

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

3
4 **PROPOSED 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 NOVEMBER 8, 2016, THE TEXAS WORKFORCE COMMISSION PROPOSED**
10 **THE BELOW RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS***
11 ***REGISTER*.**

12
13 Estimated Publication Date of the Proposal in the *Texas Register*: **November 25, 2016**
14 Estimated End of Comment Period: **December 26, 2016**

15
16 The Commission proposes new sections to Chapter 806, relating to Purchases of Products
17 and Services from People with Disabilities, as follows:

- 18
19 Subchapter A. General Provisions Regarding Purchases of Products and Services from
20 People with Disabilities, §806.1 and §806.2
21 Subchapter B. Advisory Committee Responsibilities, Meeting Guidelines, §806.21 and
22 §806.22
23 Subchapter C. Central Nonprofit Agencies, §806.31 and §806.32
24 Subchapter D. Community Rehabilitation Programs, §806.41
25 Subchapter E. Products and Services, §§806.51 - 806.53
26 Subchapter F. Complaints, Vendor Protests, Resolutions, §806.61 and §806.62
27 Subchapter G. Disclosure of Records, §806.71
28 Subchapter H. Reports; Plans, §806.81 and §806.82
29 Subchapter I. Political Subdivisions, §806.91 and §806.92

30
31 The Commission proposes the repeal of the following sections of Chapter 806, relating to
32 Purchases of Products and Services from People with Disabilities, as follows:

- 33
34 General, §806.1
35 Definitions, §806.2
36 Organization, §806.3
37 Ethical Standards, §806.4
38 Open Meetings; Public Testimony and Access, §806.5
39 Certification and Recertification of Community Rehabilitation Programs, §806.6
40 Contracting with Central Nonprofit Agencies, §806.7
41 Product Specifications and Exceptions, §806.8
42 Determination of Fair Market Value, §806.9
43 Consumer Information; Complaints and Resolution, §806.10
44 Records, §806.11
45 Performance Standards for a Central Nonprofit Agency, §806.12

1 Recognition and Approval of Community Rehabilitation Program Products and Services,
2 §806.13

- 3
- 4 PART I. PURPOSE, BACKGROUND, AND AUTHORITY
- 5 PART II. EXPLANATION OF INDIVIDUAL PROVISIONS
- 6 PART III. IMPACT STATEMENTS
- 7 PART IV. COORDINATION ACTIVITIES

8

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

10 The purpose of the amendments to the Chapter 806 rules is to comply with the
11 requirements of Senate Bill (SB) 212, enacted by the 84th Texas Legislature, Regular
12 Session (2015), which abolished the Texas Council on Purchasing from People with
13 Disabilities (Council). Section 29 (a) of SB 212 §29(a) transferred all former Council
14 powers and duties to the Texas Workforce Commission (Agency) to administer the
15 Purchasing from People with Disabilities (PPD) program effective September 1, 2015.
16 Per SB 212, the rules of the Texas Comptroller of Public Accounts (comptroller) were
17 transferred to the Agency and placed in 40 Texas Administrative Code Chapter 806.

18

19 SB 212's primary impact was the abolishment of the Council. The Council was replaced
20 with an advisory committee appointed by the Commission, which serves in a different
21 capacity.

22

23 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

24

25 **SUBCHAPTER A. GENERAL PROVISIONS REGARDING PURCHASES OF**
26 **PRODUCTS AND SERVICES FROM PEOPLE WITH DISABILITIES**

27 The Commission proposes new Subchapter A, General Provisions Regarding Purchases
28 of Products and Services from People with Disabilities, as follows:

29

30 **§806.1. General**

31 New §806.1 establishes the purpose of the Purchases of Products and Services from
32 People with Disabilities state use program and names the Agency as the administering
33 agency. The Commission proposes to modify §806.1 to remove references to "the Texas
34 Council on Purchasing from People with Disabilities (TCPPD)" and replace them with
35 "Commission," pursuant to SB 212.

36

37 **§806.2. Definitions**

38 New §806.2(1) defines "Appreciable contribution." The Agency proposes to replace the
39 term "persons" with "individuals" pursuant to SB 212, to align with statute and the
40 Agency's rule structure.

41

42 New §806.2(2) adds a new definition for "Advisory Committee" pursuant to SB 212, to
43 align with statute and the Agency's rule structure.

44

45 New §806.2(3) defines "Central nonprofit agency." Based on a review of the Council's
46 rules transferred from the Comptroller, the Agency retains this definition, replaces the

1 term "Council" with "Agency" per SB 212, and renumbers accordingly.

2
3 New §806.2(4) defines "Chapter 122." Based on a review of the Council's rules
4 transferred from the Comptroller, the Agency retains this definition and renumbers
5 accordingly.

6
7 New §806.2(5) defines "Community rehabilitation program." Based on a review of the
8 Council's rules transferred from the Comptroller, the Agency modifies this definition per
9 SB 212 and renumbers accordingly.

10
11 The previous §806.2(6) definition of "The Texas Council on Purchasing from People
12 with Disabilities" has been removed, as it is no longer applicable to this chapter.

13
14 New §806.2(6) defines "Comptroller." Based on a review of the Council's rules
15 transferred from the Comptroller, the Agency retains this definition and renumbers
16 accordingly.

17
18 New §806.2(10) defines "State use program." Based on a review of the Council's rules
19 transferred from the Comptroller, the Agency retains this definition, replaces the term
20 "Council" with "Agency" and the term "persons" with "individuals" per SB 212.

21
22 New §806.2(11) defines "Value added." Based on a review of the Council's rules
23 transferred from the Comptroller, the Agency retains this definition and replaces the term
24 "persons" with "individuals" per SB 212.

25
26 **SUBCHAPTER B. ADVISORY COMMITTEE RESPONSIBILITIES AND**
27 **MEETING GUIDELINES**

28 The Commission proposes new Subchapter B, Advisory Committee Responsibilities,
29 Meeting Guidelines, as follows:

30
31 **§806.21. Advisory Committee**

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

35
36 **§806.22. Open Meetings: Public Testimony and Access**

37 New §806.22 sets forth the requirements of the Committee to comply with the Open
38 Meetings Law, Open Meetings Act, and Texas Government Code, Chapter 2001.

39
40 **SUBCHAPTER C. CENTRAL NONPROFIT AGENCIES**

41 The Commission proposes new Subchapter C, Central Nonprofit Agencies, as follows:

42
43 **§806.31. Contracting with Central Nonprofit Agencies**

44 New §806.31 sets forth the contract requirements and responsibilities of the Agency,
45 Commission, and CNAs.

1 **§806.32. Performance Standards and Goals for a Central Nonprofit Agency**

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

3
4 **SUBCHAPTER D. COMMUNITY REHABILITATION PROGRAMS**

5 The Commission proposes new Subchapter D, Community Rehabilitation Programs, as
6 follows:

7
8
9 **§806.41. Certification and Recertification of Community Rehabilitation Programs**

10 New §806.41 sets forth the criteria and requirements the Commission and Agency will
11 use to certify and recertify CRPs.

12
13 **SUBCHAPTER E. PRODUCTS AND SERVICES**

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

15
16 **§806.51. Product Specifications and Exceptions**

17 New §806.51 provides language that products must meet certain specifications in order to
18 be available for purchase by state agencies under Texas Human Resources Code
19 §122.014 and §122.016.

20
21 **§806.52. Determination of Fair Market Value**

22 New §806.52 provides language that products and services are required to be at a price
23 determined to be the fair market price under Texas Human Resources Code §122.007 and
24 §122.015.

25
26 **§806.53. Recognition and Approval of Community Rehabilitation Program**
27 **Products and Services**

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

30
31 **SUBCHAPTER F. COMPLAINTS, PROTESTS, RESOLUTIONS**

32 The Commission proposes new Subchapter F, Complaints, Vendor Protests, Resolutions,
33 as follows:

34
35 **§806.61. Consumer Information; Complaints and Resolution**

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

38
39 **§806.62. Vendor Protests.**

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

42
43 **SUBCHAPTER G. DISCLOSURE OF RECORDS**

44 The Commission proposes new Subchapter G, Disclosure of Records, as follows:

45
46 **§806.71. Records**

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

2
3 **SUBCHAPTER H. REPORTS; PLANS**

4 The Commission proposes new Subchapter H, Reports; Plans, as follows:

5
6 **§806.81. Annual Financial Report**

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

10
11 **§806.82. Strategic Plan: Final Operating Plan**

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

16
17 **SUBCHAPTER I. POLITICAL SUBDIVISIONS**

18 The Commission proposes new Subchapter I, Political Subdivisions, as follows:

19
20 **§806.91. Procurement for Political Subdivisions**

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

24
25 **§806.92. Political Subdivisions Excluded**

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

29
30 **PART III. IMPACT STATEMENTS**

31 Randy Townsend, Chief Financial Officer, has determined that for each year of the first
32 five years the rules will be in effect, the following statements will apply:

33
34 There are no additional estimated costs to the state and to local governments expected as
35 a result of enforcing or administering the rules.

36
37 There are no estimated cost reductions to the state and to local governments as a result of
38 enforcing or administering the rules.

39
40 There are no estimated losses or increases in revenue to the state or to local governments
41 as a result of enforcing or administering the rules.

42
43 There are no foreseeable implications relating to costs or revenue of the state or local
44 governments as a result of enforcing or administering the rules.

45
46 There are no anticipated economic costs to individuals required to comply with the rules.

1
2 There is no anticipated adverse economic impact on small or microbusinesses as a result
3 of enforcing or administering the rules.
4

5
6 Economic Impact Statement and Regulatory Flexibility Analysis

7 The Agency has determined that the proposed rules will not have an adverse economic
8 impact on small businesses as these proposed rules place no requirements on small
9 businesses.
10

11 Doyle Fuchs, Director of Labor Market and Career Information, has determined that there
12 is no significant negative impact upon employment conditions in the state as a result of
13 the rules.
14

15 Reagan Miller, Deputy Director, Workforce Solutions, has determined that for each year
16 of the first five years the rules are in effect, the public benefit anticipated as a result of
17 enforcing the proposed rules will be to ensure state agencies purchase products and
18 services through businesses that employ people with disabilities.
19

20 The Agency hereby certifies that the proposal has been reviewed by legal counsel and
21 found to be within the Agency's legal authority to adopt.
22

23 **PART IV. COORDINATION ACTIVITIES**

24 In the development of these rules for publication and public comment, the Commission
25 sought the involvement of Texas' 28 Boards. The Commission provided the concept
26 paper regarding these rule amendments to the Boards for consideration and review on
27 June 30, 2016. The Commission also conducted a conference call with Board executive
28 directors and Board staff on July 8, 2016, to discuss the concept paper. During the
29 rulemaking process, the Commission considered all information gathered in order to
30 develop rules that provide clear and concise direction to all parties involved.
31

32 Comments on the proposed rules may be submitted to TWC Policy Comments,
33 Workforce Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street,
34 Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to
35 TWCPolicyComments@twc.state.tx.us. Comments must be received or postmarked no
36 later than 30 days from the date this proposal is published in the *Texas Register*.
37

38 The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which
39 provide the Texas Workforce Commission with the authority to adopt, amend, or repeal
40 such rules as it deems necessary for the effective administration of Agency services and
41 activities.
42

43 The proposed rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.
44

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
30 reforming of raw materials, assembly of components or packaging
31 of bulk products in more saleable quantities, by which value is
32 added into the final product offered for sale.
33
34 (2) Advisory committee--Advisory committee established by the
35 Commission as described in Texas Human Resources Code
36 §122.0057.
37
38 (3) Central nonprofit agency (CNA)--An agency designated as a
39 central nonprofit agency under contract with the Agency
40 pursuant to Texas Human Resources Code §122.019.
41
42 (4) Chapter 122--Chapter 122 of the Texas Human Resources Code,
43 relating to Purchasing from People with Disabilities.
44
45 (5) Community rehabilitation program (CPR)(CRP)--A government
46 or nonprofit private program operated under criteria established
47 by the Commission and under which individuals persons with

1 severe disabilities produce products or perform services for
2 compensation.

