

1 **CHAPTER 806. PURCHASES OF PRODUCTS AND SERVICES FROM**
2 **PEOPLE WITH DISABILITIES**

3
4 **ADOPTED RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS***
5 ***REGISTER*. THIS DOCUMENT WILL NOT HAVE ANY SUBSTANTIVE**
6 **CHANGES BUT IS SUBJECT TO FORMATTING CHANGES AS REQUIRED**
7 **BY THE *TEXAS REGISTER*.**

8
9 **ON MAY 23, 2017, THE TEXAS WORKFORCE COMMISSION ADOPTED THE**
10 **BELOW RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS***
11 ***REGISTER*.**

12
13 Estimated date of publication in the *Texas Register*: **June 9, 2017**

14 The rules will take effect: **June 12, 2017**

15
16 The Texas Workforce Commission (TWC) adopts new sections to Chapter 806, relating
17 to Purchases of Products and Services from People with Disabilities (PPD), *with* changes,
18 as published in the November 25, 2016, issue of the *Texas Register* (41 TexReg 9234):

19
20 Subchapter A. General Provisions Regarding Purchases of Products and Services from
21 People with Disabilities, §806.2

22 Subchapter B. Advisory Committee Responsibilities, Meeting Guidelines, §806.21 and
23 §806.22

24 Subchapter C. Central Nonprofit Agencies, §806.31 and §806.32

25 Subchapter D. Community Rehabilitation Programs, §806.41

26 Subchapter E. Products and Services, §806.53

27 Subchapter F. Complaints, Vendor Protests, Resolutions, §806.61 and §806.62

28 Subchapter G. Disclosure of Records, §806.71

29 Subchapter H. Reports; Plans, §806.81

30
31 TWC adopts new sections to Chapter 806, relating to Purchases of Products and Services
32 from People with Disabilities (PPD), *without* changes, as published in the November 25,
33 2016, issue of the *Texas Register* (41 TexReg 9234):

34
35 Subchapter A. General Provisions Regarding Purchases of Products and Services from
36 People with Disabilities, §806.1

37 Subchapter E. Products and Services, §806.51 and §806.52

38 Subchapter H. Reports; Plans, §806.82

39 Subchapter I. Political Subdivisions, §806.91 and §806.92

40
41 TWC adopts the repeal of the following sections of Chapter 806, relating to Purchases of
42 Products and Services from People with Disabilities, *without* changes, as published in the
43 November 25, 2016, issue of the *Texas Register* (41 TexReg 9234):

44
45 General, §806.1

46 Definitions, §806.2

Ch. 806 Purchases of Products and Services from People with Disabilities
(5.23.17)ADOPTED

- 1 Organization, §806.3
- 2 Ethical Standards, §806.4
- 3 Open Meetings; Public Testimony and Access, §806.5
- 4 Certification and Recertification of Community Rehabilitation Programs, §806.6
- 5 Contracting with Central Nonprofit Agencies, §806.7
- 6 Product Specifications and Exceptions, §806.8
- 7 Determination of Fair Market Value, §806.9
- 8 Consumer Information; Complaints and Resolution, §806.10
- 9 Records, §806.11
- 10 Performance Standards for a Central Nonprofit Agency, §806.12
- 11 Recognition and Approval of Community Rehabilitation Program Products and Services,
- 12 §806.13

13

14 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY OF ADOPTED RULES**

15 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS**

16 **AND RESPONSES TO PROPOSED RULES**

17

18 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

19 The purpose of the amendments to the Chapter 806 rules is to comply with the

20 requirements of Senate Bill (SB) 212, enacted by the 84th Texas Legislature, Regular

21 Session (2015), which abolished the Texas Council on Purchasing from People with

22 Disabilities (Council). Section 29(a) of SB 212 transferred all former Council powers

23 and duties to the TWC to administer the PPD program effective September 1, 2015. Per

24 SB 212, the rules of the Texas Comptroller of Public Accounts (comptroller) were

25 transferred to TWC and placed in 40 Texas Administrative Code (TAC) Chapter 806.

26

27 SB 212's primary impact was the abolishment of the Council. The Council was replaced

28 with an advisory committee appointed by TWC's three-member Commission

29 (Commission), which serves in a different capacity.

30

31 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND**

32 **RESPONSES**

33

34 **SUBCHAPTER A. GENERAL PROVISIONS REGARDING PURCHASES OF**

35 **PRODUCTS AND SERVICES FROM PEOPLE WITH DISABILITIES**

36 TWC adopts new Subchapter A, General Provisions Regarding Purchases of Products

37 and Services from People with Disabilities, as follows:

38

39 **§806.1. General**

40 New §806.1 establishes the purpose of the PPD state use program and names TWC as the

41 administering agency.

42

43 **Comment:** One commenter recommended inserting the word "competitive"

44 before "employment activities" in §806.1(1) and correspondingly, to make that

45 same change throughout the chapter.

46

1 **Response:** TWC declines to make this recommended change, either in this
2 section or throughout the chapter. The purpose of Chapter 806 derives directly
3 from Texas Human Resources Code, §122.001. The proposed wording is not
4 consistent with the statutory wording. Therefore, no change was made based on
5 this comment.
6
7

8 **§806.2. Definitions**

9 New §806.2(1) defines "Appreciable contribution."

10
11 New §806.2(2) adds a new definition for "Advisory Committee" pursuant to SB 212, to
12 align with statute.
13

14 New §806.2(3) defines "Central nonprofit agency" as it is defined in Texas Human
15 Resources Code §122.002(1). Minor, nonsubstantive changes were made to this
16 definition to track the statutory definition and address commenters' concerns regarding
17 the use of the word "Agency".
18

19 New §806.2(4) defines "Chapter 122" retaining the general reference to the Texas Human
20 Resources Code applicable to these rules. TWC has added the title of the chapter to add
21 clarity.
22

23 New §806.2(5) defines "Community rehabilitation program" as it is defined in Texas
24 Human Resources Code §122.002(3).
25

26 New §806.2(6) defines "Comptroller" as the Comptroller of Public Accounts.
27

28 New §806.2(7) defines "Direct Labor" as required by the Texas Human Resources Code
29 §122.013(c)(4).
30

31 New §806.2(8) defines "Disability" as it is defined in the Texas Human Resources Code
32 §122.002(5).
33

34 New 806.2(9) defines "Exception."
35

36 New §806.2(10) defines "State use program." Based on a review of the Council's rules
37 transferred from the Comptroller, the Agency retains this definition, replaces the term
38 "Council" with "Agency" and replaced the term "persons" with "individuals."
39

40 New §806.2(11) defines "Value added." Based on a review of the Council's rules
41 transferred from the Comptroller, TWC retains this definition and replaces the term
42 "persons" with "individuals."
43

44 **Comment:** Two commenters suggested clarification of the definition of "agency."
45 One commenter stated that the reference to the definition of "Agency" in §800.2
46 of this title does not detail at what level of the Agency the decision-making

1 specified in the proposed rules will be made. Another commenter stated that
2 clarification of the terms "Agency" and "Commission" is necessary to distinguish
3 the difference between the staff and the governing body of an agency and that
4 referencing another rule in which definitions are contained is not helpful or easily
5 understood.

6
7 **Response:** As noted in the cross-reference, the terms "Agency" and
8 "Commission," as defined in §800.2 of this title, apply to all uses of the term in
9 the Commission's rules, unless otherwise defined, and distinguish between staff
10 decisions and Commission action. TWC agrees that the definition of "agency"
11 should be clarified for purposes of this chapter. Accordingly, to avoid confusion,
12 the term "central nonprofit agency" within these rules will be shortened to
13 "CNA." In accordance with Texas Government Code §2001.007(a), TWC makes
14 available its rules over the Internet and will endeavor to include a hyperlink to any
15 cross-referenced TWC rules.

16
17 **Comment:** One commenter raised concerns that the proposed definition of
18 "appreciable contribution" does not clarify the purpose or how it applies to
19 purchasing from people with disabilities. The commenter suggested adding that
20 the "appreciable contribution" must benefit the employee with a disability by
21 developing new job skills that have not been previously attained through other
22 jobs.

23
24 **Response:** TWC agrees with this suggestion and has added the development of
25 new job skills as an alternative basis for documenting appreciable contribution.

26
27 **Comment:** One commenter requested changing the definition of "advisory
28 committee" to include the exact name of the committee in order to assist
29 individuals in obtaining more information about the committee, its membership
30 and meetings, and staff contacts on the Internet or through the TWC switchboard.

31
32 **Response:** TWC agrees with this suggestion and has made the recommended
33 change. Further, to assist individuals in obtaining information about the
34 committee, the PPD program and activities, and other relevant information, TWC
35 is committed to ensuring that it provides clear and updated information on its web
36 page.

37
38 **Comment:** Three commenters expressed concern about the definition of the term
39 "disability," stating that the community rehabilitation programs (CRPs) in the
40 state use program should be serving individuals with "severe" disabilities. One
41 commenter stated that the term "disability" alone might contribute to confusion.
42 Another commenter suggested that safeguards be added to claims of disability
43 requiring attestation by a medical or professional expert, in addition to sworn
44 affirmation by the applicant. Another requested that the definition of "disability"
45 reflect the previous definition of the term used previously in the Comptroller's
46 rules.

1
2 Three commenters suggested adding the term "severe disability" to the
3 definitions, and one requested that the term be used in place of "disability" to be
4 consistent with statute.

5
6 **Response:** TWC has defined "disability" as defined in Texas Human Resources
7 Code §122.002(5) and does not preclude "severe" disabilities. By definition, and
8 the criteria established by the Commission, a CRP is a program for individuals
9 with severe disabilities. Therefore, the Commission declines to make the changes
10 as requested. Regarding attestation, TWC agrees that this request is an appropriate
11 operational requirement, reflecting existing practice, which is more appropriately
12 contained in substantive rules rather than in a definition. Therefore, TWC has
13 revised §806.41(e)(2) to include this recommendation.

14
15 **SUBCHAPTER B. ADVISORY COMMITTEE RESPONSIBILITIES AND**
16 **MEETING GUIDELINES**

17 The Commission adopts new Subchapter B, Advisory Committee Responsibilities,
18 Meeting Guidelines, as follows:

19
20 **§806.21. Advisory Committee**

21 New §806.21 provides language establishing the newly formed advisory committee,
22 states the purpose of the advisory committee, and sets forth the responsibilities of the
23 Agency, committee, and Commission, pursuant to SB 212.

24
25 **Comment:** One commenter suggested that for clarity in subsection (c)(5), "an" be
26 changed to "each" to read "the average number of hours worked each week by
27 each individual....".

28
29 **Response:** TWC agrees with this suggestion and has made the recommended
30 change.

31
32 **Comment:** One commenter requested the addition of "number and" in subsection
33 (c)(6) to read "The number and percentage..." because the percentage of
34 individuals placed in competitive employment can have vastly different
35 implications depending on the number of individuals that the percentage
36 represents. The commenter also asked for clarity on the time frame for reporting
37 data collection.

38
39 **Response:** TWC agrees with adding "number and" in subsection (c)(6)--as
40 program implementation has shown that percentage alone does not fully capture
41 the number of individuals placed in competitive employment--and has made the
42 recommended change. TWC also clarifies that the requested reporting is made
43 annually.

44
45 **Comment:** One commenter requested clarification on the meaning of "percentage
46 of work performed" in subsection (c)(7) and whether it means by each individual

1 or all individuals collectively, if it is quantified in time spent, and if it is based on
2 actual job performance or job description.

3
4 **Response:** Based on this comment, TWC has revised subsection (c)(7) to clarify
5 that "percentage of work performed" is intended to describe the amount of work
6 performed by all individuals with disabilities collectively, quantified in hours
7 worked, and based on actual job performance.

8
9 **Comment:** One commenter suggested that the wording in subsection (d) be
10 changed to reflect that the advisory committee shall provide input to the
11 Commission on rules and not solely in adopting rules.

12
13 **Response:** TWC has clarified this section and welcomes input during the
14 rulemaking process in accordance with the Administrative Procedure Act (APA)
15 (Texas Government Code §2001.001, et seq).

16
17 **Comment:** Three commenters suggested that subsection (e) be changed to reflect
18 that TWC provides administrative support to the committee, including
19 accommodations and supports as needed by advisory committee members who
20 have disabilities, in order to allow meaningful participation by advisory
21 committee members with disabilities. One commenter requested the addition of a
22 new subsection that details the accommodations and supports that TWC shall
23 provide to advisory committee members who are disabled.

24
25 **Response:** TWC agrees with the suggestion that subsection (e) be modified to
26 reflect that administrative support to the committee includes accommodations and
27 supports, as needed. The advisory committee is subject to the Open Meetings Act
28 and required by other law to ensure Americans with Disabilities Act (ADA)
29 compliance. This subsection has been amended to indicate that accommodations
30 and supports will be provided, as required by law.

31
32 **Comment:** One commenter suggested that additional language be made to
33 subsection (f) to clarify that Texas Government Code, Chapter 2110, concerns
34 state agency advisory committees.

35
36 **Response:** TWC agrees with the commenter and has added the language as
37 suggested.

38
39 **§806.22. Open Meetings, Public Testimony and Access**

40 New §806.22 sets forth the requirements of the Committee to comply with the Open
41 Meetings Act, Public Information Act, and Texas Government Code, Chapter 2001.

42
43 **SUBCHAPTER C. CENTRAL NONPROFIT AGENCIES**

44 The Commission adopts new Subchapter C, Central Nonprofit Agencies, as follows:

45
46 **§806.31. Contracting with Central Nonprofit Agencies**

1 New §806.31 sets forth the contract requirements and responsibilities of the Agency,
2 Commission, and central nonprofit agencies (CNAs).

3
4 **Comment:** One commenter suggested that in subsection (c), the amount of annual
5 wages be paid to "each employee" and not to "an individual."

