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**XX.**

**TEXAS WORKFORCE COMMISSION**

The rules are adopted under Texas Labor Code §§301.0015 and 302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

## **Chapter 806. PURCHASES OF PRODUCTS AND SERVICES FROM PEOPLE WITH DISABILITIES**

### **§806.1. General**

The Texas Council on Purchasing from People with Disabilities is responsible for fulfilling the purpose of Chapter 122 of the Texas Human Resources Code with is to:

- (1) further the state's policy of encouraging and assisting persons with disabilities to achieve maximum personal independence by engaging in useful productive employment activities; and
- (2) provide state agencies, departments, and institutions and political subdivisions of the state with a method for achieving conformity with requirements of nondiscrimination and affirmative action in employment matters related to person with disabilities.

*The provisions of this §806.1 adopted to be effective April 21, 1997, 22 TexReg 3437; transferred effective September 1, 2015, as published in the Texas Register August 7, 2015, 40 TexReg 5065.*

### **§806.2. Definitions**

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

- (1) Appreciable contribution--the term used to refer to the substantial work effort contributed by persons with disabilities in the reforming of raw materials, assembly of components or packaging of bulk products in more saleable quantities, by which value is added into the final product offered for sale.
- (2) Central nonprofit agency (CNA)--An agency designated as a central nonprofit agency under contract with the council pursuant to §122.019 of the Texas Human Resources Code.
- (3) Chapter 122--Chapter 122 of the Texas Human Resources Code.
- (4) Community rehabilitation program (CPR)--A government entity, private nonprofit unincorporated entity which has its own nonprofit status and federal tax identification number and has as its primary purpose the employment of persons with disabilities to produce products or perform services for compensation, or a private nonprofit incorporated entity with its own federal tax identification number, articles of incorporation and bylaws that establish its existence for the primary purpose of employing persons with disabilities to produce products or perform services for compensation.
- (5) Comptroller--The Comptroller of Public Accounts.
- (6) Council--The Texas Council on Purchasing from People with Disabilities.
- (7) Direct labor--All work required for preparation, processing, and packaging of a product, or work directly relating to the performance of a service, except supervision, administration, inspection or shipping products.

- (8) Disability--A mental or physical impairment, including blindness, that impedes a person who is seeking, entering, or maintaining gainful employment.
- (9) Exception--Any product or service approved for the state use program purchased from a vendor other than a CRP because the state use product or service does not meet the applicable requirements as to quantity, quality, delivery, life cycle costs, and testing and inspection requirements pursuant to, §2155.138 and §2155.69, Government Code or as described in §122.014 and §122.016, Human Resources Code.
- (10)State use program--The statutorily authorized mandate requiring state agencies to purchase, on a non-competitive basis, the products made and services performed by persons with disabilities, which have been approved by the council pursuant to Human Resources Code, Chapter 122 and also meet the requirements of Texas Government Code, §§2155.138 and 2155.069. This program also makes approved products and services available to be purchased on a non-competitive basis by any political subdivision of the state.
- (11)Value added--The labor of persons with disabilities applied to raw materials, components, goods purchased in bulk form resulting in a change in the composition or marketability of component materials, packaging operations, and/or the servicing tasks associated with a product. Pass-throughs are not allowed; therefore, solely affixing a packaging label to a commodity does not qualify.

*The provisions of this §806.2 adopted to be effective April 21, 1997, 22 TexReg 3437; amended to be effective January 8, 2001, 25 TexReg 12991; amended to be effective January 5, 2009, 34 TexReg 64; amended to be effective September 4, 2011, 36 TexReg 5413; transferred effective September 1, 2015, as published in the Texas Register August 7, 2015, 40 TexReg 5065.*

### **§806.3. Organization**

- (a) The council is composed of nine members appointed by the governor, with the advice and consent of the senate, to set policy and exercise all authority and responsibility accorded the council pursuant to Chapter 122.
- (b) The presiding officer shall appoint a subcommittee, the pricing subcommittee, composed of three council members to review the data used to determine fair market value and make recommendations to the council concerning fair market price for products and/or services.
- (c) The presiding officer shall appoint other subcommittees as necessary to consider matters destined for full council attention and recommend action.
- (d) The presiding officer shall recommend a vice-presiding officer to the council for approval.
- (e) The council may employ staff as necessary to carry out the council's duties. Employed staff shall provide:
  - (1) Day-to-day administration of the provisions of this chapter as delegated by the council, and
  - (2) Policy recommendations and administrative support as requested by the council.
- (f) The council may establish advisory committees as deemed necessary. The membership of each advisory committee shall be determined and selected by the council.

