



Texas Council On Purchasing
From People With
Disabilities

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October 5, 1999

The Honorable John Comyn
Attorney General of Texas
OFFICE OF THE ATTORNEY GENERAL
Price Daniels Building
209 W. 14th Street
Austin, Texas 78711

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RQ-0122-gc Opinion Committee

Re: Whether the Texas Council on Purchasing from People with Disabilities has authority to obtain services from the State Auditor to conduct a financial or other audit of a Central Nonprofit Agency under contract to the Council pursuant to Chapter 122, Human Resources Code

Dear General Comyn:

The Texas Council on Purchasing from People with Disabilities ("Council") seeks your guidance concerning its authority to oversee the State Use or Set Aside program ("the program"). Specifically, the Council inquires whether the State Auditor is empowered to conduct an audit of a Central Nonprofit Agency as defined in §122.002 (1) of the Human Resources Code. While the code does not explicitly confer audit authority for the program upon the Council, the code implicitly confers such authority as it references the responsibility of the Council to be knowledgeable about and implement financial decisions for the program.

As you may recall from previous requests from this Council, the Council is made up of a nine-member body. Chapter 122 of the Human Resources Code outlines various powers and duties for the Council which enable the Council to carry out the state's policy for Texans with disabilities by supporting a program of services and products manufactured or provided by such persons. The services and products produced are offered for sale to various state agencies and departments as well as political subdivisions by community rehabilitation programs ("CRP"). The Council reviews and approves the quality of the products and services, as well as approves prices for these items to reflect changing market conditions. The Council receives no legislative appropriation. Its funds derive solely from a percentage of the management fee set by the council which is payable to the CNA, Human Resources Code, §122.019 (e).¹

The Council was established to:

“further the state’s policy of encouraging and assisting persons with disabilities to achieve maximum personal independence by engaging in useful and productive employment activities and, in addition, to provide state agencies, departments, and institutions and political subdivisions of the state with a method for achieving conformity with requirements of nondiscrimination and affirmative action employment matters related to persons with disabilities”, Human Resources Code, §122.001.

The Council cannot administer the day-to-day operations of the program on its own. Chapter 122 requires that the Council contract with a central nonprofit agency (“CNA”) to carry out the day-to-day functions of the program. TIBH serves as the current designated CNA under contract with the Council.

Regarding the Council’s authority for an audit, the following code references various responsibilities for the Council to be knowledgeable about: (1) the results of the most recent formal audit of the Council, Human Resources Code, §122.005 (b) (5); (2) the review of services provided by a CNA and revenue required to accomplish the program to determine whether each agency’s performance complies with contractual specifications, Human Resources Code, §122.019 (c); (3) File with the Governor, Lt. Governor and Speaker of the House a complete and detailed written report accounting for all funds received and disbursed by the Council during the preceding year, Human Resources Code, §122.022 (a).

While the Council receives legal, clerical, administrative and other necessary support from the General Services Commission (“GSC”), providing audit services is not among these duties, Human Resources Code, §122.012 (a). Among the oversight duties assigned to the council for the program, surely the Council can secure auditing services from the State of Texas expert in such matters, the State Auditor.

The State Auditor is governed by Chapter 321 of the Government Code. The Auditor is appointed by the Legislative Audit Committee, Government Code §321.005 (a).² The Auditor has authority to perform audits of all accounts, books and other financial records of the State Government of any officer of the State, Department, Board, Bureau, Institution, Commission or Agency thereof, and to examine and audit all Fiscal books, records and accounts of all Custodians of Public Funds, and of all disbursing officers of this state, making independent verifications of all assets liabilities, revenues and expenditures of the State, its Departments, Boards, Bureaus, Institutions, Commissions or Agencies. See, MW-192(1980)³ The Legislative Audit Committee may direct the State Auditor to conduct an audit or investigation of any entity receiving funds from the State, Government Code §321.013 (a).⁴

The State Auditor may conduct a variety of Audits and has authority to perform financial audits, compliance audits, economy and efficiency audits, effectiveness audits, special audits and investigations as defined by this chapter, Government Code §321.013 (f).⁵ The authority vested in the State Auditor suggests that the State of Texas has an interest in whether tax payer dollars are spent in accordance with State policy and State law.

The Council acknowledges that the State Auditor can perform any audit provided for in §321.013 (f) of the Government Code. The Council understands this to be true despite the absence of a legislative appropriation. The Council is an executive agency organized under the Human Resources Code. However, the current CNA, TIBH, is not a Governmental Entity. It is neither an Executive nor Legislative Agency. TIBH is a duly organized 501 (c)(3) corporation. TIBH receives no legislative appropriation under Human Resources Code §122.019 (e). TIBH receives a management fee percentage of the selling price for products or services purchased by governmental participants in the State Use Program. TIBH is paid a 6% to 7% commission based on gross sales of the products sold and services provided to state agencies, regardless of the amount of assistance from TIBH. Presumably, State Governments and Political Subdivisions, comprising the mandatory and voluntary aspects of the State Use Program, purchase goods and services from community rehabilitation programs using tax payer dollars. The Council believes that the State of Texas has a direct interest in how taxpayer dollars are spent.

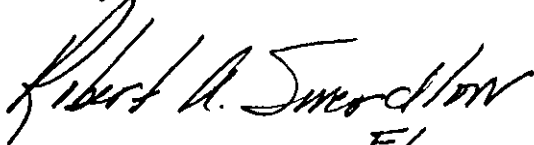
While the Council cannot identify explicit authority to request assistance from the State Auditor or authority of the State Auditor to conduct a range of audits in Chapter 122 of the Human Resources Code, the Council believes there is implicit authority for such actions. In addition to §122.005 (b)(5)⁶, §122.019(c)⁷, the Council observes the following:

"The records of the Council and of a Central Nonprofit Agency shall, to the extent that records pertain specifically to state purchases of the products and services of persons with disabilities, be made available upon request to the inspection of representatives of the State Auditor....." §122.009(a). [Emphasis Added]⁸

The Council advises that this provision, as it pertains to rights, privileges and ownership of records between TIBH and the Council, is in litigation at the Travis County District Court.⁹ The issue of whether the State Auditor may access such records is not before the court.

If the State Auditor cannot conduct an audit or the Council cannot obtain an audit, then the council cannot adequately fulfill its oversight responsibilities in accordance with Chapter 122, Human Resources Code. Without the information that may derive from an audit, persons with disabilities have no assurance that the State's policy of encouraging and assisting them in useful and productive employment activities are being met. The Council seeks your guidance to continue its work on behalf of the people of Texas.

Sincerely,



Robert A. Swerdlow, Ph.D. *E.L.*
Chairman
Texas Council on Purchasing from People with Disabilities

RAS:CSBJ:rrb

Enclosures

- Cc: Meg Pfluger, Council Member (w/o enclosures)
Texas Council on Purchasing from People with Disabilities
- Bob Templeton, Council Member (w/o enclosures)
Texas Council on Purchasing from People with Disabilities
- John Luna, Council Member (w/o enclosures)
Texas Council on Purchasing from People with Disabilities
- Dr. Gwen Morrison, Council Member (w/o enclosures)
Texas Council on Purchasing from People with Disabilities
- Byron Johnson, Council Member (w/o enclosures)
Texas Council on Purchasing from People with Disabilities
- Chester S. Beattie, Jr. Legal Counsel (w/enclosures)
General Services Commission
- Erica Goldbloom, Council Coordinator (w/enclosures)
General Services Commission