

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #2

Do Not Mark In this Box

FILED

1992 AUG 18 PM 9:33

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

Department of Administration and
Division of Rehabilitation Services
AGENCY: _____ TITLE NUMBER: 186
RULE TYPE: Legislative; CITE AUTHORITY W. Va. Code Section 5A-3-5
AMENDMENT TO AN EXISTING RULE: YES X NO _____
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 3

TITLE OF RULE BEING AMENDED: Procurement List: Committee for the
Purchase of Commodities and Services from the Handicapped

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH
ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS
COMMENT PERIOD WILL END ON September 17, 1992 AT 4:30 p.m.

ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING
ADDRESS.

Division of Rehabilitation Services
P. O. Box #50890, State Capitol Complex
Charleston, W. Va. 25305
Attn: John L. Parker
Chief, Workshop Support

THE ISSUES TO BE HEARD SHALL BE
LIMITED TO THIS PROPOSED RULE.

John L. Parker, Chief, Workshop Support

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

3.50



STATE OF WEST VIRGINIA
DEPARTMENT OF ADMINISTRATION

State Capitol
Charleston, WV 25305

Gaston Caperton
Governor

Chuck Polan
Secretary

July 31, 1992

Honorable Ken Hechler
Secretary of State
Suite 157-K
Capitol Building
Charleston, West Virginia 25305

Re: Legislative Rules for The Governor's Committee
for the Purchase of Commodities and Services
from the Handicapped: Procurement List

Dear Mr. Hechler:

Approval is hereby given for filing of legislative rules
of the Committee for the Purchase of Commodities and Services
from the Handicapped, entitled "Procurement List," as enclosed,
in accordance with West Virginia Code 5A-3-5.

Sincerely,

A handwritten signature in black ink, appearing to read "Chuck Polan".

Chuck Polan
Secretary

CP:jbb

Enclosure

SUMMARY OF PROPOSED RULE

These legislative rules involve the determination and revision of a procurement list by the Governor's Committee for the Purchase of Commodities and Services from the Handicapped and the Director of the Purchasing Division of the Department of Administration.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Legislative Rules for Establishment of a Procurement List

TYPE OF RULE: X Legislative Interpretive Procedural
Division of

Agency Rehabilitation Services Address P. O. Box 50890, State
Capitol Complex, Charleston, WV 25305

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$	\$	\$
Personal Services					0
Current Expense					0
Repairs and Alterations					0
Equipment					0
Other					0

2. Explanation of above estimates: No additional costs are anticipated by promulgating these rules.

3. Objectives of these rules: To provide procedures for the establishment of an approved procurement list for use by various state buyers and purchasing agents.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

Employment of more of our state's citizens with disabilities who were formerly either earning reduced wages in the state's sheltered workshops or no wages at all.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

Encourage these political subdivisions to participate in the State Use program and derive benefit from it. Impact on specific industries is not known. The impact is also not known on specific groups of citizens.

C. Economic Impact on Citizens/Public at Large.

Not known.

Date: August 18, 1992

Signature of Agency Head or Authorized Representative



TITLE 186
LEGISLATIVE RULES
GOVERNOR'S COMMITTEE
FOR THE PURCHASE OF COMMODITIES
AND SERVICES FROM THE HANDICAPPED

SERIES 3
RULES AND REGULATIONS
PROCUREMENT LIST

§186-3-1. General.

1.1. Scope. -- The scope of these legislative procedural rules involves the determination and revision of a procurement list by the Governor's Committee for the Purchase of Commodities and Services from the Handicapped, "Committee," and the Director of the Purchasing Division of the Department of Administration.

1.2. Authority. -- West Virginia Code, Section 5A-3-5.

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Repeal of Former Rule. -- This legislative rule repeals and replaces WV 186CSR3 "Rules and Regulations Procurement List" filed September 18, 1990, and effective October 19, 1990.

