

**Council On Purchasing from  
People with Disabilities**



**Self Evaluation Report to the  
Texas Sunset Advisory Commission  
August 30, 2013**



**Self-Evaluation Report  
Texas Council on Purchasing from People with  
Disabilities**



**Sunset Advisory Commission**

**August 30, 2013**



# INSTRUCTIONS

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Each agency under Sunset review is required by law to complete a Self-Evaluation Report (SER) on its operations. The SER is designed to provide the Sunset Commission members and staff with a general background description of each agency being reviewed. The SER also gives each agency an opportunity to provide the Commission with a preview of issues and suggested improvements regarding the agency and its functions.

The SER contains 12 sections. Agencies should record their responses to each question directly on this electronic form. Answers should be typed in the white space beneath each question box. Use as little or as much room as needed to answer each question. If the information requested does not apply to your agency, either provide similar information to reflect agency practices, or enter "N/A" in the space provided. In charts, add or delete rows, change column widths, and renumber exhibits as necessary, or rename chart headings to better reflect agency practices. If a chart is not applicable, indicate so and delete the blank chart.

This document also contains examples for certain sections of the SER. Links are provided to jump directly from one part of the document to another, and can be accessed by clicking on the underlined text where the links appear.

Reviewing the background and issues sections of recent Sunset staff reports may also be helpful in preparing certain sections of the SER. Recent Sunset staff reports are available on the Sunset website at [www.sunset.state.tx.us](http://www.sunset.state.tx.us).

Once the report is complete, fill in the appropriate page numbers on the table of contents. The text regarding Instructions, Attachments, and Examples can be deleted from the SER that the agency submits to the Sunset Commission.

By **September 1, 2013**, please submit an accessible pdf file of the Self-Evaluation Report and attachments to: [dawn.roberson@sunset.state.tx.us](mailto:dawn.roberson@sunset.state.tx.us). Please redact any personally identifiable medical information from any documents you provide to Sunset. If available, please provide one hard copy of the SER and attachments to verify the pdf to the following address.

Sunset Advisory Commission  
1501 N. Congress  
Robert E. Johnson Bldg., 6<sup>th</sup> Floor  
Austin, TX 78701

Contact Ken Martin of the Sunset staff at (512) 463-1300 with any questions, or e-mail them to [ken.martin@sunset.state.tx.us](mailto:ken.martin@sunset.state.tx.us). Every effort will be made to minimize the additional workload this report places on your agency.



## Definitions

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

(1) **Appreciable contribution**--the term used to refer to the substantial work effort contributed by persons with disabilities in the reforming of raw materials, assembly of components or packaging of bulk products in more saleable quantities, by which value is added into the final product offered for sale.

(2) **Central nonprofit agency (CNA)**--An agency designated as a central nonprofit agency under contract with the council pursuant to §122.019 of the Texas Human Resources Code.

(3) Chapter 122--Chapter 122 of the Texas Human Resources Code.

(4) **Community Rehabilitation program (CRP)**--A government entity, private nonprofit unincorporated entity which has its own nonprofit status and federal tax identification number and has as its primary purpose the employment of persons with disabilities to produce products or perform services for compensation, or a private nonprofit incorporated entity with its own federal tax identification number, articles of incorporation and bylaws that establish its existence for the primary purpose of employing persons with disabilities to produce products or perform services for compensation.

(5) **Comptroller**--The Comptroller of Public Accounts.

(6) **Council**--The Texas Council on Purchasing from People with Disabilities.

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

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

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

(10) **State use program**--The statutorily authorized mandate requiring state agencies to purchase, on a non-competitive basis, the products made and services performed by persons with disabilities, which have been approved by the council pursuant to Human Resources Code, Chapter 122 and also meet the requirements of Texas Government Code, §§2155.138 and 2155.069. This program also makes approved products and services available to be purchased on a non-competitive basis by any political subdivision of the state.

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

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# Texas Council on Purchasing from People with Disabilities Self-Evaluation Report

## I. Agency Contact Information

A. Please fill in the following chart.

(Agency Name) Exhibit 1: Agency Contacts				
	Name	Address	Telephone & Fax Numbers	E-mail Address
<b>Agency Head</b>	John W. Luna	609 Johns Drive Eules, Texas 76039	(214)683.1534	Lunajohn14@gmail.com
<b>Agency's Sunset Liaison</b>	Kelvin Moore	111 East 17 <sup>th</sup> Street Austin, Texas 78703	(512) 463-3244	Kelvin.Moore@tcppd.state.tx.us

## II. Key Functions and Performance

Provide the following information about the overall operations of your agency. More detailed information about individual programs will be requested in a later section.

**A. Provide an overview of your agency's mission, objectives, and key functions.**

The mission of the Texas Council on Purchasing from People with Disabilities (Council) is to provide leadership and direction for programs which will enable persons with disabilities to achieve maximum personal independence through suitable employment.

The Council's primary functions are to further the state's policy of encouraging and assisting persons with disabilities to achieve maximum personal independence by engaging in useful productive employment activities, and provide state agencies, departments, and institutions and political subdivisions of the state with a method for achieving conformity with requirements of nondiscrimination and affirmative action in employment matters related to persons with disabilities.

The objective toward meaningful employment of persons with disabilities supports its key function of reducing dependence on government assistance, the need for sustained mental health care tied to unemployment isolation such as depression, and empowering persons with disabilities' support of local community and tax base with wages earned through employment which enable them as tax payers to increase their local tax base.

The key functions, powers and duties of the Council are contained in the Human Resource Code Chapter 122 and the Texas Administrative Code Title 40, Part 7, Chapter 189, and these functions are generally known as the Texas State Use Program.

**B. Do your key functions continue to serve a clear and ongoing objective? Explain why each of these functions is still needed. What harm would come from no longer performing these functions?**

Yes, the functions performed by the Council are designed to enable persons with disabilities to achieve maximum personal independence through meaningful employment. This function continues to create real and meaningful jobs in local communities, which increases the local tax base without the use of appropriated funds. Current U. S. Department of Labor statistics indicate that, among workers with disabilities, the unemployment rate for such persons is significantly higher than the unemployment rate for the general population. Government Labor statistics indicate that 17% percent of disabled have jobs versus 65% of non-disabled or 83% of those with a disability were not employed as of July 2013 as opposed to only 35% of those not listing a disability. \*(See Exhibit 1 Section II B.)

If the Chapter 122 State Use Program were eliminated, thousands of Texas workers could lose their jobs within local communities, many of them returning to government assistance, which would create a burden on the state and local governments.

**C. What evidence can your agency provide to show your overall effectiveness and efficiency in meeting your objectives?**

Through education more state and local agencies are participating and purchasing products and services performed by individuals with disabilities through the State Use Program. Reporting from participating CRPs indicate that thousands of individuals are employed through this program and earn meaningful wages in their community. Also, reports indicate that supported employment initiatives are also achieved under this program. Annual reporting from CRPs indicates that approximately 30% of total contracted dollars reflect wages paid to people with disabilities under this program. The substantial attendance at the State Use annual conference and expo is an indication of widespread support. Positive letters of support are received. In September 2013, the Council will observe the 35<sup>th</sup> anniversary of the start of the Texas State Use Program. The Council's annual reports and quarterly reports are made public by posting on the program websites.

**D. Does your agency's enabling law continue to correctly reflect your mission, objectives, and approach to performing your functions? Have you recommended changes to the Legislature in the past to improve your agency's operations? If so, explain. Were the changes adopted?**

Yes, the agency's enabling laws continue to correctly reflect the agency's mission, and objective approach to perform the program's function. We have not offered changes to the Legislature in recent sessions.

**E. Do any of your agency's functions overlap or duplicate those of another state or federal agency? Explain if, and why, each of your key functions is most appropriately placed within your agency. How do you ensure against duplication with other related agencies?**

There is no direct overlap of the agency's functions with other state or federal agencies. Refer to Section X., Other Contacts, for other state and federal programs similar to this program.

**F. In general, how do other states carry out similar functions?**

Most State Use Programs are patterned after the federal Ability One program, established in 1938 in the *Javits Wagner O'Day*, (JWOD) Act, today a multi-billion dollar procurement program administered for the federal government by Source America and National Industries for the Blind, pursuant to 41U.S.C. Section 8501. These state programs generally designate a private, "central nonprofit agency" paid by a management fee from the Community Rehabilitation Programs (CRPs) to develop, implement and operate the day-to-day operations. In Texas, the central nonprofit agency (CNA) has been TIBH Industries, Inc. of Austin, since the program was established in 1978. Most programs have some regulatory authority with varying degrees of accountability and government regulation to ensure that employment benefits people with disabilities. Some states have copied the format of the Texas State Use Program in Chapter 122. Other states have consulted with participants in the Texas State Use Program in establishing or strengthening the program in their states.

According to the State Use Programs Association, currently:

- 46 states have laws that provide for a State Use Program
- 26 states have active programs
- 20 states are overseen by a State Use Council, Committee, or Commission and administered by a CNA.
- 4 states have programs that are administered by state purchasing entity and have no CNA.
- 2 states have no Council, pricing is provided by a state purchasing entity and the program is administered by a CNA.

**G. What key obstacles impair your agency's ability to achieve its objectives?**

The Texas Council has consistently noted the non-participation in the program by some state agencies and university systems, which is regularly reflected in the Comptroller's Exception Report as required in Section 122.016. These quarterly reports document contracting opportunities that were available to public agencies but were fulfilled with state agency purchases outside State Use Program sources.

These issues have been noted in formal audits conducted by the State Auditor's Office in its reviews of state agency purchasing under the State Use Program and the Historically Underutilized Businesses (HUB) Programs. Section 122.029 gives the State Auditor authority to review the purchasing practices of state agencies and their compliance with Chapter 122.

**H. Discuss any changes that could impact your agency's key functions in the near future (e.g., changes in federal law or outstanding court cases).**

Generally, the federal Americans with Disabilities Act (42 U.S.C. Section 12101) establishes the basic definitions and scope of activities relating to persons with disabilities, and interpretations of "disability" are constantly changing within the federal regulatory realm. Some CRPs that employ workers with severe disabilities utilize the "special wage certificate" from the U. S. Department of Labor under Section 14(c) of the Fair Labor Standards Act, which contains an exception to the Federal Minimum Wage law; some groups seek to abolish 14(c) wages. Beginning in 2014, the effects of the Affordable Care Act on CRP nonprofit organizations that employ workers with disabilities is uncertain in that Medicaid, SSD, or other

federal benefits now accessed by the workers may be diminished or eliminated by the Act's expanded Medicaid coverage provisions.

**I. What are your agency's biggest opportunities for improvement in the future?**

In the 2013 Texas Legislature, there were proposals to expand the contracting opportunities of disabled veteran-owned businesses (SB 10, for example). The Council recognizes the obligation and opportunities possible if the State Use Program were expanded to include nonprofit disabled-managed organizations into the Program (but not private for-profit businesses owned by veterans). This would involve expanding the definition of community rehabilitation programs in Section 122.002(3) to include disabled veteran –managed nonprofit organizations that employ primarily veterans with disabilities. Such a change could significantly increase total number of Texas workers with disabilities employed through the State Use Program and permit state agencies to directly affect the welfare and independence of Texas veterans with disabilities who seek employment.

**J. In the following chart, provide information regarding your agency's key performance measures included in your appropriations bill pattern, including outcome, input, efficiency, and explanatory measures.**

Texas Council on Purchasing from People with Disabilities Exhibit 2: Key Performance Measures — Fiscal Year 2012			
Key Performance Measures	FY 2012 Target	FY 2012 Actual Performance	FY 2012 % of Annual Target
Key numbers from Council's Annual Report includes number employed, wages, and supported employment.	We are continuously maximizing the employment of individuals with disabilities	Employed Individuals with disabilities 6,317 Wages to individuals with disabilities \$33,900,857	
Council's Strategic Plan	We adhere to the Council's Strategic Plan (See Attached)		

### III. History and Major Events

Provide a timeline of your agency's history and key events, including:

- the date your agency was established;
- the original purpose and responsibilities of your agency;
- major changes in responsibilities or statutory authority;
- changes to your policymaking body's name or composition;
- significant changes in state/federal legislation, mandates, or funding;
- significant state/federal litigation that specifically affects your agency's operations; and
- key changes in your agency's organization (e.g., a major reorganization of the agency's divisions or program areas).

\*(See Exhibit 2 Section III)

Statutory Changes in Texas Council Composition and Authority and State Use Program Changes	
Statutes	
Citation/Title	Authority/Impact on Agency (e.g., "provides authority to license and regulate nursing home administrators")
<p>HB 1673 (64<sup>th</sup> Legislature, 1975) created Article 664-5<sup>th</sup>, Texas Revised Civil Statutes.</p> <p>In 67<sup>th</sup> Legislature, 1979, State Use law moved to Chapter 93, Human Resources Code.</p>	<p>Established a Pilot Program for Purchase of Blind Made Products and Services. This legislation provided for mandatory preferential purchasing of blind made products or services by state and political subdivision purchasers. The legislation provided for the appointment of a committee appointed by the Governor's Coordinating Office for the Visually Handicapped.</p>



<p>HB 1345 (67<sup>th</sup> Legislature, 1981) moved State Use Law to Chapter 122, Human Resources Code</p>	<p>The purpose of this chapter is to further the state's policy of encouraging and assisting persons with disabilities to achieve maximum personal independence by engaging in useful and productive employment activities and, in addition, to provide state agencies, departments, and institutions and political subdivisions of the state with a method for achieving conformity with requirements of nondiscrimination and affirmative action in employment matters related to persons with disabilities.</p>
<p>HB 2658 (74<sup>th</sup> Legislature, 1995)</p>	<p>Re-organization of Chapter 122 and additions to Council authority.</p>
<p>Article 609, (1925) Revised Civil Statutes (Repealed)</p>	<p>Texas Legislature set aside printing and binding of state documents to deaf workers without regard to the required State Board of Control bidding requirements</p>
<p>Article. 664-3, § 13, in the State Purchasing Act of 1957 (Repealed)</p>	<p>Products of visually disabled or blind workers were given preference.</p>
<p>Article. 601b, § 3.20, § 3.22, Texas Revised Civil Statutes (Repealed)</p>	<p>The enabling law for the state General Services Commission. During the many years of operations under the former Article 601b, there existed in the article the preferences for state purchasing of products from disabled workers and purchases from visually disabled workers.</p>
<p>Subchapter F, Chapter 404, Government Code</p>	<p>Determines money paid to the council.</p>
<p>See Section VIII (see pages 26 - 28) for related Texas Statutes</p>	

## IV. Policymaking Structure

### A. Complete the following chart providing information on your policymaking body members.

Members of the Council serve staggered terms of six years with the terms of three members expiring on January 31 of each odd-numbered year. They are appointed by the Governor with the advice and consent of the Senate. Section 122.002(c).

