



SUNSET ADVISORY COMMISSION

Texas Council on
Purchasing from
People with Disabilities



Staff Report
August 2002

**TEXAS COUNCIL ON PURCHASING FROM
PEOPLE WITH DISABILITIES**

SUNSET STAFF REPORT

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SUMMARY



Summary

Sunset Staff Report

Texas Council on Purchasing from People with Disabilities

The Texas Council on Purchasing from people with Disabilities oversees the State Use Program, which provides for the employment of persons with disabilities in the production of quality goods and services set aside for state procurement. In overseeing the Program, the Council's charge is to balance two seemingly unrelated state interests: to create opportunities for persons with disabilities to achieve greater levels of personal growth and independence; and to provide state agencies and institutions of higher education with reasonably priced, quality goods and services. In combining these interests, the State Use Program generates savings for the State through diminished reliance of persons with disabilities on government-funded assistance and more direct procurement procedures for state agencies.

Over the past few years, significant levels of concern and criticism arose regarding the integrity of the Program and the Council's oversight of the central nonprofit agency contracted to administer the Program. These concerns prompted multiple legislative investigations which led to significant revisions to the Council's authorizing statute in 2001. These changes sought to strengthen the State Use Program by enhancing the Council's oversight authority, as well as providing measures to enhance agencies' compliance with procurement requirements.

However, the Sunset review of the Council and the State Use Program found that significant legislative directives and authorizations remain unimplemented or only partially implemented by the Council. Additionally, the review concluded that state agencies' and even the Council's lack of awareness of Program requirements and benefits contributed to limited agency compliance with state use laws. While the Council provides a valuable service and should be continued, the Sunset staff recommendations seek to provide clearer direction and identify additional resources to assist the Council in better overseeing and promoting the State Use Program.

The Council has only partially implemented the significant directives and authorizations passed by the Legislature in 2001.

For more information, contact Vanessa González, (512) 463-1300. Sunset staff reports are available online at www.sunset.state.tx.us.

The following material provides a summary of specific recommendations.

Issues / Recommendations

Issue 1 The State Has a Continuing Interest in Promoting Employment of Persons with Disabilities.

Key Recommendation

- Continue the Texas Council on Purchasing from People with Disabilities (Council) for 12 years.

Issue 2 Agency Noncompliance Limits the Success of the State Use Program in Employing People with Disabilities.

Key Recommendations

- Require the Council to promote the State Use Program among state agencies.
- Require the Texas Building and Procurement Commission to report, and the Council to evaluate, agency compliance with state use laws.
- Require the State Auditor's Office to consider agency compliance with state use laws as part of its Historically Underutilized Business compliance audits.

Issue 3 The Council Does Not Provide Adequate Oversight of the State Use Program.

Key Recommendations

- Require the Council to develop a formal process for the annual review of the central nonprofit agency's management fee.
- Establish a committee to provide greater assurance of community rehabilitation program compliance with State Use Program eligibility requirements.
- The Council should consult with the State Auditor's Office to create appropriate performance measures for the State Use Program.
- The Council should provide for increased stakeholder input on the effectiveness of the State Use Program.

Fiscal Implication Summary _____

All expenses incurred by the Council or the Texas Building and Procurement Commission in support of the Council are paid by the central nonprofit agency (CNA) which is funded by a percentage of Program sales in the form of a management fee. As a result, recommendations offered in this report would have no fiscal impact to the State.

However, the recommendations contemplate a continued need for annual appropriation authority from the CNA's management fee of approximately \$112,500 to employ staff and support Council operations.

ISSUES / RECOMMENDATIONS

Issue 1

The State Has a Continuing Interest In Promoting Employment of Persons with Disabilities.

Summary

Key Recommendation

- Continue the Texas Council on Purchasing from People with Disabilities (Council) for 12 years.

Key Findings

- The State combines two distinct objectives within the Council's State Use Program.
- The State has a continuing interest in supporting the development of employment opportunities for persons with disabilities, and procuring quality goods and services at fair prices.
- The Council is appropriately situated with the Texas Building and Procurement Commission.

Conclusion

In overseeing the State Use Program, the Council serves to promote the employment of persons with disabilities while providing reasonably priced, quality goods and services for agency procurement. In 2001, community rehabilitation programs participating in the Program employed almost 7,000 persons with disabilities in the provision of goods and services through contracts set aside for state use. Through the redirection of necessary state purchasing dollars toward set-aside contracts, the State Use Program enables individuals with disabilities to achieve greater levels of personal independence.

In support of this objective, the Council contracts with a central nonprofit agency to administer the Program, approves set-aside contracts, sets fair market prices, and generally maintains responsibility for Program oversight. In assessing the continuing need for these functions as well as the feasibility of assigning them to another agency, Sunset staff concluded that the Council should be continued for 12 years and should remain administratively linked to the Texas Building and Procurement Commission. The Council is well positioned to provide necessary oversight of the State Use Program and to increase employment opportunities for persons with disabilities.

Support

The State combines two distinct objectives within the Council's State Use Program.

- The role of the Texas Council on Purchasing from People with Disabilities is to balance the promotion of employment opportunities for people with disabilities with the provision of reasonably priced, quality goods and services for state procurement. In 2001, the Texas Building and Procurement Commission totaled all state procurement expenditures at \$8.34 billion.¹ Through the State Use Program, the State applies less than 1 percent of these procurement expenses toward the creation of new job opportunities for individuals who might otherwise have to rely on government assistance.² Currently, the Program employs almost 7,000 people. The Program has provided for the placement of an additional 2,000 individuals with disabilities in competitive positions, receiving full benefits.

Acknowledging the benefits of the Program for the State as well as for the individual, the Legislature sets those products and services produced by persons with disabilities aside from competitive bidding requirements. State agencies and institutions of higher education *must* purchase through the State Use Program, provided that products and services are available at fair market prices and meet agency specifications.

- The Council relies on a contracted central nonprofit agency to administer the State Use Program. Nineteen of 22 states maintaining state use programs operate with the use of a nonprofit agency or association. The remaining three state programs are operated fully by state agencies. In these 19 states, an oversight committee, similar to the Council, approves contracts, determines fair market prices (where the program is mandatory), and sets commission rates for the central nonprofit agency. In this way, the majority of states' programs, including the Texas program, closely mirror the structure of the federal set-aside program.

The State has a continuing interest in supporting the development of employment opportunities for persons with disabilities, and procuring quality goods and services at fair prices.

- The Council and the State Use Program provide for the employment of individuals with disabilities. Achieving this objective results in immeasurable, personal benefits for individuals who might otherwise not find employment. By learning job skills and earning wages, persons with disabilities can achieve greater levels of personal independence that also translate into more tangible benefits

The Legislature sets aside products and services produced by persons with disabilities from state competitive bidding requirements.

Persons employed through the State Use Program achieve greater levels of personal independence that translate into tangible benefits for the state.

for the state, such as reduced reliance on government assistance and increased tax revenue. The charts, *State Use Program Employment* and *State Use Program Wages*, illustrate the steady increase in individuals employed through the Program and the total amount of wages earned by them.

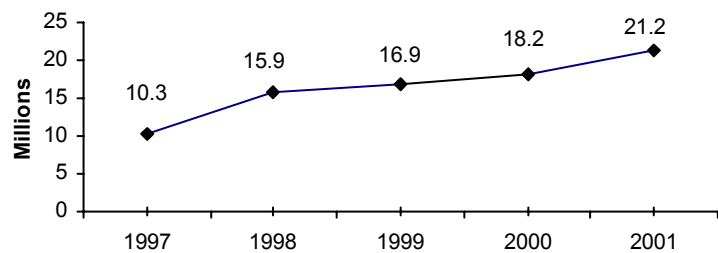
The State also benefits from the products and services that persons with disabilities provide through the set-aside purchasing program. These items which vary from mechanical pencils, to toner cartridges, to custodial services, and temporary office staffing; are essential to agency operations. In addition to paying fair market prices for these items, agencies may actually save dollars by avoiding the expense of time and resources required in a competitive bidding process.

State Use Program Employment



* Individuals with disabilities that have been placed in competitive positions and are receiving full benefits.

State Use Program Wages



- In 2001, the Legislature demonstrated support for the Council through a number of provisions intended to strengthen the Council and its oversight of the State Use Program.³ Issues 2 and 3 of this report cover specific provisions, while Appendix A provides a full review of the legislation. Among these provisions is authorization for the Council to hire staff and establish an advisory committee. Additionally, the Legislature imposed requirements on state agencies, such as reporting purchases and designating compliance coordinators, to enhance purchasing from the State Use Program.

The Legislature has also demonstrated its support for increasing employment opportunities for people with disabilities in other recent legislation, described in the textbox, *Legislative Support - Employing Persons with Disabilities*.

The Council is appropriately situated with the Texas Building and Procurement Commission.

- Currently, the Council is administratively housed in the Texas Building and Procurement Commission (TBPC), the state’s central purchasing agency. By law, TBPC must provide legal and other necessary support to the Council.⁴

**Legislative Support
Employing Persons with Disabilities**

The Legislature recently enacted the following bills in support of employing persons with disabilities.

SB 63 Creates an incentive for businesses to hire persons with disabilities by allowing a franchise tax credit based on wages paid.

SB 831 Establishes a medical assistance buy-in pilot project that allows eligible persons with disabilities to pay a premium for continued Medicaid coverage after starting employment.

TBPC is appropriately positioned to continue support of the Council's activities.

In addition to this direct support, TBPC's functions of maintaining and supporting state procurement statutes and rules have the potential of further assisting the Council and the State Use Program.

- Although the State Use Program relied on the Texas Commission for the Blind and the Texas Rehabilitation Commission for support when it began as a pilot project in 1975, today these agencies are not best situated to provide the same type of support that TBPC can provide. In the current structure, the Council can benefit from TBPC's purchasing expertise and its unique access to and authority over all state agency purchasing divisions.

While TBPC has been plagued with a series of problems in virtually every area of its operations, no other agency is more appropriately positioned to support the Council. The Legislature has attempted to remedy many of TBPC's shortcomings and may continue to do so.⁵ Because of TBPC's failure to consistently prioritize the State Use Program in its promotion of agencies' compliance with purchasing requirements, Issue 2 of this report offers additional measures to address TBPC's role in the State Use Program.

- Interviews with groups representing persons with disabilities indicated that transferring the program to a health and human service agency would have an adverse impact on the success of the Program. Such a transfer would completely remove the Program from the purchasing arena and may make agencies less likely to purchase Program goods and services. Reduced procurement would translate into fewer jobs for persons with disabilities. Program advocates and participants maintain that, for it to be successful, the State Use Program should continue to be structured and operated as a market-driven purchasing program rather than a human services program.

Recommendation

Change in Statute

1.1 Continue the Texas Council on Purchasing from People with Disabilities for 12 years.

Impact

This recommendation would continue the Texas Council on Purchasing from People with Disabilities, as it is currently structured. The Council would continue to oversee the State Use Program and provide for the State's interests in employing persons with disabilities while procuring quality goods and services at fair prices.

