

Representative Gage Froerer proposes the following substitute bill:

PURCHASING FROM COMMUNITY REHABILITATION

PROGRAMS AMENDMENTS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Marie H. Poulson

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions of the Utah Procurement Code relating to purchasing from community rehabilitation programs.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ increases the size of the Purchasing from Persons with Disabilities Advisory Board;
- ▶ requires the advisory board to publish and distribute a list of goods and services to all state agencies and interested political subdivisions provided by community rehabilitation programs;
- ▶ provides that this bill relates to bids and proposals;
- ▶ requires that the central not-for-profit association described in this bill be selected through a request for proposals;
- ▶ describes criteria used to evaluate a response to a request for proposals described in the preceding paragraph;
- ▶ permits a community rehabilitation program to contract directly with a government entity for janitorial services in response to an invitation for bids or a request for



26 proposals issued and awarded by the government entity, without involvement of the central
27 not-for-profit association described in this bill;

28 ▶ provides a preference to a community rehabilitation program that responds to an
29 invitation for bids or a request for proposals described in the preceding paragraph;

30 ▶ prohibits the central not-for-profit association described in this bill from charging a
31 fee in relation to an invitation for bids or a request for proposals described in the
32 preceding paragraph; and

33 ▶ makes technical changes.

34 **Money Appropriated in this Bill:**

35 None

36 **Other Special Clauses:**

37 None

38 **Utah Code Sections Affected:**

39 AMENDS:

40 **63G-6-425**, as renumbered and amended by Laws of Utah 2008, Chapter 382



42 *Be it enacted by the Legislature of the state of Utah:*

43 Section 1. Section **63G-6-425** is amended to read:

44 **63G-6-425. Purchase from community rehabilitation programs.**

45 (1) As used in this section:

46 (a) "Board" means the Purchasing from Persons with Disabilities Advisory Board
47 created under this section.

48 (b) "Central not-for-profit association" means [~~a group of experts designated~~] an
49 association designated by the board under Subsection (3)(a) to do the following, under
50 guidelines established by the board:

51 (i) assist the board with its functions; and

52 (ii) facilitate the implementation of board policies.

53 (c) (i) "Community rehabilitation program" means a program that is operated primarily
54 for the purpose of the employment and training of persons with a disability by a government
55 agency or qualified nonprofit organization which is an income tax exempt organization under
56 26 U.S.C. Sec. 501(c)(3) of the Internal Revenue Code.

57 (ii) A community rehabilitation program:

58 (A) maintains an employment ratio of at least 75% of the program employees under the
59 procurement contract in question have severe disabilities;

60 (B) (I) complies with any applicable occupational health and safety standards
61 prescribed by the United States Department of Labor; or

62 (II) is a supported employment program approved by the Utah State Office of
63 Rehabilitation;

64 (C) has its principal place of business in Utah;

65 (D) produces any good provided under this section in Utah; and

66 (E) provides any service that is provided by individuals with a majority of whom
67 domiciled in Utah.

68 (d) "Market price" means:

69 (i) the most recent price paid by a government entity, as the result of a competitive
70 process, for the same good or service, unless the board finds that the current market conditions
71 relating to the good or service are significantly different than the market conditions that existed
72 when the government entity procured the good or service;

73 (ii) if the information described in Subsection (1)(d)(i) is not available or not
74 applicable, the lowest price in the most recent responsible and responsive competitive bid,
75 offer, or quote received by a government entity for the same good or service, unless the board
76 finds that the current market conditions relating to the good or service are significantly
77 different than the market conditions that existed when the bid, offer, or quote was received by
78 the government entity; or

79 (iii) if the information described in Subsections (1)(d)(i) and (ii) is not available or not
80 applicable, a price determined by the board, based on a review of relevant economic factors,
81 including:

82 (A) wage and salary information provided by the Department of Workforce Services;

83 (B) market indicators; and

84 (C) other factors that the board determines are relevant.

85 ~~(d)~~ (e) "Person with a disability" means a person with any disability as defined by and
86 covered under the Americans with Disabilities Act of 1990, 42 U.S.C. 12102.

87 (f) "Reasonably competitive" means a price that is within 5% of the market price for

88 the good or service.

89 (2) (a) There is created the Purchasing from Persons with Disabilities Advisory Board
90 within the Division of Purchasing and General Services of the Department of Administrative
91 Services. The board shall be composed of the following [~~three~~] five members:

92 (i) the director of the Division of Purchasing and General Services, created [~~under~~] in
93 Section 63A-2-101, or [a] the director's designee;

94 (ii) the executive director of the Utah State Office of Rehabilitation, created [~~under~~] in
95 Section 53A-24-103, or [a] the executive director's designee; [~~and~~]

96 [~~(iii) a representative~~]

97 (iii) the director of the Division of Services for People with Disabilities, created in
98 Section 62A-5-102, or the director's designee;

99 (iv) one representative of the private business community who shall be appointed to a
100 three-year term by the governor with the advice and consent of the Senate[-]; and

101 (v) the director of the Division of Facilities Construction and Management created in
102 Section 63A-5-201, or the director's designee.

