WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION

Form #5

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OFFICE WEST VIRGINIA
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NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW

AGENCY: WV Council for Community & Technical College Education TITLE NUMBER: 135

CITE AUTHORITY: WV Code §18B-1-6 and §18B-1B-4

RULE TYPE: PROCEDURAL X INTERPRETIVE ____

EXEMPT LEGISLATIVE RULE ____

CITE STATUTE(s) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

AMENDMENT TO AN EXISTING RULE: YES ____ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: ____

TITLE OF RULE BEING AMENDED: ____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 30

TITLE OF RULE BEING PROPOSED: Purchasing

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE EFFECTIVE DATE OF THIS RULE IS January ~~20~~ 21, 2005

Authorized Signature

SUMMARY

Title 135
Procedural Rule
West Virginia Council for Community and Technical College Education

Series 30
Purchasing

This procedural rule establishes rules and policies governing and controlling purchase, acquisition and inventory management of materials, supplies, equipment, services, construction, and printing, and disposal of obsolete and surplus materials, supplies, and equipment.

CTCS
COMMUNITY AND TECHNICAL COLLEGE SYSTEM OF WV

WEST VIRGINIA COUNCIL FOR COMMUNITY AND TECHNICAL COLLEGE EDUCATION
Nelson B. Robinson Jr., Chair · James L. Skidmore, Chancellor

Title 135
Series 30

Purchasing

The established comment period for this proposed procedural rule began on October 20, 2004, and ended November 19, 2004. Interested groups were notified and one comment was received and addressed.

James L. Skidmore
Chancellor

West Virginia Higher Education Policy Commission
Meeting of December 15, 2004

ITEM:	Approval of Joint Rule on Purchasing
INSTITUTIONS:	All
COMMITTEE:	Commission/Council Items
RECOMMENDED RESOLUTION:	*Resolved*, That the West Virginia Higher Education Policy Commission approves the final proposed procedural rule Series 30, *Purchasing.*
STAFF MEMBER:	Richard Donovan

BACKGROUND:

In accordance with the provisions of House Bill No. 101 passed during the 2004 legislative session, the West Virginia Higher Education Policy Commission, at its meeting on October 15, 2004, authorized Commission staff to file a procedural rule related to purchasing for public comment. This draft procedural rule was distributed to the Presidents, the chairs of the statutory advisory councils, and other interested parties for comment simultaneously with the 30-day formal comment period of the Secretary of State's Office. The public comment period ended on November 15, 2004.

There was one formal comment during the comment period and no changes were made to the rule as the result of this comment. The rule now needs to be filed with LOCEA.

Comment to the West Virginia Council for Community and Technical College Education During the Public Comment Period:

Comment: The Director of the West Virginia Small Business Development Center, WV Development Office sent the following comment:

Number of Small Businesses Affected: This proposed rule affects the entire small business community in West Virginia as it sets forth the purchasing guidelines to be followed by all state colleges, universities and community & technical colleges.

Significant adverse impact:

1. Each institution of higher education may establish guidelines for purchases under $25,000 (7.3.2). Such non-uniform procedures potentially require vendors to familiarize themselves with multiple purchasing processes. This may result in higher personnel costs for the vendor.

2. Each institution of higher education may make purchases under $25,000

without public advertising (7.3.2, 7.3.5). The cost to vendors to monitor multiple non-public selection processes is unduly expensive.

Other Negative Small Business Impacts:

1. The State Purchasing Division tracks vendor registrants by certain categories in order to determine if members of those categories are participating in the State's Purchasing Processes: disabled small business ownership, minority small business ownership, small business ownership, veteran small business ownership, and woman small business ownership. The proposed rule does not contain similar tracking measures without which the small business community has no means to determine whether it is adequately participating to higher education's purchases. These same measures should be added to the proposed rule. Each institution of higher education should be required to improve its database management capabilities to include these measures and to generate the contracts, by commodity group, captured by each such group as part of the annual report required at section 8.2.1.

Response:

No change was made in the rule.

Changes in section 7.3 simply reflect the changes contained in House Bill No. 101, which sought to strike a balance between institutional efficiency and consistency at the $25,000 level. Council and Commission staff will review the level of variability among institutional purchasing policies and procedures as institutions implement House Bill No. 101's expanded flexibility.

The small business community can track various groups' participation in higher education purchases. West Virginia's public higher education institutions utilize the same vendor list as state agencies, and higher education institutions' expenditures are recorded in the same system (WVFIMS) as other state agencies. Therefore, state higher education expenditures can be readily tracked by any vendor category that the West Virginia Division of Purchasing identifies.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 135-30: PURCHASING

Type of Rule: _____ Legislative _____ Interpretive __X__ Procedural

Agency: WV Council for Community & Technical College Education

Address: 1018 Kanawha Boulevard East Suite 700

Charleston, WV 25301

Contact: James L. Skidmore, Chancellor
558-0265

1. Effect of Proposed rule:

	ANNUAL		FISCAL YEAR		
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	0	0	0	0	0
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERATIONS					
EQUIPMENT					
OTHER					

2. Explanation of Above Estimates:
There are no direct costs associated with this rule.

3. Objectives of These Rules:
This rule establishes policies governing and controlling purchasing for the public higher education systems.

Rule Title: 135-30: Purchasing

4. Explanation of Overall Economic Impact of Proposed Rule:

   A. Economic Impact on State Government:
      None

   B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens:
      None

   C. Economic Impact on Citizens/Public at Large.
      None

Date: October 20, 2004

Signature of Agency Head or Authorized Representative:

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WEST VIRGINIA
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TITLE 135
PROCEDURAL RULE

WEST VIRGINIA COUNCIL FOR COMMUNITY AND TECHNICAL COLLEGE EDUCATION

SERIES 30

TITLE: **PURCHASING**

SECTION 1. GENERAL

1.1 Scope: This joint rule establishes rules and policies governing and controlling purchase, acquisition and inventory management of materials, supplies, equipment, services, construction, and printing, and disposal of obsolete and surplus materials, supplies, and equipment by the West Virginia Higher Education Policy Commission, created pursuant to West Virginia Code §18B-1B-1 and hereinafter referred to as the "Commission", the West Virginia Council for Community and Technical College Education, created pursuant to West Virginia Code §18B-2B-3 and hereinafter referred to as the "Council" and the institutional boards of governors, created pursuant to West Virginia Code §18B-2A-1 and hereinafter referred to as the "Governing Boards."

1.2 Authority: West Virginia Code §18B-5-4 through §18B-5-9.

1.3 Filing Date: December 21, 2004

1.4 Effective Date: January 21, 2005

SECTION 2. DEFINITIONS

2.1 As used in this rule, all terms have the same meaning as provided in West Virginia Code §18B-1-2, and as follows:

2.1.1 "Buyer" means an individual designated by a chief procurement officer to perform designated purchasing and acquisition functions as authorized by the chief procurement officer.

2.1.2 "Chancellor for higher education" means the chief executive officer of the Commission employed pursuant to West Virginia Code §18B-1B-5.

2.1.3 "Chancellor for community and technical college education" means the chief executive officer of the Council employed pursuant to West Virginia Code § 18B-2B-3.

2.1.4 "Commission Office" means the office that houses the Vice Chancellor for Administration and such professional, administrative, clerical and other employees as may be necessary to assist the Vice Chancellor for Administration perform his or her functions, tasks and duties.

2.1.5 "Chief procurement officer" means the individual designated by a president of a state institution of higher education to manage, oversee and direct the purchasing, acquisition and inventory management of materials, supplies, equipment, services, and printing, and disposal of obsolete and surplus materials, supplies, and equipment for that institution. For the Commission Office and West Virginia Network for Educational Telecomputing, the chief procurement officer is the person designated by the Vice Chancellor for Administration.

2.1.6 "Commodity" means an article which is useful or serviceable, particularly an article of merchandise movable in trade; a good, or service of any kind, including construction; an article of trade or commerce; things that are bought and sold.

2.1.7 "Essential service" means something basic; a commodity that is necessary, indispensable, or unavoidable and is purchased in a routine, repetitive, and noncompetitive manner.

2.1.8 "Institution(s)" means any public West Virginia university, college, and community and technical college, individually or collectively, created pursuant to West Virginia Code §18B-1-2. For the purposes of this rule, the Commission Office and West Virginia Network for Educational Telecomputing shall also be considered institutions.

2.1.9 "F.O.B. destination" and "free on board destination" mean the seller or vendor must transport or pay for the transportation of the materials, supplies, equipment, services and printing, to the point of destination specified in the contract.

2.1.10 "Governing Boards" or "Boards" means the institutional boards of governors created pursuant to West Virginia Code §18B-2A-1.

2.1.11 "Higher education institution" means an institution as defined by Sections 401(f), (g) and (h) of the federal Higher Education Facilities Act of 1963, as amended.

2.1.12 "President" means the chief executive officer of a higher education institution.

2.1.13 "Sole source" means only one vendor can supply the desired product or service.

2.1.14 "Single source" means that the desired product or service is available from only one supplier because of the uniqueness and characteristics of the product or service offered.

2.1.15 "Responsible bidder" and "responsible vendor" mean a person and/or vendor who have the capability in all respects to perform contract requirements, and the integrity and reliability which will assure good faith performance.

2.1.16 "Responsive bidder" and "responsive vendor" mean a person and/or vendor who has submitted a bid which conforms in all material respects to the invitation to bid.

2.1.17 "Vendor" means a seller of goods and services.

2.1.18 "West Virginia Council for Community and Technical College Education" or "Council " means the council created pursuant to West Virginia Code §18B-2B-1.

2.1.19 "West Virginia Higher Education Policy Commission" or "Commission" means the commission created pursuant to West Virginia Code §18B-1B-1.

2.1.20 "Vice Chancellor for Administration" means that person employed by the Commission with the advice and consent of the Council in accordance with West Virginia Code §18B-4-2. The Vice Chancellor for Administration shall assume all powers and duties that were assigned to the Senior Administrator.

SECTION 3. APPLICABILITY

3.1 This procedural rule applies to all institutions as defined in Section 2 of this rule.

SECTION 4. AUTHORITY OF THE COMMISSION AND COUNCIL

4.1 Pursuant to West Virginia Code §18B-5-4, the Commission and Council shall jointly adopt rules governing and controlling acquisitions, purchases and inventory management of materials, supplies, equipment, services, construction, and printing, and the disposal of obsolete and surplus materials, supplies, and equipment.

SECTION 5. AUTHORITY AND DUTIES OF THE VICE CHANCELLOR FOR ADMINISTRATION

5.1 The Vice Chancellor for Administration shall, in the name of the Commission and Council, have the authority and duty to:

5.1.1 Administer and oversee the purchasing system of the Commission, Council and Governing Boards;

5.1.2 Recommend to the Commission and Council additional rules or modifications to this rule as may be required for efficient and cost effective management of purchases, inventorying of materials, supplies, and equipment and disposal of obsolete and surplus materials, supplies, and equipment;

5.1.3 Develop administrative manuals, guidelines, procedures, and forms which shall be followed by the institutions for purchase, acquisition and inventory management, and disposal of obsolete and surplus materials, supplies, and equipment;

5.1.4 Provide for a periodic audit of the institutions for compliance with the rules and policies that have been adopted by the Commission and Council and the administrative manuals, guidelines, procedures and forms developed by the Vice Chancellor for Administration;

5.1.5 If requested, provide assistance to one or more institutions in the purchase, acquisition and inventory management of materials, supplies, equipment, services, construction, and printing, and in disposal of obsolete or surplus materials, supplies and equipment; and

5.1.6 Compile the Commission's and Council's annual Report Card on West Virginia businesses from reports provided by the institutions for submission to the finance committees of the House of

Delegates and the Senate by the fifteenth day of January of each year.

SECTION 6. DELEGATION OF PURCHASING AUTHORITY AND RESPONSIBILITIES

6.1 The Commission, Council and each Governing Board, through the Vice Chancellor of Administration, or as may be delegated by him or her, shall purchase or acquire materials, supplies, equipment, services, construction, and printing as required by that Governing Board or the Commission and Council, as appropriate, and the institution(s) under their jurisdiction. Each Governing Board shall have fiduciary responsibility to ensure that purchases and acquisitions are made within the limits of available appropriations and funds in accordance with applicable provisions of West Virginia Code §5A-2-1 *et seq.*, and for the inventory of materials, supplies and equipment and for disposal of obsolete or surplus materials, supplies and equipment as required by the institution(s) under their jurisdiction.

