WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF PUBLIC COMMENT PERIOD

AGENCY: Emergency Management TITLE-SERIES: 170-05

RULE TYPE: Procedural Amendment to Existing Rule: No Repeal of existing rule: No

RULE NAME: Purchases During States of Emergency

CITE STATUTORY AUTHORITY: 5A-3-3c

COMMENTS LIMITED TO:

Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 03/01/2021 4:00 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

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PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

PROVIDE A BRIEF SUMMARY OF THE CONTENT OF THE RULE:

The rule sets forth the procedures for entering into a contract during a state of emergency, if the contract is necessary to assist the state in recovering from the state of emergency, for renewing these types of contracts, and for purchasing items from the Federal Government during a state of emergency if the items will assist the state in recovering from the state of emergency.

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN THE RULE AND A STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE:

This is a new rule, mandated by 5A-12-1

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

N/A

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

N/A

C. ECONOMIC IMPACT OF THE RULE ON THE STATE OR ITS RESIDENTS:

N/A

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2021 Increase/Decrease (use "-")	2022 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	00	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

The rule only sets forth the practices and procedures followed by the agency.

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

Yes

Stacy L Nowicki-Eldridge -- 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 170
PROCEDURAL RULE
WEST VIRGINIA DIVISION OF EMERGENCY MANAGEMENT

SERIES 5
PURCHASES DURING STATES OF EMERGENCY

§170-5-1. General.

1.1 Scope: These Purchasing Procedures are an explanation and clarification of operative procedures for contracts and renewal of contracts which occur during a declared state of emergency, and purchases from the federal government, so long as the purchase or contract is directly and solely related to the recovery from the declared state of emergency.

1.2. Authority -- W. Va. Code §5A-3-3c.

1.3. Filing Date –

1.4. Effective Date --

§170-5-2. Definitions.

2.1. Unless the context in which used clearly requires a different meaning, the definitions contained in W. Va. Code § 15-5-2 shall apply to this rule, in addition to the definitions set forth below.

2.1.a. "Director" shall mean the director of the Division of Emergency Management.

2.1.b. "Division" shall mean the Division of Emergency Management.

§170-5-3. Procedures for entering into contracts during a declared state of emergency for items necessary to recover from the declared state of emergency.

3.1. The Director may authorize contracts for items necessary to recover from the declared state of emergency. For purposes of this section, the contract must be necessary, directly and solely related to the recovery from a declared state of emergency and must be entered into during the declared state of emergency.

3.2. Purchasers of the division who have the authority or responsibility to purchase commodities and services, shall not make any purchase(s), without contacting the Director, or designee, except for purchases related to the operation of a division vehicle/utility vehicle.

3.2.a. When such a request is made, the Director will determine if the request is appropriate.

3.2.b. If the request is deemed appropriate, the Director will notify the Secretary of the Department of Homeland Security of the request, and the Secretary must approve or deny the purchase.

If the purchase is approved, the Director, or his or her designee, shall instruct the employee how to proceed or will advise the employee that he/she will assume the responsibility of making the procurement.

3.3. If circumstances are such, due to time or circumstance constraints, the Director, or his or her designee, shall make attempts to secure bids, or shall document open market pricing for items, and may purchase goods or services which accomplish the lowest price available, with the fastest delivery time. The Director may purchase a more expensive good or service, if the delivery time is faster, if time is of the essence.

§170-5-4. Procedures for renewing contract which were entered into during a declared state of emergency for items necessary to recover from the declared state of emergency.

4.1. If a contract is entered pursuant to this rule is needed to be renewed, such renewal shall be made as long as the contract is still necessary for the state to recover from a declared state of emergency. This subsection may not be utilized for contracts which include as part of its terms permanent reconstruction after the initial state of emergency has ended.

4.2. If renewal of the contract is deemed appropriate by the Director, the Director will notify the Secretary of the Department of Homeland Security of the request, and the Secretary must approve or deny the renewal. If the renewal is approved, the Director, or his or her designee, shall instruct staff to renew the contract.

§170-5-5. Procedures for purchasing goods or services from the Federal Government.

5.1. If the federal government, or any agency that is part of the federal government, offers for sale to the State goods or services directly and solely related to the recovery of the state from a declared state of emergency, the Director may purchase these goods or services from the federal government, or that federal agency, without the need to follow subdivision 2.5. or 2.6 of this rule.

5.2. If the purchase is deemed appropriate by the Director, the Director will notify the Secretary of the Department of Homeland Security of the request, and the Secretary must approve or deny the purchase. If the purchase is approved, the Director, or his or her designee, shall instruct staff to accomplish the purchase.

§170-5-6. Certification by the Director.

6.1. The Director shall, in writing, for any purchase necessary and appropriate under W.Va. Code §5A-3-3c, certify that the contract or purchase is directly and solely related to the recovery from a declared state of emergency and attach a copy of the proclamation to the certification.

6.2. The Director, or his or her designee, shall maintain certifications issues pursuant to this section, at a minimum, until the contracts or purchase agreements have been fully executed.