

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: COMMITTEE FOR THE PURCHASE OF COMMODITIES AND SERVICES FROM THE HANDICAPPED TITLE NUMBER: 186

CITE AUTHORITY 5A-3-5

AMENDMENT TO AN EXISTING RULE: YES ☒ NO ☐

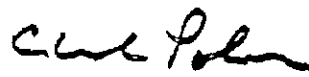
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 4

TITLE OF RULE BEING AMENDED: QUALIFICATIONS FOR PARTICIPATION

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.



CHUCK POLAN
SECRETARY OF ADMINISTRATION

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

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 West Virginia Code, 5A-3-10.

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

1.3. Filing Date.--

1.4. Effective Date.--

1.5. Repeal of former rule.--This legislative rule amends WV 186CSR4 "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.

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

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

2.7. "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.

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. "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 workshop or rehabilitation facility to qualify for participation in the program under the provisions of West Virginia 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":

3.1.1. A letter of application by an officer of the workshop or rehabilitation facility attesting that the workshop or rehabilitation facility:

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. In the manufacturing of commodities and in the provision of services, whether or not procured under the state's program, is to employ persons with disabilities to perform at least 50% of its total production or service labor. If this condition is not met, the applicant must attach to the letter of application a satisfactory plan and timetable to achieve at least this level of labor using disabled individuals.~~

3.1.1.c. Employs persons with disabilities to perform an average of at least 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 re-evaluation 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 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 re-establish and maintain this 75% level of utilization.

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:

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.

3.2. 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 to participate if, at any time, the Committee determines the workshop or rehabilitation facility 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, 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 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 vendor or the vendor leaves the contract voluntarily. This section does not prevent the approved workshop or rehabilitation facility from competing in the normal competitive bidding process and winning of a contract at the normal renewal time.



FILED

DEC 21 9 58 AM '94

West Virginia Legislature
Legislative Rule-Making Review Committee

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Room M-152, State Capitol
Charleston, West Virginia 25305
(304) 340-3286

Senator Joe Manchin, III, Co-Chair
Delegate Brian A. Gallagher, Co-Chair

December 6, 1994

Debra A. Graham, Counsel
Marie Nickerson, Admr. Assistant

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Mr. Chuck Polan, Secretary
Department of Administration
State Capitol
Charleston, WV 25305

FROM: Legislative Rule-Making Review Committee

PROPOSED RULE: Qualification for Participation

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: John L. Parker, Chief Workshop Support
WV Div. of Rehabilitation Services
P.O. Box 50890, State Capitol
Charleston, WV 25305-0890