6.2 In order to assist the Governing Board in carrying out its duties, obligations and responsibilities under this rule, the Board may, by resolution of the Board, delegate authority to the institution's president who shall have overall control and management of the institution's purchases, inventory, and disposal of obsolete or surplus materials, supplies and equipment as required by that institution. The president shall appoint a chief procurement officer to assist the president in carrying out the duties, obligations and remedies imposed by the Governing Board and this rule. This appointment shall be made in writing and filed with the Vice Chancellor for Administration, the State Auditor and the Attorney General.

6.3 Unless otherwise stated in writing by the president, the chief procurement officer shall have full authority to act as the designee of the president for purchase, acquisition, receipt of and inventory management of all materials, supplies, equipment, services, construction, and printing, and for disposal of obsolete or surplus materials, supplies, and equipment as may be required by the institution.

SECTION 7. AUTHORITY, DUTIES AND REMEDIES OF THE CHIEF PROCUREMENT OFFICER

7.1 The chief procurement officer shall, unless otherwise stated in writing, have full authority to act in matters of institutional purchasing, inventory management and disposal of surplus and obsolete property as the

designee of the president, or of the Vice Chancellor for Administration in the case of the Commission and Council Offices and West Virginia Network for Educational Telecomputing, and shall serve as the central procurement officer for the institution. This individual may also fulfill other institutional functions.

7.2 The chief procurement officer may appoint buyers and delegate authority to them as designees, or to any department within the institution. Delegation of authority by the chief procurement officer, and any limits thereupon, shall be in writing and filed with the Vice Chancellor for Administration, the State Auditor and the Attorney General. Responsibility for ensuring institutional compliance with the West Virginia Code and this rule shall rest with and be the responsibility of the chief procurement officer.

7.3 As required by law and this rule, and consistent with administrative manuals, guidelines and procedures developed by the Vice Chancellor for Administration, the chief procurement officer shall have the duty and/or authority to:

7.3.1 Purchase and contract for the materials, supplies, equipment, services, construction and printing required by the institution;

7.3.2 Establish institutional guidelines and procedures for purchases not exceeding $25,000;

7.3.3 Establish institutional guidelines and procedures for receiving, inventorying and distributing materials, supplies, equipment, services and printing;

7.3.4 Review specifications and descriptions before soliciting bids or proposals to ensure that they are competitive and fair and do not unfairly favor or discriminate against a particular brand or vendor;

7.3.5 Advertise for bids on all purchases exceeding $25,000, and post or otherwise make available notices of all purchases for which competitive bids or proposals are being solicited by the institution's purchasing office;

7.3.6 Maintain the institution's purchasing files;

7.3.7 Accept or reject any and all bids in whole or in part;

7.3.8 Waive minor irregularities in bids, bidding documents and/or specifications;

7.3.9 Apply and enforce standard specifications;

7.3.10 Manage the institution's inventory of materials, supplies and equipment, authorize transfers to or between institutions, and sell surplus, obsolete or unused materials, supplies, and equipment;

7.3.11 Prescribe the amount of deposit or bond to be submitted with any bid or contract;

7.3.12 Prescribe contract provisions for liquidated damages, remedies and/or other damages provisions in the event of vendor default;

7.3.13 Exempt from competitive bidding purchases of materials, supplies, equipment, services and printing purchased from within state government, from West Virginia sheltered workshops, from cooperative buying groups and consortia, and from the federal government or federal government contracts when price, availability and quality are comparable to those on the open market;

7.3.14 Perform chemical and physical tests on samples submitted with bids and samples of deliveries to determine compliance with specifications, if deemed necessary and prudent;

7.3.15 Hear and render opinions on vendor complaints and protests;

7.3.16 Register vendors with the Purchasing Division of the Department of Administration in accordance with the West Virginia Code;

7.3.17 Apply the preference for resident vendors required by the West Virginia Code;

7.3.18 File contracts and purchase orders that exceed the dollar limit required for competitive sealed bidding with the State Auditor;

7.3.19 Submit contracts and purchase orders to the Attorney General for approval or as may be required by law, administrative procedures and guidelines;

7.3.20 Ensure that purchases exceeding the dollar amount for competitive sealed bidding are encumbered and entered into the State's accounting system as required by West Virginia Code §18B-5-4(g) and §5A-2-1 *et seq.*

7.3.21 Apply and enforce other applicable provisions of state and federal laws pertaining to purchases, inventory management and

disposal of surplus and obsolete materials, supplies, and equipment.

7.4 Remedies that are available to the chief procurement officer when appropriate circumstances arise include:

7.4.1 In the event that a vendor fails to honor any contractual term or condition, the chief procurement officer may cancel the contract and re-award the contract to the next lowest responsible and responsive bidder;

7.4.2 Vendors failing to honor contractual obligations may be held responsible for all differences in cost;

7.4.3 Declare a vendor or bid nonresponsible or nonresponsive and refuse to award a purchase order. All such instances shall be substantiated in writing giving the reason(s) thereof, and such documentation shall be considered a public document available for inspection at all reasonable times; and

7.4.4 Suspend, for a period not to exceed one (1) year, the right of a vendor to bid on purchases when there is reason to believe that such vendor has violated any of the provisions of the terms and conditions of a contract, this rule and/or state law.

SECTION 8. PURCHASE OR ACQUISITION OF MATERIALS, SUPPLIES, EQUIPMENT, SERVICES, CONSTRUCTION AND PRINTING

8.1 Unless otherwise authorized by law, all purchases or acquisitions of materials, supplies, equipment, services, construction and printing shall be awarded by competitive bidding, except as provided in the following paragraphs of this rule:

(a) Purchases not exceeding $25,000;
(b) Competitive sealed proposals;
(c) Competitive selection procedures for professional services;
(d) Sole source and single source procurement;
(e) Emergency procurement;
(f) Open end and federal contracts; and
(g) Essential services.

8.2 Specifications shall be written to maximize and encourage competition. In certain cases, a "brand name or equal" may be used as a specification.

8.3 All purchases and acquisitions shall be made in consideration of and within limits of available appropriations and funds and in accordance with

applicable provisions of West Virginia Code §5A-2, relating to expenditure schedules and quarterly allotments of funds.

8.4 Award shall be made to the lowest responsible and responsive vendor. In determining the lowest responsible and responsive vendor, consideration will be given to such factors as quality (meeting specifications), price, time of delivery, cost of delivery, and other terms and conditions considered prudent. Unit prices shall prevail in all cases when there is a conflict between the unit price and extended price. In some cases multiple and/or split awards may be made when determined to be in the best interest of the institution. Occasionally, purchase orders may be issued which impose no obligation to take delivery of a product and/or service and as such, these purchase orders shall be issued as blanket purchase orders or price agreements. In situations where vendors are competing to provide a service that will generate income for an institution, the award shall be made to the highest responsible and responsive bidder, taking into consideration the above factors.

