

**WEST VIRGINIA**  
**SECRETARY OF STATE**  
**KEN HECHLER**  
**ADMINISTRATIVE LAW DIVISION**

Form #2

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JUL 2 2 19 PM '98

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE**

AGENCY: DEPARTMENT OF ADMINISTRATION PURCHASING TITLE NUMBER: 148

RULE TYPE: LEGISLATIVE; CITE AUTHORITY §5a-3-4

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1

TITLE OF RULE BEING AMENDED: PURCHASING

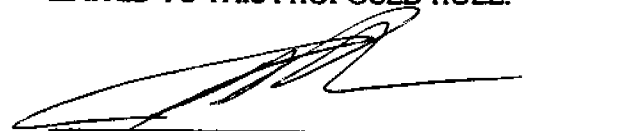
IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: \_\_\_\_\_

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 August 3, 1998 AT 9:00 a.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

DEPARTMENT OF ADMINISTRATION  
MAIN CAPITOL, ROOM E-119  
1900 KANAWHA BLVD, East  
CHARLESTON, WV 25305  
ATTN: CRYSTAL LUSK

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



Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

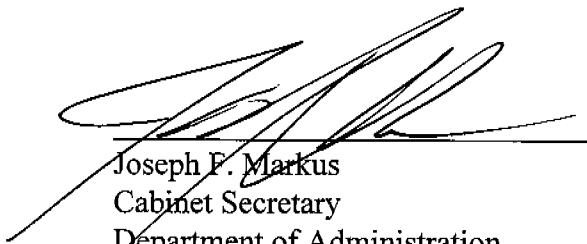
\$6.20

148CSR1

**TITLE 148**  
DEPARTMENT OF ADMINISTRATION  
PURCHASING DIVISION

SERIES 1  
PURCHASING

APPROVAL OF FILING BY CABINET SECRETARY



Joseph F. Markus  
Cabinet Secretary  
Department of Administration

**DATE:** JULY 1, 1998

**TO:** LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

**FROM:** PURCHASING DIVISION of the  
DEPARTMENT OF ADMINISTRATION

**LEGISLATIVE RULE TITLE:** 148

1. **Authorizing statute(s) citation:** W. Va. Code, §5A-3-4.
2.
  - a. **Date filed in State Register with Notice of Hearing**  
April 2, 1996
  - b. **What other notice, including advertising, did you give of the hearing?**  
None
  - c. **Date of Hearing(s)**  
N/A
  - d. **Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.**  
Attached \_\_\_\_\_ No comments received \_\_\_\_\_
  - e. **Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)**  
July 1, 1998
  - f. **Name and phone number(s) of agency person(s) to contact for additional information:**  
David Tincher (304) 558-2538
3. **If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:**
  - a. **Give the date upon which you files in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.**  
N/A
  - b. **Date of hearing:**  
N/A

- c. **On what date did you file in the State Register the finding and determinations required together with the reasons therefor?**
- d. **Attach findings and determinations and reasons:**

Attached \_\_\_\_\_

## APPENDIX B

### FISCAL NOTE FOR PROPOSED RULES

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**Rule Title:** Purchasing Division Legislative Rules (Title 148, Series 1)

**Type of Rule:** Legislative

**Agency:** Purchasing Division  
Department of Administration

**Address:** 2019 Washington Street, East  
P.O. Box 50130  
State Capitol Complex  
Charleston, WV 25305

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**1. Effect of Proposed Rule:**

There are no estimated total costs of this legislative rule change. In addition, no additional personal services, repairs or alternations, or equipment are required.

**2. Explanation of above estimates:**

The monetary effects of this Proposed Rule may be determined in the reduction of vendor protests based on unsubstantiated causes. Better clarification of these procedures is estimated to alleviate the number of these protests.

**3. Objectives of these rules:**

The objective of the Legislative Rule is to explain and clarify the authorization and responsibilities of the Purchasing Division, as stipulated in the West Virginia Code §5A-3-1, et seq. This Rule provides guidance to state agencies in the procurement of commodities and services for the state of West Virginia.

