

**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: 3

TITLE OF RULE BEING AMENDED: Committee for the Purchase of Commodities and  
Services from the Handicapped Rules for Statewide  
Contracts

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: \_\_\_\_\_

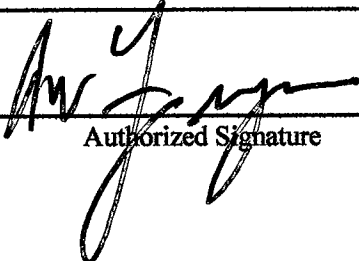
TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

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(d), 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 RULES  
COMMITTEE FOR THE PURCHASE OF COMMODITIES  
AND SERVICES FROM THE HANDICAPPED

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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

SERIES 3  
RULES FOR DETERMINING CONTENT OF STATEWIDE CONTRACT

**§186-3-1. General.**

1.1. Scope. -- The scope of this legislative rule includes the determination and revision of the statewide contract by the Committee for the Purchase of Commodities and Services from the Handicapped, 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. --

1.4. Effective Date. --

**§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 qualified vendor(s) that will produce definite quantities of commodities or 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.

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 qualified vendors of the monies needed 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.

2.7. "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

2.9. "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.

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

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

2.11. "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.

2.12. "Small Business" -- means any person, firm, corporation, partnership or association actively engaged in business in the State of West Virginia who employs no more than fifty (50) people. Companies which are affiliated companies or which are eligible to file a combined tax return for state tax purposes shall be considered one employer.

2.13. "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.

2.14. "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. 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:

3.1.1. All costs and pricing information for use in the determination of the fair market price by the Committee.

3.1.1.a. For commodities 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. For services 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. 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.

3.5. Other Institutions with Preference on the Statewide Contract. -- Except for commodities and services provided by 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 the Statewide Contract.**

4.1. When two (2) or more qualified vendors 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.

4.2. The qualified vendor first proposing a commodity or service through the CNA for inclusion on the statewide contract is given first choice to produce a commodity or provide a service.

4.3. Commodities or services to be considered for development may originate from a qualified vendor, the CNA, or a State spending unit.

4.3.1. 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 qualified vendors. 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 on the basis of Sections 4.1 and 4.2 of this rule.

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.

4.6. In any case where a qualified vendor sells commodities or service to a spending unit which has been reserved on the statewide contract without prior Committee approval, or any qualified vendor sells items at a price other than at the statewide contract price, the Committee may determine it 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 shall distribute orders from the State only to qualified vendors approved by the Committee to produce the commodity or to perform a service on the statewide contract.

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 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. No spending unit may evade the intent of this section when required commodities or services are reasonably available from qualified vendors.

6.1.1. The CNA shall grant an exception in writing for a spending unit, to procure from commercial sources commodities or services on the statewide contract when the qualified vendor 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 A reasonable time shall be given to the CNA to determine whether a qualified vendor can produce and supply the commodity or service.

### **§186-3-7. Quality of Commodities and Services.**

7.1. Commodities furnished by qualified vendors 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. The CNA and qualified vendors shall inspect commodities utilizing nationally recognized methods and procedures for sampling and inspection.

7.2 Services provided by qualified vendors 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 may be revised when needed to keep current with industry changes and government needs.

8.2. When a spending unit is changing the design or construction of a commodity on the statewide contract, the Committee and CNA shall be notified of the contemplated change prior to the effective date. A reasonable time shall be given to qualified vendors in which to redesign or retool and incorporate the change.

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

9.1 Qualified vendors shall seek broad competition in the purchase of raw materials and components used in the commodities and services provided to the State. Qualified vendors 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 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.

### **§186-3-10. Allocation of Orders.**

10.1. When a qualified vendor is unable to meet specification or delivery requirements, the CNA may allocate orders to another qualified vendor. Notice of this action is given to the Executive Secretary of the Committee.

#### 10.2. Purchase Orders.

##### 10.2.1. Purchase orders 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 shall issue purchase orders with sufficient time for the CNA to respond and for the order to be allocated to a qualified vendor.

10.2.3. The CNA shall make allocations to the appropriate qualified vendor upon receipt of an order from the spending unit.

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 spending unit should grant, if reasonable, or the CNA shall notify the Director who may issue a purchase exception authorizing procurement from commercial sources.

10.2.5. The CNA shall keep the spending unit informed of any changes in the lead time experienced by a qualified vendor 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 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, or qualified vendor fails to comply with the terms and conditions of a government order, the spending unit 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 shall notify the Committee of any cancellation of an order and the reasons for cancellation.

**§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 spending unit. Time of delivery is the date stated on the spending units purchase order.

12.2. 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 is to be maintained by the CNA.

**§186-3-13. Payments.**

13.1. Payments for commodities and services of a qualified vendor are due immediately after receipt of the shipment or receipt of a correct invoice or voucher and acceptance by the spending unit.