

Appendix II

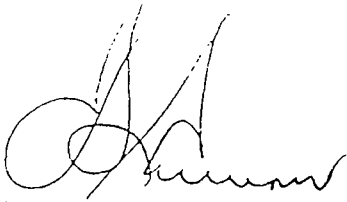
Agreements between TIBH Industries, Inc.
and Texas Council on Purchasing from People with Disabilities

**TEXAS COUNCIL
ON PURCHASING FROM PEOPLE WITH DISABILITIES
AND
TIBH INDUSTRIES, INC.**

MEDIATION SETTLEMENT AGREEMENT

- ♦ 1. Adopt reasonable performance standards and measures.
- ♦ 2. Develop transition procedures for program protection, TIBH property rights and document exchange when changing CNAs.
- ♦ 3. Clarify treatment of TIBH documents.
- 4. Change rules to provide 5-year contracts subject to cancellation for non-performance and to annual review and extensions by September 1, 1999 and implemented September 1, 2000.
- 5. TIBH to continue to allow State Auditor access to assure protection of State's interest.
- 6. By rule and/or legislation prescribe selection procedure for CNA by September 1, 1999.
- 7. In good faith, renegotiate contract for 2-years, subject to cancellation by the Texas Council on 90-days notice for non-performance or by TIBH on 90-days notice, and annual review and extension. First year of 2-year contract to begin September 1, 1998.
- 8. TIBH to dismiss lawsuit with no limitations specified on Texas Council's legal process for procuring CNAs. Prior to June 26, 1998, Robert Swerdlow and Tom Treadway to be dismissed as individuals without prejudice and the State will not later oppose amendments to readd, but the State reserves right to raise any defense it could raise today, May 14, 1998.
- 9. Work to enhance communications. Consider incorporating contract language that prescribes where correspondence is received for distribution/response by the Council.
- 10. The parties will agree to a protective order that TIBH is not required to produce proprietary records or information as later defined by TIBH and the Texas Council pursuant to Item 3 above.
- 11. All current litigation deadlines, including trial, will be extended, by agreement, 60-days beyond current dates. If the Texas Council approves this agreement during its June 26, 1998 meeting, all litigation deadlines will be extended another 90-days to allow execution of new contract with TIBH pursuant to Item 7 above. After the contract is signed pursuant to Paragraph 7 and prior to September 25, 1998, TIBH will dismiss its bid-related claim until the document issues under Paragraphs 2 and 3 are resolved and the final protective order is entered pursuant to Paragraph 10. If TIBH amends its pleadings to add the dismissed claims, defendants may assert all defenses that could have been raised as of today, May 14, 1998.
- ♦ To be developed by the Texas Council Performance Subcommittee or a designated Texas Council member with TIBH and presented to the Texas Council for adoption at the September 25, 1998, Council meeting.

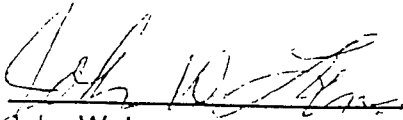
TEXAS COUNCIL ON PURCHASING FROM PEOPLE WITH DISABILITIES



Dr. Robert A. Swerdlow
Chairman

2/20/98
Date

TEXAS COUNCIL ON PURCHASING FROM PEOPLE WITH DISABILITIES



John W. Luna
Council Member

7.15.98

Date

MEMORANDUM OF AGREEMENT BETWEEN

The Texas Council on Purchasing from People with Disabilities
("the Council")

And

The Designated Central NonProfit Agency, TIBH, Industries, Inc.
("TIBH")

ARTICLE I.

A. PURPOSE OF AGREEMENT

The purpose of this agreement is to define the relationship between the Council and TIBH in the implementation of this program, to further the State's policy of encouraging and assisting persons with disabilities to achieve maximum personal independence by engaging in useful and productive work. [Human Resources Code, §122.001]

B. DESIGNATION OF THE CENTRAL NONPROFIT AGENCY

The Council under its statutory authority hereby designates TIBH as the Central NonProfit Agency (CNA) for the purposes of this agreement subject to the terms and conditions of the contract and in accordance with §122.019 of the Human Resources Code.