Fiscal Implication

This recommendation would have no fiscal impact to the State. Annual appropriation authority from TIBH's management fee of approximately \$112,500 would continue to be needed to support Council operations.

¹ Texas Building and Procurement Commission, *Texas Historically Underutilized Business Annual Report Received for Fiscal Year 2001*, Section 1 - Statewide Totals (Austin, Texas, October 15, 2001).

² Derived from TIBH reported sales for products, services and temporary services from July 1, 2000 through June 30, 2001. Program sales to state agencies, state institutions of higher education, and the courts totaled \$51.8 million, or 0.62 percent of all state expenditures in 2001.

³ Texas House Bill 1691, 77th Legislature (2001).

⁴ Texas Human Resources Code, sec. 122.012.

⁵ Texas Senate Bill 311, 77th Legislature (2001).

Issue 2

Agency Noncompliance Limits the Success of the State Use Program in Employing People with Disabilities.

Summary

Key Recommendations

- Require the Council on Purchasing from People with Disabilities to promote the State Use Program among state agencies.
- Require the Texas Building and Procurement Commission to report, and the Council to evaluate, agency compliance with state use laws.
- Require the State Auditor's Office to consider agency compliance with state use laws as part of its Historically Underutilized Business compliance audits.

Key Findings

- State agencies are not consistently purchasing goods and services from the State Use Program, limiting job opportunities for people with disabilities.
- The Council and TBPC fail to use existing compliance methods to achieve greater purchasing from the State Use Program.
- Neither the Council nor TBPC adequately promotes the State Use Program.

Conclusion

More than four million Texans live with disabilities. In establishing the mandatory State Use Program, the Legislature has demonstrated its intent to provide employment opportunities for these individuals. However, many state agencies do not comply with state use laws that require them to purchase through the Program. Without consistent agency procurement, the Program cannot reach its full potential in employing people with disabilities.

The Sunset review evaluated causes for agencies' consistent failure to purchase goods and services through the Program, and found most notable among them is the inaction of the Council and TBPC in educating agencies about the Program. Also, a lack of information and analysis about purchasing trends and the specific reasons that agencies choose not to use the Program result in an inability of the Council to make needed improvements. These recommendations seek to enable the Council, with assistance from TBPC and the State Auditor's office, to strengthen the Program by increasing agency awareness of Program requirements and benefits, and by imposing additional compliance measures.

Support

The Council, the Texas Building and Procurement Commission (TBPC), and state agencies share responsibility for supporting the State Use Program.

- The Council oversees the State Use Program. Its duties include selecting goods and services for the Program and setting competitive quality and price standards. Also, the Council oversees a central nonprofit agency (CNA), called TIBH, which manages the daily operations of the Program, including all marketing for the program. By law, no state agency, including the Council and TBPC, may market Program goods and services.

- State law requires agencies and institutions of higher education to purchase from the State Use Program unless the needed products or services meet certain exceptions, as described in the textbox,

*State Use Program Purchasing Exceptions.*¹

TBPC must submit a list of excepted items not purchased through the Program to the Council. The 77th Legislature required agencies to report to TBPC and the Council all procurements outside the State Use Program, costs paid, and reasons for not purchasing from the Program.² Recent legislation also required agencies to designate an employee to promote agency compliance with state use laws.

State Use Program Purchasing Exceptions

State agencies may purchase outside the mandatory purchasing provisions of the State Use Program under the following circumstances.

- When the product or service available through the set-aside program does not meet the reasonable requirements of the agency. This may include an inability to meet product specifications or to deliver the needed product within a certain period of time.
- When the product or service needed cannot be reasonably provided through the State Use Program by persons with disabilities. In the past, examples have included the inability to provide temporary services within certain regions of the state.
- When a product or service costs more than the fair market price of similar items.

State law requires agencies and institutions of higher education to purchase from the State Use Program unless the needed products or services meet certain exceptions.

- TBPC, as the state purchasing agency, has a significant role in the Program. Statute requires TBPC to compile the exception reports and post the reports on its Web site. The agency must also provide legal and other necessary support, including appointing an upper-level manager to ensure TBPC is fulfilling its mandate regarding the State Use Program.

TBPC must promote the Program in its general operations as well. For example, TBPC includes the Program in its procurement manuals. Also, TBPC annually performs a random audit of 10 percent of agencies to ensure that they are complying with procurement rules, including compliance with state use laws.³

State agencies are not consistently purchasing goods and services from the State Use Program, limiting job opportunities for people with disabilities.

- The purpose of the State Use Program is to employ people with disabilities in Texas. Failure of agencies to comply with state use laws by not purchasing from the Program limits opportunities for employment for people with disabilities. For persons with disabilities, employment provides much more than an income. Employment also provides individuals with a sense of accomplishment and independence as well as training for future jobs. Through this Program, persons with disabilities have an opportunity to interact with others and be productive. Failure to maximize the Program also adversely affects the State. Persons with disabilities who are not working must rely on other means of support, including state-funded support.
- Despite the benefits, many agencies are not fully using the State Use Program for the procurement of goods and services. The chart, *Highest Spending Agencies*, shows the agencies and higher education institutions that spent the most in overall procurement dollars versus how much they spent on the Program in fiscal year 2001. As shown in the chart, certain agencies and institutions have minimal Program purchases despite significant procurement levels. In addition, five of the top nine total spending agencies and institutions are not among the top Program customers.

Highest Spending Agencies, 2001⁴		
Agency Name	Total Amount Spent	Amount Spent on SUP
Texas Department of Transportation	\$ 3,560,129,838	\$28,453,631
Health and Human Services Commission	\$325,450,002	\$0
Texas Department of Criminal Justice	\$267,266,589	\$3,657,038
Texas Department of Health	\$265,797,173	\$1,212,080
University of Texas System	\$259,482,754	\$335,930
University of Texas Austin	\$189,354,065	\$0
UT Medical Branch Galveston	\$165,101,594	\$0
Texas Lottery Commission	\$149,217,720	\$7,413
Texas Department of Human Services	\$126,615,684	\$4,177,520

If TBPC finds agency noncompliance with set-aside purchasing laws, nothing happens.

The Council and TBPC fail to use existing compliance methods to achieve greater purchasing from the State Use Program.

- Auditing and reporting of Program use is limited. TBPC annually audits a random sampling of 10 percent of all state agencies to assess compliance with all purchasing rules and requirements, but this audit is very limited. If TBPC finds agency noncompliance with set-aside purchasing laws, nothing happens. TBPC does not share information from the audit with the Council, nor does it take any enforcement action.⁵

In contrast, the State Auditor's Office (SAO) reports findings of Historically Underutilized Business (HUB) procurement audits to the relevant agency and TBPC, and releases the information to the public. State law authorizes TBPC to revoke delegated purchasing authority if an agency continually fails to comply with HUB purchasing requirements.

- Although agencies are required by law to designate compliance coordinators, up until very recently, only two agencies, the Texas Department of Transportation and the Texas Department of Mental Health and Mental Retardation, had done so.⁶ During the Sunset review, the Council sent agencies a letter notifying them of their statutory obligation to appoint a compliance coordinator. As a result, several more agencies have appointed coordinators.

Texas law also requires agencies to designate a compliance coordinator for increasing agency purchasing from HUBs. However, agencies have more incentive to comply with this requirement. By law, SAO checks agency compliance with HUB purchasing requirements, including the compliance coordinator requirement. No such audit exists for the State Use Program.

- The Council and TBPC have generally failed to take advantage of exception reports to make needed changes to strengthen the State Use Program. Since 1995, statute has required TBPC to report all agency purchases outside the State Use Program to the Council. However, TBPC did not provide any State Use reporting until June 2001. Neither TBPC nor the Council monitors or analyzes the data for trends in agency use or exception purchases. In June 2002, the Council discussed reformatting exception reports to make the information more useful, but has not implemented any changes.

The Council and TBPC lack information regarding agency purchasing necessary to improve and market the State Use Program.

Neither the Council nor TBPC adequately promotes the State Use Program.

- Because the Council and TBPC do not adequately track purchasing from the State Use Program by state agencies, TIBH and the Council do not have the necessary information to improve or market the Program. The Council recently surveyed state agencies about the

Program. However, more than half of the agencies did not respond to the survey. Of the agencies that responded, most were familiar with the central nonprofit agency, TIBH, but only 60 percent were familiar with the Council. Several factors contribute to this general lack of awareness.

- TBPC consistently fails to appropriately prioritize the State Use Program. Although purchasing from the Program is mandatory and is prioritized in statute and rule above other preferential purchasing programs, including purchasing from HUBs, TBPC does not promote the State Use Program. For example, information about the Council and the State Use Program is difficult to find on TBPC's Web site. In fact, TBPC does not post exception reports on its Web site despite a statutory directive to do so.

Although TBPC performs procurement certification training, TBPC does not provide a distinct module of the training on the State Use Program. According to TBPC, training may include between 10 and 25 minutes of discussion about the Program in two to three-day courses.

- Although the Council has recently begun to promote the State Use Program by requesting designation of agency compliance coordinators and has planned an agency orientation session to be facilitated by TIBH, the Council still does not effectively promote the Program. A significant factor in its inability to promote the Program is its own lack of awareness of Program requirements. For example, Council and Council staff believed that state institutions of higher education were exempt from state use purchasing requirements. Only through the Sunset review did the Council realize that institutions of higher education are also required by law to purchase through the Program.

Another factor in the Council's poor promotion of the Program has been its lack of staff. To remedy this situation and other problems, the 77th Legislature granted the Council two full-time employees. However, the Council has only filled one of these positions and indicates that it will not fill the other one.

Armed with the necessary information and resources, other states have been much more proactive in promoting their programs. The textbox, *Promotion of Set-Aside Programs*, offers examples of promotional strategies implemented by the federal program and other states.

Although the State Use Program is mandatory and has priority over other preferential purchasing programs, TBPC does not promote its use.

Promotion of Set-Aside Programs

- The federal program employs five full-time employees to target agencies and promote the program. Also, the federal program distributes a handbook, and posts the handbook on its Web site.
- Florida, New York, and Ohio send quarterly newsletters to the CRPs and agencies.
- Florida statute sets aside space in the State Capitol to showcase program products and services.
- Ohio's governor annually declares a state use awareness week, that features educational seminars and trade shows in state office facilities around the state.
- Florida and Ohio post letters on their Web sites from the governors endorsing the programs.

- The Council, TIBH, and the community rehabilitation programs that employ people with disabilities indicate that agencies' use of procurement cards to pay for goods and services adversely affects the Program. However, TIBH allows the use of procurement cards for purchasing from its online catalogs. Neither the Council nor TBPC adequately educate agencies about this fact. In contrast, Florida's purchasing agency (TBPC's equivalent) published a communique to inform purchasers of the ability to use procurement cards with the state set-aside program.

