

**WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION**

Form #7

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2003 JUN 11 P 4:21

OFFICE WEST VIRGINIA
SECRETARY OF STATE

Effective Date

NOTICE OF AN EMERGENCY RULE

AGENCY: Higher Education Policy Commission TITLE NUMBER: 133

CITE AUTHORITY: West Virginia Code § 18C-5-9 and 29A-3A

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: Series 43

TITLE OF RULE BEING PROPOSED: Purchasing Efficiencies

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

In HB 2224 (W, Va, Code 18B-5-9), the Legislature found that an emergency exists and directs the Commission to file an Emergency Rule by July 1, 2003, for the institutions of higher education individually or cooperatively to maximize their use of any of the following purchasing practices that are determined to provide a financial advantage: (1) bulk purchasing, (2) reverse bidding, (3) electronic marketplaces, and (4) electronic remitting.

*Joyce W Daniels for
J. Michael Muller*

Authorized Signature

Use additional sheets if necessary



EMERGENCY RULE QUESTIONNAIRE

DATE: June 10, 2003

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: *(Agency Name, Address & Phone No.)* _____

West Virginia Higher Education Policy Commission
1018 Kanawha Boulevard, East, Suite 700. Charleston, WV 25301
Phone: 304-558-0277 Rich Donovan Email: donovan@hepc.wvnet.edu

EMERGENCY RULE TITLE: 133-43: Purchasing Efficiencies

1. Date of filing June 11, 2003

2. Statutory authority for promulgating emergency rule:
W. Va. Code 18B-5-9 and 29A-3A

3. Date of filing of proposed legislative rule: June 11, 2003

4. Does the emergency rule adopt new language or does it amend or appeal a current legislative rule? New

5. Has the same or similar emergency rule previously been filed and expired?
No.

6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the **immediate** preservation of public peace, health, safety or welfare.

In HB 2224 (W. Va. Code 18B-5-9), the Legislature found that an emergency exists and directs the Commission to file an Emergency Rule by July 1, 2003, for the institutions of higher education individually or cooperatively to maximize their use of any of the following purchasing practices that are determined to provide a financial advantage: (1) bulk purchasing, (2) reverse bidding, (3) electronic marketplaces, and (4) electronic remitting.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

The Commission is directed to file this Emergency Legislative Rule by July 1, 2003,
pursuant to W. Va. Code 18B-5-9 (e)

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

This rule will make the higher education purchase process more efficient thereby
reducing the cost and saving tax dollars.

**TITLE 133
EMERGENCY/LEGISLATIVE RULE
WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION
SERIES 43**

FILED

2007 JUN 11 P 4: 21

OFFICE WEST VIRGINIA
SECRETARY OF STATE

TITLE: 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.
- 1.3 Filing Date:
- 1.4 Effective Date:
- 1.5 Repeal of Former Rules: None

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 Higher Education Policy Commission" or "Commission" means the commission created pursuant to West Virginia Code §18B-1B-1.
- 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.

SECTION 3

APPLICABILITY

3.1 This rule applies to all institutions as defined in Section 2.

SECTION 4

PURCHASE OR ACQUISITION OF MATERIALS, SUPPLIES, EQUIPMENT, SERVICES, CONSTRUCTION AND PRINTING

4.1 As provided by this rule, the Commission and institutions may institute the following purchasing practices either individually or cooperatively for purchase or acquisition of materials, supplies, equipment, services and printing.

4.2 Bulk Purchasing:

4.2.1. The Commission shall establish a working committee consisting of Commission staff and institutional representatives to identify the materials, supplies, equipment, services and printing that may reasonably be purchased in bulk to take advantage of economies of scale. In compiling this list and in assessing the economic advantage of purchasing a commodity or service in bulk, the committee shall consider the acquisition cost of the commodity or service, included but not limited to, delivery costs, handling and storage costs, timing of purchases and customer satisfaction. This committee shall also monitor and report to the Chancellor from time to time on any cost savings and efficiencies realized from bulk purchasing.

4.2.2. Bulk purchase contracts may be bid and entered into by either the Commission or an institution on behalf of all institutions. Once issued, the Commission and all institutions participating in the contract shall use it as the primary source of procurement of the commodities or services provided in the contract. The Chief Procurement Officer may authorize purchases off the contract if it is deemed to be in the best interests of the Commission or institution to do so. If an institution decides not to participate in a bulk purchase contract, the institution's Chief Procurement Officer shall state in writing the reason(s) for not participating and the cost savings resulting therefrom.

4.3 Reverse Bidding:

4.3.1. The Commission shall establish a working committee consisting of representatives from the Commission staff and institutions to implement reverse bidding for all public higher education institutions within the State. The working group shall review currently accepted reverse bidding practices within both corporate America and higher education to determine what is most appropriate to West Virginia

higher education. Software and other enabling media shall also be investigated. Recommendations shall be made in a timely manner by 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 §1BB-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 §1BB-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.

Summary

**TITLE 133
LEGISLATIVE RULE
WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION
SERIES 43
PURCHASING EFFICIENCIES**

This rule is being issued pursuant to HB 2224 (WV Code §18C-5-9) which require the Higher Education Policy Commission to promulgate a rule facilitating purchasing efficiencies. The 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.

□
APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Title 133-43: Purchasing Efficiencies

Type of Rule: Legislative Interpretive Procedural

Agency: West Virginia Higher Education Policy Commission

Address: 1018 Kanawha Boulevard East
Charleston, WV 25301

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	-0-	\$85,000	\$85,000	\$85,000	\$85,000
PERSONAL SERVICES		\$80,000	\$80,000	\$80,000	\$80,000
CURRENT EXPENSE		\$5,000	\$5,000	\$5,000	\$5,000
REPAIRS & ALTERATIONS					
EQUIPMENT					
OTHER					

2. Explanation of Above Estimates:

It is difficult to predict the total cost savings that may realized but a very conservative estimate would be \$85,000 per year through utilization of bulk purchasing and more efficient purchasing methods. Utilizing these purchasing efficiencies would reduce manpower costs and current expenses.

3. Objectives of These Rules:

Guidelines for bulk purchasing, electronic remitting, reverse bidding, and other purchasing efficiencies

Rule Title: 133-43: Purchasing Efficiencies

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

None

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens:

None

C. Economic Impact on Citizens/Public at Large.

None

Date: June 10, 2003

Signature of Agency Head or Authorized Representative:
