

Appendix IV

New Administrative Rules as Published in *Texas Register*
Texas Council on Purchasing from People with Disabilities

§48.2618. Computation of Net Income.

The contractor must compute net income by subtracting allowable monthly deductions defined in §48.2611 of this title (relating to Allowable Monthly Deductions) from monthly total income, after income exclusions defined in §48.2610 of this title (relating to Income Exclusions) have been applied.

§48.2619. Cost Reporting Guidelines for the Consumer-Managed Personal Assistance Services (CMPAS) Program.

The Texas Department of Human Services applies the general principles of cost determination, as specified in §20.101 of this title (relating to Introduction).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on September 27, 2000.

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Paul Leche

General Counsel, Legal Services

Texas Department of Human Services

Earliest possible date of adoption: November 12, 2000

For further information, please call: (512) 438-3108



40 TAC §§48.2601-48.2616

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Human Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs.

The repeals implement the Human Resources Code, §§22.001-22.030.

§48.2601. Program Services.

§48.2602. Client Eligibility Criteria.

§48.2603. Contractor Responsibilities.

§48.2604. Applicant/Client Responsibilities.

§48.2605. Suspension of Services.

§48.2606. Termination of Services.

§48.2607. Client Appeals.

§48.2608. Client Copayment.

§48.2609. Determination of Monthly Total Income.

§48.2610. Income Exclusions.

§48.2611. Allowable Monthly Deductions.

§48.2612. Computation of Net Income.

§48.2613. Cost Reporting Guidelines for Client-managed Attendant Services.

§48.2614. Cost Reporting for Client-Managed Attendant Services: 1997 and Subsequent Cost Reports.

§48.2615. Client-Managed Attendant Services Pilot Voucher Project.

§48.2616. Reassessments.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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PART 7. TEXAS COUNCIL ON PURCHASING FROM PEOPLE WITH DISABILITIES

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

40 TAC §§189.2, 189.5 - 189.12

The Texas Council on Purchasing from People with Disabilities (TCCPD) proposes new §189.6 and §189.12 and amendments to §§189.2, 189.5, 189.7, 189.8, 189.9, 189.10 and 189.11 pursuant to its authority as stated in Human Resources Code Section 122.013. New §189.6 establishes criteria for recognition and approval of community rehabilitation programs. New §189.12 establishes performance standards for a central nonprofit agency (CNA) which provides the daily management of the state use program under a contract with the TCCPD.

Amendments to current rules are the following: §189.2, adding definitions to clarify terms and concepts used in the state use program; §189.5, adding a phrase and sentence to (a) which clarifies the purposes of the TCCPD's meetings; §189.7, changing the word "agencies" to "agency" to comply with statutory intent in (a) and (b), adding the source of statutory authority in (a), requiring approval of the method of calculating the management fee rate by the TCCPD, adding (c) which requires approval of the CNA's management fee and fee structure and articulating the implied authority for the TCCPD to negotiate management fees, adding (d) through (g) to clarify the TCCPD's options regarding review of the CNA's performance results, clarifying the CNA's report content regarding demographic information and setting reporting dates, adding (j) which list other reports, due dates and other contractual duties of the CNA; §189.8, adding clarifying language to (c) and (e) and statutory authority for (d); §189.9, adding statutory authority to (a) and (b), adding (1) through (5) to (b) which specify criteria for determination of "fair market price" and adding (d) which clarifies the TCCPD's duty to update prices; §189.10, clarifying the circumstances in (b) for removal or suspension of products or services from the state use program in (b), clarifying the consequence to participants in the program upon failure to make prompt corrections of causes for suspension and correcting grammar in (d); and §189.11, correcting the title of the referenced statutory citation.

Margaret Pfluger, Chair of the TCCPD, has determined that for each year of the first five years these rules are in effect there will be no fiscal implication for the state, no fiscal implication for local government as a result of enforcing or administering these rules and no impact on local employment.

