

SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #2

FILED

JUN 19 9 41 AM '95

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: University System of West Virginia TITLE NUMBER: 128

RULE TYPE: Procedural; CITE AUTHORITY: WV Code §18B-5-4 through §18B-5-8

AMENDMENT TO AN EXISTING RULE: YES ___ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: Series 21

TITLE OF RULE BEING PROPOSED: Purchasing

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 19, 1995 AT 5:00 pm. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

Charles W. Manning, Chancellor
University System of West Virginia
1018 Kanawha Blvd., Suite 700
Charleston, WV 25301

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

Pamela G. Steelhammer

ATTACH A BRIEF SUMMARY OF YOUR PROPOSAL

740

DEPARTMENT OF EDUCATION AND THE ARTS
Office of the Secretary

State Capitol Bldg. 1, R-151
Charleston, West Virginia 25305
Telephone: (304) 558-2440
Fax No.: (304) 558-1311

Gaston Caperton
Governor

Barbara Harmon-Schamberger
Cabinet Secretary

16 June 1995

The Honorable Ken Hechler
Secretary of State
State Capitol Building
Charleston, WV 25305

Dear Secretary Hechler,

I hereby grant consent as required pursuant to WV Code §5F-2-2 for the promulgation of the following procedural rule of the University System of the West Virginia Board of Trustees.

Title 128, Series 21: Purchasing

A copy of the rule is attached.

Sincerely,



Barbara Harmon-Schamberger
Secretary

BHS:mc

Attachment

cc: Dr. Chancellor Manning
Dr. John Thralls

UNIVERSITY SYSTEM OF WEST VIRGINIA BOARD OF TRUSTEES

1018 KANAWHA BOULEVARD, EAST
SUITE 700
CHARLESTON, WEST VIRGINIA 25301 - 2827

TELEPHONE (304) 558-2736
FAX (304) 558-3264

John R. Hoblitzell
Chairman

Charles W. Manning
Chancellor

June 7, 1995

Ms. Barbara Harmon-Schamberger
Secretary, Education and the Arts
Room 151, Main Capitol Building
Capitol Complex
Charleston, West Virginia 25305

Dear Secretary Harmon-Schamberger,

The following rule was adopted for promulgation by the University System of West Virginia Board of Trustees at the May 18, 1995 Finance Committee meeting.

Title 128, Series 21: *Purchasing*

Could you please review the attached and, if you approve, forward to the Secretary of State for filing and public comment. Thank you.

Sincerely,

Charles W. Manning/pgs
Charles W. Manning
Chancellor

Attachments

Marshall University
University of West Virginia College of Graduate Studies
West Virginia School of Osteopathic Medicine
West Virginia University
Potomac State College of West Virginia University
West Virginia University at Parkersburg

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 128:21 PURCHASING

Type of Rule Legislative Interpretive X Procedural

Agency West Virginia University System Board of Trustees

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$	\$	\$
Personal Services					
Current Expense	N/A	N/A	N/A	N/A	N/A
Repairs and Alterations					
Equipment					
Other					

2. Explanation of above estimates

N/A

3. Objectives of these rules

To simplify the administration and management of the purchasing and inventory processes in State higher education. To increase access for small West Virginia businesses to do business with State higher education.

4. Explanation of Overall Economic Impact of Proposed Rule

A. Economic Impact on State Government

There will be no material economic impact on State government.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of citizens.

This rule should improve access for West Virginia's small businesses to sell their products and services to the State higher education institutions.

C. Economic Impact on Citizens/Public at Large

Other than the improved access stated in B, and any spin-off benefit therefrom, there will be no material economic impact on citizens/public at large.

Date: 5/30/95



Signature of Agency Head or Authorized Representative

University Sytem of West Virginia Board of Trustees

Title 128: Series 21 *Purchasing*

The purpose of this rule is to simplify the administration and management of the purchasing and inventory processes in State higher education and to increase access for small West Virginia businesses to conduct business with West Virginia Higher Education institutions.

TITLE 128
PROCEDURAL RULE
UNIVERSITY SYSTEM OF WEST VIRGINIA
BOARD OF TRUSTEES
SERIES 21

FILED

JUN 19 9 42 AM '95

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

TITLE: PURCHASING

SECTION 1. GENERAL

- 1.1 Scope - This rule establishes rules and policies governing and controlling purchase, acquisition and inventory management of materials, supplies, equipment, services, and printing, and disposal of obsolete and surplus materials, supplies, and equipment by the University System of West Virginia Board of Trustees, hereinafter referred to as the "Governing Board."
- 1.2 Authority - West Virginia Code §18B-5-4 through §18B-5-8.
- 1.3 Filing Date:
- 1.4 Effective Date:
- 1.5 Repeal of Former Rules: None