As the designated CNA of the Council, TIBH shall carry out the duties of this agreement and fulfill the Council's requirements on reporting to the Council.

C. CONFLICT OF INTEREST

1. No member of the TIBH Board of Directors or TIBH staff shall receive any personal or financial benefit from any vendor or manufacturer or manufacturer's representative that sells a product used by a Community Rehabilitation Program (CRP); nor shall any Board or staff member derive any benefit directly or indirectly from materials or supplies used by a CRP or any product or service produced by a CRP. It shall not be a conflict of interest or violation of the foregoing policy for a TIBH Board member to receive normal and reasonable compensation or salary for actual services as director or employee of a CRP.
2. TIBH shall disclose any financial or family relationships which may create the appearance of a conflict of interest. Board members may not appoint or vote for any person related to that individual within the third degree of consanguinity (related by blood) or the second degree of affinity (related by marriage) to any paid position at TIBH. All actual or potential conflicts shall be disclosed to the Council at the next regular meeting of the Texas Council.

D. NON-DISCRIMINATION

It is agreed that the Council and TIBH shall not discriminate and shall not permit discrimination in the provision of services, benefits, or products either by them or by any

participant in this program on the basis of race, sex, color, national origin, age, religion, or disability.

E. CONFIDENTIALITY OF INFORMATION

The Council and TIBH agree that all duties and activities performed under this agreement shall conform with any applicable confidentiality and statutory requirements, subject to Article V of this Agreement.

ARTICLE II.

A. DUTIES OF THE COUNCIL

1. The Council shall determine the fair market price of all products and services manufactured or provided by persons with disabilities for sale to the State. [Human Resources Code, §122.007 (a)]
2. The Presiding Officer of the Council shall appoint a three member Pricing Subcommittee to review data used to determine the fair market price. The Subcommittee shall make recommendations to the full Council concerning fair market price for products and services. [Human Resources Code, §122.007 (b)]
3. The Council shall revise prices as necessary to reflect changes in the market place. Such revisions may be upward or downward to reflect changing market conditions. [Human Resources Code, §122.007 (c)]
4. The Council may make rules regarding other matters related to the State's use of products and services of persons with disabilities. [Human Resources Code, §122.013]
5. The Council shall adopt the form for reporting of any products or services which are purchased under the exception provisions of Human Resources Code § 122.016 (b).
6. The Council shall prepare information of consumer interest about the Council and describe the procedures by which complaints are filed and resolved with the Council. The information shall be made available to the general public and State agencies. [Human Resources Code, §122.020 (a)]
7. The Council shall keep an information file about each complaint filed relating to a product or service of a CRP. [Human Resources Code, §122.020 (b)]
8. The Council shall notify all parties of the status of any complaint at least quarterly until resolution unless such notice would jeopardize an undercover investigation. [Human Resources Code, §122.020 (c)]
9. The Council shall on or before November the 1st, of each year, file a report with the Governor, the Speaker of the House, and the LT. Governor. The report shall include:
 - a. Accounting of all funds received and disbursed by the Council;

- b. The number of persons with disabilities, according to their type of disability, participating in the program;
 - c. The amount of annual wages paid to person participating in the program, including disabled and non-disabled persons;
 - d. The number of persons with disabilities employed in communities both supported and integrated employment.
 - e. Summary of the sale of products and services offered by CRPs;
 - f. List of products and services offered by CRPs; and
 - g. The geographic distribution of the CRP. [Human Resources Code, §122.022]
10. The Council shall receive information upon which the basis of report is made, as referenced in paragraph #9, on or about October 15th of each year.
 11. The Council may cooperate with the Texas Department of Criminal Justice - Institutional Division to accomplish the purposes of the program. [Human Resources Code, §122.010]
 12. The Council may adopt procedures, practices, and standards used for Federal programs similar to the State program. [Human Resources Code, §122.011]
 13. The Council shall review all applications for selection of suitable products or services for sale to the State. It shall be the duty of the General Services Commission to develop or adopt specifications for the products or services determined by the Texas Council to be feasible for production or delivery by persons with disabilities. [Human Resources Code, §122.014]
 14. The Council may suspend awarded contracts for nonperformance by CRPs in accordance with 40 TAC Texas Administrative Code § 189.10.
 15. The Council shall obtain from TIBH a list of suitable products and services offered for sale to the State which shall contain at least - 1. delivery schedule, 2. freight, and 3. packaging, and cause the same to be published in the Texas Register at least semiannually.
 16. The Council shall cause the publication and distribution of a catalog of all products and services produced and/or provided by persons with disabilities.
 17. The Council, each year, shall review services provided by TIBH and the budget and revenues required to accomplish the program to determine whether each agency's performance complies with contractual specifications. At least once during each two-year period, the Council shall review and renegotiate the contract with TIBH subject to Article VI of this agreement. [Human Resources Code, §122.019 (c) (d)]
 18. The Council shall annually establish management fees to be paid to TIBH for their services to participating CRPs. [Human Resources Code, §122.019 (e)]

ARTICLE III.

A. DUTIES OF THE CENTRAL NONPROFIT AGENCY (TIBH)

1. TIBH shall facilitate the distribution of orders among CRPs assisting persons with disabilities. [Human Resources Code, §122.019 (a), (2)]
2. TIBH shall provide such information as necessary for the Council to submit its required report to the Governor, Lt. Governor, and Speaker of the House. [Human Resources Code, §122.022 (a)]
3. TIBH shall be responsible for the publication of a catalog of products and services available for sale to the State. This catalog will be utilized to fulfill the Council's requirement for publication of a list of products and services in the Texas Register. The catalog shall be distributed to all interested parties.
4. TIBH shall assist the CRPs in the research and development of suitable products and services and submit them to the Pricing Subcommittee for review and recommendation to the Council. No product or service shall be considered without obtaining specifications which have been developed or approved by the General Services Commission as required by statute. [Human Resources Code, §122.019 (a)(1), (b)(3)]
5. TIBH shall be responsible for the overall marketing of the selected products and services to the State and its political subdivisions with the purpose of promoting the program and obtaining contracts for qualified products and services for participating CRPs. [Human Resources Code, §122.019 (b)(2)]
6. TIBH shall provide administrative, educational, and accounting assistance to CRPs when requested by the CRP or when such assistance is directed by the Council or when the need for such assistance is obvious to TIBH. [Human Resources Code, §122.019 (b), (6) and (7)]
7. TIBH shall submit its budget for review and approval of its management fee in accordance with rules adopted by the Council. [Human Resources Code, § 122.019 (f)]

ARTICLE IV.

A. ADDITIONAL DUTIES OF TIBH AND THE AUTHORITY TO CARRY OUT THESE DUTIES DELEGATED BY THE COUNCIL

1. After screening for suitability, TIBH shall approve or reject CRP applications prior to presentation to the Pricing Subcommittee. CRPs whose applications are not adopted will be advised of the appeal process.
2. TIBH shall require annual reports from the participating CRPs detailing the actual costs to produce the product/service provided in terms directly comparable to the initial cost estimates.

