

MEETING MINUTES

February 25, 2015

**GOVERNOR'S COMMITTEE FOR THE PURCHASE OF
COMMODITIES AND SERVICES FROM THE HANDICAPPED**

The meeting was called to order at 10:00 a.m. February 25, 2015 at the West Virginia Rehabilitation Services office located at 10 McJunkin Road, Nitro, West Virginia.

ATTENDANCE: Kim Nuckles (Chairperson); Aaron Jones, Executive Director; Everette Sullivan, Brenda Bates, Mark Totten, Executive Secretary; Carol Jarrett, Recording Secretary.

Attended by Conference Call: Jan Smith, OP Shop

WVARF Staff: Aaron Jones
Mark Jackson
Gary Wolfe
Roy Woodard

Guests: Craig Greening, Jackson County Developmental Center
Debbie Birthisel, Green Acres Regional Center
Joyce Birley, Goodwill Industries of Kanawha Valley
Carla Cleek, Division of Rehabilitation Services
Brenda Hellwig, Job Squad, Inc.

Terah Klein, SW Resources
Stephen Dickerson, Mercer County Opportunity Industries
Jack Holcomb, Precision Services

ABSENT: Mark Jackson
Phillip Mason

COMMITTEE CHAIR REPORT:

Ms. Nuckles, is there a motion to approve last month's minutes?

Ms. Bates, I don't have a copy of the minutes from our last meeting, so can we approve those next month after I have had time to read them?

Ms. Nuckles, on the agenda is Craig Greening and I actually met Craig the other day and I have on here he is with the West Virginia Association of Disability Employment (WVADE) which may not be entirely accurate but that is actually what Jan Smith relayed to me through email which is why I put it on there but I will let Craig give you that information.

Mr. Greening, I am the Executive Direction of the Jackson County Developmental Center, commonly referred to as (JCDC) and I have copies I will pass out.

At a recent board meeting of WVADE as we are calling ourselves, and we had the topic of the Governor's Committee and the State Use program came up and I recognized a couple of relative new folks on the Committee. The term "State Use Program" is not a law but that is what we have called it for twenty-five years so if I refer to it as a state use program or the state use law that is what we are referring to. There are a couple of concerns we had.

- 1) One of the biggest concerns is the Committee vacancies. It is my understanding that the Committee has two seats vacant and has been for perhaps 12 months or so. I really think that is a disservice to the program and a disservice to the Committee. If there is anything we can do we would encourage the Committee and/or if we need to argue for those to be fulfilled. They are to be appointed by the Governor and approved by the Senate and there is some time that it could be done this session if possible as I know that usually comes up at the end of the session. Those vacancies are: 1) representative of a private citizen and typically the Committee tries to choose somebody who has a disability or a connection with someone with a disability as a parent or close friend or relative; and 2) the other would represent private business, it doesn't say small it just says private business. Those two vacancies we really feel a need to have their voice at this table. We respectfully ask the Governor and the Committee since you are all appointed by the Governor to take action on that.
- 2) We don't feel that the Purchasing Division is following fair market price rules. Not to brag but to give the Committee a refresher on where I have been. In 1989 I won the role to create the Committee, and Mr. Sullivan and I were appointed to the first Governor's Committee. I was representing CRPs and in fact for the first seven years I was the Chair of the Committee. That is when we promulgated the first set of rules and a couple of them have since been revised. Also, from 2000 – 2007 and for those seven years I was in fact a staff member of WVARF. I worked with these rules all the time and I have some familiarity with them which is why everybody looked at me and said "why don't you go talk to them." What I would like to do is walk through a couple of rules very briefly and just point out what the rules say. In Code WV §5A-3-10 (e) and it says: The Director, referring to the Director of Purchasing "shall, without competitive bidding purchase commodities and services produced and offered for sale by nonprofit workshops," which are CRPs qualified vendors, that is what that refers to. And, it does say they have to be of a fair market price and the like quality comparable to

other commodities and services. So we understand that we are trying to produce and sell to that. Article 3a which is what establishes the Committee and the non-profit agency. The purpose of this whole program and I think it is important to refresh why this program was developed. The purposes are to further the state's policy of encouraging disabled persons to achieve maximum personal independence by engaging productive activities, and in addition to provide state agencies, institutions and political subdivisions with a method for achieving confirmative with Purchasing procedures and requirements of nondiscrimination affirmative action employment management related to disabled persons. So the whole point of this is, in fact to use the state's purchasing to employ people with disabilities and that is something that cannot be necessarily forgotten very quickly. Then it goes on and creates the CNA and creates the Committee and it gives the responsibilities of the Committee. The Committee basically maintains records, monitors the performance of the CNA, monitor the interest of the CNA to ensure the interest of the handicapped citizens are advanced by the agency. It does under the fair market rule, which is the legislative rule, to get into what we are really talking about.

The definition of fair market price means a reasonable price set by the Committee and approved by the Director which permits the qualified vendor to recover their cost of raw materials, etc. It is not low bid, it is not anything else other than it is a fair market price and I think sometimes that gets in the way, not everybody understands that.

