

## TEXAS WORKFORCE COMMISSION LETTER

**ID/No:** WD 43-06

**Date:** June 22, 2006

**Keyword:** WIA

**To:** Local Workforce Development Board Executive Directors  
Commission Executive Staff  
Integrated Service Area Managers

**From:**  Luis M. Macias, Director, Workforce Development Division

**Subject:** **Workforce Investment Act: Appropriate Use of Third-Party Vendors  
in Texas Workforce Centers**

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### **PURPOSE:**

To provide Local Workforce Development Boards (Boards) with procedures and policies for allowing third-party vendors to operate in Texas Workforce Centers.

### **REFERENCE:**

Workforce Investment Act §121  
Master Board Contract, Section 6  
Texas Workforce Commission Local Workforce Development Boards Rules:  
40 TAC, Chapter 801, Subchapter C  
Texas Workforce Commission Local Workforce Development Boards Rules:  
40 TAC §801.13

### **FLEXIBILITY RATINGS:**

**No Local Flexibility (NLF):** This rating indicates that Boards must comply with the federal and state laws, rules, policies, and required procedures set forth in this WD Letter and have no local flexibility in determining whether and/or how to comply. Federal and state laws, rules, policies, and required procedures with a “No Local Flexibility” rating are indicated by the acronym, **NLF**, in the margin to the right of the applicable paragraph. Additionally, all information with a “No Local Flexibility” rating is indicated by “must” or “shall.”

Failure to comply with the federal and state laws, rules, policies, and required procedures with a “No Local Flexibility” rating may result in corrective action, up to and including sanction and penalty.

**Local Flexibility (LF):** This rating indicates that Boards have local flexibility in determining whether and/or how to implement guidance or recommended practices set forth in this WD Letter. All guidance or recommended practices with a “Local Flexibility” rating are indicated by the acronym, **LF**, located in the margin to the right of the applicable paragraph. Additionally, guidance or recommended practices with a “Local Flexibility” rating are indicated by “may” or “recommend.”

Boards are not subject to corrective action for failure to comply with guidance or recommended practices with a “Local Flexibility” rating.

**BACKGROUND:**

Section 121 of the Workforce Investment Act (WIA) designates entities that provide employment, training, and related services as one-stop partners and directs that their services be coordinated through the one-stop centers. WIA also provides for the inclusion of optional partners in the one-stop service delivery system. These may include organizations that administer federally funded programs, such as Temporary Assistance for Needy Families, public-sector entities like economic development agencies, or nonprofit and community-based organizations. Several federal studies cite examples of state employment agencies that allow optional partners to operate in one-stop centers.

The question of expanding the one-stop service delivery model to include for-profit entities has arisen. This approach would extend the WIA one-stop model to include new partners that typically do not operate in the Texas Workforce Centers in order to expand the services available at the Texas Workforce Centers. In considering the question of allowing third-party vendors (i.e., optional partners, both nonprofit and for-profit) to collocate, a variety of related issues were presented to the Texas Workforce Commission (Commission) for consideration.

On May 9, 2006, the Commission approved recommendations to give Boards the flexibility to set local policy on whether to allow third-party vendors to operate in Texas Workforce Centers.

**PROCEDURES:**

Boards must determine whether to allow third-party vendors to operate in Texas Workforce Centers.

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Boards that choose to allow third-party vendors to operate in Texas Workforce Centers *must* develop Board policy that addresses the following issues.

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**Eligibility Criteria**

Boards allowing third-party vendors to operate in Texas Workforce Centers must specify in policy the criteria a vendor must meet to be eligible for collocation.

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Questions to consider in developing eligibility criteria include the following:

- Will the Texas Workforce Centers in the local workforce development area (workforce area) be available to *any* third-party vendors requesting permission to collocate or only to select third-party vendors?
- Will a third-party vendor’s for-profit status affect reasonable accommodations as well as nondiscrimination (harassment or retaliation) Board policies for eligibility?
- Must a third-party vendor’s products or services be workforce related?
- Must a third-party vendor’s products or services address the Board’s goals and priorities?

- Will a third-party vendor's past performance and stability be taken into consideration in determining its eligibility?
- Must a third-party vendor meet Board-established standards for product or service quality?

**Conflict of Interest**

Boards that allow third-party vendors to operate in Texas Workforce Centers must avoid conflicts of interest by ensuring compliance with:

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- Commission rule §801.13, regarding Board member conflicts of interest; and
- Chapter 801, Subchapter C of the Commission rules, regarding the integrity of the Texas workforce system.

**Cost Implications**

Boards that allow third-party vendors to operate in Texas Workforce Centers must require that such vendors pay for their allocable portion of the costs associated with their colocation. Boards must develop criteria, which includes consideration of the following factors, for assessing costs to third-party vendors:

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- Costs involved in allowing a third-party vendor to operate in the Texas Workforce Center (e.g., the cost of Texas Workforce Center space, equipment, and supplies to be used by the third-party vendor) and the prevailing rent for office space in the workforce area
- Costs required to accommodate additional staff and customers resulting from the colocation of the third-party vendor
- Costs associated with amending the existing Board cost allocation plan

Boards must ensure that Board and Texas Workforce Center costs continue to conform with the cost principles set forth in Section 6 of the Master Board Contract.

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**Operational Issues**

Boards that allow third-party vendors to operate in Texas Workforce Centers must establish operational procedures for third-party vendors to include:

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- space allocation;
- method by which services and products may be offered (e.g., advertising, brochures, on-site representatives, on-site literature, and materials);
- access to Texas Workforce Center premises (e.g., method of entry and access, days and times, and security);
- use of Texas Workforce Center equipment and staff;
- confidentiality of information;
- on-site conduct (e.g., identification badges, sign-in sheet, appointments, and scheduling);
- prohibition of using the Board's name or logo;
- method of handling complaints by or about third-party vendors; and
- removal of third-party vendors (e.g., space limitations during natural disasters).

**Legal Issues**

Boards allowing third-party vendors to operate in Texas Workforce Centers must enter into legally binding agreements—memoranda of understanding (MOUs) or contracts—with third-party vendors. Boards must ensure that the MOUs or contracts clarify the expectations and responsibilities of both parties regarding the following:

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- Operational procedures
- Methodology for assigning costs
- Hold-harmless liability provisions
- Mechanism for resolving conflicts
- Other related issues identified locally

Boards must display a third-party vendor disclaimer in Texas Workforce Centers, such as the following:

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The (Board) allows (third-party vendor) access to (Texas Workforce Center) to colocate or advertise (third-party vendor’s) information. Neither the Board nor the Texas Workforce Commission (TWC) is responsible for the availability of such vendors, nor does the Board or TWC endorse or support any vendor statements, other than expressly stated therein. Neither the Board nor TWC is liable or responsible for any actions, statements, content, advertising, products, or other materials relating to or available from such third-party vendor.

Boards must make third-party vendors aware of the following:

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- Boards have final decision-making authority over local policies regarding third-party vendor colocation.
- Third-party vendors have no appeal rights to the Commission regarding Board policy.

**ACTIONS REQUIRED:**

Boards must ensure that appropriate staff is apprised of and complies with the requirements in this WD Letter.

**INQUIRIES:**

Direct inquiries regarding this WD Letter to the assigned contract manager for your local workforce development area.

Rescissions: None	Expiration: Continuing
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