

CHAPTER 99

**REHABILITATION FACILITIES
SET-ASIDE ACT RULES**

Authority

N.J.S.A. 30:6-23 et seq., specifically 30:6-32.

Source and Effective Date

R.1997 d.267, effective July 7, 1997.
See: 29 N.J.R. 863(a), 29 N.J.R. 2832(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 99, Rehabilitation Facilities Set-Aside Act Rules, expires on January 3, 2003. See: 34 N.J.R. 1402(b).

Chapter Historical Note

Chapter 99, State Use Law for Rehabilitation Facilities, was adopted as R.1971 d.15A, effective January 28, 1971. See: 2 N.J.R. 100(b), 3 N.J.R. 41(a). Chapter 99 was repealed by R.1980 d.178, effective April 22, 1980. See: 12 N.J.R. 322(a).

Chapter 99 was adopted as R.1985 d.55, effective February 19, 1985. See: 16 N.J.R. 2338(a), 17 N.J.R. 453(a). Pursuant to Executive Order No. 66(1978), Chapter 99 expired on February 19, 1990.

Chapter 99 was adopted as R.1990 d.295, effective June 4, 1990. See: 22 N.J.R. 766(a), 22 N.J.R. 1724(b). Pursuant to Executive Order No. 66(1978), Chapter 99 expired on June 4, 1995.

Chapter 99, Rehabilitation Facilities Set-Aside Act Rules, was adopted as R.1997 d.267, effective July 7, 1997. See: Source and Effective Date.

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SUBCHAPTER 1. GENERAL PROVISIONS

10:99-1.1 Purpose

The purpose of these rules is to further the policy of the State to encourage and assist severely disabled individuals to achieve maximum personal independence through productive employment by assuring a continuous market for commodities manufactured and services provided by them, thereby enhancing their dignity and capacity for self-support and minimizing their dependence on public assistance and the need for costly institutionalization.

10:99-1.2 Scope

This chapter establishes a mechanism through which severely handicapped persons throughout the State of New Jersey are encouraged and enabled to become productively employed through participation in workshop programs. The rule ensures a market continuity by placing product items and some services on set-aside contracts for purchase by State agencies.

10:99-1.3 Definitions

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

“Blind or legally blind” means central visual acuity that does not exceed 20/200 in the better eye with best correction or field of vision that are so limited that the widest diameter of visual field subtends an angle no greater than 20 degrees.

“Central Nonprofit Agency (CNA)” means an agency organized under the laws of New Jersey, operated in the interest of the blind and visually impaired or other severely disabled, the net income of which does not inure in whole, or in part, to the benefit of any shareholder or individual, and designated by the Commissioner to facilitate the distri-

bution (by direct allocation, or other means) of orders of the State for commodities and services on the procurement list among qualified rehabilitation facilities for the blind and visually impaired, or qualified rehabilitation facilities for other severely disabled.

“Commissioner” means the Commissioner of the Department of Human Services.

“Commodities and Services Council (Council)” means the Commodities and Services Council for the Blind, Visually Impaired and other severely disabled persons as constituted in P.L. 1981, c.488, § 3.

“Fiscal year” means the 12 month period beginning on July 1 of each year.

“Other severely disabled” means persons other than blind and visually impaired who are so severely incapacitated by any physical or mental disability that they cannot engage in normal competitive employment because of such disability. Some specific categories of severely disabled persons as defined above include, but are not limited to, those disabled by the following conditions:

1. Spinal cord injury;
2. Hearing impaired;
3. Muscular dystrophy;
4. Multiple sclerosis;
5. Developmental disabilities or other neurological disorders;
6. Severe orthopedic handicaps;
7. Multiple disabilities;
8. Severe personality or behavioral disorders, including psychosis and neurosis;
9. Severe pulmonary disease; and
10. Severe cardiac disorders.

“Program” means the Central Nonprofit Agency Program, regulated by the New Jersey Commodities and Services Council in accordance with this chapter.

“Purchasing agency” means any State agency that places orders for the procurement of any commodity or service on the procurement list.

“Rehabilitation facility” means a rehabilitation facility located in this State which qualifies as a charitable organization or institution under the provisions of section 501(c)(3) of the Internal Revenue Code and is conducted on a nonprofit basis for the purpose of carrying out a recognized program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury and of providing these individuals with remunerative employment or other occupational rehabilitative activity of an educational or therapeutic nature as defined in section 525.1 et seq. of the regulations adopted pursuant to the Federal Fair Labor Standards Act of 1938, 29 U.S.C. § 201 et seq. and related codes, and which is engaged in the production of commodities or the provision of services in connection with which not less than 75 percent of the total hours of direct labor is performed by blind or other severely handicapped persons excluding any hours of supervision, administration, inspection or shipping.

