

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

Form #6

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE**

AGENCY: Department of Administration TITLE NUMBER: 186

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1

TITLE OF RULE BEING AMENDED: Committee for the Purchase of Commodities and
Services from the Handicapped Rules for Fair Market
Price Determination

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

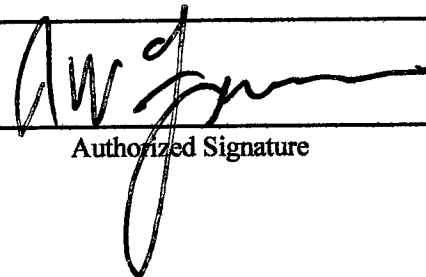
TITLE OF RULE BEING PROPOSED: _____

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) SB 172

SECTION 64-2-3(c), PASSED ON April 11, 2009

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE
FOLLOWING DATE: July 1, 2009



Authorized Signature

**TITLE 186
LEGISLATIVE RULE
COMMITTEE FOR THE PURCHASE OF COMMODITIES
AND SERVICES FROM THE HANDICAPPED**

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**SERIES 1
RULES FOR FAIR
MARKET PRICE DETERMINATION**

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§186-1-1. General.

1.1. Scope. -- The scope of these legislative rules involves the determination by the Committee for the Purchase of Commodities and Services from the Handicapped, of the fair-market price of commodities and services produced or supplied by workshops and rehabilitation facilities and offered for sale by the Central Non-Profit Agency "CNA", to the State and its political subdivisions.

1.2. Authority. -- W. Va. Code §5A-3A-5

1.3. Filing Date. --

1.4. Effective Date. --

§186-1-2. Definitions.

2.1. "CNA" -- means the Central Nonprofit Agency.

2.2. "Committee" -- means the Committee for the Purchase of Commodities and Services from the Handicapped.

2.3. "Commodities" -- means supplies, material, equipment, contractual services, and any other things used by or furnished to a spending unit.

2.4. "Costing" -- means the determination made by the CNA and qualified vendors of the monies needed to be expended to produce a commodity or provide a service. This determination includes the cost of raw materials, supplies, labor costs, capital expenditures, equipment maintenance, overhead, administrative costs, CNA service charges, delivery costs, and other usual, customary, and reasonable costs of manufacturing, marketing, and distribution of a commodity or service.

2.5. "Director" -- means the director of the purchasing division of the department of administration.

2.6. "Fair Market Price" -- means a reasonable price, set by the Committee and approved by the director, which permits the qualified vendor to recover the cost of raw materials, labor, capital, overhead, CNA service charges and delivery costs.

2.7. "Functional capability" means an individual's ability to perform certain activities taking into consideration factors such as mobility, communication, self-care, self-direction, work tolerance or work skills. Functional capability can be determined on the basis of an evaluation of rehabilitation potential.

2.8. "Labor Costs" -- means the wages, fringe benefits (such as holiday, sick leave, insurance, etc.), and employment taxes paid by or on behalf of an employee.

2.9. "Non Profit Workshop", "workshop", and "rehabilitation facility" -- mean an establishment (a) where any manufacture or handiwork is carried on, (b) which is operated either by a public agency or by a cooperative

or by a nonprofit private corporation or nonprofit association, in which no part of the net earnings thereof inures, or may lawfully inure, to the benefit of any private shareholder or individual, (c) which is operated for the primary purpose of providing remunerative employment to blind or severely disabled persons who cannot be absorbed into the competitive labor market, and (d) which shall be approved, as evidenced by a certificate of approval by the state division of rehabilitation services.

2.10. "Qualified Vendor," -- means a non profit workshop, workshop or rehabilitation facility as described in 2.9 of these rules.

2.11. "Reserved or Set Aside" -- means commodities and services that are placed on the statewide contract.

2.12. "Scope of Work" -- means the specifications, time tables, worker qualifications, materials and shipping regulations for a particular commodity or service.

