

2020 Regular Session

HOUSE BILL NO. 698

BY REPRESENTATIVE FREEMAN

PROCUREMENT: Provides procurement preference for goods manufactured and services performed by individuals with disabilities through supported employment providers

1 AN ACT

2 To amend and reenact R.S. 38:2261 and R.S. 39:1604.4, relative to public contracts; to
3 provide with respect to contracts for goods and services provided by persons with
4 disabilities; to provide relative to the preference for goods manufactured and services
5 performed by such persons; to provide relative to the State Use Council for the
6 Purchase of Goods and Services Provided by Individuals with Disabilities; and to
7 provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 38:2261 is hereby amended and reenacted to read as follows:

10 §2261. Preference for goods manufactured, or services performed, by individuals
11 with disabilities through supported employment providers; non-applicability
12 of competitive bidding requirements; coordinating council

13 A. Every agency, board, commission, department, or other instrumentality
14 of the state ~~as defined in R.S. 39:1556~~ shall give a preference in its purchasing
15 practices to goods manufactured and services performed by individuals with
16 disabilities through supported employment providers.

17 B. The requirements for competitive bidding contained in Part II of this
18 Chapter shall be inapplicable to cases in which an agency, board, commission,
19 department, or other instrumentality of the state ~~as defined in R.S. 39:1556~~ uses
20 goods manufactured, or services performed, by individuals with disabilities through

1 supported employment providers, provided the goods manufactured or services
2 performed are equal in quality and reasonable in the rate charged based upon those
3 goods and services available from other providers.

4 C. In each case where a good manufactured or a service performed by a
5 supported employment provider has been designated as a qualified mandatory-use
6 offering in accordance with R.S. 39:1604.4, every agency, board, commission,
7 department, or other instrumentality of the state shall procure the corresponding
8 good or service from the identified supported employment provider, the central
9 nonprofit agency provided for in R.S. 39:1604.4, or an authorized distributor unless
10 one or more of the exemption criteria provided in R.S. 39:1604.4 are applicable.

11 D. The State Use Council for the Purchase of Goods and Services Provided
12 by Individuals with Disabilities established pursuant to R.S. 39:1604.4~~(B)~~ shall
13 coordinate and facilitate the carrying out of the provisions of this Section. ~~The~~
14 ~~membership of this council shall be determined by the secretary of the Louisiana~~
15 ~~Department of Health.~~

16 ~~D.~~ E. For the purposes of this Section, the following terms are defined as follows:

17 (1) "Goods manufactured and services performed by individuals with
18 disabilities" shall have the meaning as defined in R.S. 39:1604.4~~(D)~~.

19 (2) "Individuals with disabilities" shall have the meaning as defined in R.S.
20 39:1604.4~~(D)~~.

21 (3) "Supported employment provider" shall have the meaning as defined in
22 R.S. 39:1604.4~~(D)~~.

23 Section 2. R.S. 39:1604.4 is hereby amended and reenacted to read as follows:

24 §1604.4. Preference for goods manufactured, or services performed by individuals
25 with disabilities through supported employment providers; definitions;
26 coordinating council

27 A. Every agency shall give a preference in its purchasing practices to goods
28 manufactured and services performed by individuals with disabilities through
29 supported employment providers, provided such goods manufactured or services

1 performed are equal in quality and reasonable in the rate charged based upon those
2 goods and services available from other providers.

3 B. There is hereby created within the Louisiana Department of Health, the
4 "State Use Council for the Purchase of Goods and Services Provided by Individuals
5 with Disabilities", hereinafter referred to as "council", whose function shall be to
6 coordinate and facilitate carrying out the provisions of this Section and the
7 provisions of R.S. 38:2261.

8 (1) ~~The membership of the council shall be determined by the secretary of~~
9 ~~the Louisiana Department of Health. The council shall meet at least four times per~~
10 year.

11 (2) The council shall have authority to designate and contract with a central
12 nonprofit agency to assist supported employment providers in submitting
13 applications for the selection of suitable goods and services, to facilitate the
14 allocation of orders among qualified supported employment providers, and otherwise
15 to assist the council in performing its functions.

16 (3) The council shall solicit and evaluate competitive sealed proposals
17 pursuant to R.S. 39:1595 at least every five years to designate and contract with a
18 central nonprofit agency.

19 C. In all cases where a good manufactured or a service performed by a
20 supported employment provider has been properly designated as a qualified
21 mandatory-use offering in accordance Subsection D of this Section, every agency,
22 board, commission, department, or other instrumentality of the state shall exclusively
23 procure the corresponding good or service from the identified supported employment
24 provider, the central nonprofit agency, or an authorized distributor unless one or
25 more of the exemption criteria provided in Subsection G of this Section are
26 applicable.

