

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION**

Form #2

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2002 MAY 30 P 4:09

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Purchase of Commodities & Services from the TITLE NUMBER: 186

RULE TYPE: Legislative CITE AUTHORITY: Handicapped 5A-3-10

AMENDMENT TO AN EXISTING RULE: YES X NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 4

TITLE OF RULE BEING AMENDED: Rules and Regulations for Qualifications for Participation

IF NO, SERIES NUMBER OF 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 July 1, 2002 AT 4:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Donna Prunty, Executive Coordinator

Department of Administration

1900 Kanawha Boulevard, East
Building 1, Room E-119

Charleston, WV 25305

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

L. Perry P. Prunty, Chairman
Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

A, B, C

Agency: Department of Administration
Rule Type: Legislative

Title Number: 186
Cite Authority: 5A-3-10

STATEMENT OF CIRCUMSTANCE AND BRIEF SUMMARY

The Department of Administration is proposing to amend the legislative rules governing the qualifications for participating in the special purchasing program established in WV Code §5A-3-10 and §5A-3-1 et seq. that creates employment opportunities for individuals with disabilities, and is governed by the Committee for the Purchase of Commodities and Services from the Handicapped.

The revisions being proposed for the Rules and Regulations for Qualifications for Participation clean up the language and strengthen and streamline many of the procedures and regulations that are contained in the current rule. The current rules have been in effect since 1993, and several changes have occurred within the organizational structure of state government that render certain provisions of the current rule obsolete.

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

OFFICE WEST VIRGINIA
SECRETARY OF STATE

SERIES 4
RULES AND REGULATIONS FOR QUALIFICATIONS FOR PARTICIPATION

§186-4-1. General.

1.1. Scope. -- The scope of this legislative rule is to set forth the qualifications for participation under the provisions of W. Va. Code §5A-3-10.

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

1.3. Filing Date. -- April 4, 1995.

1.4. Effective Date. -- April 4, 1995.

1.5. Repeal of Former Rule. -- This legislative rule amends WV 184CSR4 "Rules and Regulations for the Qualifications for Participation" filed February 17, 1993 and effective July 1, 1993.

§186-4-2. Definitions.

The following words and terms, when used in this rule, have the following meanings, unless the context clearly indicates otherwise:

2.1. ~~"Approved Workshops or Rehabilitation Facilities"~~ -- means nonprofit organizations which are surveyed by the West Virginia Division of Rehabilitation Services using the "Standards for Community Workshops" established by the West Virginia State Board of Rehabilitation. These organizations are approved by the State Board of Rehabilitation for program participation as evidenced by a certificate of approval. "Eligible Rehabilitation and Employment Oriented Organizations" -- means any nonprofit workshop or Community Rehabilitation Program (CRP) that directly provides or facilitates the provision of vocational rehabilitation services to individuals

with disabilities to enable those individuals to maximize their opportunities for employment, including career advancement.

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

~~2.3. "Certified Workshops or Rehabilitation Facilities"~~ -- means nonprofit organizations which apply to the West Virginia Division of Rehabilitation Services for participation in the program and whose documents have been reviewed by the staff of the West Virginia Division of Rehabilitation. These organizations are accepted by the West Virginia State Board of Rehabilitation as evidenced by a certificate of certification.

~~2.4~~ 2.3. "Committee" -- means the Committee for the Purchase of Commodities and Services from the Handicapped.

2.5. ~~2.4~~ "Commodities" -- means supplies, materials, equipment, contractual services, and any other articles or things used by or furnished to a department, agency or institution of state government.

2.6. ~~2.5~~ "DRS" -- means the West Virginia Division of Rehabilitation Services.

2.7. ~~2.6~~ "Qualified Workshops or Rehabilitation Facilities" -- means organizations which must be either approved or certified by the West Virginia State Board of Rehabilitation and have been notified by the Committee that they meet all committee qualifications for program participation. "Qualified Community Rehabilitation Programs" -- means a Community

Rehabilitation Program that has been approved as an acknowledged vendor of rehabilitation services by the Division of Rehabilitation Services, and has been approved as a participant in the state use program by the Committee for the Purchase of Commodities and Services from the Handicapped, as evidenced by meeting all program qualifications, including all appropriate state and federal regulations.

~~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 or 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; or~~

~~2.8.14. Rehabilitation engineering services;~~

~~2.9. 2.7 "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.~~

~~2.10. "Workshop" -- means a particular type of vocational rehabilitation facility where any manufacture or handiwork is carried on and which is operated by a public agency or by a private corporation or association, no part of the net earning of which inures 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.~~

§186-4-3. Qualification for Program Participation.