8.5 The chief procurement officer may accept or reject, in whole or in part, any bid or proposal when the chief procurement officer believes it to be in the best interest of the institution. If any bid or proposal is rejected, a written explanation shall be placed in the purchasing file.

8.6 When tie bids or proposals are received, the tie shall be broken and an award made by allowing the tied vendors to make a "last and final offer." If a tie bid is not broken by a “last and final offer,” then the tie may be broken by a flip of a coin, draw of the cards or any other impartial method deemed prudent by the chief procurement officer.

8.7 Except for exemptions granted in the West Virginia Code, all material, supplies, equipment, services and printing made upon competitive bids or proposals shall be subject to any resident vendor preference set forth in the West Virginia Code.

8.8 The chief procurement officer shall determine the applicability and amounts of bonds and/or deposits required of a vendor at any time, if, in his or her judgment, such security is necessary to safeguard the institution from undue risk. The chief procurement officer may require the vendor to submit a certified check, certificate of deposit, performance bond, or any other security acceptable to the chief procurement officer, payable to the institution. Personal checks and/or company checks are not acceptable. When a contract has been satisfactorily completed on which a surety bond or other deposit has been previously submitted, the spending unit shall certify the completion in writing to the chief procurement officer. The chief procurement officer, upon receipt of the notification, shall return the check or deposit to the vendor.

8.9 Purchases not exceeding $25,000

8.9.1 The chief procurement officer shall establish institutional guidelines and procedures for purchases not exceeding $25,000. These guidelines and procedures shall provide for obtaining adequate and reasonable records to properly account for funds and to facilitate auditing. They shall be approved by the president, filed with the Vice Chancellor for Administration and be on file in the institution's purchasing office and made available to the public upon request.

8.9.2 Purchases in this category do not require competitive bids or quotations.

8.10 Purchasing Card

8.10.1 The state purchasing card may be used as a purchasing and payment method as provided in applicable provisions of West Virginia Code §12-3-1 *et seq.*, and as follows:

(a) Employee travel expenses when the travel is required by the employee's job and is for official business of the institution. Expenses that may be paid using the purchasing card are as follows and are limited to $5,000 per transaction or the card limit whichever is less:

1. Transportation: Commercial air fare, chartered aircraft service, rail service, commercial rental vehicles, and miscellaneous ground transportation and fees such as shuttle service, taxi service and parking.
2. Lodging: Room accommodations only. Any extra charges will be the employee's responsibility to pay.
3. Fuel: Fuel for commercial rental or fleet vehicles only.
4. Meals: Meals for employee travel may not be paid using the purchasing card.
5. Reconciliation and settlement of employee travel expenses paid by the purchasing card shall be made according to the State Auditor's procedures, provided the procedures are consistent with the intent of applicable provisions of West Virginia Code §18B-5-4.

(b) Routine and regularly scheduled payments may be made using the purchasing card and are limited to the transaction limit of the card. Routine and regularly scheduled payments

mean all payments that have either received Attorney General approval in accordance with statute or do not require such approval, and are made on a regular, predictable and routine basis whether weekly, monthly, annually, or on any other regular schedule.

1. Routine, regularly scheduled payments are limited to the following: association dues; accreditation fees; software licenses and maintenance fees; resale merchandise; maintenance contracts; temporary space rentals; inter-library loan charges; inter/intra-institutional charges; contracts for artists, entertainers, and speakers; open end contracts; license fees of all types; utilities of all types; federal, state and municipal fees and assessments; real property rental fees; postage; books and related items, including those for libraries and bookstores; hospitality expenses; travel expenses; shipping, handling, and freight charges; advertising; subscriptions; periodicals, and publications; athletic and academic team related expenses; and necessary job related medical or drug testing and treatment.

2. The Council, Commission and each institution annually by June 30 shall provide a list of goods and services for which payment was made pursuant to this provision to the State Purchasing Division.

(c) In order to provide sufficient accounting and auditing procedures for all purchasing card transactions, each institution shall adopt and effectively use the reconciliation, reporting and payment software for the purchasing card program approved by the State Auditor and the Vice Chancellor for Administration.

(d) The Commission and Council may expand the use of the purchasing card for travel and routine and regularly scheduled payments for any institution it determines has the capacity, internal controls and record of effective management to handle the expanded responsibilities.

8.10.2 The Commission and each institution shall maintain a purchasing card that may be used for emergencies declared by the President of an institution and approved by the Chancellor up to the transaction limit of the card as provided in subparagraph 8.16.2.

8.11 Purchases Greater than $25,000

8.11.1 Competitive sealed bidding is the preferred method for purchase and acquisition of materials, supplies, equipment, services, construction and printing greater than $25,000.

8.11.2 The chief procurement officer shall advertise for bids on all purchases exceeding $25,000. The advertisement shall appear no less than 14 calendar days prior to the date bids are due.

8.11.3 The chief procurement officer shall, in addition to advertising, post or otherwise make available notice of all acquisitions and purchases for which competitive bids are being solicited in the purchasing office of the institution involved in the purchase no less than 14 calendar days prior to making such purchase and shall ensure that the notice is available to the public during business hours.

8.11.4 Bids shall be delivered to the specified location for receipt of bids by the bidder prior to the date and time of the bid opening according to the instruction contained in the request for bids and any addenda or modifications officially issued.

8.11.5 Bids not properly delivered or received after the required time and date shall not be opened and shall be returned to the bidder.

8.11.6 The bid shall be signed by an authorized agent of the bidder. A corporate signature without an individual's name and signature shall not be construed as an acceptable signature.

8.11.7 Facsimile and electronically transmitted bids are not acceptable for bids over $25,000.

8.11.8 A bidder may make a written modification to a sealed bid prior to the bid opening, provided modifications are made by the bidder in such a manner that the bid price is not revealed or known until the bid is opened. Written modifications must be received by the chief procurement officer prior to the date and time of the bid opening. Facsimile and electronically transmitted modifications are acceptable if the bid price is not revealed.

8.11.9 Originals or copies of bids shall be available for public inspection after the bid opening. Vendors may designate in writing with the bid submission information contained within the bid constituting trade secrets, pursuant to West Virginia Code §29B-1-4(1), which shall be exempt from disclosure. The purchasing files shall be

open for public inspection after the award has been made, except for information qualifying for the exemption set out above.

