

## Cal Wel & Inst Code § 19404

Deering's California Codes are current through Chapter 10 of the 2022 Regular Session.

*Deering's California Codes Annotated > WELFARE AND INSTITUTIONS CODE (§§ 1 — 25200) > Division 10 State Department of Rehabilitation (Pts. 1 — 2) > Part 2 Rehabilitation Services, Programs, and Facilities (Chs. 1 — 10) > Chapter 5 Rehabilitation Facilities (Arts. 1 — 2) > Article 1 General Provisions (§§ 19400 — 19404)*

### § 19404. Public purchases from community rehabilitation programs

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Any state agency, city or county, political subdivision, or district of this state may, without advertising or calling for bids, purchase materials and supplies manufactured and services provided by public or private nonprofit California corporations operating community rehabilitation programs serving persons with disabilities who have indicated an interest in supplying those goods and services and may, on an equitable basis apportion the business among the interested community rehabilitation programs, provided the goods or services meet the specifications and needs of the purchasing agency and are purchased at a fair market price, as determined by the appropriate state or local agency and provided that the public or private nonprofit California corporations comply with all of the following requirements:

**(a)**

- (1)** Contract work obtained under this section shall be performed by a labor force which is comprised primarily of persons with disabilities, as measured by the percentage of person-hours of direct labor devoted to the contract work.
- (2)** For purposes of this paragraph, "primarily" means 75 percent or greater.
- (3)** Agree to make those elections permitted of any nonprofit corporation under the federal Insurance Contributions Act and the California Unemployment Insurance Code in order to provide social security and unemployment and disability benefits for its employees commencing with its first contract or purchase order under this section and continuing thereafter. In the event that the nonprofit corporation ceases to provide those benefits, any existing contract or purchase order under this section with the corporation is terminated and no further contracts or purchase orders shall be awarded to that corporation for the period of two years after the corporation ceases to provide the benefits. For the purposes of this subdivision, a person with a disability shall be considered an employee when performing productive work.
- (4)** Provide in its articles of incorporation that at least two of the directors of its board of directors shall be comprised of persons with disabilities or the parents, guardians, or conservators of

## Cal Wel &amp; Inst Code § 19404

individuals with disabilities. Directors who are also employees of the nonprofit corporation shall not participate in or be present at discussions of the board of directors concerned with labor-management contract negotiations.

(5) Provide for disabled employees of the nonprofit corporation benefits and other employer-employee agreements substantially equal to those benefits and agreements entered into between each nonprofit corporation and the representatives designated by a majority of the employees.

(6) Not commit any unfair labor practices as defined in Section 8(a) of the National Labor Relations Act.

(7) Abide by the provisions of the Federal Fair Labor Standards Act, the Walsh-Healy Public Contract Act, the Wagner O'Day Act, and the regulations of the State Division of Industrial Welfare.

(b) For purposes of this section a "person with a disability" means any person, other than a person who is blind, who is so severely incapacitated by any physical or mental disability that he or she cannot currently engage in normal competitive employment because of the disability.

## History

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Added Stats 1974 ch 1109 § 2. Amended Stats 1991 ch 694 § 22 (AB 1143), effective October 7, 1991; Stats 1993 ch 937 § 27 (AB 1602), effective October 8, 1993.

Annotations

## Notes

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### Amendments:

Note—

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#### 1991 Amendment:

In addition to making technical changes, (1) amended the first paragraph by substituting (a) "rehabilitation facilities serving persons with disabilities" for "workshops serving the handicapped"; (b) "rehabilitation facilities" for "workshops" after "the interested"; and (c) "all of the following requirements" for "the following"; (2) substituted subsds (a)(1) and (a)(2) for former subd (a) which read: "(a) Maintain a handicapped-to-ablebodied ratio equal to or in excess of 3:1 (75%–25%) of man-hours of direct labor at all times."; (3) redesignated former subsds (b)–(f) to be

## Cal Wel &amp; Inst Code § 19404

subds (a)(3)–(a)(7); (4) substituted “person with a disability” for “client” in the last sentence of subd (a)(3); (5) amended subd (a) (4) by substituting (a) “two” for “one-quarter”; (b) “persons with disabilities” for “handicapped persons”; and (c) “individuals with disabilities.” for “mentally retarded or mentally disabled handicapped persons, including representatives of organizations of the handicapped whose membership is open to handicapped persons in the state and including at least one handicapped employee from each manufacturing center operated by the nonprofit corporation provided, however, that”; (6) substituted “disabled” for “handicapped” in subd (a)(5); (7) deleted “set forth in the memorandum of understanding” after “benefits and agreements” in subd (a)(5); (8) deleted the former second and third sentences of subd (a)(5) which read: “Nothing contained in this subdivision shall be construed to require such benefits and agreements to include the recognition of the Union of State Employees, Local 411 as contained in the memorandum of understanding of May 21, 1971, as amended June 16, 1971, or any other union to represent any of such employees. Such memorandum of understanding shall be on file and available from the Department of Rehabilitation.”; (9) designated the former last paragraph to be subd (b); and (10) substituted “a ‘disabled person’ means” for “the word handicapped is defined to mean” and “he or she cannot currently engage” for “he cannot engage” in subd (b).

**1993 Amendment:**

Substituted (1) “community rehabilitation programs” for “rehabilitation facilities” wherever it appears in the introductory clause; and (2) “ ‘person with a disability’ means any person, other than a person who is blind,” for “ ‘disabled person’ means any person (other than a blind person)” in subd (b).

**Note—**

Stats 1993 ch 937 provides:

SECTION 1. It is the intent of the Legislature in enacting this act to bring California statutes into compliance with the federal Rehabilitation Act Amendments of 1992.

**Opinion Notes**

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**Attorney General's Opinions:**

The Department of Developmental Services may not contract with a corporation employing disabled persons to provide janitorial services at state developmental centers without following an advertised, competitive bidding process. 82 Ops. Cal. Atty. Gen. 206.

**Research References & Practice Aids**

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Cal Wel & Inst Code § 19404

**Cross References:**

"Individual with a disability": W & I C § 19151.

"Community rehabilitation program": W & I C § 19152.

"Blind person": W & I C § 19153.

Legislative intent regarding rehabilitation services: W & I C § 19403.

Nonprofit corporations generally: Corp C §§ 5000 et seq.

Three competitive bids or proposals not required where contract awarded pursuant to this section: Pub Con C § 10340.

**Federal Cross References**

Federal Insurance Contributions Act: 26 USCS §§ 3101 et seq.

Federal Fair Labor Standards Act: 29 USCS §§ 201 et seq.

Unfair labor practice as defined in Section 8(a) of the National Labor Relations Act: 29 USCS § 158(a).

The Walsh-Healy Public Contracts Act: 41 USCS §§ 35 et seq.

The Wagner O'Day Act: 41 USCS §§ 46 et seq.

**Treatises:**

Cal. Legal Forms, (Matthew Bender) § 90A.22.

**Hierarchy Notes:**

Cal Wel & Inst Code Div. 10

Cal Wel & Inst Code Div. 10, Pt. 2, Ch. 5

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