Recommendation

Change in Statute

2.1 Require the Council to promote the State Use Program among state agencies.

This recommendation would require the Council and TIBH to more effectively educate state agencies about the State Use Program and its requirements and benefits. Currently, the Council has no direction in statute to promote the use of the Program, and has taken little initiative on its own. As a result, many state agencies are unaware of the Program and its requirements. This recommendation would mandate that the Council establish procedures for the promotion of the Program. In implementing this recommendation, the Council should consider establishing a public relations program, including maximizing the use of both TBPC and the CNA's Web sites, providing periodic updates about the Program in general e-mail procurement notices from TBPC, and soliciting endorsements from agencies that use the Program. The Council should also more actively promote the use of procurement cards to access Program products and services.

This recommendation would not reverse the existing provision prohibiting the Council and TBPC from marketing specific goods and services available through the program. The CNA would maintain this responsibility.

2.2 Require TBPC to report, and the Council to evaluate, agency compliance with state use laws.

This recommendation would require TBPC to report to the Council any failures to comply with set-aside requirements found in TBPC's annual random audit of agency purchasing. Given compliance information, the Council should attempt to identify and address problems in the State Use Program to increase agency participation. The Council should also assess information collected in the agency exception reports. TBPC should assist the Council in collecting and reviewing agency compliance information and analyzing data for trends in Program use. TBPC should also post exception reports on its Web site, as is currently required in statute.

2.3 Require the State Auditor's Office to consider agency compliance with state use laws as part of its Historically Underutilized Business compliance audits.

This recommendation would provide a systematic method for agency accountability regarding the State Use Program. The State Auditor's Office currently audits approximately 20 agencies every

year for HUB compliance. The simultaneous consideration of state use laws would not be an undue burden. According to HUB laws, if SAO finds that an agency is not in compliance, TBPC must assist the agency in complying. Similar language should be added regarding Council assistance in agency compliance with the State Use Program requirements.

Management Action

2.4 TBPC should expand training to include information on procuring goods and services through the State Use Program.

TBPC currently includes limited information regarding the State Use Program in its procurement manual. This recommendation would direct TBPC to include a distinct training module on the State Use Program as part of its statutorily required certification training for procurement personnel. TBPC should explain and discuss all elements of the State Use Program, including state use laws and how to obtain Program goods and services. TBPC could also educate state purchasers about the Program through other awareness activities, such as procurement seminars, expositions and trade shows, newsletters, and other existing activities.

Impact

The intent of these recommendations is to enable the Council to more effectively pursue its mission of employing people with disabilities through increased agency use of the Program. Increased information from compliance audits and exception reporting should enable the Council to address problems and strengthen the Program where needed. Likewise, directing the Council to make agencies aware of the Program and tracking agencies' use of the Program would help ensure greater use and success for the Program.

Greater use of the Program would generate more employment opportunities for persons with disabilities. In addition to the personal benefits that individuals employed by the Program would enjoy, the State would potentially realize savings in human service costs and increased tax revenue.

Fiscal Implication

These recommendations would have no direct fiscal impact to the State. Recommendations affecting TBPC and SAO, such as producing compliance information and providing increased training, incorporate specific requirements into those agencies' existing operations and would not generate any significant increase in costs. Directing the Council to assess compliance information and promote the State Use Program may require additional staff hours. The existing Council staff member could perform some of these duties. To perform additional functions, the Council may use its appropriations authority to fill its one vacant position. No additional staff allocations would be necessary.

¹ Texas Human Resources Code, sec. 122.016.

² Texas Human Resources Code, sec. 122.0095. Texas House Bill 1691, 77th Legislature (2001).

³ Texas Government Code, sec. 2161.123.

⁴ Texas Building and Procurement Commission, *Fiscal Year 2001 Annual HUB Report*. Online. Available: www.tbpc.state.tx.us/hub/hub_report/fy1/index.html. Accessed: July 11, 2002. Also, memorandum from TIBH to Sunset Advisory Commission regarding State Use Program spending by agency, July 19, 2002.

⁵ Telephone interview with TBPC Statewide Procurement Program staff (Austin, Texas, July 3, 2002).

⁶ The Texas Department of Transportation has had a designated State Use Program compliance coordinator since the mid-1980s.

Issue 3

The Council Does Not Provide Adequate Oversight of the State Use Program.

Summary

Key Recommendations

- Require the Council on Purchasing from People with Disabilities to develop a formal process for the annual review of the central nonprofit agency's management fee.
- Establish a committee to provide greater assurance of community rehabilitation program compliance with State Use Program eligibility requirements.
- The Council should consult with the State Auditor's Office to create appropriate performance measures for the State Use Program.
- The Council should provide for increased stakeholder input on the effectiveness of the State Use Program.

Key Findings

- The Legislature has increased the Council's authority to oversee the State Use Program, including the central nonprofit agency.
- Despite legislative directives, the Council has not increased its oversight of the State Use Program.
- Program objectives and measures are inadequate to guide the Program or evaluate the effectiveness of the central nonprofit agency.

Conclusion

The Legislature requires the Council on Purchasing from People with Disabilities to oversee the State Use Program. The Program enables individuals with disabilities to achieve maximum personal independence through employment in the provision of goods and services for state agency procurement. These goods and services, provided through the Program, are exempt from competitive bidding requirements, creating an incentive for ineligible parties to attempt to benefit from the Program. Past concerns about the misuse of the Program by for-profit entities led the Legislature to grant the Council additional oversight authority in 2001.

While the Sunset review found no current instances of Program misuse, the Council's failure to comply with specific legislative directives, and its reluctance to exercise its full authority in overseeing the Program, place the Program in jeopardy. Concerns about the integrity of the Program may diminish its ability to continue to serve and employ persons with disabilities. Staff recommendations seek to prevent this outcome by identifying specific provisions to assist the Council in implementing existing legislative directives and identifying sources of support for the Council.

Support

The Legislature has increased the Council's authority to oversee the State Use Program, including the Program's central nonprofit agency (CNA).

Since the State Use Program operates outside the competitive bidding process, it requires heightened oversight.

- Through the State Use Program, the Legislature sets aside products and services provided by persons with disabilities from standard state competitive bidding requirements. Under state use laws, state agencies and institutions of higher education must purchase products and services available through the State Use Program, as long as these items meet agency specifications and the fair market price.

Since the State Use Program operates outside the competitive bidding process, it requires heightened oversight to ensure that the Program is administered fairly and for the purpose of employing people with disabilities. The Legislature has granted the Council responsibility for this oversight and has increased this authority over the years.

- In relation to the Council's oversight of the Program, it has additional authority to contract with one or more CNAs to administer the Program's daily operations. Since the Program's inception in 1975, the State has contracted with only one CNA, TIBH Industries.

Following a request for proposals (RFP) issued in March 2002, the Council is awarding a five-year contract for CNA services to TIBH. This proposed contract (to be effective September 1, 2002), represents the structure in which the Council will exercise its oversight authority during the next five years.¹

HB 1691 Oversight Provisions

The 77th Legislature increased the Council's oversight authority through the following provisions in House Bill 1691.

- Authorizes the Council to establish an advisory committee, whose purpose must include reviewing the Program's effectiveness.
- Requires the Council to adopt rules for the implementation, extension, administration, or improvement of the Program, including establishing a certification process for a community rehabilitation program (CRP).
- Requires the Council to review the CNA's management fee rate annually.
- Authorizes the Council to request the State Auditor to review the CNA's management fee or the financial condition of the CNA.
- Authorizes the Council to hire staff necessary to provide management oversight for the administration of the Program, as well as policy guidance and administrative support.
- Authorizes the Council or Council staff to access financial or other information and records from a CNA or CRP, if the Council determines it is necessary.

- Past problems with the Council’s oversight of TIBH and the State Use Program led to investigations by the State Auditor’s Office, the House Committee on General Investigating, and the Senate Committee on State Affairs.² In 2001, the Legislature demonstrated its intent to strengthen the Council’s oversight authority by enacting recommendations resulting from these investigations in House Bill 1691. The table, *HB 1691 Oversight Provisions*, details some of the bill’s provisions.

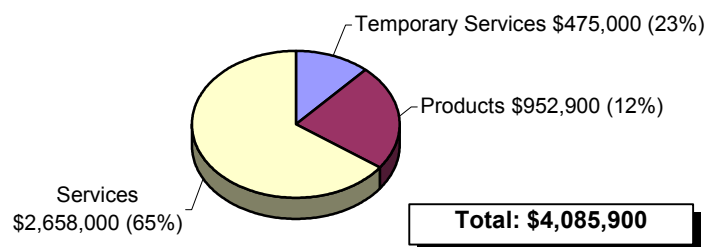
Despite legislative directives, the Council has not increased its oversight of the State Use Program.

- The Council does not fully exercise its oversight authority, despite clear legislative directives. For example, state law requires the Council to annually review the management fee the CNA charges for its administration of the Program. However, the Council has never addressed the subject of a management fee review in open meeting, even after legislation made it a requirement and authorized the Council to request an audit of the management fee by the State Auditor in September 2001.³
- While the Council has indicated that it discussed and reviewed the current management fee structure in an executive session, the Council maintains no formal review criteria.⁴ Without a formal review of the rate, the Council cannot ensure the appropriateness of the rate. The textbox, *CNA Management Fee Structure*, and the chart, *Sources of CNA Management Fee*, provide additional information about the fee.

The fee, which represents a portion of the contract price of each item sold by a community rehabilitation program (CRP) under the State Use Program, directly affects the success of the Program in providing employment for persons with disabilities. For example, each CRP pays TIBH a fee from its sales revenue. An unnecessarily high management fee may adversely affect a CRP’s operating costs and limit the number of persons it can employ. Similarly, an unusually low fee could affect the services TIBH provides.⁵

CNA Management Fee Structure		
The management fee is stratified according to the type of contract.		
Contract	Description	Sales Percent
Products	Product contracts employ the largest number of persons but have the lowest volume of revenue.	6.5%
Services	Service contracts employ fewer persons, but carry a larger contract dollar value.	6%
Temporary Services	Temporary services are a fast-growing area of service contracts.	5%

Sources of CNA Management Fee - 2001



Pricing could also be affected by an excessive management fee rate. The CNA's management fee is computed as a percentage of the selling price of a product or the contract price of a service.⁶ Agencies are not required to purchase products or services through the Program if the cost of an item (including the management fee) exceeds the fair market price.⁷ Any unnecessary increase in an item's price may lead to faltering sales of that item, thereby reducing agency participation in the Program and reducing the number of persons with disabilities that the Program may employ.

The absence of a certification process for CRPs threatens the integrity of the Program.

- The Council has not created a certification process for CRPs participating in the State Use Program. The State Auditor's Office concluded that the absence of a certification process threatens the integrity of the program, creating a risk that ineligible organizations could benefit from a ready-made state market for items.⁸ For example, an incident in 1999, in which a CRP partnered with a private company to provide postage meters to state agencies under the State Use Program, raised questions about eligibility requirements for CRPs.⁹ The Legislature addressed these questions last session by requiring the Council to develop a certification process, a minimum percentage of labor provided by persons with disabilities, as well as definitions for "value-added" and "direct labor" to help determine a CRP's eligibility. The Legislature also authorized employees to perform these and other oversight and administrative functions.

While the Council has a list of general participation guidelines for CRPs, it has no way of ensuring that all CRPs are complying with those provisions.¹⁰ These guidelines are listed in Appendix B. Except for the nonprofit status of a CRP, which is only initially verified by the CNA, all other program information is self-reported by a CRP. This includes information such as a CRP's ability to provide employment opportunities to persons with disabilities, and its efforts in maintaining a 75 percent direct labor ratio of persons with disabilities.

The Council has no way of ensuring that all CRPs are complying with Program participation guidelines.

By comparison, other states and the federal government certify and monitor CRPs participating in their set-aside programs. In fact, each of the approximately 600 CRPs enrolled in the federal program undergoes a compliance audit every two to three years to ensure compliance with set-aside standards, federal labor pricing, and other laws.

- To further enhance the Council's oversight of the State Use Program, the Legislature authorized the Council to establish an advisory committee. The committee would, among other things, review the effectiveness of the State Use Program and recommend procedures to create higher skilled and higher paying employment

opportunities. The Council has made no effort to establish such a committee, indicating that it has no need for it.¹¹ The textbox, *Council Advisory Committee*, delineates the groups from which the Council should seek representation.¹²

Other state agencies assisting people with disabilities make use of advisory committees to increase stakeholder participation and program accountability. For example, the Texas Rehabilitation Commission (TRC) has created an advisory committee to assist with issues surrounding more than 400 rehabilitation facilities.¹³ This advisory committee is composed of both TRC staff and facility representatives, and its membership changes every biennium so that other stakeholders can serve, bringing new ideas and different perspectives regularly.¹⁴

In contrast, until the last legislative session, when significant changes to the Council's statute drew attention, some major advocacy groups were not even aware of the Council's existence.¹⁵

Council Advisory Committee

When establishing an advisory committee, the Council shall seek representation from:

- community rehabilitation programs, including the Lighthouse for the Blind and Goodwill community rehabilitation programs, and the Texas Department of Mental Health and Mental Retardation community rehabilitation programs;
- central nonprofit agencies;
- disability advocacy groups;
- government purchasing agents;
- private industry representatives; and
- private citizens who have a disability and have knowledge of the sale of products and services.

Program objectives and measures are inadequate to guide the Program or evaluate the effectiveness of the CNA.

- Program objectives and the corresponding performance targets developed by the Council are vague and ambiguous. As a result, the Council cannot realistically assess the success of the Program or the effectiveness of the CNA. For example, a Council objective is "to be a continuing, dependable source of leadership and guidance that serves to maximize the stability and the integrity of the State Use/Set-Aside Program." This objective is ill-defined, containing subjective words that are difficult to quantify, much less accomplish.¹⁶

Another Council objective is "to provide effective pricing guidelines that achieve fair market pricing and that address changing market conditions." Its corresponding performance target is to have "less than five substantiated complaints per year." However, this target cannot measure the objective. A measure regarding pricing procedure should include sampling criteria, surveys of competitors, and statistical analysis of prices and trends.¹⁷ A complete list of the Council's objectives and performance targets is provided in Appendix C, *Council Objectives*.

- The Council is at an additional disadvantage in overseeing the State Use Program and the CNA because it relies wholly on the CNA for performance information. Although the Legislature authorized the Council to hire two full-time employees to provide management oversight, policy guidance, and administrative support; the Council has filled only one position and has no plans to fill the second.¹⁸

The Council is at a disadvantage in overseeing the State use Program because it relies wholly on the CNA for performance information.

- The Council receives little information from CRPs regarding the effectiveness of TIBH, even though working with CRPs is a primary function of the CNA. In 1995, the Legislature directed the Council to conduct annual reviews of the CNA and to solicit comments from the CRPs. However, the Council does not conduct an annual review. Instead, it relies on quarterly reports prepared and submitted by TIBH. While CRPs may address the Council in open meeting, CRPs have little or no direct interaction with the Council. More than two-thirds of CRPs responding to a Sunset survey stated that they had no input on reviewing TIBH.¹⁹ In fact, Sunset staff interviewed CRPs who, despite involvement in the State Use Program for more than 20 years, had never been asked by the Council to provide feedback on TIBH's performance.²⁰

Recommendation

Change in Statute

3.1 Require the Council to develop a formal process for the annual review of the CNA's management fee.

While the Legislature required the Council to conduct an annual review of the CNA's management fee last session, the Council has not adopted rules nor developed an ad hoc process. This recommendation would place specific requirements for reviewing the management fee in statute. For example, the Council should be required to give notice of the review to affected parties and invite public comment about the fee or any proposed change to the fee. In reviewing any proposed change to the fee, the Council should require the CNA to provide documentation substantiating the need for change. The Council would consider this and any other documentation provided to the Council by CRPs or the public before approving the fee each year.

The Council should provide for these specific provisions as well as the timing of the annual management fee review in rule by January 2004.

3.2 Establish a committee to provide greater assurance of CRP compliance with Program eligibility requirements.

While the Council has developed eligibility guidelines for CRP participation in the State Use Program, this recommendation would require the Council to develop a formal certification procedure in which a committee (either one specifically created for this purpose or one already in existence), composed of three council members appointed by the Council Chair, would review CRP certification applications and issue recommendations to the full Council concerning approval. The Council would define the scope of the application process in rule and could delegate administration of the application process to the CNA. Final approval of a CRP's certification would rest with the Council.

Consistent with existing statutory authority giving the Council access to CRP information and records, this recommendation would authorize the Council, Council staff, or the CNA at the Council's direction, to inspect any CRP for compliance with certification requirements. The committee would review all inspection results and recommend appropriate action to the full Council.

The Council should promulgate specific rules necessary to implement these provisions by January 2004.

Management Action

3.3 The Council should consult with the State Auditor's Office to create appropriate performance measures for the State Use Program.

The State Auditor's Office, Management Assessment Services Division, has guidelines for developing performance measures to evaluate the efficiency and effectiveness of agency programs and functions. Since the Council has the authority to contract for the administration of the Program, it has delegated some agency functions to the CNA. With such authority, the State has the expectation that the Council has guidelines in place for monitoring the CNA's performance using objective criteria. This recommendation would direct the Council to seek assistance in developing appropriate performance measures to better assess the effectiveness of Program functions, including those assigned to the CNA, emphasizing results and outcomes.

3.4 The Council should provide for increased stakeholder input on the effectiveness of the State Use Program.

This recommendation would require the Council to place greater emphasis on gathering input from interested or affected parties. The Legislature has already authorized the Council to appoint an advisory committee whose duties include reviewing the effectiveness of the Program and recommending procedures to create more employment opportunities for persons with disabilities. Additionally, the Legislature has directed the Council to solicit input from CRPs in evaluating the effectiveness and performance of the CNA. This recommendation would encourage the Council to act on these provisions and seek additional methods for engaging stakeholders.

Impact

These recommendations seek to enhance the Council's oversight of the State Use Program and the CNA. The exemption of Program contracts from competitive procurement requirements requires maximum oversight and assurance that persons with disabilities are truly benefitting from the Program. Any doubts as to the eligibility of individuals or CRPs participating in the Program, places the Program in jeopardy and may diminish its ability to provide for the employment of persons with disabilities. Through these recommendations, the Council may enhance the integrity and ultimate success of the Program.

Specifically, a formal certification process for CRPs would provide greater assurance that only eligible CRPs that employ persons with disabilities participate in the Program. Also, by implementing a formal process for reviewing the CNA management fee, the Council can better assess how efficiently the CNA is spending program revenues. Use of specific performance measures will also enable the Council to evaluate the effectiveness of the CNA and success of the Program. Finally, the Program will achieve greater accountability through increased public and stakeholder participation.

Fiscal Implication

These recommendations would have no fiscal impact to the State. Any increase in cost to the Council would be incurred by the CNA. Enhanced efficiencies in the Program, as a result of heightened oversight, should counteract any potential cost increases.

Existing Council staff could provide support in implementing some of these recommendations. For any additional functions, the Council may use its appropriation authority to fill its one vacant position. No additional staff allocations would be necessary.

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- ¹ The contract between the Council and TIBH Industries incorporates the Council's RFP No. 303-2-0230, its addendum no. 1, and TIBH's response to both items. Those documents are described as "Exhibit A," "Exhibit B," and "Exhibit C," respectively. The contract states that the "terms and conditions contained in Exhibits A and B and TIBH's integrated response in Exhibit C, dated March 7th 2002, shall be controlling and binding on both parties...." Contract between the Texas Council on Purchasing from People with Disabilities and TIBH Industries, Inc., effective September 1, 2002.
 - ² Office of the State Auditor, *An Audit Report on The State Use Program*, Report No. 01-001 (Austin, Texas, September 2000); Texas Senate, Senate Committee on State Affairs, *Report to the 77th Legislature - Charge 10, State Use Program*, (Austin, Texas, November 1, 2000); and Texas House of Representatives, House Committee on General Investigating, *Report to House of Representatives 77th Legislature* (Austin, Texas, November 8, 2000), pp. 4.1-4.15.
 - ³ Texas Council on Purchasing from People with Disabilities, Quarterly Council Meeting Minutes (Austin, Texas, February 1999 through June 2002). Council Meeting Minutes for June 21, 2002 are pending Council approval.
 - ⁴ Sunset Advisory Commission exit conference with the Texas Council on Purchasing from People with Disabilities and TIBH, Industries (Austin, Texas, August 8, 2002).
 - ⁵ The management fee assessed to every contract goes towards contract management, legislative services, line of credit promotions, and other programs. Sunset Advisory Commission exit conference with the Texas Council on Purchasing from People with Disabilities and TIBH, Industries (Austin, Texas, August 8, 2002).
 - ⁶ Telephone interview with TIBH Industries, staff (Austin, Texas, July 22, 2002) and Texas Human Resources Code, sec. 122.019(e)
 - ⁷ Texas Government Code, sec. 2155.138.
 - ⁸ Office of the State Auditor, *An Audit Report on the State Use Program*, report no. 01-001 (Austin, Texas, September, 2000), p. 17.
 - ⁹ Robert Elder Jr., "Council for Disabled Faces Questions as Crises Thrust it into Spotlight" *Wall Street Journal* (December 22, 1999).
 - ¹⁰ Texas Administrative Code, Title 40, Part 7, Rule 189.6
 - ¹¹ Interview with Texas Council on Purchasing from People with Disabilities, Council Member (Austin, Texas, April 18, 2002).
 - ¹² Texas Human Resources Code, sec. 122.0057.
 - ¹³ The term "rehabilitative facility" is used in place of "community rehabilitation program" to differentiate between those entities participating in the State Use Program and those entities in a contractual relationship with TRC. TRC contracts with entities, either for profit or nonprofit organizations, for certain services such as "halfway houses," or "centers for independent living." These facilities may also participate in the State Use Program through assisting persons with disabilities in the production of goods and services. However, TRC staff does not certify those-or any-community rehabilitation organization and TRC criteria are different than State Use Program requirements. TRC has no interaction with the Council, nor has the Council contacted TRC regarding certifications. Telephone interview with Texas Rehabilitation Commission, Community Rehabilitation Program division staff (Austin, Texas, May 30, 2002).
 - ¹⁴ Texas Rehabilitation Commission, Community Rehabilitation Program Advisory Committee Meeting, March 1, 2002 (Austin, Texas, 2002). Online Available: www.rehab.state.tx.us/community_rehab_crp_.html Accessed: July 19, 2002.
 - ¹⁵ Interview with Texas Coalition for Texans with Disabilities, Staff (Austin, Texas, May 21, 2002) and Interview with Advocacy, Inc., Staff (Austin, Texas, May 29, 2002).
 - ¹⁶ Interview with State Auditor's Office, Management Assessment Services, Staff (Austin, Texas, July 3, 2002).
 - ¹⁷ Ibid.
 - ¹⁸ Interviews with Texas Council on Purchasing from People with Disabilities, Council Members (Austin, Texas, April, 18, 2002).
 - ¹⁹ Sunset Commission, Staff, TCPPD Survey of State Use Program Stakeholders, April-May 2002.
 - ²⁰ Interviews with community rehabilitation programs, staff (Austin, Texas, May 10-11, 2002 and Dallas, Texas, June 12-13, 2002).
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ACROSS-THE-BOARD RECOMMENDATIONS