Chair Pfluger has also determined that for each year of the first five years these rules are in effect, the public will benefit as follows: under §189.2 the additional definitions will clarify understanding of the state use program; under §189.5 the additional language clarifies the purposes of the TCCPD meetings; under §189.6 the criteria for recognition and approval of entities eligible for participation in the state use program will ensure that the statutory purpose of the program is fulfilled (i.e. assisting persons with disabilities to achieve maximum personal independence by engaging in useful and productive employment activities and to provide state agencies with a method for achieving conformity with requirements of nondiscrimination and affirmative action in employment) pursuant to Human Resources Code §122.001; under §189.7 the new language clarifies the TCCPD's oversight of the state use program and authority to contract with a CNA, contractual reporting requirements and duties of the CNA; under §189.8 the new language clarifies and provides statutory authority for product specifications and exceptions; under §189.9 criteria for determining fair market prices will also ensure the fulfillment of the program's purpose by maintaining the demand for products and services from persons with disabilities; under §189.10 the amendments clarify the consequences for noncompliance of products or services and provide better notice to the entities affected; under §189.11 the law is correctly cited; and under §189.12 performance standards for the CNA are articulated and provide assurance that the TCCPD is fulfilling its duty to objectively oversee the management of the program.

Some new reporting or record-keeping requirements in the proposed rules may create additional costs for community rehabilitation programs and the community nonprofit agency. The actual costs, if any, can only be determined by each entity (i.e., community rehabilitation programs and the central nonprofit agency) required to comply with these provisions of the proposed rules. Any cost increases will be due to requirements for data that are not already produced for other state and/or federal programs affecting these entities. The TCCPD believes that any such costs will be outweighed by the anticipated public benefits the proposed rules will provide by enhancing fiscally responsible oversight of the state use program and fulfillment of the program's purpose of assisting persons with disabilities to achieve independence through productive employment.

The Texas Council on Purchasing from People with Disabilities invites public comments. Written comments should be mailed or delivered no later than thirty (30) days after the date of publication of this notice to Juliet U. King, Legal Counsel to the TCCPD, at 1711 San Jacinto Blvd., 2nd Floor, P.O. Box 13037, Austin, Texas, 78711-3047. Comments may also be submitted by facsimile at (512) 475-3779 or by email to Juliet.King@GSC.state.tx.us.

The new and amended sections are proposed under the authority of the Texas Human Resources Code, Chapter 122, §122.013 which provides the Texas Council on Purchasing from People with Disabilities with authority to promulgate rules consistent with the Human Resources Code.

Human Resources Code, Chapter 122, is affected by the proposed new and amended sections.

§189.2. 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) [(2)] Chapter 122--Chapter 122 of the Texas Human Resources Code.

(4) [(3)] Commission--The General Services Commission.

(5) [(4)] Community rehabilitation program (CRP)--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. [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.]

(6) [(5)] 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) [(6)] 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, price, and testing and inspection requirements pursuant to Texas Government Code, §2155.138 and §2155.069.

(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.

§189.5. 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 for which notice has not been given as required by Chapter 155 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.

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

(a) Any CRP currently participating in the state use program on the date these rules are adopted will be allowed to continue so long as they comply with the criteria given in this chapter.

(b) A CRP must be 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.

(c) A CRP must maintain payroll, personnel, accounting and documentation of disability for people employed to produce goods or services under the state use program.

(d) A CRP must maintain billing and payment records if it contracts with other entities for support services.

(e) A CRP must purchase raw materials through a competitive process or provide acceptable relevant documentation for its inability to do so.

(f) 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 persons with disabilities who perform the service.

(2) Supply costs for the service must not exceed twenty percent (20%) of the contract price of the 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 persons with disabilities; however, the council may accept a lower percentage when it is satisfied that this percentage is not feasible for a particular service.

(g) 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 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.

(h) Failure to meet any of the above criteria shall result in suspension or disqualification of a CRP or a product or service to be included or remain in the state use program.

(i) The rules governing the approval of products to be offered by community rehabilitation programs apply to all items that a community rehabilitation program proposes to offer to state agencies, 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.

(j) Community rehabilitation programs shall seek broad competition in the purchase of raw materials and components used to manufacture products and perform services for state agencies. Subcontracting, when necessary, 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. 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 through the state use program and an appreciable contribution to the product which accounts for a substantial amount of the value added to the product shall be achieved.

(k) The organization must not serve, in whole or in part, as an outlet or front for any entity whose primary purpose is not the employment of persons with disabilities.

(l) 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.

(m) The council, at its sole discretion, may review, or have reviewed, any CRP approved to participate in this program to verify that the CRP meets the applicable qualifications contained in this chapter.

(n) Violation of any of the criteria given in this chapter may result in suspension of approval or in disapproval of a CRP's eligibility to participate in this program.

(o) Neither the council, the State of Texas, nor any other Texas state agency will be responsible for any loss or losses, financial or otherwise, incurred by any CRP should its product not be approved for the state use program as provided by law.

§189.7. Contracting with a Central Nonprofit Agency [Agency(ies)].

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

(b) The management fee rate charged by a central nonprofit agency [agency(ies)] 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, 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) ~~[(e)]~~ 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.

(e) In accordance with the Texas Human Resources Code, §122.019(d), the council shall, at least once during the two year contract period, but more often if the council deems necessary, 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). Following the review of a CNA as required by §122.019(d) of the Human Resources Code, the council at its sole discretion, may:

(1) approve the performance of the central nonprofit agency and the continuation of the contract through its termination date; or

(2) if the contract expires within twelve months after the completion of the review and the council has approved the performance of the central nonprofit agency, the council may negotiate a new contract with the same CNA to begin upon expiration of the current contract or enter into a new contract in accordance with Subtitle D, Title 10, Government Code, using competitive bidding or competitive sealed proposals, as recommended by the commission.

(f) The council may use competitive bidding, competitive sealed proposals pursuant to Subtitle D, Title 10, Texas Government Code, 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 the council terminates the contract, the terminated CNA shall cooperate fully and assist the new CNA to take over CNA duties and responsibilities as soon as possible with the least disruption in operations possible. Such cooperation and assistance will include turning over to the new CNA the terminated CNA's records described in the Texas Human Resources Code §122.009(a), which includes but 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, financial statements, and job descriptions for staffing a CNA to perform its duties under its contract with the council.

~~[(d)]~~ In accordance with §122.019(e)(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).]

(h) ~~[(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.

(i) ~~[(g)]~~ No later than October 1st of each year the CNA [The CNA(s)] will provide to the council, regarding CRP(s) which have contracted with the [a] CNA, the following information for the period of July 1st through June 30th of each year: [-]

(1) from each CRP: [Sheltered Workshops.]

(A) summary data from CRP annual business reports; [the number of disabled persons employed by type of disability at sheltered workshops managed by the CRP(s);]

(B) the number of disabled persons employed by type of disability in programs managed by the CRP(s); [the amount of annual wages paid to disabled employees in sheltered workshops;]

(C) the amount of annual wages paid to disabled employees in CRPs; [a summary of the sale of products offered by the CRP(s);]

(D) a summary of the sale of products offered by the CRP(s); [a list of products and/or services offered by a CRP; and]

(E) a list of products and/or services offered by a CRP; [the geographic distribution of CRP(s);]

(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: [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.

(j) In accordance with the Texas Human Resource Code, §122.019(c) and (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 each CRP 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 renegotiation 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 on 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 §122.0019(d) for audit purposes, provided however, that any records provided by a CNA which may be subject to any exception to Chapter 522 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 be 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 contracts with community rehabilitation programs;

(4) promote increased supported employment opportunities for persons 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 consumers;

(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 to pay CRPs within thirty 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 include, but not be 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.

§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) An exception [Exception] from subsection (a) of this section may be made in any case as follows:

(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 and comply with Government Code §2155.138 and §2155.069.