3
4 (6) Comptroller--The Comptroller of Public Accounts.

5
6 (7) Direct labor--All work required for preparation, processing, and
7 packaging of a product, or work directly relating to the
8 performance of a service, except supervision, administration,
9 inspection, or shipping products.

10
11 (8) Disability--A mental or physical impairment, including blindness
12 that impedes a person who is seeking, entering, or maintaining
13 gainful employment.

14
15 (9) Exception--Any product or service approved for the state use
16 program purchased from a vendor other than a CRP because the
17 state use product or service does not meet the applicable
18 requirements as to quantity, quality, delivery, life cycle costs, and
19 testing and inspection requirements pursuant to Texas Government
20 Code §2155.138 and §2155.069 or as described in Texas Human
21 Resources Code §122.014 and §122.016.

22
23 (10) State use program--The statutorily authorized mandate requiring
24 state agencies to purchase, on a noncompetitive basis, the products
25 made and services performed by individuals with disabilities,
26 which have been approved by the Agency, pursuant to Texas
27 Human Resources Code, Chapter 122 and which also meet the
28 requirements of Texas Government Code, §2155.138 and
29 §2155.069. This program also makes approved products and
30 services available to be purchased on a noncompetitive basis by
31 any political subdivision of the state.

32
33 (11) Value added--The labor of individuals with disabilities applied
34 to raw materials, components, goods purchased in bulk form
35 resulting in a change in the composition or marketability of
36 component materials, packaging operations, and/or the servicing
37 tasks associated with a product. Pass-throughs are not
38 allowed; therefore, solely affixing a packaging label to a
39 commodity does not qualify.

40
41 **SUBCHAPTER B. ADVISORY COMMITTEE RESPONSIBILITIES, MEETING**
42 **GUIDELINES**

43
44 **§806.21. Advisory Committee.**

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

- 3
4 (1) performance goals for the program administered under this chapter;
5 and
6 (2) criteria for certifying a CRP for participation in the program
7 administered under this chapter.

8
9 (b) The committee shall:

- 10
11 (1) establish specific objectives for the program administered under this
12 chapter that are appropriate given the program's status as one of
13 several employment-related services the state offers to individuals
14 with disabilities;
15
16 (2) develop performance measures that may be used by the Agency to
17 evaluate whether the program is meeting the objectives established
18 under paragraph (1) of this subsection; and
19
20 (3) recommend criteria for certifying CRPs for participation in the
21 program.

22
23 (c) In developing the performance measures under subsection (b) of this section,
24 the advisory committee must consider the following factors as applicable to
25 the program administered under this chapter:

- 26
27 (1) The percentage of total sales revenue attributable to the program as:
28
29 (A) paid in wages to individuals with disabilities; and
30
31 (B) spent on direct training and professional development services
32 for individuals with disabilities;
33
34 (2) The average hourly wage earned by an individual participating in the
35 program;
36
37 (3) The average annual salary earned by an individual participating in the
38 program;
39
40 (4) the number of individuals with disabilities participating in the
41 program paid less than minimum wage and occupations into which
42 such individuals are placed;
43
44 (5) the average number of hours worked each week by an individual with
45 a disability who participates in the program;
46

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

5
6 (7) the percentage of work performed by individuals with disabilities who
7 participate in the program that is purely repackaging labor.

8
9 (d) The Committee shall provide input to the Commission in adopting rules
10 applicable to the program administered under this chapter relating to the
11 employment-first policies described in Texas Government Code §531.02447
12 and §531.02448.

13
14 (e) The Agency shall provide administrative support to the Committee.

15
16 (f) The Committee is not subject to Texas Government Code, Chapter 2110.

17
18 **§806.22. Open Meetings: Public Testimony and Access.**

19
20 The Committee, established under Texas Human Resources Code §122.0057, is
21 subject to the requirements of the Open Meetings Law, Texas Government Code,
22 Chapter 551, the Open Meetings Act, Texas Government Code, Chapter 552, and
23 Texas Government Code, Chapter 2001.

24
25 **SUBCHAPTER C. CENTRAL NONPROFIT AGENCIES**

26
27 **§806.31. Contracting with Central Nonprofit Agencies.**

28
29 (a) The Agency may select and contract with one or more CNAs and shall
30 contract through a request for proposals for a period not to exceed five years
31 to perform, at a minimum, the duties set forth in Texas Human Resources
32 Code §122.019(a) and (b).

33
34 (b) The management fee rate charged by a CNA for its services to a Community
35 Rehabilitation Program (CRP) and its method of calculation must be
36 approved by the Commission. The maximum management fee rate must be
37 reviewed on an annual basis.

38
39 (c) A percentage of the management fee described in subsection (b) of this
40 section shall be paid to the Agency and is subject to Texas Human Resources
41 Code §122.023. The percentage shall be set by the Commission in the
42 amount necessary to reimburse the general revenue fund for direct and
43 reasonable costs incurred by the Comptroller and the Agency in
44 administering the Comptroller's and the Agency's duties under this chapter,
45 including any costs associated with providing support to the Committee.

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

7
8 (e) Following the review of a CNA as required by Texas Human Resources
9 Code §122.019(d), the Agency may approve the performance of the CNA and
10 the continuation of the contract through its termination date.

11
12 (f) For the effective administration of this chapter, the CNA will provide to the
13 Agency, no later than 15 days after the end of each federal fiscal quarter, the
14 following information regarding CRPs that have contracted with the CNA:

15
16 (1) For CRPs:

17
18 (A) a collective executive summary of the CRPs annual state use
19 program evaluations;

20
21 (B) the number of individuals with disabilities, according to their type
22 of disability, who are employed in CRPs participating in the
23 programs established by this chapter or who are employed by
24 businesses or workshops that receive supportive employment
25 from CRPs;

26
27 (C) the amount of annual wages paid to an individual participating in
28 the program in a format determined by the Agency;

29
30 (D) a summary of the sale of products offered by the CRPs;

31
32 (E) a list of products and/or services offered by a CRP;

33
34 (F) the geographic distribution of CRPs;

35
36 (G) the number of individuals without disabilities who are employed
37 in CRPs under this chapter; and

38
39 (H) the average and range of weekly earnings for individuals with
40 disabilities and individuals without disabilities who are employed
41 in CRPs under this chapter; and

42
43 (2) from each CRP data on individual outplacement or supported
44 employment to include:

45
46 (A) the number of individuals in outplacement employment;

1
2 (B) the hourly wage range;

3
4 (C) the range of hours worked; and

5
6 (D) the number of individuals with disabilities employed, listed by
7 primary type of disability.

8
9 (g) In accordance with Texas Human Resource Code §122.019(c) and
10 §122.019(d), a CNA will provide or make available to the Agency:

11
12 (1) quarterly reports for each calendar quarter of its contract of sales of
13 products or services, wages paid and hours worked by individuals with
14 disabilities for CRPs participating in the state use program;

15
16 (2) quarterly reports for each calendar quarter listing CRPs that do not meet
17 criteria for participation in the state use program and the reasons that
18 each CRP listed does not meet the criteria;

19
20 (3) at least once a year by October 31, and prior to any review and/or
21 renegotiation of the contract:

22
23 (A) an updated marketing plan;

24
25 (B) a proposed annual budget with estimated sales, commissions, and
26 expenses;

27
28 (C) a program budget with details on how the expected revenue and
29 expenses will be allocated to directly support and expand the
30 state use program and other programs that expand direct services
31 and/or the enhancement of employment opportunities for
32 individuals with disabilities; and

33
34 (D) an audited annual financial statement that shall include
35 information on FDIC coverage of all cash balances, earnings
36 attributed to the management fee for the state use program,
37 accounts receivable, cash reserves, line of credit borrowings,
38 interest payments, bad debt, administrative overhead and any
39 detailed supporting documentation requested by the Agency;

40
41 (4) quarterly reports of categories of expenditures in reporting format
42 approved by the Agency;

43
44 (5) records in accordance with Texas Human Resources Code §122.009(a)
45 and §122.0019(d) for audit purposes, consistent with Texas
46 Government Code, Chapter 552, the "Public Information Act"; and

1
2 (6) any other information the Agency requests as set forth in this chapter.

3
4 (h) Duties of a CNA include, but are not limited to, those listed in Texas Human
5 Resources Code §122.019(a).

6
7 (i) The services of a CNA may include marketing and marketing support
8 services, such as those identified in §122.019(b). Other duties as designated
9 by the Agency may include:

10
11 (1) establishing a payment system with a goal to pay CRPs within
12 fourteen (14) to twenty-one (21) calendar days, but not less than
13 thirty (30) days of completion of work and proper invoicing;

14
15 (2) resolving contract issues and/or problems as they arise between
16 the CRPs and customers of the program, referring those that
17 cannot be resolved to the Agency;

18
19 (3) maintaining a system that tracks and monitors product and
20 service sales; and

21
22 (4) tracking and reporting quality and delivery times of products and
23 services.

24
25 (j) Each year by October 31, a CNA will establish performance goals for the
26 next fiscal year in support of objectives set by the Commission in §806.21(h).

27
28 (k) The Agency may terminate a contract with a CNA if the Agency:

29
30 (1) finds substantial evidence of the CNA's noncompliance with
31 contractual obligations or of conflict of interest as defined by federal
32 and state laws; and

33
34 (2) has provided at least 30 days written notice to that CNA of the
35 termination of the contract.

36
37 (l) The Agency may request an audit by the state auditor of:

38
39 (1) the management fee set for any CNA; or

40
41 (2) the financial condition of any CNA.

42
43 (m) The Commission must annually review the management fees the CRPs are
44 charged by the CNAs. The annual review process includes:

45
46 (1) sending notice to affected parties, including CNAs;

1
2 (2) soliciting and considering public comment; and

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

6
7 (n) An individual may not operate a CRP and at the same time contract with the
8 Agency as a CNA.

9
10 **§806.32. Performance Standards and Goals for a Central Nonprofit Agency.**

11
12 (a) A CNA shall meet performance standards in carrying out the terms and
13 conditions of the contract.