- (1) The council shall specify the purpose and duties of each advisory committee, which must include:
  - (A) Reviewing the effectiveness of the program administered under this chapter; and
  - (B) Recommending procedures to create higher-skilled and higher-paying employment opportunities for people with disabilities.
- (2) Members of all advisory committees serve at the will of the council. The council may dissolve any advisory committee when it deems it appropriate to do so.
- (3) the council shall make reasonable attempts to have balanced representation on each advisory committee, including attempting to have representatives with knowledge of this chapter from the following:
  - (A) the Lighthouses of the Blind community rehabilitation programs;
  - (B) the Goodwill community rehabilitation programs;
  - (C) the Texas Department of Mental Health and Mental Retardation community rehabilitation program;
  - (D) other community rehabilitation programs;
  - (E) representatives from central non-profit agencies;
  - (F) representatives from disability advocacy groups;
  - (G) government purchasing agents;
  - (H) private industry; and
  - (I) private citizens who have a disability and have knowledge of the sale of products and services.
- (g) The council shall accept legal, and other necessary support from the comptroller in accordance with legislative appropriation.
- (h) The council shall coordinate with the upper-level management employee appointed by the comptroller to enable the comptroller to meet its requirements of the chapter.
- (i) The council shall coordinate with the comptroller to facilitate the inclusion of the programs administered under this chapter in the comptroller's procurement policy manual(s).

*The provisions of this §806.3 adopted to be effective April 21, 1997, 22 TexReg 3437; amended to be effective January 3, 2002, 26 TexReg 11042; amended to be effective January 5, 2009, 34 TexReg 64; transferred effective September 1, 2015, as published in the Texas Register August 7, 2015, 40 TexReg 5065.*

#### **§806.4. Ethical Standards**

- (a) The ethical standards of conduct required of appointed officers of the State of Texas by Chapter 572 of the Texas Government Code and the qualifications for office under Chapter 122 are standards of conduct required of the members of the council. All members should exercise discretion to avoid the appearance of impropriety.

- (b) CNAs and CRPs may not present an opportunity for a council member to violate the ethical standards of conduct of Chapter 572 of the Texas Government Code and those set forth in subsection (a) of this section.
- (c) It is ground for removal from the council if a member:
  - (1) does not have at the time of appointment the qualifications required by §122.003(a) of Chapter 122 for appointment to the council;
  - (2) does not maintain during the service on the council the qualifications required by §122.003(a) of Chapter 122 for appointment to the council;
  - (3) violates a prohibition established by §122.003(d)(e) of Chapter 122;
  - (4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the term for which the member is appointed; or
  - (5) is absent from more than half of the regularly scheduled council meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the council.
- (d) The validity of an action of the council is not affected by the fact that it was taken when a ground for removal of a member of the council existed.
- (e) If the Deputy Comptroller has knowledge that a potential ground for removal exists, the Deputy Comptroller shall notify the presiding officer of the council of the potential ground. If the presiding officer is notified under this section, or if the presiding officer has knowledge that a potential ground for removal exists, the presiding officer shall notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the Deputy Comptroller shall notify the next highest officer of the council, who shall notify the governor and the attorney general that a potential ground for removal exists.

*The provisions of this §806.4 adopted to be effective April 21, 1997, 22 TexReg 3437; amended to be effective January 5, 2009, 34 TexReg 64; transferred effective September 1, 2015, as published in the Texas Register August 7, 2015, 40 TexReg 5065.*

#### **§806.5. Open Meetings; Public Testimony and Access**

- (a) A quorum of the full council or council subcommittee shall deliberate and make decisions in open meeting in accordance with Chapter 551 of the Texas Government Code and the open meeting shall be conducted pursuant to Robert's Rules of Order. The full council may meet in executive session for authorized purposes during a public meeting as allowed under Chapter 551 of the Texas Government Code.
- (b) The public will be provided a reasonable opportunity to appear before the council or council subcommittee in an open meeting and present testimony pertinent to an agenda item duly posted for said open meeting or any issue under the jurisdiction of the council.
- (c) The council shall comply with federal and state laws related to program and facility accessibility. Each CNA shall develop, for council's approval, a written plan that describes how a person who does not speak English can be provided reasonable access to the council's programs and services under its management.

- (d) The council may deliberate and take action on public testimony regarding an agenda item at the meeting for which the agenda item was duly posted.
- (e) If a member of the public inquires about a subject of which notice has not been given as required by Chapter 551 of the Texas Government Code, the notice provisions do not apply to:
  - (1) a statement of specific factual information given in response to the inquiry; or
  - (2) a recitation of existing policy in response to the inquiry.
- (f) Any deliberation of or decision about a subject of the inquiry shall be limited to a proposal to place the subject on the agenda for a subsequent meeting.
- (g) Protest/Dispute Resolution/Hearing
  - (1) Any central non-profit agency which has a dispute with the council or any CRP which is aggrieved in connection with the disapproval or suspension of its ability or its product or service to participate in the state use program may formally protest to the presiding officer of the council. Such protests must be in writing and received in by the presiding officer within 10 working days after such aggrieved person or entity knows, or should have known, of the occurrence of the action which is protested. The written protest must be presented to the presiding officer not later than thirty (30) days prior to the regularly scheduled council meeting. Formal protests must conform to the requirements of this paragraph and paragraph (2) of this subsection, and shall be resolved in accordance with the procedures set forth in paragraphs (3) and (4) of this subsection.
  - (2) A formal protest must be sworn and contain:
    - (A) a specific identification of the statutory or regulatory provision(s) that the action complained of is alleged to have violated;
    - (B) a specific description of each act alleged to have violated the statutory or regulatory provisions(s) identified in subparagraph (A) of this paragraph;
    - (C) a precise statement of the relevant facts;
    - (D) an identification of the issue or issues to be resolved;
    - (E) argument and authorities in support of the protest; and
    - (F) a statement that copies of the protest have been mailed or delivered to the using agency and/or the CNA.
  - (3) A quorum of the full council shall have the authority to settle and resolve the dispute concerning the disapproval or suspension of a CRP or its product and/or service to participate in the state use program.
  - (4) The council will deliberate and decide whether the disputed action is to be reversed, modified or affirmed during the regularly scheduled meeting following receipt of the formal written protest. Should the council's final determination be rejected by the disputant central non-profit agency or disputant CRP and the disputed action is to be contested further by a central non-profit agency or CRP, the dispute shall first be submitted to alternative dispute resolution.