The proposed change to this Rule further clarifies and streamlines the protest process which vendors doing business with the state must abide. It defines the vendor's rights in contesting certain decisions made by the Purchasing Division. It also establishes proper

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procedures by which vendors must submit protests to contract awards and explains the review evaluation.

**Rule Title:** Purchasing Division Legislative Rules (Title 148, Series1)

**4. Explanation of Overall Economic Impact of Proposed Rule:**

**A. Economic Impact on State Government:**

Potentially fewer vendor protests based on better clarification of procedures, thus, more expedient processing of contract awards (due to the potential lack of delays due to protests)

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

None

**C. Economic Impact on Citizens/Public at Large:**

None

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**148CSR1**

**TITLE 148**  
DEPARTMENT OF ADMINISTRATION  
PURCHASING DIVISION

**SERIES 1**  
PURCHASING

**BRIEF SUMMARY OF PROPOSED RULE**

This Legislative Rule is an explanation and clarification of the authorization and responsibilities of the Purchasing Division, as stipulated in the West Virginia Code §5A-3-1, et seq. This Rule provides guidance to state agencies in the procurement of commodities and services for the state of West Virginia.

The proposed change to this Rule further clarifies and streamlines the protest process which vendors doing business with the state must abide. It defines the vendor's rights in contesting certain decisions made by the Purchasing Division. It also establishes proper procedures by which vendors must submit protests to contract awards and explains the review evaluation.

**The monetary effects of this Proposed Rule may be determined in the reduction of vendor protests based on unsubstantiated causes.** Better clarification of these procedures is estimated to alleviate the number of these protests.

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**148CSR1**

**TITLE 148**  
**DEPARTMENT OF ADMINISTRATION**  
**PURCHASING DIVISION**

**SERIES 1**  
**PURCHASING**

**STATEMENT OF CIRCUMSTANCES REQUIRING THIS RULE**

West Virginia Code §5A-3-1, et seq. provides jurisdiction of the Purchasing Division. Failure to file this rule would prohibit the clarification of the responsibilities and authorization of this agency.



FILED

148CSR1

JUL 2 2 19 PM '98

TITLE 148

DEPARTMENT OF ADMINISTRATION  
PURCHASING DIVISION

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

SERIES 1  
PURCHASING

**§148-1-1. GENERAL.**

**1.1. Scope.** - This Legislative Rule is an explanation and clarification of operative procedures for the purchase of printing, commodities and services by the Purchasing Division of the Department of Administration.

**1.2. Authority.** - W. Va. Code, §5A-3-4.

**1.3. Filing Date.** - April 2, 1996.

**1.4. Effective Date.** - May 3, 1996.

**§148-1-2. DEFINITIONS.**

As used in this rule, all terms have the same meaning as provided in W. Va. Code §5A-1-1 and 5A-3-1 et seq., and as follows:

(a). "Director" means the Director of the Purchasing Division of the Department of Administration.

(b). "F.O.B. destination" and "free on board destination" mean the seller or vendor must transport or pay for the transportation of the printing, commodities or services to the point of destination specified in the contract.

(c). "Secretary" means the head of a department, as appointed by the Governor, as defined in W. Va. Code §5F-1-2.

**§148-1-3. APPLICABILITY.**

This legislative rule applies to all spending units of State government except those statutory exempted. Exempted spending units may elect to follow this rule.

All purchases must be approved by the secretary or head of the spending unit, or his or her designee, and the name of the designee shall be filed with the Director.

#### **§148-1-4. AUTHORITY AND REMEDIES OF DIRECTOR**

The Director has the power and duty to:

- (a). Ensure purchases and contracts for commodities and printing are based on competitive bid whenever possible;
- (b). Purchase or contract for, in the name of the State, the commodities and printing required by the spending units of State government;
- (c). Prescribe the manner in which commodities and printing shall be purchased, delivered, stored and distributed;
- (d). Review specifications and descriptions before soliciting bids to ensure the specifications and descriptions do not favor a particular brand or vendor;
- (e). Accept or reject any and all bids in whole or in part;
- (f). Waive minor irregularities in bids or specifications;
- (g). Apply and enforce standard specifications;
- (h). Transfer to or between spending units or sell surplus, obsolete or unused commodities;
- (i). Direct the central storerooms of supplies for spending units;
- (j). Prescribe the amount of deposit or bond to be submitted with any bid or contract;
- (k). Prescribe contract provisions for liquidated damages, remedies and/or other damages provisions in the event of vendor default;
- (l). Exempt purchases of commodities, printing and services from within State government or from West Virginia sheltered workshops from competitive bidding requirements, when price, availability and quality are comparable to those in the open market;
- (m). Employ a person whose responsibilities, in addition to other duties, shall be to identify commodities and printing available for purchase from nonprofit sheltered

workshops, evaluate the needs for the commodities and printing, coordinate the workshops in their production efforts and provide information to the workshops about available opportunities within State government for the purchase of commodities or printing;

(n). Resolve conflicts between State or other institutions with preference for State purchases in accordance with the West Virginia Code, or between a spending unit and the institution, basing the decision on quality, price and the efficient and economical operation of State government;

(o). Prescribe the manner of inspecting all deliveries of commodities, and make chemical and physical tests of samples submitted with bids and samples of deliveries to determine compliance with specifications;

(p). Collect an annual fee in the amount of \$45.00 to be paid by all vendors registering or already registered. The Director may waive the annual fee at any time when, in the discretion of the Director, waiver of the fee would be in the best interest of the State of West Virginia; and,

(q). Implement the following remedies when appropriate circumstances arise: (1). In the event that a vendor fails to honor any contractual term or condition, reserve the right to cancel the contract and re-award the purchase order to the next lowest bidder. The vendor failing to honor contractual obligations may be held responsible for all differences in cost; (2). Declare a vendor non-responsible or non-responsive and refuse to award a purchase order. All such instances shall be substantiated in writing. The documentation shall be considered a public document and shall be available for inspection at all reasonable times; or, (3). Suspend, for a period not to exceed one (1) year, the right of a vendor to bid on State purchases when there is reason to believe that the vendor has violated any of the provisions of the terms and conditions of a contract, this rule and/or State law. A suspended vendor may appeal the decision of the Director to the Secretary of Administration as provided in Section 5.3(j) of this rule.

The following are adequate grounds for suspension:

(i). A vendor has exhibited a pattern of poor performance in fulfilling his or her contractual obligations to the State. Poor performance includes, but is not limited to, a vendor 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.

(ii). The vendor has breached any contract entered into pursuant to the provision of W. Va. Code §5A-3-1 et seq. or this rule; or

(iii). The vendor has been convicted of any federal, state, or local law punishable as a felony, directly related to the performance of a contract entered into pursuant to W. Va. Code §5A-3-1 et seq. or this rule.

## **§148-1-5. REGISTRATION, BIDDING, AND AWARD.**

### **5.1. Registration of Vendors.**

- (a). All vendors shall be registered with the Purchasing Division.
- (b). Vendors shall register by filing the form provided by the Purchasing Division which shall be completed according to its instructions.
- (c). Any company or corporation, or subsidiary of the company or corporation, listed on any nationally recognized stock exchange may be considered an eligible vendor properly registered to do business with the State of West Virginia.
- (d). Vendors receiving orders for goods and/or services exceeding \$1,000 shall pay an annual fee of \$45.00. A vendor with multiple locations is required to pay only one fee when operating under one Federal Employer Identification Number (FEIN).
- (e). The director may waive the registration requirements in the case of any vendor that is a sole source provider.
- (f). Bids will not be accepted from any vendor not properly registered with the Purchasing Division prior to issuance of a purchase order.

### **5.2. Bidding**

- (a). All bids are F.O.B. destination unless otherwise clearly indicated by the vendor in the bid.
- (b). Bidders shall submit their bid and/or proposal prior to the date and time of the bid opening on the Request for Quotation forms provided to the bidders. Substitutions for the Request for Quotation form are acceptable only if the substituted terms, conditions and/or provisions are approved by the Director.
- (c). Bidders shall submit their bid and/or proposal to the Purchasing Division and an exact copy to the State Auditor prior to the specified date and time of the bid opening. Bids received after the required time and date will be rejected.

