



DEPARTMENT OF FINANCE AND ADMINISTRATION

CHARLESTON 25305

JOHN D. ROCKEFELLER IV
Governor

ARNOLD T. MARGOLIN
Commissioner

TO: The Honorable James A. Manchin
Secretary of State

FROM: Marc A. Clauson *Marc A. Clauson*
Assistant to the Commissioner
Department of Finance and Administration

SUBJECT: Departmental Regulations Filed Pursuant
to the West Virginia Code, §29A-2-5.

DATE: December 29, 1982

Pursuant to the requirements of the W.Va. Code, §29A-2-5, the Department of Finance and Administration is submitting regulations for each Division operating under the Department of Finance and Administration. The following Divisions are presently operating with regulations:

- (1) Purchasing Division, pursuant to the Code, §5A-3-L et.seq.
- (2) Leasing Division, pursuant to the Code, §5A-5-1 et.seq.
- (3) Transportation Division, pursuant to the Code, §5A-6-1 et.seq.
- (4) Surplus Property Division, pursuant to the Code, §5A-8-1 et.seq.

MAC/jp

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE 12-29-82
Administrative Law Division

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- Series 1: Purchasing Division, pursuant to the Code, §5A-3-1 et.seq.
- Series 2: Leasing Division, pursuant to the Code, §5A-5-1 et.seq.
- Series 3: Transportation Division, pursuant to the Code, §5A-6-1 et.seq.
- Series 4: Surplus Property Division, pursuant to the Code, §5A-8-1 et.seq.
- Series 5: Public Transportation Division, pursuant to Governor's Executive Order No. 11-78, June 9, 1978.

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- (1) Series I: Purchasing Division of the Department of Finance and Administration
- (2) Series II: Leasing Division of the Department of Finance and Administration
- (3) Series III: Transportation Division of the Department of Finance and Administration
- (4) Series IV: Surplus Property Division of the Department of Finance and Administration

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Title 148
Legislative Rules

WEST VIRGINIA DEPARTMENT OF FINANCE AND ADMINISTRATION

~~ADMINISTRATIVE REGULATIONS~~

~~Purchasing Division~~

~~Chapter 5A~~
~~Series 1e 1~~
~~(1977)~~

Purchasing Division

SECTION 1. GENERAL

1.01 Scope - These regulations are an explanation and clarification of operative procedures of the Purchasing Division.

1.02 Authority - These regulations are issued under authority of the West Virginia Code, Chapter 5A, Article 3, Section 4.

1.03 Effective Date - These regulations were promulgated on the 29 day of Dec, 1982 and become effective on the 29 day of Dec, 1982.

1.04 These regulations were filed in the office of the Secretary of State on 29 day of Dec, 1982.

SECTION 2. PROCEDURES AND REGULATIONS AFFECTING VENDORS

2.01 Registration of Vendors

1. All vendors desiring to provide services, commodities or printing to the State of West Virginia shall be registered with the Purchasing Division.

2. 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.

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

4. The Director may waive the registration requirement in the case of any vendor who or which is the sole source for the commodity or service in question.

5. All quotations received from vendors not registered with the Purchasing Division by the date and hour of the bid opening, must be rejected.

2.02 Request for Quotation: Bidding

1. All bids shall be F.O.B. Destination unless otherwise clearly indicated by the vendor in the bid.

2. Bids shall be submitted in duplicate (one copy to the State Auditor, one to the Purchasing Division) on the Request for Quotation forms provided 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 Purchasing.

3. The bid filed with the Purchasing Division shall be signed in ink by an individual authorized to bind the person or corporation submitting the bid. The Auditor's copy should also be signed. The bid may be accepted when the Auditor's copy is not signed provided the bids are otherwise identical, as specified in 2.04-1 of these regulations.

4. Formal changes are permitted before the bid opening. Corrected sealed bids should be submitted in person or by mail to both the State Auditor and the Purchasing Division. If delivery of corrected sealed bids is not practical, telegraphed changes will be accepted if both the Auditor and Purchasing receive duplicate telegrams before the scheduled bid opening.

5. A bid may be withdrawn anytime before the scheduled bid opening.

6. The Director, at his discretion, may reject an erroneous bid after the bid opening if all of the following conditions exist: 1) a clerical 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 goods and/or services at a reduced cost; 4) enforcement of the part of the bid in error would be unconscionable.

7. Bids shall be returned in envelopes provided by the Purchasing Division or in envelopes containing the following information:

(a) Addressed to:

Department of Finance & Administration	State Auditor's Office
Purchasing Division	Bid Observer
Room W-130, Capitol Bldg.	Room W-202, Capitol Bldg.
Charleston, W. Va. 25305	Charleston, W. Va. 25305

(b) Lower left hand corner of both envelopes is to be marked:

SEALED BID

To be opened _____

Date _____

Time _____

File No. _____

Req. No. _____

The vendor shall fill in the information on the envelopes or the bid may not be considered.

2.03 Purchase Order Terms and Conditions

1. Vendor

(a) The vendor, file and order numbers and name of spending unit shall appear on all invoices, correspondence, containers, drums, shipping tags, boxes, etc.

(b) An original typed invoice and four copies shall be submitted to the spending unit designated on the face of the purchase order.

(c) 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.

(d) All sales to the State of West Virginia are exempt for Consumer's Sales Tax or Use Tax by blanket State Exemption and blanket Federal Exemption.

2. Director

(a) The Director reserves the right to reject and return or dispose, at the risk and expense of the vendor, those portions of any shipment which are defective or fail to comply with general or brand specifications.

(b) Vendors who offer items claimed as equal to those specified on the Request for Quotation form, but which are not equal, may be removed from the routine bidders' list at the option of the Purchasing Division Director.

(c) Vendors failing to meet delivery dates as specified on his purchase order may have the purchase order cancelled in whole or in part at the option of the Director.

2.04 Vendor's Rights and Duties

1. Whenever any bid for the purchase of commodities, printing or services has been requested by the Purchasing Division, it shall be the bidder's responsibility to mail or deliver one copy of his quotation to the Purchasing Division and an exact copy or duplicate copy to the office of the State Auditor. In accordance with 5A-3-14 of the West Virginia State Code, if there is 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 of the commodity or service, the bid shall be rejected. Both of these copies must be received at the respective offices prior to the specified date and time of bid opening.

2. The vendor is responsible for returning the bid and subsequent corrections to the Purchasing Division and Auditor's Office before the specified time and date indicated on the Request for Quotation.

3. The official time clock for Purchasing will be displayed in the Purchasing Division reception room, W-130, Capitol Building.

4. Vendors failing to return quotation forms may be removed from the bidding list.

5. If there is an error in the extension price, the unit price will be used.

6. A definite shipping date, after receipt of order, should be indicated on all bids.

7. Failure to meet the delivery date stated on the bid will be sufficient cause for cancellation. Any costs related to the cancellation will be the burden of the vendor.

8. Any deviation from the specifications stated on the Request for Quotation form shall be clearly pointed out in detail. Otherwise it will be assumed that items offered meet the specifications set forth in the Request exactly and the bidder will be held responsible for delivery accordingly.

9. Bidders will be responsible for the accuracy of the information on the bid envelopes and for submitting the bid on time.

10. Vendors wishing to quote on solicitations for bids may write or visit the Purchasing Division to obtain official "Request for Quotation" forms.

2.05 Director's Rights and Duties

1. The Purchasing Director reserves the right to accept or reject, in part or in full, any bid when the Director feels it to be in the best interest of the State.

In the instance of a rejection, the Director shall cause to be inserted into the Purchase Order file a reason for the rejection if such rejection is of the mathematically low bid. If all bids are rejected, sufficient reasons shall be inserted into the Purchase Order file to enable any interested party to ascertain or derive from the associated file the particulars relative to the rejection.

2. Incomplete bids will be considered when, in the Director's opinion, it is in the best interest of the State.

3. "Lump sum" bids will be considered at the discretion of the Director.

4. In pursuance of 5A-3-39 of the West Virginia Code, the Director of Purchasing shall promptly give written notification to the Commissioner whenever there appears to be reason to believe any vendor has violated the purchasing laws or these regulations. The Director shall, in such notice, set forth a description of the pertinent circumstances and give his recommendation as to whether the concerned vendor should be suspended in accordance with 5A-3-39.

2.06 Suspension of Vendors

01. In accordance with 5A-3-39 of the West Virginia Code, "The Commissioner (of Finance and Administration) shall have the power and authority, upon the recommendation of the director, to suspend, for a period not to exceed one year, the right and privilege of a person to bid on state purchases when the Commissioner has reason to believe that such person has violated any of the provisions in the purchasing law or the rules and regulations of the director".

02. These rules and regulations require implicitly, and explicitly herein, that vendors honor and fulfill the terms and obligations imposed upon them by virtue of contracts entered into with the State of West Virginia.

Adherence is hereby required to contractual provisions relating to the quantity and quality of commodities furnished or services rendered and to the price therefor and to the date(s) of delivery or performance. Further, adherence is required to all federal, state, and local laws, regulations, and ordinances governing a vendor's performance or conduct, which laws apply to the vendor because of a contractual relationship with the State of West Virginia entered into pursuant to the provisions of Article 3 of Chapter 5A of the Code or these regulations.

Cx. The power and the authority of suspension vested in the Commissioner by virtue of 5A-3-39 of the Code may be exercised when the Commissioner has reason to believe that:

(a) A vendor has exhibited a pattern of poor performance in fulfilling his contractual obligations to the State in more than one contract (purchase order). "Poor performance" may include documented, repeated errors of omission or commission which constitute technical breaches of contract but which, taken individually, are insufficient to warrant termination of the relevant contract by reason of default. The essence of this ground for suspension is continued or repeated instances of a vendor providing or furnishing commodities, materials workmanship or services late, or at a quantity or quality level below that which is specified in the contract; or in the absence of definitive specifications, providing or furnishing commodities, materials, workmanship or services at a quantity or quality level below that which is required by generally accepted industry standards; or

(b) The vendor has willfully breached any contract entered into pursuant to the provisions of Article 3 of Chapter 5A of the Code or these regulations.

A contract shall be deemed to have been "wilfully breached" in any instance wherein a vendor refuses to do or perform any act clearly required by the terms of the contract; or in any instance wherein a vendor knowingly provides or furnishes commodities, materials, workmanship, or services at a quantity or quality level below that which is specified in the contract; or in any instance wherein a vendor is given written notice that the quantity or quality level of commodities, material, workmanship or services which he has provided is below that which is specified in the contract and such vendor, without questioning the accuracy of such notice of omission or fault, continues such omission or fault without offer or recompense or correction for such omission or fault; or

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~~(c)~~ A vendor has violated any provisions of the purchasing laws; or

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~~(d)~~ A vendor has been convicted of any federal, state, or local law punishable as a felony, which conviction arises from the vendor's acts or omissions directly related to the performance of a contract entered into pursuant to Article 3 of Chapter 5A of the Code or these regulations.

~~24.~~ Every person (vendor) whom the Commissioner has reason to believe has violated the provisions of the purchasing laws or these regulations will be notified by letter posted by registered mail of such belief and reason(s) therefor. At the same time, the vendor shall be given notice that a hearing will be held concerning the matter, if a hearing is requested within five (5) days of the vendor's receipt of the notice. The date, time, and place of the hearing will be specified in the Commissioner's letter to the vendor. The date and time of the hearing shall be at least ten (10) days after notice is given.

If a hearing is not requested, the vendor's right and privilege to bid on State purchases may be suspended for a period not to exceed one year, effective the date and time at which the hearing would have been held had one been requested. Notice of such suspension and the reason(s) therefor shall be sent to the vendor at that time by letter posted by registered mail.

5. The Commissioner shall act as hearing examiner at any hearing held. An opportunity shall be afforded to all parties to present evidence and arguments with respect to the matters and issues involved. The affected vendor shall have the right, but shall not be required, to be represented by an individual of his choice. The hearing shall be conducted in an informal manner; technical rules of evidence shall not apply. The vendor and the Commissioner or their respective representatives shall have the right to examine and cross-examine witnesses who testify, and shall have the right to submit rebuttal evidence.

All of the testimony and evidence at any such hearing shall be reported by stenographic notes and characters or by mechanical means. All rulings on the admissibility of testimony and evidence shall also be reported. The agency shall prepare an official record, which shall include reported testimony and exhibits in each contested case, and all agency staff memoranda and data used in consideration of the case, but it shall not be necessary to transcribe the reported testimony unless required for purposes of rehearing or judicial review.

6. If the affected vendor or his representative does not appear at the hearing, the Commissioner shall order such vendor's right and privilege to bid on State purchases to be suspended for a period not to exceed one year.

Such suspension shall be effective immediately and notice of such suspension and the reason(s) therefor shall be sent to the vendor by letter posted by registered mail.

Every final order or decision rendered by the Commissioner in a contested case shall be in writing or stated in the record and shall be accompanied by findings of fact and conclusions of law. Prior to the rendering of any final order or decision, any party may propose findings of fact and conclusions of law. If proposed, all other parties shall be given an opportunity to accept to such proposed findings and conclusions, and the final order or decisions shall include a ruling on each proposed finding. Findings of fact, if set forth in statutory language, shall be accompanied by concise and explicit statement of the underlying facts supporting the findings. A copy of the order or decision and accompanying findings and conclusions shall be served upon each party and his attorney of record, if any, in person or by registered mail.

9. Any vendor suspended in accordance with 5A-3-39 of the West Virginia Code shall have the right to have the Commissioner's action reviewed by a Board composed of the Governor, Attorney General, and Auditor of the State, which Board shall have the power and authority to set-aside such suspension. If the vendor wishes such review, he shall submit a request for review and three copies to the Commissioner of Finance and Administration. Upon request to the Commissioner by the vendor, all reported testimony and evidence taken at a previous hearing, if any, shall be transcribed, and a copy thereof furnished to the vendor at his expense. The Commissioner shall be responsible for making arrangements for the transcription of the reported testimony and evidence, and such transcription shall be accomplished with all dispatch.

8. Requests for review shall be in narrative form explaining in detail the reasons why the review is requested. The Commissioner shall distribute the "requests for review" to the Governor, Attorney General, and Auditor.

9. If the vendor feels an oral presentation is necessary, he shall request a hearing and give reasons why a hearing is necessary.

2.07 Tie Bids - When tie bids are received, the award will be based on the following criteria, listed in order of importance:

1. Quality - If there is a difference in quality, the award will go to the bidder offering goods and/or services of higher quality.

2. Discounts - Prompt payment discounts will be evaluated if it is possible the State will earn the discount.

3. Delivery - When delivery is specified as being important in the Request for Quotation, the award will be made to the bidder quoting the earliest delivery date.

4. In-State Vendors - If all items on a bid are equal, with one vendor being a resident of West Virginia and the other(s) being out-of-state, the award will be made to the West Virginia vendor.

5. Exact Bids - When there is no discernible difference in two or more bids, totaling \$2,000.00 or more, the tie will be broken by a flip of a coin or drawing of cards in the office of the Purchasing Director, witnessed by all interested parties.

6. Minor tie bids under \$2,000.00 may be broken in the buyer's office by a drawing of lots, the flip of a coin or any other fair and impartial method.

2.08 Resident Vendor Preference

In accordance with 5A-3-44, 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 nonresident vendor by more than two percent; and
3. Claim for such preference is made in writing at the time the bid is submitted.

In order to obtain the two percent resident vendor preference, the vendor must certify, on his bid or in a separate letter attached to his bid, that the bidder is a resident vendor under the terms of Section 44, Article 3, Chapter 5A, of the Code of West Virginia, and is requesting that a two percent resident vendor preference be given him on the subject bid. If the request is in the form of a separate letter, the spending agency, file number, requisition number, and date should be given for clarification.

A resident vendor must be a person or organization engaged in the business of selling tangible personal property or services to the State who is in good standing under the laws of the State of West Virginia and who:

1. If selling tangible personal property:
 - (a) Is a resident of the State or a foreign corporation authorized to transact business in the State; and
 - (b) Maintains an office in the State; and
 - (c) Has a stock of materials held in West Virginia for sale in the ordinary course of business, which stock is of the general type offered, and which is reasonably sufficient in quantity to meet the ordinary requirements of customers;
 - (d) Has paid personal property taxes pursuant to Chapter 11, Article 5, Section 1, et seq., of the Code of Code of West Virginia of 1931, as amended on equipment used in the regular course of supplying services of the general type offered; and

(e) Has paid business and occupational taxes pursuant to Chapter 11, Article 13, Section 1 et seq., of the Code of West Virginia of 1931, as amended.

2. If selling services:

(a) Is a resident of the State or is a foreign corporation authorized to transact business in the State; and

(b) Maintains an office in the State; and

(c) Has paid personal property taxes pursuant to Chapter 11, Article 5, Section 1 et seq., of the Code of West Virginia of 1931, as amended on equipment used in the regular course of supplying services of the general type offered; and

(d) Has paid business and occupation taxes pursuant to Chapter 11, Article 13, Section 1 et seq., of the Code of West Virginia of 1931, as amended.

A vendor is expressly prohibited from claiming the instate vendor preference on bids for items not normally stocked or handled by the company, or if the vendor's stock is comprised of samples only and is not sufficient to fill the day-to-day orders of customers.

Specific code or administrative regulation citations are not necessary when a vendor certifies his resident vendor status; however, language used must be explicit and must, in an unambiguous manner, request the two percent resident vendor preference, and should certify that the requesting company meets the criteria of being a bona fide company under the laws of the State of West Virginia, and meets all requirements of maintaining a representative stock of supplies.

2.09 Substitution of Securities for Retainages under Contract
between the State of West Virginia, by the Commissioner of Finance and
Administration, and Contractors, etc.

1. Any contractor, engineer or architect awarded and entering into a contract with the State of West Virginia, through the Commissioner of Finance and Administration, may with approval from the Commissioner, from time to time, withdraw all or any part of the amount retained for payments as stated in the contract. There shall be a written release from the contractor's, engineer's or architect's surety, according to the terms of the contract, notwithstanding any inconsistent provision herein, upon depositing with the State Treasurer, United States treasury bonds, notes, certificates of indebtedness, bills, or bonds or notes of the State of West Virginia or its political subdivisions. No amount shall be withdrawn in excess of the market value of the securities at the time of deposit or of the par value of the securities, whichever is lower.

2. The State Treasurer shall periodically collect all interest or income on the obligations deposited and pay it, when collected, to the contractor, engineer, or architect who deposited the obligation. If the deposit is in the form of coupon bonds, the State Treasurer shall deliver each coupon as it matures to the contractor, engineer or architect.

3. Any amount deducted by the State, its departments or officials, according to the terms of the contract, from any retainages due the contractor, engineer or architect, shall be taken, first from that portion of the retainages for which no security has been substituted, then from the proceeds of any deposited security. In the latter case, the contractor, engineer or architect will be entitled to receive interest, coupons, or income only from the securities that remain after such amount has been deducted.

2.10 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, bank draft, performance bond or any other bond acceptable to the Director, payable to the State of West Virginia. All checks will be deposited with the Treasurer of the State of West Virginia. Any and all interest accrued on interest bearing bonds will be immediately payable to the vendor depositing the bonds. Verification of deposit will be in a form determined by the State Treasurer.

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 judgment, such security is necessary to safeguard the State from undue risk.

2.11 Procedure After Completion of Contract

When any contract has been satisfactorily completed on which a surety bond or other deposit has been previously made in accordance with 2.10 of these regulations, certification of this completion will be made known by the spending agency to the Treasurer of the State of West Virginia. The Treasurer will then return the bond or deposit to the contractor or vendor.

SECTION 3. PROCEDURES AND REGULATIONS AFFECTING STATE AGENCIES

3.01 Establishment of Special Authorization

The Director of Purchasing shall establish a list of items that may be purchased on Special Authorization. Agencies may request in writing to the Purchasing Director that certain items be added to this established list.

3.02 Special Authorization

Spending agencies shall obtain the approval of the Purchasing Director in the form of a Special Authorization, to purchase designated

commodities or services directly from a vendor without submitting a requisition to the Purchasing Division. The primary intent of Special Authorization is to provide for purchases by State agencies, mainly of "expendable commodities" when centralized purchasing would not be economically beneficial to the State. Special Authorization is not limited to expendable commodities, however, and may also include durable commodities excluding items classified as equipment.

3.03 Purchases Only from List

Agencies shall not purchase items or services under the terms of Special Authorization if the item or service is not on the established list without approval in writing from the Purchasing Director.

3.04 Violation of Regulations

Any agency violating the regulations concerning Special Authorization or procuring commodities or services not authorized by the Purchasing Director will be subject to suspension of the privilege of Special Authorization. Any item purchased contrary to this section of the Purchasing regulations will not be approved for payment. All unapproved invoices will be returned to the spending agency for their disposition and the head of such department may be personally liable for the cost of such purchase in accordance with 5A-3-19.

3.05 Competitive Bids

Special Authorization does not dispense with the requirement that competition be obtained wherever possible. Each agency shall make every effort to obtain competitive bids from at least three vendors, and a file of all such bids shall be maintained by the agency. The bid file shall be available for public inspection during the normal office hours of the agency.

3.06 Advance Encumbrance

All purchases made under Special Authorization shall be encumbered in advance by filing Quarterly Encumbrance Documents with the Budget Division of the Department of Finance and Administration.

3.07 Special Revenue Account

Purchases made by Special Authorization for spending units deriving their funds from Special Revenue will not require a Quarterly Encumbrance Document. Encumbrance for these purchases will be made from transmittals for payment.

3.08 Bulk Purchases

When it is in the best interest of the State, bulk purchases for State institutions will be secured by the Purchasing Division. Bulk purchases may be in the form of single deliveries to each unit; term or open end contracts; or scheduled purchases for all State agencies. The Director of Purchasing shall designate the best method of storage, distribution, and delivery of all commodities.

3.09 Direct Purchasing

The Director of Purchasing may approve the purchase of commodities directly from a vendor without competitive bidding if:

1. The item cannot be obtained through ordinary purchasing procedures, or
2. The item is of a unique nature and not available from any other source.

3.10 Procedure by Spending Unit

1. The spending unit shall submit a requisition for Special Purchase (WV-40) to the Director of the Budget Division in keeping with the unit's expenditure schedule. This requisition shall have five copies of the purchase order forms attached.

2. The information on the Special Purchase forms shall be certified by an officer of the spending unit who is authorized to sign requisitions. The forms should include the following information:

(a) The name and account number of the spending unit and the requisition number.

(b) The exact description and specifications of the commodity and/or service desired.

(c) The exact cost of the commodity or service supported by a signed quotation from the proposed supplier attached to the WV-40 form.

(d) The proposed supplier and address.

(e) The vendors terms, conditions, and f.o.b. point.

(f) An explanation of why usual purchasing procedures cannot be followed.

3.11 Approval by the Purchasing Director

The Purchasing Director may, at his discretion and for the best interests of the State, grant permission for the direct purchase, after he receives the requisition, by signing the purchase order form and submitting the purchase order to the Budget Division for encumbrance.

3.12 Disapproval by the Purchasing Director

If the Purchasing Director rejects the request for a Direct Purchase Order, the request (WV-40) will be returned to the spending agency with instructions to resubmit the requirement in accordance with the normal requisitions procedures (WV-35) form.

3.13 Additional Procedure after Authorization by the Purchasing Director

After the Direct Purchase Order is encumbered, one copy of the purchase order is retained by the Purchasing Division with the requisition, one copy is returned to the spending unit, one copy is sent to the vendor, one copy is sent to the Budget Division, and one copy is forwarded to the Auditor's Office.

3.14 Public Inspection

All approved Direct Purchase orders are to be retained in the files of the Purchasing Division and are open to public inspection during normal office hours.

3.15 Direct Purchasing Procedure not to Supersede Regular Purchasing Procedure

In no event will direct purchasing authority be considered a substitute for the usual procedure in State purchasing or for emergency purchases provided for in the Code 5A-3-17.

3.16 Emergency Purchases - Authority of Purchasing Director

The Purchasing Director may authorize a spending unit to purchase in the open market, without filing requisition or estimate, specific commodities or services to meet bona fide emergencies.

3.17 Advance Approval

Verbal or written approval will be obtained from the Purchasing Director, prior to purchase, if possible. If prior approval is not possible, the spending unit may proceed to secure bids and purchase the needed service or commodity.

3.18 Procedure After Approval

In all cases, the spending agency shall submit to the Purchasing Director through the Budget Division the bids obtained for the emergency purchase and a justification letter signed by the head of the agency containing a full account of the circumstances of the emergency along with the requisition for Special Purchase (WV-40) completed in accordance with the requirements of 3.10.

3.19 Emergency Defined

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.

3.20 Approval by the Purchasing Director

The Purchasing Director may, at his discretion and for the best interests of the State, grant permission for the emergency purchase after he receives the requisition, bids, and letter of justification, by signing the purchase order forms and submitting the purchase order to the Budget Division for encumbrance.

3.21 Disapproval by the Purchasing Director

If the Purchasing Director rejects the request for Emergency Purchase, the request (WV-40 form) will be returned to the spending agency with instructions to resubmit in accordance with the normal procurement process, (WV-35 form). If the items or services contained in the request for Emergency Purchase have been procured by the agency at the time of the rejection of the emergency request, the disposition of the item for credit or the liability for the cost of the purchase shall rest with the agency head.

3.22 Additional Procedure after Authorization by the Purchasing Director

After the Emergency Purchase Order is encumbered, one copy of the purchase order is retained by the Purchasing Division with the requisition, one copy is returned to the spending unit, one copy is sent to the vendor, one copy is sent to the Budget Division, and one copy is forwarded to the Auditor's Office.

3.23 Public Inspection

All requests for Emergency Purchases are to be retained in the files of the Purchasing Division and are open to public inspection during normal office hours.

3.24 Open End Contracts - Equipment

The State of West Virginia may secure open end contracts to furnish designated equipment to State agencies at a fixed unit price or a discount from list price.

3.25 Procedure by Agency

Any agency ordering equipment covered under a State Equipment Contract shall encumber funds for the purchase by submitting a requisition for Special Purchase (WV-40) completed in accordance with the requirements of 3.10, to the Budget Division of the Department of Finance and Administration.

3.26 Approval by the Purchasing Director

The Purchasing Director may, at his discretion and for the best interest of the State, grant permission for the Equipment Contract purchase after he receives the requisition by signing the purchase order form, and submitting the purchase order to the Budget Division for encumbrance.

3.27 Disapproval by the Purchasing Director

If the Purchasing Director rejects the request for Equipment Purchase (WV-40 form) he will return the request to the agency with instructions on the proper method to procure the needed items.

3.28 Additional Procedure after Authorization by the Purchasing Director

After the Equipment Contract order is encumbered, one copy of the purchase order is retained by the Purchasing Division with the requisition, one copy is returned to the spending unit, one copy is sent to the vendor.

one copy is sent to the Budget Division, and one copy is forwarded to the Auditor's Office.

3.29 Public Inspection

All approved Equipment Contract orders are to be retained in the files of the Purchasing Division and are open to public inspection during normal office hours.

3.30 Transmittal for Payment

The transmittal for payment of an Equipment Contract order shall have an Added Property Form (WV-62) attached for inventory.

3.31 Open End Contracts - Expendable Items

The State of West Virginia shall secure open end contracts to furnish, at a fixed price or discount from list, an approximate quantity of expendable goods.

3.32 Time Limit

The length of time the agreement is effective shall be stated in the contract.

3.33 Procedure by Agency

Spending agencies may purchase expendable commodities directly from a vendor on State Contract Purchase Order (form WV-39). The WV-39 form should be completed in triplicate, one copy to the vendor, one copy to the Purchasing Division, and one agency file copy.

3.34 Encumbrance

Funds for State Contract purchases shall be encumbered in advance by the spending unit on a Quarterly Encumbrance Document (WV-56) except for agencies deriving their funds from Special Revenue whose encumbrances will be made from the transmittals for payment.

3.35 Public Inspection

All State Contract Orders are to be retained in the files of the Purchasing Division and are open to public inspection during normal office hours.

3.36 Agreements

State agencies may acquire non-competitive technical services or professional services not available within State Government, by negotiating an agreement with private specialists.

3.37 Agreements Obtained Prior to Approval

The spending agency shall acquire signed agreements from the vendor and the agency head before a purchase order agreement is issued. Agencies may use the standard short term agreement form WV-48.

3.38 Procedure by Agency

The original signed copy of the agreement and four copies shall be attached to an Agreement Requisition (WV-47) and forwarded to the Budget Division of the Department of Finance and Administration.

3.39 Approval by the Purchasing Director

The Purchasing Director shall, if he deems the agreement to be in the best interests of the State, sign the WV-47 purchase order form and forward to the Commissioner of Finance and Administration and Attorney General for approval and then submit the approved contract to the Budget Division for encumbrance. After encumbrance the Director of Purchasing shall forward the appropriate copies of the completed agreement to the Budget Division, the State Auditor's Office, the vendor, the spending unit, and the Purchasing file room.

3.40 Disapproval by the Purchasing Director

If the Purchasing Director rejects or disapproves the requisition for Agreement (WV-47), he will return the requisition to the agency with instructions on the proper method to procure the needed services.

3.41 Public Inspection

All approved agreements are to be retained in the files of the Purchasing Division and are open to public inspection during normal office hours.

SECTION 4. INSPECTION SECTION

4.01 Principal Function

1. To review the work of inspection done by designated personnel of other State agencies.
2. To maintain records necessary for the proper performance of its duties.
3. To contribute its services and experience to all State agencies and other sections of the Purchasing Division.
4. To check all records of purchases made by spending units under the delegated authority known as Special Authorization to assure that all applicable laws and regulations are being followed.

4.02 Staff

The staff of this section shall consist of the supervisor, chief inspector, inspectors and full or part-time employees of the Purchasing Division as may, from time to time, be assigned to the work.

4.03 Purpose of Inspection

The Inspectors shall review commodities and delivery records to make certain that vendors furnish the precise commodities ordered and to insure that the requirements as set forth in the purchase order are actually met; to protect the using agencies from receiving material below the level of acceptable quality; and to prevent unfairness to unsuccessful bidders.

4.04 Realistic Appraisal

Inspection shall be fair and impartial to realistically appraise the quality and condition of the actual delivery as compared with the requirements of the delivery.

4.05 Critical Examination

Inspection is the close and critical examination of commodities delivered to the State agencies according to authorized purchase orders or contracts and includes determination that:

1. Unless otherwise specifically ordered, the delivery consists of new and unused merchandise.
2. Commodities of the quality, grade or standard specified in the purchase order or contract award have been delivered.
3. The commodities or any work done as required under a contract comply with specification requirements in all essential respects, are in good condition, and delivery or completed job has been made in accordance with the terms and conditions of specifications, purchase order or contract.

4.06 Duties of Purchasing Division Inspectors - Assignment

Inspectors assigned to the Inspection Section, Purchasing Division, shall be directed by the Chief Inspector or the Purchasing Director as follows:

1. Upon receipt of a complaint report from any spending agency, an inspector will be assigned by the Chief Inspector to investigate and report upon the particular complaint.
2. He shall inspect, and where necessary, select samples of commodities delivered to the spending agencies for comparison purposes with facts as related in the spending unit's complaint report.
3. He shall accept samples for analysis from the agency and route, when necessary, to the appropriate laboratories.
4. He shall advise the spending agency on inspection methods and procedures, and arrange for personnel knowledgeable with the complaint to be present at the time of the inspection.

5. He shall detail in his weekly report to the Purchasing Director any evidence the guidelines for Special Authorization privileges are being flaunted. He shall monitor and examine available bids and shall report any consistencies in so-called "sole source" purchases or consecutively numbered invoice records to hide purchases made to avoid the bid process.

6. He shall perform such other tasks relative to complaints and inspections as may be assigned to him by the Commissioner of Finance and Administration, the Purchasing Director or the Chief Inspector.

4.07 Determination

The inspector shall determine by visual inspection, examination or comparison whether the delivered commodities conform to the specified standard of the purchase order or contract with respect to quality, grade, size, performance, etc. If required, the inspector may select samples for laboratory testing and verify the quantity.

The inspector may recommend, after sampling, that the commodities on hand be rejected if the samples do not comply with the specifications and the terms of the purchase order or contract. He may further recommend that the balance on hand of the rejected commodities be returned to the vendor for credit adjustment.

Whenever necessary or required, the inspector at his own discretion may request the vendor or his representative to be present when an inspection is to be made.

The inspector, when making his inspection at the spending unit or off-premises at the vendor's place of business or factory, should always be tactful, discreet and conduct himself in a manner that merits the respect of those with whom he must come in contact.

4.08 Designation of Inspector

The inspection Section shall maintain a record of all inspectors designated by the Commissioner of Finance and Administration.

4.09 Identification for Inspector

Each inspector shall be provided with an identification card designating him as an inspector of the Purchasing Division of the Department of Finance and Administration. In addition, each inspector will be provided with a letter of introduction to be used when visiting any State agency.

4.10 Complaint Report

Form CR-1 may be used by all State agencies to report complaints against vendors, commodities, contracts or any unsatisfactory service to the Purchasing Division. All complaint reports, form CR-1, will be directed to the Purchasing Director for attending handling and custody.

4.11 Complaint Record

The Purchasing Director shall maintain a file of all complaints received from agencies or vendors with respect to inspection matters. This file is to indicate the action taken in each case, and the inspector's report.

4.12 Pending File

The Purchasing Director shall maintain a pending file of all transactions where inspections have not been completed, or on complaints which have not been settled.

4.13 Inspection Procedure - Time and Place

Most purchases will be inspected upon delivery at the receiving point. In some cases, however, off-premises inspection may be necessary when materials and commodities are to be shipped to many destinations in small lots.

4.14 Preparation for Inspection

The inspector should equip himself with a copy of the agency's requisition, purchase order or contract and a bid proposal containing special bid terms and specifications. If a standard sample is available, he should note the essential characteristics. Such factors as style, type, color, dimensions, size, quality, etc., together with pertinent required features shall be considered or compared before the inspector can reach a determination. If the inspector is in doubt regarding information to be utilized to his advantage in the inspection, he should consult with the Purchasing Director or the Chief Inspector for additional aid in reaching a decision.

4.15 Methods of Inspection

Broadly speaking, there are five methods of inspection, namely (1) visual, (2) certification, (3) mechanical, (4) performance, and (5) analytical. Some products may be inspected by one method; others require a combination of two or more. The most common and consistent method of inspection will be by the visual approach which, by common understanding, includes the use of the five senses--sight, taste, smell, hearing and touch. In most instances, visual inspection is sufficient to establish the acceptance or rejection of many kinds, types, and classes of commodities without resort to other methods or analytical tests.

4.16 Compliance

The inspector should be able to determine whether or not the commodities comply with the requirements of the specifications or purchase order after giving due consideration to the various factors such as color, size, material, etc.

4.17 Sampling

When it is necessary to conduct tests on selected samples of commodities,

certain definite procedures must be followed to protect both the agency and the vendor against errors.

4.18 Selecting the Sample

When an inspection requires sampling, the inspector shall select, at random, a representative sample of the material or commodity to be tested. The sample should be properly tagged and identified to protect its integrity.

4.19 Testing

When a sample requires testing, the inspector will determine the most feasible method to use. If the result of the test is adverse, the Purchasing Director will be notified and a copy of the adverse report may be made available to the vendor.

4.20 Guarantees and Warranties - Enforcement

Spending agencies are responsible for enforcing guarantee clauses contained in purchase orders and contract awards. They shall call upon the vendors to make the necessary adjustments or replacements in accordance with the guarantee or warranty. Should the agency have difficulty in obtaining satisfactory service as provided by the guarantee, the matter should be referred to the Purchasing Director for his attention and appropriate action, which may ultimately result in suspension of the bidder.

4.21 Retention of Payment to Vendors

When goods or commodities delivered to the spending agency are in obvious defect or error, and not in accord with the terms of the purchase order or contract, the spending agency may advise the vendor, requesting an adjustment. Pending any such adjustment, no payment shall be made or certified to by the spending agency to the vendor. If the vendor's payments are withheld for defects, failure to make adjustments, or failure to comply with guarantees, it will improve the likelihood of better service and strict compliance with terms of the purchase orders and contracts in the future.

4.22 Access to Records

Each agency is expected to permit representatives of the Inspection Section to have access to the records, material, and facilities connected with the function of inspection, and to require its employees to cooperate fully in this respect.

Inspectors will make every effort to cooperate with other agency inspectors and should request their aid and assistance when needed in inspections. It is assumed that reciprocal arrangements will be honored between the Inspection Section and other agencies making inspections and laboratory analysis.

The Inspection Section will operate a spot-checking system of unannounced visits at various agency receiving points to review current work of any agency inspector.

4.23 Inspection Report

After an inspection has been made, the inspector shall submit to the Purchasing Director and the Chief Inspector a clear, concise and detailed report of his inspection with his recommendations.

If the inspection report discloses that the agency complaint is justified for any one of various reasons and that the vendor is at fault, the Purchasing Director may advise the vendor of the nature of the complaint, if he has not been advised previously, and of the findings of the inspector.

The Purchasing Director may request that the vendor or contractor confer with him relative to the complaint or he may make the necessary adjustments for an equitable settlement of the complaint.

4.24 Suspension of Vendor

If, after notification to the vendor, as set forth in subsection 4.23, the vendor fails to make any adjustment, the Purchasing Director may recommend to the Commissioner of Finance and Administration that he take action against the vendor by cancelling the purchase order or contract, and/or by suspending the

vendor as hereinafter set forth.

The Commissioner of Finance and Administration, acting upon the recommendation of the Purchasing Director may, by the power and authority conferred upon him by Chapter 5A, Article 3, Section 39 of the West Virginia Code, suspend the vendor from further bidding on State purchases for up to one year after due notice to him, by registered mail, setting forth the reason for the suspension.

SECTION 5. STANDARDS AND SPECIFICATIONS SECTION

5.01 Creation of Standards and Specifications Section

To implement the responsibility and duty of the Purchasing Director in establishing suitable standards and specifications, there is hereby established a Standards and Specifications Section, as a unit of the Purchasing Division, the head of which shall be called the Specification Analyst.

5.02 Chief of Section

The Specification Analyst shall be responsible for the administration of the Standards and Specifications Section under the direction of the Purchasing Division Director, subject to the authority of the Commissioner of Finance and Administration as hereinafter set forth.

5.03 Principal Duties, Records, Reports

The principal duties of the Standards Section shall be concerned with the development of standard specifications, and, as necessary, their amendment or revision. In addition, the Standards and Specifications Section shall develop and supervise suitable methods of testing, inspecting and classifying commodities.

5.04 Consultant Services

The Specification Analyst shall also serve as a consultant to the Director, Buyers, and State agencies in all technical matters relating to standards, specifications, classifications and inspection.

5.05 Development Procedures

The procedures followed in the development, amendment or revision of standard specifications shall conform to the requirements of 5.08 - 5.29: Procedures for Development of Standard Specifications. The manner of preparing, amending or revising standard specifications shall conform to the requirements of 5.30 - 5.54: Form of, and Instructions for the Preparation of Standard Specifications.

5.06 Records

The Standards Section shall maintain all records necessary for the proper performance of its duties.

5.07 Reports

The Specification Analyst shall submit reports to the Purchasing Director as required, recapitulating important facts concerning the work of the Standards and Specifications Section. Of particular importance for inclusion in these reports will be a summary of standard specifications in process and those approved.

5.08 Standardization Projects

In determining the assignment of commodities for standardization and the preparation of suitable specifications, the Specification Analyst shall solicit suggestions and recommendations from the buyers on the Purchasing Division staff and from the various State using agencies.

5.09 Priorities for Standardization

It shall be the general policy of the Standardization Section to give priority in the development of standard specifications to those commodities of general use involving major expenditures, and which indicate the greatest potential savings in procurement through standardization.

5.10 Initial Steps in the Preparation of Standard Specifications

In the standardization of quality, size, type, etc., of the commodity(ies) for which the development of standard specifications is to be undertaken, the

Standards Section shall consult with and seek the advice and recommendations of the Purchasing Division buyer responsible for procurement of the commodity.

5.11 Review by Other State Agencies

Where necessary and appropriate, the Standards Section shall seek the advice, assistance and cooperation of State agencies to ascertain their precise requirements as to the standard of quality, type, size, etc., of an item or items for which standard specifications are to be developed.

5.12 Consultation from Private Source

Experts in the field in private industry shall be consulted wherever possible. Specifications should, when possible, be designed to procure standard commercial products of suitable design, construction and quality in order to promote competition in bidding and provide for purchase at the most advantageous cost to the State.

5.13 Use of Existing Data

In assembling the technological data pertaining to the essential requirements of a standard specifications, the Standards and Specifications Section shall develop an effective use of pertinent existing specifications and research findings of other governmental agencies, as well as scientific and technical organizations.

5.14 Drafting Proposed Specifications

Upon determination of the scope of the requirements to be incorporated into a standard specification, the Standards Section shall prepare a draft of the proposed specification in accordance with the requirements of 5.30 - 5.54: Form of, and Instruction for the Preparation of Standard Specifications.

5.15 Submission of Proposed Specification for Industry Ratification

Copies of proposed specifications shall be submitted to, if possible, a minimum of six to ten reputable manufacturers, producers or other appropriate

original and principal sources of supply, soliciting their comments of acceptance or confirmation of the technical competence of the specification from the supply point of view. Submission of proposed specifications to industry shall be accompanied by a letter of transmittal. In the event the information requested in this letter does not fully apply, a similar letter of appropriate content shall be prepared to accomplish the desired result.

5.16 Distribution of Copies

Copies of the proposed specification shall be referred to the buyer responsible for procuring the commodity described in the specification, and to the members of any advisory committee or individuals in State service who have assisted in the formulation of the specification. Where appropriate, copies of proposed specifications shall be sent to other governmental agencies, scientific, technical and trade organizations concerned with the technical aspects of the specification.

5.17 Suppliers Acceptance

The specification is considered acceptable from the supply point of view when a majority of the replying sources of supply agree to or approve the proposed specification as written or with minor modifications that have little or no effect on the technical aspects of the proposed specification. The comments of each replying source of supply shall be filed in the subject specification file.

5.18 Defects; Revisions

In the event a consensus in replies from sources of supply indicates an apparent major defect or defects in the technical aspects of a proposed specification, the Standards Section shall prepare a revised draft of the proposed specification correcting the defects. This revised draft of a proposed specification shall then be processed in the same manner as an original draft.

5.19 Non-Uniform Responses

Should replies from sources of supply indicate wide variance between acceptance and non-acceptance, the Standards Section shall assemble all data readily available on the specification for submission to the Purchasing Director for instructions on the future course to pursue.

5.20 Simultaneous Submission

Copies of the proposed specification should be submitted simultaneously to industry and to principal State using agencies for their review to determine suitability to satisfy requirements.

5.21 Failure to Reply

If an agency fails to reply to the inquiry, it will be considered an acceptance of the specification.

5.22 Adjustment of Conflict

The Specifications Analyst shall give reasonable consideration to valid differing opinions registered by an agency or agencies relative to any proposed standard specification, and shall seek to adjust any areas of conflict wherever possible, consistent with the requirement to serve the best interests of the State.

5.23 Procedure: Modification of Technology

Amendments to, or revisions of, standard specifications from time to time as conditions determine, standard specifications shall be amended or revised. When proposed amendments or revisions involve a modification of the technological data of a specification, the amendment or revision shall be processed in the same manner as an original proposed specification.

5.24 Procedure: Minor or Clerical Changes

When an amendment or revision is required merely to effect correction of errors, addition or deletion of words to improve clarity and similar minor

modifications, the amendment or revision will not require industry or using agency approval, and will be subject only to approval of the Purchasing Director.

5.25 Authority of the Commissioner

Notwithstanding any of the provisions of paragraph 5.23 and 5.24 and any others hereinafter set forth, the Commissioner of Finance and Administration, as circumstances dictate and at his discretion, may change, amend, alter, correct, revise, supplement, delete or wholly waive any standards or specifications, promulgated in accordance with these regulations which he may deem inconsistent with the best interests of the State.

5.26 Approval

Statutory requirements or regulations may dictate necessary approvals. Otherwise, all standard specifications should be finally approved by the Purchasing Director, subject to any modifications by the Commissioner of Finance and Administration as set forth in 5.25.

5.27 Distribution

A specification which has been approved as a standard specification shall be printed and distributed to all using agencies and made available to all other interested parties, including prospective bidders. Additional copies of Standard Specifications may be obtained on request from the Standards Section of the Purchasing Division.

5.28 Contents

The Standards Section shall prepare in loose leaf form, and from time to time amend, an index which shall contain in both alphabetical and symbolic sequence, a list of all approved and published standard specifications.

5.29 Recommendations and Approval

Any designated proposed standard specification may be used for procurement purposes prior to its formal adoption as a standard specification

with recommendation of the Specifications Analyst and approval by the Purchasing Director.

5.30 Purpose

This outline is issued for the purpose of standardizing the form and wording in preparing standard specifications within the province of the Standardization Section.

5.31 General Form and Content of Specifications

The specification shall contain six sections, as follows, and as more fully described hereinafter:

1. Classification
2. Applicable Specifications
3. Requirements
4. Sampling, Inspection and Test Procedures
5. Preparation for Delivery
6. Notes

The subject matter of the specification shall be kept within the scope of these six sections in order that similar requirements or information will always appear in the same sections of all specifications. The various sections shall be presented in the order which they appear above and shall be restricted to content applicable to each section. In case a specification does not include requirements or information within the scope of a particular section or sections, a statement to that effect shall be made beneath the particular section heading or headings.

5.32 Style

A specification should be reduced to its technical nature and minimum form and shall stipulate all requirements.

5.33 Use of "Shall", "Will", "Should", and "May"

Use "shall" wherever a specification expresses a requirement that is

binding on either the contractor or purchaser. Use "will", "should", and "may" wherever it is necessary to express nonmandatory provisions. "Will" is also used to express a declaration of purpose on the purchaser.

5.34 Definitions of Terms used in Specifications

The need for a definition can be avoided in many cases if requirements are properly stated. However, in those cases where the proper interpretation of a specification may be dependent upon agreement of terms definitions to be accepted for a specification, the definitions should be included. The location of definitions depends on their use in the specification.

5.35 Measurements

All dimensions, capacities, size designations, volumes, or temperatures shall be specified according to established precedent and trade practice if possible. Tolerances shall be specified where applicable. Gage number alone should not be used to specify diameter or thickness.

5.36 Indexes

An alphabetical index may be placed at the end of a specification to permit ready reference to contents. Its use shall be limited to lengthy specifications.

5.37 Proprietary Names

Trade names, copyrighted names, or other proprietary names applying exclusively to the product of one company shall not be used unless unavoidable; and in this instance, the name shall be followed by the words "or approved equal", "equal to or interchangeable with", or similar wording so as to permit competition in bidding procedures.

5.38 Samples

If conformance to a standard sample is essential as a requirement of specification, it shall be clearly stated. A standard sample is a

sample essential to supplement or illustrate certain requirements of specifications. Standard samples are either on display in a sample room or other designated location or they may be furnished by the purchaser to the bidder under specified conditions.

5.39 Bid Sample

If bid samples are considered necessary in procurement, a statement to that effect shall be made in the bid document. A bid sample is a sample submitted by the bidder prior to award of contract.

5.40 Contractual Requirements

Specifications shall not include contractual requirements which are properly a part of the contract or purchase order, such as time of delivery, etc. Information relative to contractual features may be included in the notes section of the specification when necessary to insure that these contractual features will be covered in invitations for bids, contracts or orders.

5.41 Classification

This section shall list the several types, grades, classes, etc., of the commodity covered by the specifications, preceded by the words (types, grades, classes, etc.), as specified. If only one type or grade is required it shall be so stated and, if practicable, defined. Where more than one type, grade, class, etc., is listed, each subdivision shall be briefly defined. Types, grades, classes, etc., should be designated in accordance with established precedent and trade practice if possible. The same designations used in this section shall be used throughout the specification.

5.42 "Type", "Grade", "Class", and "Composition"

For the purpose of preparing specifications, "type", "grade", "class", and "composition" are defined as follows:

"Type" This term implies differences in the design, model, shape, etc. of commodities.

"Grade" This term implies a difference in the quality of a commodity. When practicable, the first grade should be the highest.

"Class" This term implies differences in mechanical or other characteristics of commodities which do not constitute a difference in quality of grade, but are for specific, equally important uses.

"Composition" This term is used in classifying commodities which are differentiated strictly by their respective chemical compositions.

5.43 Other Classifications

If the terms, "types", "grades", "classes", and "composition" do not accurately serve to classify the differences in the commodity, other terms such as "style", "color", "form", "weight", "size", "power supply", "temperature rating", "condition", "unit", "enclosure", "rating", "duty", "insulation", etc., suitable for reference may be used.

5.44 Requirements

All essential requirements and descriptions applying to the commodity covered by the specifications (or to one or more types, grades, classes, etc., if the specification includes several) shall be stated in this section. These requirements and descriptions shall refer, as applicable, to the character or quality of principal and other materials, source of materials, formula, design, construction, performance and product characteristics, chemical and physical requirements, dimensions, weight, color, spare parts, nameplates, products marking, workmanship, etc.

5.45 Sampling, Inspection and Test Procedures

This section shall include procedures concerning sampling, inspection, and tests as applicable and shall not contain provisions contained in other sections

of the specification. Requirements shall be supported in this section by tests procedures where practicable, and these procedures should be arranged in the same consecutive order as the corresponding requirements. When another specification, such as a general specification for sampling, inspection and tests, forms part of a specification, the applicable requirements for sampling, inspection or tests in the referenced specification shall not be repeated. Appropriate references shall be included to indicate the applicable methods required.

5.46 Sampling

The method of choosing samples, the number of samples to be tested, etc., if specified, shall be placed under this heading. Details of sampling will vary with the commodities.

5.47 Inspection

Under this heading shall appear provision for surface inspection, including visual examinations for defects and finish, inspection for workmanship, measurements for dimensions, and examination of packing, packaging and marking.

5.48 Tests

Under this heading shall be stated the test procedures that determine whether articles or materials conform to the requirements of the specification. Descriptions of tests and methods of analysis may be necessary to insure that they will be properly conducted, and other information, such as location and number of test specimens and description of testing apparatus, shall appear under this heading.

5.49 Sampling, Inspection and Test Procedures

Inspection shall be made at the point of delivery or at the factory when convenient and at the discretion of the purchaser.

5.50 Preparation for Delivery

This section shall cover the applicable requirements for preserving, packaging, packing, and marking. Where detailed preparation for delivery is specified, the requirements should be stated as practicable.

5.51 Packing

This paragraph shall cover requirements for exterior shipping containers, including bracing and blocking within those containers. In order to provide for shipment at the lowest possible cost, the packing specified should conform to that required for the particular commodity by the carrier's freight classification.

5.52 Labeling and Marking

This paragraph shall cover the requirements for complete identification of the commodity, both in issue packages and shipping containers.

5.53 Notes

This section should contain general or explanatory information which is not properly a part of the preceding sections. Information to assist in determining whether the specification is applicable, and in selecting the type, grade or class appropriate to the articles, equipment, or material required, should form a part of this section. The subjects covered by this section should include among others the following, as applicable, in the order listed:

1. Intended Use
2. Ordering Data
3. Bid Samples
4. Standard Samples
5. Suggested Contractual Features to be Included in Contract
6. Miscellaneous

1. "Intended Use" - A brief statement should be included under this heading describing the intended use for the material or article. If there are any particular applications for which the material is not well adapted, this information may also be included.

2. "Ordering Date" - Detailed information to be incorporated in invitations for bids, contracts or other purchasing documents shall be stated in this paragraph. Reference should be made in this paragraph to all parts of the specification where it is required that options be expressed or where it is necessary to state further requirements in order to completely define the material or article being purchased.

3. "Bid Samples" - If samples are required with the bid, this requirement should be stated in the inquiry or invitation for bids, giving information as to size or quantity of sample.

(a) All such samples shall be furnished to the Purchasing Division gratis and no liability will be incurred by the State in the event of destruction of the samples by testing.

(b) If the vendor submitting a sample wishes the sample to be returned, he shall submit instructions for such return at his expense, within thirty days after the bid opening.

(c) All samples remaining thirty days after the bid opening without return instructions shall be disposed of at the discretion of the Director of the Purchasing Division.

4. "Standard Samples" - Information for obtaining or examining standard samples, when required, shall be stated in this section.

5. "Suggested contractual features to be included in contract" - Contractual features noted in this section must be written into the invitations for bids and contracts or orders to become mandatory.

6. "Miscellaneous Notes" - Miscellaneous notes should be kept to a minimum. Where such notes are necessary, care should be taken to avoid any statements which might be interpreted as conflicting with the specification. Reference to item number under which the specified commodity is listed in supply catalogs should be noted in this section where applicable.

5.54 Ending

The following statement shall appear at the bottom of the last page of each specification:

"This specification shall, until revised or rescinded, apply to each future purchase and contract for the commodity described herein. Retain for future reference."

"Copies of State of West Virginia Standard Specifications may be obtained from the Purchasing Division, State of West Virginia, Room W-130, State Capitol, Charleston, West Virginia 25305."