*The provisions of this §806.5 adopted to be effective April 21, 1997, 22 TexReg 3437; amended to be effective January 8, 2001, 25 TexReg 12991; amended to be effective January 3, 2002, 26*

*TexReg 11042; transferred effective September 1, 2015, as published in the Texas Register August 7, 2015, 40 TexReg 5065.*

#### **§806.6. Certification and Re-Certification of Community Rehabilitation Programs**

- (a) No applicant for certification may participate in the State Use Program prior to the Council's approval of certification.
- (b) The Council may recognize programs that are accredited by national accepted vocational rehabilitation accrediting organizations and approve CRPs that have been approved by a state's habilitation or rehabilitation agency.
- (c) The Council may delegate the administration of the certification process for CRPs to a CNA.
- (d) An applicant for CRP certification must be a governmental entity; a public or private nonprofit unincorporated entity, which has its own nonprofit status and federal tax identification number and has among its purposes that employment of person with disabilities to produce products or perform services for compensation; or a public or private nonprofit incorporated entity with its own federal tax identification number, articles of incorporation and bylaws that state among its purposes that employment of persons with disabilities to produce products or perform services for compensation.
- (e) A certified CRP must:
  - (1) Maintain payroll, human resource functions, accounting, and all relevant documentation showing that the employees who produce products or perform services under the State Use Program are persons with disabilities. Documentation shall include council-approved disability determination forms which shall be subject to review at the request of the council or the CNA under authority from the council, with adherence to privacy and confidentiality standards applicable to such CRP and employee records;
  - (2) Maintain records, including contracts with other entities, in accordance with generally accepted accounting principles, and all laws relevant to the records; and
  - (3) Maintain any other records or documents required by the Council.
- (f) An applicant for certification must submit a completed application and the required documents to the Certification Subcommittee, through the CNA for the State Use Program. Upon receipt, the CNA will verify the completeness and accuracy of the application. No application will be considered without the following documents:
  - (1) copy of the IRS non-profit determination under Section 501(c), when required by law;
  - (2) copy of the Articles of Incorporation issued by the Secretary of State, when required by law;
  - (3) list of the board of directors and officers with names, addresses, and telephone numbers;
  - (4) copy of the organizational chart with job titles and names;
  - (5) proof of current insurance coverage in the form of a certificate of insurance specifying each and all coverages for liability insurance for the CRP, auto insurance for vehicles owned or leased by the CRP for Sate Use contract purposes, and worker's compensation insurance coverage or legally-recognized equivalent coverage, if applicable. Such insurance shall be carried with an insurance company authorized to do business in the State

- of Texas, and written notice of cancellation or any material change in insurance coverage will be provided to the CNA ten (10) days in advance of cancellation or change;
- (6) fire inspection certificate issued within one year of the Certification Subcommittee's formal consideration of the CRP application, if required by city, county, or state regulations, for each location where clients will be served or where persons with disabilities will be employed, or a statement of unavailability from the appropriate city, county, or state entity;
  - (7) copy of the building inspection certificate or certificate of occupancy, if required by city, county, or state regulations, for each location where clients will be served or where persons with disabilities will be employed, or a state of unavailability from the appropriate city, county, or state entity;
  - (8) copy of the wage exemption certificate (WH-228) if below minimum wages will be paid to clients or to persons with disabilities who will be employed and a statement of explanation of circumstances requiring sub-minimum wages; and
  - (9) notarized statement that the CRP agrees to maintain compliance with the requirement that at least seventy-five percent (75%) of the CRP's total hours of direct labor necessary to perform services or reform raw materials, assemble components, manufacture, prepare, process and/or package products will be performed by persons with documented disabilities consistent with the following definition set forth in the Chapter: Disability--a mental or physical impairment, including blindness, that impedes a person who is seeking entering, or maintaining gainful employment. A waiver may be granted only with Council approval.
- (g) The CNA will submit the completed application and required documents to the Certification Subcommittee no less than fifteen (15) days prior to the regularly scheduled Certification Subcommittee meeting.
  - (h) The Certification Subcommittee shall review each application and documentation and, if acceptable, forward its recommendations to the Council for approval. Once approved, the Council will notify the CRP in writing and assign the CRP a certification number.
  - (i) A CRP may protest a recommendation of non-approval at the next Certification Subcommittee meeting in accordance with the provisions of this Chapter.
  - (j) Each CRP must be re-certified every three (3) years by the Council. The re-certification procedure will require submission of all previously requested documentation, a review of submitted reports to the CNA, and a determination that the CRP has maintained compliance with the stated requirements of the State Use Program and the rules as stated in the Texas Administrative Code, Title 40, Chapter 189. The Council shall establish a schedule for the re-certification process and the CNA shall assist each CRP as necessary to attain re-certification. It is imperative that the CRP, after notification, submit within thirty (30) days the application for re-certification and required documents to the CNA. If the CRP fails to do so, the Council may request a written explanation and/or the appearance of a representative of the CRP before the Council. If the CRP fails to respond in a timely manner, the Council may consider the suspension of all State Use Program contracts until the re-certification process has been completed and approval has been attained.
  - (k) The CRP will submit quarterly wage and hour reports to the CNA. These reports are due no later than the last day of the month following the end of the quarter. If the CRP fails to submit