§186-3-2. Definitions.

The following words and terms, when used in these regulations, shall have the following meaning, unless the context clearly indicates otherwise.

2.1. "Allocation" -- means the action taken by the CNA in designating the workshop(s) that will produce definite quantities of commodities or preform specific services upon receipt of an order.

2.2. "CNA" -- means Central Nonprofit Agency.

2.3. "Committee" -- means the Governor's Committee for the Purchase of Commodities and Services from the Handicapped.

2.4. "Commodities" -- means supplies, material, equipment, contractual services, and any other things used by or furnished to a department, agency or institution of state government.

2.5. "Contractual services" -- shall include telephone, telegraph, electric light and power, water and similar services.

2.6. "Director" -- means the director of the division referred to in the heading of the article in which the word appears.

2.7. "Nonprofit workshop" -- means 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 board of vocational education, division of vocational rehabilitation.

2.8 "Rehabilitation Facility" -- means a facility that is operated for the primary purpose of providing vocational rehabilitation services to individuals with handicaps and that provides singly or in combination one or more of the following services:

2.8.1. Vocational rehabilitation services, including under one management, medical, psychiatric, psychological, social and vocational services.

2.8.2. Testing, fitting, or training in the use of prosthetic orthotic devices.

2.8.3. Prevocational conditioning or recreational therapy;

2.8.4. Physical and occupational therapy;

2.8.5. Speech and hearing therapy;

2.8.6. Psychiatric, psychological and social services;

2.8.7. Evaluation of rehabilitation potential;

2.8.8. Personal and work adjustment;

2.8.9. Vocational training with a view toward career advancement (in combination with other rehabilitation services);

2.8.10. Evaluation and control of specific disabilities;

2.8.11. Orientation and mobility services and other adjustment services to blind individuals;

2.8.12. Transitional or extended employment for those individuals with disabilities who cannot be readily absorbed in the competitive labor market;

2.8.13. Psychological rehabilitation services for individuals with chronic mental disabilities;

2.8.14. Rehabilitation engineering services.

2.9. "Reserved or Set Aside" -- means commodities and services are placed on the procurement list for as long as the state requires the commodity or service and it can be provided at a fair-market value.

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

2.11. "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.

2.12. "Workshop" -- means a particular type of vocational rehabilitation facility where any manufacture or handiwork is carried on and which is operated by public agency or by a private corporation or association, no part of the net earning of which inure or may lawfully inure to the benefit of any private shareholder or individual, or by a cooperative, for the primary purpose of providing remunerative employment to disabled persons (a) as an interim step in the rehabilitation process for those who cannot be readily absorbed in the competitive labor market; (b) during such time as employment opportunities for them in the competitive labor market do not exist; or (c) for providing vocational evaluation and work adjustment services for disadvantaged persons.

§186-3-3. Procurement List.

3.1. General. -- The Committee and Director of Purchasing shall approve a procurement list provided by the Central Nonprofit Agency, "CNA", being a list of the products and services offered by qualified workshops and rehabilitation facilities for which a purchasing agency, "PA", and/or Purchasing Division of the Department of Administration, "PD", may have entered into agreements with the workshop or CNA for the product or service. The list may also contain items that the Director of Purchasing and the Committee determines are suitable for procurement by the government of this State. The procurement list and revisions thereof shall be distributed to all purchasing officers of state spending units, political subdivisions and instrumentalities of the State by the CNA. Goods or services placed on the procurement list

must be purchased through the CNA or its agent if the PA is mandated to follow the provisions of Article 3, Chapter 5A of the West Virginia Code.

3.1.1. If any States spending unit, political subdivision or instrumentality intends to obtain any product or service, it shall determine whether the product or service is on the procurement list published in accordance with these regulations. If the needed product or service is on the procurement list, the State spending unit, political subdivision or instrumentality shall obtain such product or service from the procurement list.