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

§189.9. Determination of Fair Market Value.

(a) Pursuant to §122.008 of Chapter 122 of the Texas Human Resources Code and §2155.138 [§2155.444] 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 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; and

(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.

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

(b) Any product or service [A CRP] may be removed or temporarily suspended from the state use program as a result of a CRP: [receiving purchase orders from state agencies; to include but not be limited to one or more of the following reasons:]

(1) continuing to provide products that fail to meet specifications; [failing to make a delivery as promised]

(2) continuing to fail to make a delivery as promised;

(3) [(2)] making unauthorized substitutions;

(4) [(3)] misrepresenting merchandise;

(5) [(4)] failing to make satisfactory adjustments when required; or [and]

(6) [(5)] unethical actions.

(c) A product or service [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 the CRP's [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 an open meeting.

§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 Act [Law]").

§189.12. 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) 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;

(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 CNA, 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) provide accounting services related to purchase orders, invoices and payments to CRPs and submit annual reports detailing accounting services and invoice amounts for each CRP;

(9) create a database of governmental and private sector purchasers to promote sales of state use program products and services;

(10) conduct business ethically and submit detailed reports on a quarterly basis of any conflicts between the CRPs, the CNA and/or customers, with a goal of maintaining less than (5) complaints annually and responding to all complaints within (5) business days;

(11) follow the directives of the council, and submit quarterly reports to the council regarding any non-compliance or variances with the goal of achieving 100% compliance;

(12) 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 CRP;

(13) 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;

(14) maintain knowledge of governmental contracting and procurement processes and laws;

(15) provide general administration of the state use program with performance criteria and timely submission of reports required by these above rules; and

(16) 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 (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.

(c) Problems will be tracked, corrected and reported to the council on a quarterly basis by the CNA.

(d) A CNA will provide the council with a detailed report that contains information about new products and service contracts and renewed service contracts at least three (3) weeks prior to each quarterly council meeting.

(e) A CNA will provide the council with all quarterly reports required by these rules at least (3) weeks prior to each quarterly council meeting.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on October 2, 2000.

TRD-200006861

Juliet U. King
Legal Counsel

Texas Council on Purchasing from People with Disabilities
Earliest possible date of adoption: November 12, 2000
For further information, please call: (512) 463-3244



40 TAC §189.6, §189.12

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Council on Purchasing from People with Disabilities or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Council on Purchasing from People with Disabilities (TCPPD) proposes the repeal of Title 40, Texas Administrative Code, §189.6 (Criteria for Recognition and Approval of Community Rehabilitation Programs) and §189.12 (Reports; Strategic Plan; Final Operation Plan). The repeal of §189.6 and §189.12 are being proposed in order to reorganize Title 40, Texas Administrative Code, Chapter 189 and to allow for the adoption of amended and new rules that will contain language in accordance with the Texas Human Resources Code, Chapter 122.

Margaret Pfluger, Chair, Texas Council on Purchasing from People with Disabilities, has determined for the first five-year period the rules are in effect, there will be no fiscal implication for state or local governments as a result of enforcing or administering the repeal.

Margaret Pfluger, Chair, Texas Council on Purchasing from People with Disabilities, further determines that for each year of the first five-year period the repeals are in effect, the public benefit anticipated as a result of enforcing these rules will be the deletion of obsolete language that will allow for the amended and new rules. There is no anticipated economic cost to persons who are required to comply with the repealed rules and no impact on local employment.

The Texas Council on Purchasing from People with Disabilities invites public comments. Written comments should be mailed or delivered no later than thirty (30) days after the date of publication of this notice to Juliet U. King, Legal Counsel to the TCCPD, at 1711 San Jacinto Blvd., 2nd Floor, P.O. Box 13037, Austin, Texas, 78711-3047. Comments may also be submitted by facsimile at (512) 475-3779 or by email to Juliet.King@GSC.state.tx.us.