2.13. "Services" -- means a product by labor when that product is not considered a tangible commodity. Services include, but are not limited to, janitorial service, printing, food service, microfilming, temporary labor, and grounds maintenance.

2.14. "Severely disabled" -- means an individual who has a severe physical, visual or mental disability resulting from injury, disease, or congenital defect, which creates a limiting condition to the person's functional capability to engage in competitive employment over an extended period of time.

2.15. "Spending unit" -- means a department, agency or institution of the state government for which an appropriation is requested, or to which an appropriation is made by the Legislature.

2.16. "Statewide Contract" -- means for purposes of these rules a contract between the division of purchasing and the CNA that lists all the commodities and services the committee has approved for the program and has set a fair market price.

§186-1-3. Responsibilities of the Committee, the CNA, and state spending units.

3.1. Committee responsibility.

3.1.1. The Committee, subject to approval by the Director of Purchasing, shall determine the fair market price of all commodities and services provided by qualified vendors and offered for sale to State spending units. As outlined in §186CSR3, the Committee shall determine that the commodities and services provided by the qualified vendor are suitable for sale to the state.

3.1.2. The Committee has a duty to exercise stewardship of the State's resources as well as to the interests of people with disabilities.

3.1.3. To determine the fair market price of commodities or services the Committee must give due consideration to the following factors:

- a. The cost of the commodities or services in similar quantities if purchased by the state from a qualified in-state vendor engaged in the business of selling or providing similar commodities or services as determined by the director;
- b. To the extent applicable, the amount paid by the State in any recent purchases of similar commodities or services in similar quantities, making due allowance for general inflationary or deflationary trends as determined by the director;
- c. The actual cost to the qualified vendor of manufacturing or providing the commodity or

service; and

d. The usual, customary, and reasonable costs of manufacturing, marketing, and distribution.

3.1.4. The Committee has a duty to ensure that employee wages be at least federal minimum wage. If a qualified vendor wishes to compensate an employee more than the federal minimum wage a detailed explanation of why and how they determined the wage must be submitted to the CNA on the appropriate Committee approved form(s).

3.1.5. The fair market price may include a reasonable charge for overhead and profit, however it may not, however, be excessive or unreasonable.

3.2. Responsibilities of the CNA.

3.2.1. The CNA is the designated agent to represent qualified vendors to the Committee and to spending units. As such, the CNA is authorized to negotiate with spending units the prices and terms of contracts procured in accordance with provisions of the W. Va. Code. Qualified vendors may make joint presentations with the CNA to the Committee or spending unit when a matter affecting the qualified vendor is under deliberation.

3.3. Responsibilities of state spending units.

3.3.1. When the Committee is attempting to make an initial fair market price determination, and when the service or commodity has been procured competitively in the past, the spending unit shall provide to the CNA a copy of the most recent solicitation and contract for the service or commodity within ten (10) working days of receipt of request. If the spending unit does not have copies of the most recent solicitation and contract for the service or commodity, the spending unit shall authorize the Purchasing Division to release to the CNA that information, if available, within ten (10) working days of receipt of request by the CNA.

3.3.2. The spending unit must notify the CNA, in writing, of specific changes in the scope of work or other conditions which will be required during the new service period.

§186-1-4. Pricing guidelines established by the Committee.

4.1. The guidelines are as follows:

a. The prices included in the statewide contract are the fair market prices established by the Committee.

b. Unless otherwise provided, fair market prices for commodities include shipping and handling costs charged by private couriers.

c. The fair market price established by the Committee for a service or commodity on the statewide contract remains in effect until a new fair market price is established. In addition to the criteria established in §3.1.3 of these rules, the new fair market price shall be based on (1) any changes in the scope of work or in tasks required by the procuring agency, (2) changes in labor costs, and/or (3) an increase of other costs related to the contract.

d. The fair market price shall apply for the service period determined by the contract. Until a new fair market price has been approved, the qualified vendor must continue to provide the service or commodity in accordance with the scope of work which was the basis for establishing the old fair market price.

e. During the service period, the spending unit and CNA may, by mutual written agreement, make minor modifications in the scope of work and total price of the service, provided the total price adjustment

resulting from such modifications during the normal service period does not affect the total fair market price approved by the Committee by more than twenty percent (20%) or two thousand dollars (\$2,000) whichever is less. A report of the agreement shall be made to the Committee by the CNA. Changes in scope which result in a change of more than twenty percent (20%) or two thousand dollars (\$2,000), of the total annual price shall be processed as a price change for approval by the Committee.

