make sure that we tried to reach out to as many people as possible.

MS. GALLOWAY: Wonderful. When you finally received the bids, was there any unusual thing? Or did you receive bids from for-profit organization? And what was your experience or any tips you could share with the audience as to how you dealt with negotiating the profit piece, if in fact you selected a for-profit organization?

MS. ROBBINS: Right. So that is something that our region wasn't familiar with prior to this procurement cycle. We had never dealt with a for-profit company or agency bidding on any of our programs. In this cycle, we did have a for-profit respondent. So we had to do a lot of learning, because that was uncomfortable. And I would suggest not assuming that a for-profit company is going to be more expensive to your local area.

So we did all of that research. We did end up choosing in one of our job centers a for-profit company. And so separately, after we had gone through all of the requirements of the One-Stop operator and the adult and dislocated worker service provider, we had to negotiate the terms of that profit and set up specific metrics on how that profit was going to be earned.

MS. GALLOWAY: Great. Thank you. So Melissa, can you share your top three tips to – looking back at what you've done so far, what things can you suggest to people as they move forward in working through their own procurement process? What takeaways can you provide them in terms of what works well and what didn't work well in your process?

MS. ROBBINS: So number one, we need to allow ourselves plenty of time not only in making sure that the potential bidders have enough time to ask questions and then put together their proposals, but have adequate time for our evaluation committee or whomever is a part of your board that's going to be evaluating those proposals to really go through and make an informed decision.

One of the best things was to remove all of the unnecessary requirements that our RFP had built up over the years, all those specifics that were truly limiting the amount of bidders that would respond. And so again, that was something that was a little scary. But we just took the required frame work from the law.

And what we got back were proposals with ideas and things that the way they proposed on providing services in our area, that we probably would have never thought of ourselves, so taking away those unnecessary local requirements that make it difficult on bidders. And again, just to not be afraid of profit, and make sure that you're not excluding potential bidders, allowing for the most competition, and then reviewing all of that during the evaluation process.

MS. GALLOWAY: So it sounds like your local area had streamlined your RFP in order to ensure it met the basic requirements outlined in WIOA to ensure that it cast a wide enough net for potential bidders.

MS. ROBBINS: Exactly. Outside of the required frame work in the law – because again, we didn't have final regs yet. I'm not saying that we weren't scared. But we knew that the final regs were only going to provide further clarification. They weren't going to change the law.

And like I said, our state was really supportive in moving through all of these systems and processes as quickly as possible. So there were a few things that the state of Missouri requires functional leadership, which I think put us ahead of the game as far as getting all of our partners to work together, but removing and streamlining that process to not exclude bidders.

MS. GALLOWAY: Sounds good. So I was looking at your RFP earlier. I've reviewed it before. And this is a question that keeps popping up as we can see in the chat window. You have a dollar amount attached to it. How did you estimate or identify that dollar amount in order to attach to your RFP?

MS. ROBBINS: We went on historically what we had been awarded for the adult and dislocated worker programs. Now, because of when we did this RFP, we were actually kind of in the middle of a funding year for ourselves so we had a little bit of a better idea. But we just made sure that we identified it as an estimated allocation and we went on historical figures. That way the bidders had some frame of reference for what size programs we ran here in this region.

MS. GALLOWAY: Great. OK. So at this point in time, let's open it up for some questions. I don't know if we have any questions coming in from the audience that are directed to you, Melissa. I don't know. John, are you seeing any? Scroll all the way down. No? Let's go down to No. 14. I guess since some people are interested in knowing who actually submitted bids, I don't know if you wanted to share that information or if you made that publicly available, Melissa?

MS. ROBBINS: Well, once the bids were open, we do use a sealed bid process – but once those – those are confidential until those are open, and then the contents of the proposals are kept confidential. We did not receive any interest from Goodwill in this last cycle, to answer that question specifically.

MS. GALLOWAY: OK. All right. So it looks like the rest of the questions are kind of geared towards policy and the Department of Labor. So one of the questions that have come in is, "What type of flexibility can DOL offer states and locals to extend the procurement deadline beyond July 1, 2017?"

As we had specified in our webinar, we had already extended it, because in the statute, the original deadline was July 1, 2015. We felt that giving the local areas and the states an additional two years was sufficient in meeting this deadline. So we hope that although local areas are working towards meeting that deadline, we are standing firm on that deadline.

So if you're struggling or you're facing some challenges in meeting that deadline or working through one of the stages of the procurement process, please reach out to your state agency. And in turn, if that state needs additional technical assistance from the regional office or from our program office or our grants office, we would be more than willing to help you in trying to navigate and work out those problems so that you're able to meet that deadline of July 1, 2017.

