

Notice of Intent

Department of Health

Office for Citizens with Developmental Disabilities

Title 67 Social Services

Part VII. Rehabilitation Services

Chapter 9. Council on the Purchase of ~~Products~~Goods and
Services of ~~Severely Disabled Persons~~Individuals with
Disabilities

(LAC 67, Part VII Chapter 9)

Under the authority of R.S. 40:4 and 40:5, and in accordance with R.S. 49:950 et seq, the Administrative Procedure Act, notice is hereby given that, the Louisiana Department of Health, Office for Citizens with Developmental Disabilities (LDH-OCDD), hereby proposes to amend LAC 67:Part VII Rehabilitation Services, Chapter 9 Council on the Purchase of Goods and Services of Individuals with Disabilities. The intent of the proposed amendment will allow individuals with disabilities to work alongside individuals without disabilities in non-segregated settings earning a fair wage. The proposed rule also includes changes to remove references to sheltered workshops and replace with supported employment provider in addition to making the necessary people first language changes. The proposed amendment is to update the Rule pursuant to ACT 312 of the 2019 Regular Legislative Session.

Title 67

Social Services

Part VII. Rehabilitation Services

Chapter 9. Council on the Purchase of Goods and Services of
Individuals with Disabilities

§901. General Rules

A. The purpose of this program is to further the state of ~~Louisiana/DSS~~Louisiana's policy of encouraging and assisting ~~citizens~~individuals with disabilities to achieve maximum personal independence by engaging in useful and productive employment activities and, in addition, to ~~furnish products and services to~~ provide state, ~~and to reduce the need for institutionalization.~~ agencies, departments, and institutions and political subdivisions of the state with a method for achieving conformity with requirements of nondiscrimination and affirmative action in employment matters related to individuals with disabilities. This program will provide ~~job~~employment opportunities for ~~persons~~individuals with ~~severe~~ disabilities, thereby reducing their need for financial and other forms of assistance from government.

~~_B. The Program for the Purchase of ProductsGoods and Services of Severely Disabled Persons is designed~~Provided by Individuals with Disabilities created pursuant to ~~facilitate~~ R.S. 39:15951604.4, ~~Act 109 of 1984~~ which provides that: every ~~governmental body shall give~~agency gives a preference in its purchasing ~~practice~~practices to goods manufactured and services performed by individuals with ~~severe handicaps in state operated and state supported sheltered workshops,~~ and ~~Act 291 of 1986,~~ R.S. 39:1594(I) which allows for ~~competitive sealed bidding.~~

~~Exemption. ————— Purchases of goods manufactured by or services performed by individuals with severe handicaps in state operated or state supported workshops as defined in R.S. 39:1595.4~~disabilities, shall be ~~exempt from the provisions of this Section~~ called the State Use Council for the Purchase of Goods and Services Provided by Individuals with Disabilities hereinafter called Council.

~~_C. The Council on the Purchase of Products and Services of Severely Disabled Persons, established~~The Louisiana Department of Health (LDH) shall establish a Council and the membership of the Council shall be determined by the ~~secretary~~Secretary of LDH.~~the Department of Social Services (DSS), shall be responsible for the implementation, policies, supervision, and monitoring of the program~~

D. The Council shall be responsible for the implementation, policies, supervision, and monitoring of the program including having the authority to designate and contract with a central nonprofit agency to assist supported employment providers.

E. When contracting with a central nonprofit agency, the Council shall solicit and evaluate competitive sealed proposals pursuant to R.S. 39:1595, at least every five (5) years.

F.~~D.~~All suitable ~~products or~~goods and services approved by the ~~e~~Council in accordance with applicable specifications by or for any state agency shall be procured from such nonprofit ~~workshops where such products or~~organization, program or entity as defined by R.S. 12:201 et seq., where such goods and services are available within the period specified at the fair market price unless otherwise excluded.

AUTHORITY NOTE: Promulgated in accordance with R.S. ~~49:664.639.1604.4~~ and R.S. 36:~~477~~254.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Rehabilitation Services, LR 16:976 (November 1990) ~~,~~ amended by the Department of Health, Office for Citizens with Developmental Disabilities, LR 47:

§903. Definitions

Central Nonprofit Agency (CNA)-an entity designed as a central nonprofit agency pursuant to RS 39:1604.4.

