

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #4

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Purchase of Commodities & Services TITLE NUMBER: 186

CITE AUTHORITY §5A-3A-5

AMENDMENT TO AN EXISTING RULE: YES ☒ NO ☐

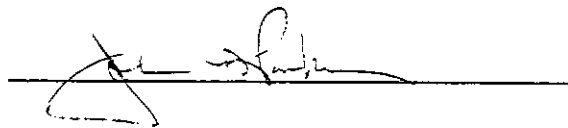
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 3

TITLE OF RULE BEING AMENDED: Rules & Regulations Procurement List

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

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.



3.80

TITLE 186
LEGISLATIVE RULES
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 rules involves the determination and revision of a procurement list by the 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. -- W. Va. Code, § 5A-3-5.
5A-3A-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 the Central Nonprofit Agency.

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

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

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

2.6. "Costing"--means the determination made by the CNA and workshops or rehabilitation facilities of the monies needed to produce a commodity or provide a service. This determination includes the cost of raw materials, supplies, labor (using Federal prevailing wage guidelines), fringe benefits, 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.

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

2.8. "Procurement List" -- means a list of the commodities and services offered by the CNA and qualified workshops or rehabilitation facilities, for which the purchasing agency or the purchasing division has entered into an agreement. The list may also contain items that the Director of Purchasing and the Committee determines are suitable for procurement.

2.9 "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:

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

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

2.9.3. Prevocational conditioning or recreational therapy;

2.9.4. Physical and occupational therapy;

2.9.5. Speech and hearing therapy;

2.9.6. Psychiatric, psychological and social services;

2.9.7. Evaluation of rehabilitation potential;

2.9.8. Personal and work adjustment;

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

2.9.10. Evaluation and control of specific disabilities;

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

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

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

2.9.14. Rehabilitation engineering services.

2.10. "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 price.

2.11. "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.

2.12. "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.

2.13. "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 the Director of Purchasing approve the procurement list provided by the CNA. CNA distributes the procurement list and revisions to all purchasing officers of state spending units, political subdivisions and instrumentalities of the State. Commodities or services placed on the procurement list must be purchased through the CNA or its agent if the purchasing agency or purchasing division is mandated to follow the provisions of W. Va. Code, § 5A-3A-1 et seq.

3.1.1. If any State spending unit, political subdivision or instrumentality intends to obtain any commodity or service, it must determine whether the commodity or service is on the procurement list published in accordance with these regulations. If the needed commodity or service is on the procurement list, the State spending unit, political subdivision or instrumentality is to obtain the commodity or the 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 commodity or service, provided the commodity or service continues to meet State specifications for quality and delivery and the commodity or service can be provided for the fair-market price set by the Committee, subject to approval by the Director of Purchasing. The Committee is to 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 is to 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 includes the item description, the specification identification, the lead time for purchase of materials, the delivery or completion time, the production or preparation time, the price, the state identification numbers required and other pertinent information considered necessary by the procuring agencies, purchasing division, or CNA.

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

3.4. Workshops or Rehabilitation Facilities Not Being Placed on Procurement List. -- Workshops or Rehabilitation Facilities not wishing to be placed on the procurement list and who fail to avail themselves of the protection of W. Va. Code, § 5-3A-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 procurement list. Such commodities 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 commodities 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, the Director of Purchasing and the Director of the Budget to jointly agree on procedures to coordinate the provisions of W. Va. Code, § 28-5B-1 et seq., the Prison Made Goods Act, and W. Va. Code, §5A-3A-1 et seq. 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 institution may be placed on the procurement list for a specific commodity or service.

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

4.1. When two (2) or more workshops or rehabilitation facilities have the ability to produce the same or similar commodities or services, the Committee has the discretion to establish 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 first choice to produce a commodity or provide a service, at the sole discretion of the Committee.

4.3. Commodities or services to be considered for development may originate from a certified or approved workshop or rehabilitation 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 or approved workshops and rehabilitation facilities as it is feasible. Interested workshops 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 Sections 4.3.1. or 4.3.2. of this rule, as is appropriate.

4.4. The Committee assigns commodities or services to the CNA or approved workshop or rehabilitation facility on the basis of Sections 4.1. and 4.2. of this rule.