An authorized representative of the bidder shall sign all bids received by the Purchasing

Division. A corporate signature without an individual name is not an acceptable signature.

(d). Bids by facsimile machine are acceptable, at the discretion of the Director. Bids by facsimile transmission must be received by the Purchasing Division and the State Auditor prior to the bid opening date and time (transmission completed). A vendor choosing to submit a bid or a written change to a bid by facsimile machine accepts full responsibility for transmission and receipt of the bid or written change to a bid. The State accepts no responsibility for the unsuccessful and/or incomplete transmission of bids by facsimile machine. An original of the bid sent by facsimile transmission and a copy must be received within two (2) working days of the bid opening date by the Purchasing Division and the State Auditor, respectively.

(e). Copies of bids may be open for public inspection in the office of the State Auditor immediately after bid opening. The files of the Purchasing Division and State Auditor are open for public inspection after the award has been made.

(f). A written change of a sealed bid is permitted before the bid opening. Written changes must be submitted to the Purchasing Division and State Auditor prior to the date and time of the bid opening. Changes by facsimile machine shall be made in the manner provided in Section 5.2(d) of this rule.

(g). The Director may reject an erroneous bid after the bid opening if all of the following conditions exist: (1) An error was made; (2) The error materially affected the bid; (3) Rejection of the bid would not cause a hardship on the State spending unit involved other than losing an opportunity to receive commodities and/or printing at a reduced cost; and (4) Enforcement of the part of the bid in error would be unconscionable. In order to reject a bid, the public file must contain documented evidence that all of the conditions set forth in this subdivision exist.

(h). Price adjustment is allowed on any purchase order if specific provisions for price adjustment have been incorporated in the Request for Quotation and the purchase order. All requests for price adjustment shall be made in accordance with the specific terms and conditions of the individual purchase order. In the event no provision for price adjustment has been made, discretion to grant a price adjustment shall rest with the Director.

### **5.3. Vendor's Rights and Duties.**

(a). Each vendor is solely responsible for the delivery of a bid to the Purchasing Division and an exact or duplicate copy to the office of the State Auditor. Any deviation between the bids received by the State Auditor and the Purchasing Division relating to quantity, quality, specifications, price, date of delivery or performance shall cause the bid to be rejected. Both bids must be received at the respective offices prior to the specified date

and time of the bid opening.

(b). The official time clock of the Purchasing Division, for the purpose of receipt of bids, will be displayed in the offices of the Purchasing Division.

(c). Vendors failing to return quotation forms may be removed from the bidding list.

(d). If there is a conflict between the extension price and the unit price, the unit price prevails.

(e). A definite shipping date, after receipt of order, should be indicated by the vendor on all bids. If not indicated on the vendor's response, delivery may be required within ten (10) days after receipt of order.

(f). 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.

(g). Vendors are responsible for the accuracy of the information of the bid envelopes.

(h). Vendors may write, visit, or telephone the Purchasing Division to obtain official bid forms.

(i). All sales to the State of West Virginia are exempt from Consumer's Sales Tax or Excise Tax by blanket state exemption and blanket federal exemption.

(j). If a vendor is suspended and requests a hearing, one will be scheduled with the Director. The vendor shall be notified, in writing, of the date, time and place of the hearing.

The hearing shall be documented and an official record be prepared. Following the hearing, the Director shall issue a written decision of the hearing. Vendors may appeal the decision of the Director to the Secretary of Administration. The appeal must be made within five (5) working days of issuance of the decision of the Director. The Secretary of Administration, or his or her designee, shall schedule a hearing and notify the vendor, in writing, of the date, time and place of the hearing. The hearing shall be documented and an official record prepared. The decision of the Secretary shall be stated in writing.

#### **5.4. Awards**

(a). Award is made to the lowest responsible bidder. Consideration is 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. In

some cases multiple and/or split awards are made when determined to be in the best interest of the State by the Director. Occasionally, purchase orders are issued which impose no obligation on the State to take delivery of a product and/or service. These purchase orders are issued as blanket purchase orders or price agreements.

