

Memo Regarding OSO Requirements in PY 2021

To: Local Workforce Board Chairs and Staff
From: WIOA Interagency Technical Assistance Team
Subject: OSO Procurement, Agreement and Payment Requirements
Date: January 2021

Background: The U.S. Department of Labor (DOL) conducted a monitoring in 2018 of Illinois' local MOUs, One-Stop Operator Agreements and other WIOA governing documents. One compliance finding focused on the competitive selection of one-stop operators.

As part of a series of corrective actions, Illinois developed guidance to help Local Workforce Boards demonstrate the payment provisions for one-stop operators. That guidance was issued on November 19, 2020, as Supplemental Guidance to the Governor 's Guidelines for Program Year (PY) 2021 MOU negotiations.

Also as part of the corrective actions, on December 3, 2020, the WIOA Interagency Technical Assistance (TA) Team presented a WIOA Webinar entitled "Information About the Requirements of One-Stop Operator Agreements." The webinar discussed requirements related to OSO procurement, agreements and payment provisions. The webinar and supporting material served as technical assistance to support local workforce boards and required partners as they prepare to procure one-stop operators and/or evaluate one-stop operator performance. The webinar also shared best practices and sample templates. The requirements are to be implemented in Program Year (PY) 2021 or the next procurement or modification to an agreement, whichever comes first.

Simultaneously, DOL Employment & Training Administration Region V offered technical assistance to states regarding one-stop operator requirements. On December 9, 2020, DOL Region V affirmed the concepts that Illinois had issued in November 2020 as Supplemental Guidance to the Governor's Guidelines for PY 2021 MOU negotiations, specifically about one-stop operator payment provisions.

Purpose: The purpose of this memo is to highlight the points of guidance as affirmed by the U.S. DOL, provide links to the online resources, and share the TA Team's responses to Frequently Asked Questions (FAQs) about the one-stop operator guidance issued since November 2020.

Resources Available: The following resources are available online for download:

1. [Training and Employment Guidance Letter No. 15-16](#): Competitive Selection of One-Stop Operators

2. December 3, 2020 WIOA Webinar, “Information About the Requirements of One-Stop Operator Agreements”
 - a. PowerPoint presentation:
<https://www.illinoisworknet.com/WIOA/Resources/Documents/Information%20About%20the%20Requirements%20of%20One-Stop%20Operator%20AgreementsWIOA%20Webinar-min.pdf>
 - b. Webinar recording:
https://apps.illinoisworknet.com/workNetMiniApps/youtubeplaylist?SenderId=B19BC9380&customParameters=%7BplaylistID%3A%22PLlkuU1d_xm9rQ49LGUFJmmQeXJr4YOEw%22%2ClistOnSide%3Afalse%2CsidePadding%3A%22%22%2CshowDescription%3Afalse%2CshowTitle%3Afalse%7D#
3. OSO Sample Agreement:
https://www.illinoisworknet.com/WIOA/Resources/Documents/OSO_Sample_Agreement_-_for_December_2_2020_WIOA_Webinar.pdf
4. Sample One-Stop Operator Invoice:
<https://www.illinoisworknet.com/WIOA/Resources/Pages/Public-Documents.aspx>
5. Frequently Asked Questions following the December 3, 2020 WIOA Webinar are provided as an attachment to this memo. They also are incorporated on the Illinois workNet FAQ page:
<https://www.illinoisworknet.com/WIOA/Resources/Pages/Advisory-Group-FAQ.aspx>
6. Supplemental Guidance for Program Year 2021:
<https://www.illinoisworknet.com/DownloadPrint/Governor's%20Guidelines%20-%20Supplemental%20Guidance%20for%20PY2021%20-%20Final%20for%20Nov.%202019%20Issuance.pdf>

DOL Affirmation of Guidance: DOL Region V affirmed the following guidance consistent with DOL Training and Employment Guidance Letter (TEGL) 15-16; in the Governor’s Guidelines – Supplemental Guidance for PY 2021 MOU negotiations; and in the December 3, 2020 WIOA Webinar.

Regarding OSO procurement, DOL will look for the following:

1. WIOA requires the competitive selection of one-stop operators and periodic evaluation of one-stop operators to continuously improve the one-stop certification process, service delivery and performance metrics.
2. The Local Workforce Board must well document the *process* of procurement using any of the methods allowable under 2 CFR part 200. The process must align with Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 200). The Local Workforce Board must also comply with the local procurement policy and procedures.
3. The local workforce board should consider all factors that will ensure high quality services when evaluating bids. When evaluating the pricing, the local workforce board may consider that consortia partners propose to charge the activities to their respective federal programs resulting in minimal cost to the local workforce board. But that should not be the only factor in evaluating bids. The evaluation criteria should be well-documented.
4. The procurement must include the estimated cost of one-stop operator services. The procurement process (e.g., Request for Proposal) may specify a range or a maximum amount.