SECTION 2. DEFINITIONS

- 2.1 As used in this rule, all terms have the same meaning as provided in West Virginia Code §18B-1-2, as follows:
 - 2.1.1 "Buyer" means an individual designated by a chief procurement officer to perform designated purchasing and acquisition functions as authorized by the chief procurement officer.
 - 2.1.2 "Central Office" means the office that houses the senior administrator and such professional, administrative, clerical and other employees as may be necessary to assist the senior administrator perform his or her functions, tasks and duties.
 - 2.1.3 "Chief procurement officer" means the individual designated by a president of a state institution of higher education to manage,

oversee and direct the purchasing, acquisition and inventory management of materials, supplies, equipment, services, and printing, and disposal of obsolete and surplus materials, supplies, and equipment of that institution. For the Governing Board's Central Office and West Virginia Network for Educational Telecomputing, the chief procurement officer is the person designated by the senior administrator.

- 2.1.4 "Institution(s)" means any university, college, and community and technical college, individually or collectively, under the jurisdiction of the Governing Board, including the Governing Board's Central Office and West Virginia Network for Educational Telecomputing.
- 2.1.5 "F.O.B. destination" and "free on board destination" mean seller or vendor must transport or pay for the transportation of the materials, supplies, equipment, services and printing, to the point of destination specified in the contract.
- 2.1.6 "Sole source" means only one vendor can supply the desired product or service.
- 2.1.7 "Single source" means that the desired product or service is available from only one supplier because of the uniqueness and characteristics of the product or service offered.
- 2.1.8 "Responsible bidder" and "responsible vendor" mean a person who has the capability in all respects to perform contract requirements, and the integrity and reliability which will assure good faith performance.
- 2.1.9 "Responsive bidder" and "responsive vendor" mean a person who has submitted a bid which conforms in all material respects to the invitation to bid.

SECTION 3. APPLICABILITY

- 3.1 This procedural rule applies to all institutions as defined in Section 2.1.3 of this rule.

SECTION 4.

AUTHORITY OF THE GOVERNING BOARD

- 4.1 The Governing Board shall adopt rules governing and controlling acquisitions, purchases and inventory management of materials, supplies, equipment, services, and printing, and the disposal of obsolete and surplus materials, supplies, and equipment, and through the senior administrator, shall administer and oversee these activities by the institutions under its control.

SECTION 5.

AUTHORITY AND DUTIES OF THE SENIOR ADMINISTRATOR

- 5.1 The senior administrator shall, in the name of the Governing Board, have the authority and duty to:
 - 5.1.1 Administer and oversee the purchasing system of the Governing Board;
 - 5.1.2 Recommend to the Governing Board such additional rules or modifications to this rule as may be required for governing and controlling purchase, acquisition and inventory management of materials, supplies, equipment, services, and printing, and disposal of obsolete and surplus materials, supplies, and equipment;
 - 5.1.3 Develop administrative manuals, guidelines, procedures, and forms, consistent with this rule, which shall be followed by the institutions for purchase, acquisition and inventory management of materials, supplies, equipment, services, and printing, and disposal of obsolete and surplus materials, supplies, and equipment. Such administrative manuals, guidelines, procedures and forms may be reviewed by, but do not require approval of, the Governing Board or its chancellor before being implemented by the senior administrator;
 - 5.1.4 Periodically audit the institutions for compliance with the rules and policies that have been adopted by the Governing Board and the administrative manuals, guidelines, procedures and forms developed by the senior administrator, as may be requested by the Governing Board;
 - 5.1.5 Purchase or contract for materials, supplies, equipment, services and printing required by the Central Office and West Virginia Network for Educational Telecomputing;

- 5.1.6 Appoint a chief procurement officer for the Central Office and West Virginia Network for Educational Telecomputing;
- 5.1.7 Provide assistance to one or more of the institutions of higher education in the purchase, acquisition and inventory management of materials, supplies, equipment, services, and printing, and in disposal of obsolete or surplus materials, supplies and equipment, if requested by the Governing Board or its chancellor; and
- 5.1.8 Compile the Governing Board's annual report card on West Virginia businesses from reports provided by the institutions for submission to the finance committees of the House of Delegates and the Senate on or before the fifteenth day of January of each year.

SECTION 6. DELEGATION OF PURCHASING AUTHORITY AND RESPONSIBILITIES TO THE STATE INSTITUTIONS OF HIGHER EDUCATION

- 6.1 The Governing Board may delegate authority to each of the presidents, or other administrative head, of the state institutions of higher education under its jurisdiction to purchase, acquire and manage inventories of materials, supplies, equipment, services, and printing, and for disposal of obsolete or surplus materials, supplies and equipment as required by that institution. Such delegated authority also may be revoked by the Governing Board.
- 6.2 Each president shall appoint a chief procurement officer who shall assist the president in carrying out the duties, obligations and remedies imposed by the Governing Board. Such appointment shall be made in writing and filed with the senior administrator, the State Auditor and the Attorney General. Unless otherwise stated in writing by the president, the chief procurement officer shall have full authority to act as the designee of the president for purchase, acquisition, receipt of and inventory management of all materials, supplies, equipment, services, and printing, and for disposal of obsolete or surplus materials, supplies, and equipment as may be required by the institution.