Community Rehabilitation Program (CRP)—a government or nonprofit private program operated under criteria established by the Council and under which individuals with disabilities produce goods or perform services for compensation.

Council—when used in these rules shall refer to the Louisiana ~~D.S.S.~~Department of Health (LDH) State Use Council ~~enfor~~ the Purchase of ~~Products~~Goods and Services ~~of Severely Disabled Persons~~Provided by Individuals with Disabilities.

Direct Labor—all ~~labor involved in the manufacture~~work required for preparation, processing and packaging of ~~goods or a good, or work directly relating to~~ the performance of ~~services~~a service; except ~~for~~ supervision, instruction, administration, ~~and~~inspection or shipping goods.

Disability—a mental or physical impairment, including blindness, that impedes a person who is seeking, entering, or maintaining gainful employment.

Goods Manufactured and Services Performed by ~~Severely Handicapped~~ Individuals with Disabilities—goods and services for which not less than 7540 percent of the man-hours of direct labor required for manufacture or performance is provided by ~~severely disabled~~ individuals with disabilities.

Individuals with Disabilities—individuals with a physical, behavioral, developmental, intellectual, sensory, mental, or

addictive disorder which constitutes a substantial obstacle to their employment and is of such a nature as to prevent an individual from engaging in normal competitive employment.

~~*Qualified Nonprofit Agency of the Severely Handicapped*~~ an agency that:

Supported Employment Provider—a nonprofit organization, program or entity that:

____ 1. ~~is incorporated under the Louisiana Nonprofit Corporation Law and operated as~~ defined by R.S. 12:201 et seq operates in the interests of ~~severely disabled~~ individuals with disabilities and provides gainful, competitive, integrated employment for individuals with disabilities, and the income of which does not inure in whole or part to the benefit of any shareholder or other private individual, ~~and~~ in compliance with a central nonprofit agency for individuals with disabilities and

____ 2. complies with any applicable occupational health and safety standards provided by the statutes or regulations of this state or of the United States.

____ 3. in Fiscal Years 2019-2020 and 2020-2021, supported employment provider shall also include any sheltered workshop transitioning to a supported employment provider as defined above.

~~Severely Disabled Individuals~~ individuals with a physical, mental, or substance abuse disability which constitutes a substantial obstacle to their employment and is of such a nature as to prevent an individual from engaging in normal competitive employment.

~~Sheltered Workshop~~ a facility designed to provide gainful employment for severely disabled individuals who cannot be absorbed into the competitive labor market or to provide interim employment for such individuals when employment opportunities for them in the competitive labor market do not exist.

~~State Operated Sheltered Workshop~~ a sheltered workshop staffed by state agency personnel.

~~State Supported Sheltered Workshop~~ a sheltered workshop funded in whole or part by the state and staffed by personnel from a qualified nonprofit agency for the severely disabled.

AUTHORITY NOTE: Promulgated in accordance with R.S. ~~49:664.639.1604.4~~ and R.S. 36:~~477~~254.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Rehabilitation Services, LR 16:976 (November 1990), amended by the Department of Health, Office for Citizens with Developmental Disabilities, LR 47:

§905. Organization of the Council

A. The eCouncil will be composed of no more than nine members to be known as the Council on the Purchase of ~~Products~~Goods and Services of ~~Severely Disabled Persons~~Individuals with Disabilities, including three state agency members and up to six appointed members. The state agency members shall be the director of State Purchasing of the Division of Administration or their designee; and the assistant secretary of the Office ~~of Human Services,~~ for Citizens with Developmental Disabilities, Louisiana Department of Health (LDH) and Hospitals or their designee; and the director of Louisiana Rehabilitation Services or their ~~designees~~designee. The six appointed members shall be recommended by the Council on the Purchase of ~~Products~~Goods and Services of ~~Severely Disabled Persons~~ Individuals with Disabilities and approved by the secretary of the ~~LDH. Department of Social Services.~~ A chairman shall be recommended by the eCouncil to the secretary of the ~~LDH. Department of Social Services~~ for appointment.

