



West Virginia Purchasing Division

VENDOR PROCUREMENT GUIDE

**An Informational Guide to Vendors Interested in Marketing
Commodities and Services to the State of West Virginia**

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West Virginia Purchasing Division

VENDOR PROCUREMENT GUIDE

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Introduction

Welcome to the West Virginia Purchasing Division's **Vendor Procurement Guide**! This guidance tool has been prepared to educate vendors on the purchasing process within the State of West Virginia. The Purchasing Division takes great pride in offering this resource to businesses wishing to sell their commodities and services to our state government.

Our staff is committed to ensuring that vendors are well-informed of our procedures as outlined in the **West Virginia Code, Code of State Rules** and the Purchasing Division Procedures Handbook. This Guide is one step toward this endeavor.

Thank you for taking the time to review this **Vendor Procurement Guide**. Our goal is to educate our business partners of our procedures in order to make the state procurement process more efficient and cost-effective to our taxpayers.

Section 1: General Information

The West Virginia Purchasing Division encourages vendors to consider the state of West Virginia as a potential customer. This guide is dedicated to providing helpful information regarding our purchasing process.

The State of West Virginia acquires a variety of commodities and services to efficiently operate our agencies and their respective programs. Purchasing laws, regulations and procedures have been implemented to protect the interest of all parties (i.e. taxpayers, state agencies and businesses participating in the procurement process.)

Each year, our state agencies purchases millions of dollars in commodities and services from thousands of vendors. The Purchasing Division has the responsibility to ensure that taxpayers' dollars are being spent according to statutory and regulatory requirements in an ethical and cost-efficient manner. The state budget is approved and based on a fiscal year. The fiscal year for the State of West Virginia is July 1 through June 30.

The mission of the Purchasing Division is simple, yet direct in what it hopes to accomplish:

To provide prudent and fair spending practices in procuring quality goods and services at the lowest cost to state taxpayers by maximizing efficiencies and offering guidance to our customers.

The Purchasing Division is bound by **West Virginia Code §5A-3**, the **Code of State Rules 148 CSR 1** and detailed guidelines in the Purchasing Division Procedures Handbook. Information on this site is supplemental to these statutory and regulatory requirements as it pertains to business partners of the Purchasing Division.

Some agencies are exempt, in part or in whole, from the Purchasing Division's authority. These exemptions are listed in **Appendix E** and on the Purchasing Division's website at:

<http://www.state.wv.us/admin/purchase/PurchasingExemptions>

The Purchasing Division's **Vendor Procurement Guide** will outline procedures in place for vendors interested in conducting business with the State of West Virginia. Additional information which may assist vendors in the state's procurement process may be found at the *Vendor Resource Center* on the Purchasing Division's website at:

<http://www.state.wv.us/admin/purchase/vrc>

The Vendor Resource Center provides information, such as accessing the **West Virginia Purchasing Bulletin**, a weekly list of solicitations expected to exceed \$25,000; the state procurement officer listing; the terms and conditions for requests for quotations

and purchase orders; bids received for solicitations; forms; as well as links to helpful web resources.

Additionally, the Purchasing Director has the authority to establish a list of non-competitive / exempt commodities and services that are not required to be competitively bid, which are noted in Section 9 of the Purchasing Division Procedures Handbook for state agency use. These commodities include utilities, postage, attorneys and law firms, etc.

For a direct link to this list, please visit:

<http://www.state.wv.us/admin/purchase/handbook>

The Purchasing Division is pleased with your interest in becoming a business partner with the State of West Virginia and looks forward to your company's participation in the competitive bid process.

Section 2: Definitions

Vendors should become familiar with the following definitions, which are used in the state procurement process administered by the Purchasing Division.

Agency - For the purpose of this **Vendor Procurement Guide**, *agency* means any agency, department, authority, board, division, institution, spending unit or office of the State of West Virginia which is not statutorily exempt from the state purchasing procedures.

Agency Open-End Contract - A legal and binding instrument between the state agency and a vendor to exclusively provide a commodity or service expected to exceed \$25,000, which was competitively bid, evaluated, and awarded by the Purchasing Division and maintained by the state agency. This contract may be for unlimited dollars and for commodities and services that are frequently purchased but are not on a statewide contract.

Agency Delegated Open-End Contract - A legal and binding instrument between the state agency and a vendor to exclusively provide a commodity or service which was competitively bid, evaluated, awarded and maintained by the state agency. This contract is for purchases \$25,000 or less annually and for commodities and services that are frequently purchased that are not on a statewide contract.

Award Date - For purchases more than \$25,000, the award date is the date of encumbrance by the Purchasing Division. This date is considered the date upon which the contract between the vendor and the agency is consummated.

Best Value Procurement - Purchasing methods used in awarding a contract based on evaluating and comparing all established quality criteria where cost is not the sole determining factor in the award. This includes Request for Proposals (RFP), Life Cycle Cost (LCC), and Expression of Interest (EOI).

Bid Bond – A bond in which a third party accepts liability to pay a certain amount of money in the event a selected bidder fails to accept the contract as bid. This bond is usually five percent (5%) of the total bid amount.

Competitive Bidding - The process by which individuals or firms compete for an opportunity to supply specified commodities and services by submitting an offer in response to a solicitation.

Contract - An agreement enforceable by law between two (2) or more competent parties for a lawful purpose for consideration.

Cooperative Agreement – A legal relationship whereby state government is transferring a thing of value to a local government (or other recipient) to carry out a public purpose of support or stimulation authorized by law, as opposed to acquiring

commodities or services for the direct benefit or use of state government. With a cooperative agreement, substantial involvement is expected between the state agency and the local government or (other recipient).

Design Build - In accordance with the *West Virginia Code* §5-22A-1, this Best Value Procurement tool is a concept within a single contract whereby the contractor is responsible to design and construct buildings or alterations to buildings.

Emergency Purchase - A purchase made when unforeseen circumstances arise, including delays by contractors, delays in transportation and an unanticipated volume of work. A report of any such purchase, together with a record of competitive bids upon which it was based, is to be submitted to the Purchasing Director. Emergency purchases are not used for hardships resulting from neglect, poor planning or lack of organization by the spending unit. Failure to plan does not constitute an emergency situation.

Expression of Interest - A Best Value Procurement tool used primarily in the selection of architects and engineers which permits the state to award a contract to the most qualified vendor on the basis of demonstrated competence and qualification for the type of professional services required at a fee determined to be fair and reasonable.

General Terms and Conditions - Standard clauses and requirements incorporated into all solicitations and resulting contracts which are derived from laws, or administrative procedures of the agency.

Grant – A legal relationship (agreement) whereby state government is transferring a thing of value to a local government (or other recipient) to carry out a public purpose of support or stimulation authorized by law, as opposed to acquiring commodities or services for the direct benefit or use of state government. In a grant relationship, substantial involvement is not expected between the state agency and the local government (or other recipient).

Labor and Materials Payment Bond - A bond submitted by the apparent successful vendor upon request of the state to ensure payment of labor and materials purchased or contracted on behalf of the state in a construction project.

Life Cycle Cost - A Best Value Procurement tool that allows for the evaluation of the total or projected cost of a commodity over its life cycle, in addition to the initial purchase price, including operational expenses and other factors.

Liquidated Damages - A specified contract provision which entitles the state to demand a set monetary amount determined to be a fair and equitable repayment to the state for loss of service due to vendor's failure to meet specific completion dates.

Litigation Bond - A bond submitted by the vendor at the time of the bid which may be used by the state to recover damages due to frivolous and groundless protests as well as law suits filed by the vendor in protest of an award, etc.

Maintenance Bond - A bond provided as a warranty of normally two (2) years, which is required on roofing projects.

Mandatory Terms - All terms and conditions in the written specification which are absolute and the compliance with cannot be waived. Failure to comply with mandatory terms shall require the vendor to be disqualified. Mandatory terms are indicated by the use of the terms *shall, will or must*.

Negotiation - A bargaining process between two (2) or more parties, each with its own viewpoints and objectives, seeking to reach a mutually satisfactory agreement on, or settlement of, a matter of common concern.

Non-Mandatory Terms - All terms and conditions in the written specification that are not absolute. Non-mandatory terms are indicated by the use of the terms *may, should, preferred or could*, and are understood to be permissive and shall not be used to disqualify any vendor.

Notice to Proceed - A formal written communication most often used in construction contracts to establish the date for work to commence and the date for its completion.

Open-End Contract - A generic term used for a contract that covers a period of time in which all terms, conditions and prices are specified with the exception of quantity.

Performance Bond – A bond in which a surety agrees to be liable to pay a certain amount of money in the event a vendor fails to perform a contract as bid. This bond is usually for the full amount of the contract.

Pre-bid Conference - A meeting between vendors and agency personnel which provides an opportunity to emphasize and clarify critical aspects of a solicitation, eliminates misunderstanding and permits vendor input. Vendor attendance may be mandatory or voluntary as specified in the bid document.

Protest - A formal, written complaint filed by a vendor regarding specifications or an award made with the intention of receiving a remedial result.

Purchase Order - A document (***WV-16***) issued by the Purchasing Division used to execute a purchase transaction with a vendor. It serves as notice to a vendor that a contract award has been made.

Purchasing Affidavit - A form required to be completed by all vendors prior to the award of a contract. In accordance with ***West Virginia Code*** §5A-3-10A, no contract or renewal of any contract may be awarded by the state or any of its political subdivisions

to any vendor or prospective vendor when the vendor is a debtor and the debt owed is an amount greater than \$1,000 in the aggregate.

Release - A written agency order to the contractor authorizing quantities of commodities and/or services to be delivered all in accordance with the terms, conditions, and prices stipulated in the original contract.

Request for Information (RFI) - A document used to solicit information to assist in preparing specifications for a Request for Quotation (RFQ) or Request for Proposal (RFP). No award can be made from an RFI.