SECTION 7. AUTHORITY, DUTIES AND REMEDIES OF THE CHIEF PROCUREMENT OFFICER

- 7.1 The chief procurement officer shall, unless otherwise stated in writing, have full authority to act in matters of institutional purchasing, inventory

management and disposal of surplus and obsolete property as the designee of the president, or the senior administrator in the case of the Central Office and West Virginia Network for Educational Telecomputing, and shall serve as the central procurement officer for the institution. This individual may also fulfill other institutional functions.

- 7.2 To assist the chief procurement officer in performing his or her duties and obligations, the chief procurement officer may appoint buyers and delegate authority to them as designees, or to any department within an institution. Such delegation of authority shall be in compliance with this rule. Such delegation of authority by the chief procurement officer, and any limits thereupon, shall be in writing and filed with the senior administrator, the State Auditor and the Attorney General. Notwithstanding any provision to the contrary, responsibility for ensuring institutional compliance with the West Virginia Code and this rule shall rest with and be the responsibility of the chief procurement officer.
- 7.3 As required by law and this rule, the chief procurement officer of each institution shall have the duty and/or authority to:
 - 7.3.1 Purchase and contract for the materials, supplies, equipment, services and printing required by the institution;
 - 7.3.2 Establish institutional guidelines and procedures for purchases of less than \$1,000. Such guidelines and procedures shall provide for obtaining adequate and reasonable records to properly account for funds and to facilitate auditing. These guidelines shall be approved by the president and filed with the senior administrator;
 - 7.3.3 Establish institutional guidelines and procedures for receiving, inventorying and distributing materials, supplies, equipment, services and printing. These guidelines and procedures shall be consistent with this rule, and the administrative manuals, guidelines, procedures and forms developed by the senior administrator. They shall be approved by the president and filed with the senior administrator;
 - 7.3.4 Review specifications and descriptions before soliciting bids or proposals to ensure the specifications and descriptions are competitive and fair and do not unfairly favor or discriminate against a particular brand or vendor;

- 7.3.5 Advertise for and post notices of all purchases for which competitive bids or proposals are being solicited in the institution's purchasing office;
 - 7.3.6 Maintain the institution's purchasing files;
 - 7.3.7 Accept or reject any and all bids in whole or in part;
 - 7.3.8 Waive minor irregularities in bids, bidding documents and/or specifications;
 - 7.3.9 Apply and enforce standard specifications;
 - 7.3.10 Manage the institution's inventory of materials, supplies and equipment and transfer to or between institutions or sell surplus, obsolete or unused materials, supplies, and equipment;
 - 7.3.11 Prescribe the amount of deposit or bond to be submitted with any bid or contract;
 - 7.3.12 Prescribe contract provisions for liquidated damages, remedies and/or other damages provisions in the event of vendor default;
 - 7.3.13 Exempt from competitive bidding purchases of materials, supplies, equipment, services and printing purchased from within state government, from West Virginia sheltered workshops, and from the federal government or federal government contracts when price, availability and quality are comparable to those in the open market;
 - 7.3.14 Perform chemical and physical tests on samples submitted with bids and samples of deliveries to determine compliance with specifications, if deemed necessary and prudent;
 - 7.3.15 Hear and render opinions on vendor complaints and protests; and
 - 7.3.16 Ensure that a vendor is registered with the Purchasing Division of the Department of Administration in accordance with the West Virginia Code before a contract or purchase order is issued to that vendor.
- 7.4 Remedies that are available to the chief procurement officer when appropriate circumstances arise include:

- 7.4.1 In the event that a vendor fails to honor any contractual term or condition, the chief procurement officer may cancel the contract and re-award the contract to the next lowest responsible and responsive bidder;
- 7.4.2 Vendors failing to honor contractual obligations may be held responsible for all differences in cost;
- 7.4.3 Declare a vendor or bid non-responsible or non-responsive and refuse to award a purchase order. All such instances shall be substantiated in writing giving the reason(s) thereof, and such documentation shall be considered a public document available for inspection at all reasonable times; and
- 7.4.4 Suspend, for a period not to exceed one (1) year, the right of a vendor to bid on purchases when there is reason to believe that such vendor has violated any of the provisions of the terms and conditions of a contract, this rule and/or state law.

