



WEST VIRGINIA COUNCIL FOR COMMUNITY AND TECHNICAL COLLEGE EDUCATION

Robert L. Brown, Chair • James L. Skidmore, Chancellor

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OFFICE OF THE
SECRETARY OF STATE

September 14, 2011

Judy Cooper, Manager
Administrative Law Division
WV Secretary of State's Office
Building 1, Suite 157K
1900 Kanawha Blvd., E., Suite 700
Charleston, WV 25305-0770

Dear Ms. Cooper,

As you are aware, when the Legislature created the West Virginia Council for Community and Technical College Education, it amended West Virginia State Code §18B-1-3(h). This allows rules of the Higher Education Policy Commission dealing with community and technical colleges to be transferred to the Council without requiring promulgation. The rules listed below have had technical changes only including the agency name from Commission to Council, the Title number, and changes in West Virginia code citations necessitated by legislation. Therefore, I request that this rule be filed as a Council rule.

Title 135, Series 12 – *Capital project Management*
Title 135, Series 24 – *Preparation of Students for College*
Title 135, Series 43 – *Purchasing Efficiencies*

If you have any questions, feel free to contact me or our General Counsel Bruce Walker at (304) 558-2102.

Sincerely,

A handwritten signature in black ink, appearing to read "James L. Skidmore", is written over a white background.

James L. Skidmore
Chancellor

Enclosures

**TITLE 135
LEGISLATIVE RULE
WEST VIRGINIA COUNCIL FOR COMMUNITY AND TECHNICAL COLLEGE
EDUCATION**

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OFFICE OF THE
SECRETARY OF STATE

**SERIES 43
PURCHASING EFFICIENCIES**

SECTION 1 GENERAL

- 1.1 Scope – This rule establishes the guidelines for the Commission and the institutions, individually or cooperatively, to maximize their use of bulk purchasing, reverse bidding, electronic market places and electronic remitting in the acquisition or procurement of materials, supplies, equipment and services.
- 1.2 Authority - West Virginia Code §18B-5-9, §18B-17-6(b).
- 1.3 Filing Date: September 14, 2011
- 1.4 Effective Date: September 14, 2011

SECTION 2 DEFINITIONS

- 2.1 As used in this rule, all terms have the same meaning as provided in West Virginia Code §18B-1-2, and as follows:
 - 2.1.1. "Bid" means an offer to perform a contract for service, work and labor, or the supplying of goods, materials, equipment or printing at a specified price in accordance with the specifications in a request for bids.
 - 2.1.2. "Bidder" means one who makes a bid.
 - 2.1.3. "Bulk purchasing" means the acquisition or procurement of materials, supplies, equipment, services and printing in quantity in order to benefit from the most favorable terms, prices and economies of scale.
 - 2.1.4. "Buyer" means an individual designated by a chief procurement officer to perform designated purchasing and acquisition functions as authorized by the chief procurement officer.
 - 2.1.5. "Chancellor" means the chief executive officer of the Commission employed pursuant to W. Va. Code §18B-1B-5.

- 2.1.6. "Chief procurement officer" means the individual designated by a president of a state institution of higher education to manage, oversee and direct the purchasing, acquisition and inventory management of materials, supplies, equipment, services, and printing, and disposal of obsolete and surplus materials, supplies, and equipment for that institution. For the Commission's Office and West Virginia Network for Educational Telecomputing, the chief procurement officer is the person designated by the Chancellor.
- 2.1.7. "Commission Office" means the office that houses the Chancellor, Vice Chancellor for Administration and other Commission staff.
- 2.1.8. "Commodity" means an article which is useful or serviceable, particularly an article of merchandise movable in trade; a good, or service of any kind, including construction; an article of trade or commerce; things that are bought and sold.
- 2.1.9. "Competitive bidding" means bids that are submitted in response to an invitation, public notice or advertisement of an intended sale or purchase.
- 2.1.10. "Electronic marketplaces" means an environment in which participating buyers and sellers exchange information about prices and product offerings and the procurement and payment process is conducted primarily via the Internet and websites of both the buyers and sellers.
- 2.1.11. "Electronic remitting" means to send or transmit documents, information or money (as in the transfer of funds or for payment of goods and services) by means of computer, telephone or electronic instrument from the originator to the recipient.
- 2.1.12. "Essential service" means something basic; a commodity that is necessary, indispensable, or unavoidable and is purchased in a routine, repetitive, and noncompetitive manner.
- 2.1.13. "F.O.B. destination" and "free on board destination" mean the seller or vendor must transport or pay for the transportation of the materials, supplies, equipment, services and printing, to the point of destination specified in the contract.
- 2.1.14. "Governing Boards" or "Boards" means the institutional boards of governors created pursuant to West Virginia Code §18B-2A-1(b).
- 2.1.15. "Institution(s)" means any public West Virginia university, college, community and technical college, individually or collectively, created

pursuant to West Virginia Code §18B-1-2. For the purposes of this rule, the Commission's Office and West Virginia Network for Educational Telecomputing shall also be considered institutions.

- 2.1.16. "President" means the executive officer of an institution.
- 2.1.17. "Sole source" means only one vendor can supply the desired product or service.
- 2.1.18. "Single source" means that the desired product or service is available from only one supplier because of the uniqueness and characteristics of the product or service offered.
- 2.1.19. "Responsible bidder" and "responsible vendor" mean a person and/or vendor who have the capability in all respects to perform contract requirements, and the integrity and reliability that will assure good faith performance.
- 2.1.20. "Responsive bidder" and "responsive vendor" mean a person and/or vendor who have submitted a bid that conforms in all material respects to the invitation to bid.
- 2.1.21. "Reverse Bidding" means (1) an offer by an intended purchaser to a seller to pay a designated price for the specified material, supplies, equipment, services and printing; (2) the buyer uses the electronic marketplace to set a date and time for interested vendors to bid on certain commodities, an opening bid is made, and other vendors follow by bidding downward until no one chooses to sell to the buyer at a lower price.
- 2.1.22. "Sealed bid" means bid submitted under seal, and which is not to be opened until a specified time at which all bids are to be opened and compared.
- 2.1.23. "Vendor" means a seller of goods and services.
- 2.1.24. "West Virginia Council for Community and Technical College Education" or "Council" means the Council created pursuant to West Virginia Code §18B-2B-1 et seq.
- 2.1.25. "Vice Chancellor for Administration" means that person employed by the Chancellor in accordance with West Virginia Code §18B-4-2. The Vice Chancellor for Administration shall assume all powers and duties that were assigned to the Senior Administrator.

the group which addresses commodities to be purchased through reverse bidding, software and enabling media, implementation procedures, and time lines to effect reverse bidding within higher education in the State.

4.4 Electronic Marketplaces:

- 4.4.1. Electronic marketplaces, also know as e-procurement, will allow the Commission and the institutions to buy or sell goods and services in a digital environment. This procurement method takes advantage of combined purchasing power, improved processes and will allow better utilization of automated systems. It will also integrate higher education buyers directly into the market place, aide in sharing best business practices and assist buyers in gaining control and thus strengthen vendor relationships, gaining access to tracking mechanics which will provide the ability to tract and report hard dollar savings.
- 4.4.2. This method of purchasing is relatively new and it will require research and planned implementation before the Commission and the institutions can take full advantage of it as a common purchasing method. As a result, a committee of Commission and institution staff will be formed to develop this method as a viable alternative to other procurement methods, plan its implementation and identify the goods and services that may be most effectively acquired using this method. Once these tasks are accomplished, this method may be employed in the acquisition of goods and services.

4.5 Electronic Remitting:

- 4.5.1. The Commission and the institutions may utilize electronic remitting in the course of transacting business with vendors, other private entities, state agencies and governmental units. This includes but is not limited to:
 - (a) Remitting payment for goods and services electronically to vendors.
 - (b) Electronically performing the processes and providing documents to the Attorney General, State Auditor, the Department of Administration and other governmental agencies which are required by W. Va. Code and normal business practices.
- 4.5.2. A committee composed of Commission staff and institutional representatives shall work with the State Auditor to implement, by December 31, 2003, an easy to use, cost effective and efficient

program to electronically remit payment for goods, services, utilities, etc. to vendors and providers.

4.5.3. In order to gain efficiencies and economy of operation the following processes required by W. Va. Code may be performed electronically using existing technology, software and procedures:

- (a) **Encumbrance:** Purchases exceeding the dollar amount identified in W. Va. Code §18B-5-4(a)(5), for purchases by sealed bids and competitive bidding, may be directly and electronically entered into the state's centralized accounting system by the staff of the Commission or the governing boards to satisfy the requirements of article two, chapter five-a, and more specifically, sections twenty-six, twenty-seven and twenty-eight to determine whether the amount of the purchase is within the Commission's or governing board's quarterly allotment, is in accordance with the approved expenditure schedule, and otherwise conforms to the provisions of article two, chapter five-a. The electronic entry shall be in lieu of any hard copy or paper submission. Purchases not exceeding the dollar amount in W. Va. Code §18B-5-4(a)(5) do not require encumbrance and shall be accounted for and liquidated in the state's centralized accounting system through the payment process.
- (b) **Filing contracts with the State Auditor:** The Commission and the institutions may file contracts with the State Auditor as required by W. Va. Code §18B-5-4(i) electronically or may make these contracts available to the State Auditor by any other acceptable means.