

## Q & A Regarding One-Stop Operator Procurement

- If the Request for Proposal (RFP) had no funding, would the RFP be acceptable if an outside entity submitted a proposal and was selected as the one-stop operator (OSO)?

According to the US Department of Labor (DOL), a Request for Proposal without a funding amount or range is considered faulty. The local board must issue a new RFP that is compliant with the requirements in the Uniform Guidance and TEGL 15-16. However, DOL has determined that re-procurement may not be necessary if the RFP met the Uniform Guidance requirements related to fair and open competition, indicated that funding would be available even though a specific funding amount was not identified, and two or more bids or proposals were received with proposed funding that is adequate to perform the stated OSO role/functions.

- In cases in which the RFP has to be done over again, what is an acceptable timeframe?

DOL has told States that they should immediately begin the process to re-procure OSOs since this will take time to do. Boards will be requested to provide timeframes for OSO re-procurement to the Department of Commerce and Economic Opportunity (Department). The timeframes will be reviewed on a case-by-case basis. Although the Department will provide flexibility, the timeframes must be reasonable.

- In cases in which a consortium of partners was selected as the OSO, is a subrecipient agreement required? Can they use an MOU like they do for infrastructure costs? It is likely that payments, if any, will be in-kind.

Yes, even though a consortium was selected, a subrecipient agreement is necessary to spell out the specific duties of the OSO so they are not blended with other duties these entities perform. The agreement should include all the requirements other subrecipient agreements call for: budget, deliverables, etc., so that the board can rate the OSO and also know how much it costs and the skills or resources needed to be the OSO. The agreement budget should properly document any applicable match (non-federal) and leveraged (allowable federal) funds that support the duties outlined in the OSO agreement. Also, the OSO is restricted from performing certain tasks, which should be identified in the agreement. Note: The essential contract elements of the one-stop operator agreement are outlined in Section 10 of TEGL 15-16. The agreement must identify the one-stop operator as a subrecipient of Federal funds.

- Looking through the Procurement Standards Section of the OMB *2CFR Ch I, Ch II, Part 200, et al. Uniform Administrative Requirement, Cost Principles, and Audit Requirements for Federal Awards; Final Rule* as published in the Federal Register Vol 78, No 248, I find no requirement to specify a dollar amount in a procurement. ( §200.317 through §200.326) – What is the basis for the DOL finding?

FROM ILLINOIS' WIOA ASSESSMENT REPORT:

The Uniform Guidance at 2 CFR 200.319(a) states that situations considered to be restrictive of competition include, but are not limited to: Noncompetitive pricing practices between firms or between affiliated companies. ETA further clarified this requirement in a recently published FAQ as follows:

Can a Local Board issue a Request for Proposal (RFP) or Invitation for Bid (IFB) that does not include any funding?

No. A local workforce development board (WDB)....cannot issue a request for proposal (RFP) or invitation for bid (IFB) that includes no funding, or includes nominal funding. An RFP or 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 1 funds. Such an RFP or IFB would violate the prohibition on competitive pricing practices under 2 CFR 200.319(a) and 29 CFR 97.36(c)(1)(iii)

Without a specified funding level, and given the fact that only the incumbent responded, it is difficult to justify that a fair and open competition occurred and that the RFP was not unduly restrictive. Furthermore, when a contract is executed with an entity as a result of an RFP that does not meet the UG requirements, the validity of that contract comes into question.

- Can the State provide technical assistance regarding the cost analysis requirement to determine the fair market value of the OSO?

The Uniform Guidance states that the method and degree of cost or price analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals. The cost analysis must be documented and include cost information about the service or product that is being procured, the source of the information and the date it was compiled, the conclusion/recommendation of the cost analysis, and the person responsible for the analysis.

Entities performing a competitive procurement must ensure that the proposed costs of the one-stop operator are allowable, meaning that they are reasonable, necessary, and allocable, as required in the Uniform Guidance at 2 CFR part 200.

If local workforce boards can support the funding level that is included in the RFP based on previous experience and staff time, this would be acceptable. Although DOL has declined to define “nominal” funding, DOL staff have mentioned that an amount of \$8,000 per year, for example, may not be adequate to sustain any one-stop operator for 12 months. In this case (a funding amount of \$8,000), the board should be prepared to document (e.g., through a budget) that the \$8,000 funding amount will cover the functions related to the OSO.

- Can the State provide examples of OSO contracts that were acceptable?

The State will research and post additional information with Q&A on Illinois workNet.

- Do the local areas need to contract or identify an independent party to make the technical changes to the RFP?

No.

- If the local board chooses to have an outside entity conduct all or part of the one-stop operator competition, is the outside entity required to submit a conflict of interest statement?

Yes.

- There is a need for technical assistance regarding how the OSO should be included in the WIOA Title IB budget and the MOU budget.
  - What if there is a major funding cut?

The OSO agreement would be like any other contract or subaward. There should be an out clause. If local boards are concerned about potential budget cuts, they may choose to be conservative in the required services and activities that are included in the RFP as long as the RFP meets the minimum requirements of the One-Stop Operator Procurement Policy.

- How does this fit in with the updated minimum training expenditure policy?

The board must ensure that the local area will meet the minimum direct training requirement as well as any other statutory spending requirements. The board must take these items in consideration when conducting the cost analysis and procurement of the one-stop operator.

- Will the state issue an updated OSO procurement check list?

The DCEO policy unit will update the OSO checklist.

- Can the local WIB accept a funding level above that in the OSO RFP?

Depending on the grantee's procurement policy, it may be allowable to accept a funding level exceeding that in the RFP. There are no explicit prohibitions at the state and federal level as long as the local area follows the requirements of TEGL 15-16 and the Uniform Administrative Guidelines.