

**WEST VIRGINIA
SECRETARY OF STATE**

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #3

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OFFICE OF THE
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: Finance and Administration TITLE NUMBER: 148

CITE AUTHORITY WV Code 5A-3-4

AMENDMENT TO AN EXISTING RULE: YES NO

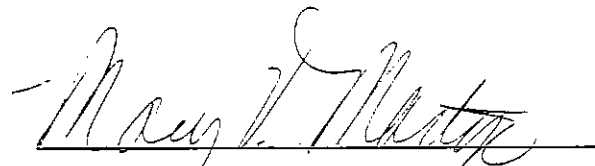
IF YES, SERIES NUMBER OF RULE BEING AMENDED: Series 1

TITLE OF RULE BEING AMENDED: Purchasing Division

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



Mary Martin

LEGISLATIVE RULES
WEST VIRGINIA DEPARTMENT OF FINANCE AND ADMINISTRATION
PURCHASING DIVISION

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Section 1. General.

1.1 Scope -- These Legislative Rules are an explanation and clarification of operative procedures of the Purchasing Division, promulgated in accordance with State Law.

1.2. Authority. -- See West Virginia Code §5A-3-4

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Repeal of Former Rules --

These rules repeal and replace the former Legislative Rules, West Virginia Department of Finance and Administration, Series 1, Purchasing Division, effective December 29, 1982.

Section 2. Applicable Departments.

These Legislative rules shall apply to all departments of state government except those statutorily exempted. Exempted agencies may elect to follow these regulations.

Section 3. Director's Authority.

3.1. Director's Duties

The director shall have the following powers and duties:

(a) Purchase or contract for, in the name of the State, the commodities and printing required by the departments of the state government;

(b) Prescribe the manner in which commodities and printing shall be purchased, delivered, stored and distributed;

(c) Review specifications and descriptions before soliciting bids to assure that the specifications and descriptions do not favor a particular brand, product or vendor;

(d) Apply and enforce standard specifications;

(e) Prescribe the amount of deposit or bond to be submitted with a bid or contract and the amount of deposit or bond to be given for the faithful performance of a contract;

(f) Award, in certain instances, without competitive bidding, commodities and printing to qualified West Virginia Sheltered Workshops; provided that such commodities and services are comparable in price and quality;

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

(h) Recommend to the Commissioner of the Department of Finance and Administration that the right and privilege of a person to bid on state purchases be suspended when the Director has evidence that such person has violated any of the provisions of the purchasing law or the regulations of the director.

3.2. Director's Remedies

The Director may implement the following remedies when appropriate circumstances arise:

(a) In the event that a vendor does not honor all contractual terms and conditions, the Director reserves the right to award the purchase order to the next lowest bidder. The vendor may be held responsible for all differences in cost.

(b) Declare a vendor non-responsible or non-responsive and refuse to award a purchase order. All such instances shall be substantiated in writing. Such documentation shall be considered a public document and shall be available for inspection at all reasonable times.

(c) Recommend to the Commissioner of the Department of Finance and Administration to suspend, for a period not to exceed one (1) year, the right of a person or business to bid on state purchases when there is reason to believe that such person has violated any of the provisions in the regulations of the Director. Additionally, the following shall be considered adequate grounds for suspension:

(1) A vendor has exhibited a pattern of poor performance in fulfilling his contractual obligations to the state. Poor performance may include 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. The essence of this reason for suspension is continued or repeated instances of poor performance.

(2) The vendor has willfully breached any contract entered into pursuant to the provisions of Article 3, Chapter 5A of the West Virginia Code or these Legislative Rules.

(3) A 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 Article 3, Chapter 5A of the West Virginia Code or these Legislative Rules.

(d) Suspension hearings - If a vendor has been recommended for suspension, and requests a hearing, one will be scheduled with the Commissioner of Finance and Administration and appropriate parties. The vendor shall be notified, in writing, of the date, time and place. The hearing shall be documented and an official record shall be prepared. The final decision of the hearing will be stated in writing.

(e) Failure to meet the delivery date stated on the purchase order will be sufficient cause for cancellation.

Section 4. Registration, Bidding and Award Regulations.

4.1. Registration of Vendors

(a) All vendors desiring to bid on commodities and/or printing to the State of West Virginia shall be registered with the Purchasing Division.

(b) Vendors shall register by filing information with the Purchasing Division. A form will be provided by the Purchasing Division and shall be completed according to its instructions.

(c) Any company or subsidiary of a company or corporation listed on any nationally recognized stock exchange may be considered an eligible vendor and properly registered to do business with the State of West Virginia.

(d) The Director may waive the registration requirements in the case of any vendor that is a sole source provider.

(e) Bids will be rejected from any vendor that is not properly registered with the Purchasing Division prior to issuance of a purchase order.

4.2. Request for Quotation-Bidding

(a) All bids shall be F.O.B. destination unless otherwise clearly indicated by the vendor in the bid.

(b) Bids shall be submitted prior to the date and time of the bid opening in duplicate (one (1) copy to the State Auditor, one (1) copy to the Purchasing Division) on the Request for Quotation forms provided to the bidder. Substitutions may be made for the Request for Quotation form only if the terms, conditions and provisions are substantially equivalent to those on the form supplied by the Purchasing Division.