SECTION 8. RULES CONCERNING PURCHASE OR ACQUISITION OF MATERIALS, SUPPLIES, EQUIPMENT, SERVICES AND PRINTING

- 8.1 Unless otherwise authorized by law, all purchases or acquisitions of materials, supplies, equipment, services and printing shall be awarded by competitive bidding, except as provided in the following paragraphs of this rule:
 - (a) Purchases not exceeding \$1,000;
 - (b) Competitive sealed proposals;
 - (c) Competitive selection procedures for professional services;
 - (d) Sole source and single source procurement;
 - (e) Emergency procurement; and
 - (f) Open end and federal contracts.
- 8.2 Specifications shall be written to maximize and encourage competition. In certain cases, a "brand name or equal" may be used as a specification.
- 8.3 All purchases and acquisitions shall be made in consideration of and within limits of available appropriations and funds and in accordance with applicable provisions of West Virginia Code §5A-2, relating to expenditure schedules and quarterly allotments of funds.

- 8.4 Award shall be made to the lowest responsible and responsive vendor. In determining the lowest responsible and responsive vendor, consideration will be given to such factors as quality (meeting specifications), price, time of delivery, cost of delivery, and other terms and conditions considered prudent. Unit prices shall prevail in all cases when there is a conflict between the unit price and extended price. In some cases multiple and/or split awards may be made when determined to be in the best interest of the institution. Occasionally, purchase orders may be issued which impose no obligation on the Governing Board or institution to take delivery of a product and/or service and as such, these purchase orders shall be issued as blanket purchase orders or price agreements. In situations where vendors are competing to provide a service that will generate income for an institution the award shall be made to the highest responsible and responsive bidder, taking into consideration the above factors.
- 8.5 The chief procurement officer may accept or reject, in whole or in part, any bid or proposal when the chief procurement officer believes it to be in the best interest of the institution. If any bid or proposal is rejected, a written explanation shall be placed in the purchasing file.
- 8.6 When tie bids or proposals are received, the tie will be broken and an award made by allowing the tied vendors to make a "last and final offer," by flip of a coin, draw of the cards or any other impartial method deemed prudent by the chief procurement officer.
- 8.7 Except for exemptions granted in the West Virginia Code, all material, supplies, equipment, services and printing made upon competitive bids or proposals, shall be subject to any resident vendor preference set out in the West Virginia Code.
- 8.8 The chief procurement officer shall determine the applicability and amounts of bonds and/or deposits required of a vendor at any time, if, in his judgment, such security is necessary to safeguard the institution from undue risk. The chief procurement officer may require the vendor to submit a certified check, certificate of deposit, performance bond, or any other security acceptable to the chief procurement officer, payable to the institution. Personal checks and/or company checks are not acceptable. Provision for such requirements will usually be incorporated into the prescribed form and purchase order. When any contract has been satisfactorily completed on which a surety bond or other deposit has been previously submitted, the spending unit shall certify the completion in writing to the chief procurement officer. The chief procurement officer, upon receipt of the notification, shall then return the check or deposit to the vendor.

8.9 Purchases not exceeding \$1,000

8.9.1 The chief procurement officer of each institution shall establish institutional guidelines and procedures for purchases not exceeding \$1,000. Such guidelines and procedures shall provide for obtaining adequate and reasonable records to properly account for funds and to facilitate auditing. These guidelines and procedures, and any modifications thereto, shall be approved by the president and filed with the senior administrator.

8.9.2 Purchases in this category do not require competitive bids or quotations.

8.10 Purchases greater than \$1,000 but not exceeding \$15,000

8.10.1 Insofar as practical for purchases in this category, no less than three qualified vendors shall be solicited to submit written quotations or oral quotations that are recorded by the chief procurement officer or buyer and placed in the procurement file. At the discretion of the chief procurement officer, facsimile and electronically transmitted quotations may be accepted from vendors. Award shall be made to the responsible and responsive vendor meeting the requirements of the specifications and offering the lowest acceptable quotation, taking into consideration the factors set forth in paragraph 8.4 of this rule.

8.10.2 The procurement file shall, at a minimum, contain the following:

- (a) The vendor's name and address;
- (b) The name and title of the individual quoting the price;
- (c) The manufacturer and model number or description of the item(s) offered;
- (d) The unit price and extended price for each item;
- (e) The payment terms, FOB point, and other applicable conditions;
- (f) The quoted delivery date; and
- (g) The signature of the individual quoting the price if the quotation is written by the vendor, or the signature of the person receiving and recording the quotation.

8.11 Purchases Greater than \$15,000

8.11.1 Competitive sealed bidding is the preferred method for purchase and acquisition of materials, supplies, equipment, services and printing greater than \$15,000.