8.11.10 The chief procurement officer may reject an erroneous bid after the bid opening, upon request of the bidder, if all of the following conditions exist: (a) an error was made; (b) the error materially affected the bid or proposal; (c) rejection of the bid or proposal would not cause a hardship on the institution other than losing an opportunity to receive materials, supplies, equipment, services, construction and/or printing at a reduced cost; and (d)enforcement of the part of the bid or proposal in error would be unconscionable. In order to reject a bid or proposal, the purchasing file must contain documented evidence that all of the above conditions exist.

8.11.11 Price and other adjustments shall be allowed on any purchase order if specific provisions for adjustments have been incorporated in the prescribed forms and the purchase order. All such requests for adjustments shall be made in accordance with the specific terms and conditions of the individual purchase order. In the event no provision for adjustments has been made, discretion to grant adjustments shall rest with the chief procurement officer.

8.11.12 Every person, firm or corporation selling or offering to sell to the Commission, Council, a Governing Board and its institutions, materials, supplies, equipment, services, construction and printing, upon competitive bid or otherwise, in excess of $25,000 per order, shall be registered with the West Virginia Department of Administration, Purchasing Division, pursuant to West Virginia Code §18B-5-5 and §5A-3-12. Purchase orders in excess of $25,000 may not be issued to any vendor not properly registered with the West Virginia Department of Administration, Purchasing Division.

8.11.13 Contracts, purchase orders and associated documents such as performance and labor/material payment bonds and certificates of insurance are not required to be approved by the Attorney General provided standard terms and conditions are standardized forms previously approved by the Attorney General are used.

8.11.14 Contracts and purchase orders that exceed the amount set forth in West Virginia Code §18B-5-4 for sealed competitive bidding shall be filed with the State Auditor.

8.12 Vendor's Rights and Duties

8.12.1 Each vendor is solely responsible for delivery of its bid or proposal to the designated location for receipt of bids or proposals prior to the specified date and time of the bid or proposal opening.

8.12.2 If there is a conflict between the extension price and the unit price, the unit price shall prevail.

8.12.3 Any changes made by the vendor in the specifications listed in the bid request must be clearly stated. If changes are not stated, it will be assumed that items offered meet the specifications in all respects.

8.12.4 Vendors are responsible for the accuracy of the information in their bid or proposal and on the bid or proposal envelope.

8.12.5 All sales to the Commission, Council and the Governing Boards are exempt from West Virginia consumer sales tax or excise tax by blanket state exemption and blanket federal exemption.

8.12.6 It is the vendor's exclusive duty and obligation to file protests and requests for reconsideration according to the requirements of Section 9, and for reconsideration of suspension, in accordance with the requirements of Section 10 of this rule; otherwise, they shall be waived.

8.13 Competitive Sealed Proposals

8.13.1 For purchases above $25,000, competitive sealed bids are the preferred method of procurement; however, if it is either not practicable or advantageous, a contract may be entered into by a request for proposals. The words "practicable" and "advantageous" are to be given ordinary dictionary meanings. The term "practicable" denotes what may be accomplished or put into practical application. "Advantageous" connotes a judgmental assessment of what is in the institution's best interest. The key element in determining advantageousness will be the need for flexibility.

8.13.2 The request for proposal method of purchasing is used to obtain goods and services when sufficient knowledge or expertise does not exist to adequately specify the details of the desired result. The desired result is written into the request for proposals. The vendor responds to the request for proposals with a proposal identifying its intended approach to meet the desired result along with a proposed price or fee. Terms and conditions of the contract

shall be included in a request for proposals, along with a pre-established award criteria based on value or points. Whenever desirable, interviews may be conducted with interested parties for clarification and/or determination of qualifications and experience prior to award. Requests for proposals go beyond price alone. They also look at the vendor's ability and resources to furnish the desired service to get the desired result. Quality of service and performance are important considerations. Requests for proposals are primarily used for large dollar projects requiring a high level of expertise on the part of the vendor.

8.14 Competitive Selection Procedures for Professional Services

8.14.1 The competitive selection procedure for professional services is similar to the process used for competitive sealed proposals; however, greater weight is given to the ability to perform the service as reflected by technical training, education and experience, and in some cases, artistic and aesthetic values and capabilities. In these cases, price may be a secondary consideration.

8.14.2 The competitive selection process for hiring architects and engineers is set forth in Chapter 5G of the West Virginia Code.

8.15 Sole Source and Single Source Procurement

8.15.1 The chief procurement officer may approve the purchase of materials, supplies, equipment, services, construction and/or printing directly from a vendor without competitive bid or proposals, if any of the following conditions exist: (a) the item cannot be obtained through ordinary purchasing procedures; (b)the item is of unique nature and not available from any other source; or (c) the item is available from a state spending unit or other institution with preference under the West Virginia Code, provided the price, availability and quality are comparable to those in the open market.

8.16 Emergency Procurement

8.16.1 Emergency purchases exceeding $25,000 must receive the prior written approval of the chief procurement officer unless made according to subparagraph 8.16.2. An emergency situation requiring purchase of materials, supplies, equipment, services, construction or printing must be the result of unforeseen events or circumstances, including delays by contractors, delays in

transportation, or an unanticipated volume of work. Emergency purchases shall not be used for hardship resulting from neglect, poor planning or lack of organization by the spending unit. Competitive bids must be obtained if possible.

8.16.2 The Commission and each institution shall maintain a purchasing card for use in and for situations declared an emergency by the president of an institution and approved by the Chancellor. Such emergencies may include but are not limited to partial or total destruction of a campus facility; loss of a critical component of utility infrastructure; heating ventilating, or air conditioning failure in an essential academic building; loss of campus road, parking lot or campus entrance; or a local, regional, or national emergency situation that has a direct impact on the campus.

8.16.3 In the event of an emergency declared by the president of the institution and approved by the Chancellor, the president or his or her designee may authorize the use of an emergency purchasing card by a designated representative in accordance with the procedures set forth in the State Auditor's Legislative Rule for the purchasing card program.

8.17 Open End Contracts and Federal Contracts

8.17.1 The Commission, Council or a Governing Board and its institution(s) may enter into open end contracts for materials, supplies, equipment, services, construction and/or printing to ~~supplies, equipment, services, construction, and/or printing to~~ supply their respective needs in the form of statewide contracts, blanket orders or price agreements. Once issued, purchases and acquisitions may be made from these contracts without securing any other bids or quotations. These contracts may be made available to other institutions, the Commission and Council for their use.