reports on time, the Council will send a warning letter and a representative of the CRP may be requested to appear before the Council. If compliance is not achieved in a consistent and timely manner, the Council, at its discretion, may consider the suspension of the CRP's State Use Program contracts.

- (l) It is imperative that CRPs maintain compliance with the State Use Program in regard to percentage requirements related to administrative costs, supplies costs, wages, and hours of direct labor necessary to perform services and/or produce products. Compliance will be monitored by the CNA and violations will be reported promptly to the Council. A violation will result in a warning letter from the Council and the CNA will offer assistance as needed to achieve compliance. A CRP that fails to meet compliance requirements, without a waiver from the Council, for two quarters in any four quarter period must submit a written explanation and a representative of the CRP will be requested to appear before the Council. State Use Program contracts may be suspended and/or certification revoked if compliance is not immediately and consistently maintained. In order to attain re-instatement, the CRP must apply for re-certification following the procedures outlined in this chapter.
- (m) The Council, at its sole discretion, may review or have reviewed any CRP participating in the State Use Program to verify that the CRP meets and maintains the requirements outlined in this chapter. A CRP shall not submit any false statement relating to certification requirements, employment of and/or number of persons with disabilities, and nature and/or quality of products and services offered through the State Use Program. A CRP must not serve, in whole or part as an outlet or front for any entity whose purpose is not the employment of people with disabilities. A CRP shall promptly report any conflict of interest or receipt of benefit or promise of benefit to the Council. The Council will consider such reports on an individual basis. Verified instances of conflict of interest by a CRP may result in suspension of the CRP's eligibility to participate in the State Use Program and/or revocation of certification.
- (n) The Council, individual members, the State of Texas, or any other Texas state agency will not be responsible for any loss or losses, financial or otherwise, incurred by a CRP should its product or services not be approved for the State Use program as provided by law.

*The provisions of this §806.6 adopted to be effective January 8, 2001, 25 TexReg 12991; amended to be effective January 3, 2002, 26 TexReg 11042; amended to be effective July 7, 2005, 30 TexReg 3878; amended to be effective October 12, 2006, 31 TexReg 8386; amended to be effective September 4, 2011, 36 TexReg 5413; transferred effective September 1, 2015, as published in the Texas Register August 7, 2015, 40 TexReg 5065.*

### **§806.7. Contracting with Central Non-Profit Agencies**

- (a) The council may select and contract with one or more central nonprofit agencies and shall contract through a request for proposals for a period not to exceed five years to perform, at a minimum, the duties set forth in §122.019(a) and (b) of Chapter 122 of the Human Resources Code.
- (b) The management fee rate charged by a central nonprofit agency for its services to the CRP(s) and its method of calculation must be approved by the council. The maximum management fee rate must be:
  - (1) computed as a percentage of the selling price of the product; or