Texas Council on Purchasing from People with Disabilities	
Recommendations	Across-the-Board Provisions
	A. GENERAL
Apply	1. Require at least one-third public membership on state agency policymaking bodies.
Already in Statute	2. Require specific provisions relating to conflicts of interest.
Already in Statute	3. Require that appointment to the policymaking body be made without regard to the appointee's race, color, disability, sex, religion, age, or national origin.
Already in Statute	4. Provide for the Governor to designate the presiding officer of a state agency's policymaking body.
Already in Statute	5. Specify grounds for removal of a member of the policymaking body.
Update	6. Require that information on standards of conduct be provided to members of policymaking bodies and agency employees.
Update	7. Require training for members of policymaking bodies.
Apply	8. Require the agency's policymaking body to develop and implement policies that clearly separate the functions of the policymaking body and the agency staff.
Already in Statute	9. Provide for public testimony at meetings of the policymaking body.
Apply	10. Require information to be maintained on complaints.
Not Applicable	11. Require development of an equal employment opportunity policy.
Not Applicable	12. Require information and training on the State Employee Incentive Program.

AGENCY INFORMATION

Agency Information

Agency at a Glance

The Council on Purchasing from People with Disabilities (Council) encourages employment opportunities for Texans with disabilities through a set-aside purchasing program, called the State Use Program. Under this Program, state agencies and other political subdivisions give purchasing preference to goods and services offered by community rehabilitation facilities that employ persons with disabilities.

The Council's major functions include:

- approving community rehabilitation programs for participation in the Program;
- setting fair market prices of products and services offered for sale through the State Use Program; and
- contracting with a central nonprofit agency to carry out the day-to-day functions of the Program.

Key Facts

- **Funding.** In fiscal year 2001, the Council's operating budget was \$30,188.¹ Funding comes from a portion of the sales revenue generated by the State Use Program. For the 2002–2003 biennium, the Legislature authorized \$225,000 to carry out the Council's duties, allow the Council to establish an advisory committee, and hire staff.
- **Staffing.** The Council employs one individual and receives legal assistance from the Texas Building and Procurement Commission (TBPC). The Council contracts with a central nonprofit agency, TIBH Industries, to administer the State Use Program.
- **Products and Services.** In 2001, the Council offered 102 different products and 25 types of services for sale under the State Use Program, generating more than \$62 million in total sales revenue.² Council rules require that at least 75 percent of the labor for those products and services be performed by persons with disabilities.
- **Persons served.** In 2001, nearly 7,000 persons with disabilities were employed under the State Use Program. Approximately two-thirds of these individuals cope with mental retardation, mental health issues, and chemical disorders.

Mission Statement

The Council's mission is to provide leadership and direction for programs which will enable persons with disabilities to achieve maximum personal independence through suitable employment.

Major Events in Agency History

- 1925** The Texas Legislature exempted printing and binding of documents by workers with hearing impairments from existing bidding requirements.
- 1938** The U.S. Congress enacted legislation directing agencies to purchase, under specified conditions, products from certified nonprofit agencies employing people with visual impairments. Years later Congress expanded the program, now called the Javits Wagner-O'Day (JWOD) Program, to include purchasing from people with severe disabilities in addition to blindness.
- 1957** The Texas Legislature gave preference to products and services made by persons with visual impairments in the State Purchasing Act.
- 1975** The Texas Legislature established the Texas Committee on Purchases of Blind-Made Products and Services as a pilot program for preferential purchasing of those products by state agencies and authorized the Committee to designate a central nonprofit agency (CNA).
- 1978** Texas Industries for the Blind and Handicapped, a private nonprofit entity formed to assist in implementing the Program, was designated CNA.
- 1979** The Legislature changed the name of the Committee to the Texas Committee on Purchases of Products and Services of Blind and Severely Disabled Persons (Committee). The Commission for the Blind had authority for promulgating rules while the State Board of Control set product specifications.
- 1995** The 74th Legislature replaced the Committee with the Council on Purchasing from People with Disabilities and charged it with oversight of the State Use Program.
- 2001** The 77th Legislature restructured oversight of the State Use Program, allowing the Council to request proposals for a contract for a CNA, access records of the CNA and community rehabilitation programs, appoint advisory committees, and employ staff.

Organization

The State Use Program represents a unique partnership between government and nonprofit private entities to ensure employment opportunities for Texans with disabilities. The Council serves as the policymaking body and contracts with a CNA to administer the State Use Program. The CNA works closely with community rehabilitation

(CRPs) programs that provide goods and services produced by persons with disabilities for sale through the Program.

Governing Body

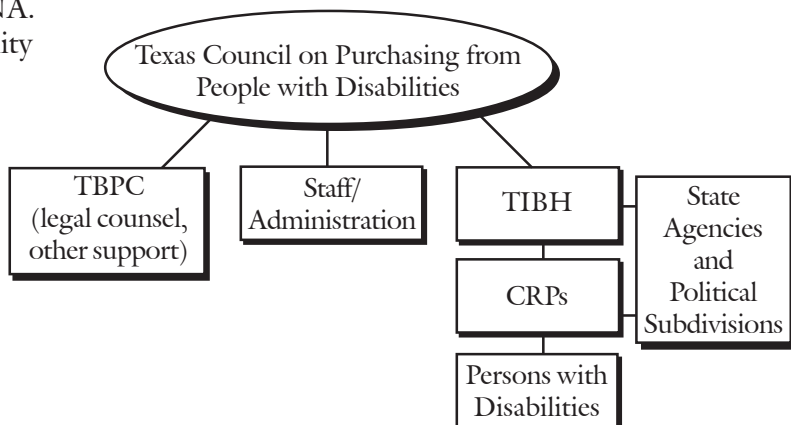
The Council is composed of nine members appointed by the Governor with the advice and consent of the Senate. Members include private citizens conversant with the employment needs of persons with disabilities and with current experience in pricing and marketing of goods and services, representatives of CRPs, representatives of state agencies or political subdivisions that purchase a significant amount of products and services provided by persons with disabilities, and persons with disabilities. The chart, *Texas Council on Purchasing from People with Disabilities*, details the Council's membership.

Staff

In 2001, the Legislature authorized the Council to hire two staff members, but it has chosen to only employ one in Austin to carry out its functions. The Council employee primarily assists with administrative duties. As required by statute, the Council continues to receive legal and other necessary support from TBPC.³ However, the State Use Program is primarily managed by TIBH Industries, the designated CNA. TIBH works directly with community rehabilitation programs that employ persons with disabilities to develop state purchasing contracts. The chart, *Texas Council on Purchasing from People with Disabilities Organizational Chart*, details the relationship between the Council, the CNA and the CRPs.

Texas Council on Purchasing from People with Disabilities		
Member	Term Expiration	Qualification/Residence
Margaret "Meg" Pfluger Chair	2005	Public Member Lubbock
Cathy J. Williams Vice Chair	2005	Texas Department of Transportation Austin
Chuck Brewton	2005	Public Member San Antonio
J. Terry Boyd	2007	Community Rehabilitation Program Representative Ft. Worth
Paul J. Calapa	2003	City of Brownsville Brownsville
David W. Franklin	2007	Disability Community Representative Dallas
Byron E. Johnson	2007	City of El Paso El Paso
John W. Luna	2003	Community Rehabilitation Program Representative Eules
Bobbie F. Templeton	2003	Public Member Driftwood

Texas Council on Purchasing from People with Disabilities Organizational Chart



For EEO reporting purposes, the Council employs an African-American male as program administrator.⁴

Central Nonprofit Agency

Although the Council has the statutory authority to oversee the State Use Program, it contracts with a CNA to administer the day-to-day operations of the Program. Since 1978, TIBH Industries has been the designated CNA under contract with the Council. The textbox, *CNA Duties*, describes TIBH's statutory and contractual responsibilities.

TIBH is a private nonprofit organization, with its own board of directors and staff, and acts as the interface between the CRPs and the purchasing systems of agencies, cities, counties, school districts, and hospital districts across Texas. TIBH maintains marketing staff in regional offices throughout the state, with offices located in Abilene, Hurst, Nacogdoches, Houston, Georgetown, and San Antonio.

Texas law requires the Council to review the services provided by the CNA (including necessary operating revenues) each year. At least once every five years, the Council must also review and renegotiate the contract with the CNA. The Council and TIBH have recently concluded the negotiation of a new contract, awarded in response to a request for proposal in March 2002. The textbox, *CNA Contract Highlights 2002*, details some of the provisions of the new operating contract.⁵

The Council contracts with TIBH Industries to administer the day-to-day operations of the Program.

CNA Duties

In accordance with statutory and contractual requirements, the CNA performs the following major functions for the State Use Program, under the Council's supervision.

- Recruits CRPs for inclusion in the State Use Program and assists them in negotiating price and specification provisions for state purchasing contracts.
- Facilitates the distribution of agency purchase requests among CRPs, based upon several factors including a CRP's ability to perform the contract requirements, the CRP's financial resources, and location of the CRP (i.e., proximity to the service contract site).
- Processes agency orders and provides advanced payment to CRPs for goods and services sold.
- Promotes increased employment opportunities for persons with disabilities by working closely with CRPs to research and develop new products and services for CRPs and the State Use Program.
- Markets products and maintains customer and public relations with state agencies and other political subdivisions.

CNA Contract Highlights 2002

The five-year contract for CNA services, to be effective September 1, 2002, includes the following provisions.

- The CNA owns all records, files, and reports related to the State Use Program. However, the Council may access documents if it provides TIBH with written notice of its inspection five business days in advance.
- The contract may be terminated by TIBH with 60 days written notice or by the Council if it finds substantial evidence that the CNA is not in compliance with its contractual obligations and gives 60 days written notice.
- Transition time between TIBH and any successor CNA is limited to 60 days. Additionally, TIBH reserves all on-going contractual rights and will be provided reasonable compensation for transition costs by the successor CNA.
- The Council cannot contract with another entity for CNA services. TIBH specified that it is to be the sole designated CNA, administering the State Use Program for the contracted term.
- TIBH's current line of credit is secured and renewed periodically with assurances that the TIBH management fee will not be significantly altered by the Council during the five-year term.
- Indemnification terms, or agreements to pay expenses of state officials named as defendants in litigation, are consistent with standard state-vendor contracts.