27 D. The council shall designate a good manufactured or service performed by
28 individuals with disabilities offered by a supported employment provider as a
29 qualified mandatory-use offering if all of the following requirements of this

1 Subsection have been met and none of the exemption criteria provided in Subsection
2 E of this Section are applicable:

3 (1) The good is manufactured by a supported employment provider or at
4 least fifty-one percent of its final value has been added by a supported employment
5 provider. A service must be directly performed by a supported employment provider.

6 (2) All steps of the following procedures are followed:

7 (a) The supported employment provider shall prepare an application for each
8 good or service in the format prescribed by the council and shall submit each
9 completed application to the central nonprofit agency for secondary analysis and
10 recommendation. The application must include detailed information regarding
11 specifications, availability, distribution, contacts, pricing, comparable market
12 offerings, and any other pertinent information to enable review and prospective use
13 by an end user.

14 (b) The central nonprofit agency shall review the application provided by the
15 supported employment provider to ensure its contents are comprehensive, accurate,
16 and supported by available data, and that pricing and quality are fully comparable
17 with open market offerings. The central nonprofit agency shall then route the
18 application with its recommendations and comments to the office of state
19 procurement.

20 (c) The office of state procurement shall review the application and the
21 recommendation of the central nonprofit agency, to ensure that the information
22 presented is comprehensive, accurate, and supported by available data, and that the
23 inclusion of the good or service as a qualified mandatory-use offering would advance
24 the best interests of the state. The office of state procurement shall then route the
25 application with its recommendation to the council.

26 (d) The council shall review the application and recommendations and
27 determine whether to designate the good or service as a qualified mandatory-use
28 offering in accordance with this Section.

1 (e) A good or service may only be designated as a qualified mandatory-use
2 offering if the supported employment provider, central nonprofit agency, office of
3 state procurement, and council all agree that designation of the good or service as a
4 qualified mandatory-use offering is advisable and allowable in accordance with this
5 Section. If any of these parties subsequently withdraw their concurrence, the good
6 or service shall no longer be designated as a qualified mandatory-use offering.

7 E. A good or service which is designated as a qualified mandatory-use
8 offering shall be exclusively sourced from a supported employment provider, the
9 central nonprofit agency, or an authorized distributor unless an exemption is
10 applicable in accordance with Subsection G.

11 F. The applicability of an exemption to one agency shall not extend the
12 exemption to unaffiliated agencies for whom the exemption does not apply.

13 G. The following shall be allowable exemptions:

14 (1) Any good or service which is unavailable from the supported employment
15 provider at the time and location needed by the agency, or whose availability to the
16 agency has been previously inconsistent.

17 (2) Any good or service whose quoted pricing exceeds the approved pricing
18 for the good or service's designation as a qualified mandatory-use offering.

19 (3) Any good or service whose specifications are inconsistent with the
20 agency's needs, or whose quality has been assessed and found to be inferior.

21 (4) Any good or service procured during emergency conditions.

22 (5) Any good or service procured whose extended value by the agency on an
23 annual basis is less than five thousand dollars.

24 (6) Any good or service procured from a certified Hudson Initiative, R.S.
25 39:2001 et seq, or Veteran Initiative Small Entrepreneurship, R.S. 39:2171 et seq,
26 in accordance with Executive Order No. JBE 2017-18.

27 (7) Any good or service which may be procured without competition in
28 accordance with this Chapter or small purchase procedures prescribed by executive
29 order of the governor pursuant to R.S. 39:1596.

1 (8) Any good or service procured from a statewide purchasing contract.

2 (9) Any good or service procured using funding with specific use rules which
3 prohibit expenditures from noncompetitive procurements.

4 (10) Any procurement which is not subject to the provisions of this Chapter.

5 (11) Any procurement in which the chief procurement officer of the agency,
6 board, commission, department, or other instrumentality of the state determines in
7 writing that the best interests of the state would be advanced by granting an
8 exemption.

9 H. The Louisiana Department of Health and the division of administration
10 may adopt, promulgate, and enforce such rules and regulations as are necessary and
11 appropriate to implement the provisions of this Section and the provisions of R.S.
12 38:2261. The regulations shall be promulgated in accordance with the Administrative
13 Procedure Act, R.S. 49:950 et seq.

14 ~~D.I.~~ For the purposes of this Section, the following terms are defined as
15 follows:

16 (1) "Central nonprofit agency" ~~for individuals with disabilities~~ means an
17 agency that:

18 (a) Is incorporated under the Louisiana Nonprofit Corporation Law and
19 operated in the interests of individuals with disabilities, and the income of which
20 does not inure in whole or in part to the benefit of any shareholder or other private
21 individual.