MS. CASTANEDA: OK. It looks like we have a question for Melissa. The question is, "Did your RFP include an amount or range on the One-Stop operator competition?"

MS. ROBBINS: No. It did not specifically separate the dollar amount for One-Stop operator operation separately than the provision of adult and dislocated worker services.

MS. CASTANEDA: OK. So it looks like someone had some audio issues and that they wanted us to just repeat if there was a nominal or no funding, zero funding attached to the RFP that it would be considered. It would be prohibited, and it would be considered noncompetitive pricing practices.

We just once again, want to point to the additional FAQs that just had come out either yesterday or today. The link – Jonathan will provided the link once again – that a local board cannot issue an RFP or an IFB that does not include any funding. We would consider this with no funding will restrict competition and result in no responses or a limited number of responses from entities. So we would consider that a restriction on competitive pricing. So we're just looking to see what are other questions.

MS. GALLOWAY: So we had some questions that are coming in as we issued an RFP and no one has applied; what do we do now? In that situation, if you look to TEGL 15-16, we ask that the board and the panel that developed the RFP look at the specifications in the RFP to see if there's any defect. Or look at the venues that were used to publicize the RFP to see if that imposed a challenge as to draw interest.

The other thing that we also suggest is reaching out to parties that may be interested in becoming a One-Stop operator to finding out why they did not submit a bid and proposal. And so in those situations where you find that there is some sort of defect, we are recommending that you revisit that RFP and republicize it.

OK. We have a lot questions coming in and it's in regards to what appears to be the FAQs that were published yesterday. And that's in regards to our phrase that we find that the use of a no-funding or a RFP that has nominal funding would restrict competition. So people are asking what do we mean by "nominal." So we will consult with our lawyers on that and provide an additional response at a later time.

OK. So we just have a few more minutes. Is there any other questions that you could answer or we could answer? There definitely seems like there's a lot of questions about establishing firewalls.

We ask that you turn to the FAQs that were published. We have five FAQs. One was on the no-funding RFPs. But the four remaining RFPs deal with roles and functions of organizations that may play a role, whether they are the fiscal agent, the administrative entity, the local board and how to create firewalls, if in fact, one or more of these organizations want to bid on becoming the One-Stop operator.

MS. CASTANEDA: It looks like, Debbie, we have a question about, "What money do we use for the execution of the operation of the center? Is it considered administrative or program funds?"

MS. GALLOWAY: OK. So the functions of a One-Stop operator would be considered a program cost. So in all likelihood, the cost that is being incurred by that operator would be charged to the program category. We do have some questions that are coming in. Can somebody submit a zero-cost proposal?

Ideally, we would think, oh, it's great that someone's willing to do the services for free. In reality, we know that it costs people time and monies to perform these functions. So if, in fact, that is happening, we are suggesting to the board to look behind those proposals. Ask them for a budget. Ask those bidders what source of funds will they be using to support the functions of being a One-Stop operator? Because we know that it takes salaries. It takes fringe benefits. It takes other costs to act as a One-Stop operator.

MS. CASTANEDA: OK. So I think that is all the questions. Do we have any more questions, Debbie?

MS. GALLOWAY: Nope.

MS. CASTANEDA: No. OK. We're going to turn it over to Jonathan who's going to wrap it up.

MS. GALLOWAY: OK. Before Jonathan wraps it up, I just would like to remind people there's one question that comes in, "How do we fix it if we already issued a zero-dollar RFP?"

We would suggest talking with your states to figure out a means in which that can be remedied. Because it is our expectation that a competitive procurement process promotes competition. And using a zero-dollar RFP does not do that. So just similar to situations where an organization has received no bids because of its RFP, it's a good time to look back at that RFP, to re-examine what needs to be done; look at your historical cost data to possibly reissue that RFP so that there is a dollar amount attached or some range of monies attached to that RFP.

MS. CASTANEDA: OK. So we are going to wrap it up soon. First of all, I just want to thank Melissa for helping us out with this webinar. Having someone in the field who's actually done the One-Stop operator competition, it really helps our participants, our stakeholders in the field to learn a little bit more about how other people are doing it and able to achieve the success to competitively procure a One-Stop operator.

Once again, in the file share, not only is the PowerPoint attached, but also the RFP – Melissa's local area's RFP. If you want to take a look at it, it's also attached in the file share. So if you are still in the middle of the process or thinking about resoliciting your RFP, you may want to take a look at South Central Workforce Investment Board's RFP to make sure that – what are they doing? What did they do and able to achieve success in this area?

So I think with that, I'll turn it over to Jonathan.

(END)