B. Reimbursement for necessary expenses actually incurred in the performance of services in connection with the work of the eCouncil will be made as authorized by the secretary of ~~D.S.~~LDH.

C. The act of a majority of the members present at a meeting at which a quorum is present shall be the act of the eCouncil.

AUTHORITY NOTE: Promulgated in accordance with R.S. ~~49:664-639:1604.4~~ and R.S. 36:~~477254~~.

 HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Rehabilitation Services, LR 16:976 (November 1990), ~~amended by the Department of Health, Office for Citizens with Developmental Disabilities, LR 47:~~

§907. Duties and Responsibilities of the Council

 A. The duties and responsibilities of the ~~e~~Council are:

 1. to coordinate and facilitate the carrying of R.S. 39:~~1595-41604.4~~ and R.S. 38:2261;

 2. to certify eligibility of programs for participation;

 3. to suspend and reinstate a ~~workshop~~, supported employment provider;

 4. to solicit and evaluate competitive sealed proposals pursuant to R.S. 39:1595 at least every 5 years to designate and contract with a central nonprofit agency to assist the ~~e~~Council in performing its functions;

 5. to act on recommendations of the central nonprofit agency.

 AUTHORITY NOTE: Promulgated in accordance with R.S. ~~49:664-639:1604.4~~ and R.S. 36:~~477254~~.

 HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Rehabilitation Services, LR 16:976 (November

1990) ~~, amended by the Department of Health, Office for Citizens with Developmental Disabilities, LR 47:~~

§909. Certification of Eligibility of Participating ~~Workshops~~Supported Employment Provider

A. The ~~e~~Council shall certify each ~~workshop~~supported employment provider making application for participating in the Program for the Purchase of ~~Products~~Goods and Services ~~of the Severely Disabled based on the criteria contained in Act 109 LA RS, 1984.~~Provided by Individuals with Disabilities.

1. The applicant meets the necessary definition of a ~~sheltered~~workshop~~supported~~ employment provider as ~~specified~~defined in ~~Act 109 LA RS, 1984.~~R.S. 39:1604.4.

2. The applicant meets the necessary definition of a ~~qualified~~central nonprofit agency ~~for the severely handicapped~~ as ~~specified~~outlined in ~~Act 109 LA RS, 1984.~~R.S. 39:1604.4, only if ~~qualified~~central nonprofit agency status is a requirement that the program must have obtained to function legally as a ~~sheltered workshop~~supported employment provider under federal and/or state statutory requirements.

3. The applicant conforms to the requirement for ~~"Goods manufactured and services performed by severely handicapped individuals"~~ Section 1. Act 109 LA RS, 1984 with disabilities as defined in R.S. 39:1604.4.

4. The applicant has demonstrated to the eCouncil's satisfaction that it is capable of providing goods and services for sale to the state that conform to the criteria for same, as established by the rules pursuant to ~~Act 109 LA RS, 1984~~R.S. 39:1604.4.

AUTHORITY NOTE: Promulgated in accordance with R.S. ~~49:664.6~~39:1604.4 and R.S. 36:~~477~~254.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Rehabilitation Services, LR 16:976 (November 1990), ~~amended by the Department of Health, Office for Citizens with Developmental Disabilities, LR 47:~~

§911. Central Nonprofit Agency

A. The eCouncil ~~may~~shall have the authority to designate and contract with a central nonprofit agency to assist ~~workshops~~supported employment providers in submitting applications for ~~eligibility, suspending~~the selection of suitable goods and ~~reinstating, workshops, facilitating the distributions~~services, to facilitate the allocation —of orders among qualified ~~workshops~~supported employment providers, in controlling quality control, and in assisting the eCouncil in carrying out its responsibilities. ~~The central nonprofit agency may also assist workshops in training, contract negotiations and procurement, costing, cash advancements against billing, no interest loans,~~

~~credit checks and collections, public relations, consultations, product development, market research, networking, industry referrals, production, management, contract administration, liaison with government, and other duties as specified by the council. Payment, if any, for such assistance shall be by agreement with the individual workshop.~~

B. The Council shall solicit and evaluate competitive sealed proposals pursuant to R.S. 39:1595, at least every five years to designate and contract with a central nonprofit agency.