3.1. Requirements. -- In order for a Community Rehabilitation Program to qualify for participation in the program under the provisions of W. Va. Code §5A-3-10, it shall file the following documents with the Executive Secretary of the Committee for the Purchase of

Commodities and Services from the Handicapped; "Committee," and the Central Nonprofit Agency; "CNA" CNA on behalf of the Committee:

3.1.1. A letter of application by an officer of the workshop or rehabilitation facility attesting that the workshop or rehabilitation facility An appropriately signed application, which includes the following attachments:

3.1.1.a. operates as non-profit entity pursuant to 26 U.S.C. § 501 et seq. or as a State agency which operates in the interest of persons with disabilities, and that no part of its net income inures to the benefit of any shareholder or other individual;

3.1.1.b. Complies with applicable occupational health and safety standards required by the laws of the United States and of this State;

3.1.1.c. Employs persons with disabilities to perform an average of at least seventy-five percent (75%) of all direct labor associated with all manufacturing and service labor performed during the previous year. If this condition is not met, a satisfactory plan, including a timetable to achieve this level of utilization of persons with disabilities, must be included with the application;

3.1.1.d. Has an ongoing placement program which includes at least pre-admission evaluation and annual review to determine each worker's capability for normal competitive employment and maintains a liaison with appropriate community services for the placement in such employment of any of its workers qualifying for placement; and

3.1.1.e. Agrees to:

3.1.1.e.A. Furnish commodities or services in strict compliance with contract specifications;

3.1.1.e.B. Make appropriate records available for inspection by the committee

or CNA at any reasonable time;

3.1.1.e.C. Maintain records of direct labor hours performed in the facility by each worker and report monthly, on the approved form, hours worked by type of disability;

3.1.1.e.D. comply with applicable occupational health and safety standards prescribed by the United States Department of Labor and the State of West Virginia Division of Labor;

3.1.1.e.E. Maintain a file on each person with a disability which includes reports of pre-admission evaluation, and annual reevaluation of the individual's capacity for normal competitive employment, prepared by a person or persons qualified by training and experience to evaluate the work potential, interest, aptitudes and abilities of handicapped persons;

3.1.1.e.F. Make full disclosure to the CNA of all facts related to the costs, overhead, or profits in the production of a commodity or the provision of a service; and

3.1.1.e.G. Maintain an average utilization of persons with disabilities of at least seventy-five percent (75%) of all direct labor associated with all manufacturing and services performed by the approved workshop or rehabilitation facility. If this condition cannot be maintained, the approved workshop or rehabilitation facility must submit for Committee approval a plan including a timetable to reestablish and maintain this seventy-five percent (75%) level of utilization.

3.1.1.a. A copy of the Internal Revenue Service letter indicating that the CRP has been accepted as a nonprofit entity for taxation purposes, or is a state agency which operates in the interest of individuals with disabilities, and that no part of its net income inures to the benefit of any shareholder or other individual.

3.1.1.b. If the CRP is incorporated,

submit a copy of the articles of incorporation showing date of filing and signature of the appropriate state official.

3.1.1.c. Submit a copy of the CRP's by-laws showing certification by an officer of the corporation.

3.1.1.d. If commensurate wages are paid, submit the current certificate(s) issued by the US Department of labor authorizing wage payments pursuant to 29 U.S.C. § 214(c).

3.1.1.e. Submit a copy of the letter showing that the CRP is registered and in good standing with the Secretary of State as a charitable organization pursuant to WV Code §29019-1.

3.1.1.f. Submit a current listing of the officers of the corporation with names, addresses and telephone numbers.

3.1.2. A letter of approval from the DRS for participation in the program which attests that the DRS has audited, examined or has on file current documentation of the following items: As a part of the application the CRP will further attest to and adhere to the following conditions:

3.1.2.a. If workshop or rehabilitation facility is incorporated, a legible copy of the articles of incorporation showing the date of filing and signature of an appropriate State official and a copy of the bylaws certified by an officer of the corporation;

3.1.2.b. A copy of the Internal Revenue Service certificate indicating that the workshop or rehabilitation facility has been accepted as nonprofit for taxation purposes;

3.1.2.c. Evidence that the workshop or rehabilitation facility meets the criteria for determining nonprofit status pursuant to 26 U.S.C. § 501 et seq. and is registered and in good standing as a charitable organization with the

Secretary of State pursuant to W. Va. Code §29-19-1 et seq.,

3.1.2.d. If sub-minimum wages are to be paid, the current certificate(s) issued by the United States Department of Labor authorizing wage payments pursuant to 29 U.S.C. § 214(c); and

3.1.2.e. A current listing of the names, addresses and phone numbers of officers of the workshop or rehabilitation facility;

3.1.2.a. Recognize the Central Nonprofit Agency has the responsibility to represent qualified CRP's in dealing with state purchasing agents and other bodies charged with purchasing responsibilities.

3.1.2.b. Maintain an ongoing placement program which includes at least pre-admission evaluation and an annual review to determine each worker's capability for normal competitive employment and maintains a liaison with appropriate community services for the placement in such employment of any of its workers qualifying for placement.

3.1.2.c. Furnish commodities and/or services in strict compliance with contract specifications.

3.1.2.d. Make appropriate records available for inspection by the Committee or the CNA at any reasonable time.

3.1.2.e. Maintain records of direct labor hours and wages performed by each worker and report on the approved quarterly report. Submit these reports in a timely fashion to the CNA.

3.1.2.f. Comply with the applicable occupational health and safety standards prescribed by the US Department of Labor and the State of West Virginia.

3.1.2.g. Maintain a file on each worker with a disability which includes reports of pre-

admission evaluation, and annual re-evaluation of the individual's capacity for normal competitive placement, prepared by a person or persons qualified by training and/or experience to evaluate the work potential, interest, aptitudes and abilities of persons with disabilities. This file will also include documentation of disability, and periodic notes related to that individual progress towards competitive placement.

3.1.2.h. Make full disclosure to the CNA of all facts related to the costs, overhead, or profits in the production of a commodity or provision of a service.

3.1.2.i. Maintain an average 75% disabled workers on the sum of all state use contracts. This will be measured by the total of direct labor hours. If this condition cannot be maintained, a plan of correction must be submitted to the committee for their approval, which will establish this 75% level of utilization.

3.2. Notification. -- The Committee shall review the application letter and the DRS approval letter, and, if acceptable, shall notify the workshop or rehabilitation facility through the CNA of its eligibility to participate in the program.

3.3. Revocation.--The Committee may revoke the rights of any ~~workshop or rehabilitation facility~~ Community Rehabilitation Program to participate if, at any time, the Committee determines the ~~workshop or rehabilitation facility~~ Community Rehabilitation Program is not in compliance with all the requirements in Section 3.1 of this rule.

3.3.1. If the CNA recommends the denial of approved status to a ~~workshop or rehabilitation facility~~ Community Rehabilitation Program, or the revocation or suspension of such status, for failure to comply with this rule or for other good cause, the CNA is to refer the matter to the Committee for review.

3.4. Adverse Small Business Impact. -- When the current vendor is a small business and the individual service or a commodity contract in question comprises 33% or more of the total annual sales of that business, the current vendor will not be displaced without Committee approval unless the agency requests a change in a vendor or the vendor leaves the contract voluntarily. This section does not prevent the approved ~~workshop or rehabilitation facility~~ Community Rehabilitation Program from competing in the normal competitive bidding process and winning of a contract at the normal renewal time.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 186, Series 4

Type of Rule: X **Legislative** **Interpretive** **Procedural**

Agency: Administration

Address: Donna M. Prunty, Executive Coordinator

1900 Kanawha Boulevard, Building 1, Room E-119

Charleston, WV 25305

1. Effect of Proposed Rule:

This rule will specify and limit the eligibility for non-profit community rehabilitation programs (CRP's) to participate in this special purchasing program that is governed by the Committee for the Purchase of Commodities and Services from the Handicapped, and identifies the process for qualifying.

	ANNUAL FISCAL YEAR				
	Increase	Decrease	Current	Next	Thereafter
ESTIMATED TOTAL COST	-0-	-0-	-0-	-0-	-0-
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERATIONS					
EQUIPMENT					
OTHER					

2. Explanation of Above Estimates:

This rule has no specific economic or cost-related impact, and none is anticipated.

3. Objectives of These Rules:

This rule clarifies the process and procedures for a Community Rehabilitation Program to become a qualified participant in this special purchasing program.

Rule Title: Rules and Regulations for Qualifications for Participation

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

None

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

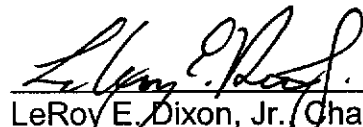
None

C. Economic Impact on Citizens/Public at Large.

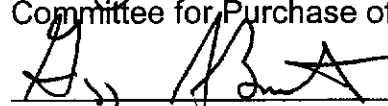
None

Date: May 30, 2002

Signature of Agency Head or Authorized Representative:



LeRoy E. Dixon, Jr. Chairman
Committee for Purchase of Commodities and Services from Handicapped



Gregory A. Burton, Cabinet Secretary
Department of Administration



BOB WISE
GOVERNOR

STATE OF WEST VIRGINIA
DEPARTMENT OF ADMINISTRATION
OFFICE OF THE CABINET SECRETARY

GREGORY A. BURTON
CABINET SECRETARY

May 30, 2002

Via Hand-Delivery

The Honorable Joe Manchin, III
Secretary of State
Building 1, Suite 157K
1900 Kanawha Boulevard, East
Charleston, WV 25305

Re: Legislative Rules

Dear Secretary Manchin,

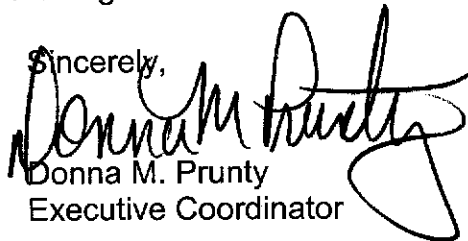
I am enclosing an original and one copy of the documents listed below for filing. The proposed rules are to clean up the language and strengthen and streamline many of the procedures and regulations that are contained in the current rule. The proposed rule changes have been approved by the Committee for the Purchase of Commodities and Services from the Handicapped. 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,



Donna M. Prunty
Executive Coordinator

DMP:dp
Enclosures
cc: Gregory A. Burton, Cabinet Secretary