- 8.11.2 The chief procurement officer shall advertise for bids on all purchases exceeding \$15,000. The advertisement shall appear no less than 14 calendar days prior to the date bids are due.
- 8.11.3 In addition to the advertising requirement set forth in subparagraph 8.11.2, for printing services exceeding \$5,000, bids shall also be advertised by written notification of such bids to any print shop affiliated with an institution of higher education and operated by classified employees.
- 8.11.4 The chief procurement officer shall, in addition to advertising, post notice of all acquisitions and purchases for which competitive bids are being solicited in the purchasing office of the institution involved in the purchase no less than 14 calendar days prior to making such purchase and shall ensure that the notice is available to the public during business hours.
- 8.11.5 Bids shall be submitted by the bidder prior to the date and time of the bid opening on the prescribed form provided to the bidder. Substitutions may be made for the prescribed form only if the substituted terms, conditions and/or provisions, if any, are approved by the chief procurement officer.
- 8.11.6 Bidders shall submit their bid to the location identified in the prescribed form prior to the specified date and time of the bid opening. Bids received after the required time and date shall not be opened and shall be returned to the bidder.
- 8.11.7 The bid shall be signed by an authorized agent of the bidder. A corporate signature without an individual name shall not be construed as an acceptable signature.
- 8.11.8 Facsimile and electronically transmitted bids are not acceptable for bids over \$15,000.
- 8.11.9 A bidder may make a written modification to a sealed bid prior to the bid opening, provided modifications are made by the bidder in such a manner that the bid price is not revealed or known until the bid is opened. Written modifications must be received by the chief procurement officer prior to the date and time of the bid opening. Facsimile and electronically transmitted modifications are not acceptable.

- 8.11.10 Originals or copies of bids shall be open for public inspection after the bid opening, except that vendors may designate in writing at the time of their bid information contained within the bid constituting trade secrets, pursuant to West Virginia Code §29B-1-4(1), which shall be exempt from disclosure. The purchasing files shall be open for public inspection after the award has been made.
- 8.11.11 The chief procurement officer may reject an erroneous bid after the bid opening, upon request of the bidder, if all of the following conditions exist: (a) an error was made; (b) the error materially affected the bid or proposal; (c) rejection of the bid or proposal would not cause a hardship on the institution involved other than losing an opportunity to receive materials, supplies, equipment, services and/or printing at a reduced cost; and (d) enforcement of the part of the bid or proposal in error would be unconscionable. In order to reject a bid or proposal, the purchasing file must contain documented evidence that all of the above conditions exist.
- 8.11.12 Price and other adjustments shall be allowed on any purchase order if specific provisions for adjustments have been incorporated in the prescribed forms and the purchase order. All such requests for adjustments shall be made in accordance with the specific terms and conditions of the individual purchase order. In the event no provision for adjustments has been made, discretion to grant adjustments shall rest with the chief procurement officer.
- 8.11.13 Every person, firm or corporation selling or offering to sell to the Governing Board and its institutions, materials, supplies, equipment, services, and printing, upon competitive bid or otherwise, in excess of \$15,000, shall be registered with the West Virginia Department of Administration, Purchasing Division, pursuant to West Virginia Code §18B-5-5 and §5A-3-12. Bids shall not be accepted from any vendor not properly registered with the West Virginia Department of Administration, Purchasing Division, prior to issuance of a purchase order.
- 8.11.14 Contracts that are competitively bid and exceed \$15,000 shall be approved as to form by the Attorney General and shall be filed with the State Auditor.

8.12 Vendor's Rights and Duties

- 8.12.1 Each vendor shall be solely responsible for delivery of a bid or proposal to the designated location for receipt of bids or proposals. Bids or proposals must be received at the designated location prior to the specified date and time of the bid or proposal opening.
- 8.12.2 If there is a conflict between the extension price and the unit price, the unit price shall prevail.
- 8.12.3 Any changes made by the vendor in the specifications listed in the bid request must be clearly stated. If changes are not stated, it will be assumed that items offered meet the specifications in all respects.
- 8.12.4 Vendors are responsible for the accuracy of the information on their bid or proposal and on the bid or proposal envelope.
- 8.12.5 All sales to the Governing Board are exempt from consumer sales tax or excise tax by blanket state exemption and blanket federal exemption.
- 8.12.6 It is the vendor's exclusive duty and obligation to file protests and requests for reconsideration according to the requirements of Section 9, and for reconsideration of suspension, in accordance with the requirements of Section 10 of this rule; otherwise, they shall be waived.

8.13 Competitive Sealed Proposals

- 8.13.1 For purchases above \$15,000, competitive sealed bids are the preferred method of procurement; however, if it is either not practicable or advantageous, a contract may be entered into by a request for proposals. The words "practicable" and "advantageous" are to be given ordinary dictionary meanings. The term "practicable" denotes what may be accomplished or put into practical application. "Advantageous" connotes a judgmental assessment of what is in the institution's best interest. The key element in determining advantageousness will be the need for flexibility.
- 8.13.2 The request for proposal method of purchasing is used to obtain goods and services when sufficient knowledge or expertise does not exist to adequately specify the details of the desired result. The

desired result is written into the request for proposals. The vendor responds to the request for proposals with a proposal identifying its intended approach to meet the desired result along with a proposed price or fee. Terms and conditions of the contract shall be included in a request for proposals, along with a pre-established award criteria based on value or points. Whenever desirable, interviews may be conducted with interested parties for clarification and/or determination of qualifications and experience prior to award. Requests for proposals go beyond price alone. They also look at the vendor's ability and resources to furnish the desired service to get the desired result. Quality of service and performance are important considerations. Requests for proposals are primarily used for large dollar projects requiring a high level of expertise on the part of the vendor.