SUBCHAPTER 2. COMMODITIES AND SERVICES COUNCIL FOR THE BLIND AND OTHER SEVERELY DISABLED PERSONS

10:99-2.1 Membership

(a) The Council shall consist of the Director of the Division of Vocational Rehabilitation Services; the Director of the Division of Purchase and Property; the Chief of the Bureau of State Use Industries; the Director of the Division of Development for Small Business and Women and Minority Businesses; the Director of the Division of Developmental Disabilities; the Executive Director of the Commission for the Blind and Visually Impaired; the President of the New Jersey Association of Rehabilitation Facilities; or their designees; and three citizens as at-large members, at least one of whom shall be a blind person and at least one of whom shall represent the private business sector. The at-large members shall be appointed by the Governor, with the advice and consent of the Senate, for terms of three years, except that, of the first at-large members appointed, one shall be appointed for a term of three years, one for a term of two years and one for a term of one year.

(b) The members of the Council shall organize annually by the selection of one of their members to serve as the chairperson. The at-large members shall serve without compensation but shall be reimbursed by the Department of Human Services for necessary expenses incurred in the performance of their duties.

10:99-2.2 Duties of the Council

(a) The Council shall recommend to the Commissioner an agency for designation as the CNA for the purposes of this program.

(b) The Council shall develop, through the CNA, a list ("sales catalog") of commodities and services which shall be set aside for purchase by State agencies from CNA-approved rehabilitation facilities and establishes a fair market price (N.J.A.C. 10:99-2.5 and 5.4) for those commodities and services.

(c) The Council shall establish allowable fees for the CNA to participating rehabilitation facilities (N.J.A.C. 10:99-3.5).

(d) The Council shall address grievances which may arise between the CNA and the facility as a result of the relation-

ship defined by the Memorandum of Understanding (N.J.A.C. 10:99-5.10).

(e) The Council shall monitor the activities of the CNA in accordance with the standards contained in this chapter both in terms of its relations with participating rehabilitation facilities and with customer agencies. In cases of documented non-compliance on part of the CNA, the Council shall recommend appropriate corrective action or rescinding of the CNA in accordance with N.J.A.C. 10:99-4.5, 4.6 and 5.7.

(f) The Council may, by majority action, release the Bureau of State Use Industries from a waiver issued by the Bureau of State Use Industries in accordance with N.J.A.C. 10:99-3.2.

10:99-2.3 Sales catalog

(a) The CNA shall issue to each purchasing agency a sales catalog, which shall include commodities and services which shall be procured from the CNA as follows:

1. For commodities, the sales catalog shall include the item description, specifications, identification, price and other pertinent information; and
2. For services, the sales catalog shall identify the type of service to be provided and other relevant information.

10:99-2.4 Fair market price

(a) The Council shall evaluate and establish fair market prices, including changes thereto, for commodities and services. The fair market price for a commodity or service provided by a certified rehabilitation facility shall be determined by a cost/price evaluation by the CNA, in coordination with the Director of Procurement and Central Services (Treasury Department), of bids received by the Bureau for the most recent competitive solicitation. The cost/price evaluation will take into consideration product specifications, quality requirements, current material market variations, lead time, and production run volumes. If the prices previously solicited are not representative, due to peculiarities in the market place, or there are no recent solicitations for the commodity or service under consideration, the CNA, in cooperation with the State Purchase Bureau, may conduct an independent evaluation of the private industry market for that commodity/service and recommend to the Commodities and Services Council a fair market price based upon the results of the study.

(b) Recommendations for fair market prices or changes thereto shall be submitted by the rehabilitation facility to the CNA. The CNA shall analyze the data and submit a recommended fair market price to the Council along with detailed justification necessary to support the recommended price. Pricing shall be established by the Council and shall reflect such things as the general and unique product specifications, quality requirements, current material market variations, lead time, production run volumes and so forth. Also included in the fair market price is the workshop's costs of production (overhead, labor and materials) and distribution as well as the fee to CNA.