Then under Section §186-1-4 of this rule, it says that the pricing guidelines established the Committee and the guidelines are so on and so forth. And the fair market price established by the Committee remains in effect until a new fair market price is established. One of the problems we have is with modifications of pricing and that is really the gist of what we want to bring before the Committee.

My organizations specifically has had new prices approved by the Committee at least twice if not three times and sent to Purchasing and they just kind of disappears and a great void for our wiper cloths. There was a time that the cotton market went crazy but basically the cotton prices settled down to what they used to be even though we are not using the virgin cotton product, everything gets affected when cotton prices go up.

One of the things established in the rules that are above this. The new fair market price must be based on the changes in the scope-of-work required by the agency, changes in labor costs or increase of other costs related to the contract. One of the things that we have heard is that recently some of my peers provide janitorial services had been asked to go seek competitive or prices with their competitors who may be in the business. For example, if I could use Ms. Kline in Parkersburg, because I used to work with her agency a long time ago and I am friends with the Vice President, Jim Winan, one of the biggest companies in West Virginia and he is not going to give me a fair price on what commodities are and that is not exactly what the fair market price rules say. It says: the cost of the commodities or services, in similar quantities purchased if purchased by the state from a qualified in-state vendor engaged in the business of providing similar services. If most of the janitorial work that is now being contracted by the state through

WVARF then there may not be a lot of examples of what the state has purchased, but it says if purchased so, a) may not apply and I'm not a lawyer and I just read what I read and try to understand it. b) to the extent of applicable amount paid by the state in any recent purchases, we don't know if the state has made any recent purchases in janitorial services other than through us so that information is not available to the CNA or to the individual CRPs. That also says amount paid by state recent purchases of similar commodities or services in similar quantities, making allowance for general inflationary trends determined by the director. What that means in the case of my wipers if we have had this contract actually predating the creation of the Committee which is about 30 years so there are no recent purchases unless somebody has side stepped the state use law and made an offsite purchase. But it does say make dual allowance for general inflationary/deflationary trends and we recognize that inflation has been very low in the last few years, but never the less there is that provision to make allowance for that.

Another thing is the actual cost for the qualified vendor, if we can document our cost that is a consideration. There shouldn't be anything hidden.

Another issue has been the wages and in this section it says the Committee has a duty to ensure that employee wages be at least Federal minimum wage. I understand there was some discussion on that. If a qualified vendor wishes to compensate an employee more than the Federal minimum wage such as a wage mandated by the state government/legislature, a detailed explanation of why and how they determined the wage must be submitted to the CNA on the appropriate Committee approved forms. If that has been done and there is a reason such as we now have the legal mandate to do something as an employer of West Virginia then there shouldn't be any discussion on making an adjustment based upon and solely based upon the new minimum wage.

My general problem with this and the adherence to minimum wage is, I believe it is somewhat discriminatory by the State of West Virginia to say that people with disabilities are only valued at minimum wage.

Ms. Smith, just wanted to let you know I have joined the meeting.

Mr. Greening, there are two steps here at the end of this rule; the first one is the initial fair market price determination procedures. This is what happens when the commodity or services are brand new. Most of what we are doing is the modifications so that is where I will direct my comments. The following procedures used when either a spending unit request a change in the scope-of-work or costing. The first point is the spending unit shall submit to the CNA a request for a price change during a breakdown of the change and the cost using the forms approved by the Committee and their appropriate documentation requested by the CNA

Committee, or the qualified vendor spending unit shall submit to the CNA a request to change the scope-of-work. So if we have a price change it can be based on the scope-of-work or the actual cost providing the service or commodity.

This is an important part because in my position and one of the things that I am bringing to the Committee is with wipers, it is a statewide contract; Purchasing is the agency to do that. The laundry services are really an agency contract because it is strictly with DHHR. Most of the janitorial contracts are agency contracts even though they are involved and put together they are still agency contracts as opposed to a statewide contract. That is our position that they still are agency contracts because it is the agency that is contracting with us and not Purchasing. Purchasing is acting for and on behalf on top of the agency. Division of Highways will contract with us for rest areas - it is not state Purchasing that is contracting with us for the rest areas. Here is the point I want to make, the CNA shall submit a copy of the suggested fair market price of the spending unit and that is the point – the spending unit is the agency. The spending unit is to notify the CNA of any objection in writing within ten (10) days. My problem has been is that every time we submit for wipers or anything else, I know laundry has had some problems with that and I won't speak for Aaron and his team for other examples but from what I know personally, is that it goes to Purchasing and it just sits there. We are not given ten (10) days of a written notice of what they feel is the problem. We get verbal comment – well we looked on the internet and we found a price for your product cheaper. So what, 1) that doesn't mean it is fair market price and 2) you can go to spot market on the internet and find any price that is lower or higher at any given time but you are asking us at this point for price commitment to five (5) years and it should only be for three (3) years. But if you want a price commitment from me for three (3) years on a commodity like that then there has to be some realization that that is not going to be the low bid that you can go out and buy something. Fair market price is not low bid.

I believe I have presented the issues at hand but I will certainly entertain any questions.

Ms. Nuckles, any Committee members have any questions?

Mr. Sullivan, the minimum wage provides for everyone to receive minimum wage – did I understand you to say Craig that the disabled could only receive...