6
7 **Response:** TWC notes that this comment refers to wording in §806.31(f)(1)(C),
8 rather than §806.31(c). TWC agrees with the comment and has made the
9 suggested change.

10
11 **Comment:** One commenter stated that the information in subsection (f) regarding
12 the quarterly reporting deadline for a CNA is unclear and seems to conflict with
13 the time period stated in §806.41(j). The commenter suggested that 60 days would
14 be a sufficient deadline. The commenter also requested clarification as to why the
15 CNA reports quarterly information in program evaluations that are generated once
16 a year. The commenter also requested clarification on reporting requirements in
17 subsection (g)(1) that seem to duplicate similar reporting requirements in
18 subsection (f). Additionally, the commenter requested clarification on subsection
19 (i)(1), which states that the goal to pay CRPs is 14 to 21 calendar days, but not
20 less than 30 days of completion of work and proper invoicing. The commenter
21 stated that based on the intent of this policy, the word "less" should be changed to
22 "more."

23
24 **Response:** TWC agrees with the commenter and has made certain changes to
25 clarify relevant time frames. First, TWC has modified the CNA reporting time
26 frame from 15 to 60 days, in order to allow the CRPs time to report to the CNA,
27 and allowing the CNA to submit the information to TWC. TWC clarifies that the
28 requirement for quarterly reporting will enable adjustments to be made to the
29 program more frequently, if necessary, rather than being limited to a single annual
30 adjustment. TWC agrees that subsection (g)(1) is duplicative and has eliminated
31 that subsection. Finally, TWC also agrees that the intent of this policy is more
32 appropriately captured by modifying the word "less" to "more" in subsection
33 (i)(1) and has made the change.

34
35 **Comment:** One commenter suggested rewording subsection (h) to read, "the
36 range of hourly wages for employees with disabilities and employees without
37 disabilities who are employed in CRPs under this chapter." The commenter's
38 context and wording indicate that the comment is made in reference to subsection
39 (f)(1)(H), rather than to subsection (h).

40
41 **Response:** Section 806.31(f)(1)(H) tracks the statutory language in Texas Human
42 Resources Code §122.022(b), which contains a list of items identified by the
43 legislature for TWC to report. Through §806.31(f)(1), TWC requests from a CRP
44 items necessary to compile the report. Because this is a specific requirement that
45 the legislature imposed on TWC, TWC declines to make the change as requested.
46

1 **Comment:** One commenter requested that a new subsection (h) be added to state
2 that the "agency will publicly post the information provided under §806.31(f) and
3 (g) within 30 days of receipt."
4

5 **Response:** TWC agrees with the comment, has added a new subsection (h), and
6 will post public information within 20 days of receipt to ensure that access is
7 provided sooner.
8

9 **§806.32. Performance Standards and Goals for a Central Nonprofit Agency**

10 New §806.32 sets forth the performance standards, goals, and requirements of CNAs.
11

12 **Comment:** One commenter stated that of the 17 performance standards in this
13 section, only two are geared toward individuals with disabilities participating in
14 the program. The commenter suggested a number of changes to include person-
15 centered planning, which documents employment goals, as a requirement to
16 adhere to Texas Government Code §531.02447 in order to ensure a living wage,
17 and a new section to increase competitive integrated employment for individuals
18 with complex medical, physical, or behavioral needs.
19

20 **Response:** TWC agrees with including language regarding employment services
21 and counseling and has modified subsection (b)(1) to reflect development of a
22 person-centered plan. Additionally, in order to operationalize this performance
23 goal at the CRP level, a new subsection was added to §806.41(f) to ensure that
24 CRPs document their performance of this function as part of the
25 certification/recertification process. Regarding the Texas Employment-First
26 Policy, as TWC is subject to this statute, repeating herein is unnecessary.
27 Additionally, TWC declines to make the recommended change regarding
28 "competitive employment," in this section and throughout the chapter. The
29 purpose of Chapter 806 derives directly from Texas Human Resources Code
30 §122.001. The proposed wording is not consistent with the statutory wording.
31

32 **Comment:** One commenter suggested broadening the title of this section to
33 encompass the entire program rather than solely the CNA and requested
34 amending subsection (b)(1) and (2) to ensure that individuals receive minimum
35 wage or higher, in addition to person-centered planning, which documents
36 employment goals. The commenter also requested that subsection (b)(4) be
37 deleted in order to direct greater emphasis on the development of employment
38 opportunities by the CNA rather than emphasizing information workshops.
39

40 **Response:** Subchapter C, consisting of §806.31 and §806.32, pertain to CNAs.
41 The standards and goals specifically applicable to a CNA are found in §806.32.
42 These standards and goals are not applicable to the entire program. Therefore, no
43 change is made based on this comment. However, as suggested, subsection (b)(1)
44 has been modified to reflect the proposed change regarding development of
45 person-centered plans. Regarding the commenter's proposal to modify
46 subsections (b)(1) and (2) to require paying minimum wage or higher, TWC has

1 incorporated employment opportunities that pay minimum wage or higher as a
2 goal in employment opportunities generally. However, TWC declines to adopt the
3 commenter's specific rule wording, as it exceeds the authority provided by statute
4 for the PPD program. Additionally, TWC declines to delete subsection (b)(4), as
5 the wording reflects a viable function of a CNA. However, TWC agrees with the
6 commenter's suggestion to emphasize the development of employment
7 opportunities by adding the requested wording to new subsection (b)(3) and
8 renumbering thereafter.

9
10 **Comment:** One commenter stated that, regarding subsection (b)(7), the CNA's
11 performance goals should track reporting requirements in §806.31(g)(3)

12
13 **Response:** TWC declines to make the recommended change, as these two
14 sections are not in conflict and serve different purposes.

15 16 **SUBCHAPTER D. COMMUNITY REHABILITATION PROGRAMS**

17 The Commission adopts new Subchapter D, Community Rehabilitation Programs, as
18 follows:

19 20 **§806.41. Certification and Recertification of Community Rehabilitation Programs**

21 New §806.41 sets forth the criteria and requirements that the Commission and Agency
22 will use to certify and recertify CRPs.

23
24 **Comment:** One commenter suggested adding the term "competitive" in
25 subsection (d) to accurately describe the type of compensation for individuals
26 with severe disabilities.

27
28 **Response:** The term "community rehabilitation program" (CRP), as defined in
29 §806.2, follows the statutory definition in Texas Human Resources Code
30 §122.002, which does not include the word "competitive." No change was made
31 based on this comment. .

32
33 **Comment:** Two commenters requested that subsection (e)(2) include a
34 requirement for the individual to sign the form that documents the disability and
35 determines program eligibility.

36
37 **Response:** TWC agrees with the recommendation and has modified subsection
38 (e)(2) accordingly.

39
40 **Comment:** One commenter stated that a subminimum wage represents a cycle of
41 poverty and expressed concern that the process to determine piece rates and
42 eligibility for subminimum wage is not based on a foundation that matches natural
43 skills, desires, and individual employment goals with job opportunities. Two
44 commenters recommended amending subsection (f)(8) to include clarification of
45 the employees paid, a plan to phase out this practice, and a statement of
46 explanation of circumstances subminimum wages.

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Response: Section 806.41(d) is one of many requirements for existing documentation that should be submitted as part of the certification application. The federal Fair Labor Standards Act (FLSA) authorizes employers, after receiving a certificate from the US Department of Labor Wage and Hour Division, to pay subminimum wages to workers with disabilities for the work being performed. Subminimum wages are wages less than the federal minimum wage. The Wage and Hour Division is responsible for the administration and enforcement of FLSA. TWC has no authority to "phase out" this practice and, therefore, has made no change based on this comment. TWC has made changes in §806.32(b)(1) and (2), setting performance goals for a CNA to increase employment opportunities, including those paying minimum wage or higher.

Subsection (f)(8) as proposed and adopted contains the “statement of explanation of circumstances requiring subminimum wage.” Therefore, no change was made based on this comment.

Comment: Two commenters stated that current subsection (f)(9) is not clear as to whether the performance standard is that 75 percent of the hours worked should be performed by individuals with disabilities or that 75 percent of the individuals employed should be individuals with disabilities. The commenters made similar suggestions to amend the subsection in order to ensure that both performance standards are required.

Response: Section 806.41(f)(9) focuses on total hours by requiring that "at least 75 percent of the CRP's total hours ... will be performed by individuals with documented disabilities." No change has been made based on this comment.

Comment: One commenter requested the addition of a provision in subsection (i) that requires every CRP, upon recertification, to implement a plan to pay every individual minimum wage or higher within three years. Additionally, if the CRP has not phased out subminimum wage, recertification will not be approved. By 2023, every CRP will be expected to pay all employees minimum wage or higher.

Response: No change has been made based on this comment, as it exceeds the authority provided by statute for the PPD program.

Comment: Two commenters suggested adding a subsection requiring CRPs to report any state agency that is not using the program to benefit individuals with disabilities.

Response: TWC agrees with the suggestion, has added a new subsection (n), and has relettered thereafter.

SUBCHAPTER E. PRODUCTS AND SERVICES

The Commission adopts new Subchapter E, Products and Services, as follows:

Ch. 806 Purchases of Products and Services from People with Disabilities
(5.23.17)ADOPTED

1
2 **§806.51. Product Specifications and Exceptions**

3 New §806.51 provides language that products must meet certain specifications in order to
4 be available for purchase by state agencies under Texas Human Resources Code
5 §122.014 and §122.016.
6

7 **§806.52. Determination of Fair Market Value**

8 New §806.52 provides language that products and services are required to be at a price
9 determined to be the fair market price under Texas Human Resources Code §122.007 and
10 §122.015.
11

12 **§806.53. Recognition and Approval of Community Rehabilitation Program**
13 **Products and Services**

14 New §806.53 sets forth the criteria and requirements the Agency will use to approve
15 products and services to be available for purchase.
16

17 **Comment:** Two commenters suggested significant oversight to ensure that
18 disabled citizens of the State of Texas benefit from this program. Oversight
19 includes audits from an outside entity to examine affirmations of disabilities from
20 participants and doctors, in addition to an examination of the 75 percent goal.
21

22 **Response:** TWC shares the commenters' focus on oversight of the PPD program.
23 The proposed changes to this section, specifically to §806.53(a)(4), (b)(1) and
24 (b)(3) are intended to allow the Agency the flexibility to establish a percentage
25 greater than 75% should circumstances warrant, and to align with the existing
26 requirements in subsections (a)(3) and (b)(1) applying the 75% figure to each
27 contract. Additionally, upon approval of the revised rules, Commission staff will
28 begin regularly scheduled reviews of each CRP's operation to ensure compliance
29 with all program requirements, including employee eligibility. Accordingly,
30 TWC believes the rules, as proposed, address the stated concerns and has made no
31 changes.
32

33 **Comment:** One commenter stated that the current requirements in §806.53 do not
34 give a clear picture of how the contract dollars are being used and that it would be
35 helpful to know the rationale for the stated percentages. The commenter suggested
36 adding a new paragraph to subsection (b), stating that the CRP will send a
37 detailed report explaining how the CRP used 100 percent of the contract dollars.
38 The commenter also suggested an amendment to subsection (b)(3) to clarify that
39 75 percent of the individuals employed be individuals with disabilities and 75
40 percent of the hours of direct labor be performed by individuals with disabilities.
41

42 **Response:** TWC agrees with the commenter's suggestion and has added a new
43 requirement in subsections (a) and (b), as recommended, relating to the detailed
44 report. However, TWC declines to make the suggested change to subsection
45 (b)(3) because the same information is captured in the 75 percent of hours of
46 direct labor in subsection (b)(1).

1
2 **SUBCHAPTER F. COMPLAINTS, VENDOR PROTESTS, RESOLUTIONS**

3 The Commission adopts new Subchapter F, Complaints, Vendor Protests, Resolutions, as
4 follows:

5
6 **§806.61. Consumer Information; Complaints and Resolution**

7 New §806.61 sets forth the process for filing complaints and duties of the Agency to
8 resolve complaints.

9
10 **Comment:** Two commenters expressed concern that there is not a process
11 described in an accessible manner for individuals with disabilities employed by
12 the CRP to file a complaint, and they requested the addition of a new subsection
13 (d) to include that information.

14
15 **Response:** The Commission declines to make the requested change. The
16 requested change to address employee complaints is outside the scope of
17 §122.020 of the Texas Human Resources Code. Additionally, all information that
18 TWC posts on its website is subject to accessibility requirements.

19
20 **Comment:** One commenter requested clarification on subsection (g) regarding
21 the agency level at which complaints will be resolved and details on how the
22 complaint will be recorded, closed, and reported to the interested parties.

23
24 **Response:** Based on this comment, TWC has modified subsection (a) to provide
25 more detail regarding the process and subsection (g) to clarify at what agency
26 level and how complaints will be resolved. Consistent with Texas Human
27 Resources Code §122.020, procedures for complaint resolution closure and
28 reporting to parties are reflected in subsections (c) and (d) of this section.

29
30 **§806.62. Vendor Protests.**

31 New §806.62 sets forth the process for disputing a solicitation or award of a contract and
32 duties of the Agency to resolve protests.

33
34 **Comment:** One commenter questioned why a "program manager," specified in
35 subsection (c), may settle or resolve a vendor protest. The commenter noted that
36 "program manager" is not a defined term and that the vendor protest procedure
37 should be consistent with the procedures of the procurement division of the
38 Comptroller's Office (Statewide Procurement Division), as specified in Texas
39 Government Code §2155.076.

40
41 **Response:** The Commission agrees and has made a change to align TWC rules
42 with Comptroller rules, as required under Texas Government Code §2155.076.
43 Accordingly, given that vendor protests filed with the Comptroller under 34 TAC
44 §20.534 are resolved by the director, defined at 34 TAC §20.25 as "division
45 director," the Commission will modify the rule to substitute "division director" for
46 "program manager." Furthermore, because of TWC's structure, the division

1 director of this program is currently TWC's deputy executive director, who, under
2 subsection (e) of this section, is designated as the individual managing appeals.
3 The Commission hereby makes the corresponding change to designate the
4 division director's final determination as TWC's final decision to fully align with
5 Texas Government Code §2155.076. Additionally, a change has been made to
6 subsection (f) to align retention of vendor protest records with current standards,
7 as mandated under Texas Government Code §2155.076.

8 9 **SUBCHAPTER G. DISCLOSURE OF RECORDS**

10 The Commission adopts new Subchapter G, Disclosure of Records, as follows:

11 12 **§806.71. Records**

13 New §806.71 sets forth the requirements and duties of the Agency to handle records.

14
15 **Comment:** Two commenters requested the wording of subsection (c) be changed
16 to read, "No records belonging to a CNA or a CRP may be accessed or released
17 except as authorized under the Texas Public Information Act," stating that it is
18 important to consult the law rather than rely on this rule for guidance on the
19 release of information.

20
21 **Response:** The language in §806.71 reiterates the statutory language in Texas
22 Human Resources Code §122.0215, which provides access to CNA or CRP
23 information by the Agency. Section 122.01215 specifically restricts release of
24 these records except in specific circumstances that may be more restrictive than
25 the Texas Public Information Act. To add the phrase as recommended by these
26 commenters is in conflict with the statutory language. Therefore, a change has
27 been made based on this comment.

28 29 **SUBCHAPTER H. REPORTS; PLANS**

30 The Commission adopts new Subchapter H, Reports; Plans, as follows:

31 32 **§806.81. Annual Financial Report**

33 New §806.81 sets forth the requirement of the Agency to prepare an annual financial
34 report and file with the governor and the presiding officer of each house of the legislature
35 under Texas Human Resources Code §122.022.

36
37 **Comment:** One commenter stated that the data reported by the CRPs does not
38 provide the public with a clear picture of the actual wages earned by individuals
39 with disabilities. The commenter suggested changing subsection (b)(7) to state
40 that the report will include the range of weekly wages for employees with
41 disabilities and employees without disabilities.

42
43 **Response:** TWC agrees with the commenter and has modified subsection (b)(7)
44 to delete "the average and" and to change "earnings" to "wages."

45 46 **§806.82. Strategic Plan: Final Operating Plan**

1 New §806.82 sets forth the requirement for the Agency to prepare a strategic plan and a
2 final operating plan relating to the Agency's and Commission's activities under this
3 chapter, as required by Texas Government Code, Chapter 2054, Subchapter E under
4 Texas Human Resources Code §122.024.

5
6 **SUBCHAPTER I. POLITICAL SUBDIVISIONS**

7 The Commission adopts new Subchapter I, Political Subdivisions, as follows:

8
9 **§806.91. Procurement for Political Subdivisions**

10 New §806.91 sets forth the requirement for political subdivisions to follow procurement
11 rules as required by Texas Human Resources Code §122.017, relating to procurement for
12 political subdivisions.

13
14 **§806.92. Political Subdivisions Excluded**

15 New §806.92 sets forth the requirement of excluded political subdivisions to follow
16 procurement rules as required by Texas Human Resources Code §122.018, relating to
17 political subdivisions excluded.

18
19 **COMMENTS WERE RECEIVED FROM:**

20
21 Richard Carter, Information Technology Alliance of Texas
22 Melynda Caudle, Cooper Consulting Company
23 Fred Weber, TIBH Industries, Inc.
24 Linda Logan, Texas Council for Developmental Disabilities
25 Jean Langendorf, Disability Rights Texas
26 Kyle Piccola, The Arc of Texas

27
28 The Agency hereby certifies that the adoption has been reviewed by legal counsel and
29 found to be within the Agency's legal authority to adopt.

30
31 The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which
32 provide the Texas Workforce Commission with the authority to adopt, amend, or repeal
33 such rules as it deems necessary for the effective administration of Agency services and
34 activities.

35
36 The adopted rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.
37

1 **CHAPTER 806. PURCHASES OF PRODUCTS AND SERVICES FROM**
2 **PEOPLE WITH DISABILITIES**

3
4 **SUBCHAPTER A. GENERAL PROVISIONS REGARDING PURCHASES OF**
5 **PRODUCTS AND SERVICES FROM PEOPLE WITH DISABILITIES**
6

7 **§806.1. General.**
8

9 The Texas Workforce Commission is responsible for fulfilling the purpose of
10 Chapter 122 of the Texas Human Resources Code, which is to:

- 11
12 (1) further the state's policy of encouraging and assisting individuals with
13 disabilities to achieve maximum personal independence by engaging in
14 useful productive employment activities; and
15
16 (2) provide state agencies, departments, and institutions and political
17 subdivisions of the state with a method for achieving conformity with
18 requirements of nondiscrimination and affirmative action in
19 employment matters related to individuals with disabilities.
20

21 **§806.2. Definitions.**
22

23 The following words and terms, when used in this chapter, shall have the
24 following meanings unless the context clearly indicates otherwise. "Agency" and
25 "Commission" are defined in §800.2 of this title, relating to Definitions.
26

- 27
28 (1) Appreciable contribution--The term used to refer to the substantial
29 work effort contributed by individuals with disabilities in the reforming
30 of raw materials, assembly of components or packaging of bulk
31 products in more saleable quantities, by which value is added into the
32 final product offered for sale or through which the individuals with
33 disabilities develop new job skills that have not been previously
34 attained through other jobs.
35
36 (2) Advisory committee--the Purchasing from People with Disabilities
37 Advisory Committee, established by the Commission, as described in
38 Texas Human Resources Code §122.0057.
39
40 (3) Central nonprofit agency (CNA)--An entity designated as a central
41 nonprofit agency under contract pursuant to Texas Human Resources
42 Code §122.019.
43
44 (4) Chapter 122--Chapter 122 of the Texas Human Resources Code,
45 relating to Purchasing from People with Disabilities.
46

- 1 (5) Community rehabilitation program (CRP)--A government or nonprofit
2 private program operated under criteria established by the Commission
3 and under which individuals with severe disabilities produce products
4 or perform services for compensation.
- 5
- 6 (6) Comptroller--The Comptroller of Public Accounts.
- 7
- 8 (7) Direct labor--All work required for preparation, processing, and
9 packaging of a product, or work directly relating to the performance of
10 a service, except supervision, administration, inspection, or shipping
11 products.
- 12
- 13 (8) Disability--A mental or physical impairment, including blindness that
14 impedes a person who is seeking, entering, or maintaining gainful
15 employment.
- 16
- 17 (9) Exception--Any product or service approved for the state use program
18 purchased from a vendor other than a CRP because the state use
19 product or service does not meet the applicable requirements as to
20 quantity, quality, delivery, life cycle costs, and testing and inspection
21 requirements pursuant to Texas Government Code §2155.138 and
22 §2155.069 or as described in Texas Human Resources Code §122.014
23 and §122.016.
- 24
- 25 (10) State use program--The statutorily authorized mandate requiring state
26 agencies to purchase, on a noncompetitive basis, the products made and
27 services performed by individuals with disabilities, which have been
28 approved by the Agency, pursuant to Texas Human Resources Code,
29 Chapter 122 and which also meet the requirements of Texas
30 Government Code, §2155.138 and §2155.069. This program also
31 makes approved products and services available to be purchased on a
32 noncompetitive basis by any political subdivision of the state.
- 33
- 34 (11) Value added--The labor of individuals with disabilities applied to raw
35 materials, components, goods purchased in bulk form resulting in a
36 change in the composition or marketability of component materials,
37 packaging operations, and/or the servicing tasks associated with a
38 product. Pass-throughs are not allowed; therefore, solely affixing a
39 packaging label to a commodity does not qualify.

40

41 **SUBCHAPTER B. ADVISORY COMMITTEE RESPONSIBILITIES, MEETING**
42 **GUIDELINES**

43

44 **§806.21. Advisory Committee.**

45

1 (a) The advisory committee, as described in Texas Human Resources Code
2 §122.0057, shall assist the Commission in establishing:

3
4 (1) performance goals for the program administered under this chapter;
5 and

6
7 (2) criteria for certifying a CRP for participation in the program
8 administered under this chapter.

9
10 (b) The advisory committee shall:

11
12 (1) establish specific objectives for the program administered under this
13 chapter that are appropriate given the program's status as one of several
14 employment-related services the state offers to individuals with
15 disabilities;

16
17 (2) develop performance measures that may be used by the Agency to
18 evaluate whether the program is meeting the objectives established
19 under paragraph (1) of this subsection; and

20
21 (3) recommend criteria for certifying CRPs for participation in the
22 program.

23
24 (c) In developing the performance measures under subsection (b) of this section,
25 the advisory committee must consider the following factors as applicable to
26 the program administered under this chapter:

27
28 (1) The percentage of total sales revenue attributable to the program as:

29
30 (A) paid in wages to individuals with disabilities; and

31
32 (B) spent on direct training and professional development services
33 for individuals with disabilities;

34
35 (2) The average hourly wage earned by an individual participating in the
36 program;

37
38 (3) The average annual salary earned by an individual participating in the
39 program;

40
41 (4) the number of individuals with disabilities participating in the
42 program paid less than minimum wage and occupations into which
43 such individuals are placed;

44
45 (5) the average number of hours worked each week by each individual
46 with a disability who participates in the program;

1
2 (6) the number and percentage of individuals with disabilities who
3 participate in the program and who are placed into competitive
4 positions, including competitive management or administrative
5 positions within CRPs; and

6
7 (7) the percentage of work performed by individuals with disabilities who
8 participate in the program collectively that is purely repackaging
9 labor, quantified in hours worked and based on actual job
10 performance.

11
12 (d) The advisory committee shall provide input to the Commission applicable to
13 the program administered under this chapter relating to the employment-first
14 policies described in Texas Government Code §531.02447 and §531.02448.

15
16 (e) The Agency shall provide administrative support to the advisory committee,
17 including accommodations and supports, as required by law.

18
19 (f) The advisory committee is not subject to Texas Government Code, Chapter
20 2110, regarding state agency advisory committees.

21
22 **§806.22. Open Meetings, Public Testimony and Access.**

23
24 The advisory committee, established under Texas Human Resources Code
25 §122.0057, is subject to the requirements of the Open Meetings Law, Texas
26 Government Code, Chapter 551, the Public Information Act, Texas Government
27 Code, Chapter 552, and Texas Government Code, Chapter 2001.

28
29 **SUBCHAPTER C. CENTRAL NONPROFIT AGENCIES**

30
31 **§806.31. Contracting with Central Nonprofit Agencies.**

32
33 (a) The Agency may select and contract with one or more CNAs and shall
34 contract through a request for proposals for a period not to exceed five years
35 to perform, at a minimum, the duties set forth in Texas Human Resources
36 Code §122.019(a) and (b).

37
38 (b) The management fee rate charged by a CNA for its services to a CRP and its
39 method of calculation must be approved by the Commission. The maximum
40 management fee rate must be reviewed on an annual basis.

41
42 (c) A percentage of the management fee described in subsection (b) of this
43 section shall be paid to the Agency. The percentage shall be set by the
44 Commission in the amount necessary to reimburse the general revenue fund
45 for direct and reasonable costs incurred by the Comptroller and the Agency in
46 administering the Comptroller's and the Agency's duties under this chapter.

1 including any costs associated with providing support to the advisory
2 committee.

3
4 (d) In accordance with Texas Human Resources Code §122.019(c), the Agency
5 shall annually review services by and the performance of a CNA and the
6 revenue required to accomplish the program. The purpose of the review shall
7 be to determine whether a CNA has complied with statutory requirements,
8 contract requirements, and performance standards set forth in §806.32 of this
9 title (relating to performance standards for a CNA).

10
11 (e) Following the review of a CNA as required by Texas Human Resources
12 Code §122.019(d), the Agency may approve the performance of the CNA and
13 the continuation of the contract through its termination date.

14
15 (f) For the effective administration of this chapter, the CNA will provide to the
16 Agency, no later than 60 days after the end of each federal fiscal quarter, the
17 following information regarding CRPs that have contracted with the CNA:

18
19 (1) For CRPs:

20
21 (A) a collective executive summary of the CRPs annual state use
22 program evaluations;

23
24 (B) the number of individuals with disabilities, according to their type
25 of disability, who are employed in CRPs participating in the
26 programs established by this chapter or who are employed by
27 businesses or workshops that receive supportive employment
28 from CRPs;

29
30 (C) the amount of annual wages paid to each employee participating
31 in the program in a format determined by the Agency;

32
33 (D) a summary of the sale of products offered by the CRPs;

34
35 (E) a list of products and/or services offered by a CRP;

36
37 (F) the geographic distribution of CRPs;

38
39 (G) the number of individuals without disabilities who are employed
40 in CRPs under this chapter; and

41
42 (H) the average and range of weekly earnings for individuals with
43 disabilities and individuals without disabilities who are employed
44 in CRPs under this chapter; and

1 (2) from each CRP data on individual outplacement or supported
2 employment to include:

3
4 (A) the number of individuals in outplacement employment;

5
6 (B) the hourly wage range;

7
8 (C) the range of hours worked; and

9
10 (D) the number of individuals with disabilities employed, listed by
11 primary type of disability.

12
13 (g) In order to conduct the reviews required by Texas Human Resource Code
14 §122.019(c) and §122.019(d), a CNA will provide or make available to the
15 Agency:

16
17 (1) quarterly reports for each calendar quarter listing CRPs that do not meet
18 criteria for participation in the state use program and the reasons that each
19 CRP listed does not meet the criteria;

20
21 (2) at least once a year by October 31, and prior to any review and/or
22 renegotiation of the contract:

23
24 (A) an updated marketing plan;

25
26 (B) a proposed annual budget with estimated sales, commissions, and
27 expenses;

28
29 (C) a program budget with details on how the expected revenue and
30 expenses will be allocated to directly support and expand the
31 state use program and other programs that expand direct services
32 and/or the enhancement of employment opportunities for
33 individuals with disabilities; and

34
35 (D) an audited annual financial statement that shall include
36 information on FDIC coverage of all cash balances, earnings
37 attributed to the management fee for the state use program,
38 accounts receivable, cash reserves, line of credit borrowings,
39 interest payments, bad debt, administrative overhead and any
40 detailed supporting documentation requested by the Agency;

41
42 (3) quarterly reports of categories of expenditures in reporting format
43 approved by the Agency;

1 (4) records in accordance with Texas Human Resources Code §122.009(a)
2 and §122.0019(d) for audit purposes, consistent with Texas Government
3 Code, Chapter 552, the "Public Information Act"; and

4
5 (5) any other information the Agency requests as set forth in this chapter.

6
7 (h) The Agency will post the public information provided under subsections (f)
8 and (g) of this section within 20 days of receipt.

9
10 (i) Duties of a CNA include, but are not limited to, those listed in Texas Human
11 Resources Code §122.019(a).

12
13 (j) The services of a CNA may include marketing and marketing support
14 services, such as those identified in §122.019(b). Other duties as designated
15 by the Agency may include:

16
17 (1) establishing a payment system with a goal to pay CRPs within
18 fourteen (14) to twenty-one (21) calendar days, but not more than
19 thirty (30) days of completion of work and proper invoicing;

20
21 (2) resolving contract issues and/or problems as they arise between
22 the CRPs and customers of the program, referring those that
23 cannot be resolved to the Agency;

24
25 (3) maintaining a system that tracks and monitors product and
26 service sales; and

27
28 (4) tracking and reporting quality and delivery times of products and
29 services.

30
31 (k) Each year by October 31, a CNA will establish performance goals for the
32 next fiscal year in support of objectives set by the Commission.

33
34 (l) The Agency may terminate a contract with a CNA if the Agency:

35
36 (1) finds substantial evidence of the CNA's noncompliance with
37 contractual obligations or of conflict of interest as defined by federal
38 and state laws; and

39
40 (2) has provided at least 30 days written notice to that CNA of the
41 termination of the contract.

42
43 (m) The Agency may request an audit by the state auditor of:

44
45 (1) the management fee set for any CNA; or
46

1 (2) the financial condition of any CNA.

2
3 (n) The Commission must annually review the management fees the CRPs are
4 charged by the CNAs. The annual review process includes:

5
6 (1) sending notice to affected parties, including CRPs;

7
8 (2) soliciting and considering public comment; and

9
10 (3) reviewing documentation provided by a CNA, CRP, or the public in
11 support or opposition of a proposed management fee rate change.

12
13 (o) An individual may not operate a CRP and at the same time contract with the
14 Agency as a CNA.

15
16 **§806.32. Performance Standards and Goals for a Central Nonprofit Agency.**

17
18 (a) A CNA shall meet performance standards in carrying out the terms and
19 conditions of the contract.

20
21 (b) Operating pursuant to statute and rules, a CNA must manage and coordinate
22 the day-to-day operation of the state use program including, but not limited
23 to, the following activities:

24
25 (1) Increase employment opportunities for individuals with disabilities,
26 including employment paying minimum wage or higher, by promoting
27 the development of person-centered planning, which documents
28 employment goals, employment counseling, and placement services
29 provided by CRPs;

30
31 (2) Increase employment opportunities, including those paying minimum
32 wage or higher, for individuals with disabilities by researching new
33 products, services, and markets; improving existing products and
34 services; and reporting to the Agency on a quarterly basis the status of
35 these activities;

36
37 (3) Work with CRPs to develop employment opportunities;

38
39 (4) Provide superior customer relations by monitoring customer
40 satisfaction with products and services, responding to customer
41 complaints within one business day or less, and reporting to the Agency
42 on a quarterly basis the level of consumer satisfaction for each CRP,
43 based on complaints as to products or services provided, with a goal of
44 incurring no more than five complaints per year that have not been
45 resolved to customer satisfaction;

- 1 (5) Provide quarterly regional information workshops to promote the state
2 use program throughout the year and across the state;
- 3
- 4 (6) Provide training programs to CRPs on the requirements to participate
5 in the state use program, governmental contracting, and procurement
6 procedures and laws;
- 7
- 8 (7) Resolve contract issues and/or problems as they arise between the
9 CRPs, the CNA, and/or customers, referring those that cannot be resolved
10 to the Agency and submitting quarterly status reports on issues and
11 referrals;
- 12
- 13 (8) Provide an annual report that includes the CNA's audited financial
14 statements, an updated strategic plan, and an updated projected schedule
15 of expenses that details how the management fee is being allocated to
16 directly support the state use program and what amount of funds are
17 being devoted to expanding direct services to programs that enhance the
18 lives of individuals with disabilities and what percentage of funds will be
19 used for administrative overhead, such as salaries;
- 20
- 21 (9) Demonstrate compliance with state and federal tax laws and payroll
22 laws by submitting quarterly reports of sales and taxes paid to the Texas
23 Comptroller of Public Accounts and the Internal Revenue Service (IRS);
- 24
- 25 (10) Maintain a system in accordance with generally accepted accounting
26 principles that will record information related to purchase orders,
27 invoices, and payments to each CRP to facilitate the preparation and
28 submission of the annual report;
- 29
- 30 (11) Create a database of state agency and political subdivision purchases to
31 promote sales of state use program products and services;
- 32
- 33 (12) Conduct business ethically and submit detailed reports on a quarterly
34 basis of any conflicts between the CRPs and the CNA;
- 35
- 36 (13) Create and maintain automated tracking and monitoring of
37 product/service sales and submit quarterly reports to the Agency
38 regarding delivery turnaround times and contract performance for each
39 CRP;
- 40
- 41 (14) Respond to inquiries about individual sales and/or total sales within
42 five business days or sooner and submit quarterly reports regarding the
43 number of inquiries and average response time in conjunction with the
44 report described in paragraph (12) of this subsection;
- 45

- 1 (15) Maintain knowledge of governmental contracting and procurement
2 processes and laws;
- 3
- 4 (16) Provide general administration of the state use program with
5 performance criteria and timely submission of reports required by these
6 rules;
- 7
- 8 (17) Monitor CRP compliance and promptly report violations to the
9 Agency, offering assistance as needed to achieve compliance; and
- 10
- 11 (18) Maintain and dispose of records in accordance with the laws and
12 directives set forth by the Agency and submit any or all records
13 requested within three weeks of the request. Disclosure to the public of
14 any and all CNA records shall be subject to the Public Information Act.

15

16 **SUBCHAPTER D. COMMUNITY REHABILITATION PROGRAMS**

17

18 **§806.41. Certification and Recertification of Community Rehabilitation**
19 **Programs.**

- 20
- 21 (a) No applicant for certification may participate in the state use program prior to
22 the approval of certification.
- 23
- 24 (b) The Commission may recognize programs that are accredited by nationally
25 accepted vocational rehabilitation accrediting organizations and approve
26 CRPs that have been approved by a state's habilitation or rehabilitation
27 agency.
- 28
- 29 (c) The Commission may delegate the administration of the certification process
30 for CRPs to a CNA.
- 31
- 32 (d) An applicant for CRP certification must be a government or nonprofit private
33 program operated under criteria established by the Commission and under
34 which individuals with severe disabilities produce products or perform
35 services for compensation.
- 36
- 37 (e) A certified CRP must:
- 38
- 39 (1) maintain payroll, human resource functions, accounting, and all
40 relevant documentation showing that the employees who produce
41 products or perform services under the state use program are
42 individuals with disabilities;
- 43
- 44 (2) ensure that documentation includes approved disability determination
45 forms that are signed by the individual and document the relevant
46 disability, in addition to determining program eligibility, and that shall

1 be subject to review at the request of the Agency or the CNA under
2 authority from the Commission, with adherence to privacy and
3 confidentiality standards applicable to such CRP and employee records;
4 and

5
6 (3) maintain and dispose of records or documents required by the Agency,
7 including contracts with other entities, in accordance with generally
8 accepted accounting principles, and all laws relevant to the records.

9
10 (f) An applicant for certification must submit a completed application and the
11 required documents to the Agency through the CNA for the state use
12 program. Upon receipt, the CNA will verify the completeness and accuracy
13 of the application. No application will be considered without the following
14 documents:

15
16 (1) Copy of the IRS nonprofit determination under §501(c), when required
17 by law;

18
19 (2) Copy of the Articles of Incorporation issued by the Secretary of State,
20 when required by law;

21
22 (3) List of the board of directors and officers with names, addresses, and
23 telephone numbers;

24
25 (4) Copy of the organizational chart with job titles and names;

26
27 (5) Proof of current insurance coverage in the form of a certificate of
28 insurance specifying each and all coverages for the CRP's liability
29 insurance, auto insurance for vehicles owned or leased by the CRP for
30 state use contract purposes, and workers' compensation insurance
31 coverage or legally recognized equivalent coverage, if applicable. Such
32 insurance shall be carried with an insurance company authorized to do
33 business in the State of Texas, and written notice of cancellation or any
34 material change in insurance coverage will be provided to the CNA 10
35 business days in advance of cancellation or change;

36
37 (6) Fire inspection certificate issued within one year of the formal
38 consideration of the CRP application, if required by city, county, or
39 state regulations, for each location where customers will be served or
40 where individuals with disabilities will be employed, or a statement of
41 unavailability from the appropriate city, county, or state entity;

42
43 (7) Copy of the building inspection certificate or certificate of occupancy,
44 if required by city, county, or state regulations, for each location where
45 customers will be served or where individuals with disabilities will be

1 employed, or a statement of unavailability from the appropriate city,
2 county, or state entity;

3
4 (8) Copy of the wage exemption certificate (WH-228) if below minimum
5 wages will be paid to customers or to individuals with disabilities who
6 will be employed, and a statement of explanation of circumstances
7 requiring subminimum wages;

8
9 (9) Notarized statement that the CRP agrees to maintain compliance with
10 the requirement that at least 75 percent of the CRP's total hours of
11 direct labor, for each contract, necessary to perform services or reform
12 raw materials, assemble components, manufacture, prepare, process
13 and/or package products will be performed by individuals with
14 documented disabilities consistent with the definition set forth in this
15 chapter. If a CRP intends to seek a waiver from the 75 percent
16 requirement of the CRP's total hours of direct labor for a contract, the
17 waiver request must be submitted with the application for approval;
18 and

19
20 (10) An applicant for certification must attest that it either has already
21 developed or will develop, within 90 days of certification, a person-
22 centered plan for each individual with a disability it employs that
23 clearly documents attainable employment goals and describes how the
24 CRP will:

25
26 (A) help the individual reach their employment goals; and

27
28 (B) match the individual's skills and desires with the task(s) being
29 performed for the CRP.

30
31 (g) The Agency shall review each complete application and all required
32 documentation and, if acceptable, forward its recommendations to the
33 Commission for approval. Once approved, the Agency will notify the CRP in
34 writing and assign the CRP a certification number.

35
36 (h) A CRP may protest a recommendation of non-approval pursuant to the
37 Agency's appeal process in §806.61.

38
39 (i) To continue in the program, each CRP must be recertified by the Commission
40 every three years. The recertification process requires submission of all
41 previously requested documentation, a review of reports submitted to the
42 CNA, and a determination that the CRP has maintained compliance with the
43 stated requirements of the state use program. The Commission shall establish
44 a schedule for the recertification process and the CNA shall assist each CRP
45 as necessary to attain recertification. The CRP, after notification, shall submit
46 within 30 days the application for recertification and required documents to

1 the CNA. If the CRP fails to do so, the Agency may request a written
2 explanation and/or the appearance of a representative of the CRP before the
3 Agency. If the CRP fails to respond in a timely manner, the Agency may
4 consider the suspension of all state use program contracts until the
5 recertification process has been completed and approval has been attained.
6

7 (j) The CRP shall submit quarterly wage and hour reports to the CNA. These
8 reports are due no later than the last day of the month following the end of
9 the quarter. If the CRP fails to submit reports on time, the Agency may
10 request a representative of the CRP to appear before the Agency. The
11 Agency may consider the suspension of the CRP's state use program
12 contracts if compliance is not achieved in a consistent and timely manner.
13

14 (k) CRPs shall maintain compliance with the state use program regarding
15 percentage requirements related to administrative costs, supply costs, wages,
16 and hours of direct labor necessary to perform services and/or produce
17 products. Compliance will be monitored by the CNA and/or the Agency, and
18 violations will be reported promptly to the Agency. A violation will result in
19 a warning letter from the CNA or Agency, which will then offer assistance as
20 needed to achieve compliance. A CRP that fails to meet compliance
21 requirements, without a waiver from the Agency, for two quarters in any
22 four-quarter period, shall submit a written explanation and a representative of
23 the CRP will be requested to appear before the Agency. State use program
24 contracts may be suspended and/or certification revoked if compliance is not
25 immediately and consistently maintained. To attain reinstatement, the CRP
26 must apply for recertification following the procedures outlined in this
27 chapter.
28

29 (l) The Agency may review or designate a CNA or third party to review any
30 CRP participating in the state-use program to verify compliance with the
31 requirements outlined in this chapter.
32

33 (m) A CRP must not serve, in whole or part, as an outlet or front for any entity
34 whose purpose is not the employment of individuals with disabilities.
35

36 (n) A CRP shall report to the Agency any state agency that is not using the
37 program to benefit individuals with disabilities.
38

39 (o) A CRP shall promptly report any conflict of interest or receipt of benefit or
40 promise of benefit to the Agency. The Agency will consider such reports on
41 an individual basis. Verified instances of conflict of interest by a CRP may
42 result in suspension of the CRP's eligibility to participate in the state use
43 program and/or revocation of certification.
44

45 (p) The Commission, the Agency, individual members, the State of Texas, or any
46 other Texas state agency will not be responsible for any loss or losses,

1 financial or otherwise, incurred by a CRP should its product or services not
2 be approved for the state use program as provided by law.

3
4 **SUBCHAPTER E. PRODUCTS AND SERVICES**

5
6 **§806.51. Product Specifications and Exceptions.**

- 7
8 (a) A product manufactured for sale through the Comptroller to any office,
9 department, institution or agency of the state shall be manufactured or
10 produced according to specifications developed by the Comptroller. If the
11 Comptroller has not developed specifications for a particular product, the
12 production shall be based on commercial or federal specifications in current
13 use by the industry.
- 14
15 (b) Requisitions for products and/or services required by state agencies are
16 processed by the Comptroller according to Comptroller rules.
- 17
18 (c) An exception from subsection (a) of this section may be made in any case as
19 follows:
- 20
21 (1) Under the rules of the Comptroller, the product and/or service so
22 produced or provided does not meet the reasonable requirements of the
23 office, department, institution, or agency; or
- 24
25 (2) The requisitions made cannot be reasonably complied with through
26 provision of products and/or services produced by individuals with
27 disabilities.
- 28
29 (d) An office, department, institution, or agency may not evade purchasing
30 products and/or services produced or provided by individuals with disabilities
31 by requesting variations from standards adopted by the Comptroller when the
32 products and/or services produced or provided by individuals with
33 disabilities, per established standards, are reasonably adapted to the actual
34 needs of the office, department, institution, or agency and comply with Texas
35 Government Code §2155.138 and §2155.069.
- 36
37 (e) The Comptroller shall provide the Agency with a list of items known to have
38 been purchased under the exceptions provided in subsection (c) of this
39 section monthly, in the format adopted by the Agency.
- 40
41 (f) The Agency shall review submitted state agency exception reports made
42 available by the Comptroller that list purchase products or services available
43 from a CNA or CRP under this chapter, but purchased from another business
44 that is not a CNA or CRP under this chapter.
- 45

1 (g) The Agency shall coordinate with the employee designated by each state
2 agency to assist in attaining future compliance with this chapter, when an
3 agency makes and reports an unjustified purchase or purchases of a product
4 available under the programs authorized under this chapter.

5
6 **§806.52. Determination of Fair Market Value.**

7
8 (a) Pursuant to Texas Human Resources Code, Chapter 122 and Texas
9 Government Code §2155.138, a suitable product and/or service that meets
10 applicable specifications established by the state or its political subdivisions
11 and that is available within the time specified must be procured from a CRP
12 at the price determined by the Commission to be the fair market price under
13 Texas Human Resources Code §122.007.

14
15 (b) The Agency shall review products, services, and price revisions submitted by
16 the CNA on behalf of participating or prospective CRPs. Due consideration
17 shall be given to the factors set forth in Texas Human Resources Code
18 §122.015, as well as to the extent applicable, the amounts being paid for
19 similar articles in similar quantities by state agencies purchasing the products
20 or services not in the state use program.

21
22 (c) The Agency may also consider other criteria as necessary to determine the fair
23 market price of the products and/or services, including, but not limited to:

24
25 (1) changing market conditions;

26
27 (2) frequency and volume of past state purchases of the particular products
28 and/or services offered;

29
30 (3) request from a state agency that a CRP develop and provide a particular
31 product and/or service;

32
33 (4) value added necessary to maximize the employment of people with
34 disabilities; and/or

35
36 (5) quality comparison between similar products and/or services.

37
38 (d) The Comptroller shall provide the Agency with the information and resources
39 necessary for the Agency to comply with this section.

40
41 **§806.53. Recognition and Approval of Community Rehabilitation Program**
42 **Products and Services.**

43
44 (a) A CRP desiring to provide services under the state use program must comply
45 with the following requirements to obtain approval from the Commission:

- 1 (1) A minimum of 35 percent of the contract price of the service must be
2 paid to the individuals with disabilities who perform the service in the
3 form of wages and benefits;
4
5 (2) Supply costs for the service must not exceed 20 percent of the contract
6 price of the service;
7
8 (3) Administrative costs allocated to the service must not exceed 10
9 percent of the contract price for the service. At least 75 percent of the
10 hours of direct labor for each contract, necessary to perform a service,
11 must be performed by individuals with disabilities;
12
13 (4) The Agency may establish a different percentage if the Agency
14 determines that a percentage greater than the 75 percent for the offered
15 service is reasonable based on consideration of factors, including, but
16 not limited to:
17
18 (A) past practices in a particular area;
19
20 (B) whether other CRPs providing the same or similar services have
21 achieved the 75 percent requirement; and
22
23 (C) whether the Commission has established a policy goal to encourage
24 employment of individuals with disabilities in a particular field;
25
26 (5) Any necessary subcontracted services shall be performed to the
27 maximum extent possible by other CRPs and in a manner that maximizes
28 the employment of individuals with disabilities; and
29
30 (6) A detailed report will be submitted to the Agency providing breakdown
31 of -100 percent of contract dollars for services.
32
33 (b) A CRP must comply with the following requirements to obtain approval
34 from the Commission for state use products:
35
36 (1) At least 75 percent of the hours of direct labor, for each contract,
37 necessary to reform raw materials, assemble components, manufacture,
38 prepare, process and/or package a product, must be performed by
39 individuals with disabilities;
40
41 (2) Appreciable contribution and value added to the product by individuals
42 with disabilities must be determined to be substantial on a product-by-
43 product basis, based on requested documentation provided to the
44 Agency upon application for a product to be approved for the state use
45 program; and
46

- 1 (3) The Agency may establish a different percentage if the Agency
2 determines that a percentage greater than the 75 percent for the offered
3 product is reasonable based on consideration of factors, including, but
4 not limited to:
5
6 (A) past practices in a particular area;
7
8 (B) whether other CRPs providing the same or similar products have
9 achieved the 75 percent requirement;
10
11 (C) whether the Commission has established a policy goal to promote
12 workplace integration for individuals with disabilities;
13
14 (D) whether the Commission has established a policy goal to
15 encourage employment of individuals with disabilities in a
16 particular field. ; and
17
18 (4) A detailed report will be submitted to the Agency providing breakdown
19 of 100 percent of contract dollars for products.
20
21 (c) The rules governing the approval of products to be offered by a CRP apply to
22 all items that a CRP proposes to offer to state agencies or political
23 subdivisions, regardless of the method of acquisition by the agency, whether
24 by sale or lease. A CRP must own any product it leases. A proposal by a
25 CRP to rent or lease a product to a state agency is a proposal to offer a
26 product, not a service, and the item offered must meet the requirements of
27 these rules. If the product is offered for lease by the CRP, the unit cost of the
28 product, for purposes of applying the standards set forth in these rules, is the
29 total cost to the state agency of leasing the product over its expected useful
30 life.
31
32 (d) Raw materials or components may be obtained from companies operated for
33 profit, but a CRP must own any product that it offers for sale to state agencies
34 or political subdivisions through the state use program and make an
35 appreciable contribution to the product that accounts for a substantial amount
36 of the value added to the product.

SUBCHAPTER F. COMPLAINTS, VENDOR PROTESTS, RESOLUTIONS

§806.61. Consumer Information; Complaints and Resolution.

- 41 (a) Complaints regarding matters pertaining to this chapter shall be made in
42 writing and addressed to the Agency Deputy Executive Director for review
43 and determination. The written complaint must include the name and address
44 of the person who filed the complaint and the subject matter of the complaint.
45
46

- 1 (b) The Agency shall maintain an information file regarding each complaint.
2
3 (c) If a written complaint is filed with the Agency, the Agency, at least as
4 frequently as quarterly and until final disposition of the complaint, shall
5 notify the parties to the complaint of the status of the complaint unless the
6 notice would jeopardize an undercover investigation.
7
8 (d) The Agency shall provide to the individual filing the complaint, and to each
9 individual who is a subject of the complaint, a copy of the Agency's policies
10 and procedures relating to complaint investigation and resolution.
11
12 (e) Any product or service may be removed or temporarily suspended from the
13 state use program after review and/or investigation of a filed complaint, if the
14 Agency determines that a CRP is:
15
16 (1) providing products that fail to meet specifications;
17
18 (2) failing to make a delivery as promised;
19
20 (3) making unauthorized substitutions;
21
22 (4) misrepresenting merchandise;
23
24 (5) failing to make satisfactory adjustments when required; ~~or~~
25
26 (6) taking unethical actions; or
27
28 (7) non-complying with other Agency rules or contract.
29
30 (f) A product or service that has been temporarily suspended may be reinstated
31 by promptly correcting the reason(s) for suspension. A failure to make the
32 necessary correction promptly may result in the termination of the CRP's
33 contract with the CNA.
34
35 (g) Complaints shall be resolved by the Agency Deputy Executive Director.
36

37 **§806.62. Vendor Protests.**
38

- 39 (a) A protest shall be made in writing and received by the Agency within 10
40 working days after the protesting party knows, or should have known, of the
41 occurrence of the action that is protested.
42
43 (b) A protest must include:
44
45 (1) a precise statement of the relevant facts;

1 (2) a statement of any issues (of law or fact) that the protesting party
2 contends must be resolved; and

3
4 (3) a statement of the argument and authorities that the protesting party
5 offers in support of the protest.

6
7 (c) A statement that copies of the protest have been mailed or delivered to the
8 using entity and all other identifiable interested parties must be included. The
9 program manager may settle and resolve the dispute over the solicitation or
10 award of a contract at any time before the matter is submitted on appeal to the
11 deputy executive director.

12
13 (d) If the protest is not resolved by mutual agreement, the division director shall
14 issue a written determination that resolves the protest.

15
16 (e) The director's determination shall be the Agency's final administrative action.

17
18 (f) The Agency shall maintain all documentation on the purchasing process that
19 is the subject of a protest or appeal in accordance with its approved records
20 retention schedule.

21 22 **SUBCHAPTER G. DISCLOSURE OF RECORDS**

23 24 **§806.71. Records.**

25
26 (a) The Agency shall access financial or other information and records from a
27 CNA or a CRP if the Agency determines the information and records are
28 necessary for the effective administration of this chapter and rules adopted
29 under this chapter.

30
31 (b) Information and records must be obtained under subsection (a) of this section
32 in recognition of the privacy interest of individuals employed by CNAs or
33 CRPs. The information and records may not be released or made public on
34 subpoena or otherwise, except that release may be made:

35
36 (1) for statistical purposes, but only if a person is not identified;

37
38 (2) with the consent of each person identified in the information released;
39 or

40
41 (3) regarding a compensation package of any CNA employee or
42 subcontractor if determined by the Commission to be relevant to the
43 administration of this chapter.

44
45 (c) No records belonging to a CNA or a CRP may be accessed or released except
46 as authorized under the Texas Public Information Act.

1
2 (d) The Agency or a CNA shall inspect a CRP for compliance with certification
3 criteria established under Texas Human Resources Code §122.013(c).
4

5 **SUBCHAPTER H. REPORTS; PLANS**
6

7 **§806.81. Annual Financial Report**
8

9 (a) On or before November 1 of each year, the Agency shall prepare an annual
10 financial report in the form prescribed by Texas Government Code
11 §2101.011, relating to the Commission's activities, and Texas Human
12 Resources Code §122.022 relating to reports, and file the report with the
13 governor and the presiding officer of each house of the legislature.
14

15 (b) As part of the report filed under subsection (a) of this section, the Agency
16 shall provide:
17

18 (1) the number of individuals with disabilities, by type of disability, who
19 are employed in CRPs participating in the programs established by this
20 chapter or who are employed by businesses or workshops that receive
21 supportive employment from CRPs;
22

23 (2) the amount of annual wages paid to a person participating in the
24 program;
25

26 (3) a summary of the sale of products offered by a CRP;
27

28 (4) a list of products and services offered by a CRP;
29

30 (5) the geographic distribution of the CRPs;
31

32 (6) the number of individuals without disabilities who are employed in
33 CRPs under this chapter; and
34

35 (7) the average and the range of weekly wages for individuals with
36 disabilities and individuals without disabilities who are employed in
37 CRPs under this chapter.
38

39 **§806.82. Strategic Plan; Final Operating Plan.**
40

41 The Agency shall prepare a strategic plan and a final operating plan relating to the
42 Commission's activities under this chapter, as required by Texas Government
43 Code, Chapter 2054, Subchapter E.
44

45 **SUBCHAPTER I. POLITICAL SUBDIVISIONS**
46

1 **§806.91. Procurement for Political Subdivisions.**

2
3 Political subdivisions shall follow procurement rules as required by Texas Human
4 Resources Code §122.017, relating to procurement for political subdivisions.

5
6 **§806.92. Political Subdivisions Excluded.**

7
8 Excluded political subdivisions shall follow procurement rules as required by
9 Texas Human Resources Code §122.018, relating to political subdivisions
10 excluded.

11
12
13 **~~§806.1. General.~~**

14
15 ~~The Texas Council on Purchasing from People with Disabilities is~~
16 ~~responsible for fulfilling the purpose of Chapter 122 of the Texas Human~~
17 ~~Resources Code which is to:~~

- 18
19 ~~(1) further the state's policy of encouraging and assisting persons with~~
20 ~~disabilities to achieve maximum personal independence by engaging in~~
21 ~~useful productive employment activities; and~~
22
23 ~~(2) provide state agencies, departments, and institutions and political~~
24 ~~subdivisions of the state with a method for achieving conformity with~~
25 ~~requirements of nondiscrimination and affirmative action in~~
26 ~~employment matters related to persons with disabilities.~~

27
28 **~~§806.2. Definitions.~~**

29
30 ~~The following words and terms, when used in this chapter, shall have the~~
31 ~~following meanings unless the context clearly indicates otherwise.~~

- 32
33 ~~(1) Appreciable contribution—The term used to refer to the substantial~~
34 ~~work effort contributed by persons with disabilities in the reforming of~~
35 ~~raw materials, assembly of components or packaging of bulk products~~
36 ~~in more saleable quantities, by which value is added into the final~~
37 ~~product offered for sale.~~
38
39 ~~(2) Central nonprofit agency (CNA)—An agency designated as a central~~
40 ~~nonprofit agency under contract with the council pursuant to §122.019~~
41 ~~of the Texas Human Resources Code.~~
42
43 ~~(3) Chapter 122—Chapter 122 of the Texas Human Resources Code.~~
44
45 ~~(4) Community rehabilitation program (CRP)—A government entity,~~
46 ~~private nonprofit unincorporated entity which has its own nonprofit~~

1 ~~status and federal tax identification number and has as its primary~~
2 ~~purpose the employment of persons with disabilities to produce~~
3 ~~products or perform services for compensation, or a private nonprofit~~
4 ~~incorporated entity with its own federal tax identification number,~~
5 ~~articles of incorporation and bylaws that establish its existence for the~~
6 ~~primary purpose of employing persons with disabilities to produce~~
7 ~~products or perform services for compensation.~~

8
9 ~~(5) Comptroller—The Comptroller of Public Accounts.~~

10
11 ~~(6) Council—The Texas Council on Purchasing from People with~~
12 ~~Disabilities.~~

13
14 ~~(7) Direct labor—All work required for preparation, processing, and~~
15 ~~packaging of a product, or work directly relating to the performance of~~
16 ~~a service, except supervision, administration, inspection or shipping~~
17 ~~products.~~

18
19 ~~(8) Disability—A mental or physical impairment, including blindness, that~~
20 ~~impedes a person who is seeking, entering, or maintaining gainful~~
21 ~~employment.~~

22
23 ~~(9) Exception—Any product or service approved for the state use program~~
24 ~~purchased from a vendor other than a CRP because the state use~~
25 ~~product or service does not meet the applicable requirements as to~~
26 ~~quantity, quality, delivery, life cycle costs, and testing and inspection~~
27 ~~requirements pursuant to, §2155.138 and §2155.069, Government Code~~
28 ~~or as described in §122.014 and §122.016, Human Resources Code.~~

29
30 ~~(10) State use program—The statutorily authorized mandate requiring state~~
31 ~~agencies to purchase, on a nonecompetitive basis, the products made and~~
32 ~~services performed by persons with disabilities, which have been~~
33 ~~approved by the council pursuant to Human Resources Code, Chapter~~
34 ~~122 and also meet the requirements of Texas Government Code,~~
35 ~~§2155.138 and §2155.069. This program also makes approved~~
36 ~~products and services available to be purchased on a nonecompetitive~~
37 ~~basis by any political subdivision of the state.~~

38
39 ~~(11) Value added—The labor of persons with disabilities applied to raw~~
40 ~~materials, components, goods purchased in bulk form resulting in a~~
41 ~~change in the composition or marketability of component materials,~~
42 ~~packaging operations, and/or the servicing tasks associated with a~~
43 ~~product. Pass throughs are not allowed; therefore, solely affixing a~~
44 ~~packaging label to a commodity does not qualify.~~

45
46 **~~§806.3. Organization.~~**

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- ~~(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 for 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 nonprofit 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 this 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).~~

~~**§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.~~

- 1 ~~(c) It is a ground for removal from the council if a member:~~
2
3 ~~(1) does not have at the time of appointment the qualifications required by~~
4 ~~§122.003(a) of Chapter 122 for appointment to the council;~~
5
6 ~~(2) does not maintain during the service on the council the qualifications~~
7 ~~required by §122.003(a) of Chapter 122 for appointment to the council;~~
8
9 ~~(3) violates a prohibition established by §122.003(d)(e) of Chapter 122;~~
10
11 ~~(4) cannot, because of illness or disability, discharge the member's duties~~
12 ~~for a substantial part of the term for which the member is appointed; or~~
13
14 ~~(5) is absent from more than half of the regularly scheduled council~~
15 ~~meetings that the member is eligible to attend during a calendar year~~
16 ~~unless the absence is excused by majority vote of the council.~~
17
18 ~~(d) The validity of an action of the council is not affected by the fact that it was~~
19 ~~taken when a ground for removal of a member of the council existed.~~
20
21 ~~(e) If the Deputy Comptroller has knowledge that a potential ground for removal~~
22 ~~exists, the Deputy Comptroller shall notify the presiding officer of the~~
23 ~~council of the potential ground. If the presiding officer is notified under this~~
24 ~~section, or if the presiding officer has knowledge that a potential ground for~~
25 ~~removal exists, the presiding officer shall notify the governor and the~~
26 ~~attorney general that a potential ground for removal exists. If the potential~~
27 ~~ground for removal involves the presiding officer, the Deputy Comptroller~~
28 ~~shall notify the next highest officer of the council, who shall notify the~~
29 ~~governor and the attorney general that a potential ground for removal exists.~~
30

31 **~~§806.5. Open Meetings; Public Testimony and Access.~~**
32

- 33 ~~(a) A quorum of the full council or council subcommittee shall deliberate and~~
34 ~~make decisions in open meeting in accordance with Chapter 551 of the Texas~~
35 ~~Government Code and the open meeting shall be conducted pursuant to~~
36 ~~Robert's Rules of Order. The full council may meet in executive session for~~
37 ~~authorized purposes during a public meeting as allowed under Chapter 551 of~~
38 ~~the Texas Government Code.~~
39
40 ~~(b) The public will be provided a reasonable opportunity to appear before the~~
41 ~~council or council subcommittee in an open meeting and present testimony~~
42 ~~pertinent to an agenda item duly posted for said open meeting or any issue~~
43 ~~under the jurisdiction of the council.~~
44
45 ~~(c) The council shall comply with federal and state laws related to program and~~
46 ~~facility accessibility. Each CNA shall develop, for council's approval, a~~

1 ~~written plan that describes how a person who does not speak English can be~~
2 ~~provided reasonable access to the council's programs and services under its~~
3 ~~management.~~

4
5 ~~(d) The council may deliberate and take action on public testimony regarding an~~
6 ~~agenda item at the meeting for which the agenda item was duly posted.~~

7
8 ~~(e) If a member of the public inquires about a subject for which notice has not~~
9 ~~been given as required by Chapter 551 of the Texas Government Code, the~~
10 ~~notice provisions do not apply to:~~

11
12 ~~(1) a statement of specific factual information given in response to the~~
13 ~~inquiry; or~~

14
15 ~~(2) a recitation of existing policy in response to the inquiry.~~

16
17 ~~(f) Any deliberation of or decision about a subject of the inquiry shall be limited~~
18 ~~to a proposal to place the subject on the agenda for a subsequent meeting.~~

19
20 ~~(g) Protests/Dispute Resolution/Hearing~~

21
22 ~~(1) Any central nonprofit agency which has a dispute with the council or~~
23 ~~any CRP which is aggrieved in connection with the disapproval or~~
24 ~~suspension of its ability or its product or service to participate in the~~
25 ~~state use program may formally protest to the presiding officer of the~~
26 ~~council. Such protests must be in writing and received in by the~~
27 ~~presiding officer within 10 working days after such aggrieved person or~~
28 ~~entity knows, or should have known, of the occurrence of the action~~
29 ~~which is protested. The written protest must be presented to the~~
30 ~~presiding officer not later than thirty (30) days prior to the regularly~~
31 ~~scheduled council meeting. Formal protests must conform to the~~
32 ~~requirements of this paragraph and paragraph (2) of this subsection, and~~
33 ~~shall be resolved in accordance with the procedures set forth in~~
34 ~~paragraphs (3) and (4) of this subsection.~~

35
36 ~~(2) A formal protest must be sworn and contain:~~

37
38 ~~(A) a specific identification of the statutory or regulatory provision(s)~~
39 ~~that the action complained of is alleged to have violated;~~

40
41 ~~(B) a specific description of each act alleged to have violated the~~
42 ~~statutory or regulatory provision(s) identified in subparagraph~~
43 ~~(A) of this paragraph;~~

44
45 ~~(C) a precise statement of the relevant facts;~~

46

1 ~~(D)—an identification of the issue or issues to be resolved;~~

2
3 ~~(E)—argument and authorities in support of the protest; and~~

4
5 ~~(F)—a statement that copies of the protest have been mailed or~~
6 ~~delivered to the using agency and/or the CNA.~~

7
8 ~~(3)—A quorum of the full council shall have the authority to settle and~~
9 ~~resolve the dispute concerning the disapproval or suspension of a CRP~~
10 ~~or its product and/or service to participate in the state use program.~~

11
12 ~~(4)—The council will deliberate and decide whether the disputed action is to~~
13 ~~be reversed, modified or affirmed during the regularly scheduled~~
14 ~~meeting following receipt of the formal written protest. Should the~~
15 ~~council's final determination be rejected by the disputant central~~
16 ~~nonprofit agency or disputant CRP and the disputed action is to be~~
17 ~~contested further by a central nonprofit agency or CRP, the dispute~~
18 ~~shall first be submitted to alternative dispute resolution.~~

19
20 **~~§806.6—Certification and Recertification of Community Rehabilitation~~**
21 **~~Programs.~~**

22
23 ~~(a)—No applicant for certification may participate in the State Use Program prior~~
24 ~~to the Council's approval of certification.~~

25
26 ~~(b)—The Council may recognize programs that are accredited by national~~
27 ~~accepted vocational rehabilitation accrediting organizations and approve~~
28 ~~CRPs that have been approved by a state's habilitation or rehabilitation~~
29 ~~agency.~~

30
31 ~~(c)—The Council may delegate the administration of the certification process for~~
32 ~~CRPs to a CNA.~~

33
34 ~~(d)—An applicant for CRP certification must be a governmental entity; a public or~~
35 ~~private nonprofit unincorporated entity, which has its own nonprofit status~~
36 ~~and federal tax identification number and has among its purposes the~~
37 ~~employment of persons with disabilities to produce products or perform~~
38 ~~services for compensation; or a public or private nonprofit incorporated entity~~
39 ~~with its own federal tax identification number, articles of incorporation and~~
40 ~~bylaws that state among its purposes the employment of persons with~~
41 ~~disabilities to produce products or perform services for compensation.~~

42
43 ~~(e)—A certified CRP must:~~

44
45 ~~(1)—maintain payroll, human resource functions, accounting, and all~~
46 ~~relevant documentation showing that the employees who produce~~

1 products or perform services under the State Use Program are persons
2 with disabilities. Documentation shall include council-approved
3 disability determination forms which shall be subject to review at the
4 request of the council or the CNA under authority from the council,
5 with adherence to privacy and confidentiality standards applicable to
6 such CRP and employee records;

7
8 ~~(2) maintain records, including contracts with other entities, in accordance~~
9 ~~with generally accepted accounting principles, and all laws relevant to~~
10 ~~the records; and~~

11
12 ~~(3) maintain any other records or documents required by the Council.~~

13
14 ~~(f) An applicant for certification must submit a completed application and the~~
15 ~~required documents to the Certification Subcommittee, through the CNA for~~
16 ~~the State Use Program. Upon receipt, the CNA will verify the completeness~~
17 ~~and accuracy of the application. No application will be considered without~~
18 ~~the following documents:~~

19
20 ~~(1) copy of the IRS nonprofit determination under Section 501(c), when~~
21 ~~required by law;~~

22
23 ~~(2) copy of the Articles of Incorporation issued by the Secretary of State,~~
24 ~~when required by law;~~

25
26 ~~(3) list of the board of directors and officers with names, addresses, and~~
27 ~~telephone numbers;~~

28
29 ~~(4) copy of the organizational chart with job titles and names;~~

30
31 ~~(5) proof of current insurance coverage in the form of a certificate of~~
32 ~~insurance specifying each and all coverages for liability insurance for~~
33 ~~the CRP, auto insurance for vehicles owned or leased by the CRP for~~
34 ~~State Use contract purposes, and worker's compensation insurance~~
35 ~~coverage or legally recognized equivalent coverage, if applicable. Such~~
36 ~~insurance shall be carried with an insurance company authorized to do~~
37 ~~business in the State of Texas, and written notice of cancellation or any~~
38 ~~material change in insurance coverage will be provided to the CNA ten~~
39 ~~(10) days in advance of cancellation or change;~~

40
41 ~~(6) fire inspection certificate issued within one year of the Certification~~
42 ~~Subcommittee's formal consideration of the CRP application, if~~
43 ~~required by city, county, or state regulations, for each location where~~
44 ~~clients will be served or where persons with disabilities will be~~
45 ~~employed, or a statement of unavailability from the appropriate city,~~
46 ~~county, or state entity;~~

1
2 ~~(7) copy of the building inspection certificate or certificate of occupancy, if~~
3 ~~required by city, county, or state regulations, for each location where~~
4 ~~clients will be served or where persons with disabilities will be~~
5 ~~employed, or a statement of unavailability from the appropriate city,~~
6 ~~county, or state entity;~~

7
8 ~~(8) copy of the wage exemption certificate (WH 228) if below minimum~~
9 ~~wages will be paid to clients or to persons with disabilities who will be~~
10 ~~employed and a statement of explanation of circumstances requiring~~
11 ~~subminimum wages; and~~

12
13 ~~(9) notarized statement that the CRP agrees to maintain compliance with~~
14 ~~the requirement that at least seventy five percent (75%) of the CRP's~~
15 ~~total hours of direct labor necessary to perform services or reform raw~~
16 ~~materials, assemble components, manufacture, prepare, process and/or~~
17 ~~package products will be performed by persons with documented~~
18 ~~disabilities consistent with the following definition set forth in this~~
19 ~~Chapter: Disability a mental or physical impairment, including~~
20 ~~blindness, that impedes a person who is seeking, entering, or~~
21 ~~maintaining gainful employment. A waiver may be granted only with~~
22 ~~Council approval.~~

23
24 ~~(g) The CNA will submit the completed application and required documents to~~
25 ~~the Certification Subcommittee not less than fifteen (15) days prior to the~~
26 ~~regularly scheduled Certification Subcommittee meeting.~~

27
28 ~~(h) The Certification Subcommittee shall review each application and~~
29 ~~documentation and, if acceptable, forward its recommendations to the~~
30 ~~Council for approval. Once approved, the Council will notify the CRP in~~
31 ~~writing and assign the CRP a certification number.~~

32
33 ~~(i) A CRP may protest a recommendation of nonapproval at the next scheduled~~
34 ~~Certification Subcommittee meeting in accordance with the provisions of this~~
35 ~~Chapter.~~

36
37 ~~(j) Each CRP must be recertified every three (3) years by the Council. The re-~~
38 ~~certification procedure will require submission of all previously requested~~
39 ~~documentation, a review of submitted reports to the CNA, and a~~
40 ~~determination that the CRP has maintained compliance with the stated~~
41 ~~requirements of the State Use Program and the rules as stated in the Texas~~
42 ~~Administrative Code, Title 40, Chapter 189. The Council shall establish a~~
43 ~~schedule for the recertification process and the CNA shall assist each CRP as~~
44 ~~necessary to attain recertification. It is imperative that the CRP, after~~
45 ~~notification, submit within thirty (30) days the application for recertification~~
46 ~~and required documents to the CNA. If the CRP fails to do so, the Council~~

1 may request a written explanation and/or the appearance of a representative
2 of the CRP before the Council. If the CRP fails to respond in a timely
3 manner, the Council may consider the suspension of all State Use Program
4 contracts until the recertification process has been completed and approval
5 has been attained.