10:99-2.5 Annual report

The Council shall prepare and submit to the Commissioner an annual report prepared by the CNA on the activities conducted under N.J.S.A. 30:6-23 et seq. (hereinafter referred to as "the Act") and results within 90 days following the close of the fiscal year.

SUBCHAPTER 3. CENTRAL NONPROFIT AGENCY (CNA)

10:99-3.1 Designation of the CNA

A CNA shall be designated by the Commissioner to represent the rehabilitation facilities for the blind and visually impaired as well as rehabilitation facilities for other severely disabled individuals.

10:99-3.2 Duties and responsibilities of the CNA

(a) The CNA shall:

1. Act as a liaison in the representation of rehabilitation facilities to the Council under the Act;

2. Evaluate the qualifications and capabilities of the rehabilitation facilities in accordance with the requirements of this chapter and provide the Council with the data concerning these rehabilitation facilities, their status as a qualified program, and their manufacturing and/or service capabilities;

3. Recommend to the Council, with justification, including recommended prices, suitable commodities or services for procurement from its qualified rehabilitation facilities, as specified in N.J.A.C. 10:99-3.3;

4. Meet with the Chief of the Bureau of State Use Industries to secure a formal written waiver, including any restrictions thereof, for a commodity or services proposed for set-asides, to insure there will be no duplication or competition;

5. Distribute orders from State purchasing agencies among its qualified rehabilitation facilities, in accordance with N.J.A.C. 10:99-3.4;

6. Maintain the following records and data on its certified facilities:

- i. The articles of incorporation;

- ii. A copy of the by-laws;

- iii. A copy of the Section 501(c)(3) Internal Revenue Service certificate;

- iv. Evidence that the facility meets the criteria for determining nonprofit status under the applicable provisions of New Jersey law and is registered and in good standing as a charitable organization with the Secretary of State; and

- v. A copy of current certificate(s) issued by the United States Department of Labor authorizing wage payments under section 14(c) of the Fair Labor Standards Act, 29 U.S.C. § 201 et seq.

7. Monitor participating rehabilitation facilities to insure contract compliance in production of a commodity or performance of a service;

8. Monitor and inspect the activities of participating facilities to ensure compliance with N.J.S.A. 30:6-23 et seq. and this chapter;

9. As market conditions change, recommend price changes, with appropriate justification from the agency, for assigned commodities or services in the sales catalog;

10. Enter into contracts with State procuring entities for the furnishing of commodities or the provision of services provided by the rehabilitation facilities;

11. Prepare for the Council an annual report for each fiscal year, within 90 days of the close of such fiscal year, concerning the operations of participating rehabilitation facilities under N.J.S.A. 30:6-23 et seq., including significant accomplishments and developments and such other details as the CNA considers appropriate or the Council may request; and

12. Provide an appeal process to address disputes or grievances which may occur between the participating rehabilitation facilities and the CNA (N.J.A.C. 10:99-4.5).

10:99-3.3 Development of commodities or services for set-aside

(a) Items to be considered for set-aside contract may originate from a certified facility, the CNA or a State agency:

1. When originating from a facility, the facility proposing the commodity or service to the CNA shall have priority for set-aside. The facility shall prepare for product set-aside within 90 days. (N.J.A.C. 10:99-4.1);

2. Facilities interested in producing the commodity or service must provide to the CNA a price list and business plan as well as any other pertinent information relating to the specification.

(b) Within 60 days after receipt of notification by the CNA of its intent to propose a commodity or service for addition to the sales catalog, the Bureau of State Use Industries shall notify the CNA of their intention to exercise their priority on the proposed commodity or service.

10:99-3.4 Distribution of orders

When the Council has approved two or more facilities to produce a specific commodity, or perform a particular service, the CNA shall distribute orders among those facilities based on a competitive process. The competitive process shall be based on a facility's ability to meet State specifications, to demonstrate the capacity to produce the product or service, and at a competitive price.

10:99-3.5 Fees

The commissions to the CNA shall be eight percent of the State sales price as approved by the Commodities and Services Council on September 18, 1984.

