

July 31, 2001

**Workforce Investment Act (WIA) Memorandum Number E&T 01-18**

**Topic:** On-the-Job Training (OJT) Pre-Award Contract Requirements

**Subject:** Processes that need to be completed by a new or expanding business or establishment before an OJT contract is awarded

**Purpose:** The purpose of this memorandum is to provide guidance to LWIAs when awarding contracts to businesses and establishments that submit applications to provide OJT services to WIA participants, and to provide WIA and state requirements regarding pre-award contracts and documentations.

**Background:** It is safe to assume that several LWIAs have experiences in providing OJT contracts to businesses under the previous program. However, most LWIAs may not have begun providing these services since the implementation of the Workforce Investment Act. To assist LWIAs with or without experience in this area, the following instructions are being provided.

**Instructions:** If you have an existing establishment or business expanding its operations that plans to apply for funds to provide OJT services to WIA participants, it is a requirement to conduct a standardized pre-award documentation process.

As stated in Section 667.268, the state, jointly with local areas, must verify that a new or expanding establishment or business is not, in fact, relocating employment from one area to another. Additionally, Section 663.700 prohibits contracting with an employer who previously exhibited a pattern of failing to provide OJT participants with continued long-term employment with wages, benefits and working conditions equal to those provided to regular employees.

To ensure the regulations and the act are followed, we ask each LWIA planning to provide the OJT contracts with new or expanding businesses or establishments to follow attached instructions.

**Contact:** For questions regarding this policy, please contact Susan Cowden or Rubka Tamerat at 1-800-255-5872.

**Effective Date:** Immediately

**Expiration Date:** Indefinite

WB/SKC/RT

Attachment

## **OJT PRE-AWARD CONTRACT INFORMATION**

Section 101 of Workforce Investment Act (WIA) defines on-the-job training (OJT) as training by an employer in the public, private non-profit, or private sector that is provided to a paid participant who is engaged in productive work that provides knowledge or skills essential to the full and adequate performance of the job. OJT provides reimbursement to the employer of up to 50 percent of the wage rate of the participant, for the extraordinary cost of providing the training and additional supervision related to the training.

Section 667.268 requires a standardized pre-award review be completed and documented jointly by the Local Workforce Investment Area with the establishment or business as a prerequisite to WIA assistance to verify that an establishment or business which is new or expanding is not, in fact, relocating employment from one area to another.

In addition to the pre-award review required by the WIA, other information required by the Tennessee Department of Labor and Workforce Development (TDOLWD) is required in the OJT pre-award contract application.

## **OJT PRE-AWARD CONTRACT APPLICATION**

- 1) Company Name:  
  
Employer ID#:  
  
Training Site Address:  
  
Phone Number:
- 2) Name of person responsible for the operation of this contract:  
  
Title:  
  
Office Phone Number:
- 3) Contractor's products or services:  
SIC/NAICS Code:
- 4) Total number of current employees:
- 5) Is anyone in a layoff status?    \_\_\_\_ Yes    \_\_\_\_\_ No

**CONCURRENCE OF THE COLLECTIVE BARGAINING AGENT**

Are any occupations in which employment and training is to be offered subject to a collective bargaining agreement?  Yes  No

If yes, labor organization: \_\_\_\_\_

**INSURANCE**

Will the new employees covered by Worker's Compensation Insurance?

Yes  No

Worker's Compensation Insurance or equivalent on-site medical and accident insurance required for all OJT participants. Please provide the following information:

Carrier: \_\_\_\_\_

Policy Number: \_\_\_\_\_

Expiration Date: \_\_\_\_\_

**PREVIOUS OR CURRENT OJT CONTRACTS**

PURPOSE: Section 663.700 of the Workforce Investment Act requires that a local program must not contract with an employer who has previously exhibited a pattern of failing to provide OJT participants with a continued long-term employment with wages, benefit and working conditions equal to those provided to regular employees who are doing the same type of work. OJT contract must be limited to the period of time required for a participant to become proficient in the occupation for which the training is being provided. For the purpose of this provision the following criteria will apply:

1. A pattern of failure is defined as an employer who has received two or more OJT contracts and has failed to continually employ a majority (50%) of those individuals after the completion of training for a period not less than six months, with wages and benefits at the same level as similarly situated employees.
2. Employers who meet the criteria in item 1 will be considered ineligible for WIA-funded programs for a period of twelve (12) months from the date of termination of the last OJT contract.
3. Participants who have been terminated for cause, who quit voluntarily, who have been released due to unforeseeable changes in business conditions, or who have been employed by another employer in a training-related position may not be counted in the determination of pattern of failure.

However, the LWIA must account for these individuals and document that the employer met the training needs of the participants.

Does the business or establishment have a current or previous OJT contract? \_\_\_\_\_ Yes  
\_\_\_\_\_ No

Was the contractor's OJT contract performance satisfactory? \_\_\_\_\_ Yes \_\_\_\_\_ No

### **PROPOSED TRAINING**

Provide a brief narrative describing the proposed training, including why training is needed, current business and economic prospects, projected growth and/or expansion in the proposed training occupation, the ability to train and retrain proposed trainee(s), etc.

ATTACH THE PROPOSED ELEMENTS OF WORK AND TRAINING. USE A SEPARATE SHEET FOR EACH PROPOSED OCCUPATION.

### **RESOURCES TO PERFORM TRAINING**

Does the employer have tools, materials, and supervision needed to perform training?  
\_\_\_\_\_ Yes \_\_\_\_\_ No

If yes, has the contract service representative toured the plant or facility? \_\_\_\_\_ Yes  
\_\_\_\_\_ No

Comment:

### **GRIEVANCE PROCEDURE**

Does the employer have grievance procedures available to participating employee(s) in regard to terms/conditions of employment? \_\_\_\_\_ Yes \_\_\_\_\_ No

Is the employer willing to use WIA grievance procedures? \_\_\_\_\_ Yes \_\_\_\_\_ No

### **RELOCATION/EXPANDING COMPANIES**

Section 181 (d) (1) of the Workforce Investment Act prohibits the use of funds to encourage the relocation of a business or part of a business if such relocation would result in a loss of employment of any employee of such business at the original location within the United States.

A. Is the company new? \_\_\_\_\_ Yes \_\_\_\_\_ No

B. Is the company relocating? \_\_\_\_\_ Yes \_\_\_\_\_ No

C. Is the company expanding? \_\_\_\_\_ Yes \_\_\_\_\_ No

If yes to (A) or (B), list name, address, and telephone number of previous location or home base from which the relocation or expansion is taking place.

Briefly explain why the expansion or relocation is taking place:

D. Is the relocation or expansion within the original labor market area?

Yes  No

E. \*Has the business been open for more than 120 days?  Yes  No

Date active operation started at site: \_\_\_\_\_

F. List the name(s), address, and telephone number of parent company and all subsidiaries both in and out of state under which this company operates or previously operated (if applicable)

G. Are there any layoffs at the:

- Proposed training site?  Yes  No
- Parent company?  Yes  No
- Subsidiaries?  Yes  No
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If yes, explain:

H. Are any employees being displaced at the original location by the relocation or expansion?  Yes  No

If yes, explain:

\*Open for business is defined as a company or an existing establishment that has assigned staff who are on their payroll for the purpose of expanding or starting a new business

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Local Administrative Approval for contract