

HB0026S01 compared with HB0026

~~{deleted text}~~ shows text that was in HB0026 but was deleted in HB0026S01.

inserted text shows text that was not in HB0026 but was inserted into HB0026S01.

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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

~~{Committee Note:~~

~~_____The Workforce Services and Community and Economic Development Interim
Committee recommended this bill.~~

~~}General Description:~~

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

Highlighted Provisions:

This bill:

- ▶ defines ~~{the term "reasonably competitive"}~~terms;
- ▶ increases the size of the Purchasing from Persons with Disabilities Advisory Board;

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- ▶ 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 proposals issued and awarded by the government entity, without involvement of the central not-for-profit association described in this bill;
- ▶ provides a preference to a community rehabilitation program that responds to an invitation for bids or a request for proposals described in the preceding paragraph;
- ▶ prohibits the central not-for-profit association described in this bill from charging a fee in relation to an invitation for bids or a request for proposals described in the preceding paragraph; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

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

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

(1) As used in this section:

(a) "Board" means the Purchasing from Persons with Disabilities Advisory Board

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created under this section.

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

- (i) assist the board with its functions; and
- (ii) facilitate the implementation of board policies.

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

(ii) A community rehabilitation program:

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

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

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

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

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

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

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

~~—— (e) "Reasonably competitive" means a price that:~~

~~—— (i) the public procurement unit and the community rehabilitation program agree on for the goods or services; or~~

~~—— (ii) the board determines is reasonably competitive}Market price" means:~~

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

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

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

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

(B) market indicators; and

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

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

(f) "Reasonably competitive" means a price that is within 5% of the market price for the good or service.

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

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

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

~~[(iii) a representative]~~

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

~~{~~ ~~—~~ ~~(iv) the director of the Governor's Office of Economic Development, created in Section 62M-1-201, or the director's designee;~~

~~†~~ ~~(iv)~~ ~~{two representatives}~~ one representative of the private business community who shall be appointed to a three-year term by the governor with the advice and consent of the Senate~~[-]; and~~

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~~(vi) a representative from the public who has served, but is not currently serving, as a member of the Legislature, appointed to a three-year term by the governor with the advice and consent of the Senate}~~v) the director of the Division of Facilities Construction and Management created in Section 63A-5-201, or the director's designee.

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

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

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

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

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

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

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

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

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

(b) The designated central not-for-profit association:

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

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

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

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- (i) identify qualified community rehabilitation programs and the goods and services that they provide or have the potential to provide;
- (ii) help ensure that goods and services are provided at reasonable quality and delivery levels;
- (iii) recommend pricing for goods and services;
- (iv) ~~[reviewing]~~ review bids and proposals and ~~[recommending]~~ recommend the award of contracts under the board's direction;
- (v) ~~[collecting and reporting]~~ collect and report program data to the board and to the division; and
- (vi) other duties specified by the board.

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

- (i) fee schedule;
- (ii) qualifications; and
- (iii) other criteria described in the request for proposals.

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

- (a) the good or service offered for sale by a community rehabilitation program reasonably conforms to the needs and specifications of the public procurement unit;
- (b) the community rehabilitation program can supply the good or service within a reasonable time; and
- (c) the price of the good or service is reasonably competitive with the cost of procuring the good or service from another source.

(5) ~~{ Each }~~ (a) A government entity may award a contract to a community rehabilitation program:

~~(a) }~~ (a) in response to an invitation for bids or a request for proposals issued by the governmental entity for janitorial services, without involvement of the central not-for-profit association selected under Subsection (3)(a).

(b) [Each] A community rehabilitation program~~[-(a)]~~ may submit a bid ~~{or offer }~~to

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~~the board at any time and not necessarily in response to a request for bids; and] or offer, in response to an invitation for bids or a request for proposals{; and~~
~~_____} described in Subsection (5)(a), without involvement of the central not-for-profit association selected under Subsection (3)(a).~~

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

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

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

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

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

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Legislative Review Note

~~_____ as of 11-2-11 3:49 PM~~

~~_____ Office of Legislative Research and General Counsel}~~