4.5. The workshop or rehabilitation facility proposing a commodity or service is to complete all action necessary to place the commodity or service on the procurement list within nine (9) months after the request that the commodity or service be set-aside. 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 is determined by the order in which the workshop or rehabilitation facility proposed the commodity or service for addition to the procurement list, the proponent having the highest priority.

4.6. The Committee may require a pre- or post-production sample for the purpose of determining production capability and quality of products.

4.7. In any case where a certified or approved workshop or rehabilitation facility sells commodities or service to the State or political subdivision which has been reserved on the procurement list or by the CNA for another workshop or rehabilitation 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 the program provided for under W. Va. Code, § 5A-3-1 et seq.

§186-3-5. Distribution of Orders.

5.1. The CNA is to 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 is to 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 listed on the procurement list 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 spending unit or cannot be reasonably provided by a workshop or rehabilitation facility. No spending unit may evade the intent of this section when required commodities or services are reasonably available from workshops or rehabilitation facilities.

6.1.1. The CNA is to 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. The CNA may recommend an exception when the quantity involved is insufficient for economical production or provision by the workshop or rehabilitation facility.

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

6.1.4. When the conditions of Sections 6.1.2. and 6.1.3. of this rule are 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 are to be manufactured in strict compliance with government specifications. Where no specifications exist, commodities produced are to be of the highest quality and comparable to similar items available on the commercial market. The CNA and workshops or rehabilitation facilities are to inspect commodities to be inspected utilizing nationally recognized methods and procedures for sampling and inspection.

7.2. Services. -- Services provided by qualified workshops and rehabilitation facilities are performed in accordance with government specifications and standards. Where no specifications or standards exist, the service is 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. Only the basic specifications are to be referenced in the procurement list. The purchasing agency or the purchasing division is to notify the CNA of the latest applicable specifications.

8.2. When a spending unit 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 are to be notified of the contemplated change prior to the effective date and given a reasonable time in which to redesign or retool and incorporate the change in its listed products.

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

9.1. Workshops and rehabilitation facilities are to 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 are to 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 is to 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 commodities 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 of Orders.

10.1. Allocation. -- In cases where contracts are in the name of the CNA and a producing workshop or rehabilitation 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 is given to the Executive Secretary of the Committee. Spending units are to purchase commodities and services on the procurement list by contracting with the CNA.

10.2. Purchase orders.

10.2.1. Purchase orders are to contain:

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

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

10.2.2. Spending units are to issue purchase orders with sufficient time for the CNA to reply, for the orders) to be allocated, and for the workshop or rehabilitation facility to produce the commodity or provide the service.

10.2.3. The CNA is to make allocations to the appropriate workshop and rehabilitation facility upon receipt of an order from the spending unit.

10.2.4. The CNA is to promptly acknowledge purchase orders. When a purchase order provides a delivery schedule which cannot be met, the CNA is to request a revision, which the spending unit should grant, if reasonable, or the CNA is to notify the Director who may issue a purchase exception authorizing procurement from commercial sources.

10.2.5. The CNA is to keep the spending unit informed of any changes in the lead time experienced by a workshop or rehabilitation facility 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 the delivery or completion date is not reasonable, the spending unit is to 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 spending unit is to 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 is notified, and if practical, requested to reallocate the order. The CNA is to notify the Committee of any cancellation of an order and the reasons for cancellation.

§186-3-12. Shipping and Packing.

12.1. Commodities are to 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 purchasing agency's or purchasing division's purchase order.

12.2. The workshop or rehabilitation facility, via the CNA to the purchasing agency or purchasing division, is to provide standard packing information, unless otherwise stated.

12.3. Subject to approval by the Committee, the CNA, when it considers 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, is to be maintained by 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 the shipment or receipt of a correct invoice or voucher and acceptance by the purchasing agency or purchasing division. Payments for commodities or services are to be paid to the workshop, rehabilitation facility, or CNA.

44 contribution system). are authorized.

45 --(e) The legislative rules filed in the state register on
46 the fifth day of November, one thousand nine hundred
47 ninety-one, modified by the consolidated public retire-
48 ment board to meet the objections of the legislative rule-
49 making review committee and refiled in the state
50 register on the twenty-second day of January, one
51 thousand nine hundred ninety-three, relating to the
52 consolidated public retirement board (benefit determi-
53 nation and appeal), are authorized.