(c) Of the bids received in compliance with §4.2 (b) of these rules, at least one must contain a signature by an individual authorized to bind the person or corporation submitting the bid. Acceptable signatures include those in ink, pencil, computer, rubber stamp, facsimile, photo copy and carbon copy. The bids must be otherwise identical, as specified in West Virginia Code §5A-3-14. The signed copy shall reside in the Purchasing Division. A corporate signature without an individual name shall not be construed as an acceptable signature.

(d) A written change of a sealed bid is permitted before the bid opening. Written changes, which may include mailgram, telex, etc., must be submitted prior to the date and time of the bid opening. The vendor should verify the change by letter and deliver the verification to both the Auditor's Office and the Purchasing Division within two (2) working days.

(e) 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 agency 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 above conditions exist.

(f) No price adjustment shall be allowed on any purchase order unless specific provisions for price adjustment have been incorporated in the Request for Quotation and the purchase order. All such requests for price adjustment shall be made in accordance with the specific terms and conditions of the individual purchase order.

4.3. Vendor's Rights and Duties

(a) It shall be the bidder's responsibility to deliver one (1) copy of his quotation (and any subsequent changes) to the Purchasing Division and an exact or duplicate copy to the office of the State Auditor. Method of delivery is the sole responsibility of the vendor. In accordance with §5A-3-14 of the West Virginia Code, any deviation between the Auditor's and the Purchasing Division's copies of the bid relating to quantity, quality, specifications, price, date of delivery or performance shall cause the bid to be rejected. Both of these copies 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 shall prevail.

(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 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 on 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.

4.4. Award Regulations

(a) Award will be made to the lowest responsible bidder meeting all specifications.

(b) The Purchasing Director reserves the right to accept or reject, in part or in whole, 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 into the purchase order file.

(c) Tie bids,—When tie bids are received, the award will be based on the following criteria listed in order of importance:

(1) In-state vendors - if all items on a bid are equal with one (1) vendor being a resident of West Virginia as defined in §5A-3-44 of the West Virginia Code and other(s) being out-of-state, the award will be made to the West Virginia resident vendor.

(2) Quality - If there is a difference in quality, the award will be made to the vendor who offers the highest quality.

(3) Delivery - The award will be made to the bidder quoting the earliest delivery date.

(4) Discounts - Prompt payment discounts will be evaluated if it is likely the state will earn the discount.

(5) If it is not possible to break the tie based on the four (4) above criteria, then any other criteria deemed to be acceptable to the Director of Purchasing may be considered.

(6) Flip of a coin - A fair and impartial method such as the flip of a coin may be utilized in making the award. Any interested party shall be allowed to witness the awarding of a tie bid. Tie bids under \$5,000.00 may be broken in the buyer's office. Tie bids over \$5,000.00 or for open-end contracts will be broken in the Director's office.

(d) Resident Vendor Preference

In accordance with §5A-3-44 of the West Virginia Code, a resident vendor will receive award of a purchase order in preference to a nonresident vendor: Provided, That:

(1) The purchase order is based on competitive bids;

(2) The bid of the resident vendor does not exceed that of a non resident vendor by more than two percent (2%); and

(3) Claim for such preference is made in writing at the time the bid is submitted.

(e) Uniform Vendor Reciprocity

Vendors resident in the State of West Virginia are to be granted the same preference over vendors resident in another state in the same manner, on the same basis and to the same extent that preference is granted in awarding bids for the same type of work by such other state to vendors resident therein over vendors resident in the State of West Virginia.

(f) Requirements for bonds and deposits

When a contract is to be awarded, the Director may require the contractor or 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 should normally be incorporated into the Request for Quotation and purchase order. The Director of Purchasing, however, may require bonds or securities at any time if, in his judgement, such security is necessary to safeguard the state from undue risk.

When any contract has been satisfactorily completed on which a surety bond or other deposit has been previously submitted, the spending agency shall certify the completion in writing to the Purchasing Division. The Purchasing Division, upon receipt of the notification, may then return the check or deposit to the vendor.

Section 5. Procurement Methods

5.1. Special Authorization

The Director of Purchasing is granted authority by §5A-3-4(1) of the West Virginia Code to establish a list of commodities and/or printing that may be purchased directly by the agency. The primary intent of this delegation of purchasing authority known as Special Authorization is to provide for purchases by state agencies, when centralized purchasing may not be as efficient to the state.

(a) Purchases only from list

An agency shall not purchase commodities and/or printing under the terms of Special Authorization if the commodity and/or printing is not on the established list without approval in writing from the Purchasing Director.

(b) Competitive bids

Special Authorization does not dispense with the requirement that competition be obtained whenever possible. Each agency shall make every effort to obtain competitive bids from at least three (3) vendors known to provide that particular commodity or printing and a file of all such bids shall be maintained by the agency. The agency bid file shall be available for public inspection during the normal office hours of the agency.