Mr. Greening, it says "at least" but the concept that I have understood and the pressures come back from Purchasing is to keep it at minimum wage as much as possible. Generally speaking I have gotten the impression from my peers and from the CNA staff that there is a lot of pressure to keep wages in janitorial contracts at minimum wage.

Mr. Sullivan, we have been bothered with this for a few years. People want to come in and submit a low bid this year just to get the business and then next year they go way out of fair market price and that has been a problem for the Committee. It has

been discussed a lot of times. I think that we ought to see that we are at the fair market price and let it go at that and forget about these people who are trying to undercut us.

Ms. Bates, I agree with that and I want to say, "thank you Craig" for eloquently saying what I tried to say I'm sure in 35 pages in our last meeting. I think the Committee has followed the rules in that, when there is something that is presented we look at all the

information submitted by the CRP to the CNA to determine if it is fair market price based on these rules. I think we have done very well in following the rules that are here and we have as I had mentioned the last time met road blocks in terms of getting things through. As a Committee we will take a lot of time to look at all the information that is presented and then it will come back again and again and sometimes three or four times. We had Michael Hagg who was here the last time who has the VA, who is willing to pay and has been willing to pay for several months but we can't get it through. It has just been frustrating for the Committee and I guess I showed that frustration the last time but I think you said everything very well very capsulized.

Mr. Totten, before we go any further, let's talk about some of the things you said. If we address everything that you said I think we are going to spend a lot of time repeating the same things that we said in the last meeting. Because I think whatever was relayed to you had a lot of the questions related to you but none of the answers that we provided last month. You said you had a meeting conflict with last month and I think a lot of things you have addressed, had brought up as problems were discussed last month and clarified a lot.

Mr. Greening, part of the reason I am here is because on the board of WVADE met after the last Committee meeting and there was still concern from a lot of the members at that board of Directors meeting and basically that is why I am sitting here because they are not sure those things have been adequately addressed.

Ms. Smith, could I ask who is speaking?

Ms. Bates, Craig Greening.....

Ms. Smith, didn't sound like you Craig.

Mr. Totten, a lot of what you said was your commentary and some of it was the law that you read from the Code so I don't know if you want me to address your commentary or if you want to talk about the law.

Mr. Greening, either one...

Mr. Totten, a lot has been misrepresented to you, we talked about low bid we explained last month and Purchasing is not looking for a low bid.

Mr. Greening, could you explain to me why after five (5) years my wipers are sitting nowhere?

Mr. Totten, I cannot address the wipers.

Mr. Greening, I don't want to get into a battle dialogue with you Mark but I think these things still hang here and until some of these things actually get done because the three times that we have submitted all the documentation we have been asked to do we still have yet to get a written comment within ten (10) days explaining why we have not done

that. So if there are reasons why something is not done, I think it is courteous, I think it is efficient, I think it is part of having a work relationship that any concern that Purchasing has or an agency has about a price based on statement of work or whatever the issue is that there is a response within ten (10) days so we can address that.

Mr. Totten, have you been in contact a lot with Mike Sheets over the last 12 months?

Mr. Greening, no we don't get feedback that is part of the big concern with particularly the commodities contract which is odd because there are services in that, not strictly commodities, but the point is we are not getting feedback. We are certainly not getting it written, so if something is said here or something said to the staff by the time CNA staff has time to get to us it gets jumbled and we want to have a work relationship with all of you, we certainly want to be courteous in that working relationship, but we have got to have some honest feedback in writing. That is the only way you are going to be able to communicate to us.

Mr. Totten, prior to Kim taking over the Committee is this the first time you have ever brought this up because I just met you today and I am hearing a lot of frustration.

Mr. Greening, first off I have been in this business since 1982. I just have a lot of commitment to this program and what it does for people with disabilities and my organization.....

Mr. Totten, and the implication that there is an opinion of Purchasing that it goes against any of that is a little bit inappropriate.

Mr. Greening, well maybe so but I look at actions. I'm an outcome based kind of guy. Quite frankly I have learned over the years I have heard a lot of people talk but we are looking at outcomes. The outcome is there has been delay, after delay, after delay within Purchasing and very little response back.

Mr. Totten, and you are insinuating that those delays are because Purchasing doesn't believe that people with disabilities should earn the minimum wage?

Mr. Greening, I know that offended you but what I am saying is....

Mr. Totten, because you are connecting things that aren't.....

Mr. Greening, ok let's take that off the table and put it aside.

Mr. Totten, ok

Mr. Greening, that is not a point for discussion.

Mr. Wolfe, what we are really getting to is, I have a sheet here of contracts that we talked about last month and for one, West Virginia Lottery requested three (3) floors to be taken off and right now the state is paying an extra \$3,000+ per month for it because

we can't change it, we can't get a FMP letter and process it. There is someone here that would save the state money. I think it is like somebody left you and went away, we don't hear nothing so what can you do. It is like the woman who leaves you and you start trying to figure out why she left you. You think of everything until she finally comes and tells you why she left you. We don't hear any answers and I think everybody just comes up with their own conclusion.

Mr. Greening, so my assumptions are incorrect, that is fine. I will remove my assumptions but in the place of my assumptions I would like concrete answers.

Mr. Totten, ok this is the first that I have heard that there has been a miscommunication with you so how can I speak specifically to the situation with your wipers when I have never heard about it?

Mr. Greening, next month same place, same time.

Mr. Totten, all right fair enough.

Ms. Bates, it isn't you, it is Purchasing and you represent Purchasing and this has been going.....

Mr. Totten, and I am not taking any of this personally but I am trying to be fair. Purchasing has no opinion about anything.

Ms. Bates, but Mark what I am saying is, you represent Purchasing and Purchasing has held up all of these contracts for months and months.

Mr. Totten, to simplify that by saying Purchasing has held up these contracts is unfair as well.

Mr. Greening, well that is the perception based on the lack of outcome.

Mr. Totten, and it is a lot more complicated, it sounds great to bring this up in a meeting and create this villain but the reality is a little bit more complicated than that and we spent a lot of time last month talking about it.

Mr. Jones, what has been done between the last meeting and this meeting as far as fair market value letters? Let Kim address that.

Ms. Nuckles, it is 10:50 a.m. and Everette has to leave at 11:00 a.m. and I think what I am going to do is the next two things on the agenda were comparables and the commodities pricing and I put Aaron, Mark and Gary on there just so they could address any questions we have. I want to fix this. Let me use wipers as an example or let's say we have a term contract from July 1 – a one year contract.

Mr. Greening, we have had the same issue with several contracts, but stick to the wipers.

Ms. Nuckles, let's just use wipers, a one year contract pricing. Let's say WVARF gets me and I get Purchasing comparables for wipers.

Mr. Jones, we have done that three (3) times already.

Ms. Nuckles, ok this is good. I came in on October 15th the day before the meeting so let's assume you get that and Purchasing looks at it, this is hypothetical, are you requesting that the price be changed during the term of the contract or are you anticipating it for the following year contract to work out to negotiate a new price?

Mr. Greening, the later because commodities contract was issued when?

Mr. Jones, it was originally supposed to expire at the end of February of last year. Then it was extended to the end of April, we submitted everything again as I said in the last meeting and I won't go through all that....

Ms. Nuckles, and you were doing this in anticipation of the July contract.

Mr. Greening, when a contract was issued then we also tried to get a price increase because when the cotton market went crazy and we are talking about almost double prices we tried to get a modification during the contract year as well as after so we can't do it but I would be more focused on the end of the contract to renewal for that than I would be trying to go back and fix something.

Ms. Nuckles, and I asked that because to me sometimes I think there is this misconception that a contract is just a sale to the state but it is not. I don't think people realize it is a legal significance or the actual agreement. You are changing something or benefit so that is my concern with the minimum wage as well. The Committee is concerned that at very bare minimum those individuals with disabilities are paid minimum wage. If you want to pay your employees more that is awesome and we encourage that and I know we all agree with that. My concern was lots of times we have these change orders for example and these change orders are happening for my benefit in the middle of a contract term.

Mr. Totten, I don't know if that would get approved mid contract term anyway.

Ms. Nuckles, right but I say that because my only frustration is again, it is not just a sales – it is a contract so if the contract is for a year you know unfortunately the minimum wage thing for example and anticipation in knowing the minimum wage – that is kind of a sales job for the WVARF guys and they know that. We have talked about it, it's a sales job it is kind of like going to 4.1.e and saying hey, you know you need to convince the agency this is the right thing to do and you can justify that by explaining the increased labor costs and you can let them know that 4.1.e allows them to change the price by mutual agreement with the CNA because there is that 20% and my frustration is these change orders are coming at mid contract, the

agency doesn't agree to it and unfortunately you may have to wait until the July term for it to be renewed.

Mr. Wolfe, we tried to do the right thing for the state and we said why should we do it because it takes effect January 1st then we won't put it in in June or July 1st we will wait until it takes effect thinking we would do it and they said yes that would be great. We made a mistake and we were trying to do the right thing and it cost us.

Ms. Nuckles, I know and they did and that was one of the problems, I saw the notes and unfortunately because the rules say the agency has to agree to it as it has to be mutual agreement. If they don't you may have to wait for the contract.....

Mr. Greening, if there is a modification based on the state minimum wage being increased there are lots of contracts with the state that have built in raises in them.

Ms. Nuckles, which is how it should be.

Mr. Greening, but once we knew the minimum wage was going to increase then that can be calculated that on July 1, 2015 it goes to this and on July 1, 2016 it goes to this and it is done, you don't have to worry about any other modifications, so you don't have to go back to the trough as it were multiply times. I certainly, working for WVARF understand the contract thing but there has to be some good form of communication based on reality and perception, it's there and we are here to say we want to blow up the iceberg and get this communication and things moving because although I appreciate that Purchasing may have had some technical issues, here is the bottom line for me and here is the bottom line for most of my peers. I cannot operate without cash and I can't employ people and take a hit on a 17% increase over 12 months.

Mr. Totten, have you communicated to the Committee Chair the issues before now?

Mr. Greening, no I have not had an opportunity.

Ms. Bates, the CNA as the rules state, the CNA represents the CRPs and it has been communicated from the CNA to the Committee; therefore, the communication is done. Craig and the CRPs do not communicate with Purchasing or with the Committee. The CNA communicates on behalf of the CRPs and that has been done. It has been done on the wipers, it has been done on the minimum wage and basically what's happening on the minimum wage is that the CNA presented the information to the Committee, the Committee made a decision based upon input from the Chairperson of the Department of Administration who is also over Purchasing and we did what we were told, what we thought was right. Now the CRPs have to pay for that and that should not be. They should get the increases for the minimum wage bottom line first thing. Second thing is, these individuals who have been waiting months and months and some of them more than months on increases, we need this, we need that and I mean it just keeps coming back. I have got all kinds of communication from the CNA to Purchasing with documentation for Craig's problems, for Michael Hagg's problems. All of those things have been communicated and it is not Craig's job to communicate them

to Purchasing it is the CNA's. And the CNA is supposed to work through the Committee to Purchasing and somehow along the way these rules and it has just been recent have come to the point where you know Purchasing has become directly involved with determining fair market price or giving the Committee what should be fair market price when the Committee is using the rules.

Ms. Nuckles, let's tie this into something positive, here is a positive thing. Gary and Mark and Aaron got me some comparables and Dave Tincher has reviewed. One from Winan's, one from Michael about the laundry I think – table linens, and Aetna and I think Source America.

Mr. Wolfe, we have three or four others out there and they are not going to give us anything. Matter-of-fact, what we do have from Winan's and Aetna they are so broad and basically, one guy who I know, I had to trick him with somebody I know so it would be like playing a trick on family and he said where is the building I want to go see it? I said could you put that on letterhead and he said why do you want it on letterhead? Finally, when Mark kept asking he did send something but again it is a big broad picture and I don't think it is exactly what you guys are looking for. But what we have done is, we wore everybody out, we lied to about ten people on a building and everyone knew we were lying and just gave us some little stuff and that is what we submitted to you guys.

Ms. Nuckles, Dave actually liked this cleaning agreement so I wrote a couple of things down and my question for Aaron as I know Mark is not here, was this a hypothetical to clean your WVARF building on Allen Drive?

Mr. Wolfe, Mark is the numbers guy and I know he did that particular one.

Ms. Nuckles, but Dave indicated that he liked this and it made sense to him, he likes the format, he understood. He had a couple of questions just in terms... he actually said this morning if that is what this was, he thought that was creative and liked it then this is hypothetical Winan's cleaning the WVARF building, he actually liked that. So to me that is a baby step but it is a good step so to me that is a positive.

Mr. Wolfe, I heard Mark finally say I am going to take another approach and he called one of the companies and said you are not going to get any business but can you do me a favor and it is a big favor and if I can ever give you one back I will give you one back and the guy said I'll do something for you but I'm not going to spend much time on it.

Ms. Nuckles, and if the Committee is ok with it maybe what I will do I will sit down with Mark the end of this week or next week and go through this and he can explain to me the numbers so that I can get back to Dave, let's just do that.

Mr. Jones, how does that solve our FMP letters?

Ms. Nuckles, well it doesn't solve the FMP letters.

Mr. Jones, how are we going to get these contracts moving forward, that the bottom line?

Mr. Wolfe, I have four contracts that I have done the assessment a month and a half ago and the state agency has called me three times saying when can they start? Remember the DOH one that we approved? These are sitting on my desk sitting there and the state agencies keeps calling saying are we going to start those, we want to put people to work? I said we can't yet, we can't do it.

Mr. Sullivan, Kim I'm sorry I'll have to excuse myself but I have to leave. Craig it is nice to see you, you do a very professional job and I appreciate you very much. Craig has been involved for many, many years and he knows the system. All of you be safe and Mark I am sure you understand our problems and I feel comfortable that you will get the message to the right people to process these claims.

Mr. Greening, Madam Chairman if I could interject and thank you for allowing me to interject but what is the FMP letter issue?

Mr. Totten, I am going to answer your question about what is missing. The information that you sent in order for and we are close to make this comparable WVARF needs to give a price for the exact same thing that you requested from these private section vendors, so it is apples to apples. Because there is data here and all you have to do is say what your price would be compared to theirs. I am not looking for low bid, your mention of that so take that off the table because that has never been the point and we explained that last month. In order for this to be apples to apples just take the information you got from the private sector and give your equivalent price. I think we are really, really close.

Mr. Wolfe, then we can hand carry that over to Dave, and put the line on the bottom of the FMP letter and Kim you sign it and he will sign it then we can get these other ones rolling? Is that what we are going to get, because we will make Mark come to work tonight and pull those things out and put on the spreadsheet and come up with a price.

Mr. Totten, what the Purchasing Director said this morning, was that in order for this to be apples to apples that your price for the exact same thing needs to be next to these private sector prices. Some of the information is really arbitrary.

Mr. Wolfe, we can break it down like theirs. Ours are way too informational. We can break that down and compare like apples to apples.

Ms. Nuckles, that's great.....

Mr. Wolfe, I'm the one driving it the most. Last month I got a little ticked and pushed a little too fast but I will have that for you on Friday. We left here last month and started calling and calling. We want to get it done. Most of my life I was a salesman and you know when I finished a presentation the next thing I asked was for the order and my order right now is who, when, where? If we get that stuff the next day what day are we

going to get you guys to put the signatures on those FMP letters that I can process the ones I have on this sheet and then go to those other ones that I have hanging that want business to start and we can get the proper work to send to your office.

Ms. Nuckles, can you get me that by Friday?

Ms. Bates, I guess I don't understand how and Craig put it very eloquently that we are following the rules. The rules say that there are certain things that determine fair market price and that the Committee reviews those things and approves those and submits to Purchasing. So I am trying to understand how all of this has become like it is when just a few months ago everything was going through and signed. I am just trying to understand for WVARF's sake I'm just talking about the contracts, I'm not talking about janitorial; I'm not talking about the commodities here.

Mr. Totten, Kim has explained that when she took over the Committee that the law was reviewed so that we have talked in all the previous meetings about why things are being different today than they were say six (6) months ago.

Ms. Bates, I understand and I know I am not a lawyer but the rules don't require even if you just read them, I am just really, really concerned for the CRPs sake, I keep going back to minimum wage, now I was assured that this would all be resolved and it appears that it isn't. I keep going back to minimum wage only because my Director.....

Mr. Totten, I didn't give any kind of assurance or guarantee, I don't know what you are referring to with an assurance.

Ms. Bates, I told my Director that I thought everything was going to be worked out and everything was looking good but it is not. The contracts aren't going through, those change orders evidently have not been approved and it is just disconcerting that....

Mr. Totten, you can make this argument as passionate and as eloquent as you want but that still doesn't take us away from what is required. The second part that I want to tell you what the Purchasing Director said this morning as the next thing that he wanted to give you and what he is asking for, the information of the private sector vendors there would be a certain sense, there would be a certain price but it wouldn't say if it was per sq. ft. if it was per room or whatever. It also didn't say what you are getting with that. What he wants from WVARF is what WVARF would offer with that. So not just what your price would be for whatever but then does that include the examples he gave or is it trash or is it vacuuming?

Mr. Wolfe, could you write that down or have him to write down what he wants that would help tremendously? We hear some things and we go get some stuff and then something else... because the last meeting when you get those comparables make sure you have yours right with it – did anyone here remember that because I never did? You keep coming back and you keep coming back and it is never good enough.

Ms. Bates, it is never the same information that is asked.

Mr. Wolfe, I want that FMP letter and I want to know what I need to do to get that FMP letter as that is what I need.

Mr. Greening, Madam Chair, Mark just said what was required, where is it that these comparisons have to be brought forth by the CNA, where is that in the rules? Where does it say that we have to do this analysis of private sector to what we offer? What it says.....

Ms. Nuckles, actually I think you read it. We have had this issue in the meeting with Bob and then we couldn't find it, something strange happened.

Mr. Greening, this is under the fair market price modification because all these are modifications to the price not initial pricing. So, the following procedures used in the spending unit or request a change in the scope-of-work: Qualified vendors submit a request for the price change showing a breakdown of cost; qualified vendor of the spending unit shall submit to the change the scope-of-work; CNA shall review the breakdown prior to submission of fair market price to the Committee; the CNA shall submit a copy suggesting a fair market price - the spending unit. Even though it says comparable in the law where it says the Director shall buy. Nowhere is there a step here that says that ...

Mr. Totten, I think you read it...how do you define fair market price? How do you define fair market price?

Mr. Greening, it is right here.

Mr. Totten, compared to the private sector?

Mr. Greening, fair market price definition means a reasonable price set by the Committee, approved by the Director which permits the qualified vendor to recover the cost of raw materials, labor, capital overhead, CNA service charges and costs. That is the definition of fair market price.

Mr. Totten, that is a very brief definition.

Mr. Greening, I understand but you asked me what the definition of fair market price was Mark and that is it.

Mr. Totten, ok

Ms. Bates, I guess my question is, is there anything ready for a vote, is there anything ready for a fair market price letter, is there anything ready at this point for the change orders, and is there anything ready, anything done?

Mr. Totten, I think we have answered what we need.....

Ms. Bates, is there anything done, are the change orders ready to be approved by Purchasing, are the new contracts ready to be approved by Purchasing, are the commodities ready to be approved yet?

Mr. Totten, you are implying that nothing is taking place between the last month and I am not going to play your gotcha game.

Ms. Bates, no I am not – oh my gosh.....

Mr. Jones, all we are saying is the last time we met we were told to get you pricing for comparison and now you have come back again and said ok, now give us your pricing.

Mr. Totten, no and Dave said in December that it had to be apples to apples and if I didn't communicate that when we talked about it last month then that is my lack of eloquence. But Dave said in December that it had to be apples to apples.

Ms. Bates, Madam Chairperson, I don't think we have any resolution to any of our issues from the last meeting so I don't see that there is anything to vote on, is there?

Ms. Nuckles, well I don't think there is anything to vote on but I will say if Aaron or Gary want to with regard to those 86 contracts because I know that was really Brenda's concern and part of the process unfortunately is that the agency has to agree with the CNA on the price increase. We have had several meetings outside of the Committee talking about the 20% we have to go through the Committee if they approve it, there has to be this mutual agreement. I think there is a large percentage of those maybe where the agency has agreed, I don't know if the two of you want to speak to any of those contracts because I know there are a couple where you have received emails.....