103 (b) The board shall meet, as needed, to facilitate the procurement of goods and services
104 from community rehabilitation programs by a public procurement unit under this chapter by:

105 (i) identifying goods and services that are available from community rehabilitation
106 programs [~~according to the requirements under~~] in accordance with the requirements of
107 Subsection (4);

108 (ii) [~~approving~~] determining reasonably competitive prices in accordance with
109 Subsection (4)(c) for goods and services that are identified under Subsection (2)(b)(i);

110 [~~(iii) developing, maintaining, and approving a preferred procurement contract list of~~
111 ~~goods and services identified and priced under Subsections (2)(b)(i) and (ii);~~]

112 (iii) publishing and distributing to all state agencies and interested political
113 subdivisions a list of goods and services, or categories of goods and services, provided by
114 community rehabilitation programs;

115 (iv) reviewing bids or proposals received by a community rehabilitation program; and

116 (v) awarding and renewing specified contracts for set contract times, without
117 competitive bidding or another competitive procurement process, for the purchase of goods and
118 services under Subsection (4).

119 (c) The provisions of Subsections (2)(b) and (4)(a) are an exception to the procurement
120 provisions under this chapter.

121 (3) (a) ~~[The]~~ In accordance with Subsection (3)(d), the board may [designate] select,
122 through a request for proposals, a central not-for-profit association~~[, appoint its members,]~~ and
123 establish guidelines for its duties.

124 (b) The designated central not-for-profit association;

125 (i) serves at the pleasure of the board ~~[and the central not-for-profit association or its~~
126 ~~individual members]; and~~

127 (ii) may be removed by the board at any time by a majority vote of the board.

128 (c) Subject to the board guidelines and in its discretion, a designated central
129 not-for-profit association may be assigned to perform the following duties:

130 (i) identify qualified community rehabilitation programs and the goods and services
131 that they provide or have the potential to provide;

132 (ii) help ensure that goods and services are provided at reasonable quality and delivery
133 levels;

134 (iii) recommend pricing for goods and services;

135 (iv) ~~[reviewing]~~ review bids and proposals and ~~[recommending]~~ recommend the award
136 of contracts under the board's direction;

137 (v) ~~[collecting and reporting]~~ collect and report program data to the board and to the
138 division; and

139 (vi) other duties specified by the board.

140 (d) The board shall evaluate a response to a request for proposals described in
141 Subsection (3)(a) based on the offerors':

142 (i) fee schedule;

143 (ii) qualifications; and

144 (iii) other criteria described in the request for proposals.

145 (4) Except as provided under Subsection (6), notwithstanding any provision in this
146 chapter to the contrary, each public procurement unit shall purchase goods and services
147 produced by a community rehabilitation program using the preferred procurement ~~[contract list~~
148 ~~approved under]~~ list described in Subsection (2)(b)(iii) if:

149 (a) the good or service offered for sale by a community rehabilitation program

150 reasonably conforms to the needs and specifications of the public procurement unit;

151 (b) the community rehabilitation program can supply the good or service within a
152 reasonable time; and

153 (c) the price of the good or service is reasonably competitive with the cost of procuring
154 the good or service from another source.

155 (5) (a) A government entity may award a contract to a community rehabilitation
156 program in response to an invitation for bids or a request for proposals issued by the
157 governmental entity for janitorial services, without involvement of the central not-for-profit
158 association selected under Subsection (3)(a).

159 (b) ~~[Each] A~~ community rehabilitation program ~~[:-(a)]~~ may submit a bid ~~[to the board at~~
160 ~~any time and not necessarily in response to a request for bids; and]~~ or offer, in response to an
161 invitation for bids or a request for proposals described in Subsection (5)(a), without
162 involvement of the central not-for-profit association selected under Subsection (3)(a).

163 (c) A community rehabilitation program shall receive a 5% preference on its cost score
164 when it submits a bid or response to provide janitorial services to a government entity in
165 response to an invitation for bids or a request for proposals described in Subsection (5)(a) if it
166 certifies in its response or offer that it is claiming the preference.

167 (d) The central not-for-profit association selected under Subsection (3)(a) may not
168 charge a fee to a community rehabilitation program in relation to an invitation for bids or a
169 request for proposals described in Subsection (5)(a).

170 ~~[(b) shall certify on any bid it submits to the board or to a public procurement unit~~
171 ~~under this section that it is claiming a preference under this section.]~~

172 (6) During a fiscal year, the requirement for a public procurement unit to purchase
173 goods and services produced by a community rehabilitation program under the preferred
174 procurement list under Subsection (4) does not apply if the Division of Purchasing and General
175 Services determines that the total amount of procurement contracts with community
176 rehabilitation programs has reached \$5 million for that fiscal year.

177 (7) In the case of conflict between a purchase under this section and a purchase under
178 Section 63G-6-423, this section prevails.

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