- (2) the contract price of a service; and
  - (3) must be included in the selling price or contract price; and
  - (4) must be paid at the time of sale.
- (c) The council shall annually review the management fee and shall publish in the Texas Register a request for comment on the proposed management fee not later than the 60th day before the review. The council shall give reasonable notice of the intended management fee review to each CRP. In the event of a proposed management fee rate change the council shall require the CNA to provide documentation in support of any such change. Any supporting documentation of the CNA's proposed rate shall be made available to the public upon request. The council, at its sole discretion, may negotiate and approve varying management fees for a CNA to provide a fee structure that corresponds to the level of service being given by a CNA to each of the CRPs.
- (d) A percentage of the management fee described in subsection (b) of this section shall be set by the council and paid to the council in an amount necessary to reimburse the general revenue fund for direct and reasonable costs incurred by the comptroller in administering its duties under Chapter 122.
- (e) In accordance with the Texas Human Resources Code, §122.019(c), the council shall annually review services by and the performance of a CNA, and the revenue required to accomplish the program. The purpose of the review shall be to determine whether a CNA has complied with statutory requirements, contract requirements, and performance standards set forth in §189.12 of this title (relating to performance standards for a central nonprofit agency).
- (f) Following the review of a CNA as required by §122.019(d) of the Human Resources Code, the council at its sole discretion, may approve the performance of the central nonprofit agency and the continuation of the contract through its termination date. The council may issue a request for proposals or negotiate an emergency contract not to exceed one year, when a contract with a CNA is terminated by the council because:
- (1) the central nonprofit agency ceases operations;
  - (2) the central nonprofit agency gives notice that it can not complete the contract;
  - (3) the central nonprofit agency's performance contract has been terminated due to its failure to perform its contractual obligations; or
  - (4) review of the central nonprofit agency results in disapproval of its performance.
- (g) In the event a new CNA succeeds to the contract for any reason provided in these rules, the prior CNA shall cooperate fully and assist the new CNA to take over CNA duties and responsibilities as soon as possible with minimal disruption to the operations of the program. Such cooperation and assistance will include turning over to the council the terminated CNA's records described in the Texas Human Resources Code §122.009(a), which includes but is not limited to a marketing plan, a listing of CRPs participating in the state use program, copies of all contracts with CRPs participating in the state use program, a listing of state agencies that purchase state use products and services, program funding requirements, and job descriptions for staffing a CNA to perform its duties under its contract with the council.
- (h) Not later than the 60th day before the date the council adopts or renews a contract, the council shall publish notice of the proposed contract in the Texas Register.

- (i) No later than October 1st of each year the CNA will provided the council, regarding CRP(s) which have contracted with the CNA, the following information for the period of July 1st through June 30th of each year:
  - (1) for CRPs:
    - (A) a collective executive summary of the CRPs annual state use program evaluations;
    - (B) the number of disabled persons employed by type of disability and the number of non-disabled workers employed in programs managed by the CRP(s) or who are employed by businesses or workshops that receive supportive employment from CRPs;
    - (C) the amount of annual wages and the average and range of weekly earnings for disabled and non-disabled workers who are employed in CRPs under this chapter;
    - (D) a summary of the sale of products offered by the CRP(s);
    - (E) a list of products and/or services offered by a CRP;
    - (F) the geographic distribution of CRP(s); and
    - (G) a report of all CRPs that have not met the criteria for participation in the state use program in a format approved by the council.
  - (2) from each CRP data on individual outplacement or supported employment to include:
    - (A) the number of individuals in outplacement employed;
    - (B) the hourly wage range;
    - (C) the range of hours worked; and
    - (D) the number of disabled persons employed by primary type of disability.
- (j) In accordance with the Texas Human Resources Code §122.019(c) and §122.019(d), a CNA will provide or make available to the council:
  - (1) quarterly reports for each calendar quarter of its contract of sales of products or services, wages paid and hours worked by persons with disabilities for CRPs participating in the state use program;
  - (2) quarterly reports for each calendar quarter listing CRPs that do not meet criteria for participation in the state use program and the reasons that each CRP listed does not meet the criteria;
  - (3) at least once a year by October 31st, and prior to any review and/or re-negotiation of the contract:
    - (A) an updated marketing plan;
    - (B) a proposed annual budget with estimated sales, commissions, and expenses;
    - (C) a program budget with details on how the expected revenue and expenses will be allocated to directly support and expand the state use program and other programs that expand direct services and/or the enhancement of employment opportunities for persons with disabilities; and

- (D) an audited annual financial statement which should include information of FDIC coverage of all cash balances, earnings attributed to the management fee for the state use program, accounts receivable, cash reserves, line of credit borrowings, interest payments, bad debt, administrative overhead and any detailed supporting documentation requested by the council;
  - (4) quarterly reports of categories of expenditures in reporting format approved by the council;
  - (5) records in accordance with the Texas Human Resources Code §122.009(a) and §122.019(d) for audit purposes, provided however, that any records provided by a CNA which may be subject to any exception to Chapter 552 of the Texas Government Code, would not be disclosed to any third party except with the permission of the CNA or in accordance with the provisions of Chapter 552, Government Code (the “Public Information Act”); and
  - (6) any other information the council requests as set forth in Chapter 189 of this title (relating to Purchase of Products and Services from Persons with Disabilities).
- (k) Duties of a CNA include, but not limited to:
- (1) recruit and assist community rehabilitation programs in developing and submitting applications for the selection of suitable products and services;
  - (2) facilitate the distribution of orders among community rehabilitation programs;
  - (3) manage and coordinate the day-to-day operations of the program, including the general administration of contacts with community rehabilitation programs;
  - (4) promote increased supported employment opportunities for person with disabilities;
  - (5) investigate products and services before they are proposed by CRPs for the state use program and after their approval for compliance with Texas Government Code §2155.138 and §2155.069; and
  - (6) monitor CRPs to ensure that all criteria for participation in the state use program are met.
- (l) The services of a central nonprofit agency may include marketing and marketing support services, such as:
- (1) assistance to CRPs regarding solicitation and negotiation of contracts;
  - (2) direct marketing of products and services to state agencies and political subdivision;
  - (3) research and development of products and services;
  - (4) public relations activities to promote the program;
  - (5) customer relations;
  - (6) education and training;
  - (7) accounting services related to purchase orders, invoices, and payments to CRPs; and
  - (8) other duties as designated by the council that may include:
    - (A) establishing a payment system with a goal to pay CRPs within fourteen (14) to twenty-one (21) days, but not less than thirty (30) days of completion of work and proper invoicing;