SUBCHAPTER 4. REHABILITATION FACILITIES

10:99-4.1 Procedures for qualification of rehabilitation facilities

(a) A rehabilitation facility seeking eligibility to participate in the program shall submit to the Council, through the CNA, the following documents, transmitted by a letter signed by an officer of the corporation:

1. A legible copy of the articles of incorporation showing the date of filing and the signature of an appropriate State official;

2. A copy of the by-laws certified by an officer of the corporation;

3. A copy of the Internal Revenue Service certificate indicating that the corporation has been accepted as a nonprofit agency for taxation purposes under the provisions of Section 501(c)3 of the Internal Revenue Code;

4. Evidence that the facility meets the criteria for determining nonprofit status under the applicable provisions of New Jersey law and is registered and in good standing as a charitable organization with the Secretary of State;

5. A copy of current certificate(s) issued by United States Department of Labor authorizing wage payments under section 14(c) of the Fair Labor Standards Act, 29 U.S.C. §§ 201 et seq.; and

6. Evidence of a marketing plan demonstrating the facility's ability to provide the service or commodity.

(b) After the CNA review and approval of submitted documentation, the Council will review the documents submitted and if they are approved by the Council in accordance with (a) above, the facility shall be considered eligible and shall be notified through the CNA of the facility's eligibility to participate in the program.

(c) At the time the CNA recommends to the Council the addition of a commodity or service to the sales catalog, the CNA shall also submit to the Council a signed copy of the appropriate initial certification for the facility to be authorized.

(d) To maintain its qualifications, each facility authorized to produce a commodity or provide a service shall complete an annual certification of the documents specified in (a) above, and shall submit a signed copy to the Council through the CNA within six weeks following the close of the fiscal year.

10:99-4.2 Responsibilities of rehabilitation facilities

(a) Each facility participating in the program shall:

1. Furnish commodities or services in accordance with the purchase order specifications;

2. Make records pertaining to the contract available for inspection by the CNA during normal business hours;

3. Maintain records of direct labor hours performed in the facility by each worker;

4. Comply with applicable Federal and State occupational health and safety standards without discrimination; and

5. Maintain a file on each program participant which includes reports of pre-admission evaluation and annual re-evaluations of the individual's capability for employment.

10:99-4.3 Purchase of materials

Facilities shall seek three competitive bids for the purchase of individual components used in the commodities and services purchased by the State. The CNA shall examine the specifications, volume, frequency of order, transportation and storage requirements, user agency and information on the current supplier.

10:99-4.4 Production of commodities

In the production of commodities, a facility shall make a value added contribution to the commodity by the reforming of raw materials, package modification, assembly of components or a combination thereof.

10:99-4.5 Cancellation of contract

(a) A contract with a facility may be canceled by the CNA, with approval by the Council, for non-compliance with the terms of the contract, such as failure to meet State specifications, quality assurance standards, or quantity and delivery requirements. Prior to any contract cancellation, the facility shall be informed of the problem and shall be given a reasonable period to correct the non-compliance.

(b) If a contract with a facility has been canceled in accordance with (a) above, the facility may subsequently present evidence to the Council, through CNA, that the facility is capable of meeting the terms of the contract. The CNA shall document the readiness or capability of the facility to resume production according to the terms of the specific contract in existence prior to resumption of the contract and shall present same to the Council for re-set-aside.

10:99-4.6 Revocation of approval of nonprofit facility

If the CNA recommends the denial of approved status to a facility, or the revocation or suspension of such status for failure to comply with these rules, the matter shall be referred to the Council. The Council will attempt to resolve the matter. If satisfactory resolution of the matter is not accomplished, the matter shall be referred by the Council for a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq. and the Uniform Administrative Procedure Rules of Practice, N.J.A.C. 1:1.

SUBCHAPTER 5. PROCUREMENT REQUIREMENTS AND PROCEDURES

10:99-5.1 Purchasing agencies

Purchasing agencies shall purchase commodities and services on set-aside from the CNA on a sole-provider basis.

10:99-5.2 Purchase orders

(a) "Purchase orders" means the authorizations from State and quasi-State agencies to the CNA to produce definite quantities of commodities or perform specific services.

(b) For commodities, purchase orders shall contain name, commodity number, latest specification, quantity, unit price, place and time of delivery.

(c) For services, purchase orders shall contain type and location of service required, latest specification, work to be performed, estimated volume and time for completion.

(d) Purchase orders shall provide three to four weeks for the CNA to process the order(s) and for the facility to produce the commodity or provide the service, in accordance with (f) below.

(e) The CNA shall acknowledge purchase orders within 48 hours. When a purchase order provides a delivery schedule which cannot be met, the CNA shall request a revision, which the purchasing agency should grant, if feasible. If the purchasing agency determines that the revision is not feasible, the CNA shall issue a purchase exception authorizing procurement from commercial sources in accordance with N.J.A.C. 10:99-5.3.

