



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

eFILED

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Office of West Virginia
Secretary Of State

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE EXEMPT, INTERPRETIVE OR PROCEDURAL
RULE**

AGENCY: Housing Development Fund TITLE-SERIES: 88-03
RULE TYPE: Procedural Amendment to Existing Rule: No Repeal of existing rule: No
RULE NAME: Purchasing Procedural Rule
CITE STATUTORY AUTHORITY: 31-18-6

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

July 24, 2020

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Erica L Boggess -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 88
PROCEDURAL RULE
WEST VIRGINIA HOUSING DEVELOPMENT FUND

SERIES 3
PURCHASING PROCEDURE

§88-3-1. General.

1.1. Scope. -- This rule is to ensure certain controls and accountabilities are in place for the purchase of goods and services by the Fund. This rule identifies procurement guidelines based on the monetary amount of the good or service. This rule applies only to the purchase of goods and services for the administrative functions of the Fund and is not applicable to housing programs.

1.2. Authority. -- W. Va. Code §31-18-6.

1.3. Filing Date. -- June 24, 2020.

1.4. Effective Date. -- July 24, 2020.

§88-3-2. Definitions.

2.1. "Authorized Designee" means anyone designated in writing by the Executive Director to perform a specific task or function.

2.2. "Board" means the Board of Directors of the Fund.

2.3. "Executive Director" means the Executive Director of the Fund.

2.4. "Fund" means the West Virginia Housing Development Fund created and established under W. Va. Code §31-18-1 *et seq.*

2.5. "RFP" means Request for Proposal.

2.6. "State" means the State of West Virginia.

§88-3-3. Overview.

3.1. The Fund is a public body corporate and government instrumentality of the State established to increase the supply of residential housing for persons and families of low or moderate income and to provide construction and permanent mortgage financing to public and private sponsors of such housing. In addition, the Fund serves as a pass-through entity or administrator of money allocated by the Federal Government. The Fund does not spend the federal award but instead passes it on to the end user, which is a developer of affordable housing. As such, the Uniform Guidance Procurement Policies and the updates under the National Defense Authorization Act (NDAA) do not directly apply to the Fund's operations.

The Fund receives no appropriations from the State, is not a state spending unit, is not subject to an appropriated budget by the State, is not required to adopt a legally authorized budget and is not subject to the State's procurement process. However, for sound financial management and oversight purposes an annual administrative budget is presented to, and approved by, the Board. Monthly, the Board reviews

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a comparison of actual to budgeted expenses to monitor the Fund's compliance with its administrative budget. Goods and services purchased for the administrative functions of the Fund are approved as part of the annual administrative budget.

§88-3-4. Purchasing Requirements.

4.1. All purchases of goods and services are subject to expenditure approval. Documentation of the evaluation and decision will be imaged with the executed contract, if applicable. If the purchase does not involve a contract, documentation should be included as backup to the request for payment and imaged with the payable/voucher.

4.2. Requirements for purchases up to \$5,000:

4.2.1. No formal bid process is required.

4.2.2. The authorized approval(s) on the request for payment will serve as documentation of the decision of reasonableness and will be imaged with the payable.

4.3. Requirements for purchases greater than \$5,000 but not more than \$10,000:

4.3.1. No formal bid process required if prices obtained through research and inquiry are considered to be reasonable.

4.3.2. Reasonableness will be determined by comparing prices to previous purchases, other published prices or prices obtained from more than one (1) vendor.

4.3.3. The proposed purchase must receive the approval of an Authorized Designee or the Executive Director.

4.4. Requirements for purchases greater than \$10,000 but not more than \$75,000:

4.4.1. Prices or quotes will be obtained from a minimum of two (2) separate sources.

4.4.2. Price is not required to be the final deciding factor.

4.4.3. The proposed purchase must receive the approval of an Authorized Designee or the Executive Director.

4.5. Requirements for purchases greater than \$75,000:

4.5.1. Bids or price quotes must be solicited from an adequate number of known qualified suppliers with sufficient response time permitted. This may be done in the form of an RFP or price solicitation.

4.5.2. The RFP invitation or price solicitation must define the items or services to allow consistency and comparability of bids or price quotes submitted, if applicable.

4.5.3. Bids or price quotes will be opened at a time and place prescribed in the RFP invitation or price solicitation, if applicable. Price is not required to be the final deciding factor.

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4.5.4. All bidders will be notified of either successful or unsuccessful bid or quote in writing, which may be via e-mail.

4.5.5. Any or all bids and/or quotes may be rejected if there is a sound, documented reason for such rejection.

4.5.6. The proposed purchase must receive the approval of the Executive Director or other officer or employee with full signature authority as authorized by the Board.

4.6. Consultants and Contracts. The Executive Director, or other officers or employees with full signature authority as authorized by the Board, may engage consultants and execute contracts for services or software within budgets approved by the Board.

4.7. Protests. Protests apply only to bids, price quotes and awards made under Section 4.5.

4.7.1. Submission of Protest.

4.7.1.a. Protests based on bid or price quote specifications must be submitted no later than five (5) working days prior to the bid or price quote opening. Protest of a purchase order or contract award must be submitted no later than five (5) working days after the award. The vendor is responsible for knowing the bid or price quote opening and award dates. Protests received after these dates may be rejected at the option of the Executive Director.

4.7.1.b. All protests must be submitted in writing to the Fund and contain the following information:

4.7.1.b.1. The name and address of the protestor;

4.7.1.b.2. The requisition, solicitation, purchase order or contract numbers;

4.7.1.b.3. A statement of the grounds of protest;

4.7.1.b.4. Supporting documentation, if necessary; and

4.7.1.b.5. The resolution or relief sought.

4.7.1.c. Failure to submit the information required by Subdivision 4.7.1.b. shall be grounds for rejection of the protest by the Executive Director.

4.7.2. Protest Review.

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

4.7.2.b. The Fund may refuse to review any protests when the matter involved has been decided in a previous protest by the Fund.

§88-3-5. Permitted Exceptions.

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5.1. Sole-Source Provider. Exceptions may be made to the provisions of this rule in instances where there is a “sole-source” provider.

5.2. Software Purchases. It is the practice of the Fund to evaluate various software applications through research and vendor product demonstrations and then select the software that best meets the needs of the organization through a cost/benefit analysis. In these instances, a formal RFP need not be issued.

5.3. Emergencies. Exceptions may be made in the event of federally declared emergencies or State declared emergencies affecting the Fund or its programs.

5.4. Board Approved Exceptions. Case-by-case exceptions may be made to the provisions of this rule in instances approved by the Board.

5.5. Documentation of Exceptions. The reasoning for and approval of exceptions should be noted in the supporting documentation and/or the payment/voucher request. Any exception shall require the written approval of the Executive Director or other officers or employees with full signature authority as authorized by the Board.

§88-3-6. Severability.

6.1. If any word, phrase, or provision of this rule is held to be invalid, the remainder of the rule shall, to the fullest extent possible, not be affected by that holding.