§64-2-10. Committee for the purchase of commodities and services from the handicapped.

1 (a) The legislative rules filed in the state register on
2 the eighteenth day of September, one thousand nine
3 hundred ninety-two, modified by the committee for the
4 purchase of commodities and services from the handi-
5 capped to meet the objections of the legislative rule-
6 making review committee and refiled in the state
7 register on the seventeenth day of February, one
8 thousand nine hundred ninety-three, relating to the
9 committee for the purchase of commodities and services
10 from the handicapped (procurement list: committee for
11 the purchase of commodities and services from the
12 handicapped), are authorized with amendments set
13 forth below:

14 On page two, subsection 2.9., by striking out the
15 entirety of said subsection and inserting in lieu thereof
16 the following: "Nonprofit workshops", "workshops" and
17 'rehabilitation facility' means an establishment (a)
18 where any manufacture or handiwork is carried on, (b)
19 which is operated either by a public agency or by a
20 cooperative or by a nonprofit private corporation or
21 nonprofit association, in which no part of the net
22 earnings thereof inures, or may lawfully inure, to the
23 benefit of any private shareholder or individual, (c)
24 which is operated for the primary purpose of providing
25 remunerative employment to blind or severely disabled
26 persons who cannot be absorbed into the competitive
27 labor market, and (d) which shall be approved, as
28 evidenced by a certificate of approval, by the state board

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29 of vocational education, division of vocational
30 rehabilitation.”;

31 On page three, subsection 2.13., by striking out the
32 entirety of said subsection.;

33 On page five, subsection 4.2., by striking out the word
34 “facility” and inserting in lieu thereof the word
35 “workshop”;

36 And,

37 On page six, subsection 4.7., by striking out the words
38 ‘certified or approved’.”

39 (b) The legislative rules filed in the state register on
40 the eighteenth day of September, one thousand nine
41 hundred ninety-two, modified by the committee for the
42 purchase of commodities and services from the handi-
43 capped to meet the objections of the legislative rule-
44 making review committee and refiled in the state
45 register on the seventeenth day of February, one
46 thousand nine hundred ninety-three, relating to the
47 committee for the purchase of commodities and services
48 from the handicapped (qualifications for participation:
49 committee for the purchase of commodities and services
50 from the handicapped), are authorized with amend-
51 ments set forth below:

52 “On page one, subsection 2.1., by striking out the
53 entirety of said subsection;

54 On page one, subsection 2.3., by striking out the
55 entirety of said subsection;

56 On page two, subsection 2.7., by striking out the
57 entirety of said subsection;

58 On page two, subsection 2.8., by striking out the
59 entirety of said subsection;

60 On page three, subsection 2.10., by striking out the
61 entirety of said subsection and inserting in lieu thereof
62 the following ‘Nonprofit workshop’, ‘workshop’ and
63 ‘rehabilitation facility’ means an establishment (a)
64 where any manufacture or handiwork is carried on, (b)
65 which is operated either by a public agency or by a

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WEST VIRGINIA LEGISLATURE
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
Room M-152, State Capitol
Charleston, West Virginia 25305
(304) 340-3286

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Senator William R. Wooton, Co-Chair
Delegate David Grubb, Co-Chair

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE
Debra A. Graham, Counsel
~~Michael McThomas, Associate Counsel~~
Marie Nickerson, Admr. Assistant

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

January 12, 1993

TO: Ken Hechler, Secretary of State, State Register

TO: Mr. John L. Parker
Chief, Workshop Support
Division of Rehabilitation Services
P. O. Box 50890, Capitol Complex
Charleston, WV 25305

FROM: Legislative Rule-Making Review Committee

PROPOSED RULE: Procurement List: Committee for the Purchase of
Commodities and Services from the Handicapped

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule
(a) as originally filed
(b) as modified by the agency X
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached. _____
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____
5. Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached. _____

Pursuant to Code 29A-3-11(c), this notice has been filed in the State Register and with the agency proposing the rule.

cc: