PROCUREMENT, FIREWALLS, AND CONFLICT OF INTEREST
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AGENDA

1. Procurement
   - General Standards
   - Methods of Procurement
   - Procuring One-Stop Operators and Service Providers
   - Selecting Subrecipients as a Pass-through Entity

2. Internal Controls

3. Firewalls

4. Conflict of Interest

5. Summary and Next Steps

6. Resources
WHAT PROCUREMENT STANDARDS APPLY?

LWDBs as Non-Federal Entities

- Develop and use own documented procurement procedures
- Follow the general procurement standards 200.318-326
- Reflecting applicable State/local laws and regulations
- Conforming to applicable Federal law and standards of the Uniform Guidance
When selecting subrecipients on a competitive basis, you must follow the procurement rules. When required by statute (e.g., OSO, WIOA Youth Service Providers) or state or local policies and procedures, or when required by the Funding Opportunity Announcement (FOA) and/or grant terms and conditions.
2 CFR 200.319

- Full and open competition
  - Restrictions on competition generally prohibited, including geographic preferences
  - Pre-qualified lists must be current and include enough qualified sources to ensure open and free competition
  - Must not preclude bidders from qualifying during solicitation period

- Required
  - Written procurement policies and procedures
  - Written standards of conduct
GENERAL PROCUREMENT STANDARDS

Award only to responsible contractors 2 CFR 200.318 (h)

- Ability to perform successfully
- Past performance, compliance with public policy, financial and technical resources, contractor integrity

Prohibited organizations and individuals

- Debarred or suspended
- Tax liability
- Felons
RECORD OF THE PROCUREMENT

Maintain records sufficient to detail the history of the procurement, including:

- Rationale for method of procurement
- Selection of contract type
- Basis for contractor selection or rejection
- Basis for contract price
COST AND PRICE ANALYSIS

- Contract Cost and Price Analysis 2 CFR 200.324
  - Every procurement action in excess of the Simplified Acquisition Threshold, including modifications, must include an independent estimate of costs before receiving bids or proposals
  - Also required for sole source procurements
  - Cost plus percentage of cost contracts not allowable

- State requirements
  - Local areas must comply with the lower state SAT threshold of $100,000
  - Cost and price analysis to be conducted for all procurements

- Also necessary for budgeting purposes
  - Based on funds available and expected levels of service in return
In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. 2 CFR 200.319(b)

Firewall issues this raises

- LWDB, Fiscal Agent, or any other entity’s staff may not develop the specifications for the RFP and then select themselves as the OSO or Youth Service Provider
- In one local area the LWDB is also the OSO
- In eight local areas the CEO/Fiscal Agent is also the Youth Service Provider
- In two local areas the LWDB is also the Youth Service Provider
- With address this further in section on firewalls and conflict of interest
STANDARDS OF CONDUCT

- 2 CFR 200.112 & 200.318(c)
- Must establish policies for Federal awards
- Written standards of conduct for anyone who touches process (selection, award, administration of contracts)
  - Note that the standards of conduct also apply during the administration of the award
- Real or apparent conflict of interest—personal or organizational
- Neither solicit nor accept anything of monetary value
- Staff, family member, partner, or employer organization has financial or other interest in or tangible benefit from awardee or bidder
- Take disciplinary actions for violations
PROCUREMENT

METHODS OF PROCUREMENT
METHODS OF PROCUREMENT

2 CFR 200.320

- Methods of Procurement to be Followed
- Micro Purchase
- Small Purchase
- Sealed Bids
- Competitive Proposals
- Non-Competitive Proposals

State/Local requirements may be different (make sure to check – could be more restrictive)
MICRO PURCHASES

- Micro Purchase 2 CFR 200.320(a)
  - Acquisition of supplies or services not exceeding $3,500 in aggregate
  - May be awarded without soliciting competitive quotations if price is reasonable
  - Distribute equitably among qualified suppliers to extent practicable
  - A higher threshold up to $50,000 may be established based on internal controls, an evaluation of risk, and documented procurement procedures
    - Must be consistent with State and local requirements
Small purchase procedures 2 CFR 200.320(b)

- Informal procurement methods for securing services, supplies, or other property
- Cost is less than the Simplified Acquisition Threshold (SAT)
- SAT set by the FAR at 48 CFR 2.1, currently $150,000
- Price or rate quotations must be obtained from an adequate number of qualified sources
- Future changes in FAR threshold will apply
- Must be consistent with State and local requirements
SEALED BIDS

Sealed Bids (formal advertising) 2 CFR 200.320(c)

- Bids publicly solicited
- Firm fixed price contract is awarded
- Successful bid conforms to all material items and conditions of the invitation for bids—and is lowest in price
- Preferred method for procuring construction
- Not used generally for procurement of services
(COMPETITIVE) PROPOSALS

2 CFR 200.320(d)

Requirements

• Publicize RFP and identify all evaluation factors
• Solicit from an adequate number of qualified sources
• Written method for evaluating and selecting proposals
• Contract awarded to responsible firm
  ▪ Most advantageous proposal
  ▪ Price and other factors considered
NON-COMPETITIVE PROCUREMENT (SOLE SOURCE)

- Only under one or more of the following circumstances
  - Does not exceed micro-purchase threshold
  - Available only from a single source
  - Public exigency or emergency will not permit a delay resulting from publicizing a competitive solicitation
  - Federal or pass-through entity authorizes in response to written request
  - After solicitation from a number of sources, competition is determined inadequate
    - e.g., Only one respondent
    - Cost and price analysis required since there is no competition for comparison

- State workforce policy #4 requires written justification
At a minimum, the one-stop operator must coordinate the service delivery of required one-stop partners and service providers. Local Boards may establish additional roles of one-stop operator, including, but not limited to: Coordinating service providers within the center and across the one-stop system, being the primary provider of services within the center, providing some of the services within the center, or coordinating service delivery in a multi-center area. The competition for a one-stop operator must clearly articulate the role of the one-stop operator.
REQUIRED CONTENT OF RFP (2 CFR 200.319)

- No geographic preferences
- Written procedures for conducting the procurement
- Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured, without unduly restricting competition
- Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals
- Publicly advertise
Background

- Describe one-stop system, purpose, and structure
- Identify partners and their programs
- Request description of bidder organization: type, principal purpose/mission, services provided

Define the role of OSO

Identify the additional services to be provided (if any)

- Require description of firewall protections if performing incompatible functions

Ask for staffing plan

Request line-item budget and budget summary (needed for cost and price analysis)

Identify the evaluation factors to be used to rate proposals

Identify logistical requirements
POSSIBLE ROLE OF OSO

- Coordinate the delivery of partner services (minimum requirement)
- In conjunction with partners, identify one-stop objectives and measures of performance
- Report performance results quarterly to LWDB
- Assist in negotiating MOU and partner sharing of infrastructure and additional costs
- Reconcile actual costs with IFA and additional cost budgets
- Provide program services
POSSIBLE OSO PROGRAM SERVICES

- Reception desk and referral of customers to partner programs
- Resource room
- Delivery of career services
- Etc.
EVALUATION FACTORS

- Constructed around principal OSO roles
- Knowledge of, experience with, and achievements regarding:
  - Partners’ employment and training programs
  - Coordinating the work of multiple entities
  - Negotiating budgets
  - Identifying organizational objectives and reporting results
- Staffing
  - Who will staff the OSO role, their qualifications and experience
  - Additional support provided by the organization
- Budget
  - Allowable and reasonable costs
  - Cost effectiveness relative to extent and quality of services provided
  - Within the limit of available funds
LOGISTICAL CONSIDERATIONS

- Due date of proposal
- Where and how delivered
- Decision steps and timeframes
- Composition of evaluation team by position and organization
- Restrict length of application?
- Etc.
If the Local WDB is selected to serve as the OSO, the local CEO and the Governor have approved the selection, and the State has certified the one-stop centers in that region.

If the Local WDB is selected as the OSO through sole source procurement, the local CEO and the Governor have given prior approval, and the Local WDB has established sufficient conflict of interest policies and procedures that have been approved by the Governor.

If the Local WDB acts as a provider of career services, the local CEO and Governor have approved this arrangement.

If the Local WDB provides training services, the Governor has granted a waiver to do so.
STATE WORKFORCE POLICY #4

- LWDB must establish written firewall protections to eliminate potential or appearance of conflict of interest
- OSO may not serve as staff to the LWDB
- LWDB must select the OSO through a fair and open competitive process
- Career services may be provided by OSO, through contracts with direct service providers, or LWDB documentation of the process and selection criteria used to award these contracts
  - If by OSO, career services must be included in competitive procurement process
    - All OSO functions must be identified in the RFP
  - Firewalls to separate governance functions and program service operations
PROHIBITED OSO ROLES (20 CFR 678.620)

- Convene system stakeholders to assist in the development of the local plan
- Prepare and submit local plans
- Be responsible for oversight of itself
- Manage or significantly participate in the competitive selection process for one-stop operators
- Select or terminate one-stop operators, career services, and youth providers
- Negotiate local performance accountability measures
- Develop and submit budget for activities of the Local Board in the local area
SELECTING SUBRECIPIENTS

AS PASS THROUGH ENTITY
KEY TERMS

► Non-Federal Entity
  • Any entity receiving Federal funds
  • Includes for-profits and foreign entities per DOL exceptions at 2 CFR 2900.2

► Pass-Through Entity (PTE)
  • Any non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program
  • Key distinction: pass-through subaward (subrecipient) vs. procurement action (contractor)

▶ See state’s checklist on “contractor/subrecipient determination” and next slide
▶ OSO is a subrecipient procured on a competitive basis
▶ PTE’s selection of other subrecipients is not always a procurement action
  ▶ E.g., Selection of service providers
  ▶ Unless required by law, regulations, state/local policy: e.g., OSO, Youth Service Provider
AZDES developed this form to help make the determination of whether a subgrantee/entity is a contractor or a subrecipient.
<table>
<thead>
<tr>
<th>Subrecipient</th>
<th>Contractor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Determines who is eligible to receive what Federal assistance</td>
<td>Provides similar goods or services to many different purchasers</td>
</tr>
<tr>
<td>Performance is measured by whether objectives of Federal program are met</td>
<td>Provides the goods and services within normal business operations</td>
</tr>
<tr>
<td>Has responsibility for programmatic decision making</td>
<td>Provides goods or services that are ancillary to the operation of the Federal program</td>
</tr>
<tr>
<td>Responsible for adhering to applicable Federal program requirements</td>
<td>Not subject to the compliance requirements of the Federal program</td>
</tr>
<tr>
<td>Uses Federal funds to carry out a program for a public purpose</td>
<td>Provides goods and services for the non-Federal entity’s own use, creating a procurement relationship</td>
</tr>
<tr>
<td>Funded by a Subaward</td>
<td>Funded by a Procurement Contract</td>
</tr>
</tbody>
</table>
SELECTING SUBRECIPIENTS

What guides the selection of subrecipients when a competitive process is not required?

Internal Controls System
- Written procedures
- Conflict of interest provisions

Risk Assessment: Subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring

2 CFR 200.331(b)
- Past record of performance
- Cost principles: reasonable costs
- Past record of compliance
- Audit and monitoring results
POST-AWARD PTE RESPONSIBILITIES (2 CFR 200.332)

- Monitor the subrecipient’s compliance to include:
  - Federal (and state/local) requirements and performance goals
  - Reviewing financial and performance reports
  - Ensure timely corrective action on noted deficiencies
  - Issue management decision on findings
  - Provide training and technical assistance
  - Consider taking enforcement action against noncompliant subrecipients
WHAT QUESTIONS DO YOU HAVE ON PROCUREMENT?
INTERNAL CONTROLS
INTERNAL CONTROLS FRAMEWORK

- Committee of Sponsoring Organizations of the Treadway Commission (COSO)

