

Form #2

2008 JUL -2 PM 3:10

TITLE OF RULE BEING PROPOSED: _____

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

Agency: Department of Administration
Rule Type: Legislative

Title Number: 186
Cite Authority: 5A-3A-5

STATEMENT OF CIRCUMSTANCE AND BRIEF SUMMARY

The Committee for the Purchase of Commodities and Services from the Handicapped proposes revising its Legislative Rules on Statewide Contract in order to bring language up-to-date. These rules set the standard of how commodities and services are placed on the statewide contract for what is known as the State Use Program as described in 5A-3-10 of the West Virginia State Code. In addition, an Adverse Small Business Impact section has been added to the rules including the opportunity for a small business representative to appear before the Committee prior to a commodity or service being placed on the statewide contract.

2006 JUL -2 PM 3:40

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

SERIES 3
RULES AND REGULATIONS ~~PROCUREMENT LIST~~ STATEWIDE CONTRACT

§186-3-1. General.

1.1. Scope. -- The scope of these legislative rules involves the determination and revision of a ~~procurement list~~ the statewide contract 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-3A-5

1.3. Filing Date. -- ~~June 17, 1993~~

1.4. Effective Date. -- ~~June 17, 1993~~

§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)~~ qualified vendor(s) that will produce definite quantities of commodities or ~~perform~~ perform 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 spending unit. ~~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 ~~committee~~ CNA and qualified vendors ~~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 costs, ~~(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. "Fair Market Price" -- means a reasonable price, set by the Committee and approved by the director, which can recover for the qualified vendor the cost of raw materials, labor, capital, overhead, CNA service charges and delivery costs

~~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. "Non Profit Workshop, 'workshop', and rehabilitation facility" -- 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.~~ state division of rehabilitation services.

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

~~2.10. 2.11. "Reserved or Set Aside" -- means commodities and services that are placed on the statewide contract, 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. 2.12. "Services" -- means a product by labor when that product is not considered 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. "Statewide Contract" -- for purposes of these rules a contract between the division of purchasing and the CNA which lists all the commodities and services the committee has approved for the program and has set a fair market price.

§186-3-3. Procurement List, Statewide Contract.

3.1. The CNA must provide to the Committee a list of commodities and services available from qualified vendors for consideration for the statewide contract. The following information must be provided to the committee prior to making such determination:

~~3.1. General. -- The Committee and 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. 3.1.1. 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.~~

~~3.1.1.a. Commodities.— For commodities, the procurement list includes identify 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.~~

~~3.1.1.b. Services.— For services, the procurement list identifies identify 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.~~

~~3.1.2. When the current vendor is a small business and the individual service or commodity in question comprises 33% or more of the total annual sales of that business, the current vendor will not be displaced, unless the agency requests a change in a vendor or the vendor leaves the contract voluntarily. The CNA shall provide the committee with the name(s) of the small business(s) and the percentage of the impact to the business(s) if the commodity or service is lost.~~

~~3.1.2.a. The committee shall provide a 60 day notification to a current vendor of a service or commodity prior to consideration for placement on the statewide contract.~~

~~3.1.2.b. The current vendor may appear before the committee prior to the commodity or service being placed on the statewide contract.~~

~~3.2. The committee shall approve all commodities or services prior to their placement on the statewide contract.~~

~~3.3. The committee shall transmit its recommendation(s) to the director, who has final approval. If the director wants more information from the committee he/she may request it.~~

3.4. Commodities or services placed on the statewide contract must be purchased through the CNA if the spending unit is mandated to follow the provisions of W.Va. Code §5A-3A-1 et seq.

3.4.1. If any state spending unit intends to obtain any commodity or service, it must determine whether the commodity or service is on the statewide contract. If the needed commodity or service is on the statewide contract it shall be obtained from the contract.

3.4.2. Commodities or services placed on the statewide contract are "reserved" for the committee to assign.

~~3.4.3. 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 Qualified vendors 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 statewide contract 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: 3.5. Other Institutions with Preference on the Procurement List. -- Except for commodities and services provided by workshops and rehabilitation facilities qualified vendors 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 qualified vendors ~~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 statewide contract. ~~procurement list.~~

4.2. The ~~workshop~~ qualified vendor first proposing a commodity or service through the CNA for inclusion on the statewide contract ~~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 qualified vendor ~~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~~ A qualified vendor must submit to the Committee documentation evidencing product development within ninety (90) days, in order to be given priority for set aside.

4.3.1.a. The qualifying vendor proposing a commodity or service shall complete all action necessary to place the commodity or service on the statewide contract within nine (9) months after the request that the commodity or service be set aside. If within nine (9) months the qualified vendor has not completed action, the committee may reassign the commodity or service to another qualified vendor capable of producing the commodity or performing the service. Provided, that the qualified vendor is prepared to take prompt action to submit a proposal to place the commodity or service on the statewide contract. Priority on reassignment is determined by the order in which the qualified vendor proposed the commodity or service for addition to the statewide contract.

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~~ qualified vendors, workshops and rehabilitation facilities as it is feasible. Interested workshops or rehabilitation facilities Interested qualified vendors 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 qualified vendors ~~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.~~ 4.5. The Committee may require a pre- or post-production sample for the purpose of determining production capability and quality of products, at any time.

~~4.7.~~ 4.6. In any case where a ~~workshop or rehabilitation facility~~ qualified vendor sells commodities or service to a spending unit ~~the State or political subdivision~~ which has been reserved on the ~~procurement list or by the CNA for another workshop or rehabilitation facility~~ the statewide contract without prior Committee approval, or any qualified vendor ~~workshop or rehabilitation facility~~ sells items at a price other than at the ~~procurement list~~ statewide contract price, the Committee may determine it is ~~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~~ shall distribute orders from the State only to ~~workshops or rehabilitation facilities~~

~~qualified vendors approved by the Committee to produce the specific commodity or to perform the particular a service on the statewide contract. 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.~~

5.2. When the Committee has approved two or more qualified vendor's to produce a specific commodity, or to perform a particular service, the CNA shall distribute orders among those facilities in accordance with an assignment policy approved by the committee.

§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 statewide contract be purchased from qualified vendors 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 qualified vendor. a workshop or rehabilitation facility. No spending unit may evade the intent of this section when required commodities or services are reasonably available from qualified vendors. workshops or rehabilitation facilities.

6.1.1. ~~The CNA is to recommend~~ shall grant an exception in writing be granted for a spending unit, to procure from commercial sources commodities or services on the statewide contract procurement list, when the qualified vendor workshop or rehabilitation facility cannot furnish a commodity or service within the time period specified by the spending unit or when the quantity involved is insufficient for economical production or provision by the qualified vendor. The CNA shall report exceptions to the committee.

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. ~~6.1.2~~ When the conditions of Sections 6.1.2 and 6.1.3 of this rule are met and an emergency exists, a A reasonable lead notice time shall be given to the CNA to determine whether a qualified vendor 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 vendors workshops and rehabilitation facilities are to shall be manufactured in strict compliance with government specifications. Where no specifications exist, commodities produced are to shall be of the highest quality and comparable to similar items available on the commercial market. The CNA and workshops or rehabilitation facilities qualified vendors are to shall inspect commodities ~~be inspected~~ utilizing nationally recognized methods and procedures for sampling and inspection.

7.2. ~~Services.~~ Services provided by qualified vendors 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 statewide contract 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 purchasing division is to notify the CNA of the latest applicable specifications.~~

8.2. When ~~an~~ a spending unit of the State, its political subdivisions or instrumentalities, is changing the design or construction of a commodity on the statewide contract, procurement list, the Committee and CNA ~~are to~~ shall be notified of the contemplated change prior to the effective date. ~~and given a~~ A reasonable time shall be given to qualified vendors 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~~ Qualified vendors ~~are to~~ 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~~ Qualified vendors ~~are to~~ 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 qualified vendor ~~workshop or rehabilitation facility is to~~ 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 commodities from a non-certified provider directly to the State may not be sold under the statewide contract. ~~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~~ When a qualified vendor is unable to meet specification or delivery requirements, the CNA may allocate orders to another qualified vendor ~~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~~ shall contain:

a. For commodities -- qualified 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.

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~~ shall issue purchase orders with sufficient time for the CNA to respond ~~and for the order to be allocated to a qualified vendor. 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~~ shall make allocations to the appropriate qualified vendor ~~workshop and rehabilitation facility~~ upon receipt of an order from the spending unit.

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

10.2.5. The CNA shall ~~is to~~ keep the spending unit informed of any changes in the lead time experienced by a qualified vendor ~~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~~ shall first notify the CNA to reallocate or to request an exception authorizing procurement from commercial sources.

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

11.1. When the CNA, ~~a workshop or a rehabilitation facility~~ or qualified vendor fails to comply with the terms and conditions of a government order, the spending unit ~~is to~~ 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 is notified, and if practical, requested to reallocate the order. The CNA ~~is to~~ shall 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~~ shall be shipped freight (FOB destination). Delivery is accomplished when a shipment is received and accepted by the spending unit purchasing agency. Time of delivery is the date stated on the spending units 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.~~ Standard packing information shall be provided in the order, unless otherwise stated in the contract.

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 a qualified vendor ~~workshops and rehabilitation facilities~~, is to be maintained by the CNA.

§186-3-13. Payments.

13.1. Payments for ~~products~~ commodities and services of a qualified vendor ~~workshop or rehabilitation facility~~ are due immediately after receipt of the shipment or receipt of a correct invoice or voucher and acceptance by the spending unit. ~~Payments for commodities or services are to be paid to the workshop;~~

~~rehabilitation facility or CNA.~~

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Rules and Regulations for Statewide Contract

Type of Rule: ☒ Legislative ☐ Interpretive ☐ Procedural

Agency: Department of Administration

Address: Penney A. Hall, Chairperson, Committee for the Purchase of Commodities and Services from the Handicapped, Department of Administration, 1900 Kanawha Blvd., East, State Capitol Room E-119, Charleston, West Virginia 25305

Phone Number: 558-1783 Email: penney.a.hall@wv.gov

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

There will not be any fiscal impact because of these rules. They bring language up-to-date and make the procedures used by the Committee more understandable. They add a notification period if a commodity or service is to be placed on the State Use Statewide Contract which would impact a small business and gives the small business the opportunity to appear before the Committee.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: _____

Rule Title: Rules and Regulations for Statewide Contract

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

MEMORANDUM

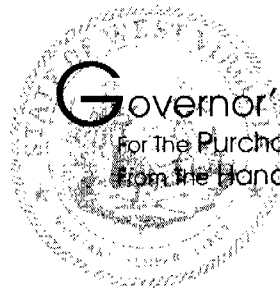
Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

Date: _____

Signature of Agency Head or Authorized Representative

Bennett L. Hall, Chairperson

Alvin Ferguson



Governor's **C**ommittee

For the Purchase of Commodities & Services
from the Handicapped

1900 Kanawha Boulevard, East
State Capitol, Room E-119
Charleston, West Virginia 25305-0120
304.558.1783

July 2, 2008

Via Hand-Delivery

The Honorable Betty Ireland
Secretary of State
Building 1, Suite 157K
1900 Kanawha Boulevard, East
Charleston, WV 25305

Re: Legislative Rules

Dear Secretary Ireland,

I am enclosing an original and one copy of the documents listed below for filing. The proposed rules are being filed in regard to the Committee for the Purchase of Commodities and Services from the Handicapped Rules and Regulations for Statewide Contract. I will provide a copy of the enclosed documents to the Legislative Rule Making Review Committee once they are marked filed by your office.

The documents enclosed consist of the following:

1. Notice of Comment Period on a Proposed Rule,
2. Statement of Circumstance and Brief Summary,
3. Proposed Rules, and
4. Fiscal Note for Proposed Rules.

Thank you very much for your assistance. If you have any questions, or need any additional information, please do not hesitate to give me a call.

Sincerely,

Penney A. Hall
Committee Chairperson

Enclosures