The repeal to Title 40, Texas Administrative Code, Chapter 189, §189.6 and §189.12 are proposed under the authority of the Texas Human Resources Code, Chapter 122, §122.013 which provides the Texas Council on Purchasing from People with Disabilities with authority to promulgate rules consistent with the Human Resources Code.

Human Resources Code, Chapter 122, is affected by the proposed repeal.

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

§189.12. Reports; Strategic Plan; Final Operation Plan.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on October 2, 2000.

TRD-200006862

Juliet U. King

Legal Counsel

Texas Council on Purchasing from People with Disabilities

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For further information, please call: (512) 463-3244

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 1. MANAGEMENT

SUBCHAPTER B. PUBLIC MEETINGS AND HEARINGS

43 TAC §1.5

The Texas Department of Transportation proposes amendments to §1.5, concerning public hearings.

EXPLANATION OF PROPOSED AMENDMENT

Transportation Code, §21.111 requires the Texas Transportation Commission (commission) or the commission's authorized representative to hold a public hearing before approving financial assistance for airport development grants and loans.

Subsection (b) is amended to allow the executive director to designate an employee of the department to conduct public hearings in regards to receiving comments from interested parties prior to the approval of financial assistance under Transportation Code, §21.111. Delegation of authority allows for the hearings to be conducted at times necessary and convenient to the public.

Subsection (a)(4) is amended to update statutory references.

Subsection (a)(5) is deleted to remove reference to Transportation Code, §545.362, which expired due to the repeal of the national maximum speed limits.

FISCAL NOTE

James Bass, Director, Finance Division, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments. There are no anticipated economic costs for persons required to comply with the section as proposed.

David Fulton, Director, Aviation Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT

David Fulton has also determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing or administering the amendments will be to better serve the public by allowing for hearings to be conducted at times necessary and convenient to the public. There will be no effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments may be submitted to David Fulton, Director, Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on November 13, 2000.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation and more specifically, Transportation Code, §21.111, which authorizes the commission to delegate responsibility for conducting public hearings regarding financial assistance for airport development grants.

No statutes, articles, or codes are affected by the proposed amendments.

§1.5. Public Hearings.

(a) Subject of hearings. The commission may hold public hearings to:

(1) consider the adoption of rules, in accordance with the Administrative Procedure Act, Government Code, Chapter 2001;

(2) receive evidence and testimony concerning the desirability of acquiring dredge material disposal sites and of any widening, relocation, or alteration of the main channel of the Gulf Intracoastal Waterway, in accordance with Transportation Code, Chapter 51;

(3) provide for public input regarding the design, schematic layout, and environmental impact of transportation projects, in accordance with Transportation Code, §203.021, and §2.42 and §2.43 of this title (relating to Highway Improvement Projects - Federal-aid and Highway Improvement Projects - State Funds);

(4) consider maximum prima facie speed limits on highways in the state highway system that are near public or private [institutions of] elementary or secondary schools or institutions of higher education, in accordance with Transportation Code, §545.357 [§545.351];

~~[(5) receive testimony regarding a proposed order establishing maximum prima facie speed limits, in accordance with Transportation Code, §545.362;]~~

(5) [(6)] annually receive public input on the commission's highway project selection process and the relative importance of the various criteria on which the commission bases its project selection decisions, in accordance with Transportation Code, §201.602;

(6) [(7)] receive comments from interested persons prior to transferring a segment of the state highway system to the Texas Turnpike Authority under Transportation Code, §362.0041;

(7) [(8)] receive comments from interested parties prior to approving any financial assistance under Transportation Code, §21.111; and

(8) [(9)] provide, when deemed appropriate by the commission or when otherwise required by law, for public input regarding any other issue under the jurisdiction of the commission.

(b) Authorized representative. The executive director or an employee of the department designated by the executive director may conduct public hearings held under subsection (a)(1), (3), (7), and (8) [(9)] of this section.

(c) Conduct and decorum. Public hearings will be conducted in a manner that maximizes public access and input while maintaining