3. TIBH may temporarily suspend any CRP contract due to poor quality, non-performance, delivery problems, non-compliance, or any other breach of contract or violation of the rules applicable to this program subject to appeal by the CRP to the Council.
4. TIBH is authorized to receive payments from the agencies for products and services provided by the CRPs.
5. TIBH shall assist CRPs in resolving any complaints filed with regard to quality, quantity, timeliness, or delivery.
6. TIBH shall assist the CRPs in the continued development and improvement of products and services offered for sale to the State.
7. TIBH shall notify the Council of any changes in the current listing of recognized and participating CRPs.
8. TIBH shall provide the Council information relating to completed contracts, recognition, suspension or reinstatement proceedings, summary data of CRP audits to ensure program compliance, and any other relevant data so requested by the Council which is required to carry out the expressed or implied legislative intent of the program.
9. TIBH shall administer and coordinate the normal day-to-day operations of the program by acting as the central facilitating agency between the CRPs, the Council, and all purchasers of products and services available in the program.
10. TIBH shall recruit such new CRPs as may be required to continue the existing program or provide for its expansion.
11. TIBH shall cooperate with the Texas Department of Criminal Justice - Institutional Division in the implementation and operation of this program.
12. TIBH shall use all reasonable effort to insure that all data presented to the Council to establish a fair market price reflects the true and accurate costs to produce the proposed or existing product or service.

ARTICLE V.

A. MEDIATED TERMS AND CONDITIONS

Prior to September 1, 1999, the Council will, in conjunction with TIBH, develop or clarify (1) reasonable performance standards and measures, (2) transition procedures to protect the program and TIBH's property rights, (3) issues of ownership of and access to TIBH's and the program's documents and records, and (4) the stipulation and delineation of the transfer of documents and records if and when an existing CNA is succeeded by another CNA. These four (4) enumerated new criteria will be physically incorporated into the extension of this agreement, which is to be effective on September 1, 1999, unless either party gives notice to cancel the agreement.

ARTICLE VI.

A. TERM OF AGREEMENT

1. This agreement is effective September 1, 1998, for an initial term of one year, and this agreement shall be extended in writing for one additional one-year term beginning September 1, 1999, unless either party hereto gives the prescribed notice listed below to the other party of its intentions not to extend it for the second year. [40 Texas Administrative Code, Section 189.7 (e)]
2. This agreement may be canceled by either party by written notice by the Texas Council on 90-days notice for non-performance, or by TIBH on 90-days notice.

ARTICLE VII.

A. ENTIRE AGREEMENT

The agreement and executed amendments, if any, constitute the entire agreement of the parties concerning the subject matter hereof and all prior and contemporaneous understandings, whether written, or oral are merged herein.

The agreement incorporates relevant portions of the Mediated Settlement Agreement reached between the Council and TIBH approved by each at their respective meetings on June 26, 1998 and June 29, 1998. The Mediated Settlement Agreement is affixed to this agreement as "Exhibit A".

B. AMENDMENTS

The terms and conditions of the contract, amendments, modifications, or other documents submitted by either party which conflict with, or in any way purport to amend or add to any of the terms and conditions of the contract are specifically objected to by the other party and shall be of no force or effect, nor shall govern in any way the subject matter hereof, unless set forth in writing and signed by both parties.

C. CONTRACT ADMINISTRATORS

1. The Contract Administrator for the Council shall be the Coordinator to the Council. TIBH may direct all questions and requests to the Administrator. The address and fax number is as follows:

PAS
8/31/98
MS. ERICA GOLDBLOOM
P.O. BOX 13047, AUSTIN, TX 78711-3047

FAX 512-463-3564

2. The Contract Administrator for TIBH shall be Fred M. Weber, Jr. The Council may direct all questions and requests to the Administrator. The address and fax number is as follows:

TIBH Industries, Inc.
300 Highland Mall Blvd., #302, Austin, TX 78752
Telephone: (512) 451-8145/Fax: (512) 451-0824

APPROVED BY

Robert A. Swerdlow 8/31/98

Dr. Robert A. Swerdlow Date
Chairman, Texas Council on Purchasing
from People Disabilities

Billy J. Kilborn 9-1-98

Billy J. Kilborn Date
Chairman, TIBH Board of Directors

State of Texas
County of TRAVIS

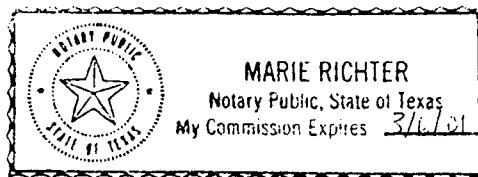
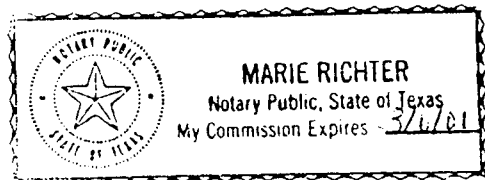
State of Texas
County of TRAVIS

Sworn to and subscribed before me this
31st day of August, 1998.

Sworn to and subscribed before me this
1st day of September, 1998.

Marie Richter
Notary Public Signature

Marie Richter
Notary Public Signature



**EXTENSION OF
MEMORANDUM OF AGREEMENT BETWEEN**

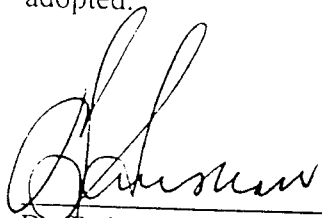
The Texas Council on Purchasing from People with Disabilities
("the Council")
The Designated Central NonProfit Agency, TIBH Industries, Inc.
("TIBH")

Pursuant to Article VI(A)(1) of the Memorandum of Agreement (the "Agreement"), between the Council and TIBH effective August 31, 1998, the Agreement is hereby mutually extended by the Council and by TIBH for one additional year to August 31, 2000. All provisions of the Agreement shall remain in full force and effect, specifically including pursuant to Article V of the Agreement, the following:

- (1) any transition procedures developed in conjunction with TIBH and the terms of the Agreement and formally adopted by the Council during the term of this Agreement for the purpose of changing from one CNA to another CNA, including reasonable methods to determine property rights and protections relating to the current CNA's (TIBH's) documents and those documents related to the State Use Program, and
- (2) the performance standards and measures developed in conjunction with TIBH and the terms of the Agreement and approved and adopted by the Council during the term of the Agreement.

The Council has proposed an administrative rule addressing performance standards, which is going through a comment period in accordance with the Texas Administrative Procedures Act. Any such transition procedures and performance standards that are developed in conjunction with TIBH and the terms of the Agreement and adopted by the Council during the term of this Agreement shall be applicable under this Agreement thirty (30) days after final adoption and publication in the Texas Register. This Extension does not affect TIBH's rights to challenge any procedures and standards adopted.

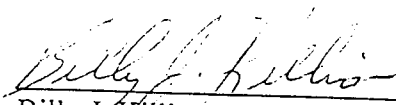
APPROVED BY:



Dr. Robert A. Swerdlow
Chairman, Texas Council on
Purchasing from People with Disabilities
P.O. Box 13047
Austin, Texas 78711-3047

Date

8/31/99



Billy J. Killion
Chairman, TIBH Board of Directors
The Designated Central NonProfit Agency
300 Highland Mall Blvd., Suite 302
Austin, Texas 78752

August 31, 1999

Date

State of Texas

County of Travis

Sworn to and subscribed before me by Billy J. Killion, Chairman, TIBH Board of Directors, on this 31st day of August, 1999.

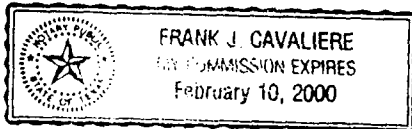


Marie Richter
NOTARY PUBLIC, STATE OF TEXAS

State of Texas

County of Jefferson

Sworn to and subscribed before me by Robert A. Swerdlow, Chairman, Texas Council on Purchasing from People with Disabilities, on this 2nd day of September, 1999.



Frank J. Cavaliere
NOTARY PUBLIC, STATE OF TEXAS