(f) The CNA shall keep the purchasing agency informed of any changes in the lead time experienced by its facilities in order to keep to a minimum requests for extensions once an order is placed by the purchasing agency. Where, due to unusual conditions, an order does not provide sufficient lead time, the CNA may request an extension of the delivery or completion date which should be granted, if feasible. If extension of delivery or completion date is not feasible, the purchasing agency shall first notify the CNA and request the CNA to issue a purchase exception authorizing procurement from commercial sources.

10:99-5.3 Certification of exceptions

(a) The CNA allows a purchasing agency to procure from commercial sources in accordance with provisions of New Jersey statutes, or other applicable local ordinances, commodities or services on the procurement list when both of the following conditions are met:

1. The facility cannot furnish a commodity or service within the period specified; and

2. The commodity or service is available from a commercial source in the specified quantities and within the period specified.

(b) The CNA may similarly issue a certification of exception as in (a) above when the quantity involved is not sufficient for economical production or provision by the facilities.

(c) When the conditions in (a) or (b) above are met, the CNA shall provide such certification within five business days, and shall specify the quantities and delivery period covered by the certification and shall notify the Council of its action.

(d) Certification of exception shall be provided in written form.

10:99-5.4 Prices

(a) The prices included in the sales catalog shall be fair market prices established by the Council in accordance with this section. The price is determined by a cost/price evaluation by the CNA, in coordination with the Director of Procurement and Central Services (Treasury Department), of bids received by the Bureau for the competitive solicitation closest in time to the evaluation. The cost/price evaluation shall take into consideration such things as the general and unique product specifications, quality requirements, current material market variations, lead time, production run volumes and any other measure specific to the item(s) being in the catalog. The fair market price shall recover a rehabilitation workshop's costs of production and distribution and the CNA's fee.

(b) Prices for commodities include delivery costs (fob destination).

(c) Price changes for commodities and services shall apply to all orders placed on or after the effective date of the change.

10:99-5.5 Shipping and delivery

Commodities shall be shipped freight prepaid (fob destination). Delivery shall be accomplished when a shipment is received and accepted by the purchasing agency. Time of delivery is the time and date the shipment is received by the purchasing agency.

10:99-5.6 Payments

Payments for products or services or rehabilitation facilities shall be made within 30 days after receipt of shipment and a correct invoice or voucher, whichever is later, unless altered by specific contract provision or applicable State law.

10:99-5.7 Adjustment and cancellation of purchase orders

When the CNA or a facility fails to comply with the terms of a State purchase order, the purchasing agency shall make every effort to negotiate adjustments before taking action to cancel the order. When a State order is canceled for failure to comply with its terms, the CNA shall be notified and if practicable, requested to reassign the order. The CNA shall notify the Council of any cancellation of an order and the reason therefor.

10:99-5.8 Correspondence and inquiries

Routine correspondence or inquiries concerning deliveries of commodities being shipped from or performance of service by rehabilitation facilities shall be with the CNA.

10:99-5.9 Quality of merchandise and services produced or provided by facilities

(a) Commodities furnished under State specification by rehabilitation facilities shall be manufactured in strict compliance with such specifications. Where no specifications exist, commodities produced shall be of the highest quality and equal to similar items available on the commercial market. Commodities shall be inspected by CNA utilizing nationally recognized test methods and procedures for sampling and inspection.

(b) Services provided by rehabilitation facilities shall be performed in accordance with State specifications and standards. Where no State specification or standard exists, the services shall be performed in accordance with good commercial practices.

10:99-5.10 Quality complaints

When the quality of a commodity or service received from rehabilitation facilities is not considered satisfactory by the using agency, the agency shall address complaints to the CNA. The CNA shall take necessary action to remedy the problem and shall advise the Council of the action taken.

10:99-5.11 Specification changes

(a) Specifications cited in the sales catalog may undergo a series of changes, indicated by revision dates, to keep current with industry changes and agency requirements. Since it is not feasible to show the latest revision current on the publication date, only the basic specification is referenced in the sales catalog. Purchasing agencies shall notify the CNA of the latest applicable specification.

(b) When a State Department or agency is changing the design or construction of a commodity in the sales catalog that involves the assignment of a new commodity number, the State agency shall notify the Council and the CNA of the contemplated change prior to its effective date and be permitted to incorporate such change in its listed products. CNA will similarly notify the participating facility of this change.