- (B) resolving contract issues and/or problems as they arise between the CRPs and customers of the program, referring those that cannot be resolved to the council;
  - (C) maintaining a system that tracks and monitors product and service sales; and
  - (D) tracking and reporting quality and delivery times of products and services.
- (m) Each year by October 31st, a central nonprofit agency will establish performance goals for the next fiscal year in support of objectives set by the council. Those performance goals will included, but not limited to:
- (1) sales of products or services;
  - (2) wages paid to persons with disabilities;
  - (3) hours worked by persons with disabilities;
  - (4) response time to customers' inquiries and/or complaints; and
  - (5) quality standards and delivery goals for CRP programs operations.
- (n) The CNA shall have an authorized representative present at all council meetings who can bind the CNA to any representations, agreements or decisions regarding agenda items subject to the council's authority.
- (o) The council may terminate a contract with a central non-profit agency if:
- (1) the council finds substantial evidence of the central non-profit agency's noncompliance with contractual obligations or of conflict of interest; and
  - (2) the council has provided at least 30 days written notice to that central non-profit agency of the termination of the contract.
- (p) The council may request an audit by the state auditor of:
- (1) the management fee set for any central non-profit agency; or
  - (2) the financial condition of any central non-profit agency.
- (q) A person may not operate a community rehabilitation program and at the same time contract with the council as a central non-profit agency.
- (r) The council must annually review the management fees the CRPs are charged by the CNAs.

*The provisions of this §806.7 adopted to be effective April 21, 1997, 22 TexReg 3437; amended to be effective January 8, 2001, 25 TexReg 12991; amended to be effective January 3, 2002, 26 TexReg 11042; amended to be effective March 23, 2005, 30 TexReg 1643; amended to be effective January 5, 2009, 34 TexReg 64; transferred effective September 1, 2015, as published in the Texas Register August 7, 2015, 40 TexReg 5065.*

## **§806.8. Product Specifications and Exceptions**

- (a) A product manufactured for sale through the comptroller to any office, department, institution or agency of the state shall be manufactured or produced according to specifications developed by the comptroller. If the comptroller has not developed specifications for a particular product, the production shall be based on commercial or federal specifications in current use by the industry.

- (b) Requisitions for products and/or services required by state agencies are processed by the comptroller according to comptroller rules.
- (c) An exception from subsection (a) of this section may be made in any case as follows:
  - (1) under the rules of the comptroller, the product and/or service so produced or provided does not meet the reasonable requirements of the office, department, institutions, or agency; or
  - (2) the requisitions made cannot be reasonably complied with through provision of products and/or services produced by persons with disabilities.
- (d) An office, department, institution, or agency may not evade purchasing products and/or services produced or provided by persons with disabilities by requesting variations from standards adopted by the comptroller when the products and/or services produced or provided by persons with disabilities, per established standards, are reasonably adapted to the actual needs of the office, department, institution, or agency and comply with Government Code §2155.138 and §2155.069.
- (e) The comptroller shall provide the council with a list of items known to have been purchased under the exceptions provided in subsection (c) of this section monthly, in the format adopted by the council.
- (f) The council, subcommittee, or staff shall review and process the exception reports received from state agencies, and the comptroller that purchase products or services available from a central non-profit agency or community rehabilitation program under this chapter, but purchased from another business that is not a central non-profit agency or community rehabilitation program under this chapter.
- (g) The council shall coordinate with the respective employee, designated by each state agency, to assist in attaining future compliance with this chapter, when an agency makes and reports an unjustified purchase or purchases of a product available under the programs authorized by this chapter,
- (h) Council may request an Attorney General opinion prior to engaging in alternative dispute resolution.

*The provisions of this §806.8 adopted to be effective April 21, 1997, 22 TexReg 3437; amended to be effective January 8, 2001, 25 TexReg 12991; amended to be effective January 3, 2002, 26 TexReg 11042; amended to be effective January 5, 2009, 34 TexReg 64; transferred effective September 1, 2015, as published in the Texas Register August 7, 2015, 40 TexReg 5065.*

### **§806.9. Determination of Fair Market Value**

- (a) Pursuant to §122.008 of Chapter 122 of the Texas Human Resources Code and §2155.138 of the Texas Government Code, a suitable product and/or service that meets applicable specifications and that is available within the time specified must be procured from a CRP at the price determined by the council to be the fair market price.
- (b) The pricing subcommittee shall review products, services and price revisions submitted by the CNA on behalf of participating or prospective CRP(s). Due consideration shall be given to the following factors set forth in the Human Resources Code §122.015 and other criteria which is necessary to determine the fair market price of the products and/or services:

- (1) to the extent applicable, the amounts being paid for similar articles in similar quantities by state agencies purchasing the products or services not in the state use program;
  - (2) the amounts which private business would pay for similar products or services in similar quantities if purchasing from a reputable corporation engaged in the business of selling similar products or services;
  - (3) to the extent applicable, the amount paid by the state in any recent purchases of similar products or services in similar quantities, making due allowance for general inflationary or deflationary trends;
  - (4) the actual cost of manufacturing the product or performing a service at a community rehabilitation program offering employment services on or off premises to persons with disabilities, with adequate weight to be given to legal and moral imperatives to pay workers with disabilities equitable wages; or
  - (5) the usual, customary, and reasonable costs of manufacturing, marketing, and distribution.
- (c) The pricing subcommittee shall recommend its decisions regarding products, services and price revisions to the full council for formal action.
- (d) The council shall revise the prices periodically to reflect changing market conditions.

*The provisions of this §806.9 adopted to be effective April 21, 1997, 22 TexReg 3437; amended to be effective January 8, 2001, 25 TexReg 12991; amended to be effective September 4, 2011, 36 TexReg 5413; transferred effective September 1, 2015, as published in the Texas Register August 7, 2015, 40 TexReg 5065.*

#### **§806.10. Consumer Information; Complaints and Resolution**

- (a) Complaints regarding matters under the jurisdiction of the council shall be made in writing and addressed to the council's presiding officer who shall refer the complaint to the appropriate subcommittee for review and determination. The subcommittee shall then recommend action on the complaint to the full council. The council shall maintain information regarding each complaint. The written complaint must include the name and address of the person who filed the complaint and the subject matter of the complaint.
- (b) Any product or service may be removed or temporarily suspended from the state use program as a result of a CRP:
- (1) continuing to provide products that fail to meet specifications;
  - (2) continuing to fail to make a delivery as promised;
  - (3) making unauthorized substitutions;
  - (4) misrepresenting merchandise;
  - (5) failing to make satisfactory adjustments when required; or
  - (6) unethical actions.
- (c) A product or service which has been temporarily suspended may be reinstated by promptly correcting the reason(s) for suspension. A failure to make the necessary correction promptly may result in termination of the CRP's contract with the CNA.

(d) Complaints shall be resolved by a quorum of the council.

*The provisions of this §806.10 adopted to be effective April 21, 1997, 22 TexReg 3437; amended to be effective January 8, 2001, 25 TexReg 12991; amended to be effective September 4, 2011, 36 TexReg 5413; transferred effective September 1, 2015, as published in the Texas Register August 7, 2015, 40 TexReg 5065.*

### **§806.11. Records**

- (a) The comptroller is the depository for all records of the council's operations and disclosure of records are subject to requirements of Chapter 552 of the Texas Government Code (the "Public Information Act").
- (b) The council or the council's staff, when approved in advance by the council, may access financial or other information and records from a central nonprofit agency or a community rehabilitation program if the council determines the information and records are necessary for the effective administration of this chapter and rules adopted under this chapter.
- (c) Information and records must be obtained under subsection (b) in recognition of the privacy interest of persons employed by central nonprofit agencies or community rehabilitation programs. The information and records may not be released or made public on subpoena or otherwise, except that release may be made:
  - (1) for statistical purposes, but only if a person is not identified;
  - (2) with the consent of each person identified in the release; or
  - (3) regarding a compensation package of any central nonprofit agency employee or subcontractor if determined by the council to be relevant to the administration of this chapter.
- (d) No records may be accessed or released without the council chairperson's written approval given in response to a written request. Anyone, including one or more council members, council staff, or any other individual or entity, seeking to access or receive copies of a record or records belonging to a central non-profit agency or a community rehabilitation program shall follow the following procedure.

*The provisions of this §806.11 adopted to be effective April 21, 1997, 22 TexReg 3437; amended to be effective January 8, 2001, 25 TexReg 12991; amended to be effective January 3, 2002, 26 TexReg 11042; amended to be effective January 5, 2009, 34 TexReg 64; transferred effective September 1, 2015, as published in the Texas Register August 7, 2015, 40 TexReg 5065.*

### **§806.12. Performance Standards for a Central Nonprofit Agency (CNA)**

- (a) A CNA shall meet performance standards in carrying out the terms and conditions of the contract.
- (b) Operating pursuant to the statute and rules of the council, a CNA must manage and coordinate the day-to-day operation of the state use program including, but not limited to the following activities:
  - (1) strive to increase employment for persons with disabilities by ten percent (10%) per year by researching new products, services and markets, improving existing products and services, and reporting to the council on a quarterly basis the status of these activities;