Funding

In 2001, the Council's operating budget was \$30,189. However, the Legislature determined that additional staffing was necessary to manage the Program and authorized \$225,000 for two staff positions for the 2002–2003 biennium. The Legislature appropriates funding for the Council through the Texas Building and Procurement Commission (TBPC), where the Council is administratively housed. By law, TBPC must provide the Council with administrative, legal, and other support. In 2001, TBPC incurred expenditures totaling \$7,597 in support of Council activities.⁶

The Council has only filled one staff position and has indicated that it does not intend to fill the second position.⁷ As a result, the Council's operating budget is only \$58,913 per year of the current biennium.

Revenues

Funding appropriated for the Council comes entirely from a portion of the sales revenue generated by the State Use Program. This portion is paid to the State by TIBH Industries.

The Council does not plan to fill one of its two staff positions.

As the CNA, TIBH collects a management fee from the CRPs for all products and services a CRP sells through the Program. The Council has the authority to set this management fee as a percentage of the revenue generated from the sale of a product or service. The fee, which averages about 6 percent of the contract price of an item, is taken into consideration by the

2001 Management Fees			
Item Sold	Estimated Amount Sold	Fee Percentage	Amount of Fee
Products	\$14,660,000	6.5%	\$952,900
Services	\$44,300,000	6%	\$2,658,000
Temporary Services	\$9,500,000	5%	\$475,000
Total	\$68,460,000	--	\$4,085,900

Council when it sets fair market price.⁸ The chart, *2001 Management Fees*, details the different levels of fees charged during 2001. This management fee represents TIBH’s sole source of funding.

Expenditures

Council expenses are divided into three areas: travel, staff salary, and general operating expenses. These are covered by TIBH.

The Council is subject to historically underutilized business (HUB) purchasing requirements, but is administratively attached to TBPC and relies on TBPC for all its purchasing needs. TBPC captures the Council’s purchases as part of its HUB reporting. However, the Council has one contract, for an indeterminate amount, with the CNA. This contract was determined to have subcontracting opportunities. Approximately 2.5 percent of the total contract is to be subcontracted with HUB vendors. In aggregate, this translates to an estimated dollar amount of \$99,000.⁹

TIBH Program Expense Allocation - 2001		
Program Function	Amount	Percentage
Processing Orders and Payments	\$949,000	25%
General Administration	\$115,000	3%
Pricing and Costing	\$185,000	5%
Contract Management	\$801,000	21%
Texas Council	\$30,000	1%
Training-Education-PR	\$284,000	8%
Marketing of Products/Services	\$1,010,000	26%
Warehouse	\$132,000	4%
Research and Development	\$210,000	6%
Technical Assistance Fund	\$26,000	1%
Total	\$3,742,000	

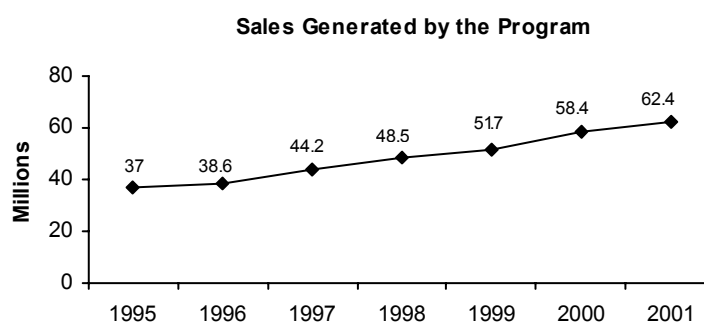
TIBH performs the day-to-day operations in support of the State Use Program. As shown in the chart, *TIBH Program Expense Allocation - 2001*, TIBH spent \$1,010,000, or 26 percent of its total cost, on marketing products and services during 2001. Meanwhile, processing agency orders and payments to CRPs accounted for another 25 percent of costs, or \$949,000.

TIBH also maintains a balance (“reserve”) fund totaling approximately \$2.2 million. This fund reflects the ongoing profit or loss of TIBH since its beginning. From this fund, TIBH is able to provide CRPs with advance payments, in

anticipation of remittance checks from state agencies and other political subdivisions purchasing items from the Program.

Agency Operations

Through the State Use Program, Texas seeks to provide employment opportunities for persons with disabilities while providing quality goods and services for purchase by state agencies. Initially begun as a pilot project for products made by persons with visual impairments, the Program has grown to be one of the largest set-aside programs of its kind in the nation. The line graph, *Sales Generated by the Program*, shows a steady increase in the reported annual sales figures since 1995. The chart, *Top Five State Use Programs 2001*, shows that Texas is behind only New York in sales and number of persons with disabilities employed.¹⁰



Top Five State Use Programs 2001				
State	Sales in Million	Wages in Millions	Number of persons/w Disabilities	Number of CRPs
New York	\$109.5	\$31.4	7,722	129
Texas	\$62.4	\$21.2	6,902	158
Ohio	\$28.7	\$8.7	3,653	120
Pennsylvania	\$31.2	\$7.4	6,429	90
Florida	\$21.7	\$4.6	1,853	57

The following sections describe the State Use Program and the Council's activities to support the Program. These activities include monitoring agency compliance with Program purchasing requirements, establishing eligibility criteria for CRPs, and setting the fair market price of products and services it approves for set-aside.

Agency Procurement

Participation in the Program is mandatory for state agencies and higher education institutions and voluntary for political subdivisions. Agencies do not have to competitively bid when purchasing products and services provided by a CRP if the product or service meets established specifications and does not exceed fair market price, which is determined by the Council.¹¹

State agencies and higher education institutions must participate in the Program.

Top Ten State Agency Customers - 2001	
Agency	SUP Purchase
Texas Department of Transportation	\$28,453,631
Texas Department of Human Services	\$4,177,520
Texas Department of Criminal Justice	\$3,657,038
Texas Natural Resource Conservation Commission	\$2,394,479
Texas Rehabilitation Commission	\$1,591,570
Texas Department of Health	\$1,121,080
Texas Building and Procurement Commission	\$1,180,443
Office of the Attorney General	\$1,057,784
Texas Youth Commission	\$391,861
Texas Department of Protective and Regulatory Services	\$389,265

If an agency does not comply with mandatory Program guidelines, it must file an exception report with TBPC detailing the reasons for non-compliance. Statute directs TBPC to compile this information and submit monthly reports to the Council.¹²

Through the Program, agencies purchase goods and services from hand soap to desks to landscaping services, without having to comply with competitive bid requirements. In 2001, the Program generated approximately \$62 million dollars in sales. The chart, *Top Ten State Agency Customers - 2001*, shows the total number of sales to the ten highest spending agencies. The chart, *Products/Services Offered for Sale*

Under the State Use Program, shows services as the highest sales category, accounting for 78 percent of Program revenue, with temporary office staffing as the fastest growth area in services. Office and school supplies represent almost half of product sales.

The products and services offered through the State Use Program are produced by CRPs and are also available to municipalities, school districts, universities, and the general public.

Community Rehabilitation Programs

By law, the Council is required to establish a certification process for CRPs participating in the State Use Program.¹⁴ While the Council has not created a "certification process," it provides product and service guidelines designed to ensure that CRPs employ acceptable percentages of persons with disabilities. The textbox, *CRP Eligibility Criteria*,¹⁵ delineates some of the requirements a CRP must meet to participate in the State Use Program. The Council will approve a CRP's entry into the Program based upon the CNA's recommendation.

Products/Services Offered for Sale Under the State Use Program¹³	
Category	FY 2000 Sales
Automotive Products	\$176,643
Hospital & Institutional Care Items	\$164,754
Personal Care Items	\$948,560
Janitorial & Housekeeping Supplies	\$998,356
Food & Beverage Products	\$2,376,706
Office & School Supplies	\$6,919,915
Industrial Supplies	\$150,050
Furniture & Fixtures	\$1,277,407
Clothing	\$569,912
Miscellaneous Products	\$331,118
Services	\$48,533,945
Total Sales	\$62,447,366

TIBH staff verify the nonprofit corporate status of new CRPs. This recognition process is conducted through review of CRP tax-exemption documents and verification from state and federal databases, private reporting services, and media resources.¹⁶ The CNA may randomly conduct a re-confirmation of corporate status on a CRP, but usually only does so based on an indication of loss of nonprofit status.¹⁷

To qualify for the State Use Program, a CRP must ensure that persons with disabilities perform at least 75percent of the hours of direct labor necessary to perform a service or reform raw materials, assemble components, manufacture, prepare, process and/or package a product.¹⁸ However, the Council may accept a lower percentage when it is satisfied that the 75percent labor requirement is not feasible for a particular product.

Employing Texans with Disabilities

The role of providing employment opportunities for people with disabilities fall to the CRPs. CRPs are community-based government entities (like state schools) or nonprofit private organizations (like Goodwill Industries) operated under criteria established by the Council. Approximately 160 CRPs exist throughout Texas. *Appendix D* depicts the location of CRPs.

Through the State Use Program, CRPs fill contracts for services, such as highway litter maintenance or landscaping or products, such as assembled mechanical pencils and notebook binders. More recently, CRPs have begun to offer temporary employment services as a staffing service for state and local governmental entities.¹⁹

Persons with disabilities are employed by CRPs and compensated for their work through sales revenue, under guidelines established by the federal set-aside program and adopted by the State. Generally, the wage earned by a person with disabilities employed under the State Use Program is above minimum wage. In 2001, more than 90 percent of the total wages paid to people with disabilities were above minimum wage.

The Council defines “disability” as a mental or physical impairment, including blindness, that impedes a person who is seeking, entering, or maintaining gainful employment.²⁰ The chart, *Texans Employed Through the State Use Program*, shows those individuals employed by CRPs participating in the Program, according to disability.

CRP Eligibility Criteria

- A CRP must be a government entity, a private nonprofit unincorporated entity, or a private nonprofit incorporated entity established for the primary purpose of employing persons with disabilities.
- CRPs must document disability information for persons employed by the program, disseminated by category.
- A CRP must ensure that at least 75 percent of the direct labor necessary to perform a service or manufacture a product is accomplished by persons with a disabilities.

Texans Employed Through the State Use Program²¹		
Type of Disability	FY 2000	FY 2001
Mental Retardation	1,738	2,195
Mental Health	1,004	1,354
Chemical Disorder	795	1,132
Learning Disability	506	715
Physical Impairment	390	408
Visual Impairment	257	444
Hearing Impairment	116	108
Brain Injury	69	53
Other ²²	426	493
Total	5,301	6,902

Reviewing and Pricing Products and Services

Prices for products or services offered under the Program are determined by the Council's three-member Pricing Subcommittee, which bases its assessments on the item's fair market value and recommendations from the CNA. The textbox, *Fair Market Value*, list the statutory factors the Council must consider in determining a product's fair market value. Other factors affecting an item's price include the CNA's management fee, which is charged to the CRPs, and is computed as a percentage of the selling price of a product or service. In making this determination, the Council is required to ensure that the products and services offered for sale, offer the best value to the state or other political subdivisions.