3.1.2. Commodities or Services placed on the procurement list are "reserved" for the CNA to assign, subject to Committee approval, to a workshop or rehabilitation facility for as long as the State requires the item or service provided the item continues to meet State specifications for quality and delivery and the item can be provided for the fair-market price set by the Committee, subject to approval by the Director of Purchasing. The Committee shall review prices at least annually and assure that the CNA maintains an updated procurement list and other documents required by the State.

3.1.3. As a requirement for placement on the procurement list, the workshop or rehabilitation facility must provide the Committee and the CNA with full disclosure of all costs and pricing information for use in the determination of the fair-market price by the Committee.

3.2. Commodities. -- For commodities, the procurement list shall include the item description, specification identification, lead time for purchase of materials, delivery or completion time, production or preparation time, price, any state identification numbers required and other pertinent information deemed necessary by the PA, PD, or CNA.

3.3. Services. -- For services, the procurement list shall identify the type of service to be provided, the area(s) and/or spending units to be served, as well as information on process, lead time for purchase of materials, delivery or completion time, production or preparation time, state identification numbers and other pertinent information.

3.4. Facilities Not Being Placed on Procurement List. -- Facilities not wishing to be placed on the procurement list and who fail to avail themselves of the protection of West Virginia Code, Section 5-3A-10, being the exemption from competitive bidding, may bid competitively on goods or services without the involvement of the CNA or Committee, provided the goods or services have not been "reserved" on the procurement list. Such goods or services may be placed on the list for the bidding facility or another facility at any time by the Committee.

3.5. Other Institutions with Preference on the Procurement List. -- Except for items and services provided by workshops and rehabilitation facilities under contract with the State as of July 1, 1990, commodities or services meeting state specifications which are under substantial development or in production by any other institution with preference may be placed on the procurement list with the approval of the Director of Purchasing.

3.5.1. The CNA may negotiate agreements regarding contract reservation with the Prison Industries subject to final approval by the Committee and the Director of Purchasing. The Committee may enter into direct negotiations with the Commissioner of Corrections, Director of Purchasing and Director of the Budget to jointly agree on procedures to coordinate the provisions of West Virginia Code, Article 5B of Chapter 28, the Prison Made Goods Act, and Article 3A of Chapter 5A. In the event of a conflict between institutions with purchasing preference under the West Virginia Code, the Director of Purchasing shall make a final determination as to which institutions, with purchasing preference under the West Virginia Code, the Director of Purchasing shall make a final determination as to which institution may be placed on the procurement list for a specific item.

§186-3-4. Development of Commodities and Services for Reservation on the Procurement List.

4.1. The Committee shall have the discretion in establishing the priority of commodities or services for inclusion on the procurement list.

4.2. The facility first proposing a commodity or service through the CNA for inclusion on the procurement list may be given priority on its assignment, at the sole discretion of the Committee.

4.3. Items to be considered for development may originate from a certified facility, the CNA, or a State spending unit.

4.3.1. When originating from a workshop or rehabilitation facility, the workshop or rehabilitation facility proposing the commodity or service to the CNA may be given priority for set-aside. The workshop or rehabilitation facility must submit to the Committee documentation evidencing product development within ninety (90) days.

4.3.2. When originating from the CNA, the CNA shall distribute appropriate information about the commodity or service in a fair and equitable manner to all certified workshop and rehabilitation facilities as it is feasible. Interested workshop or rehabilitation facilities must provide the CNA with the information requested, as per the guidelines provided by the CNA.

4.3.3. Requests directly from the State spending units shall be in accordance with subsections 4.3.1. or 4.3.2. of this Section, as is appropriate.

4.4. The Committee shall assign commodities or services to the CNA or approved workshop or rehabilitation facility on the basis of subsections 4.1. and 4.2. of this Section.