Regarding the OSO Agreement:

5. The DOL ETA requires minimum standards for the one-stop operator agreements between the Local Workforce Board and the selected OSO. The intent is to enable flexibility for the states and local areas to create agreements that meet local needs and still comply with the Uniform Guidance, state and local policies. Illinois offers a sample OSO Agreement that includes the minimum provisions and can be tailored to the local workforce area.
6. When a local workforce board selects a consortium of required partners to serve as the one-stop operator, there needs to be clear documentation of adequate firewalls between service delivery, oversight, and the functions of a one-stop operator. The December 3, 2020 WIOA Webinar and the FAQ below provide examples of firewalls.
7. The budget for the term of the OSO Agreement must include all required activities, including the value of leveraged resources to provide the services (i.e., the value of the non-cash contributions). The sample OSO Agreement includes a sample budget.

8. As long as the OSO Agreement complies with local contract laws and serves as a legally binding contract, it is OK if the value of the one-stop operator services is leveraged by outside sources and results in a minimal cash contribution. The agreement and the effectiveness of the services needs to be well-documented and continually evaluated.
9. The OSO Agreement should include provisions for the termination of the Agreement for cause. The local workforce board must monitor the “performance” of the OSO in completing the tasks outlined in the OSO agreement. This review should be conducted at least annually. If the OSO performance is not satisfactory, then the local workforce board should initiate a procurement process to replace the OSO.

Regarding the OSO Payment Provisions:

1. DOL wants to see documentation of the value of the one-stop operator services provided. This expectation applies regardless of whether the one-stop operator model is a single entity or a consortium of partners.
2. When the consortium model is used, the Local Workforce Board must document the value of each service provided and each consortium partner’s contribution toward that value. Demonstrate the exchange of funds, which can include cash or non-cash contributions. Local Workforce Areas in Illinois can achieve this through the following:
 - a. *OSO Agreement budget*, which covers the full term of the agreement. A sample is provided at the link above.
 - b. *The annual MOU and one-stop operating budget spreadsheet*, which breaks down each partner’s annual contribution per line item in the OSO Agreement budget. These were issued with the Governor’s Guidelines – Supplemental Guidance for PY 2021 MOU negotiations in November 2020 and are available at the link above.
 - c. *An invoicing process*. A sample invoice is available at the link above and in the Supplemental Guidance for PY 2021.
3. Non-cash contributions toward the cost of OSO services are acceptable as long as the non-cash contributions comply with the Uniform Guidance and the OSO Agreement and are well-documented.

Following are the WIOA Interagency TA Team’s responses to Frequently Asked Questions submitted after the December 3, 2020 WIOA Webinar.

Attachment 1

Frequently Asked Questions About One-Stop Operator Requirements As presented in the December 3, 2020 WIOA Webinar (Updated December 29, 2020)

The WIOA Interagency Technical Assistance (TA) Team presented a WIOA Webinar on December 3, 2020 entitled “Information About the Requirements of One-Stop Operator Agreements.” The webinar discussed requirements related to OSO procurement, agreements and payment provisions.

A recording of the webinar is available here:

https://www.youtube.com/watch?v=Ma4PrF8kYbQ&feature=emb_title

A sample OSO Agreement is available here:

https://www.illinoisworknet.com/WIOA/Resources/Documents/OSO_Sample_Agreement_-_for_December_2_2020_WIOA_Webinar.pdf

FAQ About OSO Procurement Requirements

1. **Q:** Is it acceptable to use a sole source procurement when you only receive on bid for one-stop operator services?

A: The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 200) classify sole source procurement as non-competitive and a last resort only when certain criteria are met (2 CFR 200.320(f)). The sole source procurement must be consistent with local procurement policies. After solicitation of a number of sources, and competition is determined to be inadequate, then a local workforce board may receive approval from the State to conduct a sole source procurement. The local workforce board must maintain sufficient documentation to verify the ways in which the process fostered competition but only received one proposal. The local workforce board must also document the decision and affirmation to enter into the sole source procurement with the one-stop operator.

2. **Q:** What are firewalls, and what are some examples of firewalls?