Fair Market Value

In determining the fair market value of an item offered under the State Use Program, to the extent possible, the Council must consider the following factors.

- The amounts being paid for similar items and quantities by federal agencies purchasing from the federal set-aside program.
- The amounts paid by private businesses for similar products purchased from reputable corporations.
- The amount being paid by the State in any recent purchases of similar items and quantities.
- The actual cost of manufacturing the product or performing the service by a CRP, with adequate weight given to wages including the value of the labor of the person with a disability associated with an item.
- The usual, customary, and reasonable cost of manufacturing, marketing, and distributing of an item.

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- ¹ Legislative Budget Board, Performance Analyst, "Re: Fwd: Council on Purchasing from People with Disabilities" e-mail to Sunset Advisory Commission, June 21, 2002.
- ² In fiscal year 2001, three different numbers representing the total sales under the State Use Program were published: \$62.4 million by State Use Programs Association (SUPRA), *Annual Survey*, November 2001; \$68 million by TIBH, *Proposal Response to request for Proposal No. 303-2-0230*, submitted March 8, 2002, Austin, Texas); and \$78.5 million, Texas Building and Procurement Commission for Texas Council on Purchasing from People with Disabilities, *Request for Proposal No. 303-2-0230*, submission date March 8, 2002.
- ³ Texas Human Resources Code, sec. 122.012
- ⁴ In accordance with the requirements of the Sunset Act [TEX. GOV'T CODE §325.011], trend information for the agency's employment of minorities and females, disseminated by job category, is to be included in staff reports.
- ⁵ The contract between the Texas Council on Purchasing from People with Disabilities and TIBH incorporates the Council's RFP, RFP addendum no. 1, and TIBH's response thereto. The terms and conditions contained in the RFP, addendum no. 1 and TIBH's response are the terms of the contract. Attachment Q of TIBH's response contains exceptions to the RFP.
- ⁶ Statute requires the CNA to cover costs incurred by TBPC in support of the Council.
- ⁷ Sunset Advisory Commission² overview meeting with Chairperson of Texas Council on Purchasing from People with Disabilities chairwoman (Austin, Texas, April 18, 2002).
- ⁸ Texas Human Resource. Code, sec. 122.019
- ⁹ TIBH Industries, *Proposal Response to request for Proposal No. 303-2-0230*, submitted March 8, 2002, (Austin, Texas), page 10.
- ¹⁰ State Use Programs Association (SUPRA), *Annual Survey*, November 2001.
- ¹¹ Texas Government Code, sec. 2155.138(a)
- ¹² Texas Human Resources Code, sec.122.016.
- ¹³ SUPRA, *Annual Survey*.
- ¹⁴ Texas Human Resources Code, sec. 122.013 (c)(2).
- ¹⁵ Texas Administrative Code, Title 40, part 7, rule 189.6.
- ¹⁶ The corporate status monitoring process involves a four tier system: 1) state verifications through online databases from the Secretary of State, the State Comptroller's Office, TBPC, Texas Department of Transportation, and other Texas TRAIL databases; 2) federal verifications through the IRS and US General Services Commission's database; 3) private reporting through Guidestar.com online services, which monitors nonprofit entities; and 4) media resources via online clipping services. TIBH *RFP Response*, Attachment J, page 3.
- ¹⁷ Telephone interview with TIBH General Counsel (Austin, Texas, May 31, 2002)
- ¹⁸ Texas Administrative Code, Title 40, part 7, rule 189.6.
- ¹⁹ CRPs recruit, screen and hire their own employees (temporaries), who are then assigned to provide services to state and local entities. An employer/employee relationship only exists between the CRP and the person with disability hired as a temporary staffer. These services are currently available in Dallas, Ft. Worth, Houston, Corpus Christi, San Antonio, and Austin.
- ²⁰ Texas Administrative Code, Title 40, part 7, rule 189.6.
- ²¹ Texas Council on Purchasing from People with Disabilities *Annual Reports 1999-2000 and FY 2000-2001*, as prepared by TIBH Industries (Austin, Texas, October 2000 and October 2001)
- ²² The category "Other" is comprised of those individuals with disabilities such as dyslexia; accidental injury; poisoning; attention deficit disorder; sever diabetes; metabolism disorder; and other disabilities or conditions not know or specified. The category also includes those individuals classified as either emotionally disturbed or emotionally disturbed with criminal offenses coming from halfway houses. The number of persons employed reflects those individual who may work part or full-time on State Use contracts. Employees who have multiple disabilities are listed only once, under their primary disability.

APPENDICES

Appendix A

Implementation Status: HB 1691 Provisions¹		
Section	Description	Status
122.003	Modifies the composition of the Texas Council on Purchasing from People with Disabilities (Council) to include persons with disabilities.	Implemented
122.0055	Authorizes the Council to employ staff to provide management oversight, policy guidance, and administrative support to the Council.	Partially implemented. The Council filled one of two full-time positions.
122.0057	Authorizes the Council to establish an advisory committee, if necessary. Requires the Council to specify the purpose and duties of the committee, which must include reviewing the State Use Program's (Program) effectiveness and recommending procedures to create higher skilled and higher paying employment opportunities. Requires the Council to seek representation from community rehabilitation programs, central nonprofit agencies, disability advocacy groups, government purchasing agents, private industry representatives, and private disabled citizens.	Not implemented. Discussed in Issue 3.
122.0095	Requires each state agency that purchases products or services through the Program to designate an agency employee to ensure that the agency is in compliance with existing law, and report to the Texas Building and Procurement Commission (TBPC) and the Council the purchase of products or services available from a central nonprofit agency (CNA) or community rehabilitation program (CRP) but which were purchased through another business instead. Requires TBPC to post the required reports on its Web site.	Partially implemented. In July 2002, the Council sent letters to state agencies encouraging designation of compliance coordinators. Agency reporting of exception purchases has increased, but is not widespread. TBPC does not post reports on its Web site. Discussed in Issue 2.
122.012	TBPC is required to include the State Use Program in TBPC's procurement policy manuals and to assign an upper-level management level employee to ensure that TBPC meets its requirements in relation to the Council.	Partially implemented. The Program is only minimally represented in TBPC's procurement manual. Discussed in Issue 2.

Appendix A

Implementation Status: HB 1691 Provisions¹		
Section	Description	Status
122.013	Requires rather than authorizes the Council to adopt rules for the implementation, extension, administration, or improvement of the Program. Requires the Council to adopt rules: to address possible conflicts of interest for CNAs and CRPs, to establish a process for the certification of CRPs, to establish a minimum percentage of disabled labor a CRP must employ, and to define the terms "value-added" and "direct labor."	Partially implemented. The Council has not established a certification process. Discussed in Issue 3.
122.019	Authorizes the Council to select and contract with one or more CNAs through a request for proposals for a period not to exceed five years. Authorizes the Council to renew and renegotiate a contract with a CNA at least once during each five-year period, but does not require it to do so. Specifies that the management fee rate charged by a CNA must be reviewed annually by the Council. Authorizes the Council to terminate a contract if the CNA is not in compliance with contractual obligations. Authorizes the Council to request an audit by the State Auditor of a CNA's management fee or the financial condition of the CNA.	Partially implemented. The Council has completed the request for proposals and is awarding a five-year contract to TIBH. The Council does not review the management fee annually. Discussed in Issue 3.
122.0205	Requires that a dispute between the Council and a CNA or CRP first be submitted to alternative dispute resolution	Not yet applicable.
122.0215	Authorizes the Council and Council staff to access financial or other information and records from a CNA or a CRP, if the Council determines it necessary. Requires the Council to adopt rules establishing procedures to ensure that information and records are kept confidential and protected from release to unauthorized persons.	Partially implemented. The Council has adopted rules, but has not exercised its authority to access information and records.
122.022	Provides that the Council must include in its annual report additional information regarding the number and earnings of persons with and without disabilities employed by CRPs or businesses or workshops .	Implementing. The Council's 2002 annual report is not yet available.

¹ Texas House Bill 1691, 77th Legislature(2001) codified in Texas Human Resources Code, ch. 122.

Appendix B

Criteria for Community Rehabilitation Programs¹

1. A CRP must be 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.
2. A CRP must maintain payroll, human resource functions, accounting and documentation of disability for people employed to produce goods or services under the state use program.
3. A CRP must maintain contracts and billing and payment records if it contracts with outside entities for services of any kind.
4. A CRP desiring to provide services under the state use program must comply with the following requirements to obtain approval from the council:
 - a. A minimum of thirty-five percent (35%) of the contract price of the service must be paid to persons with disabilities who perform the service in the form of wages and benefits; however, the council may accept a lower percentage when it is satisfied that this percentage is not feasible for a particular service.
 - b. Supply costs for the service must not exceed twenty percent (20%) of the contract price of the service; however, the council may accept a larger percentage when it is satisfied that this percentage is not feasible for a particular service.
 - c. Administrative costs allocated to the service must not exceed ten percent (10%) of the contract price for the service. At least seventy-five percent (75%) of the hours of direct labor necessary to perform a service must be done by persons with disabilities; however, the council may accept a lower percentage when it is satisfied that this percentage is not feasible for a particular service.
5. A CRP must comply with the following requirements to obtain approval from the council for state use products:
 - a. At least seventy-five percent (75%) of the hours of direct labor necessary to reform raw materials, assemble components, manufacture, prepare, process and/or package a product must be done by persons with disabilities; however, the council may accept a lower percentage when it is satisfied that this percentage is not feasible for a particular product.

Appendix B

- b. Appreciable contribution to the product by persons with disabilities must be determined on a product-by-product basis to be substantial based on acceptable documentation provided to the council upon application for a product to be approved for the state use program.
6. The rules governing the approval of products to be offered by community rehabilitation programs apply to all items that a community rehabilitation program proposes to offer to state agencies or political subdivisions, regardless of the method of acquisition by the agency, whether by sale or lease. A community rehabilitation program must in fact own any product or products it leases. A proposal by a community rehabilitation program to rent or lease a product to a state agency is a proposal to offer a product, not a service, and the item offered must meet the requirements of these rules governing products. If the product is offered for lease by the community rehabilitation program, the unit cost of the product, for purposes of applying the standards set forth in these rules, is the total cost to the state agency of leasing the product over its expected useful life.
7. Any necessary subcontracted services shall be performed to the maximum extent possible by other community rehabilitation programs and in a manner that maximizes the employment of persons with disabilities.
8. Raw materials or components may be obtained from companies operated for profit, but a community rehabilitation program must own any product that it offers for sale to state agencies or political subdivisions through the state use program and make an appreciable contribution to the product which accounts for a substantial amount of the value added to the product.
9. The organization must not serve, in whole or in part, as an outlet or front for any entity whose primary purpose is not the employment of people with disabilities.
10. The council may recognize a CRP that maintains accreditation by a nationally accepted vocational rehabilitation accrediting organization, and approve CRP services that have been approved for a purchase by a state habilitation or rehabilitation agency.
11. The council, at its sole discretion, may review, or have reviewed, any CRP approved to participate in this program to verify that the CRP meets the applicable qualifications contained in this chapter.