C. The central nonprofit agency may also assist supported employment providers in training, contract negotiations and procurement, costing, cash advancements against billing, no interest loans, credit checks and collections, public relations, consultations, goods development, market research, networking, industry referrals, production, management, contract administration, liaison with government, and other duties as specified by the Council. Payment, if any, for such assistance shall be by agreement with the individual supported employment provider.

BD. The eCouncil shall establish rates for marketing services to be charged ~~the workshop~~ to the supported employment provider by the central nonprofit agency.

CE. Purchase orders ~~shall~~may be issued by the appropriate purchasing agency for suitable ~~products~~goods and services directly to a ~~workshop~~supported employment provider with copies to a central nonprofit agency, ~~but no vouchers from that agency will be approved for payment by the purchasing agency. The purchasing agency will consult with the central nonprofit agency on questions of allocation before issuing a purchase order to any workshop.~~ Provision. Provisions may also be made ~~where permissible,~~ to issue purchase orders directly to the central nonprofit agency which will in turn make payment to the ~~workshop~~supported employment provider.

D-F. If such assistance is authorized in the designation, the eCouncil may instruct the central nonprofit agency to assist it in carrying out certain specified eCouncil responsibilities.

E-G. The central nonprofit agency will submit annually a detailed written report of its program and budget to the eCouncil. This report shall include:

1. the number of disabled persons according to their type of disability who are employed ~~in workshops~~by supported employment providers participating the program for the purchase of ~~products~~goods and services;

2. the amount of annual wages paid to persons participating in the program;

3. a summary of the sale of ~~products~~goods offered by the ~~workshops~~supported employment providers;

4. a list of ~~products~~goods and services offered by the ~~workshops~~supported employment providers;

5. the geographic distribution of the ~~workshops; and~~supported employment providers;

6. other information specified by the ~~e~~Council for its determination of rates for marketing services to be charged the ~~workshops~~supported employment providers by the central nonprofit agency.;

7. information regarding the financial operations and conditions of the central nonprofit;

8. a report of the extent to which activities were performed in accordance with 911.C above;

9. the number of persons with disabilities who transitioned to individual or supported employment opportunities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.~~639~~:1604.4 and R.S. 36:477254.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Rehabilitation Services, LR 16:976 (November 1990), ~~,-~~ amended by the Louisiana Department of Health, Office for Citizens with Developmental Disabilities, LR 47:

§913. Suspension and Reinstatement of a Supported Employment Provider Workshop

A. The eCouncil, after notice and a hearing may suspend a workshop supported employment provider from its right to receive purchase orders from this program for suitable products goods and services under any or all of the following circumstances:

1. failure of delivered products goods and services to meet or exceed specification;

2. failure to deliver ordered products goods and services as required in the specifications.

B. The eCouncil may reinstate a workshop supported employment provider after a suspension only if the eCouncil makes an affirmative finding on each of the following:

1. that the workshop supported employment provider has reimbursed the state for damages suffered by reason of any of the failures giving rise to suspension;

2. that the workshop supported employment provider has made the necessary corrections to avoid these failures in the future.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.639:1604.4 and R.S. 36:477254.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Rehabilitation Services, LR 16:976 (November 1990), amended by the Department of Health, Office for Citizens with Developmental Disabilities, LR 47:

§915. Value Added

A. A ~~workshop-supported employment provider~~ may not act merely as a receiving and shipping facility, except under circumstances as approved by the eCouncil.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1604.4 and R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Rehabilitation Services, LR 16:976 (November 1990), ~~amended by the Department of Health, Office for Citizens with Developmental Disabilities, LR 47:~~

§917. Inspections

A. The appropriate purchasing agency, at its option, may monitor ~~workshop-supported employment provider~~ manufacturing activities for compliance with specifications under existing contracts.