A: Firewalls are a combination of policies, procedures and monitoring activities that demonstrate everything from procurement to operations and oversight are impartial and avoid undue influence to benefit any one party or individual over another. This is important when one entity serves in more than one role in the local service delivery

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system, when an entity serves in more than one function in the procurement process, and when sole source selection occurs. Examples of firewalls include:

- a) A multi-function agreement that clearly defines roles, prohibited functions, and protocol when a potential real or apparent conflict of interest occurs.
- b) Documented, clear separation of duties
 - a. Example of fiscal agent duties related to the accounting and disbursement of WIOA funds: Individuals whose duties include receiving, accounting, reporting and disbursing WIOA funds as fiscal agent shall not be permitted to engage in policy or service delivery issues or activities.
- c) Documented, clear reporting hierarchy
 - a. Example: As a member of a consortium serving as the one-stop operator, the County Employment and Training Department shall report to the Local Workforce Innovation Board on operations, performance accountability, and continuous improvement.
 - b. Example: As a provider of career services, the County Employment and Training Department shall report to the Local Workforce Innovation Board on program services, delivery, performance accountability and continuous improvement.
- d) Conflict of interest policy
 - a. Example: No member of the CEOs or the Local Workforce Innovation Board or its committees shall cast a vote on any matter which has direct bearing on services to be provided by that member (or any organization which such member directly represents) or on any matter which would provide direct financial benefit to such member or the immediate family of such member.
 - b. Example: The Program Manager will disclose any potential real or apparent conflict of interest, abstain from voting, and follow any other course of action requested by the Board (e.g., leave the meeting) whenever:
 - i. The Board or other appropriate committee has matters on its agenda related to the role of the OSO (policy, goals, evaluation, etc.).
 - ii. The Board or other appropriate committee deals with matters that may directly impact Title IB oversight, policy, procurement, budget or evaluation.
 - iii. This disclosure and abstention will be noted in relevant meeting minutes.
- e) Conflict of interest disclosure statements
 - a. Example: I, [Name], publicly disclose my conflict with any Board discussion or action regarding the procurement of the one-stop operator. My agency, [Name], is responding to this Request for

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Proposal. As a board member, I have recused myself from all discussion and decision-making regarding the procurement process, including the development of the RFP and the selection process.

- f) Multi-function agreements to specify what functions the OSO consortium partner will do and will not do.
 - a. See § 679.430 How do entities performing multiple functions in a local area demonstrate internal controls and prevent conflict of interest?
 - i. Local organizations often function simultaneously in a variety of roles, including local fiscal agent, Local WDB staff, one-stop operator, and direct provider of services. Any organization that has been selected or otherwise designated to perform more than one of these functions must develop a written agreement with the Local Workforce Innovation Board and CEO to clarify how the organization will carry out its responsibilities while demonstrating compliance with WIOA and corresponding regulations, relevant Office of Management and Budget circulars, and the State's conflict of interest policy.
 - b. 20 CFR 678.610(c) regarding when sole-source selection of a one-stop operator is appropriate and how it is conducted.
 - c. 2 CFR 200.319(a) regarding competition specifies that all procurement transactions for services required under a Federal award must be conducted in a manner providing full and open competition consistent with standards in Section § 200.320 (Methods of procurement to be followed).

FAQ About OSO Agreement Requirements

- 3. **Q:** Do we have to re-procure our one-stop operator to incorporate the standards outlined in the new sample template of an OSO Agreement?

A: It depends on the term of the active OSO Agreement.

If the original OSO Agreement spans four years, then any renewal procedures must incorporate and customize the minimum standards offered in the sample OSO Agreement template that was issued on December 3, 2020.

Any renewal process must also consider the local workforce board's monitoring and evaluation of the OSO performance to identify improvements to the one-stop certification process, service delivery and performance metrics.

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Any new OSO Agreement should incorporate the minimum standards offered in the sample OSO Agreement template issued on December 3, 2020.

FAQ About OSO Payment Provisions

4. **Q:** If the MOU Report of Outcomes and the draft one-stop operating budget is due on April 15 each year, what if the new OSO budget is not yet known? Or what if the OSO procurement process is midstream when the MOU budget is due?

A: The Request for Proposal (RFP) for one-stop operator services should specify the services required and the range that a local workforce board will fund for those services. That scope of services and that range of funding that is outlined in the RFP can be inserted into the MOU narrative and the one-stop operating budget for submittal. MOU Amendments may be warranted if the actual cost of the one-stop operator services are significantly different after the agreed-upon MOU budget has been submitted to the State.