- (2) provide superior customer relations by monitoring customer satisfaction with products and services, responding to customer complaints within one business day or less, and reporting to the council on a quarterly basis the level of consumer satisfaction for each CRP based on complaints as to products or services provided by each CRP with a goal of incurring no more than five complaints per year that have not been resolved to the customer's satisfaction;
- (3) provide quarterly regional information workshops to promote the state use program;
- (4) provide quarterly regional training programs to the CRPs on the requirements to participate in the state use program, governmental contracting, and procurement procedures and laws;
- (5) resolve contract issues and/or problems as they arise between the CRPs, the CNAs, and/or customers, referring those that cannot be resolved to the council and submit quarterly status reports on issues and referrals;
- (6) provide an annual report that includes audited financial statements of the CNA, an updated strategic plan, and an updated projected schedule of expenses that details how the management fee is being allocated to directly support the state use program and what amount of funds are being devoted to expanding direct services to programs that enhance the disabled and what percentage of funds will be used for administrative overhead, such as salaries;
- (7) demonstrate compliance with state and federal tax laws and payroll laws by submitting quarterly reports of sales and taxes paid to the Texas Comptroller of Public Accounts and the Internal Revenue Service;
- (8) maintain a system in accordance with generally accepted accounting principles that will record information related to purchase orders, invoices and payments to each CRP in order to facilitate the preparation and submission of the annual report;
- (9) create a database of state agency and political subdivision purchases to promote sales to state use program products and services;
- (10) conduct business ethically and submit detailed reports on a quarterly basis of any conflicts between the CRPs and the CNA;
- (11) create and maintain automated tracking and monitoring of product/service sales and submit quarterly reports to the council regarding delivery turnaround times and contract performance for each CPR;
- (12) respond to inquiries about individual sales and/or total sales within five (5) business days or sooner and submit quarterly reports regarding the number of inquiries and average response time in conjunction with the above described report;
- (13) maintain knowledge of governmental contracting and procurement processes and laws;
- (14) provide general administration of the state use program with performance criteria and timely submission of reports required by these above rules; and
- (15) maintain all necessary records for audit purposes that are in accordance with the law and directives set forth by the council and submit any or all records requested by the council within three (3) weeks of the request. Disclosure to the public of any and all records of a CNA shall be subject to the Public Information Act.

*The provisions of this §806.12 adopted to be effective January 8, 2001, 25 TexReg 12991; transferred effective September 1, 2015, as published in the Texas Register August 7, 2015, 40 TexReg 5065.*

### **§806.13. Recognition and Approval of Community Rehabilitation Program Products**

- (a) A CRP desiring to provide services under the state use program must comply with the following requirements to obtain approval from the council:
  - (1) A minimum of thirty-five percent (35%) of the contract price of the service must be paid to person with disabilities who perform the service in the form of wages and benefits; however, the council may accept a lower percentage when it is satisfied that this percentage is not feasible for a particular service.
  - (2) Supply costs for the service must not exceed twenty percent (20%) of the contract price of the service; however, the council may accept a large percentage when it is satisfied that this percentage is not feasible for a particular service.
  - (3) Administrative costs allocated to the service must not exceed ten percent (10%) of the contract price for the service. At least seventy-five percent (75%) of the hours of direct labor necessary to perform a service must be done by person with disabilities; however, the council may accept a lower percentage when it is satisfied that this percentage is not feasible for a particular service.
- (b) A CRP must comply with the following requirements to obtain approval from the council for state use products:
  - (1) At least seventy-five percent (75%) of the hours of direct labor necessary to reform raw materials, assemble components, manufacture, prepare, process and/or package a product must be done by persons with disabilities; however, the council may accept a lower percentage when it is satisfied that this percentage is not feasible for a particular product.
  - (2) Appreciable contribution and value added to the product by persons with disabilities must be determined on a product-by-product basis to be substantial based on acceptable documentation provided to the council upon application for a product to be approved for the state use program.
- (c) The rules governing the approval of products to be offered by community rehabilitation programs apply to all items that community rehabilitation program proposes to offer to state agencies or political subdivisions, regardless of the method of acquisition by the agency, whether by sale or lease. A community rehabilitation program must in fact own any product or products it leases. A proposal by a community rehabilitation program to rent or lease a product to a state agency is a proposal to offer a product, not a service, and the item offered must meet the requirements of these rules governing products. If the product is offered for lease by the community rehabilitation program, the unit cost of the product, for purposes of applying the standards set forth in these rules, is the total cost to the state agency of leasing the product over its expected useful life.
- (d) Any necessary subcontracted services shall be performed to the maximum extent possible by other community rehabilitation programs and in a manner that maximizes the employment of persons with disabilities.

- (e) Raw materials or components may be obtained from companies operated for profit, but a community rehabilitation program must own any product that it offers for sale to state agencies or political subdivisions through the state use program and make an appreciable contribution to the product which accounts for a substantial amount of the value added to the product.

*The provisions of this §806.13 adopted to be effective January 16, 2005, 30 TexReg 91; amended to be effective September 4, 2011, 36 TexReg 5413; transferred effective September 1, 2015, as published in the Texas Register August 7, 2015, 40 TexReg 5065.*