AUTHORITY NOTE: Promulgated in accordance with R.S. ~~49:664.639:1604.4~~ and R.S. 36:~~477254~~.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Rehabilitation Services, LR 16:976 (November

1990) ~~amended by the Department of Health, Office for Citizens with Developmental Disabilities, LR 47:~~

§919. Records

A. The records of the ~~e~~Council and of any nonprofit agency participating in this program which pertain to state purchases of the ~~products~~goods and services of ~~severely disabled persons~~individuals with disabilities, shall be made available upon request to the inspection of representatives of the ~~State~~Legislative Auditor, Office of the Inspector General, the ~~Governor's~~Division of Administration, Office of Planning and Budget ~~Office~~, or the Legislative ~~Budget Board~~Fiscal Office on the assurance that the information will be safeguarded, used only for the purpose for which provided, and not released to unauthorized persons.

B. A request for information ~~from~~for other records of the ~~e~~Council which identifies ~~severely disabled persons~~individuals with disabilities as a state agency client or former client will be forwarded to ~~the appropriate agency~~LDH for ~~release~~review.

C. ~~DSS~~LDH is the depository for all records concerning the ~~e~~Council's operations.

AUTHORITY NOTE: Promulgated in accordance with R.S. ~~49:664.639:1604.4~~ and R.S. 36:~~477~~254.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Rehabilitation Services, LR 16:976 (November 1990), amended by the Louisiana Department of Health, Office for Citizens with Developmental Disabilities, LR 47:

§921. Exceptions

A. Exceptions from the operation of the mandatory provisions of these rules may be made in any case where under the rules of the state purchasing agency, the productgoods or service so produced or provided does not meet the reasonable requirements of the office, department, institution, or agency.

B. No office, department, institution, or agency may evade the intent of these rules by slight variations from standards adopted by the appropriate purchasing agency, when the productsgoods or services produced or provided by personsindividuals with ~~severe~~ disabilities, in accordance with established standards, are reasonably adapted to the actual needs of the office, department, institution, or agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. ~~49:664.639:1504.4~~ and R.S. 36:~~477254~~.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Rehabilitation Services, LR 16:976 (November 1990), amended by the Louisiana Department of Health, Office for Citizens with Developmental Disabilities, LR 47:

Family Impact Statement

In compliance with Act 1183 of the 199 Regular Legislative Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will not have an adverse impact on family functioning, stability, and autonomy as described in R.S. 49:972.

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Legislative Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will not have an adverse impact on child, individual and family poverty in relation to individual or community asset development as described in R.S. 49:973.

Small Business Statement

It is anticipated that the proposed Rule will not have a significant adverse effect on small businesses as defined in the Regulatory Flexibility Act. The agency, consistent with health, safety, environmental and economic factors has considered and, where possible, utilized regulatory methods in drafting the proposed rule to accomplish the objectives of applicable statutes while minimizing any anticipated adverse impact on small businesses.

Provider Impact Statement

After considering House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has no impact on the staffing level requirements or qualifications required to provide the same level of service, no direct or indirect cost to the provider to provide the same level of service, and will have no impact on the provider's ability to provide the same level of service as described in HCR 170.

Public Comments

Interested persons may submit written comments about the proposed Rule to Carol Lee, Office for Citizens with Developmental Disabilities, P.O. Box 3117, Baton Rouge, LA 70821-3117. Ms. Lee is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is on January 29, 2021.

Public Hearing

Interested persons may submit a written request to conduct a public hearing by U.S. mail to the Office of the Secretary ATTN: LDH Rulemaking Coordinator, Post Office Box 629, Baton Rouge, LA 70821-0629, however, such request must be received no later than 4:30 p.m. on January 8, 2021. If the criteria set forth in R.S. 49:953 (A) (2) (a) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on January 27, 2021 in Room 173 of the Bienville

Building, which is located at 628 North Fourth Street, Baton Rouge, LA. To confirm whether or not a public hearing will be held, interested parties should first call Allen Enger at (225) 342-1342 after January 8, 2021. If a public hearing is to be held, all interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing. In the event of a hearing, parking is available to the public in the Galvez Parking Garage which is located between North Sixth and North Fifth/North and Main Streets (cater-corner from the Bienville Building). Validated parking for the Galvez Garage may be available to public hearing attendees when the parking ticket is presented to LDH staff at the hearing.

Dr. Courtney N. Phillips

Secretary