8.17.2 The Commission, Council, a Governing Board and its institution(s) may, without securing any other bids or quotations, make purchases from cooperative buying groups, consortia, the federal government and from federal government contracts if the materials, supplies, equipment, services, and printing to be purchased are available from these groups, consortia, or the federal government and its contracts, and if this is the most financially advantageous manner of making the purchase.

8.18 Essential Services

8.18.1 Essential services may be purchased and paid for by the Commission, Council, a Governing Board and its institution(s) without securing competitive bids or proposals or issuing purchase orders. Commodities in this category may include but are not limited to utilities of all kinds; postage; items for resale; municipal, county, state, and federal fees; student awards, stipends, loans and grants; shipping and freight charges; tuition and registration fees and refunds thereof; professional dues; etc. The Vice Chancellor for Administration shall issue guidelines for the purchase of and payment for essential services.

8.19 Motor Vehicle Purchase

8.19.1 The purchase and leasing of motor vehicles shall be consistent with this rule, and guidelines and procedures adopted by the Commission, Council, a Governing Board and the Vice Chancellor for Administration.

8.20 Procurement File

8.20.1 The chief procurement officer shall maintain a purchasing file for each procurement or acquisition. This file shall contain all relevant information pertaining to such purchase or acquisition, including but not limited to: (a) bids, proposals or quotations received in response to a request for sealed bids or proposals; however, an unopened bid or proposal shall not be considered a public document or record; (b) identification and certification of the successful bid; (c) why any bid or proposal is rejected in whole or in part; (d) justification for award to other than the lowest vendor; and (e) vendor protests or complaints. The purchasing file shall be a public record open to inspection during normal business hours. No records in the purchasing file shall be destroyed without the written consent of the Legislative Auditor, except as set forth in subparagraph 8.20.2.

8.20.2 Those files in which the original documentation has been held for at least one year and in which the original documents have been reproduced and archived on microfilm or other equivalent method of duplication may be destroyed without written consent of the Legislative Auditor. All files, no matter the storage method, shall be open for inspection by the Legislative Auditor upon request.

8.21 Report Card on West Virginia Businesses

8.21.1 Each institution shall prepare an annual report, in the format prescribed by the Vice Chancellor for Administration, which shall

include, but not be limited to, information regarding the number of out-of-state entities with which the institution contracted, the number of in-state firms with which the institution contracted, the dollar amount of each contract, the equipment, commodity or service for which the contract was let, and the institution's recommendations, if any, on the manner in which purchasing procedures can be improved. This report shall be submitted to the Vice Chancellor for Administration by the first day of October for the preceding fiscal year.

8.21.2 The Vice Chancellor for Administration shall compile the reports submitted by each institution and consolidate the data into the Commission's and Council's annual Report Card, which is to be submitted to the finance committees of the House of Delegates and the Senate annually by the fifteenth day of January.

8.22 Approval of Lease-Purchase Arrangements for the Governing Boards

8.22.1 After the Commission or Council has granted approval for lease-purchase arrangements by a Governing Board, the Governing Board may enter into lease-purchase arrangements for capital improvements, including equipment. Any lease-purchase agreement exceeding one million dollars in total must have prior approval of the Commission or Council.

8.22.2 Proposals for any lease-purchase arrangements shall be made in accordance with West Virginia Code §18B-5-4(q). The Vice Chancellor for Administration may establish guidelines and a format for receiving, considering and approving such proposals.

8.22.3 Lease-purchase agreements exceeding one hundred thousand dollars must be approved as to form by the Attorney General.

8.23 Lease Agreements for Grounds, Buildings, Office Space or Other Space

8.23.1 The Commission, Council and Governing Boards have the authority to enter into lease agreements for grounds, buildings, office space or other space in the name of the State for ~~not~~ more than one fiscal year but not exceeding forty years under the following conditions:

(a) The Commission, Council and institutions shall be responsible for all rent and other necessary payments in connections with the contract of lease; and

(b) Satisfactory grounds, buildings, office or other space is not available on grounds and in buildings currently owned or leased.

8.23.2 Before executing any rental contract or lease, the Commission, Council or a Governing Board, as appropriate, shall do the following:

(a) Determine the fair rental value of the grounds, building, office space or other space to be leased in the condition in which they exist, and shall contract for or lease the premises at a price not to exceed the fair market value; and

(b) Leases shall contain, in substance, all of the following provisions:

1. That the Commission, Council or Governing Board as lessee, has the right to cancel the lease without further obligation on the part of the lessee upon giving thirty days' written notice to the lessor at least thirty days prior to the last day of the succeeding month;

2. That the lease shall be considered canceled without further obligation on the part of the lessee if the Legislature or the federal government fails to appropriate sufficient funds for the lease or otherwise acts to impair the lease or causes it to be canceled; and

3. That the lease shall be considered renewed for each ensuing fiscal year during the term of the lease unless it is canceled by the Commission, Council or the Governing Board before the end of the then-current fiscal year.

8.23.3 The Commission, Council or an institution which is granted any grounds, buildings, office space or other space leased in accordance with West Virginia Code §18B-5-4 may not order or make permanent changes of any type unless the Commission, Council or the Governing Board, as appropriate, has first determined that the change is necessary for the proper, efficient and economically sound operation of the institution. For purposes of this section, a "permanent change" means any addition, alternation, improvement, remodeling, repair or other change involving the expenditure of state funds for the installation of any tangible thing which cannot be economically removed from the

grounds, buildings, office space or other space when vacated by the institution.

8.23.4 Leases and other instruments for grounds, buildings, office or other space, once approved by the Commission, Council or Governing Board, may be signed by the chief executive officer of the Commission, Council or the institution. A lease and other instrument entered into by a Governing Board that exceeds one million dollars in total must receive prior approval of the Commission or Council, as appropriate, before being executed by the Governing Board or institution.

8.23.5 The Commission or Council shall present to the Joint Committee on Government and Finance for prior review any purchase of real estate, any lease-purchase agreement and any construction of new buildings or other acquisitions of buildings, office space, grounds resulting from a lease entered into pursuant to the provisions of West Virginia Code §18B-5-4 (r)(2).

8.23.6 Any lease or instrument exceeding one hundred thousand dollars annually shall be approved as to form by the Attorney General. A lease or other instrument for grounds, buildings, office or other space that contains a term, including any options, of more than six months for its fulfillment shall be filed with the State Auditor.