8.14 Competitive Selection Procedures for Professional Services

8.14.1 The competitive selection procedure for professional services is similar to the process used for competitive sealed proposals; however, greater weight is given to the ability to perform the service as reflected by technical training, education and experience, and in some cases, artistic and aesthetic values and capabilities. In these cases, price may be a secondary consideration.

8.15 Sole Source and Single Source Procurement

8.15.1 The chief procurement officer may approve the purchase of materials, supplies, equipment, services and/or printing directly from a vendor without competitive bid or proposals, if any of the following conditions exist: (a) the item cannot be obtained through ordinary purchasing procedures; (b) the item is of unique nature and not available from any other source; or (c) the item is available from a State spending unit or other institution with preference under the West Virginia Code, provided the price, availability and quality are comparable to those in the open market.

8.16 Emergency Procurement

8.16.1 Emergency purchases exceeding \$15,000 must receive the prior written approval of the chief procurement officer. An emergency situation requiring purchase of materials, supplies, equipment, services or printing must be the result of unforeseen events or circumstances, including delays by contractors, delays in transportation, or an unanticipated volume of work. Emergency

purchases shall not be used for hardship resulting from neglect, poor planning or lack of organization by the spending unit. Competitive bids must be obtained if possible.

8.17 Open End Contracts and Federal Contracts

8.17.1 The Governing Board and its institutions may enter into open end contracts for materials, supplies, equipment, services and/or printing to supply their respective needs in the form of statewide contracts, blanket orders or price agreements. Once issued, purchases and acquisitions may be made from these contracts without securing any other bids or quotations.

8.17.2 The Governing Board and its institutions may, without securing any other bids or quotations, make purchases from the federal government and from federal government contracts if the materials, supplies, equipment, services, and printing to be purchased is available from the federal government and from federal government contracts, if this is the most financially advantageous manner of making the purchase.

8.18 Motor Vehicle Purchase

8.18.1 Purchasing and leasing of motor vehicles shall be done consistent with this rule, and guidelines and procedures adopted by the Governing Board and the senior administrator.

8.19 Procurement File

8.19.1 The chief procurement officer shall maintain a purchasing file for each procurement or acquisition which shall contain all relevant information pertaining to such purchase or acquisition, including but not limited to: (a) bids, proposals or quotations received in response to a request for sealed bids or proposals, however, an unopened bid or proposal shall not be considered a public document or record; (b) identification and certification of the successful bid; (c) why any bid or proposal is rejected in whole or in part; (d) justification for award to other than the lowest vendor; and (e) vendor protests or complaints. The purchasing file shall be a public record open to inspection during normal business hours. No records in the purchasing file shall be destroyed without the written consent of the Legislative Auditor.

8.19.2 Those files in which the original documentation has been held for at least one year and in which the original documents have been reproduced and archived on microfilm or other equivalent method of duplication, may be destroyed without written consent of the Legislative Auditor. All files, no matter the storage method, shall be open for inspection by the Legislative Auditor upon request.

8.20 Report Card on West Virginia Businesses

8.20.1 Each institution shall prepare an annual report, in the format prescribed by the senior administrator, which shall include but not be limited to, information regarding the number of out-of-state entities with which the institution contracted, the number of in-state firms with which the institution contracted, the dollar amount of each contract, the equipment, commodity or service for which the contract was let, and the institution's recommendations, if any, on the manner in which purchasing procedures can be improved. This report shall be submitted to the senior administrator by the twentieth day of December for the current calendar year.

8.20.2 The senior administrator shall compile the reports submitted by each institution into the Governing Board's annual report card which is to be submitted to the finance committees of the House of Delegates and the Senate by the fifteenth day of January of each year.

SECTION 9. PROTESTS AND RECONSIDERATION

9.1 Protests

9.1.1 Protests based on specifications or improprieties in any type of solicitation which are apparent prior to the bid or proposal opening or closing date must be filed not later than five calendar days prior to the bid or proposal opening or closing date. A protest of the award must be filed no later than five calendar days following award of the contract. Protests filed prior to an award shall be resolved in accordance with this rule before an award is made. Information regarding awards may be obtained from the institution's purchasing office, and a vendor contemplating a protest has a duty to obtain this information in a timely manner.

9.1.2 The protest must be filed in writing with the chief procurement officer and contain the name and address of the protestor, the

requisition number of the bid or the purchase order number, a statement of the grounds for protest and supporting documentation, the relief sought, and if a hearing on the merits of the protest is requested.

9.1.3 The chief procurement officer will review the protest and issue a decision in writing. In the event a hearing on the merits of the protest is requested by the protestor, the chief procurement officer shall set a time and place for the hearing. The hearing shall be recorded and an official record shall be prepared. Following the hearing, the chief procurement officer shall issue a written decision.