(Texas Council On Purchasing From People With Disabilities) Exhibit 3: Policymaking Body				
Member Name	Term/ Appointment Dates/ Appointed by ____ (e.g., Governor, Lt. Governor, Speaker)	Qualification (e.g., public member, industry representative)	Address	Telephone Number Fax Number E-mail Address
CHAIRMAN John W. Luna	<b>Appointed by</b> Governor Rick Perry <b>Re-appointed</b> <b>Term:</b> 5/1/09 - 1/31/2015 <b>Confirmed:</b> 5/13/09	Community Representative	609 Johns Eules, Texas 76039	<u>Cell Ph#:</u> (214) 683-1534 Fax # N/A  <u>Lunajohn14@g mail.com</u>
Wanda Stovall	<b>Appointed by:</b> Governor Rick Perry  <b>Re-appointed</b> <b>Term:</b> 5/1/09 - 1/31/2015 <b>Confirmed:</b> 5/13/09	Public Representative	4009 Inwood Road Fort Worth, Texas 76109	Office: N/A Fax: N/A  <u>Cell Ph#:</u> (817) 781-7116 <u>wandastovall@</u> <u>charter.net</u>
Kevin Jackson	<b>Appointed by:</b> Governor Rick Perry <b>Re-appointed:</b> <b>Term:</b> 3/28/2013 – 1/31/2019 <b>Confirmed:</b> 4/10/13	Person With Disabilities	5717 Taylorcrest Dr. Austin, Texas 78749	<u>Cell Ph#:</u> (512) 431-8471 Fax #: N/A <u>kmjacksonsr@</u> <u>att.net</u>
Dietrich M. von Biedenfeld	<b>Appointed by:</b> Governor Rick Perry <b>Term</b> 4/24/2012 – 1/31/17 <b>Confirmed:</b> 4/10/13	Public Representative	502 East Jefferson Street West Columbia, TX 77486	<u>Cell Ph#:</u> (713) 305-0245 Fax # N/A: <u>dmvonbie@gm</u> <u>ail.com</u>

Glenn Hagler	<b>Appointed by:</b> Governor Rick Perry <b>Term:</b> 10/4/2012 – 1/13/2017 Confirmed: 4/10/13	Agency Purchasing Representative	216 South Ridge Circle Georgetown, Texas 78628	<b>Office #:</b> (512) 302-2401 <b>Fax#:</b> (512) 302- 2421 <b><u>glenn.hagler@t xdot.gov</u></b>
Kevin Cloud	<b>Appointed by:</b> Governor Rick Perry <b>Term:</b> 8/15/2012 – 1/31/2017 Confirmed: 4/10/13	Community Rehabilitation Program Representative	11409 Evening Star Dr. Austin , Texas 78739	<b>Office#:</b> (512) 615-8406 <b>Fax#:</b> (512) 615- 8406 kcloud@psiinc. com
Beverly Jackson-Loss	<b>Appointed by:</b> Governor Rick Perry <b>Term:</b> 3/28/2013– 1/31/2015 Confirmed: 4/10/13	Public Representative	718 County Road 3746 Wolfe City , Texas 75496	<b>Home#:</b> (903) 496-2205 <b>Fax#:</b> (903) 496- 7600 <b><u>bjloss@sbcglob al.net</u></b>
Alfred “Al” Matson	<b>Appointed by:</b> Governor Rick Perry <b>Term:</b> 3/28/2013 – 1/31/2019 Confirmed: 4/10/13	Community Rehabilitation Program Representative	16701 Lafayette Dr. Tyler, Texas 75703	<b>Office #:</b> (903) 595-0404 <b>Fax#:</b> (903)531- 0157 <b><u>amatson@andr ewscenter.com</u></b>
Jack “Dan” Bremer	<b>Appointed by:</b> Governor Rick Perry <b>Term:</b> 3/28/2013 – 1/31/2019 Confirmed: 4/10/13	Agency Purchasing Representative	1442 Hueco Springs Loop Rd. New Braunfels, Texas 78132	<b>Office #:</b> (512) 206-5529 <b>Fax#:</b> (512) 206- 4711 <b><u>jack.bremer@h hsc.state.tx.us</u></b>

**B. Describe the primary role and responsibilities of your policymaking body.**

The primary responsibility of the nine-member Texas Council on Purchasing from People Disabilities (TCPPD) is to further the state policy of encouraging and assisting persons with disabilities to achieve maximum personal independence by engaging in useful and productive employment activities and, in addition, to provide state agencies, departments, and institutions and political subdivisions of the state with a method for achieving conformity with requirements of nondiscrimination and affirmative action in employment matters related to persons with disabilities.

**Council's responsibilities:**

1. Provide policy direction for the program.
2. Adopt agency rules, procedures, practices and standards.
3. Determine the fair market price and value-added of all products produced and services provided by persons with disabilities.
4. Contract with a central nonprofit agency (CNA) to administer the program.
5. Establish criteria for certification and compliance of community rehabilitation programs.
6. Prepare an agency strategic plan and a final operating plan as required Subchapter E Chapter 2054, Government Code.
7. Develop and implement policies that provide the public with a reasonable opportunity to appear before the Council and to speak on any issue under the jurisdiction of the Council.
8. Keep an information file about each formal complaint filed relating to a product or service of a CRP.
9. On or before November the 1<sup>st</sup> of each year, file a report accounting for all funds disbursed by the Council, and documenting number of persons employed, wages paid, sales of products and services and other measures of program success with the Governor, the Speaker of the House, and the Lt. Governor.
10. Increase state and local agency participation in the State Use Program.
11. Review the quarterly exception reports of agencies purchasing outside Chapter 122 mandate.
12. Promote the State Use *WorksWonders* brand in marketing the program.

**C. How is the chair selected?**

The Chairman is appointed by the Governor.

**D. List any special circumstances or unique features about your policymaking body or its responsibilities.**

One of the unique features of the Council and its responsibilities is found in Section 122.019(a)(b). In 1975, the Texas Legislature enacted legislation creating the State Use Program, which called for the designation of a private, nonprofit corporation (CNA). The program does not receive any appropriated funds from the state to operate. The program operating budget is financed entirely from the management fee (rate approved by the council) on the sales of products and services to the state. The Council's operating budget is also financed entirely by the management fee without legislative appropriations.

**Section 122.019(a)(b) Chapter 122 of the Human Resources Code**

- (a) The council shall contract with a central nonprofit agency (CNA) to:
- (1) recruit and assist community rehabilitation programs in developing and submitting applications for the selection of suitable products and services;
  - (2) facilitate the distribution of orders among community rehabilitation programs;
  - (3) manage and coordinate the day-to-day operation of the program, including the general administration of contracts with community rehabilitation programs; and
  - (4) promote increased supported employment opportunities for persons with disabilities.
- (b) The services of a central nonprofit agency may include marketing and marketing support services, such as:
- (1) assistance to community rehabilitation programs regarding solicitation and negotiation of contracts;
  - (2) direct marketing of products and services to consumers;
  - (3) research and development of products and services;
  - (4) public relations activities to promote the program;
  - (5) customer relations;
  - (6) education and training;
  - (7) accounting services related to purchase orders, invoices, and payments to community rehabilitation programs; and
  - (8) other duties designated by the council.

**E. In general, how often does your policymaking body meet? How many times did it meet in FY 2012? In FY 2013?**

The Council meets quarterly in accordance with Council Rule, Section 189.6:

- (a) A quorum of the full council or council subcommittee shall deliberate and make decisions in open meeting in accordance with Chapter 551 of the Texas Government Code and the open meeting shall be conducted pursuant to Robert's Rules of Order. The full council may meet in executive session for authorized purposes during a public meeting as allowed under Chapter 551 of the Texas Government Code.

The Council generally schedules two meetings in Austin and two in other Texas cities per fiscal year. In the past two years, the Council has held meetings in Corpus Christi, Tyler, San Antonio and Houston. The Pricing Subcommittee meets approximately two weeks prior to each quarterly Council meeting, and the Certification Subcommittee generally meets immediately prior to the full Council meetings. The Performance Subcommittee meets as necessary. Refer to Part J, following.

**In FY 2012**

The Council met four times.

The Pricing Subcommittee met four times.

The Certification Subcommittee met four times.

The Performance Subcommittee conducted three RFP Subcommittee meetings.

**In FY 2013**

The Council has met four times.

The Pricing Subcommittee has met four times.

The Certification Subcommittee has met five times.

**F. What type of training do members of your agency’s policymaking body receive?**

Before a member of the Council may assume its duties and before the member may be confirmed by the Senate, the member must complete at least one course of the training program established under this Section 122.005.

All Council members have exceeded the minimum requirement on training. Council members also regularly attend the CNA’s ongoing training sessions which are conducted to benefit CRP vendors and state agency purchasers and are to promote compliance with program requirements.

**G. Does your agency have policies that describe the respective roles of the policymaking body and agency staff in running the agency? If so, describe these policies.**

Policies describing the role of the Council are found throughout the Council’s rules and in the statutes. The Council employs one staff member as the State Use Coordinator, who reports directly to the Council, and is the liaison to the CNA, TIBH Industries. Additionally, as required by Section 122.012, the Comptroller of Public Accounts provides legal counsel and an executive liaison to assist the Council in performing its duties.

The Council has adopted the following rules at TAC, Title 40, Chapter 189 that define the varies roles and responsibilities for Council:

**Rules**

- §189.1 General
- §189.2 Definitions
- §189.3 OrganizationPage
- §189.4 Ethical Standards
- §189.5 Open Meetings; Public Testimony and Access
- §189.6 Criteria for Recognition and Approval of Community Rehabilitation Programs
- §189.7 Contracting with a Central Nonprofit Agency
- §189.8 Product Specifications and Exceptions
- §189.9 Determination of Fair Market Value
- §189.10 Consumer Information; Complaints and Resolution
- §189.11 Records
- §189.12 Performance Standards for a Central Nonprofit Agency (CNA)
- §189.13 Recognition and Approval of Community Rehabilitation Program Products and Services

**H. What information is regularly presented to your policymaking body to keep them informed of your agency's performance?**

The CNA gives a comprehensive quarterly report to the Council as provided in Rule 189.7(j). There is a CRP presentation about their program at each quarterly Council meeting. The Council also receives a quarterly report from the Comptroller as required by Section 122.016, which details procurements by state agencies outside of the requirements of the Chapter 122 purchasing program. The Council's staff administrator regularly provides information to Council members, as developments occur. The Council has recently added an additional report by auditing staff of the Comptroller regarding any findings of non-compliance with Program discovered during routine post-payment audits. This report is in addition to the State Auditor's Office semiannual review of state agency compliance with program requirements conducted pursuant to Section 122.029 and Texas Government Code Section 2161.123.

**I. How does your policymaking body obtain input from the public regarding issues under the jurisdiction of the agency? How is this input incorporated into the operations of your agency?**

The nine-member Council provides the public with a reasonable opportunity to appear before the Council subcommittees during open meetings and to present testimony pertinent to an agenda item duly posted for open meetings or any issue under the jurisdiction of the Council. At each quarterly meeting, a CRP is invited to appear before the Council and present an overview of its operations and participation in the State Use Program. The public is always free to speak during the public comment period. Public participation is governed by Council Rule 189.5

The Council holds its quarterly meetings, which are posted as to time and location. The Pricing Subcommittee and the Certification Subcommittee meet prior to each quarterly Council meeting. At least one meeting each year may be held in a location other than Austin to facilitate attendance at Council meetings by persons outside the Austin area. Public comment is always a standing item on the council's quarterly agenda.

The Council reviews public comments during the rule making process and may incorporate substantive suggestions or revise proposed rules in response to public input. The Council welcomes public comment and intends to consider any such input for incorporation into procedures, rules or plan to improve the State Use Program.

Section 122.019(c) requires that each year, public comment is requested by the Council on the CNA's performance in administering the program. Additionally, Section 122.030 requires publication of and an opportunity to comment on the management fee rate charged by the Central Nonprofit Agency.

**J. If your policymaking body uses subcommittees or advisory committees to carry out its duties, fill in the following chart.**

Texas Council on Purchasing from People with Disabilities Exhibit 4: Subcommittees and Advisory Committees			
Name of Subcommittee or Advisory Committee	Size/Composition/How are members appointed?	Purpose/Duties	Legal Basis for Committee

Pricing Subcommittee	Three Council members, including two agency purchasing representatives, appointed by the Chairman of the Council.	To review the data submitted by the CNA to determine fair market value and make recommendations to the council concerning fair market price for products and/or services.	Section 122.007(b) Rule 189.3 (b)
Certification Subcommittee	Three Council members appointed by the Chairman of the Council.	To review certification applications of Community Rehabilitation Programs seeking to participate in the State Use Program.	Section 122.003(j) Rule 189.6
Performance Subcommittee	Council members appointed by the Chairman of the Council.	Draft and present proposed rules to Council and conduct annual review of the CNA. Conducted RFP process for selection of CNA in 2011 under Section 122.019(a).	Rule 189.7(e)

## V. Funding

### A. Provide a brief description of your agency's funding.

A portion of the CNA's management fee described by Section 122.019(e)-(f) shall be paid to the Council and is subject to Section 122.023. The amount of the direct and reasonable costs incurred by the Council and its staff is reimbursed annually by the CNA, TIBH Industries, Inc.

The Council's process for determining the agency's operating budget needs and priorities are based on the review of past expenditures, and consultation with the CNA and Council's staff. This process includes examining the prior year operating budget, then determining the administrative needs and agency priorities for the next fiscal year. The Council's final budget amount is then reported **in advance** to the Comptroller of Public Accounts. The Comptroller of Public Accounts will request the funds **in advance** from the Central Nonprofit Agency (CNA). The CNA is financed entirely from the management fee it collects on sales of products and services to state and local agencies. **The Council does not operate on any appropriated funds from the state.**

### B. List all riders that significantly impact your agency's budget.

There have been no riders that significantly impact the agency's budget.



**C. Show your agency's expenditures by strategy.**

The Council has never prepared expenditures by strategy report because no state funds are used to pay for Council's staff or expenditures.

(Agency Name) Exhibit 5: Expenditures by Strategy — Fiscal Year 2012 (Actual)			
Goal/Strategy	Amount Spent	Percent of Total	Contract Expenditures Included
N/A			
<b>GRAND TOTAL:</b>			

**D. Show your agency's sources of revenue. Include all local, state, and federal appropriations, all professional and operating fees, and all other sources of revenue collected by the agency, including taxes and fines.**

Texas Council on Purchasing from People with Disabilities Exhibit 6: Sources of Revenue — Fiscal Year 2012 (Actual)	
Source	Amount
A portion of the management fee described by Section 122.019(e)(f) shall be paid to the Council and is subject to Section 122.023	The amount varies per year at cost.
The Council does not operate on any appropriated funds from the state.	
<b>TOTAL</b>	N/A

**E. If you receive funds from multiple federal programs, show the types of federal funding sources.**

The Council does not receive funds from any federal programs or any other government source.

(Agency Name) Exhibit 7: Federal Funds — Fiscal Year 2012 (Actual)				
Type of Fund	State/Federal Match Ratio	State Share	Federal Share	Total Funding
N/A				

<b>TOTAL</b>				

**F. If applicable, provide detailed information on fees collected by your agency.**

The Council does not collect fees.

(Agency Name) Exhibit 8: Fee Revenue — Fiscal Year 2012				
Fee Description/ Program/ Statutory Citation	Current Fee/ Statutory maximum	Number of persons or entities paying fee	Fee Revenue	Where Fee Revenue is Deposited (e.g., General Revenue Fund)
N/A				

## VI. Organization

**A. Provide an organizational chart that includes major programs and divisions, and shows the number of FTEs in each program or division. Detail should include, if possible, Department Heads with subordinates, and actual FTEs with budgeted FTEs in parenthesis.**

\*See Exhibit 3 Section VI A.

**B. If applicable, fill in the chart below listing field or regional offices.**

N/A

(Agency Name) Exhibit 9: FTEs by Location — Fiscal Year 2012				
Headquarters, Region, or Field Office	Location	Co-Located? Yes/No	Number of Budgeted FTEs, FY 2013	Number of Actual FTEs as of June 1, 2013
			<b>TOTAL:</b>	<b>TOTAL:</b>

**C. What are your agency's FTE caps for fiscal years 2012-2015?**

Two

**D. How many temporary or contract employees did your agency have as of August 31, 2012?**

There were no temporary or contract employees as of August 31, 2013.

**E. List each of your agency's key programs or functions, along with expenditures and FTEs by program.**

Texas Council on Purchasing from People with Disabilities Exhibit 10: List of Program FTEs and Expenditures — Fiscal Year 2012		
Program	FTEs as of August 31, 2012	Actual Expenditures
State Use Program	1	74,799
<b>TOTAL</b>		

## VII. Guide to Agency Programs

Complete this section for **each** agency program (or each agency function, activity, or service if more appropriate). Copy and paste the questions as many times as needed to discuss each program, activity, or function. Contact Sunset staff with any questions about applying this section to your agency.

