



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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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: Water Development Authority

TITLE-SERIES: 44-04

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

RULE NAME: PURCHASING PROCEDURE

CITE STATUTORY AUTHORITY: 22C-1-6

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

July 11, 2020

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

Yes

**Tina Parker -- 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 44
PROCEDURAL RULE
WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

SERIES 4
PURCHASING PROCEDURE

§44-4-1. 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 Authority. This rule identifies procurement guidelines based on the monetary amount of the good or service.

1.2. Authority. -- W. Va. Code §22C-1-6.

1.3. Filing Date. -- June 11, 2020.

1.4. Effective Date. -- July 11, 2020.

§44-4-2. Definitions.

2.1. "Authority" means the West Virginia Water Development Authority created and established under W. Va. Code §22C-1-1 *et seq.*

2.2. "Board" means the Water Development Board.

2.3. "Director" means the Director of the Authority, or anyone that the Director has designated in writing to perform a specific task or function.

2.4. "Local Governmental Agencies" means counties; municipalities; watershed improvement districts; soil conservation districts; sanitary districts; public service districts; drainage districts; regional governmental authorities and any other governmental agency, entity, political subdivision, public corporation or agency having the authority to acquire, construct or operate public water facilities, storm-water systems or wastewater facilities.

2.5. "RFP" means Request for Proposal.

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

§44-4-3. Overview.

3.1. The Authority is the agency that coordinates the financing and closing for all infrastructure and economic development loans and provides financing for the design, construction, improvement and acquisition of water and wastewater facilities to Local Governmental Agencies. The Authority is also the administrative oversight agency for servicing loans and grants made from its revenue bond programs, the West Virginia Infrastructure Fund and the Drinking Water Treatment Revolving Fund. The Authority provides administrative oversight for the Clean Water Treatment Revolving Fund.

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The Authority receives no appropriations from the State 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.

§44-4-4. Purchasing Requirements.

4.1. All purchases of goods and services by the Authority 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 the Director.

4.4. Requirements for purchases greater than \$10,000 but not more than \$25,000:

4.4.1. Prices or quotes will be obtained from a minimum of two (2) separate sources; provided, that this subsection 4.4.1 shall not apply in instances where there is a "sole-source" provider.

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

4.4.3. The proposed purchase must receive the approval of the Director.

4.5. Requirements for purchases greater than \$25,000:

4.5.1. Bids must be solicited from Class II legal advertisement as described in W. Va. Code Chapter 59, Article 3 and solicited from an adequate number of known qualified suppliers with sufficient response time permitted. This may be done in the form of a RFP, if applicable.

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

4.5.3. Bids will be opened at a time and place prescribed in the RFP invitation, if applicable.

4.5.4. Any or all bids and/or quotes may be rejected if there is a sound, documented reason.

4.5.5. The proposed purchase must receive the approval of the Director.

4.6. Bid Protests. Protests apply only to bids and awards made under Section 4.5.

4.6.1. Submission of Protest.

4.6.1.a. Protests based on bid specifications must be submitted no later than five (5) working days prior to bid 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 opening and award dates. Protests received after these dates may be rejected at the option of the Director.

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

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

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

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

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

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

4.6.1.c. Failure to submit the information in 4.6.1.b. above shall be grounds for rejection of the protest by the Director.

4.6.2. Protest Review.

4.6.2.a. The 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 Director or assigned designee. Continuation or delay of a purchase order or contract award is at the discretion of the Director.

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

§44-4-5. Severability.

5.1. 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.