14
15 (b) Operating pursuant to statute and rules, a CNA must manage and coordinate
16 the day-to-day operation of the state use program including, but not limited
17 to, the following activities:

18
19 (1) Increase employment opportunities for individuals with disabilities by
20 promoting employment counseling and placement services provided by
21 CRPs;

22
23 (2) Increase employment opportunities for individuals with disabilities by
24 researching new products, services, and markets; improving existing
25 products and services; and reporting to the Agency on a quarterly basis
26 the status of these activities;

27
28 (3) 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 Agency
31 on a quarterly basis the level of consumer satisfaction for each CRP,
32 based on complaints as to products or services provided, with a goal of
33 incurring no more than five complaints per year that have not been
34 resolved to customer satisfaction;

35
36 (4) Provide quarterly regional information workshops to promote the state
37 use program throughout the year and across the state;

38
39 (5) Provide training programs to CRPs on the requirements to participate in
40 the state use program, governmental contracting, and procurement
41 procedures and laws;

42
43 (6) 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 Agency and submitting quarterly status reports on issues
46 and referrals;

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- (7) Provide an annual report that includes the CNA's audited financial statements, 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 lives of individuals with disabilities and what percentage of funds will be used for administrative overhead, such as salaries;
 - (8) 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 (IRS);
 - (9) Maintain a system in accordance with generally accepted accounting principles that will record information related to purchase orders, invoices, and payments to each CRP to facilitate the preparation and submission of the annual report;
 - (10) Create a database of state agency and political subdivision purchases to promote sales of state use program products and services;
 - (11) Conduct business ethically and submit detailed reports on a quarterly basis of any conflicts between the CRPs and the CNA;
 - (12) Create and maintain automated tracking and monitoring of product/service sales and submit quarterly reports to the Agency regarding delivery turnaround times and contract performance for each CRP;
 - (13) Respond to inquiries about individual sales and/or total sales within five business days or sooner and submit quarterly reports regarding the number of inquiries and average response time in conjunction with the report described in paragraph (11) of this subsection;
 - (14) Maintain knowledge of governmental contracting and procurement processes and laws;
 - (15) Provide general administration of the state use program with performance criteria and timely submission of reports required by these rules;
 - (16) Monitor CRP compliance and promptly report violations to the Agency, offering assistance as needed to achieve compliance; and

1 (17) Maintain and dispose of records in accordance with the laws and
2 directives set forth by the Agency and submit any or all records
3 requested within three weeks of the request. Disclosure to the public of
4 any and all CNA records shall be subject to the Public Information Act.

5
6 **SUBCHAPTER D. COMMUNITY REHABILITATION PROGRAMS**

7
8 **§806.41. Certification and Recertification of Community Rehabilitation**
9 **Programs.**

- 10
11 (a) No applicant for certification may participate in the state use program prior to
12 the approval of certification.
- 13
14 (b) The Commission may recognize programs that are accredited by nationally
15 accepted vocational rehabilitation accrediting organizations and approve
16 CRPs that have been approved by a state's habilitation or rehabilitation
17 agency.
- 18
19 (c) The Commission may delegate the administration of the certification process
20 for CRPs to a CNA.
- 21
22 (d) An applicant for CRP certification must be a government or nonprofit private
23 program operated under criteria established by the Commission and under
24 which individuals with severe disabilities produce products or perform
25 services for compensation.
- 26
27 (e) A certified CRP must:
- 28
29 (1) maintain payroll, human resource functions, accounting, and all
30 relevant documentation showing that the employees who produce
31 products or perform services under the state use program are
32 individuals with disabilities;
- 33
34 (2) ensure that documentation includes approved disability determination
35 forms that shall be subject to review at the request of the Agency or the
36 CNA under authority from the Commission, with adherence to privacy
37 and confidentiality standards applicable to such CRP and employee
38 records; and
- 39
40 (3) maintain and dispose of records or documents required by the Agency,
41 including contracts with other entities, in accordance with generally
42 accepted accounting principles, and all laws relevant to the records.
- 43
44 (f) An applicant for certification must submit a completed application and the
45 required documents to the Agency through the CNA for the state use
46 program. Upon receipt, the CNA will verify the completeness and accuracy

1 of the application. No application will be considered without the following
2 documents:

3
4 (1) Copy of the IRS nonprofit determination under §501(c), when required
5 by law;

6
7 (2) Copy of the Articles of Incorporation issued by the Secretary of State,
8 when required by law;

9
10 (3) List of the board of directors and officers with names, addresses, and
11 telephone numbers;

12
13 (4) Copy of the organizational chart with job titles and names;

14
15 (5) Proof of current insurance coverage in the form of a certificate of
16 insurance specifying each and all coverages for the CRP's liability
17 insurance, auto insurance for vehicles owned or leased by the CRP for
18 state use contract purposes, and workers' compensation insurance
19 coverage or legally recognized equivalent coverage, if applicable. Such
20 insurance shall be carried with an insurance company authorized to do
21 business in the State of Texas, and written notice of cancellation or any
22 material change in insurance coverage will be provided to the CNA 10
23 business days in advance of cancellation or change;

24
25 (6) Fire inspection certificate issued within one year of the formal
26 consideration of the CRP application, if required by city, county, or
27 state regulations, for each location where customers will be served or
28 where individuals with disabilities will be employed, or a statement of
29 unavailability from the appropriate city, county, or state entity;

30
31 (7) Copy of the building inspection certificate or certificate of occupancy,
32 if required by city, county, or state regulations, for each location where
33 customers will be served or where individuals with disabilities will be
34 employed, or a statement of unavailability from the appropriate city,
35 county, or state entity;

36
37 (8) Copy of the wage exemption certificate (WH-228) if below minimum
38 wages will be paid to customers or to individuals with disabilities who
39 will be employed, and a statement of explanation of circumstances
40 requiring subminimum wages; and

41
42 (9) Notarized statement that the CRP agrees to maintain compliance with
43 the requirement that at least 75 percent of the CRP's total hours of
44 direct labor, for each contract, necessary to perform services or reform
45 raw materials, assemble components, manufacture, prepare, process
46 and/or package products will be performed by individuals with

1 documented disabilities consistent with the definition set forth in this
2 chapter. If a CRP intends to seek a waiver from the 75 percent
3 requirement of the CRP's total hours of direct labor for a contract, the
4 waiver request must be submitted with the application for approval.
5

6 (g) The Agency shall review each complete application and all required
7 documentation and, if acceptable, forward its recommendations to the
8 Commission for approval. Once approved, the Agency will notify the CRP in
9 writing and assign the CRP a certification number.
10

11 (h) A CRP may protest a recommendation of non-approval pursuant to the
12 Agency's appeal process in §806.61.
13

14 (i) To continue in the program, each CRP must be recertified by the Commission
15 every three years. The recertification process requires submission of all
16 previously requested documentation, a review of reports submitted to the
17 CNA, and a determination that the CRP has maintained compliance with the
18 stated requirements of the state use program. The Commission shall establish
19 a schedule for the recertification process and the CNA shall assist each CRP
20 as necessary to attain recertification. The CRP, after notification, shall submit
21 within 30 days the application for recertification and required documents to
22 the CNA. If the CRP fails to do so, the Agency may request a written
23 explanation and/or the appearance of a representative of the CRP before the
24 Agency. If the CRP fails to respond in a timely manner, the Agency may
25 consider the suspension of all state use program contracts until the
26 recertification process has been completed and approval has been attained.
27

28 (j) The CRP shall submit quarterly wage and hour reports to the CNA. These
29 reports are due no later than the last day of the month following the end of
30 the quarter. If the CRP fails to submit reports on time, the Agency may
31 request a representative of the CRP to appear before the Agency. The
32 Agency may consider the suspension of the CRP's state use program
33 contracts if compliance is not achieved in a consistent and timely manner.
34

35 (k) CRPs shall maintain compliance with the state use program regarding
36 percentage requirements related to administrative costs, supply costs, wages,
37 and hours of direct labor necessary to perform services and/or produce
38 products. Compliance will be monitored by the CNA and/or the Agency, and
39 violations will be reported promptly to the Agency. A violation will result in
40 a warning letter from the CNA or Agency, which will then offer assistance as
41 needed to achieve compliance. A CRP that fails to meet compliance
42 requirements, without a waiver from the Agency, for two quarters in any
43 four-quarter period, shall submit a written explanation and a representative of
44 the CRP will be requested to appear before the Agency. State use program
45 contracts may be suspended and/or certification revoked if compliance is not
46 immediately and consistently maintained. To attain reinstatement, the CRP

1 must apply for recertification following the procedures outlined in this
2 chapter.

3
4 (l) The Agency may review or designate a CNA or third party to review any
5 CRP participating in the state-use program to verify compliance with the
6 requirements outlined in this chapter.

7
8 (m) A CRP must not serve, in whole or part, as an outlet or front for any entity
9 whose purpose is not the employment of individuals with disabilities.

10
11 (n) A CRP shall promptly report any conflict of interest or receipt of benefit or
12 promise of benefit to the Agency. The Agency will consider such reports on
13 an individual basis. Verified instances of conflict of interest by a CRP may
14 result in suspension of the CRP's eligibility to participate in the state use
15 program and/or revocation of certification.

16
17 (o) The Commission, the Agency, individual members, the State of Texas, or any
18 other Texas state agency will not be responsible for any loss or losses,
19 financial or otherwise, incurred by a CRP should its product or services not
20 be approved for the state use program as provided by law.

21
22 **SUBCHAPTER E. PRODUCTS AND SERVICES**

23
24 **§806.51. Product Specifications and Exceptions.**

25
26 (a) A product manufactured for sale through the Comptroller to any office,
27 department, institution or agency of the state shall be manufactured or
28 produced according to specifications developed by the Comptroller. If the
29 Comptroller has not developed specifications for a particular product, the
30 production shall be based on commercial or federal specifications in current
31 use by the industry.

32
33 (b) Requisitions for products and/or services required by state agencies are
34 processed by the Comptroller according to Comptroller rules.

35
36 (c) An exception from subsection (a) of this section may be made in any case as
37 follows:

38
39 (1) Under the rules of the Comptroller, the product and/or service so
40 produced or provided does not meet the reasonable requirements of the
41 office, department, institution, or agency; or

42
43 (2) The requisitions made cannot be reasonably complied with through
44 provision of products and/or services produced by individuals with
45 disabilities.

1 (d) An office, department, institution, or agency may not evade purchasing
2 products and/or services produced or provided by individuals with disabilities
3 by requesting variations from standards adopted by the Comptroller when the
4 products and/or services produced or provided by individuals with
5 disabilities, per established standards, are reasonably adapted to the actual
6 needs of the office, department, institution, or agency and comply with Texas
7 Government Code §2155.138 and §2155.069.

8
9 (e) The Comptroller shall provide the Agency with a list of items known to have
10 been purchased under the exceptions provided in subsection (c) of this
11 section monthly, in the format adopted by the Agency.

12
13 (f) The Agency shall review submitted state agency exception reports made
14 available by the Comptroller that list purchase products or services available
15 from a CNA or CRP under this chapter, but purchased from another business
16 that is not a CNA or CRP under this chapter.

17
18 (g) The Agency shall coordinate with the employee designated by each state
19 agency to assist in attaining future compliance with this chapter, when an
20 agency makes and reports an unjustified purchase or purchases of a product
21 available under the programs authorized under this chapter.

22
23 **§806.52. Determination of Fair Market Value.**

24
25 (a) Pursuant to Texas Human Resources Code, Chapter 122 and Texas
26 Government Code §2155.138, a suitable product and/or service that meets
27 applicable specifications established by the state or its political subdivisions
28 and that is available within the time specified must be procured from a CRP
29 at the price determined by the Commission to be the fair market price under
30 Texas Human Resources Code §122.007.

31
32 (b) The Agency shall review products, services, and price revisions submitted by
33 the CNA on behalf of participating or prospective CRPs. Due consideration shall
34 be given to the factors set forth in Texas Human Resources Code §122.015, as
35 well as to the extent applicable, the amounts being paid for similar articles in
36 similar quantities by state agencies purchasing the products or services not in the
37 state use program.

38
39
40 (c) The Agency may also consider other criteria as necessary to determine the fair
41 market price of the products and/or services, including, but not limited to:

42
43 (1) changing market conditions;

44
45 (2) frequency and volume of past state purchases of the particular products
46 and/or services offered;

1
2 (3) request from a state agency that a CRP develop and provide a particular
3 product and/or service;

4
5 (4) value added necessary to maximize the employment of people with
6 disabilities; and/or

7
8 (5) quality comparison between similar products and/or services.

9
10 (d) The Comptroller shall provide the Agency with the information and resources
11 necessary for the Agency to comply with this section.

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

15
16 (a) A CRP desiring to provide services under the state use program must comply
17 with the following requirements to obtain approval from the Commission:

18
19 (1) A minimum of 35 percent of the contract price of the service must be
20 paid to the individuals with disabilities who perform the service in the
21 form of wages and benefits;

22
23 (2) Supply costs for the service must not exceed 20 percent of the contract
24 price of the service;

25
26 (3) Administrative costs allocated to the service must not exceed 10
27 percent of the contract price for the service. At least 75 percent of the
28 hours of direct labor for each contract, necessary to perform a service,
29 must be performed by individuals with disabilities;

30
31 (4) The Agency may establish a different percentage if the Agency
32 determines that a percentage greater than the 75 percent for the offered
33 service is reasonable based on consideration of factors, including, but
34 not limited to:

35
36 (A) past practices in a particular area;

37
38 (B) whether other CRPs providing the same or similar services have
39 achieved the 75 percent requirement; and

40
41 (C) whether the Commission has established a policy goal to encourage
42 employment of individuals with disabilities in a particular field.

43
44 (5) Any necessary subcontracted services shall be performed to the
45 maximum extent possible by other CRPs and in a manner that maximizes
46 the employment of individuals with disabilities.

1
2 (b) A CRP must comply with the following requirements to obtain approval
3 from the Commission for state use products:

4
5 (1) At least 75 percent of the hours of direct labor, for each contract,
6 necessary to reform raw materials, assemble components, manufacture,
7 prepare, process and/or package a product, must be performed by
8 individuals with disabilities;

9
10 (2) Appreciable contribution and value added to the product by individuals
11 with disabilities must be determined to be substantial on a product-by-
12 product basis, based on requested documentation provided to the
13 Agency upon application for a product to be approved for the state use
14 program; and

15
16 (3) The Agency may establish a different percentage if the Agency
17 determines that a percentage greater than the 75 percent for the offered
18 product is reasonable based on consideration of factors, including, but
19 not limited to:

20
21 (A) past practices in a particular area;

22
23 (B) whether other CRPs providing the same or similar products have
24 achieved the 75 percent requirement;

25
26 (C) whether the Commission has established a policy goal to promote
27 workplace integration for individuals with disabilities; and

28
29 (D) whether the Commission has established a policy goal to encourage
30 employment of individuals with disabilities in a particular field.

31
32 (c) The rules governing the approval of products to be offered by a CRP apply to
33 all items that a CRP proposes to offer to state agencies or political
34 subdivisions, regardless of the method of acquisition by the agency, whether
35 by sale or lease. A CRP must own any product it leases. A proposal by a
36 CRP to rent or lease a product to a state agency is a proposal to offer a
37 product, not a service, and the item offered must meet the requirements of
38 these rules. If the product is offered for lease by the CRP, the unit cost of the
39 product, for purposes of applying the standards set forth in these rules, is the
40 total cost to the state agency of leasing the product over its expected useful
41 life.

42
43 (d) Raw materials or components may be obtained from companies operated for
44 profit, but a CRP must own any product that it offers for sale to state agencies
45 or political subdivisions through the state use program and make an

1 appreciable contribution to the product that accounts for a substantial amount
2 of the value added to the product.

3
4 **SUBCHAPTER F. COMPLAINTS, VENDOR PROTESTS, RESOLUTIONS**

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

- 7
8 (a) Complaints regarding matters under the Agency's jurisdiction, in accordance
9 with Texas Human Resources Code, Chapter 122, shall be made in writing
10 and addressed to the Agency for review and determination.
11
12 (b) The Agency shall maintain an information file regarding each complaint.
13
14 (c) If a written complaint is filed with the Agency, the Agency, at least as
15 frequently as quarterly and until final disposition of the complaint, shall
16 notify the parties to the complaint of the status of the complaint unless the
17 notice would jeopardize an undercover investigation.
18
19 (d) The Agency shall provide to the individual filing the complaint, and to each
20 individual who is a subject of the complaint, a copy of the Agency's policies
21 and procedures relating to complaint investigation and resolution.
22
23 (e) Any product or service may be removed or temporarily suspended from the
24 state use program after review and/or investigation of a filed complaint, if the
25 Agency determines that a CRP is:
26
27 (1) providing products that fail to meet specifications;
28
29 (2) failing to make a delivery as promised;
30
31 (3) making unauthorized substitutions;
32
33 (4) misrepresenting merchandise;
34
35 (5) failing to make satisfactory adjustments when required; or
36
37 (6) taking unethical actions; or
38
39 (7) non-complying with other Agency rules or contract.
40
41 (f) A product or service that has been temporarily suspended may be reinstated
42 by promptly correcting the reason(s) for suspension. A failure to make the
43 necessary correction promptly may result in the termination of the CRP's
44 contract with the CNA.
45
46 (g) Complaints shall be resolved by the Agency.

1
2 **§806.62. Vendor Protests.**
3

4 (a) A protest shall be made in writing and received by the Agency within 10
5 working days after the protesting party knows, or should have known, of the
6 occurrence of the action that is protested.

7
8 (b) A protest must include:
9

10 (1) a precise statement of the relevant facts;

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

13
14 (3) a statement of the argument and authorities that the protesting party
15 offers in support of the protest.

16
17 (c) A statement that copies of the protest have been mailed or delivered to the
18 using entity and all other identifiable interested parties must be included. The
19 program manager may settle and resolve the dispute over the solicitation or
20 award of a contract at any time before the matter is submitted on appeal to the
21 deputy executive director.

22
23 (d) If the protest is not resolved by mutual agreement, the program manager shall
24 issue a written determination that resolves the protest.

25
26 (e) The protesting party may appeal a written determination by the program
27 manager to the deputy executive director.

28
29 (f) The Agency shall maintain all documentation on the purchasing process that
30 is the subject of a protest or appeal in accordance with the retention schedule
31 of the Texas Department of Procurement and Support Services.
32

33 **SUBCHAPTER G. DISCLOSURE OF RECORDS**

34
35 **§806.71. Records.**
36

37 (a) The Agency shall access financial or other information and records from a
38 CNA or a CRP if the Agency determines the information and records are
39 necessary for the effective administration of this chapter and rules adopted
40 under this chapter.

41
42 (b) Information and records must be obtained under subsection (a) of this section
43 in recognition of the privacy interest of individuals employed by CNAs or
44 CRPs. The information and records may not be released or made public on
45 subpoena or otherwise, except that release may be made:
46

- 1 (1) for statistical purposes, but only if a person is not identified;
2
3 (2) with the consent of each person identified in the information released;
4 or
5
6 (3) regarding a compensation package of any CNA employee or
7 subcontractor if determined by the Commission to be relevant to the
8 administration of this chapter.
9
10 (c) No records belonging to a CNA or a CRP may be accessed or released to
11 anyone, including advisory committee members, outside entities, and
12 individuals, unless disclosure is required under the Texas Public Information
13 Act.
14
15 (d) The Agency or a CNA shall inspect a CRP for compliance with certification
16 criteria established under Texas Human Resources Code §122.013(c).
17

18 **SUBCHAPTER H. REPORTS; PLANS**

19 20 **§806.81. Annual Financial Report**

- 21
22 (a) On or before November 1 of each year, the Agency shall prepare an annual
23 financial report in the form prescribed by Texas Government Code
24 §2101.011, relating to the Commission's activities, and Texas Human
25 Resources Code §122.022 relating to reports, and file the report with the
26 governor and the presiding officer of each house of the legislature.
27
28 (b) As part of the report filed under subsection (a) of this section, the Agency
29 shall provide:
30
31 (1) the number of individuals with disabilities, by type of disability, who
32 are employed in CRPs participating in the programs established by this
33 chapter or who are employed by businesses or workshops that receive
34 supportive employment from CRPs;
35
36 (2) the amount of annual wages paid to a person participating in the
37 program;
38
39 (3) a summary of the sale of products offered by a CRP;
40
41 (4) a list of products and services offered by a CRP;
42
43 (5) the geographic distribution of the CRPs;
44
45 (6) the number of individuals without disabilities who are employed in
46 CRPs under this chapter; and

1
2 (7) the average and the range of weekly earnings for individuals with
3 disabilities and individuals without disabilities who are employed in
4 CRPs under this chapter.

5
6 **§806.82. Strategic Plan; Final Operating Plan.**

7
8 The Agency shall prepare a strategic plan and a final operating plan relating to the
9 Commission's activities under this chapter, as required by Texas Government
10 Code, Chapter 2054, Subchapter E.

11
12 **SUBCHAPTER I. POLITICAL SUBDIVISIONS**

13
14 **§806.91. Procurement for Political Subdivisions.**

15
16 Political subdivisions shall follow procurement rules as required by Texas Human
17 Resources Code §122.017, relating to procurement for political subdivisions.

18
19 **§806.92. Political Subdivisions Excluded.**

20
21 Excluded political subdivisions shall follow procurement rules as required by
22 Texas Human Resources Code §122.018, relating to political subdivisions
23 excluded.

24
25
26 **~~§806.1. General.~~**

27
28 ~~The Texas Council on Purchasing from People with Disabilities is~~
29 ~~responsible for fulfilling the purpose of Chapter 122 of the Texas Human~~
30 ~~Resources Code which is to:~~

31
32 ~~(1) further the state's policy of encouraging and assisting persons with~~
33 ~~disabilities to achieve maximum personal independence by engaging in~~
34 ~~useful productive employment activities; and~~

35
36 ~~(2) provide state agencies, departments, and institutions and political~~
37 ~~subdivisions of the state with a method for achieving conformity with~~
38 ~~requirements of nondiscrimination and affirmative action in~~
39 ~~employment matters related to persons with disabilities.~~

40
41 **~~§806.2. Definitions.~~**

42
43 ~~The following words and terms, when used in this chapter, shall have the~~
44 ~~following meanings unless the context clearly indicates otherwise.~~

- 1 ~~(1) Appreciable contribution—The term used to refer to the substantial~~
2 ~~work effort contributed by persons with disabilities in the reforming of~~
3 ~~raw materials, assembly of components or packaging of bulk products~~
4 ~~in more saleable quantities, by which value is added into the final~~
5 ~~product offered for sale.~~
6
7 ~~(2) Central nonprofit agency (CNA)—An agency designated as a central~~
8 ~~nonprofit agency under contract with the council pursuant to §122.019~~
9 ~~of the Texas Human Resources Code.~~
10
11 ~~(3) Chapter 122—Chapter 122 of the Texas Human Resources Code.~~
12
13 ~~(4) Community rehabilitation program (CRP)—A government entity,~~
14 ~~private nonprofit unincorporated entity which has its own nonprofit~~
15 ~~status and federal tax identification number and has as its primary~~
16 ~~purpose the employment of persons with disabilities to produce~~
17 ~~products or perform services for compensation, or a private nonprofit~~
18 ~~incorporated entity with its own federal tax identification number,~~
19 ~~articles of incorporation and bylaws that establish its existence for the~~
20 ~~primary purpose of employing persons with disabilities to produce~~
21 ~~products or perform services for compensation.~~
22
23 ~~(5) Comptroller—The Comptroller of Public Accounts.~~
24
25 ~~(6) Council—The Texas Council on Purchasing from People with~~
26 ~~Disabilities.~~
27
28 ~~(7) Direct labor—All work required for preparation, processing, and~~
29 ~~packaging of a product, or work directly relating to the performance of~~
30 ~~a service, except supervision, administration, inspection or shipping~~
31 ~~products.~~
32
33 ~~(8) Disability—A mental or physical impairment, including blindness, that~~
34 ~~impedes a person who is seeking, entering, or maintaining gainful~~
35 ~~employment.~~
36
37 ~~(9) Exception—Any product or service approved for the state use program~~
38 ~~purchased from a vendor other than a CRP because the state use~~
39 ~~product or service does not meet the applicable requirements as to~~
40 ~~quantity, quality, delivery, life cycle costs, and testing and inspection~~
41 ~~requirements pursuant to, §2155.138 and §2155.069, Government Code~~
42 ~~or as described in §122.014 and §122.016, Human Resources Code.~~
43
44 ~~(10) State use program—The statutorily authorized mandate requiring state~~
45 ~~agencies to purchase, on a noncompetitive basis, the products made and~~
46 ~~services performed by persons with disabilities, which have been~~

1 approved by the council pursuant to Human Resources Code, Chapter
2 122 and also meet the requirements of Texas Government Code,
3 §2155.138 and §2155.069. This program also makes approved
4 products and services available to be purchased on a noncompetitive
5 basis by any political subdivision of the state.
6

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

13
14 **~~§806.3. Organization.~~**

15
16 ~~(a) The council is composed of nine members appointed by the governor, with~~
17 ~~the advice and consent of the senate, to set policy and exercise all authority~~
18 ~~and responsibility accorded the council pursuant to Chapter 122.~~

19
20 ~~(b) The presiding officer shall appoint a subcommittee, the pricing subcommittee,~~
21 ~~composed of three council members to review the data used to determine fair~~
22 ~~market value and make recommendations to the council concerning fair~~
23 ~~market price for products and/or services.~~

24
25 ~~(c) The presiding officer shall appoint other subcommittees as necessary to~~
26 ~~consider matters destined for full council attention and recommend action.~~

27
28 ~~(d) The presiding officer shall recommend a vice-presiding officer to the council~~
29 ~~for approval.~~

30
31 ~~(e) The council may employ staff as necessary to carry out the council's duties.~~
32 ~~Employed staff shall provide:~~

33
34 ~~(1) Day to day administration of the provisions of this chapter as delegated~~
35 ~~by the council, and~~

36
37 ~~(2) Policy recommendations and administrative support as requested by the~~
38 ~~council.~~

39
40 ~~(f) The council may establish advisory committees as deemed necessary. The~~
41 ~~membership of each advisory committee shall be determined and selected by~~
42 ~~the council.~~

43
44 ~~(1) The council shall specify the purpose and duties of each advisory~~
45 ~~committee, which must include:~~
46

1 ~~(A) Reviewing the effectiveness of the program administered under~~
2 ~~this chapter; and~~

3
4 ~~(B) Recommending procedures to create higher skilled and higher-~~
5 ~~paying employment opportunities for people with disabilities.~~

6
7 ~~(2) Members of all advisory committees serve at the will of the council.~~
8 ~~The council may dissolve any advisory committee when it deems it~~
9 ~~appropriate to do so.~~

10
11 ~~(3) The council shall make reasonable attempts to have balanced~~
12 ~~representation on each advisory committee, including attempting to~~
13 ~~have representatives with knowledge of this chapter from the~~
14 ~~following:~~

15
16 ~~(A) the Lighthouses for the Blind community rehabilitation~~
17 ~~programs;~~

18
19 ~~(B) the Goodwill community rehabilitation programs;~~

20
21 ~~(C) the Texas Department of Mental Health and Mental Retardation~~
22 ~~community rehabilitation program;~~

23
24 ~~(D) other community rehabilitation programs;~~

25
26 ~~(E) representatives from central nonprofit agencies;~~

27
28 ~~(F) representatives from disability advocacy groups;~~

29
30 ~~(G) government purchasing agents;~~

31
32 ~~(H) private industry; and~~

33
34 ~~(I) private citizens who have a disability and have knowledge of the~~
35 ~~sale of products and services.~~

36
37 ~~(g) The council shall accept legal, and other necessary support from the~~
38 ~~comptroller in accordance with legislative appropriation.~~

39
40 ~~(h) The council shall coordinate with the upper level management employee~~
41 ~~appointed by the comptroller to enable the comptroller to meet its~~
42 ~~requirements of this chapter.~~

43
44 ~~(i) The council shall coordinate with the comptroller to facilitate the inclusion of~~
45 ~~the programs administered under this chapter in the comptroller's~~
46 ~~procurement policy manual(s).~~

1
2
3 **~~§806.4. Ethical Standards.~~**
4

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

10
11 ~~(b) CNAs and CRPs may not present an opportunity for a council member to~~
12 ~~violate the ethical standards of conduct of Chapter 572 of the Texas~~
13 ~~Government Code and those set forth in subsection (a) of this section.~~

14
15 ~~(c) It is a ground for removal from the council if a member:~~

16
17 ~~(1) does not have at the time of appointment the qualifications required by~~
18 ~~§122.003(a) of Chapter 122 for appointment to the council;~~

19
20 ~~(2) does not maintain during the service on the council the qualifications~~
21 ~~required by §122.003(a) of Chapter 122 for appointment to the council;~~

22
23 ~~(3) violates a prohibition established by §122.003(d)(e) of Chapter 122;~~

24
25 ~~(4) cannot, because of illness or disability, discharge the member's duties~~
26 ~~for a substantial part of the term for which the member is appointed; or~~

27
28 ~~(5) is absent from more than half of the regularly scheduled council~~
29 ~~meetings that the member is eligible to attend during a calendar year~~
30 ~~unless the absence is excused by majority vote of the council.~~

31
32 ~~(d) The validity of an action of the council is not affected by the fact that it was~~
33 ~~taken when a ground for removal of a member of the council existed.~~

34
35 ~~(e) If the Deputy Comptroller has knowledge that a potential ground for removal~~
36 ~~exists, the Deputy Comptroller shall notify the presiding officer of the~~
37 ~~council of the potential ground. If the presiding officer is notified under this~~
38 ~~section, or if the presiding officer has knowledge that a potential ground for~~
39 ~~removal exists, the presiding officer shall notify the governor and the~~
40 ~~attorney general that a potential ground for removal exists. If the potential~~
41 ~~ground for removal involves the presiding officer, the Deputy Comptroller~~
42 ~~shall notify the next highest officer of the council, who shall notify the~~
43 ~~governor and the attorney general that a potential ground for removal exists.~~

44
45 **~~§806.5. Open Meetings; Public Testimony and Access.~~**
46

- 1 ~~(a) A quorum of the full council or council subcommittee shall deliberate and~~
2 ~~make decisions in open meeting in accordance with Chapter 551 of the Texas~~
3 ~~Government Code and the open meeting shall be conducted pursuant to~~
4 ~~Robert's Rules of Order. The full council may meet in executive session for~~
5 ~~authorized purposes during a public meeting as allowed under Chapter 551 of~~
6 ~~the Texas Government Code.~~
- 7
- 8 ~~(b) The public will be provided a reasonable opportunity to appear before the~~
9 ~~council or council subcommittee in an open meeting and present testimony~~
10 ~~pertinent to an agenda item duly posted for said open meeting or any issue~~
11 ~~under the jurisdiction of the council.~~
- 12
- 13 ~~(c) The council shall comply with federal and state laws related to program and~~
14 ~~facility accessibility. Each CNA shall develop, for council's approval, a~~
15 ~~written plan that describes how a person who does not speak English can be~~
16 ~~provided reasonable access to the council's programs and services under its~~
17 ~~management.~~
- 18
- 19 ~~(d) The council may deliberate and take action on public testimony regarding an~~
20 ~~agenda item at the meeting for which the agenda item was duly posted.~~
- 21
- 22 ~~(e) If a member of the public inquires about a subject for which notice has not~~
23 ~~been given as required by Chapter 551 of the Texas Government Code, the~~
24 ~~notice provisions do not apply to:~~
- 25
- 26 ~~(1) a statement of specific factual information given in response to the~~
27 ~~inquiry; or~~
- 28
- 29 ~~(2) a recitation of existing policy in response to the inquiry.~~
- 30
- 31 ~~(f) Any deliberation of or decision about a subject of the inquiry shall be limited~~
32 ~~to a proposal to place the subject on the agenda for a subsequent meeting.~~
- 33
- 34 ~~(g) Protests/Dispute Resolution/Hearing~~
- 35
- 36 ~~(1) Any central nonprofit agency which has a dispute with the council or~~
37 ~~any CRP which is aggrieved in connection with the disapproval or~~
38 ~~suspension of its ability or its product or service to participate in the~~
39 ~~state use program may formally protest to the presiding officer of the~~
40 ~~council. Such protests must be in writing and received in by the~~
41 ~~presiding officer within 10 working days after such aggrieved person or~~
42 ~~entity knows, or should have known, of the occurrence of the action~~
43 ~~which is protested. The written protest must be presented to the~~
44 ~~presiding officer not later than thirty (30) days prior to the regularly~~
45 ~~scheduled council meeting. Formal protests must conform to the~~
46 ~~requirements of this paragraph and paragraph (2) of this subsection, and~~

1 shall be resolved in accordance with the procedures set forth in
2 paragraphs (3) and (4) of this subsection.