Mr. Jones, we had 48 that fell under the 22,000 range. We submitted letters to the agencies for their approval. We have gotten calls from five of them wondering what was going on and we have explained this is to cover the minimum wage. This is the way we went about doing it since we couldn't do change orders. Although we had already done the change orders on the instructions of the Committee from previous meetings but since it was decided that we couldn't do it that way we submitted 48 of those contracts to and I think you have the list that I sent to you – you have the list don't you Kim?

Ms. Nuckles, yes I have the spreadsheet that Mark sent me.

Mr. Wolfe, yes there was 48 and a bunch of them were DHHR and we didn't call each DHHR, we just called the head of DHHR and said here they are look at all of them and if you need to contact your person and they said ok to each DRS, each one of the DOH so we covered five or six people as opposed to 48.

Mr. Jones, apparently the head of each procurement department are the ones who are going to sign off on them because nobody wants to sign their name on anything. Just like fair market value letters, apparently nobody wants to sign off on them but we can't move forward until we have them and that is the bottom line.

Ms. Nuckles, let me go back to this and this really goes back to especially for and I know Gary is good at this, Gary is a sales person and he is good at this. Mark sent me an example email that he sent to Mark Musick, I think who is a Purchasing Assistant for the office of Insurance Commissioner (OIC) and here is what it says: "Insurance Commission contracts affected by minimum wage." Now if I got an email that said that with no explanation I would be like what is this about, somebody explain to me.....and I know it is a lot of work but maybe when you find the contact person instead of attaching it to an email with an explanation saying that, even try to take them through the 4.1.8., or justify it by explaining your salesmanship explaining the increased labor cost. This is the right thing to do and here is why, because if I got that email and we all know sometimes when people send those emails without explanations they go to the bottom of your list. Maybe Gary needs to be the one to do that Aaron, I don't know.

Mr. Jones, we sent the letter that we were advised to send with the Code quoted. It was a part of the service agreement.

Ms. Nuckles, I'm certainly not telling you how to do your job, I'm not doing that.

Mr. Jones, I'm just saying that is what we have done then we are getting calls back and as Craig read there after ten (10) days if they don't reply and we have that problem with every service agreement we send out. We have some agencies that won't sign that agreement until the last date of the whole contract. We ran into that problem when we discussed Camp Dawson the last time. Camp Dawson swore up and down they had presented everything, we got that purchase order day before yesterday and it was signed on February 2, 2015 by Camp Dawson and we signed it on June 30, 2014. They held it all this time and remember we weren't getting any money from them, now it goes to Purchasing and Purchasing has it for 20 days before we get it, and this was a rush order. This was from the Legislators and everybody else – you get this processed. It took 20 days to get it through the Purchasing Division for us to get the purchase order. I'm not concerned about that but the one I am concerned about is the fact that we send these service agreements out and we have large numbers of them that do not send us anything back but according to the law in ten (10) days if they don't respond then they have accepted it, so that is where we are. Nobody wants to sign anything and again I will say it again, all we are asking for is for somebody to sign a fair market letters so we can process the contracts that were submitted three (3) months ago.

Mr. Greening, Madam Chair, there has to be some communication from this Committee to somebody that in fact, the fair market price has been approved. If it is the letter or some issues on the letter but there must be a way of communicating the Committee's decisions and actions to everybody. Back to Mark and I don't want to beat this horse but I think it is an important point because I just remembered something, 3.1.3A under the fair market price it does say the cost of commodities and services if purchased by the state. My question I guess is, really where is it written that we have to do that, now we have done that, we have done that with wipers, we have done that with other things but the janitorial six (6) years ago there was a standardization of the pricing to avoid this very thing and Purchasing was involved and it was six or seven years ago. The whole

pricing process procedure that is used to create a price was created specifically to address this issue. Whether trying to go out to vendors and never getting a straight answer or heaven forbid asking WVARF to lie and make a false presentation.

Mr. Jones, I didn't authorize that, let me just say.

Mr. Greening, be that as it may.....

Ms. Nuckles, what we are trying to do now like unit pricing, is that what you mean? Is that what you mean, like a range?

Mr. Greening, so you try to take some mythical building and put some mythical pricing to it and since I have spent seven years pricing buildings, every building is different, every building even once you get into it, it is unique, but the whole point of the standardized costing of janitorial was to address this if my memory is correct because who is going to go out and do that? Purchasing certainly doesn't want to go out and do this comparison shopping. We don't feel like we are in a position to do it as a CRP, CNA doesn't really because they are trying to cover 55 counties and every county can be different. You can always find a big company to come in and I know Dave and Jim Winan's and I'm surprised they even gave you any kind of a number. But if they gave you the most generic number possible.....

Mr. Totten, again we are not looking for a low price.

Mr. Greening, I understand that and I am not trying to imply that, but what I am saying is.

Mr. Totten, in spite of what happened six years ago, I think what we are looking for now, six years ago or one year ago we didn't have a fair market comparison on file.

Mr. Greening, but the whole point of the standardization which took months to develop with lots of input from Purchasing Division was designed to do this on the biggest chunk of business, that is the state use program which is janitorial, so be that as it may, if it is not on file, I don't know.

Ms. Nuckles, remember that Brenda?

Ms. Bates, yes and the minutes of the Committee always has the documentation attached, Purchasing could certainly use those because the Committee presents the information to Purchasing and the Committee determines the fair market price and we have gone through this so many times and if you go back and if you need documentation then you should use the documentation of the Committee because the Committee determines fair market price and we have that.

Ms. Smith, that is what I am struggling with, as for years it was approved and then we finally set up a standardization. We review things that have been used nationwide and has been approved by many that uses standardization and statistics that proved that we

are doing this in a professional manner. Now we are being questioned with our janitorial. That is where I struggle with it because we have finally done this in such a professional manner and this is the time that we are being told we have to compare really with the agencies, with other janitorial companies that aren't acting in this same manner, they don't do it in the same precise and professional manner that we are now.

Mr. Totten, no it was never an issue of how WVARF makes the calculation. We talked about that a lot last month. We are not, in no way questioning the way that WVARF prices are being calculated.

Ms. Bates, I'm really confused too on how we have gotten to the point where Purchasing is communicating with the CNA completely and not through the Committee. Last month I asked or two weeks ago I asked what is it that you need and it needs to come to me and I need to understand because I am responsible; the Committee is responsible for the fair market price, the CNA is responsible to present to the Committee; the Committee then presents that and it should not be a problem in that all of the documentation for the fair market price is attached to those minutes and has been for years and years and so I am really.....I feel so bad for the CNA folks, the WVARF folks because as Aaron has said and I have copies of a lot of the information that has been presented and it seems like it is a moving target. Now if it is not, that is ok but I need something and the Committee needs something that says we need 1, 2, 3, 4 and then it is our responsibility to make sure the CNA has that information and if they do then we determine the fair market price. That is the way it has been done, that is what the Rules say so I am really.....that is why you are getting frustrations from everybody. I want from Purchasing to the Chairperson and I would like you to forward that on exactly what you need.

Mr. Totten, he and I have discussed that.....

Ms. Bates, it is not between you and..... it is between.....

Mr. Totten, but you are in the room....and if we spent less time on commentary maybe we could talk about the details.

Ms. Bates, no – no – Mark this is about and I want to know, please Kim I would like to have in writing from Purchasing what the issues are to you and you and I and the Committee need to look at that. And, we have got to get this stuff through.

Mr. Totten, do you want to do that before we go through the thing that we talked about today that would move this forward? Do you want to put that on hold so we can do that?

Ms. Bates, no Mark I don't. I want those 86 contracts done and.....

Mr. Totten, I think everyone in this room wants those 86 contracts done.

Ms. Bates, everyone in this room has done everything humanly possible to try to get that done and it isn't about you, I'm not saying you are doing anything wrong, I'm just saying for years.....

Mr. Greening, 25 years.....

Mr. Totten, I know I'm not.....

Ms. Bates, well I am not either.....

Ms. Bates, for years.....

Mr. Totten, I wasn't being defensive.....

Ms. Bates, for years we have gone through this, we have done this the right way and now there are people with disabilities who are suffering because we can't get this stuff through Purchasing, period. We are not stopping it, Purchasing is stopping it. We have to blame you because that is where it is stopping and we have got to get this done. I need to know – we need to know where we are on this like Friday and then next Friday and the next Friday a written report because it is not moving. I assured my Director that everything was taken care of and it isn't.

Mr. Totten, and I disagree if it is not moving. You are implying that nothing is taking place since the last meeting and that is false.

Ms. Bates, ok

Ms. Nuckles, this is the first I have heard about standardize pricing. Do we already have this established?

Mr. Greening, six years ago.

Ms. Nuckles, this is the first in four months I have heard of this. That is what I have been trying to do for the past four months and in talking to the WVARF guys, we have to get unit pricing.

Ms. Bates, Jan mentioned it last month.

Ms. Nuckles, 2008 or 2009 you think? I don't know anything about that.

Mr. Greening, about six years ago, I'm thinking '08. Every janitorial pricing that you are getting is that standardized pricing and I'm sure Gary or Mark could explain it to you in detail.

Mr. Wolfe, I actually came in with the old Committee Chairman and the new one and bored everybody to death by showing color coding's and spreadsheets and how we come up with it.

Ms. Nuckles, was it a sub-committee? Who from Purchasing do you remember was involved?

Ms. Birley, Mike Sheets...

Mr. Wolfe, matter-of-fact we did it before Christmas and Purchasing, you Kim, Aaron, Dave Tincher, the Attorney and Mark Jackson and I sat there and I even brought the new assessment and scope and everything for the Purchasing building.

Mr. Totten, I don't think...

Ms. Nuckles, do we have a motion to adjourn for today?

MOTION #1

Ms. Bates, so moved. Ms. Smith seconded.

WARF Meeting Dates for 2015:

Wednesday, March 18, 2015

Wednesday, April 15, 2015

Tuesday, May 19, 2015

Wednesday, June 17, 2015