§186-1-5. Initial Fair Market Price Determination Procedures.

5.1. The CNA shall use the following procedure to develop the initial fair market price to be recommended to the Committee.

5.1.1. The CNA shall request a copy of the most recent solicitation or contract (as required under 3.3.1(a) of this rule) of the service or commodity from the spending unit.

5.1.2. The CNA shall request a scope of work from the spending unit.

5.1.3. The qualified vendor must submit to the CNA all costs associated with fulfilling the contract on Committee approved forms and assist the CNA in establishment of the fair market price.

5.1.4. The CNA shall review and verify all costing information submitted by the qualified vendor.

5.1.5. Prior to submission to the Committee, the CNA shall submit a copy of the suggested fair market price to the spending unit. The spending unit is to notify the CNA of any objection in writing within ten (10) working days of receipt.

5.1.6. The CNA shall submit all costing information to the committee and comments from the spending unit using the appropriate forms(s) for approval.

5.1.6.1. Base Price – Each time the committee determines the fair market price, a new base price is established.

5.1.6.2. The qualified vendor shall project costs for at least three (3) years in order to assist state spending units in future years.

5.1.7. The Committee shall review the proposal package submitted by the CNA to determine the fair market price. If additional information or clarification is needed by the committee the appropriate party(s) will be contacted.

5.1.8. The committee shall notify the CNA of the approved fair market price. The CNA shall notify the spending unit and qualified vendor of the committee's action.

§186-1-6. Fair Market Price Modifications.

6.1. The following procedure is used when either a spending unit requests a change in the scope of work/specifications or costing.

6.1.1. The qualified vendor or the spending unit shall submit to the CNA a request for a price change showing a breakdown of the change in the costs using forms provided by the Committee and other appropriate documentation as requested by the CNA or Committee; or

6.1.2. The qualified vendor or the spending unit shall submit to the CNA a request to change the scope of work for a current contract and the reason(s) for the change using forms approved by the Committee and appropriate documentation as requested by the CNA or Committee.

6.1.3. The CNA shall review and verify the breakdown of the changes in the qualified vendors costs.

6.1.4. Prior to submission of the fair market price change request to the Committee, the CNA shall submit a copy of the suggested fair market price to the spending unit. The spending unit is to notify the CNA of any objection in writing within ten (10) working days of receipt of the proposed price, otherwise concurrence with the proposed price shall be assumed.

6.1.5. The CNA shall submit the fair market price change request with supporting data to the Committee. The request is to be accompanied by the following:

- a. A breakdown of changes in the qualified vendors cost using the committee approved form(s).
- b. The objections and/or comments of the spending unit concerning the proposed fair market price change.

6.1.6. The Committee shall review the information submitted and establish the modified fair market price.

6.1.7. The Committee shall transmit the notice of the approved modified fair market price to the CNA. The CNA shall notify the spending unit and the qualified vendor of the Committee's action.

§186-1-7. Miscellaneous provisions.

7.1 Qualified vendors who fail to avail themselves of the protection of W. Va. Code §5A-3-10, which exempts certain workshops and rehabilitation facilities from competitive bidding, may bid competitively on commodities or services without the involvement of the CNA or Committee, provided the commodities or services have not been "reserved" on the statewide contract..

7.2 A qualified vendor may elect to discontinue consideration of a project or to discontinue services if they cannot recover their production costs. The qualified vendor must give the CNA and the committee at least sixty (60) days written notice of their intent to discontinue service.