(b). The Director may accept or reject, in whole or in part, any bid when the Director feels it to be in the best interest of the State. If any bid is rejected, a written explanation must be placed in the purchase order file.

(c). When tie bids are received, the award is 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 considered prudent by the Director.

(d). Vendor Preference - All purchases of commodities and printing made upon competitive bids, with the exception of construction services, are subject to a resident vendor preference in accordance with the rules promulgated by the Secretary of the Department of Tax and Revenue. In addition, all purchases of commodities and printing made upon competitive bid are subject to reciprocity preference equal to the amount of preference applied or granted by another State. A resident vendor is one who:

(i). Is authorized to transact business within the State by appropriate authorities;

(ii). Maintains an office in the State;

(iii). Has actually paid, and not just applied to pay, personal property taxes on equipment used in the regular course of supplying services of the general type offered;

(iv). Has actually paid, and not just applied to pay, business taxes; and

(v). When selling tangible personal property, has available for delivery a stock of materials of the type being offered and a reasonable quantity.

If any of these requirements or provisions jeopardize the receipt of federal funds, then such requirements or provisions are null and void and of no force and effect.

(e). Requirements for bonds and deposits- The Director shall determine the applicability and amount of bonds and/or deposit required of a vendor at any time, if, in his or her judgment, the security is necessary to safeguard the State from undue risk. The Director may require the vendor to submit a certified check, certificate of deposit, performance bond, or any other security acceptable to the Director, payable to the State of West Virginia. Personal checks and/or company checks are not acceptable. Provision for such requirements is usually incorporated into the Request for Quotation and purchase order.

When any contract is 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 Purchasing Division. Upon receipt of the notification, the Purchasing Division shall return the check or deposit to the vendor.

## **§148-1-6. PURCHASING METHODS.**

### **6.1. General**

(a). Specifications are written to maximize and encourage competition. In certain cases, a "brand name or equal" is used as a specification.

(b). Contracts requiring more than six (6) months to fulfill are filed with the State Auditor.

### **6.2. Purchases of \$10,000 or less.**

Spending units may make purchases in the amount of \$10,000 or less of certain commodities, printing and services under guidelines established by the Director, Records of the purchases are maintained on file with the spending unit and made available for public inspection during the normal office hours of the spending unit.

### **6.3. Purchases In Excess of \$10,000.**

(a). Purchase of commodities and printing estimated to be in excess of \$10,000 are advertised at least two times, whenever possible, using advertising media such as the Purchasing Bulletin, newspapers, trade journals, the purchasing bulletin board and journals in the Purchasing offices, or any other media the Director considers advisable. The requirement to advertise is waived by the Director when he or she determines it is in the best interest of the State.

### **6.4. Open End Contracts.**

The State may secure open end contracts to obtain commodities and/or printing to supply the repetitive needs of the State spending units in the form of statewide contracts, blanket orders or price agreements. The Director may solicit requirements for similar commodities, printing and services to determine the best methods for acquisition. The Director may grant exceptions to spending units from utilizing existing statewide contracts, blanket orders, price agreements, etc., on a case-by-case basis if determined to be in the best interest of the State.



### **6.5. Non-Competitive Procurement.**

The Director of Purchasing may approve the purchase of commodities and/or printing directly from a vendor without competitive bidding, if any of the following conditions exist:

(a) The item cannot be obtained through ordinary purchasing procedures; (b) The item is of a 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.

### **6.6. Emergency Procurement.**

Emergency purchases exceeding \$10,000 must receive the prior written approval of the Director or his or her designee. An "Emergency Situation" requiring a purchase of commodities, printing or services, must be the result of unforeseen events or circumstances, including delays by contractors, delays in transportation, or an unanticipated volume of work. Emergency purchases are not used for hardship resulting from neglect, poor planning or lack of organization by the spending unit. Competitive bids are obtained if possible.

### **6.7. Used Equipment.**

Used equipment may be purchased directly without competitive bids upon prior approval of the Director.