4.5. The workshop or rehabilitation facility proposing a commodity or service shall complete action to place it on the procurement list within nine (9) months after assignment. If within the nine (9) months, the workshop or rehabilitation facility has not completed action, the Committee may reassign the commodity or service to another workshop or rehabilitation facility capable of producing the commodity or performing the service, provided that the workshop or rehabilitation facility is prepared to take prompt action to submit a proposal to place the commodity or service on the procurement list. Priority on reassignment will be determined by the order in which the workshop and rehabilitation facilities proposed the commodity or service for addition to procurement list, the proponent having the highest priority.

4.6. The Committee may require a pre- or post-production sample for purpose of determining production capability and quality of products at any time prior to or after an item is placed on the procurement list.

4.7. In any case where a certified workshop or rehabilitation facility sells items to the State or political subdivision which has been reserved on the procurement list or by the CNA for another facility without prior Committee approval, or any workshop or rehabilitation facility sells items at a price other than at the procurement list price, the Committee may determine that the workshop or rehabilitation facility is no longer eligible for participation in this program.

§186-3-5. Distribution of Orders.

5.1. The CNA shall distribute orders from the State only to workshops or rehabilitation facilities approved by the Committee to produce the specific commodity or to perform the particular service. When the Committee has approved two or more workshop or rehabilitation facilities to produce a specific commodity, or to perform a particular service, the CNA shall distribute orders among those facilities in a fair and equitable manner.

§186-3-6. Exceptions.

6.1. The Director of Purchasing, upon advice of the Committee or the CNA, may grant exceptions to the requirement that commodities or services be purchased from workshops or rehabilitation facilities without competitive bidding in any

situation where the commodity or service so produced or provided does not meet the reasonable requirements of the purchasing unit or cannot be reasonably provided by a workshop or rehabilitation facility. No spending unit may evade the intent of this section when required goods or services are reasonably available from workshops or rehabilitation facilities.

6.1.1. The CNA shall recommend an exception be granted for a spending unit to procure from commercial sources commodities or services on the procurement list when the workshop or rehabilitation facility cannot furnish a commodity or service within the time period specified by the spending unit.

6.1.2. An exception may be recommended when the quantity involved is insufficient for economical production or provision by the workshop(s) or rehabilitation facility(ies).

6.1.3. When the condition in subsection 6.1.1. of this Section is met, the exception shall be provided promptly, specifying the quantities and delivery covered by the exception.

6.1.4. When the conditions of subsections 6.1.2. and 6.1.3. of this Section have been met and an emergency exists, a reasonable lead notice time shall be given to the CNA to determine whether a workshop or rehabilitation facility can produce and supply the commodity or service.

\$186-3-7. Quality of Commodities and Services.

7.1. Commodities. -- Commodities furnished by qualified workshops and rehabilitation facilities shall be manufactured in strict compliance with government specifications. Where no specifications exist, commodities produced shall be of the highest quality and comparable to similar items available on the commercial market. Commodities shall be inspected utilizing nationally recognized methods and procedures for sampling and inspection.

7.2. Services. -- Services provided by qualified workshops and rehabilitation facilities shall be performed in accordance with government specifications and standards. Where no specifications or standards exist, the service shall be performed in accordance with good commercial practices.

\$186-3-8. Specification Changes.

8.1. Specifications cited in the procurement list may be revised when needed to keep current with industry changes and government needs. Since it is not feasible to show the latest revision on the publication date, only the basic specification shall be referenced in the procurement list. Procurement agencies shall notify the CNA of the latest applicable specifications.

8.2. When an ordering office of the State, its political subdivision or instrumentalities, is changing the design or construction of a commodity on the procurement list, the Committee and CNA shall be notified of the contemplated changes prior to the effective date and shall be given a reasonable time in which to redesign or retool and incorporate such change in its listed products.

§186-3-9. Production of Commodities and Value Added.

9.1. Workshop and rehabilitation facilities shall seek broad competition in the purchase of raw materials and components used in the commodities and services provided to the State. Workshops and rehabilitation facilities shall consult with the CNA before entering into multi-year contracts for raw materials or components used in the commodities and services provided to the State.

9.2. In the production of commodities, a workshop or rehabilitation facility shall make a value added contribution to the commodity by the reforming of raw materials, package modification, assembly of components, installation, warehousing, handling or a combination thereof. Shipments of goods from a non-certified provider directly to the State are not eligible for the procurement list or participation in the program.

§186-3-10. Allocation and Orders.

10.1. Allocation. -- Allocation is the action taken by the CNA in designating the workshop(s) that will produce definite quantities of commodities or perform specific services upon receipt of an order. In cases where contracts are in the name of the CNA and a producing facility is unable to meet specification or delivery requirements, the CNA may allocate orders to another certified workshop or rehabilitation facility. Notice of this action shall be given to the Executive Secretary of the Committee. Purchasing agencies shall purchase commodities and services on the procurement list by contracting with CNA.

10.2. Purchase orders.

10.2.1. Purchase orders shall contain:

10.2.1.a. For commodities-vendor's name, address and federal tax identification number, commodity class and number, latest specifications, quantity, unit price, item description, and place and time of delivery.

10.2.1.b. For services-type and location of service required, latest specifications, work to be performed, estimated volume and time for completion.

10.2.2. Ordering offices shall issue purchase orders with sufficient time for the CNA to reply, for the order(s) to be allocated, and for the workshop or rehabilitation facility to produce the commodity or provide the service.

10.2.3. The CNA shall make allocations to the appropriate workshop(s) and rehabilitation facility(ies) upon receipt of an order from the ordering office.

10.2.4. The CNA shall promptly acknowledge purchase orders. When a purchase order provides a delivery schedule which cannot be met, the CNA shall request a revision, which the ordering office should grant, if reasonable, or the CNA shall issue a purchase exception authorizing procurement from commercial sources.

10.2.5. The CNA shall keep the ordering office informed of any changes in the lead time experienced by a workshop(s) or rehabilitation facility(ies) in order to keep to a minimum requests for extensions once an order is placed by an ordering office. Where, due to unusual conditions, an order does not provide sufficient lead time, the CNA may request an extension of the delivery or completion date which should be granted, if reasonable. If extension of delivery or completion date is not reasonable, the ordering office shall first notify the CNA to reallocate or to request an exception authorizing procurement from commercial sources.

§186-3-11. Adjustment and Cancellation of Orders.

11.1. When the CNA, a workshop or a rehabilitation facility fails to comply with the terms and conditions of a government order, the ordering office shall make reasonable efforts to negotiate adjustments before taking action to cancel the order. When a government order is cancelled for failure to comply with its terms and conditions, the CNA shall be notified, and if practical, be requested to reallocate the order. The CNA shall notify the Committee of any cancellation of an order and the reason(s).

§186-3-12. Shipping and Packing.

12.1. Commodities shall be shipped freight (FOB destination). Delivery is accomplished when a shipment is received and accepted by the purchasing agency. Time of delivery is the date stated on the procuring agency purchase order.

12.2. Standard packing information, unless otherwise stated in the specifications, shall be provided by the facility via the CNA to the procuring agency.

12.3. Subject to approval by the Committee, the CNA, when it deems necessary, may request payment from procuring agencies for set-up costs or costs incurred related to unusual delivery requests of commodities.

12.4. Unless otherwise provided, routine correspondence or inquiries concerning deliveries of commodities being shipped from or performance of service by workshops and rehabilitation facilities shall be with the CNA.

\$186-3-13. Payments.

13.1. Payments for products and services of a workshop or rehabilitation facility are due immediately after receipt of shipment or receipt of a correct invoice or voucher and acceptance by the purchasing agency. Payments for commodities or services shall be paid to the official contracting agency, i.e., the workshop, rehabilitation facility, or CNA.