8.23.7 The Commission and Council may promulgate additional rules deemed necessary to carry out the provisions of this section, and the Vice Chancellor for Administration may issue procedures for complying with this section.

SECTION 9. PROTESTS AND RECONSIDERATION

9.1 Protests and requests for reconsideration of a decision made by a chief procurement officer may only be made by a person and/or vendor who is a potential or actual bidder on that particular contract and/or purchase.

9.2 Protests

9.2.1 Protests based on specifications or improprieties in any type of solicitation which are apparent or should have been apparent prior to the bid or proposal opening or closing date must be filed not later than five calendar days prior to the bid or proposal opening or closing date. A protest of the award must be filed no later than five calendar days following the notice of the institution's intent to award the contract as posted or otherwise

made available in the institution's purchasing office for competitive transactions greater than $25,000. Protests filed prior to five calendar days following the notice of intent to award shall be resolved in accordance with this rule before an award is made. Information regarding awards may be obtained from the institution's purchasing office, and a vendor contemplating a protest has a duty to obtain this information in a timely manner.

9.2.2 The protest must be filed in writing with the chief procurement officer and contain the name and address of the protestor, the requisition number of the bid or the purchase order number, a statement of the grounds for protest and supporting documentation, the relief sought, and if a hearing on the merits of the protest is requested.

9.2.3 The chief procurement officer shall review the protest and issue a decision in writing. In the event a hearing on the merits of the protest is requested by the protestor, the chief procurement officer shall set a time and place for the hearing. The hearing shall be recorded and an official record shall be prepared. Following the hearing, the chief procurement officer shall issue a written decision.

9.3 Reconsideration

9.3.1 Reconsideration of a decision on a protest by the chief procurement officer may be requested by an aggrieved party to the institution's chief financial officer. A request for reconsideration shall be made in writing within five calendar days after receiving the chief procurement officer's written decision, and it shall contain the name and address of the aggrieved party, the requisition or purchase order number, a statement of the grounds for reconsideration with supporting documentation, the relief sought, and if a hearing on the merits is requested.

9.3.2 The chief financial officer shall review the request for reconsideration and issue a decision in writing. In the event a hearing on the merits is requested by the aggrieved party, the chief financial officer shall set a time and place for the hearing. The hearing shall be recorded and an official record shall be prepared. Following the hearing, the chief financial officer shall issue a decision in writing to the aggrieved party and his or her decision shall be final.

9.3.3 The chief procurement officer and chief financial officer may refuse to decide any protest or reconsideration where the matter

involved is the subject of litigation before a court of competent jurisdiction, or has been decided on the merits by such court. The foregoing shall not apply where the court requests, expects or otherwise expresses interest in the decision of the chief procurement officer and chief financial officer.

SECTION 10. SUSPENSION AND RECONSIDERATION

10.1 Suspension

10.1.1 The chief procurement officer shall have authority to suspend, for a period not exceeding one year, the right and privilege of a person to bid on purchases of the institution.

10.1.2 The following shall be considered adequate grounds for suspension of a vendor: (a) a vendor has exhibited a pattern of poor performance in fulfilling its contractual obligation(s) including, but not limited to, providing or furnishing commodities, materials, services or construction late, or at a quantity or quality level below that which is specified in the contract, or repeated instances of poor performance; or (b) the vendor has breached any contract entered into pursuant to the provisions of West Virginia Code §18B-5-4 through §18B-5-9 or this rule, or the vendor has been convicted of any federal or state law punishable as a felony if such conviction is directly related to the performance of a contract entered into pursuant to West Virginia Code §18B-5-4 through §18B-5-9 or this rule. Any such suspension must be imposed within one year of the date of the act, omission, or conviction the suspension is based upon, or within one year of the chief procurement officer's discovery of such act, omission, or conviction.

10.2 Reconsideration

10.2.1 Reconsideration of a decision on suspension by the chief procurement officer may be requested by an aggrieved party to the institution's chief financial officer. A request for reconsideration shall be made in writing within five calendar days after receiving the chief procurement officer's decision and it shall contain the name and address of the aggrieved party, a statement of the grounds for reconsideration with supporting documentation, the relief sought, and if a hearing on the merits is requested.

10.2.2 The chief financial officer will review the request for reconsideration and issue a decision in writing. In the event a

hearing on the merits is requested by the aggrieved party, the chief financial officer shall set a time and place for the hearing. The hearing shall be recorded and an official record prepared. Following the hearing, the chief financial officer will issue a decision in writing to the aggrieved party and his or her decision shall be final.

10.2.3 The chief financial officer may refuse to decide any reconsideration when the matter involved is the subject of litigation before a court of competent jurisdiction, or has been decided on the merits by such court. The foregoing shall not apply when the court requests, expects or otherwise expresses interest in the decision of the institution.

10.3 Vice Chancellor for Administration

10.3.1 An institution that suspends the right and privilege of a vendor to bid on purchases of the institution shall forward a copy of the suspension notice to the chief procurement officer of the Commission Office, who shall maintain a record of such suspension and shall notify all institutions as well as the Director of the State Division of Purchasing of such suspension.

10.3.2 If the chief procurement officer of the Commission Office determines that the actions of the vendor leading to the suspension by an institution are of a serious enough nature to justify imposition of a system-wide suspension, he or she shall forward the suspension and his or her recommendation to the Vice Chancellor for Administration for review. If the Vice Chancellor for Administration determines that the actions of the suspended vendor justify a system-wide suspension, he or she shall notify the vendor and all institutions of the system-wide suspension.

SECTION 11. QUALIFICATIONS OF A BUYER AND A CHIEF PROCUREMENT OFFICER

11.1 Buyer

11.1.1 No person shall be employed as a buyer unless that person, at the time of employment, is either: (a) a graduate of an accredited college or university; or (b) has at least four year's experience in purchasing for any unit of government or for any business, commercial or industrial enterprise.

11.1.2 Any person making purchases and acquisitions pursuant to this section shall execute a bond in the penalty of fifty thousand dollars, payable to the state of West Virginia, with a corporate bonding or surety company authorized to do business in this state as surety thereon, in a form prescribed by the Attorney General and conditioned upon the faithful performance of all duties in accordance with West Virginia Code §18B-5-4 through §18B-5-9 and this rule. In lieu of separate bonds for such buyers, a blanket surety may be obtained. Any such bond shall be filed with the Secretary of State. The cost of any such bond or bonds shall be paid from funds appropriated to the Commission, Council or Governing Board.

11.2 Chief Procurement Officer

11.2.1 From the date of adoption of this rule by the Commission and henceforth, no new person shall be employed as a chief procurement officer unless that person, at the time of employment, is: (a) a graduate of and has received a baccalaureate degree from an accredited college or university; and (b) has at least four year's experience in purchasing for any unit of government or for any business, commercial or industrial enterprise.

11.2.2 The bonding provisions set forth in subparagraph 11.1.2 shall also apply to any person employed as a chief procurement officer.

SECTION 12. PROMPT PAYMENT

12.1 Each institution purchasing or acquiring materials, supplies, equipment, services and printing in accordance with West Virginia Code §18B-5-4 through §18B-5-9 and this rule, shall notify and inform every vendor doing business with that institution of the provisions of West Virginia Code §5A-3-54, also known as the "Prompt Pay Act of 1990."

SECTION 13. RECEIVING AND INVENTORY MANAGEMENT

13.1 Receiving

13.1.1 The chief procurement officer shall establish institutional guidelines and procedures for receiving and distributing materials, supplies, equipment, services and printing to departments and offices within the institution. These guidelines and procedures ~~offices within the institution. These guidelines and procedures~~

shall be consistent with this rule, and they shall be approved by the president, filed with the Vice Chancellor for Administration and shall be on file in the institution's purchasing office and made available to the public upon request.

13.2 Inventory Management

13.2.1 The chief procurement officer shall inventory all equipment and furnishings that have a value at the time of purchase or acquisition of $5,000 or more per unit. Such inventory shall be kept current at all times. An institution may elect to inventory equipment and furnishings with a value less than $5,000 per unit.

13.2.2 The chief procurement officer shall set up and maintain the institution's inventory management system on the basis of generally accepted accounting standards. This system shall also conform to the requirements of the Commission, Council, the Governing Board, the state and the federal government as applicable.

13.2.3 The chief procurement officer shall conduct an annual audit of the institution's inventory.

SECTION 14. DISPOSAL OF SURPLUS OR OBSOLETE MATERIALS, SUPPLIES AND EQUIPMENT

14.1 The chief procurement officer shall identify and inventory the institution's surplus or obsolete materials, supplies and equipment and shall store such materials, supplies and equipment until such time as they may be disposed of in a manner consistent with this rule and state law.

14.2 An institution may dispose of surplus or obsolete materials, supplies and equipment by transfer to other governmental agencies or institutions, by exchange or trade, or by sale as junk or otherwise.

14.3 If the method of disposition is other than by transfer to, or exchange or trade with other governmental agencies or institutions, the chief procurement officer shall, at least ten days prior to the disposition, advertise once a week for two consecutive weeks by newspaper publication as a Class II legal advertisement in compliance with the provisions of West Virginia Code §59-3-1 *et seq.*, in the county where the surplus or obsolete materials, supplies and equipment are located, their availability or sale, in whole or part, at public auction or by sealed bid, as sound business practices may warrant under existing circumstances and conditions.

14.4 An institution may also dispose of surplus or obsolete materials, supplies and equipment through the surplus property unit of the Purchasing Division of the West Virginia Department of Administration; in which case, all of the rules and regulations of the Department of Administration shall be followed.

14.5 Under no circumstances shall any of the property described in this section be sold, transferred or conveyed to any private person, firm or corporation other than at public auction or by sealed bid or as otherwise provided in West Virginia Code §18B-5-7.

14.6 The funds an institution receives from the sale of surplus materials, supplies, and equipment shall be deposited in the institutional account originally used to purchase said materials, supplies, and equipment, if such account is readily ascertainable, minus any administrative costs associated with the disposal.

SECTION 15. VIOLATIONS

15.1 Any person who authorizes or approves a purchase contract in a manner in violation of the West Virginia Code, this rule, or any policy or procedure adopted by the Commission, Council and the Governing Board shall be personally liable for the cost of such purchase or contract. Purchases or contracts violating the West Virginia Code and/or this rule shall be void and of no effect.

15.2 Any person receiving anything of value from a known interested party in the awarding of a purchase order shall be subject to the provisions of West Virginia Code §5A-3-28, -29, -30, -31.

15.3 Except as may be authorized by the provisions of Chapter 6B of the West Virginia Code, neither the Commission, Council, or a Governing Board, nor any employee of the Commission, Council or a Governing Board, shall be financially interested, or have any beneficial personal interest, directly or indirectly, in the purchase of any equipment, materials, supplies, services, or printing, nor in any firm, partnership, corporation or association furnishing them. Neither the Commission, Council or a Governing Board nor any employee of the Commission, Council or a Governing Board shall accept or receive directly or indirectly, from any person, firm or corporation, known by the Commission, Council, Governing Board or such employee to be interested in any bid, contract or purchase, by rebate, gift or otherwise, any money or other thing of value whatsoever or any promise, obligation or contract for future reward or compensation.

15.4 Any vendor violating the West Virginia Code or this rule may be suspended from the right to bid on or submit a proposal for institutional purchases for a period of up to one year.

SECTION 16. PERFORMANCE AUDITS

16.1 The Joint Committee on Government and Finance is required by West Virginia Code to conduct performance audits and the Commission or Governing Board shall be responsible for paying the cost of the audit from funds appropriated to the Commission or Governing Board.

16.2 The Commission also has an obligation under West Virginia Code to conduct performance audits of the policies, procedures and results of the procurement of goods and services by the state institutions of higher education and report to the Legislative Oversight Committee on Educational Accountability (LOCEA) on the results of the performance audits, together with any recommendations for additional actions that might be taken to improve the efficiency, effectiveness and economy of the administrative operations of the institutions and the Commission.

SECTION 17. PERMITTING PRIVATE INSTITUTIONS OF HIGHER EDUCATION TO JOIN AS PURCHASERS

17.1 The Commission and Governing Boards shall permit private institutions of higher education to join as purchasers on purchase contracts for materials, supplies, equipment, services and printing entered into by the Commission, Council and Governing Board or the institutions under the Board's control. Any private school desiring to join as a purchaser on such purchase contracts shall file with the Vice Chancellor for Administration an affidavit signed by the president of the institution of higher education or a designee, requesting that it be authorized to join as a purchaser on such contracts, and agreeing that it will be bound by such terms and conditions as the Commission, Council or Governing Board may prescribe, and that it will be responsible for payment directly to the vendor under each purchase contract.