(c) Violation of regulations

Any agency violating the regulations concerning Special Authorization or procuring commodities and/or printing not authorized by the Purchasing Director may be subject to suspension of the use of Special Authorization procedures. Furthermore, any commodity or printing purchased contrary to this section may not be approved for payment.

5.2. Bids Attached Procurement

The Director may establish a procedure to allow for the procurement of non-recurring commodities and/or printing as prescribed by law. This procedure requires the agency to obtain written bids for a commodity of printing from at least three (3) vendors (if possible) known to provide the needed product. Those bids are then forwarded to the Purchasing Division for final evaluation and award.

5.3. Standard Procurement

The most common procedure used to obtain commodities and/or printing is the standard procurement. Requisitions are developed by the agency and submitted to Purchasing for competitive bidding.

5.4. Open End Contracts

The State of West Virginia may secure open end contracts to obtain commodities and/or printing to supply the repetitive needs of the State agencies.

5.5. 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: 1) The item cannot be obtained through ordinary purchasing procedures; 2) The item is of a unique nature and not available from any other source, 3) The item is available from a state sheltered workshop at a comparable price and quality level.

5.6. Emergency Procurement

The Purchasing Director may authorize a spending agency to purchase in the open market specific commodities and/or printing to meet bonafide emergencies. An "Emergency Situation" must be the result of unforeseen events or circumstances which may include delays by contractors, delays in transportation, or an unanticipated volume of work. Emergency purchases shall not be used for hardships resulting from neglect or poor planning or organization by the spending agency.

5.7. Scheduled Procurement

The Director may establish a scheduled procurement by combining needs of one or more agencies for a definite quantity of a particular commodity.

5.8. Agreements

The Director may negotiate for technical, professional or other services not routinely available within state government by a procurement method known as an agreement. This may be delegated to the agency at the discretion of the Director.

5.9. Request for Proposals

The Director may establish Requests for Proposals (RFP) to allow for procurement of certain commodities and/or printing. This procurement is based upon predefined and established criteria.

Section 6. Purchasing Division Sections

6.1. Buying

The Buying Section is established to procure commodities and/or printing required by State agencies. The Director may assign specific commodities and/or printing classifications to each buyer.

6.2. Inspection

The Inspection Section is established to visit State Agencies and perform the following duties: 1) Insure that the commodities and/or printing to state agencies are in accordance with specifications; 2) Verify that proper Purchasing regulations are followed by the agencies for Special Authorization and other agency delegated procurement methods; and 3) To assist agency personnel with other procurement matters as needed.

6.3. Standards and Specifications

The Standards and Specifications section is established to develop suitable standards and specifications for commodities and/or printing used by state agencies. The specification analysts shall be responsible for the administration of the Standards and Specifications under the direction of the Purchasing Director.

6.4. Sheltered Workshops

In compliance with §5A-3-12 of the West Virginia Code, a sheltered workshop coordinator will be employed in the Purchasing Division under the direction of the Purchasing Director. The primary responsibilities of this individual shall be to: 1) Identify commodities and/or printing available for purchase by the State of West Virginia from West Virginia sheltered workshops and; 2) To make the workshops aware of potential opportunities to provide needed commodities and/or printing to State Agencies.

6.5. Records and Distribution

The Records and Distribution Section shall maintain the official records for all procurement described in §§5.2. through 5.9. of these Legislative Rules. This section shall make available to the public, during regular working hours, all documents processed by the Purchasing Division.



KEN HECHLER
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Special Assistant

(Plus all the volunteer
help we can get)

STATE OF WEST VIRGINIA
SECRETARY OF STATE
Charleston 25305

TO WHOM IT MAY CONCERN:

There were no comments received during the comment period. No changes were made from the original filed copy.


Mary V. Martin

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STATE OF WEST VIRGINIA



STATE OF WEST VIRGINIA
DEPARTMENT OF FINANCE AND ADMINISTRATION

State Capitol
Charleston, WV 25305

Arch A. Moore, Jr.
Governor

John F. McCuskey
Commissioner

TO: Whom It May Concern
FROM: Kathy P. Klein, Director of Purchasing Division
SUBJECT: Legislative Rule Changes
DATE: August 2, 1988

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FBI EN

The following are noteworthy changes contained in the Purchasing Division's proposed Legislative Rules:

1. The proposed rules allow for a defaulting vendor to be responsible for the difference in cost to reaward a purchase order. See Section 3.2.a of the proposed rules.
2. The policy of declaring a vendor non-responsible has been added. See proposed Section 3.2.b.
3. Registration of a vendor is required only prior to issuance of a purchase order now, instead of prior to the bid opening date and time. See proposed Section 4.1.e.
4. The proposed rules define what an acceptable original signature is. Also, the proposed rules allow for the exchange of bids with the Auditor when the Auditor receives an original signature and Purchasing receives a copy signature. See proposed Section 4.2.c.
5. The priorities for breaking tie bids have changed. Also, the proposed rules allow for the Director to use judgement in breaking a tie if the listed factors do not provide a significant tie breaking point. Finally, the dollar limit for a buyer breaking tie bids in the Buyer's office has been raised to \$5,000. See proposed Section 4.4.c.

KPK:dd