22 (b) Complies with any applicable occupational health and safety standards
23 provided by the statutes or regulations of this state and of the United States.

24 (2) "Client" means an individual with a disability who is employed by a
25 supported employment provider.

26 (3) "Direct labor" means all labor involved in the manufacture of goods or
27 the performance of services except for supervision, instruction, administration, and
28 shipping.

1 (4) "Goods manufactured and services performed by individuals with
2 disabilities" means goods and services for which not less than forty percent of the
3 man-hours of direct labor required for manufacture or performance is provided by
4 individuals with disabilities.

5 (5) "Individuals with disabilities" means individuals with a physical,
6 behavioral, developmental, intellectual, sensory, mental, or addictive disorder which
7 constitutes a substantial obstacle to their employment.

8 (6) "Supported employment provider" means a nonprofit organization,
9 program, or entity as defined by R.S. 12:201 et seq., which provides gainful,
10 competitive, integrated employment, training, and rehabilitation services for
11 individuals with disabilities in compliance with a central nonprofit agency for
12 individuals with disabilities. In Fiscal Years 2019-2020 and 2020-2021, "supported
13 employment provider" shall also include any sheltered workshop transitioning to a
14 model of gainful, competitive, integrated employment, training, and rehabilitation
15 services for individuals with disabilities.

16 Section 3. This Act shall become effective on July 1, 2021.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 698 Original

2020 Regular Session

Freeman

Abstract: Creates a procedure for designating goods manufactured or services performed by individuals with disabilities as mandatory-use items and requires procurement of such item or service by an agency, board, commission, department, or other instrumentality of the state in certain situations if the good or services has been so designated.

Present law establishes rules and regulations for the procurement of supplies by state agencies and requirements for public contracts. Proposed law retains present law.

Present law establishes a procurement preference for goods manufactured or services performed by individuals with disabilities when provided through a supported employment provider. Defines "supported employment provider" as a nonprofit organization, program or entity which provides gainful employment, training, and rehabilitation services for individuals with disabilities. Defines "individuals with disabilities" as individuals with a physical, behavioral, developmental, intellectual, sensory, mental, or addictive disorder which constitutes a substantial obstacle to their employment. Further defines "goods manufactured and services performed by individuals with disabilities" to mean goods and

services for which not less than 40% of the direct man-hours required for manufacture or performance are provided by individuals with disabilities. Proposed law retains present law.

Present law establishes the State Use Council for the Purchase of Goods and Services Provided by Individuals with Disabilities (hereinafter "Council") to facilitate present law preference provisions. Proposed law retains present law. Present law requires the secretary of the La. Dept. of Health to determine the membership of the council. Proposed law repeals this authority. Proposed law further requires the Council to meet at least four times per year.

Proposed law establishes a procedure by which goods manufactured or services rendered by persons with disabilities through a supported employment provider may be designated as "mandatory-use." Such a designation would require agencies, boards, commissions, departments, or other instrumentalities of the state to procure the good or service from the supported employment provider or an authorized distributor unless an exemption provided in proposed law applies to that procuring entity.

The procedure for designating a good or service as "mandatory-use" pursuant to proposed law is:

- (1) The supported employment provider must prepare an application for each good or service and submit it to the central nonprofit agency designated by the Council (pursuant to present law).
- (2) The central nonprofit agency must review the application and ensure the accuracy of the information. The agency must then route the application with its recommendations and comments to the office of state procurement.
- (3) The office of state procurement must review the application and recommendations received, ensure the information is accurate, and that inclusion of the good or service as a qualified mandatory-use offering would advance the best interests of the state. The office of state procurement must then route the application with its recommendation to the Council.
- (4) The Council must review the application and recommendations and make a final determination whether to designate the good or service as a qualified mandatory-use offering.

Pursuant to proposed law, a good or service may only be designated as mandatory-use *if* the supported employment provider, central nonprofit agency, office of state procurement and Council all agree that its designation is advisable and in accordance with proposed law.

Proposed law sets for certain exemptions that would allow a procuring agency, board, commission, department or instrumentality of the state to not purchase a qualified mandatory-use good or service. Those exemptions include, but are not limited to, procurement during emergency conditions, specifications inconsistent with the procuring entity's needs, use restrictions on funds being used for the procurement, and if the chief procurement officer of the procuring entity determines in writing that the best interest of the state would be advanced by granting an exemption.

Present law authorizes the La. Dept. of Health to promulgate rules to enforce and implement the preference provided for in present law. Proposed law retains present law and further authorizes the Division of Administration to promulgate such rules.

Effective July 1, 2021.

(Amends R.S. 38:2261 and R.S. 39:1604.4)