6
7 ~~(k) The CRP will submit quarterly wage and hour reports to the CNA. These~~
8 ~~reports are due no later than the last day of the month following the end of~~
9 ~~the quarter. If the CRP fails to submit reports on time, the Council will send~~
10 ~~a warning letter and a representative of the CRP may be requested to appear~~
11 ~~before the Council. If compliance is not achieved in a consistent and timely~~
12 ~~manner, the Council, at its discretion, may consider the suspension of the~~
13 ~~CRP's State Use Program contracts.~~

14
15 ~~(l) It is imperative that CRPs maintain compliance with the State Use Program in~~
16 ~~regard to percentage requirements related to administrative costs, supplies~~
17 ~~cost, wages, and hours of direct labor necessary to perform services and/or~~
18 ~~produce products. Compliance will be monitored by the CNA and violations~~
19 ~~will be reported promptly to the Council. A violation will result in a warning~~
20 ~~letter from the Council and the CNA will offer assistance as needed to~~
21 ~~achieve compliance. A CRP that fails to meet compliance requirements,~~
22 ~~without a waiver from the Council, for two quarters in any four quarter~~
23 ~~period must submit a written explanation and a representative of the CRP will~~
24 ~~be requested to appear before the Council. State Use Program contracts may~~
25 ~~be suspended and/or certification revoked if compliance is not immediately~~
26 ~~and consistently maintained. In order to attain reinstatement, the CRP must~~
27 ~~apply for recertification following the procedures outlined in this chapter.~~

28
29 ~~(m) The Council, at its sole discretion, may review or have reviewed any CRP~~
30 ~~participating in the State Use Program to verify that the CRP meets and~~
31 ~~maintains the requirements outlined in this chapter. A CRP shall not submit~~
32 ~~any false statement relating to certification requirements, employment of~~
33 ~~and/or number of persons with disabilities, and nature and/or quality of~~
34 ~~products and services offered through the State Use Program. A CRP must~~
35 ~~not serve, in whole or part, as an outlet or front for any entity whose purpose~~
36 ~~is not the employment of people with disabilities. A CRP shall promptly~~
37 ~~report any conflict of interest or receipt of benefit or promise of benefit to the~~
38 ~~Council. The Council will consider such reports on an individual basis.~~
39 ~~Verified instances of conflict of interest by a CRP may result in suspension of~~
40 ~~the CRP's eligibility to participate in the State Use Program and/or revocation~~
41 ~~of certification.~~

42
43 ~~(n) The Council, individual Council members, the State of Texas, or any other~~
44 ~~Texas state agency will not be responsible for any loss or losses, financial or~~
45 ~~otherwise, incurred by a CRP should its product or services not be approved~~
46 ~~for the State Use Program as provided by law.~~

1
2 **~~§806.7. Contracting with Central Nonprofit Agencies.~~**
3

4 ~~(a) The council may select and contract with one or more central nonprofit~~
5 ~~agencies and shall contract through a request for proposals for a period not to~~
6 ~~exceed five years to perform, at a minimum, the duties set forth in~~
7 ~~§122.019(a) and (b) of Chapter 122 of the Human Resources Code.~~
8

9 ~~(b) The management fee rate charged by a central nonprofit agency for its~~
10 ~~services to the CRP(s) and its method of calculation must be approved by the~~
11 ~~council. The maximum management fee rate must be:~~
12

13 ~~(1) — computed as a percentage of the selling price of the product; or~~
14

15 ~~(2) — the contract price of a service; and~~
16

17 ~~(3) — must be included in the selling price or contract price; and~~
18

19 ~~(4) — must be paid at the time of sale.~~
20

21 ~~(c) The council shall annually review the management fee and shall publish in~~
22 ~~the *Texas Register* a request for comment on the proposed management fee~~
23 ~~not later than the 60th day before the review. The council shall give~~
24 ~~reasonable notice of the intended management fee review to each CRP. In~~
25 ~~the event of a proposed management fee rate change the council shall require~~
26 ~~the CNA to provide documentation in support of any such change. Any~~
27 ~~supporting documentation of the CNA's proposed rate shall be made~~
28 ~~available to the public upon request. The council, at its sole discretion, may~~
29 ~~negotiate and approve varying management fees for a CNA to provide a fee~~
30 ~~structure that corresponds to the level of service being given by a CNA to~~
31 ~~each of the CRPs.~~
32

33 ~~(d) A percentage of the management fee described in subsection (b) of this~~
34 ~~section shall be set by the council and paid to the council in an amount~~
35 ~~necessary to reimburse the general revenue fund for direct and reasonable~~
36 ~~costs incurred by the comptroller in administering its duties under Chapter~~
37 ~~122.~~
38

39 ~~(e) In accordance with the Texas Human Resources Code, §122.019(c), the~~
40 ~~council shall annually review services by and the performance of a CNA, and~~
41 ~~the revenue required to accomplish the program. The purpose of the review~~
42 ~~shall be to determine whether a CNA has complied with statutory~~
43 ~~requirements, contract requirements, and performance standards set forth in~~
44 ~~§189.12 of this title (relating to performance standards for a central nonprofit~~
45 ~~agency).~~
46

- 1 ~~(f) Following the review of a CNA as required by §122.019(d) of the Human~~
2 ~~Resources Code, the council at its sole discretion, may approve the~~
3 ~~performance of the central nonprofit agency and the continuation of the~~
4 ~~contract through its termination date. The council may issue a request for~~
5 ~~proposals or negotiate an emergency contract not to exceed one year, when a~~
6 ~~contract with a CNA is terminated by the council because:~~
7
8 ~~(1) the central nonprofit agency ceases operations;~~
9
10 ~~(2) the central nonprofit agency gives notice that it cannot complete~~
11 ~~the contract;~~
12
13 ~~(3) the central nonprofit agency's performance contract has been~~
14 ~~terminated due to its failure to perform its contractual~~
15 ~~obligations; or~~
16
17 ~~(4) review of the central nonprofit agency results in disapproval of its~~
18 ~~performance.~~
19
20 ~~(g) In the event a new CNA succeeds to the contract for any reason provided in~~
21 ~~these rules, the prior CNA shall cooperate fully and assist the new CNA to~~
22 ~~take over CNA duties and responsibilities as soon as possible with minimal~~
23 ~~disruption to the operations of the program. Such cooperation and assistance~~
24 ~~will include turning over to the council the terminated CNA's records~~
25 ~~described in the Texas Human Resources Code §122.009(a), which includes~~
26 ~~but is not limited to a marketing plan, a listing of CRPs participating in the~~
27 ~~state use program, copies of all contracts with CRPs participating in the state~~
28 ~~use program, a listing of state agencies that purchase state use products and~~
29 ~~services, program funding requirements, and job descriptions for staffing a~~
30 ~~CNA to perform its duties under its contract with the council.~~
31
32 ~~(h) Not later than the 60th day before the date the council adopts or renews a~~
33 ~~contract, the council shall publish notice of the proposed contract in the *Texas*~~
34 ~~*Register*.~~
35
36 ~~(i) No later than October 1st of each year the CNA will provide to the council,~~
37 ~~regarding CRP(s) which have contracted with the CNA, the following~~
38 ~~information for the period of July 1st through June 30th of each year:~~
39
40 ~~(1) for CRPs:~~
41
42 ~~(A) a collective executive summary of the CRPs annual state use~~
43 ~~program evaluations;~~
44
45 ~~(B) the number of disabled persons employed by type of disability~~
46 ~~and the number of nondisabled workers employed in programs~~

1 managed by the CRP(s) or who are employed by businesses or
2 workshops that receive supportive employment from CRPs;

3
4 ~~(C) the amount of annual wages and the average and range of weekly~~
5 ~~earnings for disabled and nondisabled workers who are employed~~
6 ~~in CRPs under this chapter;~~

7
8 ~~(D) a summary of the sale of products offered by the CRP(s);~~

9
10 ~~(E) a list of products and/or services offered by a CRP;~~

11
12 ~~(F) the geographic distribution of CRP(s); and~~

13
14 ~~(G) a report of all CRPs that have not met the criteria for participation~~
15 ~~in the state use program in a format approved by the council.~~

16
17 ~~(2) from each CRP data on individual outplacement or supported~~
18 ~~employment to include:~~

19
20 ~~(A) the number of individuals in outplacement employed;~~

21
22 ~~(B) the hourly wage range;~~

23
24 ~~(C) the range of hours worked; and~~

25
26 ~~(D) the number of disabled persons employed by primary type of~~
27 ~~disability.~~

28
29 ~~(j) In accordance with the Texas Human Resource Code, §122.019 (c) and~~
30 ~~§122.019(d), a CNA will provide or make available to the council:~~

31
32 ~~(1) quarterly reports for each calendar quarter of its contract of sales of~~
33 ~~products or services, wages paid and hours worked by persons with~~
34 ~~disabilities for CRPs participating in the state use program;~~

35
36 ~~(2) quarterly reports for each calendar quarter listing CRPs that do not~~
37 ~~meet criteria for participation in the state use program and the reasons~~
38 ~~that each CRP listed does not meet the criteria;~~

39
40 ~~(3) at least once a year by October 31st, and prior to any review and/or re-~~
41 ~~negotiation of the contract:~~

42
43 ~~(A) an updated marketing plan;~~

44
45 ~~(B) a proposed annual budget with estimated sales, commissions, and~~
46 ~~expenses;~~

1
2 ~~(C) a program budget with details on how the expected revenue and~~
3 ~~expenses will be allocated to directly support and expand the~~
4 ~~state use program and other programs that expand direct services~~
5 ~~and/or the enhancement of employment opportunities for persons~~
6 ~~with disabilities; and~~

7
8 ~~(D) an audited annual financial statement which should include~~
9 ~~information on FDIC coverage of all cash balances, earnings~~
10 ~~attributed to the management fee for the state use program,~~
11 ~~accounts receivable, cash reserves, line of credit borrowings,~~
12 ~~interest payments, bad debt, administrative overhead and any~~
13 ~~detailed supporting documentation requested by the council;~~

14
15 ~~(4) quarterly reports of categories of expenditures in reporting format~~
16 ~~approved by the council;~~

17
18 ~~(5) records in accordance with the Texas Human Resources Code~~
19 ~~§122.009(a) and §122.0019(d) for audit purposes, provided however,~~
20 ~~that any records provided by a CNA which may be subject to any~~
21 ~~exception to Chapter 552 of the Texas Government Code, would not be~~
22 ~~disclosed to any third party except with the permission of the CNA or~~
23 ~~in accordance with the provisions of Chapter 552, Government Code~~
24 ~~(the "Public Information Act"); and~~

25
26 ~~(6) any other information the council requests as set forth in Chapter 189~~
27 ~~of this title (relating to Purchase of Products and Services from Persons~~
28 ~~with Disabilities).~~

29
30 ~~(k) Duties of a CNA include, but not be limited to:~~

31
32 ~~(1) recruit and assist community rehabilitation programs in developing and~~
33 ~~submitting applications for the selection of suitable products and~~
34 ~~services;~~

35
36 ~~(2) facilitate the distribution of orders among community rehabilitation~~
37 ~~programs;~~

38
39 ~~(3) manage and coordinate the day to day operations of the program,~~
40 ~~including the general administration of contracts with community~~
41 ~~rehabilitation programs;~~

42
43 ~~(4) promote increased supported employment opportunities for persons~~
44 ~~with disabilities;~~

1 ~~(5) investigate products and services before they are proposed by CRPs for~~
2 ~~the state use program and after their approval for compliance with~~
3 ~~Texas Government Code §2155.138 and §2155.069; and~~

4
5 ~~(6) monitor CRPs to ensure that all criteria for participation in the state use~~
6 ~~program are met.~~

7
8 ~~(l) The services of a central nonprofit agency may include marketing and~~
9 ~~marketing support services, such as:~~

10
11 ~~(1) assistance to CRPs regarding solicitation and negotiation of contracts;~~

12
13 ~~(2) direct marketing of products and services to state agencies and political~~
14 ~~subdivisions;~~

15
16 ~~(3) research and development of products and services;~~

17
18 ~~(4) public relations activities to promote the program;~~

19
20 ~~(5) customer relations;~~

21
22 ~~(6) education and training;~~

23
24 ~~(7) accounting services related to purchase orders, invoices, and payments~~
25 ~~to CRPs; and~~

26
27 ~~(8) other duties as designated by the council that may include:~~

28
29 ~~(A) establishing a payment system with a goal to pay CRPs within~~
30 ~~fourteen (14) to twenty one (21) calendar days, but not less than~~
31 ~~thirty (30) days of completion of work and proper invoicing;~~

32
33 ~~(B) resolving contract issues and/or problems as they arise between~~
34 ~~the CRPs and customers of the program, referring those that~~
35 ~~cannot be resolved to the council;~~

36
37 ~~(C) maintaining a system that tracks and monitors product and service~~
38 ~~sales; and~~

39
40 ~~(D) tracking and reporting quality and delivery times of products and~~
41 ~~services.~~

42
43 ~~(m) Each year by October 31st, a central nonprofit agency will establish~~
44 ~~performance goals for the next fiscal year in support of objectives set by the~~
45 ~~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.~~

~~(o) The council may terminate a contract with a central nonprofit agency if:~~

- ~~(1) the council finds substantial evidence of the central nonprofit 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 nonprofit 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 nonprofit agency; or~~
- ~~(2) the financial condition of any central nonprofit agency.~~

~~(q) A person may not operate a community rehabilitation program and at the same time contract with the council as a central nonprofit agency.~~

~~(r) The council must annually review the management fees the CRPs are charged by the CNAs.~~

~~§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.~~

- 1 ~~(b) Requisitions for products and/or services required by state agencies are~~
2 ~~processed by the comptroller according to comptroller rules.~~
3
- 4 ~~(c) An exception from subsection (a) of this section may be made in any case as~~
5 ~~follows:~~
6
- 7 ~~(1) under the rules of the comptroller, the product and/or service so~~
8 ~~produced or provided does not meet the reasonable requirements of the~~
9 ~~office, department, institution, or agency; or~~
10
- 11 ~~(2) the requisitions made cannot be reasonably complied with through~~
12 ~~provision of products and/or services produced by persons with~~
13 ~~disabilities.~~
14
- 15 ~~(d) An office, department, institution, or agency may not evade purchasing~~
16 ~~products and/or services produced or provided by persons with disabilities by~~
17 ~~requesting variations from standards adopted by the comptroller when the~~
18 ~~products and/or services produced or provided by persons with disabilities,~~
19 ~~per established standards, are reasonably adapted to the actual needs of the~~
20 ~~office, department, institution, or agency and comply with Government Code~~
21 ~~§2155.138 and §2155.069.~~
22
- 23 ~~(e) The comptroller shall provide the council with a list of items known to have~~
24 ~~been purchased under the exceptions provided in subsection (c) of this~~
25 ~~section monthly, in the format adopted by the council.~~
26
- 27 ~~(f) The council, subcommittee, or staff shall review and process the exception~~
28 ~~reports received from state agencies, and the comptroller that purchase~~
29 ~~products or services available from a central nonprofit agency or community~~
30 ~~rehabilitation program under this chapter, but purchased from another~~
31 ~~business that is not a central nonprofit agency or community rehabilitation~~
32 ~~program under this chapter.~~
33
- 34 ~~(g) The council shall coordinate with the respective employee, designated by~~
35 ~~each state agency, to assist in attaining future compliance with this chapter,~~
36 ~~when an agency makes and reports an unjustified purchase or purchases of a~~
37 ~~product available under the programs authorized by this chapter,~~
38
- 39 ~~(h) Council may request an Attorney General opinion prior to engaging in~~
40 ~~alternative dispute resolution.~~
41

42
43 **~~§806.9. Determination of Fair Market Value.~~**
44

- 45 ~~(a) Pursuant to §122.008 of Chapter 122 of the Texas Human Resources Code~~
46 ~~and §2155.138 of the Texas Government Code, a suitable product and/or~~

1 service that meets applicable specifications and that is available within the
2 time specified must be procured from a CRP at the price determined by the
3 council to be the fair market price.

4
5 ~~(b) The pricing subcommittee shall review products, services and price revisions~~
6 ~~submitted by the CNA on behalf of participating or prospective CRP(s). Due~~
7 ~~consideration shall be given to the following factors set forth in the Human~~
8 ~~Resources Code §122.015 and other criteria which is necessary to determine~~
9 ~~the fair market price of the products and/or services:~~

10
11 ~~(1) to the extent applicable, the amounts being paid for similar articles in~~
12 ~~similar quantities by state agencies purchasing the products or services~~
13 ~~not in the state use program;~~

14
15 ~~(2) the amounts which private business would pay for similar products or~~
16 ~~services in similar quantities if purchasing from a reputable corporation~~
17 ~~engaged in the business of selling similar products or services;~~

18
19 ~~(3) to the extent applicable, the amount paid by the state in any recent~~
20 ~~purchases of similar products or services in similar quantities, making~~
21 ~~due allowance for general inflationary or deflationary trends;~~

22
23 ~~(4) the actual cost of manufacturing the product or performing a service at~~
24 ~~a community rehabilitation program offering employment services on~~
25 ~~or off premises to persons with disabilities, with adequate weight to be~~
26 ~~given to legal and moral imperatives to pay workers with disabilities~~
27 ~~equitable wages; or~~

28
29 ~~(5) the usual, customary, and reasonable costs of manufacturing,~~
30 ~~marketing, and distribution.~~

31
32 ~~(c) The pricing subcommittee shall recommend its decisions regarding products,~~
33 ~~services and price revisions to the full council for formal action.~~

34
35 ~~(d) The council shall revise the prices periodically to reflect changing market~~
36 ~~conditions.~~

37
38 **~~§806.10. Consumer Information; Complaints and Resolution.~~**

39
40 ~~(a) Complaints regarding matters under the jurisdiction of the council shall be~~
41 ~~made in writing and addressed to the council's presiding officer who shall~~
42 ~~refer the complaint to the appropriate subcommittee for review and~~
43 ~~determination. The subcommittee shall then recommend action on the~~
44 ~~complaint to the full council. The council shall maintain information~~
45 ~~regarding each complaint. The written complaint must include the name and~~

1 address of the person who filed the complaint and the subject matter of the
2 complaint.

3
4 ~~(b) Any product or service may be removed or temporarily suspended from the
5 state use program as a result of a CRP:~~

6
7 ~~(1) continuing to provide products that fail to meet specifications;~~

8
9 ~~(2) continuing to fail to make a delivery as promised;~~

10
11 ~~(3) making unauthorized substitutions;~~

12
13 ~~(4) misrepresenting merchandise;~~

14
15 ~~(5) failing to make satisfactory adjustments when required; or~~

16
17 ~~(6) unethical actions.~~

18
19 ~~(c) A product or service which has been temporarily suspended may be
20 reinstated by promptly correcting the reason(s) for suspension. A failure to
21 make the necessary correction promptly may result in the termination of the
22 CRP's contract with the CNA.~~

23
24 ~~(d) Complaints shall be resolved by a quorum of the council.~~

25
26
27 **~~§806.11. Records.~~**

28
29 ~~(a) The comptroller is the depository for all records of the council's operations
30 and disclosure of records are subject to requirements of Chapter 552 of the
31 Texas Government Code (the "Public Information Act").~~

32
33 ~~(b) The council or the council's staff, when approved in advance by the council,
34 may access financial or other information and records from a central
35 nonprofit agency or a community rehabilitation program if the council
36 determines the information and records are necessary for the effective
37 administration of this chapter and rules adopted under this chapter.~~

38
39 ~~(c) Information and records must be obtained under subsection (b) in recognition
40 of the privacy interest of persons employed by central nonprofit agencies or
41 community rehabilitation programs. The information and records may not be
42 released or made public on subpoena or otherwise, except that release may be
43 made:~~

44
45 ~~(1) for statistical purposes, but only if a person is not identified;~~

1 ~~(2) with the consent of each person identified in the release; or~~

2
3 ~~(3) regarding a compensation package of any central nonprofit agency~~
4 ~~employee or subcontractor if determined by the council to be relevant~~
5 ~~to the administration of this chapter.~~

6
7 ~~(d) No records may be accessed or released without the council chairperson's written~~
8 ~~approval given in response to a written request. Anyone, including one or more~~
9 ~~council members, council staff, or any other individual or entity, seeking to~~
10 ~~access or receive copies of a record or records belonging to a central nonprofit~~
11 ~~agency or a community rehabilitation program shall follow the following~~
12 ~~procedure.~~

13
14 ~~§806.12. Performance Standards for a Central Nonprofit Agency.~~

15
16 ~~(a) A CNA shall meet performance standards in carrying out the terms and~~
17 ~~conditions of the contract.~~

18
19 ~~(b) Operating pursuant to the statute and rules of the council, a CNA must~~
20 ~~manage and coordinate the day-to-day operation of the state use program~~
21 ~~including, but not limited to the following activities:~~

22
23 ~~(1) strive to increase employment for persons with disabilities by ten~~
24 ~~percent (10%) per year by researching new products, services and~~
25 ~~markets, improving existing products and services, and reporting to the~~
26 ~~council on a quarterly basis the status of these activities;~~

27
28 ~~(2) provide superior customer relations by monitoring customer~~
29 ~~satisfaction with products and services, responding to customer~~
30 ~~complaints within one business day or less, and reporting to the council~~
31 ~~on a quarterly basis the level of consumer satisfaction for each CRP~~
32 ~~based on complaints as to products or services provided by each CRP~~
33 ~~with a goal of incurring no more than five complaints per year that have~~
34 ~~not been resolved to the customer's satisfaction;~~

35
36 ~~(3) provide quarterly regional information workshops to promote the state~~
37 ~~use program;~~

38
39 ~~(4) provide quarterly regional training programs to the CRPs on the~~
40 ~~requirements to participate in the state use program, governmental~~
41 ~~contracting, and procurement procedures and laws;~~

42
43 ~~(5) resolve contract issues and/or problems as they arise between the~~
44 ~~CRPs, the CNA, and/or customers, referring those that cannot be~~
45 ~~resolved to the council and submit quarterly status reports on issues and~~
46 ~~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 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 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 CRP;~~
- ~~(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)~~

1 weeks of the request. Disclosure to the public of any and all records of
2 a CNA shall be subject to the Public Information Act.
3

4 ~~§806.13. Recognition and Approval of Community Rehabilitation Program~~
5 ~~Products and Services.~~
6

7 ~~(a) A CRP desiring to provide services under the state use program must comply~~
8 ~~with the following requirements to obtain approval from the council:~~
9

10 ~~(1) A minimum of thirty-five percent (35%) of the contract price of the~~
11 ~~service must be paid to persons with disabilities who perform the~~
12 ~~service in the form of wages and benefits; however, the council may~~
13 ~~accept a lower percentage when it is satisfied that this percentage is not~~
14 ~~feasible for a particular service.~~
15

16 ~~(2) Supply costs for the service must not exceed twenty percent (20%) of~~
17 ~~the contract price of the service; however, the council may accept a~~
18 ~~larger percentage when it is satisfied that this percentage is not feasible~~
19 ~~for a particular service.~~
20

21 ~~(3) Administrative costs allocated to the service must not exceed ten~~
22 ~~percent (10%) of the contract price for the service. At least seventy-~~
23 ~~five percent (75%) of the hours of direct labor necessary to perform a~~
24 ~~service must be done by persons with disabilities; however, the council~~
25 ~~may accept a lower percentage when it is satisfied that this percentage~~
26 ~~is not feasible for a particular service.~~
27

28 ~~(b) A CRP must comply with the following requirements to obtain approval~~
29 ~~from the council for state use products:~~
30

31 ~~(1) At least seventy-five percent (75%) of the hours of direct labor~~
32 ~~necessary to reform raw materials, assemble components, manufacture,~~
33 ~~prepare, process and/or package a product must be done by persons~~
34 ~~with disabilities; however, the council may accept a lower percentage~~
35 ~~when it is satisfied that this percentage is not feasible for a particular~~
36 ~~product.~~
37

38 ~~(2) Appreciable contribution and value added to the product by persons~~
39 ~~with disabilities must be determined on a product by product basis to~~
40 ~~be substantial based on acceptable documentation provided to the~~
41 ~~council upon application for a product to be approved for the state use~~
42 ~~program.~~
43

44 ~~(c) The rules governing the approval of products to be offered by community~~
45 ~~rehabilitation programs apply to all items that a community rehabilitation~~
46 ~~program proposes to offer to state agencies or political subdivisions;~~

1 regardless of the method of acquisition by the agency, whether by sale or
2 lease. A community rehabilitation program must in fact own any product or
3 products it leases. A proposal by a community rehabilitation program to rent
4 or lease a product to a state agency is a proposal to offer a product, not a
5 service, and the item offered must meet the requirements of these rules
6 governing products. If the product is offered for lease by the community
7 rehabilitation program, the unit cost of the product, for purposes of applying
8 the standards set forth in these rules, is the total cost to the state agency of
9 leasing the product over its expected useful life.

10
11 (d) ~~Any necessary subcontracted services shall be performed to the maximum~~
12 ~~extent possible by other community rehabilitation programs and in a manner~~
13 ~~that maximizes the employment of persons with disabilities.~~

14
15 (e) ~~Raw materials or components may be obtained from companies operated for~~
16 ~~profit, but a community rehabilitation program must own any product that it~~
17 ~~offers for sale to state agencies or political subdivisions through the state use~~
18 ~~program and make an appreciable contribution to the product which accounts~~
19 ~~for a substantial amount of the value added to the product.~~