3
4 ~~(2) A formal protest must be sworn and contain:~~

5
6 ~~(A) a specific identification of the statutory or regulatory provision(s)
7 that the action complained of is alleged to have violated;~~

8
9 ~~(B) a specific description of each act alleged to have violated the
10 statutory or regulatory provision(s) identified in subparagraph
11 (A) of this paragraph;~~

12
13 ~~(C) a precise statement of the relevant facts;~~

14
15 ~~(D) an identification of the issue or issues to be resolved;~~

16
17 ~~(E) argument and authorities in support of the protest; and~~

18
19 ~~(F) a statement that copies of the protest have been mailed or
20 delivered to the using agency and/or the CNA.~~

21
22 ~~(3) A quorum of the full council shall have the authority to settle and
23 resolve the dispute concerning the disapproval or suspension of a CRP
24 or its product and/or service to participate in the state use program.~~

25
26 ~~(4) The council will deliberate and decide whether the disputed action is to
27 be reversed, modified or affirmed during the regularly scheduled
28 meeting following receipt of the formal written protest. Should the
29 council's final determination be rejected by the disputant central
30 nonprofit agency or disputant CRP and the disputed action is to be
31 contested further by a central nonprofit agency or CRP, the dispute
32 shall first be submitted to alternative dispute resolution.~~

33
34 **~~§806.6. Certification and Recertification of Community Rehabilitation
35 Programs.~~**

36
37 ~~(a) No applicant for certification may participate in the State Use Program prior
38 to the Council's approval of certification.~~

39
40 ~~(b) The Council may recognize programs that are accredited by national
41 accepted vocational rehabilitation accrediting organizations and approve
42 CRPs that have been approved by a state's habilitation or rehabilitation
43 agency.~~

44
45 ~~(c) The Council may delegate the administration of the certification process for
46 CRPs to a CNA.~~

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

~~(e) A certified CRP must:~~

~~(1) maintain payroll, human resource functions, accounting, and all relevant documentation showing that the employees who produce products or perform services under the State Use Program are persons with disabilities. Documentation shall include council-approved disability determination forms which shall be subject to review at the request of the council or the CNA under authority from the council, with adherence to privacy and confidentiality standards applicable to such CRP and employee records;~~

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

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

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

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

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

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

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

~~(5) proof of current insurance coverage in the form of a certificate of insurance specifying each and all coverages for liability insurance for~~

1 the CRP, auto insurance for vehicles owned or leased by the CRP for
2 State Use contract purposes, and worker's compensation insurance
3 coverage or legally recognized equivalent coverage, if applicable. Such
4 insurance shall be carried with an insurance company authorized to do
5 business in the State of Texas, and written notice of cancellation or any
6 material change in insurance coverage will be provided to the CNA ten
7 (10) days in advance of cancellation or change;

8
9 ~~(6) fire inspection certificate issued within one year of the Certification
10 Subcommittee's formal consideration of the CRP application, if
11 required by city, county, or state regulations, for each location where
12 clients will be served or where persons with disabilities will be
13 employed, or a statement of unavailability from the appropriate city,
14 county, or state entity;~~

15
16 ~~(7) copy of the building inspection certificate or certificate of occupancy, if
17 required by city, county, or state regulations, for each location where
18 clients will be served or where persons with disabilities will be
19 employed, or a statement of unavailability from the appropriate city,
20 county, or state entity;~~

21
22 ~~(8) copy of the wage exemption certificate (WH-228) if below minimum
23 wages will be paid to clients or to persons with disabilities who will be
24 employed and a statement of explanation of circumstances requiring
25 subminimum wages; and~~

26
27 ~~(9) notarized statement that the CRP agrees to maintain compliance with
28 the requirement that at least seventy five percent (75%) of the CRP's
29 total hours of direct labor necessary to perform services or reform raw
30 materials, assemble components, manufacture, prepare, process and/or
31 package products will be performed by persons with documented
32 disabilities consistent with the following definition set forth in this
33 Chapter: Disability a mental or physical impairment, including
34 blindness, that impedes a person who is seeking, entering, or
35 maintaining gainful employment. A waiver may be granted only with
36 Council approval.~~

37
38 ~~(g) The CNA will submit the completed application and required documents to
39 the Certification Subcommittee not less than fifteen (15) days prior to the
40 regularly scheduled Certification Subcommittee meeting.~~

41
42 ~~(h) The Certification Subcommittee shall review each application and
43 documentation and, if acceptable, forward its recommendations to the
44 Council for approval. Once approved, the Council will notify the CRP in
45 writing and assign the CRP a certification number.~~

46

- 1 ~~(i) A CRP may protest a recommendation of nonapproval at the next scheduled~~
2 ~~Certification Subcommittee meeting in accordance with the provisions of this~~
3 ~~Chapter.~~
- 4
- 5 ~~(j) Each CRP must be recertified every three (3) years by the Council. The re-~~
6 ~~certification procedure will require submission of all previously requested~~
7 ~~documentation, a review of submitted reports to the CNA, and a~~
8 ~~determination that the CRP has maintained compliance with the stated~~
9 ~~requirements of the State Use Program and the rules as stated in the Texas~~
10 ~~Administrative Code, Title 40, Chapter 189. The Council shall establish a~~
11 ~~schedule for the recertification process and the CNA shall assist each CRP as~~
12 ~~necessary to attain recertification. It is imperative that the CRP, after~~
13 ~~notification, submit within thirty (30) days the application for recertification~~
14 ~~and required documents to the CNA. If the CRP fails to do so, the Council~~
15 ~~may request a written explanation and/or the appearance of a representative~~
16 ~~of the CRP before the Council. If the CRP fails to respond in a timely~~
17 ~~manner, the Council may consider the suspension of all State Use Program~~
18 ~~contracts until the recertification process has been completed and approval~~
19 ~~has been attained.~~
- 20
- 21 ~~(k) The CRP will submit quarterly wage and hour reports to the CNA. These~~
22 ~~reports are due no later than the last day of the month following the end of~~
23 ~~the quarter. If the CRP fails to submit reports on time, the Council will send~~
24 ~~a warning letter and a representative of the CRP may be requested to appear~~
25 ~~before the Council. If compliance is not achieved in a consistent and timely~~
26 ~~manner, the Council, at its discretion, may consider the suspension of the~~
27 ~~CRP's State Use Program contracts.~~
- 28
- 29 ~~(l) It is imperative that CRPs maintain compliance with the State Use Program in~~
30 ~~regard to percentage requirements related to administrative costs, supplies~~
31 ~~cost, wages, and hours of direct labor necessary to perform services and/or~~
32 ~~produce products. Compliance will be monitored by the CNA and violations~~
33 ~~will be reported promptly to the Council. A violation will result in a warning~~
34 ~~letter from the Council and the CNA will offer assistance as needed to~~
35 ~~achieve compliance. A CRP that fails to meet compliance requirements,~~
36 ~~without a waiver from the Council, for two quarters in any four quarter~~
37 ~~period must submit a written explanation and a representative of the CRP will~~
38 ~~be requested to appear before the Council. State Use Program contracts may~~
39 ~~be suspended and/or certification revoked if compliance is not immediately~~
40 ~~and consistently maintained. In order to attain reinstatement, the CRP must~~
41 ~~apply for recertification following the procedures outlined in this chapter.~~
- 42
- 43 ~~(m) The Council, at its sole discretion, may review or have reviewed any CRP~~
44 ~~participating in the State Use Program to verify that the CRP meets and~~
45 ~~maintains the requirements outlined in this chapter. A CRP shall not submit~~
46 ~~any false statement relating to certification requirements, employment of~~

1 and/or number of persons with disabilities, and nature and/or quality of
2 products and services offered through the State Use Program. A CRP must
3 not serve, in whole or part, as an outlet or front for any entity whose purpose
4 is not the employment of people with disabilities. A CRP shall promptly
5 report any conflict of interest or receipt of benefit or promise of benefit to the
6 Council. The Council will consider such reports on an individual basis.
7 Verified instances of conflict of interest by a CRP may result in suspension of
8 the CRP's eligibility to participate in the State Use Program and/or revocation
9 of certification.

10
11 ~~(n) The Council, individual Council members, the State of Texas, or any other~~
12 ~~Texas state agency will not be responsible for any loss or losses, financial or~~
13 ~~otherwise, incurred by a CRP should its product or services not be approved~~
14 ~~for the State Use Program as provided by law.~~

15
16 **~~§806.7. Contracting with Central Nonprofit Agencies.~~**

17
18 ~~(a) The council may select and contract with one or more central nonprofit~~
19 ~~agencies and shall contract through a request for proposals for a period not to~~
20 ~~exceed five years to perform, at a minimum, the duties set forth in~~
21 ~~§122.019(a) and (b) of Chapter 122 of the Human Resources Code.~~

22
23 ~~(b) The management fee rate charged by a central nonprofit agency for its~~
24 ~~services to the CRP(s) and its method of calculation must be approved by the~~
25 ~~council. The maximum management fee rate must be:~~

26
27 ~~(1) computed as a percentage of the selling price of the product; or~~

28
29 ~~(2) the contract price of a service; and~~

30
31 ~~(3) must be included in the selling price or contract price; and~~

32
33 ~~(4) must be paid at the time of sale.~~

34
35 ~~(c) The council shall annually review the management fee and shall publish in~~
36 ~~the *Texas Register* a request for comment on the proposed management fee~~
37 ~~not later than the 60th day before the review. The council shall give~~
38 ~~reasonable notice of the intended management fee review to each CRP. In~~
39 ~~the event of a proposed management fee rate change the council shall require~~
40 ~~the CNA to provide documentation in support of any such change. Any~~
41 ~~supporting documentation of the CNA's proposed rate shall be made~~
42 ~~available to the public upon request. The council, at its sole discretion, may~~
43 ~~negotiate and approve varying management fees for a CNA to provide a fee~~
44 ~~structure that corresponds to the level of service being given by a CNA to~~
45 ~~each of the CRPs.~~

- 1 ~~(d) A percentage of the management fee described in subsection (b) of this~~
2 ~~section shall be set by the council and paid to the council in an amount~~
3 ~~necessary to reimburse the general revenue fund for direct and reasonable~~
4 ~~costs incurred by the comptroller in administering its duties under Chapter~~
5 ~~122.~~
6
7 ~~(e) In accordance with the Texas Human Resources Code, §122.019(c), the~~
8 ~~council shall annually review services by and the performance of a CNA, and~~
9 ~~the revenue required to accomplish the program. The purpose of the review~~
10 ~~shall be to determine whether a CNA has complied with statutory~~
11 ~~requirements, contract requirements, and performance standards set forth in~~
12 ~~§189.12 of this title (relating to performance standards for a central nonprofit~~
13 ~~agency).~~
14
15 ~~(f) Following the review of a CNA as required by §122.019(d) of the Human~~
16 ~~Resources Code, the council at its sole discretion, may approve the~~
17 ~~performance of the central nonprofit agency and the continuation of the~~
18 ~~contract through its termination date. The council may issue a request for~~
19 ~~proposals or negotiate an emergency contract not to exceed one year, when a~~
20 ~~contract with a CNA is terminated by the council because:~~
21
22 ~~(1) the central nonprofit agency ceases operations;~~
23
24 ~~(2) the central nonprofit agency gives notice that it cannot complete~~
25 ~~the contract;~~
26
27 ~~(3) the central nonprofit agency's performance contract has been~~
28 ~~terminated due to its failure to perform its contractual~~
29 ~~obligations; or~~
30
31 ~~(4) review of the central nonprofit agency results in disapproval of its~~
32 ~~performance.~~
33
34 ~~(g) In the event a new CNA succeeds to the contract for any reason provided in~~
35 ~~these rules, the prior CNA shall cooperate fully and assist the new CNA to~~
36 ~~take over CNA duties and responsibilities as soon as possible with minimal~~
37 ~~disruption to the operations of the program. Such cooperation and assistance~~
38 ~~will include turning over to the council the terminated CNA's records~~
39 ~~described in the Texas Human Resources Code §122.009(a), which includes~~
40 ~~but is not limited to a marketing plan, a listing of CRPs participating in the~~
41 ~~state use program, copies of all contracts with CRPs participating in the state~~
42 ~~use program, a listing of state agencies that purchase state use products and~~
43 ~~services, program funding requirements, and job descriptions for staffing a~~
44 ~~CNA to perform its duties under its contract with the council.~~
45

1 ~~(h) Not later than the 60th day before the date the council adopts or renews a~~
2 ~~contract, the council shall publish notice of the proposed contract in the *Texas*~~
3 ~~*Register*.~~

4
5 ~~(i) No later than October 1st of each year the CNA will provide to the council,~~
6 ~~regarding CRP(s) which have contracted with the CNA, the following~~
7 ~~information for the period of July 1st through June 30th of each year:~~

8
9 ~~(1) for CRPs:~~

10
11 ~~(A) a collective executive summary of the CRPs annual state use~~
12 ~~program evaluations;~~

13
14 ~~(B) the number of disabled persons employed by type of disability~~
15 ~~and the number of nondisabled workers employed in programs~~
16 ~~managed by the CRP(s) or who are employed by businesses or~~
17 ~~workshops that receive supportive employment from CRPs;~~

18
19 ~~(C) the amount of annual wages and the average and range of weekly~~
20 ~~earnings for disabled and nondisabled workers who are employed~~
21 ~~in CRPs under this chapter;~~

22
23 ~~(D) a summary of the sale of products offered by the CRP(s);~~

24
25 ~~(E) a list of products and/or services offered by a CRP;~~

26
27 ~~(F) the geographic distribution of CRP(s); and~~

28
29 ~~(G) a report of all CRPs that have not met the criteria for participation~~
30 ~~in the state use program in a format approved by the council.~~

31
32 ~~(2) from each CRP data on individual outplacement or supported~~
33 ~~employment to include:~~

34
35 ~~(A) the number of individuals in outplacement employed;~~

36
37 ~~(B) the hourly wage range;~~

38
39 ~~(C) the range of hours worked; and~~

40
41 ~~(D) the number of disabled persons employed by primary type of~~
42 ~~disability.~~

43
44 ~~(j) In accordance with the Texas Human Resource Code, §122.019 (c) and~~
45 ~~§122.019(d), a CNA will provide or make available to the council:~~

- 1 ~~(1) quarterly reports for each calendar quarter of its contract of sales of~~
2 ~~products or services, wages paid and hours worked by persons with~~
3 ~~disabilities for CRPs participating in the state use program;~~
4
5 ~~(2) quarterly reports for each calendar quarter listing CRPs that do not~~
6 ~~meet criteria for participation in the state use program and the reasons~~
7 ~~that each CRP listed does not meet the criteria;~~
8
9 ~~(3) at least once a year by October 31st, and prior to any review and/or re-~~
10 ~~negotiation of the contract:~~
11
12 ~~(A) an updated marketing plan;~~
13
14 ~~(B) a proposed annual budget with estimated sales, commissions, and~~
15 ~~expenses;~~
16
17 ~~(C) a program budget with details on how the expected revenue and~~
18 ~~expenses will be allocated to directly support and expand the~~
19 ~~state use program and other programs that expand direct services~~
20 ~~and/or the enhancement of employment opportunities for persons~~
21 ~~with disabilities; and~~
22
23 ~~(D) an audited annual financial statement which should include~~
24 ~~information on FDIC coverage of all cash balances, earnings~~
25 ~~attributed to the management fee for the state use program,~~
26 ~~accounts receivable, cash reserves, line of credit borrowings,~~
27 ~~interest payments, bad debt, administrative overhead and any~~
28 ~~detailed supporting documentation requested by the council;~~
29
30 ~~(4) quarterly reports of categories of expenditures in reporting format~~
31 ~~approved by the council;~~
32
33 ~~(5) records in accordance with the Texas Human Resources Code~~
34 ~~§122.009(a) and §122.0019(d) for audit purposes, provided however,~~
35 ~~that any records provided by a CNA which may be subject to any~~
36 ~~exception to Chapter 552 of the Texas Government Code, would not be~~
37 ~~dislosed to any third party except with the permission of the CNA or~~
38 ~~in accordance with the provisions of Chapter 552, Government Code~~
39 ~~(the "Public Information Act"); and~~
40
41 ~~(6) any other information the council requests as set forth in Chapter 189~~
42 ~~of this title (relating to Purchase of Products and Services from Persons~~
43 ~~with Disabilities).~~
44
45 ~~(k) Duties of a CNA include, but not be limited to:~~
46

1 ~~(1) recruit and assist community rehabilitation programs in developing and~~
2 ~~submitting applications for the selection of suitable products and~~
3 ~~services;~~

4
5 ~~(2) facilitate the distribution of orders among community rehabilitation~~
6 ~~programs;~~

7
8 ~~(3) manage and coordinate the day-to-day operations of the program,~~
9 ~~including the general administration of contracts with community~~
10 ~~rehabilitation programs;~~

11
12 ~~(4) promote increased supported employment opportunities for persons~~
13 ~~with disabilities;~~

14
15 ~~(5) investigate products and services before they are proposed by CRPs for~~
16 ~~the state use program and after their approval for compliance with~~
17 ~~Texas Government Code §2155.138 and §2155.069; and~~

18
19 ~~(6) monitor CRPs to ensure that all criteria for participation in the state use~~
20 ~~program are met.~~

21
22 ~~(1) The services of a central nonprofit agency may include marketing and~~
23 ~~marketing support services, such as:~~

24
25 ~~(1) assistance to CRPs regarding solicitation and negotiation of contracts;~~

26
27 ~~(2) direct marketing of products and services to state agencies and political~~
28 ~~subdivisions;~~

29
30 ~~(3) research and development of products and services;~~

31
32 ~~(4) public relations activities to promote the program;~~

33
34 ~~(5) customer relations;~~

35
36 ~~(6) education and training;~~

37
38 ~~(7) accounting services related to purchase orders, invoices, and payments~~
39 ~~to CRPs; and~~

40
41 ~~(8) other duties as designated by the council that may include:~~

42
43 ~~(A) establishing a payment system with a goal to pay CRPs within~~
44 ~~fourteen (14) to twenty one (21) calendar days, but not less than~~
45 ~~thirty (30) days of completion of work and proper invoicing;~~

1 ~~(B) resolving contract issues and/or problems as they arise between~~
2 ~~the CRPs and customers of the program, referring those that~~
3 ~~cannot be resolved to the council;~~
4

5 ~~(C) maintaining a system that tracks and monitors product and service~~
6 ~~sales; and~~
7

8 ~~(D) tracking and reporting quality and delivery times of products and~~
9 ~~services.~~
10

11 ~~(m) Each year by October 31st, a central nonprofit agency will establish~~
12 ~~performance goals for the next fiscal year in support of objectives set by the~~
13 ~~council. Those performance goals will include, but not be limited to:~~
14

15 ~~-(1) sales of products or services;~~
16

17 ~~-(2) wages paid to persons with disabilities;~~
18

19 ~~(3) hours worked by persons with disabilities;~~
20

21 ~~(4) response time to customers' inquiries and/or complaints; and~~
22

23 ~~(5) quality standards and delivery goals for CRP programs operations.~~
24

25 ~~(n) The CNA shall have an authorized representative present at all council~~
26 ~~meetings who can bind the CNA to any representations, agreements or~~
27 ~~decisions regarding agenda items subject to the council's authority.~~
28

29 ~~(o) The council may terminate a contract with a central nonprofit agency if:~~
30

31 ~~(1) the council finds substantial evidence of the central nonprofit agency's~~
32 ~~noncompliance with contractual obligations or of conflict of interest;~~
33 ~~and~~
34

35 ~~(2) the council has provided at least 30 days written notice to that central~~
36 ~~nonprofit agency of the termination of the contract.~~
37

38 ~~(p) The council may request an audit by the state auditor of:~~
39

40 ~~(1) the management fee set for any central nonprofit agency; or~~
41

42 ~~(2) the financial condition of any central nonprofit agency.~~
43

44 ~~(q) A person may not operate a community rehabilitation program and at the~~
45 ~~same time contract with the council as a central nonprofit agency.~~
46

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

3
4
5 **~~§806.8. Product Specifications and Exceptions.~~**

6
7 ~~(a) A product manufactured for sale through the comptroller to any office,~~
8 ~~department, institution or agency of the state shall be manufactured or~~
9 ~~produced according to specifications developed by the comptroller. If the~~
10 ~~comptroller has not developed specifications for a particular product, the~~
11 ~~production shall be based on commercial or federal specifications in current~~
12 ~~use by the industry.~~

13
14 ~~(b) Requisitions for products and/or services required by state agencies are~~
15 ~~processed by the comptroller according to comptroller rules.~~

16
17 ~~(c) An exception from subsection (a) of this section may be made in any case as~~
18 ~~follows:~~

19
20 ~~(1) under the rules of the comptroller, the product and/or service so~~
21 ~~produced or provided does not meet the reasonable requirements of the~~
22 ~~office, department, institution, or agency; or~~

23
24 ~~(2) the requisitions made cannot be reasonably complied with through~~
25 ~~provision of products and/or services produced by persons with~~
26 ~~disabilities.~~

27
28 ~~(d) An office, department, institution, or agency may not evade purchasing~~
29 ~~products and/or services produced or provided by persons with disabilities by~~
30 ~~requesting variations from standards adopted by the comptroller when the~~
31 ~~products and/or services produced or provided by persons with disabilities,~~
32 ~~per established standards, are reasonably adapted to the actual needs of the~~
33 ~~office, department, institution, or agency and comply with Government Code~~
34 ~~§2155.138 and §2155.069.~~