9.2 Reconsideration

9.2.1 Reconsideration of a decision on a protest by the chief procurement officer may be requested by an aggrieved party to the institution's chief financial officer. A request for reconsideration shall be made in writing within five calendar days after receiving the chief procurement officer's written decision and it shall contain the name and address of the aggrieved party, the requisition or purchase order number, a statement of the grounds for reconsideration with supporting documentation, the relief sought, and if a hearing on the merits is requested.

9.2.2 The chief financial officer will review the request for reconsideration and issue a decision in writing. In the event a hearing on the merits is requested by the aggrieved party, the chief financial officer shall set a time and place for the conference. The hearing shall be recorded and an official record shall be prepared. Following the hearing, the chief financial officer shall issue a decision in writing to the aggrieved party and his or her decision shall be final.

9.2.3 The institution may refuse to decide any protest or reconsideration where the matter involved is the subject of litigation before a court of competent jurisdiction, or has been decided on the merits by such court. The foregoing shall not apply where the court requests, expects or otherwise expresses interest in the decision of the institution.

SECTION 10.

SUSPENSION AND RECONSIDERATION

10.1 Suspension

- 10.1.1 The chief procurement officer shall have the power and authority to suspend, for a period not exceeding one year, the right and privilege of a person to bid on purchases of the institution.
- 10.1.2 The following shall be considered adequate grounds for suspension of a vendor: (a) a vendor has exhibited a pattern of poor performance in fulfilling its contractual obligation(s) including, but not limited to, providing or furnishing commodities, materials or services late, or at a quantity or quality level below that which is specified in the contract, or repeated instances of poor performance; or (b) the vendor has breached any contract entered into pursuant to the provisions of West Virginia Code §18B-5-4 through §18B-5-7 or this rule, or the vendor has been convicted of any federal or state law punishable as a felony if such conviction is directly related to the performance of a contract entered into pursuant to West Virginia Code §18B-5-4 through §18B-5-7 or this rule. Any such suspension must be imposed within one year of the date of the act, omission, or conviction the suspension is based upon, or within one year of the chief procurement officer's discovery of such act, omission, or conviction.

10.2 Reconsideration

- 10.2.1 Reconsideration of a decision on suspension by the chief procurement officer may be requested by an aggrieved party to the institution's chief financial officer. A request for reconsideration shall be made in writing within five calendar days after receiving the chief procurement officer's decision and it shall contain the name and address of the aggrieved party, a statement of the grounds for reconsideration with supporting documentation, the relief sought, and if a hearing on the merits is requested.
- 10.2.2 The chief financial officer will review the request for reconsideration and issue a decision in writing. In the event a hearing on the merits is requested by the aggrieved party, the chief financial officer shall set a time and place for the conference. The hearing shall be recorded and an official record prepared. Following the hearing, the chief financial officer will issue a decision in writing to the aggrieved party and his or her decision shall be final.

- 10.2.3 The institution may refuse to decide any reconsideration where the matter involved is the subject of litigation before a court of competent jurisdiction, or has been decided on the merits by such court. The foregoing shall not apply where the court requests, expects or otherwise expresses interest in the decision of the institution.

SECTION 11. QUALIFICATIONS OF A BUYER AND A CHIEF PROCUREMENT OFFICER

11.1 Buyer

- 11.1.1 No person shall be employed as a buyer unless that person, at the time of employment, is either: (a) a graduate of an accredited college or university; or (b) has at least four year's experience in purchasing for any unit of government or for any business, commercial or industrial enterprise.
- 11.1.2 Any person making purchases and acquisitions pursuant to this section shall execute a bond in the penalty of fifty thousand dollars, payable to the state of West Virginia, with a corporate bonding or surety company authorized to do business in this state as surety thereon, in a form prescribed by the Attorney General and conditioned upon the faithful performance of all duties in accordance with West Virginia Code §18B-5-4 through §18B-5-7 and this rule. In lieu of separate bonds for such buyers, a blanket surety may be obtained. Any such bond shall be filed with the Secretary of State. The cost of any such bond or bonds shall be paid from funds appropriated to the Governing Board.

11.2 Chief Procurement Officer

- 11.2.1 From the date of adoption of this rule by the Governing Board and henceforth, no new person shall be employed as a chief procurement officer unless that person, at the time of employment, is: (a) a graduate of and has received a baccalaureate degree from an accredited college or university; and (b) has at least four year's experience in purchasing for any unit of government or for any business, commercial or industrial enterprise.
- 11.2.2 The bonding provisions set forth in subparagraph 11.1.2 shall also apply to any person employed as a chief procurement officer.

SECTION 12. PROMPT PAYMENT

12.1 Each institution purchasing or acquiring materials, supplies, equipment, services and printing in accordance with West Virginia Code §18B-5-4 through §18B-5-7 and this rule, shall notify and inform every vendor doing business with that institution of the provisions of West Virginia Code §5A-3-54, also known as the "Prompt Pay Act of 1990."