Request for Quotations (RFQ) - A document, containing the specifications or scope of work and all contractual terms and conditions, that is used to solicit written bids. Conformity to specifications and price are the only factors used in the evaluation process. The Purchasing Division's RFQ form is a **WV-17**, with the agency (delegated purchasing) equivalent being a **WV-43** form.

Request for Proposals (RFP) - A Best Value Procurement tool used to acquire professional and other services where the scope of work may not be well defined and cost is not the sole factor in determining the award. All criteria by which the bidders will be evaluated must be contained within the bid document.

Secondary Bid Process – A subsequent bidding process for commodities and services included in an existing contract that is required as part of the original terms and conditions. Participation in this secondary bid process is restricted to the pre-approved, certified vendors for the existing contract.

Sole Source - The only known vendor who can supply a commodity or service needed by a state agency.

Solicitation - A written or oral attempt made by the state to obtain bids or proposals for the purpose of entering into a contract. A Request for Quotations (RFQ), Request for Proposals (RFP), telephone calls or other documents may be used.

Statewide Contract - A legal and binding instrument between the state and a vendor(s) which is used by all state agencies to purchase frequently used commodities and services. State agencies are required to use these contracts, which are competitively bid, awarded and maintained by the Purchasing Division.

Vendor - An individual or business registered with the Purchasing Division who may provide commodities and services to state agencies.

Vendor Preference - A numerical preference used during the evaluation of bids when comparing in-state and out-of-state bidders, pursuant to **West Virginia Code §5A-3-37**.

Section 3: Purchasing Levels of Authority

The state purchasing process distinguishes between two levels of procurement authority, depending upon the dollar value of the purchase. These levels consist of:

(1) **Agency Delegated Acquisitions**

Procurements of \$25,000 or less, which are designated by the Purchasing Division to be processed by state agencies.

(2) **Formal Acquisitions**

Procurements of more than \$25,000, which are processed by the Purchasing Division.

Each state agency must designate a procurement officer who is responsible, knowledgeable and officially educated on the state purchasing guidelines as well as their own agency procedures. Each spending unit shall process all purchases through this individual, who shall be responsible for correspondence and communication with the Purchasing Division.

Agency Delegated Acquisitions:

As noted above, the Purchasing Division has delegated purchasing authority to state agencies for procurements estimated to cost \$25,000 or less. No agency shall issue a series of requisitions to circumvent this \$25,000 threshold.

Amounts spent with vendors are viewed comprehensively. This means that state agencies continuously monitor their expenditures with vendors to ensure that the total amount spent with a given vendor, within any 12-month period, does not exceed a bid threshold without the proper level of documentation and bidding.

Commodities and services that are expected to cost \$2,500 or less require **no bids**; however, competition is always encouraged.

For purchases \$2,500.01 to \$5,000, three (3) **verbal** bids are required, where possible, and the lowest bid meeting specifications must be awarded the purchase order/contract.

Purchases \$5,000.01 to \$25,000 require three (3) **written** bids, where possible, and the lowest bid meeting specifications must be awarded the purchase order/contract. Signed fax or electronic bids are acceptable. A vendor choosing to submit a bid or a written change to a submitted bid by electronic transmission accepts full responsibility for transmission and receipt of the bid or written change to the submitted bid. The state accepts no responsibility for the unsuccessful and/or incomplete transmission of bids by electronic transmission.

A “no bid” is not considered a bid. All efforts to obtain bids must be documented and maintained in the agency file. These documents are subject to public review.

Formal Acquisitions:

The Purchasing Division is responsible for acquiring all commodities and services on behalf of all agencies that fall under its statutory authority. Agencies under the Purchasing Division’s authority are required to process purchases estimated to exceed \$25,000 through the Purchasing Division, unless statutorily exempt. For a list of exemptions, please see **Appendix E** or visit:

<http://www.state.wv.us/admin/purchase/PurchasingExemptions>

The Purchasing Division has the authority to develop, amend or repeal guidelines set forth to comply with the established Code. The Purchasing Director may make specific exemptions to these guidelines if particular purchases are determined to be in the best interest of the State of West Virginia.

In addition, the Purchasing Division has the responsibility for the standardization of commodities and services purchased, and may adopt standard specifications to apply in all purchases of a particular commodity or service. These standard specifications result in statewide contracts, which are awarded by the Purchasing Division and mandatory for use by state agencies. For a list of mandatory and optional contracts, see **Appendix F** or visit:

<http://www.state.wv.us/admin/purchase/contracts.html>

The Purchasing Division assigns its buying staff to specific state agencies, which enables the respective agencies to communicate and process their transactions with one centralized buyer. For a list of buyer assignments for state agencies, see **Appendix C** or visit:

<http://www.state.wv.us/admin/purchase/byrassign.pdf>

Section 4: Vendor Registration and Responsibilities

This section addresses the requirements established for vendors who wish to conduct business with the State of West Virginia.

Vendors receiving purchase orders of \$1,000 or more from the State of West Virginia must be properly registered by completing a **Vendor Registration and Disclosure Statement and Small, Women-, and Minority-owned Business Certification Application (WV-1 or WV-1A)** form) which will be kept on file with the Purchasing Division, in accordance with **West Virginia Code** §5A-3-12. The **Code of State Rules CSR148-1-6** states that, except for purchasing card vendors providing travel-related services or receiving an aggregate total yearly payment of \$25,000 or less from a spending unit, all vendors are required to register with the Purchasing Division. As part of the registration process, vendors will complete one of the two forms listed below, as determined by the type and dollar amount of your transactions with the State of West Virginia:

- **WV-1:** This form is to be completed by vendors receiving purchase orders exceeding an aggregate amount of \$1,000 per fiscal year. The **WV-1** form requires payment of the \$125 annual fee. The vendor's check and the **WV-1** form should be mailed directly to the Purchasing Division. Credit card payments may be made when submitting this form by contacting the Vendor Registration Coordinator at (304) 558-2311. Upon payment of this fee, the vendor will receive access to the **West Virginia Purchasing Bulletin**, which contains upcoming bid opportunities expected to exceed \$25,000 as well as downloadable bid documents.
- **WV-1A:** This form is to be completed by vendors supplying sole source commodities and services to West Virginia state agencies or vendors whose aggregate sales to state agencies are in the amount of \$1,000 or less during any one fiscal year. The vendor is to complete Part I of the form and return it to the requesting agency. The agency procurement officer will review the form for completeness and legibility, complete Part II, sign the form and forward it to the Purchasing Division for processing.

For delegated purchases (\$25,000 or less), agencies will first check to see if the vendor is already registered with the Purchasing Division prior to initiating the registration process. If the vendor is not registered, the agency procurement officer will furnish the appropriate **Vendor Registration and Disclosure Statement and Small, Women-, and Minority-owned Business Certification Application** to the vendor. The forms may be downloaded from the Purchasing Division website at:

<http://www.state.wv.us/admin/purchase/forms.html>

Registration Fee:

Except for Purchasing Card vendors providing travel-related services or receiving an aggregate yearly payment of less than \$25,000 from a spending unit, vendors receiving orders for commodities or services exceeding \$1,000, regardless of payment method, shall pay an annual registration fee of \$125 to the Purchasing Division, as outlined in the **Code of State Rules CSR148-1-6**.

A vendor having multiple locations shall pay only one fee when operating under one Federal Employer Identification Number (FEIN).

Only those vendors who have paid the fee have access to the online **West Virginia Purchasing Bulletin**, the weekly publication that lists all bid opportunities expected to exceed \$25,000.

Vendors are required to register even if they are deemed to be sole source suppliers by the Purchasing Division. However, the registration fee requirement is waived.

Vendor Hold:

Vendors are notified in writing 60 and 30 days prior to the expiration of their registration. Vendors who do not renew are automatically placed on hold. Agencies cannot issue purchase orders exceeding \$1,000 to a vendor who is on hold.

Small, Women-, and Minority-Owned Business Certification

As required by **West Virginia Code** §5A-3-59, the West Virginia Purchasing Division has incorporated the Small, Women-, and Minority-Owned Businesses (SWAM) Certification Application as part of the **Vendor Registration & Disclosure Statement and Small, Women, and Minority-Owned Business Certification** (WV-1 and WV-1A forms), beginning July 1, 2012. As a result, vendors may apply to become certified if they fall within the business categories defining a small, women-, and minority-owned business.

West Virginia Code of State Rules §148-2-1 et seq. requires vendors to re-certify every two years in order to continue compliance. The recognized designations for SWAM are outlined on the Purchasing Division's Vendor Registration webpage at:

<http://www.state.wv.us/admin/purchase/VendorReg.html>

Section 5: Bid Opportunities

This section offers an overview of the bid opportunities available with the State of West Virginia.

Vendors may discuss and market their commodities and services with agency procurement officers or the Purchasing Division buying staff. Descriptive literature and full product specifications are helpful to share. To ensure that the Purchasing Division or agency representative is available to meet, vendors should call in advance to schedule an appointment.

For bidding opportunities \$25,000 or less, vendors should directly contact the state agency procurement officer and present their commodities and services to make them aware of their interest; however, the vendor must exercise restraint in assisting the agency in preparing a specification.

For a listing of agency procurement officers, see **Appendix D** or visit the Purchasing Division website at:

<http://www.state.wv.us/admin/purchase/vrc/agencyli.html>

Specifications are carefully reviewed by the agency procurement officer for agency delegated purchases and by the Purchasing Division for requisitions exceeding \$25,000 to eliminate restrictions and limitations which could unfairly reduce competition. Although vendor assistance is appreciated in developing specifications, no fee will be paid or special consideration given when the actual purchase order is awarded. Vendors who are compensated for assisting in the writing of specification may not bid on the resulting solicitation.

Vendors are permitted to request the agency to list its business as a “*suggested vendor*” on the requisition to ensure an opportunity to bid.

West Virginia Purchasing Bulletin

The Purchasing Division offers paid, registered vendors with a listing of solicitations that are currently out for bid that are expected to exceed \$25,000. This listing, referred to as the **West Virginia Purchasing Bulletin**, is updated each week and categorizes the solicitations by the Purchasing Division buyers, who are assigned specific agencies.

Each solicitation includes a variety of information, starting with the Request for Quotations number. This number uses the agency prefix assigned by the Purchasing Division. For example, in the solicitation below, **PEI** is the prefix for the WV Public Employees Insurance Agency. The number after the prefix is the specific number for that solicitation.

The Request for Quotation is a downloadable file; therefore, if the vendor places his or her cursor over this highlighted number and clicks on it, the solicitation will open and may be reviewed, printed or saved to the computer.

The spending unit is the agency for which the Purchasing Division is soliciting bids for a specific commodity or service.

The bid opening date is the date by which all bids must be officially received and time stamped by the Purchasing Division. Bid openings are scheduled at 1:30 p.m. during the week. No bids shall be considered after that time on the date of the bid opening. Bids received after the bid opening date and time shall be immediately disqualified in accordance with State law. These bids will be stamped as "Bid Received Late," maintained with the official file and posted online upon receipt with the other bids. The bids are opened in a public forum at the Purchasing Division (2019 Washington Street, East, Charleston, WV unless otherwise specified) and posted online at:

<http://www.state.wv.us/admin/purchase/Bids>

Below is an example of a solicitation that is displayed in the **West Virginia Purchasing Bulletin**.

| | | |
|----------------|--------------------------------------|--|
| RFQ NO. : | PEI011003 | OPEN-END CONTRACT TO PROVIDE PRINTING |
| SPENDING UNIT: | WV PUBLIC EMPLOYEES INSURANCE AGENCY | AND MAILING OF VARIOUS PUBLICATIONS FOR THE WV PUBLIC EMPLOYEES INSURANCE AGENCY |
| BID OPENING: | 01/13/2011 | |

To locate a particular RFQ or to search for a particular commodity or service, the vendor may use the "Find Feature" by pressing Ctrl + F on the keyboard.

At the top of the **West Virginia Purchasing Bulletin** home page, there are several links to information that our vendor community may be interested in accessing:

[\[Bids Received\]](#) [\[Request RFQ Hardcopy\]](#) [\[View PO Awards\]](#) [\[View Bulletin Archives\]](#)

The "Bids Received" link provides access to all bids that have been received and opened. This listing is categorized by bid opening date; however, vendors may also search for bids using the RFQ number.

If a vendor elects to not download the RFQ from the **West Virginia Purchasing Bulletin**, he or she may click on the "Request RFQ Hardcopy" link to request that the Purchasing Division mail or fax the solicitation. For a list of purchase orders which have been awarded, the vendor may access "View PO Awards."

Additionally, the Purchasing Division maintains on its website all past issues of the **West Virginia Purchasing Bulletin**. To view an archived issue, the vendor may click on the link titled "View Bulletin Archives."

A link to the Business Associate Addendum Notice is also posted at the upper section of the **West Virginia Purchasing Bulletin** site. To view a copy, visit:

http://www.state.wv.us/admin/purchase/privacy/baa_notice.pdf

Vendors should be aware of the Purchasing Division's Privacy Notice regarding information collected indicated below when submitting a bid or documentation.

Privacy Notice: The Purchasing Division is required to collect certain information as stated in **West Virginia Code** §5A-3-12, other applicable sections of the *West Virginia Code*, the Vendor Registration and Disclosure Statement forms, and other documents to facilitate the state bidding and contract administration processes. That information is generally obtained by the Purchasing Division through the Vendor Registration and Disclosure Statement form or vendors' submitted responses to solicitations, but may be obtained in other forms and formats. All information collected is stored in a secure environment, but unless specifically protected under state law, any information provided to the Purchasing Division may be inspected by or disclosed to the public.

To help educate participating vendors on various issues, the Purchasing Division posts each month a link to informational articles on the **West Virginia Purchasing Bulletin** site that may be helpful to our paid, registered vendors.

The Purchasing Division is pleased to provide vendors with opportunities to bid on commodities and services needed by our state agencies. Vendors are continuously encouraged to actively participate in the state's competitive bid process.

Section 6: Purchasing Process

This section details the various types of purchasing transactions and methods to process requisitions to contract award.

Purchasing Transaction Types

There are several different types of purchasing transaction types, depending upon the commodity and service that needs to be obtained and the frequency of the agency's need.

A one-time single purchase is used to purchase commodities or services that are not considered repetitive.

An open-end contract may be established for specific commodities and services when the exact amount is unknown. The Purchasing Division issues both statewide contracts, for mandatory use by all state agencies under its authority, and agency open-end contracts. These open-end contracts are convenient for recurrent purchases because the competitive bidding has already taken place and the agency may simply issue a release order from these contracts.

Some of the benefits of statewide contracts to state agencies are the volume discount to the state, the availability throughout the entire state, guaranteed pricing, and administrative ease since the competitive bid process is complete.

Benefits to the vendor community includes guaranteed sales statewide, confirmed pricing, set terms and conditions, and potential sales to political subdivisions, such as counties, municipalities, school boards of education, etc. **See page 30 for additional information on political subdivisions.**

Professional service contracts are used to obtain specific professional expertise which is not available within state government. Examples of professional services may be legal, architectural, medical, dental, engineering and other consultant services. All needs for professional services estimated to cost in excess of \$25,000 must be bid through the Purchasing Division, unless specifically exempt.

Emergency purchases may be necessary when unforeseen causes arise, in accordance with **West Virginia Code** §5A-3-15. The Purchasing Director, exercising sound judgment and discretion, will review the agency's justification and must provide approval for the emergency purchases. A minimum of three bids, if possible, should be obtained.

Lease and lease purchase of equipment are transaction types by which a state agency may obtain equipment and make payments for the use of the equipment over a period of time.

Sole source procurements are used when competition is not available and the commodity or service is only available from one source. The item cannot be obtained through ordinary purchasing procedures and the item is unique and not available from any other source. For sole source procurement \$25,000 or less, the agency maintains written documentation at their location certifying that no other sources are available and that the agency exhausted all attempts to secure competition. For sole source procurements exceeding \$25,000, the Purchasing Division posts a sole source determination in the **West Virginia Purchasing Bulletin**, noting the potential sole source vendor and the quotation to determine if there are any other vendors who may provide the commodity or service. If no other valid responses are received by vendors, the Purchasing Division will process the purchase. If valid responses are received, the Purchasing Division will competitive bid the commodity or service on behalf of the agency.

Purchasing Methods

There are several types of purchasing methods, which are used to acquire commodities and services for state agencies. These methods include Requests for Quotations, Requests for Proposals, Expressions of Interest, and Requests for Information.

- Request for Quotations

A Request for Quotation (RFQ) is an *invitation to bid* on state purchases. For purchases over \$25,000 which are processed through the Purchasing Division, the RFQ is the standard form used to solicit and submit bids. All bids will be opened in a public forum, referred to as the *bid opening*. The vendor must submit the completed RFQ to the Purchasing Division by the established date and time in order to be considered. **The bid must be signed by the vendor to be considered valid.**

Although the RFQ form issued by the Purchasing Division should be used to prevent confusion or errors, substitutions for the RFQ form may be made **only** if the terms, conditions, and provisions offered by the vendor are equivalent to the official RFQ. Submission of an alternate bid form that contains conflicting terms and conditions may be cause for rejection of the entire bid.

The RFQ contains detailed specifications of the commodities and services to be procured in addition to all terms and conditions that must be met by the vendor. Unsuccessful vendors are not compensated for the development and submission of bids.

Bid packages are electronically downloadable via the **West Virginia Purchasing Bulletin** by paid, registered vendors from the Purchasing Division website at <http://www.state.wv.us/admin/purchase/newbul.htm>; by visiting the Purchasing Division at 2019 Washington Street, East, in Charleston, West Virginia; or upon request by calling (304) 558-2306.

When the Request for Quotations process is used, competitive bids are received, properly evaluated and awarded to the **lowest responsible bidder** who meets the specifications. Generally defined, a responsible bidder is one who has a reputation for good performance, financial stability, and is able to furnish the required needs of the agency as requested.

After a proper evaluation, if an award is made to a vendor other than the lowest bidder, a thorough justification is written and retained for public record and inspection.

The RFQ includes the quantity (*except for indefinite quantity open-end contracts*), the *ship to* and *bill to* addresses, all service requirements, maintenance, repair, warranty, and any special conditions required by the spending unit. If any portion of the request is unclear, it is the vendor's responsibility to request clarification from the state agency or buyer at least five (5) days prior to the bid opening. Please be aware a deadline is established in the RFQ for technical questions relating to the solicitation.

Specifications and commodity descriptions in RFQs are prepared in a manner to encourage all vendors who can meet the state's requirements to bid. Specifications should be reviewed and if vendors determine that they are too restrictive, they must send a written protest to the Purchasing Director, at least five (5) working days prior to the bid opening. If no protest is received, it is determined there are no objections to the specifications. See **Section 7** of this **Vendor Procurement Guide** for additional information on protest procedures.

If it is determined, either before or after the bid opening that commodities or services having different specifications or quantity are required for the intended use and it is in the best interest of the state, the Purchasing Director has the authority to rewrite the RFQ and issue a rebid.

The bid submitted to the Purchasing Division must be signed by an individual authorized to legally bind the person, partnership, company, or corporation submitting the bid. You should also indicate on the envelope the date and time of the bid opening, the state Purchasing Division buyer, and the requisition number. An example is below:

Buyer: 32
RFQ: DPS1134
Bid Opening Date: 5/10/2012
Bid Opening Time: 1:30 p.m.

It is the vendor's responsibility to deliver the original bid to the Purchasing Division prior to the established bid opening date and time.

Signed bids submitted by facsimile transmission may be accepted in lieu of sealed bids if the completed bid is received prior to the bid opening time. However, the original bid bond should be received ***within two working days following the specified date of the bid opening in all cases where a bid bond is required.***

Signed facsimile are acceptable. The state accepts no responsibility for the unsuccessful and/or incomplete receipt of bids submitted by any electronic means.

Refer to the checklist below when submitting bids/proposals for purchases **over \$25,000**:

CHECKLIST

Submitting Bids/Proposals More than \$25,000

- Have you signed your bid/proposal?
 - Have you included the required bid bonds, if applicable?
 - Are you responding by the date and time as established for the opening?
 - If offering an alternate as an *or equal* option, did you clearly follow the specification instructions?
 - Have you supplied the original bid to the Purchasing Division?
 - Have you met the mandatory requirements stated in the bid?
 - Have you attended the mandatory pre-bid conference, if applicable?
 - Have you responded appropriately to the mandatory addenda (*changes to the original RFQ*), if applicable?
- Best Value Purchasing / Request for Proposals (RFP)

Best Value Purchasing is a purchasing method used to acquire services where the specifications or scope of work may not be well-defined and cost is not the sole factor in determining the award. One such type of Best Value Procurement is a Request for Proposals, which is used to solicit proposals from potential bidders, taking into consideration criteria and scoring methods as defined in the Request for Proposals. Such criteria factors may include the vendors' ability, resources, experience, staffing, and proposed methods to furnish the required services.

Best Value Purchasing Standard Format

All Requests for Proposals follow the standard format defined by the Purchasing Division. This format addresses required areas and enables the agency to modify the background and scope of work to meet its needs.

Evaluation Criteria

All evaluation criteria must be clearly defined in the specifications section and based on a 100 point total score. Based on a 100 point total, cost shall represent a minimum of 30 of the 100 total points in the criteria, unless specifically approved by the Purchasing Director.

Proposal Format and Content

Proposals shall be requested and received in two distinct parts: technical and cost. The cost portion shall be sealed in a separate envelope and will be opened after the completion of the technical evaluation.

Proposal Submission

West Virginia Code §5A-3-11 states that “The bid must be received by the Purchasing Division prior to the specified date and time of the bid opening. The failure to deliver or the non-receipt of the bid by the Purchasing Division prior to the appointed date and hour shall result in the rejection of the bid. The vendor is solely responsible for the receipt of the bid by the Purchasing Division prior to the appointed date and hour of the bid opening. All bids will be opened publicly by two or more persons from the Purchasing Division. Vendors will be given notice of the day, time, and place of the public bid opening. Bids may be viewed immediately after being opened.”

Technical Bid Opening

The Purchasing Division will open only the technical proposals on the date and time specified in the Request for Proposals. The Purchasing Division representative will read aloud the names of those who responded to the solicitation and confirm that a Cost Proposal has been included in the bid.

Technical Evaluation

An evaluation committee shall review the technical proposals, assign appropriate points and make a final written consensus recommendation to the Purchasing Division buyer. Vendors must score a minimum of 70% (49 points) of the total technical points possible to be considered as a qualifying proposal. All Vendors not attaining the minimum acceptable score (MAS) shall be considered to have submitted a non-qualifying proposal; therefore, these Vendors shall be disqualified and removed from further consideration. All cost bids, including qualifying and non-qualifying technical proposals,

will be opened. A proposal may be deemed non-qualifying for a number of reasons including, but not limited to, the bidder's technical proposal failing to meet the minimum acceptable score and the bidder's technical proposal failing to meet a mandatory requirement of the contract. Certain information, such as technical scores and reasons for disqualification, will not be available until after the contract award, pursuant to **West Virginia Code §5A-3-11(h)** and **West Virginia Code of State Rules §148-1-6.2.5**.

If the Purchasing Division buyer approves the committee's recommendation, the information will be forwarded to an internal review committee within the Purchasing Division.

Cost Bid Opening

Upon approval of the technical evaluation from the internal review committee, the Purchasing Division will schedule a time and date to publicly open and read aloud all of the cost proposals.

The Purchasing Division shall schedule a date and time to publicly open and announce cost proposals when the Purchasing Division has approved the technical recommendation of the evaluation committee. The agency and the vendors shall be notified of this date. All cost bids for qualifying and non-qualifying proposals will be opened. A proposal may be deemed non-qualifying for a number of reasons including, but not limited to, the bidder's technical proposal failing to meet the minimum acceptable score and the bidder's technical proposal failing to meet a mandatory requirement of the contract. Certain information, such as technical scores and reasons for disqualification, will not be available until after the contract award, pursuant to **West Virginia Code §5A-3-11(h)** and **West Virginia Code of State Rules §148-1-6.2.5**.

Cost Evaluation

The evaluation committee will review the cost proposals, assign appropriate points and make final consensus recommendation to the Purchasing Division. **West Virginia Code §5A-3-37**, provides an opportunity for qualifying vendors to request (at the time of bid) preference for their residency status. Such preference is an evaluation method only and will be applied only to the cost bid in accordance with the **West Virginia Code**. Please note that this preference does not apply to construction. A certificate of application is used to request this preference. Generally, a West Virginia vendor may be eligible for two 2.5% preferences in the evaluation process, to a maximum total of 5%.