35
36 ~~(e) The comptroller shall provide the council with a list of items known to have~~
37 ~~been purchased under the exceptions provided in subsection (c) of this~~
38 ~~section monthly, in the format adopted by the council.~~

39
40 ~~(f) The council, subcommittee, or staff shall review and process the exception~~
41 ~~reports received from state agencies, and the comptroller that purchase~~
42 ~~products or services available from a central nonprofit agency or community~~
43 ~~rehabilitation program under this chapter, but purchased from another~~
44 ~~business that is not a central nonprofit agency or community rehabilitation~~
45 ~~program under this chapter.~~

1 ~~(g) The council shall coordinate with the respective employee, designated by~~
2 ~~each state agency, to assist in attaining future compliance with this chapter,~~
3 ~~when an agency makes and reports an unjustified purchase or purchases of a~~
4 ~~product available under the programs authorized by this chapter,~~
5

6 ~~(h) Council may request an Attorney General opinion prior to engaging in~~
7 ~~alternative dispute resolution.~~
8
9

10 ~~**§806.9. Determination of Fair Market Value.**~~

11
12 ~~(a) Pursuant to §122.008 of Chapter 122 of the Texas Human Resources Code~~
13 ~~and §2155.138 of the Texas Government Code, a suitable product and/or~~
14 ~~service that meets applicable specifications and that is available within the~~
15 ~~time specified must be procured from a CRP at the price determined by the~~
16 ~~council to be the fair market price.~~
17

18 ~~(b) The pricing subcommittee shall review products, services and price revisions~~
19 ~~submitted by the CNA on behalf of participating or prospective CRP(s). Due~~
20 ~~consideration shall be given to the following factors set forth in the Human~~
21 ~~Resources Code §122.015 and other criteria which is necessary to determine~~
22 ~~the fair market price of the products and/or services:~~
23

24 ~~(1) to the extent applicable, the amounts being paid for similar articles in~~
25 ~~similar quantities by state agencies purchasing the products or services~~
26 ~~not in the state use program;~~
27

28 ~~(2) the amounts which private business would pay for similar products or~~
29 ~~services in similar quantities if purchasing from a reputable corporation~~
30 ~~engaged in the business of selling similar products or services;~~
31

32 ~~(3) to the extent applicable, the amount paid by the state in any recent~~
33 ~~purchases of similar products or services in similar quantities, making~~
34 ~~due allowance for general inflationary or deflationary trends;~~
35

36 ~~(4) the actual cost of manufacturing the product or performing a service at~~
37 ~~a community rehabilitation program offering employment services on~~
38 ~~or off premises to persons with disabilities, with adequate weight to be~~
39 ~~given to legal and moral imperatives to pay workers with disabilities~~
40 ~~equitable wages; or~~
41

42 ~~(5) the usual, customary, and reasonable costs of manufacturing,~~
43 ~~marketing, and distribution.~~
44

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

1
2 ~~(d) The council shall revise the prices periodically to reflect changing market~~
3 ~~conditions.~~

4
5 ~~**§806.10. Consumer Information; Complaints and Resolution.**~~

6
7 ~~(a) Complaints regarding matters under the jurisdiction of the council shall be~~
8 ~~made in writing and addressed to the council's presiding officer who shall~~
9 ~~refer the complaint to the appropriate subcommittee for review and~~
10 ~~determination. The subcommittee shall then recommend action on the~~
11 ~~complaint to the full council. The council shall maintain information~~
12 ~~regarding each complaint. The written complaint must include the name and~~
13 ~~address of the person who filed the complaint and the subject matter of the~~
14 ~~complaint.~~

15
16 ~~(b) Any product or service may be removed or temporarily suspended from the~~
17 ~~state use program as a result of a CRP:~~

18
19 ~~(1) continuing to provide products that fail to meet specifications;~~

20
21 ~~(2) continuing to fail to make a delivery as promised;~~

22
23 ~~(3) making unauthorized substitutions;~~

24
25 ~~(4) misrepresenting merchandise;~~

26
27 ~~(5) failing to make satisfactory adjustments when required; or~~

28
29 ~~(6) unethical actions.~~

30
31 ~~(c) A product or service which has been temporarily suspended may be~~
32 ~~reinstated by promptly correcting the reason(s) for suspension. A failure to~~
33 ~~make the necessary correction promptly may result in the termination of the~~
34 ~~CRP's contract with the CNA.~~

35
36 ~~(d) Complaints shall be resolved by a quorum of the council.~~

37
38
39 ~~**§806.11. Records.**~~

40
41 ~~(a) The comptroller is the depository for all records of the council's operations~~
42 ~~and disclosure of records are subject to requirements of Chapter 552 of the~~
43 ~~Texas Government Code (the "Public Information Act").~~

44
45 ~~(b) The council or the council's staff, when approved in advance by the council,~~
46 ~~may access financial or other information and records from a central~~

1 nonprofit agency or a community rehabilitation program if the council
2 determines the information and records are necessary for the effective
3 administration of this chapter and rules adopted under this chapter.
4

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

10
11 ~~(1) for statistical purposes, but only if a person is not identified;~~

12
13 ~~(2) with the consent of each person identified in the release; or~~

14
15 ~~(3) regarding a compensation package of any central nonprofit agency
16 employee or subcontractor if determined by the council to be relevant
17 to the administration of this chapter.~~

18
19 ~~(d) No records may be accessed or released without the council chairperson's written
20 approval given in response to a written request. Anyone, including one or more
21 council members, council staff, or any other individual or entity, seeking to
22 access or receive copies of a record or records belonging to a central nonprofit
23 agency or a community rehabilitation program shall follow the following
24 procedure.~~

25
26 **~~§806.12. Performance Standards for a Central Nonprofit Agency.~~**

27
28 ~~(a) A CNA shall meet performance standards in carrying out the terms and
29 conditions of the contract.~~

30
31 ~~(b) Operating pursuant to the statute and rules of the council, a CNA must
32 manage and coordinate the day-to-day operation of the state use program
33 including, but not limited to the following activities:~~

34
35 ~~(1) strive to increase employment for persons with disabilities by ten
36 percent (10%) per year by researching new products, services and
37 markets, improving existing products and services, and reporting to the
38 council on a quarterly basis the status of these activities;~~

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

- ~~(3) provide quarterly regional information workshops to promote the state use program;~~
- ~~(4) provide quarterly regional training programs to the CRPs on the requirements to participate in the state use program, governmental contracting, and procurement procedures and laws;~~
- ~~(5) resolve contract issues and/or problems as they arise between the CRPs, the CNA, and/or customers, referring those that cannot be resolved to the council and submit quarterly status reports on issues and referrals;~~
- ~~(6) provide an annual report that includes audited financial statements of the CNA, an updated strategic plan, and an updated projected schedule of expenses that details how the management fee is being allocated to directly support the state use program and what amount of funds are being devoted to expanding direct services to programs that enhance the disabled and what percentage of funds will be used for administrative overhead, such as salaries;~~
- ~~(7) demonstrate compliance with state and federal tax laws and payroll laws by submitting quarterly reports of sales and taxes paid to the Texas Comptroller of Public Accounts and the Internal Revenue Service;~~
- ~~(8) 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;~~

- 1
2 ~~(13) maintain knowledge of governmental contracting and procurement~~
3 ~~processes and laws;~~
4
5 ~~(14) provide general administration of the state use program with~~
6 ~~performance criteria and timely submission of reports required by these~~
7 ~~above rules; and~~
8
9 ~~(15) maintain all necessary records for audit purposes that are in~~
10 ~~accordance with the law and directives set forth by the council and~~
11 ~~submit any or all records requested by the council within three (3)~~
12 ~~weeks of the request. Disclosure to the public of any and all records of~~
13 ~~a CNA shall be subject to the Public Information Act.~~

14
15 **~~§806.13. Recognition and Approval of Community Rehabilitation Program~~**
16 **~~Products and Services.~~**

- 17
18 ~~(a) A CRP desiring to provide services under the state use program must comply~~
19 ~~with the following requirements to obtain approval from the council:~~
20
21 ~~(1) A minimum of thirty-five percent (35%) of the contract price of the~~
22 ~~service must be paid to persons with disabilities who perform the~~
23 ~~service in the form of wages and benefits; however, the council may~~
24 ~~accept a lower percentage when it is satisfied that this percentage is not~~
25 ~~feasible for a particular service.~~
26
27 ~~(2) Supply costs for the service must not exceed twenty percent (20%) of~~
28 ~~the contract price of the service; however, the council may accept a~~
29 ~~larger percentage when it is satisfied that this percentage is not feasible~~
30 ~~for a particular service.~~
31
32 ~~(3) Administrative costs allocated to the service must not exceed ten~~
33 ~~percent (10%) of the contract price for the service. At least seventy-~~
34 ~~five percent (75%) of the hours of direct labor necessary to perform a~~
35 ~~service must be done by persons with disabilities; however, the council~~
36 ~~may accept a lower percentage when it is satisfied that this percentage~~
37 ~~is not feasible for a particular service.~~
38
39 ~~(b) A CRP must comply with the following requirements to obtain approval~~
40 ~~from the council for state use products:~~
41
42 ~~(1) At least seventy-five percent (75%) of the hours of direct labor~~
43 ~~necessary to reform raw materials, assemble components, manufacture,~~
44 ~~prepare, process and/or package a product must be done by persons~~
45 ~~with disabilities; however, the council may accept a lower percentage~~

1 when it is satisfied that this percentage is not feasible for a particular
2 product.

3
4 ~~(2) Appreciable contribution and value added to the product by persons~~
5 ~~with disabilities must be determined on a product by product basis to~~
6 ~~be substantial based on acceptable documentation provided to the~~
7 ~~council upon application for a product to be approved for the state use~~
8 ~~program.~~

9
10 ~~(c) The rules governing the approval of products to be offered by community~~
11 ~~rehabilitation programs apply to all items that a community rehabilitation~~
12 ~~program proposes to offer to state agencies or political subdivisions,~~
13 ~~regardless of the method of acquisition by the agency, whether by sale or~~
14 ~~lease. A community rehabilitation program must in fact own any product or~~
15 ~~products it leases. A proposal by a community rehabilitation program to rent~~
16 ~~or lease a product to a state agency is a proposal to offer a product, not a~~
17 ~~service, and the item offered must meet the requirements of these rules~~
18 ~~governing products. If the product is offered for lease by the community~~
19 ~~rehabilitation program, the unit cost of the product, for purposes of applying~~
20 ~~the standards set forth in these rules, is the total cost to the state agency of~~
21 ~~leasing the product over its expected useful life.~~

22
23 ~~(d) Any necessary subcontracted services shall be performed to the maximum~~
24 ~~extent possible by other community rehabilitation programs and in a manner~~
25 ~~that maximizes the employment of persons with disabilities.~~

26
27 ~~(e) Raw materials or components may be obtained from companies operated for~~
28 ~~profit, but a community rehabilitation program must own any product that it~~
29 ~~offers for sale to state agencies or political subdivisions through the state use~~
30 ~~program and make an appreciable contribution to the product which accounts~~
31 ~~for a substantial amount of the value added to the product.~~

32
33