¹ Texas Administrative Code, title 40, part 7, rule 189.6

Appendix C

Council Objectives

1. To provide quality products and services that are fairly priced and that conform to Council guidelines.
Performance target: Increased purchasing of products and services
2. To provide effective pricing guidelines that achieve fair market pricing and that address changing market conditions.
Performance target: Less than five substantiated complaints per year.
3. To be a continuing, dependable source of leadership, information and support for community rehabilitation programs that participate in the State Use/Set Aside Program.
Performance target: Positive results in any surveys taken and less than three substantiated complaints per year.
4. To be a continuing, dependable source of leadership and guidance that serves to maximize employment opportunities for people with disabilities.
Performance target: Annually increase number of people with disabilities employed and number of hours worked by people with disabilities.
5. To be a continuing, dependable source of leadership and guidance that serves to maximize the stability and the integrity of the State Use/Set Aside Program.
Performance target: The continuation of a growing State Use/Set Aside Program.
6. To update the strategic plan annually.
Performance target: Annually updated strategic plan.
7. To promote State Use /Set Aside Program and receive public input.
Performance target: Hold up to four town hall meetings annually.
8. To arrange for audit of the Council and its CNA bi-annually.
Performance target: Receive and review bi-annual audit reports.

Appendix D

Community Rehabilitation Programs



Appendix E

Results of Sunset Survey

As part of this review, Sunset staff designed a survey to obtain input from individuals and groups who participate in the State Use Program or who have a concerted interest in promoting the employment of people with disabilities. In May 2002, Sunset staff surveyed 151 Community Rehabilitation Centers (CRPs); seven central non-profit agency (CNA) board members, currently TIBH; and 14 interest groups. Sunset staff also made the survey available on our Web site.

Sunset staff received a total of 26 responses, or 15 percent, of the total number surveyed. This number includes responses from TIBH board members and CRPs.

The chart below summarizes the responses.

Survey Results	
Question	Responses
How well does the Council create jobs and training for people with disabilities while providing quality goods and services to the state?	All TIBH board members and CRPs said it is not the responsibility of the Council to create jobs and training.
Is the Council necessary?	Most CRPs said the Council is necessary.
How does the Texas State Use Program compare with the Javits-Wagner-O'Day program (JWOD)?	All TIBH board members said the difference is that JWOD is a bigger program with higher sales. Nearly half of the CRPs that responded to the survey do not work with JWOD. Of those that do, approximately twice as many said that JWOD was easier to work with than the Texas State Use Program. As reasons, CRPs cited more detailed procedures, expert staff, stronger laws, more support from federal agencies, better technical assistance, and better communication.
How well does the relationship between the Council, the CNA, and the CRPs work?	All TIBH board members said TIBH and the Council do not work well together.
What would you change?	Most CRPs said TIBH and the Council do not work well together. CRPs also said they have no or poor relationships with the Council, but have good relationships with TIBH.
How well does the Council make information about the agency and its processes easily accessible?	Most TIBH board members said the dissemination of information to CRPs is not the job of the Council.
Is the information easy to understand?	Approximately half of the CRPs said they never receive information from the Council, only from TIBH, and that information is helpful.

Appendix E

Survey Results	
Question	Responses
<p>Should Texas state government be involved in the administration of the program?</p> <p>Is some other agency or group better equipped to perform the Council's duties? If so, which one(s)?</p>	<p>All TIBH board members said the Council is the best agency to administer the Program.</p> <p>Approximately half of the CRPs said state government should administer the Program. Some said the Governor's office or the Texas Building and Procurement Commission (TBPC) should administer the Program.</p>
<p>Are there specific functions the Council should or should not perform?</p>	<p>All TIBH board members said the Council should not be involved in the internal operations of TIBH.</p> <p>Approximately half of the CRPs said the Council should promote the Program with state agencies. A quarter of the respondents said the Council should not micro-manage the CRPs and TIBH. Others suggested that the Council should work to improve its relationship with TIBH and that the Council should not have put forth a Request for Proposal to contract with a new central non-profit agency.</p>
<p>Does the Council provide effective oversight of agencies' purchasing?</p> <p>How can the Council increase participation in the State Use Program?</p>	<p>All TIBH board members said the Council does not provide effective oversight of agencies' purchasing. Board members suggested employing state use coordinators and requiring TBPC to provide compliance oversight.</p> <p>Most CRPs said the Council does not effectively oversee agencies' purchasing. CRPs suggested that the Council hire more staff to help enforce compliance, work with the Governor's office to promote the Program, and establish an awareness campaign. Additionally, they suggested the state should strengthen Program enforcement laws, and agencies should employ state use coordinators.</p>
<p>What effect do alternative state purchasing and payment methods such as reverse auctions and procurement cards have on the Program?</p>	<p>Approximately half of the TIBH board members said the methods allowed agencies to circumvent the Program. Half the respondents said the agencies themselves were the problem, not the methods.</p> <p>Virtually all CRPs said procurement cards have a negative impact on the Program.</p>
<p>What about the program do you dislike? Why?</p>	<p>TIBH board members' comments included the Council's micro-management of TIBH and the CRPs, and that the Council is influenced by special interests to the detriment of the Program.</p> <p>CRP comments included lack of enforcement, the poor relationships between TIBH and the Council and between the Council and CRPs, and limitations of the Program.</p>

Appendix E

Survey Results	
Question	Responses
How stringent are the requirements for CRPs to remain eligible for the State Use Program?	All TIBH board members said the requirements are sufficient. Most CRPs said the requirements are sufficient. Comments included needing more performance-based requirements and stricter on-time delivery requirements, and lowering the ratio of disabled to non-disabled workers.
Is the management fee reasonable? What changes would your recommend?	All TIBH board members said the fee is reasonable. Most CRPs said the fee is reasonable. Some CRPs said the fee should be the same for products and services, reduced for longer running contracts that have been repeatedly renewed, and higher for smaller contracts.
Are people who are served by the Program served by similar state or federal programs? If so, which ones and how are they served?	All TIBH board members and many CRPs said people are also served by the federal program. Approximately a quarter of the CRPs said people are also served by the Texas Rehabilitation Commission, the Texas Commission for the Blind, the Texas Department of Mental Health and Mental Retardation, and/or by local providers.
Should the State Use Program adopt federal guidelines for monitoring and ensuring the eligibility of CRPs?	Most TIBH board members and CRPs said the state should not adopt federal guidelines. However, some CRPs said that State Use Program CRPs that are not involved in the federal program should be subject to the federal guidelines.
How effective is the CNA's marketing of goods and services to state purchasing agents?	All TIBH board members said the marketing is excellent. More than half of the CRPs said the marketing is effective. Some said TIBH needs stronger sales staff and better sales representation throughout the state and that too much emphasis is placed on services to the detriment of products.
How involved are the CRPs in the annual review of the CNA? How receptive is the Council to feedback regarding the CNA?	Most TIBH board members said CRPs have no input. Virtually all CRPs said they are not involved in the process, have not been asked, or have very little input. Many said the only interaction between CRPs and the Council is during Council meetings.

Appendix E

Survey Results	
Question	Responses
How effective are the CNA and Council at researching and developing new goods and services, and identifying new employment opportunities for CRPs?	<p>All TIBH board members said research and development are not the Council's job, and TIBH is very effective.</p> <p>Approximately one quarter of the CRPs said the CRPs do the research and development. Slightly fewer said the Council and TIBH are effective. Some said research and development are not the Council's job, and that TIBH is effective. Some said the Council and TIBH are effective only with services.</p>
Should the Council contract with multiple CNAs? Why or why not?	All TIBH board members and most CRPs opposed contracting with multiple CNAs, because doing so would increase costs and create confusion for purchasers.
Was the RFP process fair? Is the scope of the RFP reasonable?	<p>Most TIBH board members said the process was not fair or only slightly fair.</p> <p>Approximately half of the CRPs said the process was fair. More than one quarter of the CRPs said the entire process was unnecessary, and the remainder of the CRPs said that they had no way to answer because they were not given any information about the process at all.</p>
Please add any other comments about the Texas Council on Purchasing from People with Disabilities.	<p>TIBH board members' comments included:</p> <ul style="list-style-type: none"> • Council should stop micro-managing TIBH. • Appoint more private sector members to the Council. • Council should focus on effective and efficient pricing and ensure compliance of state agency purchasing. <p>CRP's comments included:</p> <ul style="list-style-type: none"> • Designate compliance coordinators at state agencies. • Implement stronger enforcement measures. • Appoint top-level agency personnel to the Council. • Allow CRPs better access to the Council. • Council should stop micro-managing TIBH and the CRPs. • Council should hire more staff. • Cancel the RFP process. • Appoint more private sector members to the Council. • Council should more actively promote the Program. • Council and CRPs should conduct an annual review of TIBH together.

Appendix F

Staff Review Activities

The Sunset staff engaged in the following activities during the review of the Texas Council on Purchasing from People with Disabilities.

- Worked with Council's Chair, members, and staff. Met with members of the Public Relations and Pricing subcommittees. Attended all regularly scheduled meetings of the Council and the Pricing Subcommittee and reviewed minutes of past Council meetings.
- Worked with TIBH's executive and administrative staff. Interviewed over the telephone, TIBH board members and legal counsel. Toured TIBH offices, including its regional office in San Antonio.
- Reviewed the Council's previous operating Memorandum of Understanding with TIBH, the recent request for proposals (RFP) for central nonprofit agency (CNA) services, and TIBH's response to the RFP.
- Reviewed Council and TIBH budget and expenditure information; and the TIBH statewide marketing plan, community rehabilitation program (CRP) reporting information, and quarterly reports.
- Met with, or interviewed over the telephone, TBPC's legal counsel and procurement staff.
- Met with CRP representatives, and toured CRP facilities in Austin, Dallas, and Ft. Worth.
- Solicited written comments from CRPs, advocacy groups, and TIBH board members.
- Met with, or interviewed over the telephone, representatives of national and state interest groups. Attended a meeting of the Texas Association of Community Rehabilitation Programs and invited members to participate in the Sunset Review Process.
- Reviewed past legislation, including the results of a previous Sunset review; and reports from the State Auditor's Office, the House Committee on General Investigating, and the Senate Committee on State Affairs. Interviewed key legislative staff.
- Interviewed over the telephone, staff from the Texas Secretary of State's Office, the Office of the Attorney General, the Texas Rehabilitation Commission, the Texas Department of Mental Health and Mental Retardation, the Commission for the Blind, the Texas Health and Human Services Commission, the Texas Department of Transportation, and the Texas Department of Protective and Regulatory Services.
- Interviewed over the telephone federal set-aside (JWOD) program administrators and staff.
- Researched national CRP certification standards, the use of procurement cards, statutory requirements from other state use programs, and compliance information from the federal set-aside program.
- Performed other background and comparative research using the Internet.

**SUNSET REVIEW OF THE
TEXAS COUNCIL ON PURCHASING
FROM PEOPLE WITH DISABILITIES**

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