### **6.8. Agreements.**

The Director may negotiate for technical, professional or other services not routinely available within the State government by a procurement method known as an agreement. The Director may delegate the authority to negotiate for technical, professional or other services to spending units. The agreement must be approved by the Director before issuance.

### **6.9. Request for Proposals and Expressions of Interest.**

The Director may approve use of Requests for Proposals (RFP), Expressions of Interest (EOI) and other similar types of requests to allow for procurement of similar types of requests to allow for procurement of certain commodities, services and/or printing. An RFP and/or EOI are awarded on the basis of the criteria specified in the instructions to the bidders, including price.

## **6.10. Deliveries.**

Spending units are responsible for the inspection of goods, ensuring purchases meet contractual requirements, and maintaining records of receipt for goods and services. Routine visits to spending units are made by personnel of the Purchasing Division to review and report on purchasing practices and procedures and to verify that commodities and services delivered conform to contractual requirements.

## **§148-1-7. PROTESTS.**

### **~~7.1. Protests.~~**

~~(a). Protests based on specifications or improprieties in any type of solicitation which are apparent prior to the bid opening or closing date for receipt of bids or proposals must be filed no later than five (5) working days prior to the bid opening or closing date. Protests based on a violation of State law or rule must be filed no later than five (5) working days after issuance by the Purchasing Division of the notice of intent to award the contract. Any other protest must be filed no later than five (5) working days following award of the contract or purchase order.~~

~~(b). Protests filed after the time frames specified in subdivision (a) of this subsection will not be considered. In addition, after the time frames specified in subdivision (a) of this subsection, protests may not be amended, altered or changed.~~

~~(c). A protest must be filed in writing with the Director and contain the name and address of the protester, the requisition number, a statement of the grounds for protest, supporting documentation, and the relief sought.~~

~~(d). Protests received timely will be reviewed and a written decision issued.~~

### **7.1. Vendor Rights.**

A vendor has the option of protesting certain decisions made by the Purchasing Division. Vendors may protest bid specifications or purchase order/contract awards by following specific formats and time frames.

### **~~7.2. Reconsideration of Protest Decisions.~~**

~~(a). Reconsideration of a decision on a protest may be requested by an aggrieved party to the Director. A request for reconsideration shall be in writing and contain the name and address of the aggrieved party, the requisition number, a statement of the grounds for reconsideration and, a statement of whether a hearing is requested, supporting~~

~~documentation, and the relief sought.~~

~~(b). In the event a hearing is requested by the aggrieved party, the Director, or his or her designee, will set a time and place for the hearing for full review of the matter.~~

~~(c). If no hearing is requested, the Director, or his or her designee, will review the request for reconsideration and issue a written decision. If a hearing is requested, the Director, or his or her designee, will hold the hearing and then issue a written decision.~~

### **7.2. Submission of Protests.**

Protests based on bid specifications must be submitted no later than five (5) working days prior to the bid opening. Protest of purchase order/contract awards must be submitted no later than five working days after the award. The vendor is responsible to be knowledgeable of the bid opening and award dates. Protests received after these dates may be rejected at the option of the Purchasing Director.

All protests must be submitted in writing to the Purchasing Director and contain the following information:

- (a) the name and address of the protester.
- (b) the requisition/purchase order/contract number(s).
- (c) a statement of the grounds for protest.
- (d) supporting documentation (if necessary)
- (e) resolution or relief sought.

Failure to submit this information will be grounds for rejection of the protest.

### **7.3. General.**

~~The State may refuse to decide any protest or reconsideration where the matter involved is the subject of litigation before a court of competent jurisdiction, has previously been decided on the merits by a court of competent jurisdiction, or has been decided in a previous protest. The provisions of the subsection do not apply where the court requests, expects or otherwise expresses interest in the decision of the State.~~

### **7.3 Protest Review.**

The Purchasing Director or his designee will review the matter of protest and issue a written decision. A hearing may be conducted at the option of the Purchasing Director or his designee. Continuation or delay of the purchase order/contract award is at the discretion of the Purchasing Director.

The Purchasing Division reserves the right to refuse to review any protest where the matter involved is the subject of litigation before a court of competent jurisdiction, has previously been decided on the merits by a court of competent jurisdiction, or has been decided in a previous protest by the Purchasing Division. The provisions of this subsection do not apply where the court requests, expects, or otherwise expresses interest in the decision of the state.

**§148-1-8. LATE PAYMENTS.**

**8.1. Before July 1, 1991.**

Payments on completed public contracts entered into after July 1, 1990 and before July 1, 1991, in accordance with W. Va. Code §5A-3-1 et seq., except public construction contracts relating to roads or bridges let by the Commissioner of the Division of Highways, shall bear interest at the current rate determined by the State Tax Commissioner beginning on the ninety-first day, unless the contracting spending unit reasonably determines that delay in completing the contract or accepting payment is the fault of the vendor.

**8.2. On or After July 1, 1991.**

(a). On or after July 1, 1991, if a properly registered and qualified vendor who supplies services or commodities to any State spending unit, except the Division of Highways, the Public Employees Insurance Agency and the Department of Health and Human Services, does not receive payment within sixty (60) days following receipt by that spending unit of a legitimate uncontested invoice, the vendor shall receive interest from the sixty-first day until the date the State check is mailed to the vendor at the current rate determined by the State Tax Commissioner.

(b). On or after July 1, 1992, if a properly registered and qualified vendor who supplies services or commodities to the Division of Highways, the Public Employees Insurance Agency or the Department of Health and Human Resources does not receive payment within sixty (60) days following receipt by the spending unit of a legitimate uncontested invoice, the vendor shall receive interest from the sixtieth day until the date the State check is mailed to the vendor at the current rate determined by the State Tax Commissioner.

(c). An invoice is considered received at the earlier of the date marked as received by the spending unit or three (3) days after the date of the postmark made by the United States postal service as evidenced on the envelope in which the invoice was mailed.

The initial receiving spending units shall indicate the date of receipt on the invoice, attaching the envelope in which the invoice was mailed or other explanatory

documentation evidencing the date of receipt and tolling of the time limits for payments.

(d). An invoice is considered legitimate and uncontested if the commodities or services covered by the invoice have been delivered and accepted or fully performed and accepted, if the appropriate authorization for delivery of the commodities or services has been received by the vendor, and if the invoice is correct in all respects, as determined by the spending unit reviewing the invoice. If an invoice is contested for any reason at any level of processing, only when the contest has been resolved does the time for accruing interest begin.

If the invoice is received prior to acceptance of the commodities or services, then the invoice becomes legitimate and uncontested and considered received upon acceptance of the commodities and services.

(e). The State spending unit initially receiving the legitimate uncontested invoice shall process the invoice for payment within ten (10) days from receipt, except that the Department of Health and Human Resources, the Division of Highways and the Public Employees Insurance Agency have fifteen (15) days from receipt to process the invoice for payment. Although all invoices should be processed in a prompt manner, invoices subject to a cash discount should be processed in such a manner as to avail the spending unit of the discount, if possible.

(f). Any other State spending unit charged by law with processing requisitions for payment of legitimate uncontested invoices shall either process the requisition or reject it for good cause within ten (10) days after the State spending unit receives the requisition. If the State spending unit fails to process or reject the requisition for good cause within ten (10) days, then it is liable for payment of that portion of interest attributable to its actions.

#### **§148-1-9. VIOLATIONS.**

(a) any person who authorizes or approves a purchase or contract in a manner in violation of the West Virginia Code, this rule or any policy or procedure adopted by the Purchasing Division is personally liable for the cost of such purchase or contract. Purchases or contracts violating the West Virginia Code and/or this rule are void and of no effect.

(b). Any vendor violating the West Virginia Code, this rule, or any policy or procedure adopted by the Purchasing Division may be suspended from the right to bid on State purchases for a period of up to one year. Appeal of the suspension may be made to the Secretary of Administration.

(c). Any person receiving anything of value from a known interested party in the

awarding of a purchase order is subject to the provisions of the W. Va. Code §5A-3-28,29,30 and 31, unless otherwise determined by the Ethics Commission.