

TEXAS WORKFORCE COMMISSION LETTER

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Keywords: Administration

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



From: Laurence M. Jones, Director, Workforce Development Division

Subject: **Implementation of New Rules for Contractor Advertising**

PURPOSE:

To provide Local Workforce Development Boards (Boards) with information and guidance on new Texas Workforce Commission (Commission) rules regarding contractor advertising, adopted by the Commission on December 19, 2006, and effective on January 8, 2007.

REFERENCE:

Texas Government Code §2308.264(e)(4)
Texas Workforce Commission Local Workforce Development Boards Rules:
40 TAC §801.33

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:

Senate Bill (SB) 998, enacted by the 79th Texas Legislature, Regular Session (2005), amended Texas Government Code §2308.264(e)(4) to allow entities that contract with a Board to use, display, and advertise their business name when providing one-stop workforce services for the Board.

In accordance with this legislative direction, on December 19, 2006, the Commission amended Chapter 801, Local Workforce Development Boards rules, by adopting new §801.33, relating to advertising. The new rules, applicable to any existing and future contracts for one-stop services, ensure that an entity contracting with the Boards may use, display, and advertise its contractor business name when providing workforce services for the Boards.

The new rules may be accessed at:
<http://www.twc.state.tx.us/twcinfo/rules/twcrules.html>.

This WD Letter provides Boards with information and guidance regarding new rules for contractor advertising.

PROCEDURES:

Within 120 days or within three Board meetings—whichever is later—of the effective date of new Commission rules §801.33, Boards must develop policies regarding the limitations and restrictions on the use, display, and advertising of contractors' business names when providing one-stop workforce services.

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Additionally, Boards must be aware that:

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- the new rules become effective on January 8, 2007; and
- the policies apply only in the event a contractor or prospective contractor requests to advertise.

At a minimum, Board policies must address the following:

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- The requirement that a contractor’s business name be displayed in a subordinate position to the Board’s name in terms of size, placement, stature, and location.
- The advertising medium to be used, including the Internet, radio, television, and print, as well as the design of the advertising medium.
- The requirement that contractors and prospective contractors provide the Board with advance written notice of their intent to use, display, or advertise their business name.

For example, a Board may require contractors to provide 30-days written notice if they intend to use, display, or advertise their business name.

- The prohibition on a contractor’s or prospective contractor’s business-name recognition from being a factor in evaluating a proposal for services.
- The limitations necessary to avoid potential confusion on the part of employers and job seekers attempting to access one-stop workforce services.

For example, a Board’s advertising policy:

- may direct how contractor staff outreaches and communicates with employers;
- will establish parameters that align with its branding strategy; and
- may allow a contractor’s business name to be advertised only in print material, by limiting greetings and introductions to the Board’s brand.

- The methods of holding contractors accountable.

For example, a Board may include a provision on adherence to its advertising policies in existing and future contracts for one-stop workforce services.

- The methods to ensure that Commission-contracted funds are not associated with advertising a contractor’s business name and the requirement that contractors or prospective contractors disclose the source of funds to be used for advertising, along with the requirement for an attestation that no Commission-contracted funds will be used for advertising.

Note: Boards and contractors must not use Commission-contracted funds to pay for:

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- displaying the contractor’s business name on materials used in performing contracted duties;
- replacing the contractor’s unused advertising materials; and
- removing the contractor’s business name from signs remaining on a Texas Workforce Center’s premises.

Boards must charge an outgoing contractor for costs associated with:

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- replacing unused materials that contain the outgoing contractor’s business name, such as pamphlets describing one-stop workforce services; and
- removing the outgoing contractor’s business name from signs designed to remain on the premises of a Texas Workforce Center.

Boards must be the final decision-making authority related to Board policies on contractor advertising. Therefore, there will be no appeals to the Commission.

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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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