- Components of the COSO Framework
  1. Control Environment
  2. Risk Assessment
  3. Control Activities
  4. Information and Communication
  5. Monitoring
I. CONTROL ENVIRONMENT

- Persons in leadership positions
  - Set a positive tone at the top
  - Establish a system of internal controls as part of an organizational culture
  - Value integrity, ethical behavior, and employee competence

- Applicability to firewalls: Local WDB, CEO/Fiscal Agent, and Subrecipients
  - Establish policies and implement procedures to create adequate firewalls as an internal control protection
  - Emphasize the importance of firewalls in promoting organizational and individual integrity and ethical behavior
  - A responsibility for all organizations
2: RISK ASSESSMENT

- Conduct risk assessments
  - Assess exposure to risk of loss, roadblocks to accomplishing objectives, and other vulnerabilities
  - Identify the methods and means of mitigating each risk factor

- Applicability to firewalls: Local WDB and participating organizations
  - Assess where the roles and functions of organizations and individuals overlap or conflict and thus represent potential firewall and conflict of interest weaknesses
  - Identify where and how duties, roles and functions need to be separated to mitigate risk and maintain adequate firewalls
  - In the RFP process, require competing organizations to identify their firewalls that separate the performance of multiple and incompatible functions
3: CONTROL ACTIVITIES

- Establish policies and procedures that mitigate risk and help ensure that management decisions are carried out

- Applicability to firewalls
  - Clearly define the specific roles and functions of each organization, division, unit, and individual staff position
  - Establish policies and procedures that mitigate the identified risks associated with the lack of adequate firewalls and conflict of interest protections
  - Separate roles, functions and duties
  - Establish oversight/monitoring capability that is independent of the functions being monitored
Establish effective information and communication systems that enable the organization to conduct, manage, and control its operations.

**Applicability to firewalls**

- Communicate policies and procedures to all applicable organizations and staff.
- Update and reinforce those policies and procedures on a regular basis.
- Provide training to organizations and staff.
- Maintain records and information systems that provide reliable reporting and that document compliance with firewall and conflict of interest requirements.
5: MONITORING

- Monitor the internal control system to assess effectiveness and determine whether the controls need to be updated

- Applicability to firewalls
  - Establish a monitoring and oversight function that is independent of the organizations, operational units, and functions being monitored
  - Monitor on a regular basis
  - Monitor all organizations and functions where firewall and conflict of interest protections need to be enforced
  - Monitor subrecipients, including OSO
  - Oversee staff compliance by supervisors
COMPLETING THE CHECKLIST

- Regulatory requirements (citations provided)
- Good management practices
- COSO framework for internal controls
- Assess each statement
  - Yes – Provision in place
  - No – Provision not yet in place
  - NA – Provision not applicable to your organization
- Objective: Getting to “Yes”
FIREWALLS
FIREWALLS AND CONFLICT OF INTEREST

- Regulations often address them in combination together
  - “…provided that adequate firewall and conflict of interest protections are in place”
  - Overlap in content and application but with some distinctions

- Firewalls
  - Apply mainly to external organizational relationships and
  - Internal organizational structure

- Conflict of Interest
  - Applies more to personal conduct (but with some organizational applications)
FIREWALL

- Barrier or protection against an undesirable influence
- Functions performed or influenced by a single organization or individual
- Separation of incompatible roles and functions
  - Between organizations
  - Between divisions and units within an organization
  - Between staff functions within a single division or unit
- Oversight and monitoring
  - Independent of the operations being monitored
  - Compensating controls
WIOA RULES ON FIREWALLS

Adequate firewalls must be in place when the same organization performs more than one of the following functions:

- Staff to the Local Workforce Development Board (LWDB)
- Fiscal Agent
- One-Stop Operator
- Direct provider of services (career or training services)

20 CFR 679.430
FIREWALL SOLUTIONS

- Ideal Separation
  - Having the four functions performed by separate organizations
  - Not the case in most local areas
  - Are there alternative firewall protections?

- When multiple functions justifiable
  - Best option – given local circumstances
  - Unavoidable – no other good option
  - MUST have alternative firewall protections in place
ESTABLISHING A CONTROL ENVIRONMENT – (#1 ON CHECKLIST)

- The Local Workforce Development Board (LWDB), or the Administrative Entity on behalf of the Board, has supported and promoted the establishment of an internal control environment that fosters integrity, ethical values, and competence across the entire local workforce system
  - Board sets the tone
  - Also applies to every organization
RISK ASSESSMENT

- The Local Workforce Development Board (WDB), or the Administrative Entity on behalf of the Board, has conducted a risk assessment of the workforce area’s systemwide program and administrative operations to identify where the roles and functions of participating organizations overlap and need to be separated by firewalls:
  - Identifying areas of exposure to risk
  - Each entity needs to conduct its own risk assessment

- Entities that perform multiple roles need to assess their risk on an ongoing basis
CONTROL ACTIVITIES

- The Local WDB has established system-wide policies and procedures that create those firewalls and incorporate other appropriate internal control safeguards addressing the areas of exposure to risk
  - Putting the firewall and internal control provisions in writing
  - Applies to every organization
The Local WDB has clearly defined the roles and specific functions to be performed by the:

- Local WDB and its committees
- Staff to the Local WDB
- Fiscal agent
- Administrative Entity (if separate from the Board)
- One-Stop Operator (OSO)
- Service providers
There are safeguards in place so that, if the OSO also serves as a service provider, the OSO

• Does not develop, manage or conduct the competition of a service provider in which it intends to compete

• Does not perform subsequent oversight, monitoring, and evaluation of performance of itself as a service provider

20 CFR 678.625

Independent monitoring of OSO performance is itself a firewall protection
If the OSO is also a service provider, the OSO has established firewalls and internal controls within the OSO-service provider entity, and the Local WDB has implemented specific policies and procedures regarding oversight, monitoring, and evaluation of performance of the OSO-service provider. **20 CFR 678.625**

- Require bidders vying for selection as both OSO and service provider to identify their own firewalls so those firewalls can be evaluated during the proposal rating process in meeting the Board’s policy on firewall protections.
COMMUNICATION

- Guidelines and training on firewall protections have been provided to all participating organizations.
- Locals should also train their staff to ensure the policy is being followed (especially if there is turnover).
The Local WDB has established a comprehensive system of oversight and monitoring which covers all entities that provide WIOA program services and perform administrative functions

- Not sufficient to rely on Federal and State monitoring
- Single Audit Act auditors do not monitor every participating organization, do not monitor firewalls, and do not even express an opinion on the organization’s internal control system
In instances where firewall separation between organizations in the local workforce area are not complete and sufficient, the LWDB, or the administrative entity acting on behalf of the LWDB, has established a system of compensating controls that detect and overcome any firewall weaknesses that may exit:

- Compensating controls “compensate” for firewall protections that are not sufficient in themselves.
- Need to provide rigorous protection against firewall and conflict of interest risks.
- Responsibility of the organization to develop, implement, and document these controls.
COMPENSATING CONTROLS: PROCESS STEPS

1. Identify specific firewall weaknesses where functions overlap
2. Determine that it cannot be resolved by separation alone
3. Identify alternative ways to overcome that weakness
4. Obtain commitment from affected organizations to implement the solution
5. Monitor for compliance with the solution and evaluate its effectiveness – monitoring is “independent of and separate from…”
6. Objective: Monitor, Detect, Mitigate, and DOCUMENT
Same organization serving as:

- LWDB Staff, Fiscal Agent, Adult/Dislocated Worker Service Provider and Youth Service Provider: 7
- LWDB Staff and Fiscal Agent: 1
- LWDB Staff, One Stop Operator, Adult/Dislocated Worker Service Provider, and Youth Service Provider: 1
- LWDB Staff, Fiscal Agent, and Youth Service Provider: 1
- LWDB Staff and Adult/Dislocated Worker Service Provider: 1
STEPS TO MITIGATE FIREWALL ISSUES (HANDOUT)

- Identify organizations performing multiple roles
- Identify the organizational units and staff positions that perform functions within each role
- Determine whether functions are sufficiently separated within the organization by having separate staff and supervisors perform those functions and report separately to upper management
  - If yes, sufficient firewalls appear to be in place
  - If no, have the organization determine whether it can reorganize the functions to achieve adequate separation
- If adequate separation cannot be achieved, identify compensating controls to mitigate the lack of sufficient separation
POLICY ON FIREWALLS WHEN OSO IS SERVICE PROVIDER

► If you combine the two functions in the solicitation for OSO
  • Make OSO responsible for adequate firewalls and ICs as SP, as required
  • Make firewalls and ICs part of the solicitation and bid proposal requirements

► LWDB as awarding agency
  • Approve OSO’s firewalls and other terms of operation as SP
  • Ensure that there are measurable goals for each function that can be monitored

► Required LWDB oversight/monitoring of OSO as SP
  • Firewalls operating as intended?
  • Actual v. planned results
  • Report to LWDB, not to the OSO
Selection of Fiscal Agent
- CEO has sole authority to select Fiscal Agent

Selecting official approves terms of agreement
- CEO defines role of Fiscal Agent
- Written agreement between LWDB and CEO must describe how CEO will carry out its responsibilities as Fiscal Agent
  - CEO must identify the firewalls between its role as Fiscal Agent and its other roles

LWDB/CEO needs to identify its method of providing independent oversight over the firewall protections

Independent oversight of actual operations and results
- Are firewalls working?
- Are Fiscal Agent duties being performed satisfactorily?
- Are the results being reported back to the LWDB?
STAFF TO CEO/FISCAL AGENT AS SERVICE PROVIDER – 10 LOCAL AREAS

- Define roles of staff serving the CEO/Fiscal Agent and their roles as service provider
  - Identify the divisions/units performing each role
  - Identify the individuals performing each role
  - Is there any overlap in performing both roles: organizational and staff

- Where overlap exists
  - Organizational: Identify method to separate the functions of the units
  - Staff: Identify method of separating the duties

- If separation not possible
  - Identify compensating controls
    - Separate supervisory chain of command
    - Separate reporting structure
    - Board (oversight and audit committee) approves the controls
    - Independent monitoring and reporting directly to the Board (Oversight Committee)
CONFLICT OF INTEREST
### REAL, POTENTIAL, OR APPARENT

<table>
<thead>
<tr>
<th>Real</th>
<th>Potential</th>
<th>Apparent</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Actual and certain</td>
<td>• Could develop into a real conflict of interest</td>
<td>• Whether real, potential, or not – it appears to be a conflict</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• In the public mind</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• “How would the newspaper headline read”</td>
</tr>
</tbody>
</table>

*ARIZONA PROCUREMENT, FIREWALL AND COI TRAINING*
### Conflict of Interest

<table>
<thead>
<tr>
<th>Must</th>
<th><strong>2 CFR 200.318(c)(1)</strong> requires a Conflict of Interest (COI) policy in place for any employee participating in a procurement transaction</th>
</tr>
</thead>
<tbody>
<tr>
<td>Should</td>
<td>Good business practice to apply COI policies to all employees</td>
</tr>
<tr>
<td></td>
<td>Policy should address situations where employees have outside or additional employment or interests</td>
</tr>
</tbody>
</table>

### Code of Conduct (Ethics)

<table>
<thead>
<tr>
<th>Must</th>
<th>For employees engaged in procurement transaction and administration of awards</th>
</tr>
</thead>
<tbody>
<tr>
<td>Should</td>
<td>Sound business practice to have an agency-wide code of ethics policy for all employees, managers and board members</td>
</tr>
</tbody>
</table>
STANDARDS OF CONDUCT, CONFLICT OF INTEREST

2 CFR 200.112 & 200.318 (c)

Must establish policies for Federal awards

- Written standards of conduct for anyone who touches process (selection, award, administration of contracts)
- Real or apparent conflict of interest—personal or organizational
- Neither solicit nor accept anything of monetary value
- Staff, family member, partner, or employer organization has financial or other interest in or tangible benefit from awardee or bidder
CONFLICT OF INTEREST POLICY

- Issued by Workforce Arizona Council
- Applies to Local Workforce Development Boards, Local Workforce Administrative Entities (grant recipients), One Stop Operators, and Workforce Stakeholders (not an exhaustive list)
- Objective: to establish guidelines for conflict of interest, firewalls, and internal controls required under WIOA for LWDBs and entities serving in more than one role in the ARIZONA@WORK system.
WRITTEN AGREEMENT REQUIREMENTS

- Must be executed between the entity serving in multiple roles, the LWDB, and the Chief Elected Official
- Must specify how the organization/entity will carry out its responsibilities, demonstrate compliance with WIOA, its corresponding regulations, Uniform Guidance, and the State’s Conflict of Interest policy
- Must include requirements for internal controls, conflict of interest, and firewalls
STAFF CONFLICT OF INTEREST

No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest 2 CFR 200.318

- Financial or other interest or tangible personal benefit
- Applies to the administration of an award and not just the selection
ORGANIZATIONAL CONFLICT OF INTEREST

- **2 CFR 200.318(c)(2)**
  - Because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.
  - If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the non-Federal entity must maintain written standards of conduct covering organizational conflicts of interest.

- Coincides with firewall requirement when the one-stop operator is also a service provider.
The Local WDB requires the One-Stop Operator (OSO) to disclose any potential conflict of interest with particular training and other service providers. \(20 \text{ CFR 678.600(e)(1)}\)
- Should be a clause in the agreement with the OSO

Other COI disclosure requirements
- Performing multiple functions
- Procurement
- LWDB members

Organizations must disclose in writing any potential conflict to Federal agency or pass-through entity. \(2 \text{ CFR 200.112 & 200.318 (c)}\)
In instances where the separation of duties is not complete and sufficient, the organization needs to establish a system of compensating controls that mitigates the problem that may exist.

- Compensating controls can help to “compensate” for the lack of separation of duties, such as:
  - Have some functions performed by another unit
  - Checklists that can be monitored
  - Expand direct supervisor approvals and oversight, and use managers from other units
  - Independent monitoring unit in-house
  - Outside agency monitoring
COMPENSATING CONTROLS: PROCESS STEPS

1. Identify specific cycles where duties are not currently separated
2. Determine whether they can be separated within the unit
3. If not possible to separate within the unit, identify staff (or another entity) outside the unit that can perform one or more of the duties
4. If that is not possible, expand supervisory approvals and controls, and include supervisors outside the unit if necessary
5. Establish separate chains for reporting to upper management
6. Monitor for compliance with the solution and evaluate its effectiveness — monitoring is “independent of and separate from…”
7. Objective: Monitor, Detect, Mitigate
CONTROL ACTIVITIES: MONITORING

Monitoring needs to be targeted to those areas:

- Specific regulations and other requirements related to conflict of interest and separation of duties
- Include the vulnerabilities identified in risk assessment
- Determine whether the control activities are working
- LWDB responsibility also

Evidence of monitoring

- Capability: Monitoring guide questions and oversight instructions to supervisors and managers that require oversight of these areas, etc.
- Follow-through: Monitoring reports, supervisors’ written instructions to staff, checklists, copies of documents reviewed, etc.
SUMMARY AND NEXT STEPS
INTERNAL CONTROLS: FIREWALLS

- The Uniform Guidance relies on an organization’s internal control system as the basis for determining compliance with many regulatory requirements.
- A key component of an internal control system is to have adequate firewalls in place to separate incompatible functions performed by organizations, by divisions and units within an organization, and by staff in each division and unit.
- A risk assessment identifies any weaknesses in firewall protections and the steps to be taken to mitigate those risks.
- There are numerous control activities that can be performed to establish and reinforce firewall protections.
- It is important to communicate and train staff on firewall protections in place.
- Oversight and monitoring are independent of the functions being monitored.
INTERNAL CONTROLS: CONFLICT OF INTEREST

- A key component of an internal control system is to have safeguards in place to prevent conflict of interest and to separate incompatible staff functions and duties.
- A risk assessment identifies any instances where conflict of interest may exist and where duties are not adequately separated, and identifies the steps to be taken to mitigate those risks.
- The organization implements appropriate control activities that can be put in place to establish protections against conflict of interest and inadequate separation of duties.
- It is important to communicate and train staff on their roles in maintaining protections against conflict of interest and inadequate separation of duties.
- Compensating controls are put in place when adequate separation of duties cannot otherwise be achieved.
- Oversight and monitoring are independent of the functions being monitored.
RECOMMENDED NEXT STEPS
CONTROL ENVIRONMENT & RISK ASSESSMENT

▶ Control Environment

• Obtain commitment from all applicable organizations to create sufficient internal controls to mitigate firewall issues

▶ Risk Assessment

• Assess where the roles and functions of organizations and individuals overlap or conflict and thus represent potential firewall and conflict of interest weaknesses

• Identify where and how duties, roles and functions need to be separated to mitigate risk and maintain adequate firewalls and conflict of interest protections
RECOMMENDED NEXT STEPS
CONTROL ACTIVITIES

Control Activities

• Clearly define the specific roles and functions of each organization, division, unit, and individual staff position

• Establish policies and procedures that mitigate the identified risks associated with the lack of adequate firewalls and conflict of interest protections

• Separate roles, functions and duties to the extent possible

• Where separation is not possible, establish compensating controls

• Establish oversight/monitoring capability that is independent of the functions being monitored
RECOMMENDED NEXT STEPS
INFORMATION AND COMMUNICATION

Information and Communication

• Communicate policies and procedures to all applicable organizations and staff
• Update and reinforce those policies and procedures on a regular basis
• Provide training to organizations and staff on an ongoing basis
• Maintain records and information systems that provide reliable reporting and document compliance with firewall and conflict of interest requirements
RECOMMENDED NEXT STEPS – MONITORING

Monitoring

• Establish a monitoring and oversight function that is independent of the organizations, operational units, and functions being monitored
• Monitor on a regular basis
• Monitor all organizations and functions where firewall and conflict of interest protections need to be enforced
• Monitor subrecipients including the OSO
• Oversee staff compliance by supervisors
• Document the monitoring results and any corrective actions taken
RESOURCES
RESOURCES

► **GAO’s Standards for Internal Control in the Federal Government**

► **COSO’s Internal Control – Integrated Framework**
  • [http://www.coso.org/documents/990025P_Executive_Summary_final_may20_e.pdf](http://www.coso.org/documents/990025P_Executive_Summary_final_may20_e.pdf)

► **Uniform Guidance**
  • 2 CFR 200.61
  • 2 CFR 200.303

► **Handouts**
  • Checklist on Firewalls and Conflict of Interest
  • Steps to Evaluate and Create Policies on Firewalls, Conflict of interest, and Separation of Duties
Core Monitoring Guide
- Objective 2.d Procurement and Contract Administration, Objective 2.f Subrecipient Management & Oversight

Grant & Financial Management Technical Assistance Guide
- Chapter 6: Procurement, Contracts, and Leases

TEGL 15-16: Competitive Selection of One-Stop Operators

Department of Labor Exceptions 2 CFR Part 2900

ETA SMART Training on Procurement and Subrecipient Management

Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards 2 CFR Part 200
- 2 CFR 200.90
- 2 CFR 200.112
- 2 CFR 200.213
- 2 CFR 200.317-326
- 2 CFR 200.400

WIOA One-Stop Operator Description 20 CFR 678.600-635

WIOA Administrative Provisions 20 CFR 683.200
STATE RESOURCES

- Procurement Policy – [State Workforce Policy #4: ARIZONA@WORK One Stop Operator and Service Provider Selection Policy](#)

- Conflict of Interest Policy – [State Workforce Policy #8: Conflict of Interest Policy](#)
WHAT QUESTIONS DO YOU HAVE?
EVALUATION

► Please take a minute and give us feedback on the session today (link is also in the chat):

https://www.surveymonkey.com/r/AZ_Governance_Apr_28_2021
THANK YOU!

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