**A. Provide the following information at the beginning of each program description.**

<b>Name of Program or Function</b>	State Use Program
<b>Location/Division</b>	Comptroller of Public Accounts, 111 East 17 <sup>th</sup> Street, Austin, Texas
<b>Contact Name</b>	John Luna and Kelvin Moore
<b>Actual Expenditures, FY 2012</b>	\$74,799
<b>Number of Actual FTEs as of June 1, 2013</b>	1
<b>Statutory Citation for Program</b>	Texas Human Resources Code, Chapter 122

**B. What is the objective of this program or function? Describe the major activities performed under this program.**

The Council's primary function is to further the state's policy of encouraging and assisting persons with disabilities to achieve maximum personal independence by engaging in useful productive employment activities, and provide state agencies, departments, and institutions and political subdivisions of the state with a method for achieving conformity with requirements of nondiscrimination and affirmative action in employment matters related to persons with disabilities.

**C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and performance measures that best convey the effectiveness and efficiency of this function or program.**

1. The Annual Report to the Governor, Lieutenant Governor and Speaker as required in Section 122.022 clearly demonstrates the impact of the State Use Program on the economy of Texas and on the lives of Texas workers with disabilities who are employed in their communities under the State Use Program. The most recent report (for 2012) indicates that 6,317 workers with disabilities and 1,359 without disabilities, were directly employed through the program, with a total of \$44,403,421 total wages paid to those persons.
2. TIBH Industries, Inc. Quarterly Report to the Council, as required by Texas Council Rule 189.7(j), the Council's CNA reports and tracks actual hours of labor performed by Texas workers with disabilities under the Program, as well as total wages paid. This gives the Council ongoing feedback of the statistics and performance measures related to the program.
3. Under Rule 189.7(e), The Texas Council annually reviews the efficiency and management of the program as performed by its CNA. Recent evaluations are attached.
4. Economic benefit studies conducted by the State Use Programs Association (SUPRA) demonstrate the effectiveness of State Use Programs in Texas and in other states in that workers with disabilities earn wages through such programs, and save governments significantly because of the non-reliance on government benefit programs.

**D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.**

The original focus of the State Use Program on purchases from persons with blindness or visual impairment was expanded in legislation to include products and services provided by all persons with disabilities, as generally defined in Chapter 122.002(5).

**E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.**

This program serves individuals with disabilities by providing them employment in their local community programs on State Use contracts with state and local government customers. For FY 2012, the number of individuals served by the State Use Program is 6,317. The statistical analysis of worker disability types is contained in the Annual Report to the Governor (attached). Workers are employed by producing goods sold to state and local agencies, by performing services under CRP services contracts, or by employment through State Use temporary employment services agencies.

**F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. Indicate how field/regional services are used, if applicable.**

The State Use Program daily operations are performed by the CNA, TIBH Industries, Inc., a nonprofit corporation under a current five-year contract, ending in 2017. The Council sets policy and with the assistance of its staff, oversees the direction of the program, and evaluates the performance of the CNA.

Under the Council's supervision, the Central Nonprofit Agency is contracted to carry out the following key functions:

1. The CNA shall recruit and assist community rehabilitation programs in developing and submitting applications for the selection of suitable products and services.
2. The CNA shall facilitate the distribution of orders among community rehabilitation programs assisting persons with disabilities.
3. The CNA shall manage and coordinate the day-to-day operation of the program, including the general administration of contracts with community rehabilitation programs.
4. The CNA shall promote increased supported employment opportunities for persons with disabilities.
5. The CNA shall assist the CRPs in the research and development of suitable products and services and submit them to the Pricing Committee for review and recommendation to the Council.
6. The CNA shall recruit and assist community rehabilitation programs in developing and submitting applications for the selection of suitable products and services.
7. The CNA shall provide assistance to CRPs regarding the solicitation and negotiation of contracts.

8. The CNA shall require annual business reports from the participating CRPs demonstrating qualifications to continue participating under this program. Additional reports shall be provided when requested by the Council or its subcommittees.

9. No later than September 15<sup>th</sup> of each year, the CNA shall submit a draft of the Annual Report to the Council for review and comment. The report period covered shall be September 1 through June 30. The CNA shall provide such information as necessary for the Council to submit its required report to the Governor, Lt. Governor, and Speaker of the House.

**G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).**

The Council and its staff's operations are funded by a portion of the CNA's management fee pursuant to Chapter 122.019(f). There are no state appropriated funds or federal funding sources.

**H. Identify any programs, internal or external to your agency that provides identical or similar services or functions to the target population. Describe the similarities and differences.**

There are no identical or similar services or functions provided by other state agencies.

**I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.**

N/A

**J. If the program or function works with local, regional, or federal units of government, include a brief description of these entities and their relationship to the agency.**

Chapter 122.026 allows for the participation of cities, counties and special districts to access the State Use Program by entering into contracts with local CRPs that participate in the Program. The cities of Houston, Austin, San Marcos and others are long-time supporters of State Use employment through their services contracts with TIBH Industries, Inc. Additionally, state agencies are required under Section 122.008 to purchase products and utilize services provided by the program once approved by the Council.

**K. If contracted expenditures are made through this program please provide:**

- a short summary of the general purpose of those contracts overall;
- the amount of those expenditures in fiscal year 2012;
- the number of contracts accounting for those expenditures;

- top five contracts by dollar amount, including contractor and purpose;
- the methods used to ensure accountability for funding and performance; and
- a short description of any current contracting problems.

N/A

**L. Provide information on any grants awarded by the program.**

No grants are awarded by the program.

**M. What statutory changes could be made to assist this program in performing its functions? Explain.**

In the 2013 Texas Legislature, there were proposals to expand the contracting opportunities of disabled veteran-owned businesses (SB 10, for example). The Council recognizes the obligation and opportunities possible if the State Use Program were expanded to include nonprofit disabled-managed organizations into the Program (but not private for-profit businesses owned by veterans). This would involve expanding the definition of community rehabilitation programs in Section 122.002(3) to include disabled veteran –managed nonprofit organizations that employ primarily veterans with disabilities. Such a change could significantly increase total number of Texas workers with disabilities employed through the State Use Program and permit state agencies to directly affect the welfare and independence of Texas veterans with disabilities who seek employment.

**N. Provide any additional information needed to gain a preliminary understanding of the program or function.**

Website: [www.tcppd.state.tx.us](http://www.tcppd.state.tx.us)

- O. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:**
- why the regulation is needed;
  - the scope of, and procedures for, inspections or audits of regulated entities;
  - follow-up activities conducted when non-compliance is identified;
  - sanctions available to the agency to ensure compliance; and
  - procedures for handling consumer/public complaints against regulated entities.

The Council administers a regulatory program in that any Community Rehabilitation Program (CRP) seeking to obtain contracts under the State Use Program must be certified by the Texas Council in accordance with Section 122.013(c)(2) and Texas Council Rules 189.6 and 189.13. This certification process involves an ongoing program administered by the CNA (TIBH) and overseen by the Texas Council and its Certification Subcommittee. CRPs are certified on a three-year cycle according to criteria in Council Rules 189.6 and 189.13. At each Council meeting, Certification Applications received and screened by the CNA are considered by the Council for certification of new CRPs and recertification of existing CRPs.

The certification process ensures that the state’s interest is protected in that only qualified nonprofit organizations will be allowed to participate in the State Use Program and that they will fulfill the statutory purpose of employing workers with disabilities in executing public contracts. Certification applications and forms are available on the TIBH and Council websites.

The Council and TIBH maintain a formal procedure process involving application forms and document verification of any CRP applying for certification or recertification. These CRP documents are maintained and reviewed by TIBH for the Council. TIBH representatives are authorized under Council rules to conduct inspections of CRP records and facilities to ensure compliance with Chapter 122 and Council rules after certification.

Issues discovered that indicate CRP noncompliance are reported to the Council at its quarterly meetings, and there is a process for the Council to require CRP compliance or temporarily waive compliance, with an approved corrective plan. Rule 189.6(l).

Sanctions for CRP noncompliance can include temporary or permanent suspension of CRP status or suspension from State Use contracting opportunities under Texas Council Rule 189.6(l)-(m).

Complaints regarding the Council, CNA, or the Program, can be received through a process provided in Section 122.020 and Council Rule 189.10.

**P. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency’s practices.**

(Texas Council on Purchasing from People with Disabilities) (Community Rehabilitation Programs) <b>Exhibit 11: Information on Complaints Against Regulated Persons or Entities</b> Fiscal Years 2011 and 2012		
	FY 2011	FY 2012
Total number of regulated persons	0	0
Total number of regulated entities	114	114
Total number of entities inspected	2	3
Total number of complaints received from the public	1	0
Total number of complaints initiated by agency	0	0
Number of complaints pending from prior years	0	0
Number of complaints found to be non-jurisdictional	0	0
Number of jurisdictional complaints found to be without merit	1	0
Number of complaints resolved	1	0
Average number of days for complaint resolution	90	0
Complaints resulting in disciplinary action:	0	0
administrative penalty	0	0
reprimand	0	0
probation	0	0



suspension	0	0
revocation	0	0
other	0	0

## VIII. Statutory Authority and Recent Legislation

**A. Fill in the following chart, listing citations for all state and federal statutes that grant authority to or otherwise significantly impact your agency. Do not include general state statutes that apply to all agencies, such as the Public Information Act, the Open Meetings Act, or the Administrative Procedure Act. Provide information on Attorney General opinions from FY 2009 – 2013, or earlier significant Attorney General opinions, that affect your agency’s operations.**

Texas Council on Purchasing from People with Disabilities Exhibit 12: Statutes/Attorney General Opinions	
Statutes	
Citation/Title	Authority/Impact on Agency (e.g., Provides authority to license and regulate nursing home administrators@)
1. Chapter 122, Texas Human Resources Code	1. This is the agency’s governing statute, and contains all substantive elements of the Council’s duties and responsibilities.
2. Section 2155.138, Government Code	2. Reaffirms Chapter 122 non-bidding for goods and services purchased from organizations employing persons with blindness or visual impairments.
3. Section 2155.441, Government Code	3. Reaffirms Chapter 122 by creating a purchasing preference for products purchased from persons with intellectual disabilities.
4. Section 2155.144(n), Government Code	4. Reaffirms Chapter 122 by stating that procurements by Health and Human Service agencies must recognize Chapter 122.
5. Section 252.022(a)(13), Local Government Code	5. Recognizes Section 122.026 provision that provides that procurement procedures of municipalities do not prevail over Chapter 122.
6. Section 51.9335(d), Education Code	6. Purchasing laws of institutions of higher education do

	not take precedent over state purchasing laws relating to contracting with historically underutilized businesses (HUBs) or to the procurement of goods and services from persons with disabilities.
7. Section 2157.068(c), Government Code	7. Department of Information Resources must make a good-faith effort to increase commodity purchases from Texas workers with disabilities.
<b>Attorney General Opinions</b>	
<b>Attorney General Opinion No.</b>	<b>Impact on Agency</b>
OPINON NO. JM-385 (1985)	Ruled that counties are not required to comply with general requirements relating to competitive bidding in purchasing and can make purchases authorized under Chapter 122, Human Recourses Code, without competitive bids because Chapter 122 prevails as a special statutory provision over the general provisions in other purchasing laws. (Note: Sec. 122.026 added in 1995 resolves this issue.)
OPINION NO. JM-444 (1986)	Reaffirmed Opinion No. JM-385 and ruled that Chapter 122, Human Resources Code, permits other political subdivisions of the state (cities, hospital districts, school districts) to make preferential purchases from community rehabilitation programs (CRPs) employing workers with disabilities without the usual competitive bidding.

**B. Provide a summary of recent legislation regarding your agency by filling in the chart below or attaching information already available in an agency-developed format. Briefly summarize the key provisions. For bills that did not pass, briefly explain the key provisions and issues that resulted in failure of the bill to pass (e.g., opposition to a new fee, or high cost of implementation). Place an asterisk next to bills that could have a major impact on the agency.**

Texas Council on Purchasing from People with Disabilities Exhibit 13: 83rd Legislative Session Chart		
<b>Legislation Enacted – 83rd Legislative Session</b>		
<b>Bill Number</b>	<b>Author</b>	<b>Summary of Key Provisions</b>
SB 59 (Sec. 74)	Sen. Nelson	Changes to Texas Council’s annual report to Governor and other state

		agencies per Section 2101.011, Government Code.
<b>HB 1726</b>	Rep. Bohac	Permits the state to contract for a single logistical services provider which can include a State Use contractor under Chapter 122.
<b>HB 2472 (Sec. 21)</b>	Rep. Cook	Confirms Comptroller's administrative relation to the State Use Program and Council through 2021.
<b>Legislation Not Passed – 83rd Legislative Session</b>		
<b>Bill Number</b>	<b>Author</b>	<b>Summary of Key Provisions/Reason the Bill Did Not Pass</b>
HB 2847	Rep. White	Would have added a private industry representative to Texas Council, and would ban a state agency from terminating an open contract in favor of a nonprofit contractor.
SB 10	Sen. Van de Putte	Would have added "service disabled veteran owned business" to Chapter 122 definition of "community rehabilitation program".
SB 1679 (Sec. 8)	Sen. Zaffirini	Would have repealed Section 2155.138, Government Code, which reaffirms Chapter 122 purchasing mandate.

## IX. Major Issues

The purpose of this section is to briefly describe any potential issues raised by your agency, the Legislature, or stakeholders that Sunset could help address through changes in statute to improve your agency's operations and service delivery. Inclusion of an issue does not indicate support, or opposition, for the issue. Instead, this section is intended to give the Sunset Commission a basic understanding of the issues so staff can collect more information during our detailed research on your agency. Some questions to ask in preparing this section may include: (1) How can your agency do a better job in meeting the needs of customers or in achieving agency goals? (2) What barriers exist that limit your agency's ability to get the job done?

1. In the 2013 Texas Legislature, there were proposals to expand the contracting opportunities of disabled veteran-owned businesses (SB 10, for example). The Council recognizes the obligation and opportunities possible if the State Use Program were expanded to include nonprofit disabled-managed organizations into the Program (but not private for-profit businesses owned by veterans). This would involve expanding the definition of community rehabilitation programs in Section 122.002(3) to include disabled veteran –managed nonprofit organizations that employ primarily veterans with disabilities. Such a change could significantly increase total number of Texas workers with disabilities employed through the State Use Program and permit state agencies to directly affect the welfare and independence of Texas veterans with disabilities who seek employment.

2. The Texas Council has consistently noted the non-participation in the program by some state agencies and university systems, which is regularly reflected in the Comptroller's Exception Report as required in Section 122.016. These quarterly reports document contracting opportunities that were available to public agencies but were fulfilled with state agency purchases outside State Use Program sources.

These issues have been noted in formal audits conducted by the State Auditor's Office in its reviews of state agency purchasing under the State Use Program and the Historically Underutilized Businesses (HUB) Programs. Section 122.029 gives the State Auditor authority to review the purchasing practices of state agencies and their compliance with Chapter 122.

Emphasis should be given to issues appropriate for resolution through changes in state law. Issues related to funding or actions by other governmental entities (federal, local, quasi-governmental, etc.) may be included, but the Sunset Commission has no authority in the appropriations process or with other units of government. If these types of issues are included, the focus should be on solutions which can be enacted in state law. This section contains three components:

### **Brief Description of Issue.**

**Background.** Include enough information to give context for the issue. Information helpful in building context includes:

- What specific problems or concerns are involved in this issue?
- Who does this issue affect?
- What is the agency's role related to the issue?
- Any previous legislative action related to the issue?

**Possible Solutions and Impact.** Provide potential recommendations to solve the problem. Feel free to add a more detailed discussion of each proposed solution, including:

- How will the proposed solution fix the problem or issue?
- How will the proposed change impact any entities or interest groups?
- How will your agency's performance be impacted by the proposed change?
- What are the benefits of the recommended change?
- What are the possible drawbacks of the recommended change?
- What is the fiscal impact of the proposed change?

Complete this section for each policy issue. Copy and paste boxes A through C as many times as needed to discuss each issue.

<b>A. Brief Description of Issue</b>
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1. In the 2013 Texas Legislature, there were proposals to expand the contracting opportunities of disabled veteran-owned businesses (SB 10, for example). The Council recognizes the obligation and opportunities possible if the State Use Program were expanded to include nonprofit disabled-managed organizations into the Program (but not private for-profit businesses owned by veterans). This would involve expanding the definition of community rehabilitation programs in Section 122.002(3) to include disabled veteran –managed nonprofit organizations that employ

primarily veterans with disabilities. Such a change could significantly increase total number of Texas workers with disabilities employed through the State Use Program and permit state agencies to directly affect the welfare and independence of Texas veterans with disabilities who seek employment.

2. The Texas Council has consistently noted the non-participation in the program by some state agencies and university systems, which is regularly reflected in the Comptroller's Exception Report as required in Section 122.016. These quarterly reports document contracting opportunities that were available to public agencies but were fulfilled with state agency purchases outside State Use Program sources.

These issues have been noted in formal audits conducted by the State Auditor's Office in its reviews of state agency purchasing under the State Use Program and the Historically Underutilized Businesses (HUB) Programs. Section 122.029 gives the State Auditor authority to review the purchasing practices of state agencies and their compliance with Chapter 122.

**B. Discussion**

There were numerous bills. If nonprofit disabled veteran managed organizations meet our program certification standards they should be eligible to be a part of the program.

**C. Possible Solutions and Impact**

State agencies should be required to consistently purchase goods and services available through the State Use Program, increasing job opportunities for people with disabilities.

Increase the scope of the program and enhance the number of veterans with disabilities being employed, which will increase the local tax base by employing workers with disabilities.

**X. Other Contacts**

- A. Fill in the following chart with updated information on people with an interest in your agency, and be sure to include the most recent e-mail address.**

Texas Council on Purchasing from People with Disabilities Exhibit 14: Contacts			
INTEREST GROUPS (groups affected by agency actions or that represent others served by or affected by agency actions)			
Group or Association Name/ Contact Person	Address	Telephone	E-mail Address
Lighthouse Industries for the Blind of Texas/Dave Wells	2001 Austin Street San Angelo, TX 769903	(325) 653-4231	d.wells@lighthousefortheblind.org

Community Rehabilitation Programs (CRPs), participating in Chapter 122 Procurement Program, 119 local CRPs in Texas Expanco, Inc./David Dodson	See enclosed Texas Council's Annual Report to Governor, for names and addresses of local CRPs  3005 Wichita Court Fort Worth, TX 76140	(817) 293-9486	<a href="mailto:david.dodson@expanco.com">david.dodson@expanco.com</a>
Texas Association of Goodwill Industries (TAGS)/Lori Henning	Ste. 350, PMB 174 Austin, TX 78738-6500	(512) 263-8920	<a href="mailto:Lhenning_austin@yahoo.com">Lhenning_austin@yahoo.com</a>

**INTERAGENCY, STATE, OR NATIONAL ASSOCIATIONS**  
(that serve as an information clearinghouse or regularly interact with your agency)

<b>Group or Association Name/ Contact Person</b>	<b>Address</b>	<b>Telephone</b>	<b>E-mail Address</b>
Texas Association of Public Purchasers/Rod Bliss	P. O. Box 513 Austin, TX 78767	(512) 374-5477	<a href="mailto:Rod.bliss@txdot.gov">Rod.bliss@txdot.gov</a>
State Use Programs Association (SUPRA)/ Ron Romano	NYSID 11 Columbia Circle Drive Albany, NY 12203	(518) 463-9706	<a href="mailto:rromano@nysid.org">rromano@nysid.org</a>
Source America – Deborah Ignatz	8401 Old Courthouse Road Vienna, VA 22182	(678) 838-5171	<a href="mailto:dignatz@sourceamerica.org">dignatz@sourceamerica.org</a>
ACCSES/Terry Farmer	1501 M Street NW, 7 <sup>th</sup> Floor Washington, DC 20005	(202) 349-4259	<a href="mailto:trfarmer@accses.org">trfarmer@accses.org</a>

**LIAISONS AT OTHER STATE AGENCIES**

(with which your agency maintains an ongoing relationship, e.g., the agency's assigned analyst at the Legislative Budget Board, or attorney at the Attorney General's office)

<b>Agency Name/Relationship/ Contact Person</b>	<b>Address</b>	<b>Telephone</b>	<b>E-mail Address</b>
Each state agency is required under Section 122.0095 to designate a State Use Coordinator to promote Chapter 122 procurement through the Texas Council.	Texas Council Coordinator has this list of coordinators		

Comptroller of Public Accounts/Raette Hearne Rule 189.3(g)(h)(i)	111 West 17 <sup>th</sup> Street Austin, Texas 78701	(512) 475-0001	<a href="mailto:Raette.Hearne@cpa.state.tx.us">Raette.Hearne@cpa.state.tx.us</a>
Texas Procurement and Support Services (TPASS)/Ron Pigott Rule 189.3(h)(i)	111 West 17 <sup>th</sup> Street Austin, Texas 78701	(512) 463-5038	<a href="mailto:Ron.pigott@cpa.state.tx.us">Ron.pigott@cpa.state.tx.us</a>
Office of the Governor/Gabby Fuentes	State Capitol Austin, Texas 78701	(512) 475-2255	<a href="mailto:gfuentes@governor.state.tx.us">gfuentes@governor.state.tx.us</a>

## XI. Additional Information

**A. Texas Government Code, Sec. 325.0075 requires agencies under review to submit a report about their reporting requirements to Sunset with the same due date as the SER. Include a list of each report that the agency is required by statute to prepare and an evaluation of the need for each report based on whether factors or conditions have changed since the statutory requirement was in place. If the list is longer than one page, please include it as an attachment.**

2012 Annual Report of the Texas Council on Purchasing from People with Disabilities to the Governor, under Section 122.022 is attached.

**B. Has the agency implemented statutory requirements to ensure the use of "first person respectful language"? Please explain and include any statutory provisions that prohibit these changes.**

Yes. The Texas Council statute, rules, policies, website, forms, and all materials comply with first person respect language.

**C. Fill in the following chart detailing information on complaints regarding your agency. Do not include complaints received against people or entities you regulate. The chart headings may be changed if needed to better reflect your agency's practices.**

There have been no complaints.

Texas Council on Purchasing from People with Disabilities Exhibit 15: Complaints Against the Agency — Fiscal Years 2011 and 2012		
	FY 2011	FY 2012
Number of complaints received	0	0
Number of complaints resolved	0	0
Number of complaints dropped/found to be without merit	0	0
Number of complaints pending from prior years	0	0
Average time period for resolution of a complaint	0	0

**D. Fill in the following chart detailing your agency's Historically Underutilized Business (HUB) purchases.**

Based upon the legal constraints of the Council's statute and the interplay of the statute with the HUB statute, it is impossible for the program to generate HUB purchases. A full explanation of the reasons for this are set forth below.

The operations and activities of TIBH are governed by their contract with the Texas Council on Purchasing from People with Disabilities (the Council), and the statutes and rules governing the Council's operations. The Council is governed by Texas Human Resources Code Chapter 122, and they have adopted rules pursuant to their authority under that chapter in 40 TAC Chapter 189. The Council has broad and exclusive authority pursuant to Human Resources Code (HRC) §122.008 to set prices for services and products provided under the program by Community Rehabilitation Programs (CRPs). Once the Council has determined under that section that a CRP is proposing to provide a product or service at "fair market value", a state agency is required to purchase that good or service if it meets their need and the CRP is fully authorized to provide that good or service to any state agency or political subdivision of the state. TIBH has been contracted as the "Central Nonprofit Agency" (the prime implementer of the program on behalf of the Council) under the Council's statutory authority in HRC §122.019. TIBH is bound to administer the program as directed by the Council, which includes registering CRPs and promoting the CRPs' participation in the program. TIBH acts as the central ordering mechanism for the program, delivering the orders from state agencies to the appropriate CRP and ensuring as much as possible that the CRPs are satisfying the agency's needs.



The Texas Historically Underutilized Business Program is authorized and governed by Texas Gov't Code (TGC) Chapter 2161. The HUB program requirement at issue here is primarily governed by TGC §2161.252. That section mandates that any response or bid submitted on state procurements must contain a HUB Subcontracting Plan (HSP) in order to be considered responsive. Failure to submit an HSP on a solicitation where one has been required by the agency is grounds for disqualification as “non-responsive.”

The dilemma faced by TIBH is that they can neither complete an HSP by saying they are “self-performing”, since they are in fact relying on the CRPs performing their statutory role of doing the actual work anticipated by the contract, nor can they provide subcontracting opportunities to a HUB. The reason for the latter is the statutory limits of the program – both TIBH and all CRPs participating in the program are required by law to be non-profit corporations (HRC §§122.002, 122.019). By definition, a HUB must be a for-profit business (TGC §2161.001(2)(A)-(C)). If TIBH or a CRP were to subcontract any primary work of the program, they would be violating the language of the program requirements (all work must be performed and directed by non-profits with a mission of assisting in the employment of persons with disabilities) and they would be endangering their IRS non-profit status. IRS regulations severely limit the ability of non-profits to subcontract the primary work of their non-profit mission to for-profit companies. This prevents for-profit companies from hiding behind fictitious non-profits in order to limit their tax liability.

To summarize, the elements of an HSP require that a company certify that either (1) they are performing all the work themselves with their own resources, or (2) that they have performed “good faith effort” outreach to HUBs for any subcontracting opportunities. In this case, TIBH cannot certify to the former, and there are no subcontracting opportunities that TIBH would be allowed to provide to HUBs since they are, by definition, for-profit businesses. It’s a catch-22 for TIBH and I believe that their statutory role along with the Council’s previous approval of the CRP’s service offering overcomes the need for an HSP when they reply to a competitive solicitation proffered by a state agency.

Texas Council on Purchasing from People with Disabilities					
Exhibit 16: Purchases from HUBs					
FISCAL YEAR 2010					
Category	Total \$ Spent	Total HUB \$ Spent	Percent	Agency Specific Goal *	Statewide Goal
Heavy Construction	N/A				11.9%
Building Construction	N/A				26.1%
Special Trade	N/A				57.2%
Professional Services	N/A				20.0%
Other Services	N/A				33.0%
Commodities	N/A				12.6%
<b>TOTAL</b>	N/A				

\* If your goals are agency specific-goals and not statewide goals, please provide the goal percentages and describe the method used to determine those goals. (TAC Title 34, Part 1, Chapter 20, Rule 20.13)

FISCAL YEAR 2011					
Category	Total \$ Spent	Total HUB \$ Spent	Percent	Agency Goal	Statewide Goal
Heavy Construction	N/A				11.9%
Building Construction	N/A				26.1%
Special Trade	N/A				57.2%
Professional Services	N/A				20.0%
Other Services	N/A				33.0%
Commodities	N/A				12.6%
<b>TOTAL</b>	N/A				
FISCAL YEAR 2012					
Category	Total \$ Spent	Total HUB \$ Spent	Percent	Agency Goal	Statewide Goal
Heavy Construction	N/A				11.2%
Building Construction	N/A				21.1%
Special Trade	N/A				32.7%
Professional Services	N/A				23.6%
Other Services	N/A				24.6%
Commodities	N/A				21.0%
<b>TOTAL</b>	N/A				

**E. Does your agency have a HUB policy? How does your agency address performance shortfalls related to the policy? (Texas Government Code, Sec. 2161.003; TAC Title 34, Part 1, rule 20.15b)**

N/A

**F. For agencies with contracts valued at \$100,000 or more: Does your agency follow a HUB subcontracting plan to solicit bids, proposals, offers, or other applicable expressions of interest for subcontracting opportunities available for contracts of \$100,000 or more? (Texas Government Code, Sec. 2161.252; TAC Title 34, Part 1, rule 20.14)**

N/A

**G. For agencies with biennial appropriations exceeding \$10 million, answer the following HUB questions.**

N/A

	Response / Agency Contact
1. Do you have a HUB coordinator? (Texas Government Code, Sec. 2161.062; TAC Title 34, Part 1, rule 20.26)	
2. Has your agency designed a program of HUB forums in which businesses are invited to deliver presentations that demonstrate their capability to do business with your agency? (Texas Government Code, Sec. 2161.066; TAC Title 34, Part 1, rule 20.27)	
3. Has your agency developed a mentor-protégé program to foster long-term relationships between prime contractors and HUBs and to increase the ability of HUBs to contract with the state or to receive subcontracts under a state contract? (Texas Government Code, Sec. 2161.065; TAC Title 34, Part 1, rule 20.28)	

**H. Fill in the chart below detailing your agency's Equal Employment Opportunity (EEO) statistics.<sup>1</sup>**

There is only one employee for the Council on Purchasing from People with Disabilities.

Texas Council on Purchasing from People with Disabilities Exhibit 17: Equal Employment Opportunity Statistics							
FISCAL YEAR 2009							
Job Category	Total Positions	Minority Workforce Percentages					
		Black		Hispanic		Female	
		Agency	Civilian Labor Force %	Agency	Civilian Labor Force %	Agency	Civilian Labor Force %
Officials/Administration	N/A		7.5%		21.1%		37.5%
Professional	N/A		9.7%		18.8%		53.3%
Technical	N/A		13.9%		27.7%		53.9%
Administrative Support	N/A		12.7%		31.9%		67.1%
Service Maintenance	N/A		14.1%		49.9%		39.1%
Skilled Craft	N/A		6.6%		46.3%		6.0%
FISCAL YEAR 2010							

<sup>1</sup> The Service/Maintenance category includes three distinct occupational categories: Service/Maintenance, Para-Professionals, and Protective Services. Protective Service Workers and Para-Professionals are no longer reported as separate groups. Please submit the combined Service/Maintenance category totals, if available.

Job Category	Total Positions	Minority Workforce Percentages					
		Black		Hispanic		Female	
		Agency	Civilian Labor Force %	Agency	Civilian Labor Force %	Agency	Civilian Labor Force %
Officials/Administration	N/A		7.5%		21.1%		37.5%
Professional	N/A		9.7%		18.8%		53.3%
Technical	N/A		13.9%		27.7%		53.9%
Administrative Support	N/A		12.7%		31.9%		67.1%
Service/Maintenance	N/A		14.1%		49.9%		39.1%
Skilled Craft	N/A		6.6%		46.3%		6.0%

**FISCAL YEAR 2011**

Job Category	Total Positions	Minority Workforce Percentages					
		Black		Hispanic		Female	
		Agency	Civilian Labor Force %	Agency	Civilian Labor Force %	Agency	Civilian Labor Force %
Officials/Administration	N/A		8.99%		19.5%		39.4%
Professional	N/A		11.33%		17.4%		59.14%
Technical	N/A		14.16%		21.63%		41.47%
Administrative Support	N/A		13.57%		30.53%		65.52%
Service/Maintenance	N/A		14.68%		48.18%		40.79%
Skilled Craft	N/A		6.35%		47.44%		4.19%

**I. Does your agency have an equal employment opportunity policy? How does your agency address performance shortfalls related to the policy?**

The Texas Council on Purchasing from People with Disabilities adheres to the Comptroller of Public Account's Equal Opportunity Policy.

## **XII. Agency Comments**

Provide any additional information needed to gain a preliminary understanding of your agency.