SECTION 13. RECEIVING AND INVENTORY MANAGEMENT

13.1 Receiving

13.1.1 The chief procurement officer shall establish institutional guidelines and procedures for receiving and distributing materials, supplies, equipment, services and printing to departments and offices within the institution. These guidelines and procedures shall be consistent with this rule, and they shall be approved by the president and filed with the senior administrator.

13.2 Inventory Management

13.2.1 The chief procurement officer shall inventory all equipment and furnishings that have a value at the time of purchase or acquisition of \$1,000 or more. Such inventory shall be kept current at all times.

13.2.2 The chief procurement officer shall set up and maintain the institution's inventory management system on the basis of generally accepted accounting standards. This system shall also conform to the requirements of the Governing Board, the state and the federal government as applicable.

13.2.3 The chief procurement officer shall conduct an annual audit of the institution's inventory. On the fifteenth day of July of each year, the president shall submit the institution's official inventory report to the senior administrator for the preceding fiscal year.

SECTION 14. DISPOSAL OF SURPLUS OR OBSOLETE MATERIALS, SUPPLIES AND EQUIPMENT

14.1 The chief procurement officer shall identify and inventory the institution's surplus or obsolete materials, supplies and equipment and shall store such

materials, supplies and equipment until such time as they may be disposed of in a manner consistent with this rule and state law.

- 14.2 Institutions may dispose of surplus or obsolete materials, supplies and equipment by transfer to other governmental agencies or institutions, by exchange or trade, or by sale as junk or otherwise.
- 14.3 If the method of disposition is other than by transfer to, or exchange or trade with other governmental agencies or institutions, the chief procurement officer shall, at least ten days prior to the disposition, advertise once a week for two consecutive weeks by newspaper publication as a Class II legal advertisement in compliance with the provisions of West Virginia Code §59-3-1 et. seq., in the county where the surplus or obsolete materials, supplies and equipment are located, their availability or sale, in whole or part, at public auction or by sealed bid, as sound business practices may warrant under existing circumstances and conditions.
- 14.4 The institutions may also dispose of surplus or obsolete materials, supplies and equipment through the surplus property unit of the Purchasing Division of the West Virginia Department of Administration; in which case, all of the rules and regulations of the Department of Administration shall be followed.
- 14.5 Under no circumstances shall any of the property described in this section be sold, transferred or conveyed to any private person, firm or corporation other than at public auction or by sealed bid or as otherwise provided in West Virginia Code §18B-5-7.

SECTION 15. VIOLATIONS

- 15.1 Any person who authorizes or approves a purchase contract in a manner in violation of the West Virginia Code, this rule, or any policy or procedure adopted by the Governing Board, shall be personally liable for the cost of such purchase or contract. Purchases or contracts violating the West Virginia Code and/or this rule shall be void and of no effect.
- 15.2 Any person receiving anything of value from a known interested party in the awarding of a purchase order shall be subject to the provisions of West Virginia Code §5A-3-28, 29, 30, 31.
- 15.3 Neither the Governing Board, nor any employee of the Governing Board, shall be financially interested, or have any beneficial personal interest, directly or indirectly, in the purchase of any equipment, materials, supplies,

services, or printing, nor in any firm, partnership, corporation or association furnishing them. Neither the Governing Board or any employee of said board shall accept or receive directly or indirectly, from any person, firm or corporation, known by the Governing Board or such employee to be interested in any bid, contract or purchase, by rebate, gift or otherwise, any money or other thing of value whatsoever or any promise, obligation or contract for future reward or compensation.

- 15.5 Any vendor violating the West Virginia Code or this rule may be suspended from the right to bid on or submit a proposal for institutional purchases for a period of up to one year.

SECTION 16. PERFORMANCE AUDITS

- 16.1 An independent performance audit of all purchasing functions and duties which are performed at any institution of higher education shall be performed each fiscal year. The Joint Committee on Government and Finance is required by West Virginia Code to conduct the performance audit and the Governing Board shall be responsible for paying the cost of the audit from funds appropriated to the Governing Board. The Governing Board may also conduct independent performance audits as it deems necessary and prudent.

SECTION 17. PERMITTING PRIVATE INSTITUTIONS OF HIGHER EDUCATION TO JOIN AS PURCHASERS

- 17.1 The Governing Board shall permit private institutions of higher education to join as purchasers on purchase contracts for materials, supplies, equipment, services and printing entered into by the Governing Board or the institutions under its control. Any private school desiring to join as a purchaser on such purchase contracts shall file with the senior administrator an affidavit signed by the president of the institution of higher education or a designee, requesting that it be authorized to join as a purchaser on such contracts, and agreeing that it will be bound by such terms and conditions as that Governing Board may prescribe, and that it will be responsible for payment directly to the vendor under each purchase contract.