

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: Patricia W. Jones

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 preferred 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; and
- ▶ makes technical changes.

Money Appropriated in this Bill:



26 None

27 **Other Special Clauses:**

28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **63G-6-425**, as renumbered and amended by Laws of Utah 2008, Chapter 382



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

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

35 **63G-6-425. Purchase from community rehabilitation programs.**

36 (1) As used in this section:

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

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

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

43 (ii) facilitate the implementation of board policies.

44 (c) (i) "Community rehabilitation program" means a program that is operated primarily
45 for the purpose of the employment and training of persons with a disability by a government
46 agency or qualified nonprofit organization which is an income tax exempt organization under
47 26 U.S.C. Sec. 501(c)(3) of the Internal Revenue Code.

48 (ii) A community rehabilitation program:

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

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

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

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

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

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

59 (d) "Market price" means:

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

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

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

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

74 (B) market indicators; and

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

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

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

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

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

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

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

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

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

92 (v) the director of the Division of Facilities Construction and Management created in
93 Section 63A-5-201.

94 (b) The person appointed under Subsection (2)(a)(iv) will be the chair of the board.

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

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

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

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

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

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

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

112 ~~[(e)]~~ (d) The provisions of Subsections (2)~~[(b)]~~(c) and (4)(a) are an exception to the
113 procurement provisions under this chapter.

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

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

118 (i) serves at the pleasure of the board ~~[and the central not-for-profit association or its~~

119 ~~individual members]; and~~

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

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

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

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

127 (iii) recommend pricing for goods and services;

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

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

132 (vi) other duties specified by the board.

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

135 (i) fee schedule;

136 (ii) qualifications; and

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

138 (4) Except as provided under Subsection (6), notwithstanding any provision in this
139 chapter to the contrary, each public procurement unit shall purchase goods and services

140 produced by a community rehabilitation program using the preferred procurement ~~[contract list~~
141 ~~approved under]~~ list described in Subsection (2)~~(b)](c)~~(iii) if:

142 (a) the good or service offered for sale by a community rehabilitation program
143 reasonably conforms to the needs and specifications of the public procurement unit;

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

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

148 (5) Each community rehabilitation program: (a) may submit a bid to the board at any
149 time and not necessarily in response to a request for bids; and

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

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

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