

Appendix I

Current Administrative Rules Governing
Texas Council on Purchasing from People with Disabilities

PART VII. TEXAS COUNCIL ON PURCHASING FROM PEOPLE WITH DISABILITIES

Chapter	Section
189. Purchases of Products and Services from People with Disabilities	189.1

Authority: The provisions of this Part VII issued under the Human Resources Code, §122.013.

CHAPTER 189. PURCHASES OF PRODUCTS AND SERVICES FROM PEOPLE WITH DISABILITIES

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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.

Chapter 122—Chapter 122 of the Texas Human Resources Code.

Commission—The General Services Commission.

Community rehabilitation program (CRP)—A government or nonprofit private program operated under criteria established by the council and under which persons with severe disabilities produce products or perform services for compensation.

Council—The Texas Council on Purchasing from People with Disabilities.

Disability—A mental or physical impairment, including blindness, that impedes a person who is seeking, entering, or maintaining gainful employment.

Source: The provisions of this §189.2 adopted to be effective April 21, 1997, 22 TexReg 3437.

§ 189.1. 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 which 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 persons with disabilities.

Source: The provisions of this §189.1 adopted to be effective April 21, 1997, 22 TexReg 3437.

§ 189.2. Definitions

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

§ 189.3. 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.

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(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 shall accept legal, clerical, administrative, and other necessary support from the commission in accordance with legislative appropriation.

Source: The provisions of this §189.3 adopted to be effective April 21, 1997, 22 TexReg 3437.

§ 189.4. 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 a 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 section 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 executive director of the commission has knowledge that a potential ground for removal exists, the executive director 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 executive director 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.

Source: The provisions of this §189.4 adopted to be effective April 21, 1997, 22 TexReg 3437.

§ 189.5. Open Meetings; Public Testimony and Access

(a) A quorum of the full council or council subcommittee shall deliberate 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.

(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 for 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

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place the subject on the agenda for a subsequent meeting.

Source: The provisions of this §189.5 adopted to be effective April 21, 1997, 22 TexReg 3437.

§ 189.6. Criteria for Recognition and Approval of Community Rehabilitation Programs

The council may:

(1) recognize a CRP that maintains accreditation by a nationally accepted vocational rehabilitation accrediting organization; and

(2) approve CRP services that have been approved for purchase by a state habilitation or rehabilitation agency.

Source: The provisions of this §189.6 adopted to be effective April 21, 1997, 22 TexReg 3437.

§ 189.7. Contracting with Central Nonprofit Agency(ies)

(a) The council shall contract with a central nonprofit agency(ies) to perform, at a minimum, the duties set forth in §122.019(a)(b) of Chapter 122.

(b) The management fee rate charged by a central nonprofit agency(ies) for its services to the CRP(s) 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) 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 commission in administering its duties under Chapter 122.

(d) In accordance with §122.019(c)(d) of Chapter 122, the council shall, at least annually, review services by a central nonprofit agency(ies) and the revenue required to accomplish the program to determine whether performance complies with contractual specifications and accomplishes the council's objectives.

(e) The council shall contract with the CNA(s) for periods of 12 months. Contracts may be extended with or without amendments for one additional 12

month period. At any time during the 24 month period, but not later than the end of the 24 months, the council must enter into a new contract with the CNA(s).

(f) 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.

(g) The CNA(s) will provide to the Council, regarding CRP(s) which have contracted with a CNA, the following information for the period of July 1st through June 30th of each year.

(1) Sheltered Workshops.

(A) the number of disabled persons employed by type of disability at sheltered workshops managed by the CRP(s);

(B) the amount of annual wages paid to disabled employees in sheltered workshops;

(C) a summary of the sale of products offered by the CRP(s);

(D) a list of products and/or services offered by a CRP; and

(E) the geographic distribution of CRP(s).

(2) Individual Outplacement or Supported Employment.

(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.

Source: The provisions of this §189.7 adopted to be effective April 21, 1997, 22 TexReg 3437.

Cross References: This Section cited in 40 TAC §189.12, (relating to Reports: Strategic Plan; Final Operating Plan).

§ 189.8. Product Specifications and Exceptions

(a) A product manufactured for sale through the commission to any office, department, institution or agency of the state shall be manufactured or produced according to specifications developed by the commission. If the commission 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 commission according to commission rules.

(c) Exception from subsection (a) of this section may be made in any case as follows:

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(1) under the rules of the commission, the product and/or service so produced or provided does not meet the reasonable requirements of the office, department, institution, 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 commission 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.

(e) The commission shall provide the council with a list of items purchased under the exceptions provided in subsection (b) of this section monthly, in the format adopted by the council.

Source: The provisions of this §189.8 adopted to be effective April 21, 1997, 22 TexReg 3437.

§ 189.9. Determination of Fair Market Value

(a) Pursuant to §122.008 of Chapter 122 and §2155.441 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(s) on behalf of participating or prospective CRP(s). Due consideration shall be given to the factors set forth in §122.015 and other criteria which is necessary to determine the fair market price of the products and/or services.

(c) The pricing subcommittee shall recommend its decisions regarding products, services and price revisions to the full council for formal action.

Source: The provisions of this §189.9 adopted to be effective April 21, 1997, 22 TexReg 3437.

§ 189.10. 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 sub-

committee shall then recommend action on the complaint to the full council. The council shall maintain information regarding each complaint.

(b) A CRP may be removed or temporarily suspended from receiving purchase orders from state agencies, to include but not be limited to one or more of the following reasons:

(1) failing to make a delivery as promised;

(2) making unauthorized substitutions;

(3) misrepresenting merchandise;

(4) failing to make satisfactory adjustments when required; and

(5) unethical actions.

(c) A CRP 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 the CRP's termination of its contract with the CNA.

(d) Complaints regarding a CNA shall be resolved by the a quorum of the council and representatives of the CNA in open meeting.

Source: The provisions of this §189.10 adopted to be effective April 21, 1997, 22 TexReg 3437.

§ 189.11. Records

The commission 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 Law").

Source: The provisions of this §189.11 adopted to be effective April 21, 1997, 22 TexReg 3437.

§ 189.12. Reports; Strategic Plan; Final Operating Plan

(a) On or before November 1 of each year, the council shall file with the governor and the presiding officer of each house of the legislature a complete and detailed written annual report which meets the reporting requirements applicable to financial reporting provided in the General Appropriations Act. The annual report shall include the information regarding CRP(s) which have contracted with a CNA as set forth in §189.7(g) of this title (relating to Contracting with Central Nonprofit Agency(ies)).

(b) The council shall prepare an agency strategic plan and a final operating plan as required by Subchapter E, Chapter 2054, Government Code.

Source: The provisions of this §189.12 adopted to be effective April 21, 1997, 22 TexReg 3437.