West Virginia Code §5A-3-37(5) and (6) provides an opportunity for qualifying resident vendors who are a veteran of the United States armed forces, the reserves or the National Guard to request, at the time of bid, preference for their residency status. Resident veterans who qualify may receive a preference of 3.5%. The Purchasing Division will make the determination of the Vendor Preference and Resident Veteran Preference, as applicable.

Additionally, application may be made for preference as a non-resident small, women- and minority-owned business, in accordance with **West Virginia Code** §5A-3-59 and **West Virginia Code of State Rules**.

Contract Approval and Award

After the cost proposals have been opened, the evaluation committee performs its review and makes its recommendation based on the highest scoring vendor to the Purchasing Division buyer.

Once approved by the buyer, the contract is generated and approved by the Purchasing Division, forwarded to the Attorney General's Office for approval *as to form*, returned to the Purchasing Division as approved, encumbered, and then mailed to the successful vendor. Notification, at that time, is made to the unsuccessful bidders.

- Expression of Interest (EOI)

The Purchasing Division uses Expressions of Interest primarily in the selection of architectural and engineering services. A response to an Expression of Interest should include a statement of the firm's qualifications and performance data, and may include anticipated concepts and proposed methods of approach to the project.

A standard format is used for Expression of Interests, which addresses required areas and enables the agency to modify the requirements and description of the work to meet its needs.

- Request for Information (RFI)

An RFI is a document used to solicit information, data, comments, or reactions from possible suppliers preceding the issuance of a Request for Quotation and/or a Request for Proposal. The RFI is used for informational purposes only and **no award** will be made.

Bid Solicitation

Request for Quotations (RFQ), Request for Proposals (RFP), Sole Source Determinations and Expressions of Interest may be downloaded from the **West Virginia Purchasing Bulletin** by registered vendors or requested by the vendor from the Purchasing Division. Every vendor who specifically makes a request in response to the **West Virginia Purchasing Bulletin** will receive a copy of the solicitation. The solicitation may also be sent unsolicited to vendors, which are recommended by the agency as *suggested vendors*.

An RFQ is distributed by either the state agency (for purchases \$25,000 or less) or by the Purchasing Division (for purchases over \$25,000). Requisitions for commodities or

services estimated to exceed \$25,000 are published in the **West Virginia Purchasing Bulletin**.

Vendors must review the solicitation closely as well as the instructions to vendor submitting bids and the general terms and conditions which are included as part of the solicitation. To view the templates for the instructions and Purchasing Master Terms and Conditions, please visit:

<http://www.state.wv.us/admin/purchase/TCP.pdf>

To view the templates for the instructions and Agency Master Terms and Conditions, please visit:

<http://www.state.wv.us/admin/purchase/TCA.pdf>

Addenda

During the bid process, it may be necessary to alter bidding documents. To facilitate a change to a solicitation after issuance for bid in the **West Virginia Purchasing Bulletin**, a formal written addendum is required. The addendum is generated by the agency to address the change and is issued to prospective bidders by the Purchasing Division.

A formal addendum is necessary to: add, delete or change specifications or attachments; provide a copy of the pre-bid attendee list; answer technical questions, requests for clarification, or requests for product substitutions (*on construction projects*); extend or alter bid schedule dates/times; or any other such change to the issued bidding documents.

Bid Changes and Withdrawals

Formal changes of submitted bids are permitted before the bid opening. A bidder shall submit changes in writing to the Purchasing Division and the changes must be received by the Purchasing Division prior to the date and time of the bid opening. The corrected bid should state, "this bid supersedes any and all bids received previously."

A bid may be cancelled at any time prior to the bid opening if requested in writing by the vendor. All bids submitted become the property of the State of West Virginia and no bid (revised or cancelled) may be physically removed from the Purchasing Division after being submitted.

Alternate "or Equal" Bids

If a vendor chooses to bid an alternate commodity to that which is specified in the RFQ, he or she is required to quote a commodity of "equal or better" quality. All necessary literature, technical data, certification, or samples must be supplied to verify the equal

quality of the alternate commodity. If the commodity deviates in any way from the specifications, vendors must clearly identify the deviation in their bid document.

Brand name specifications indicate a quality level only. Alternate brands of equal quality may be accepted, provided that the deviations between the items are minor and do not affect the use or suitability for the needs of the state. Minor deviations from detailed specifications may be waived by the Purchasing Director.

Failure to provide information for alternate items may be grounds for rejection of a vendor's bid. The Purchasing Division is ultimately responsible for the determination of what commodities and services are "equal."

Bid Submission

The vendor is responsible for submitting a correct and accurate bid to the Purchasing Division by the specified bid opening time and date. All bids must be clocked in no later than the scheduled bid opening time and date to be considered. If presenting the bid in person, the vendor must submit its bid to the receptionist immediately upon arrival. Any bid that has been received by the Purchasing Division staff is considered to be in the possession of the Purchasing Division and will not be returned for any reason. Bids that are not received by the Purchasing Division by the bid opening time and date will be stamped as "Bid Received Late," maintained in the official file and posted online upon receipt with the other bids.

Fax bids are acceptable, but receipt of bid must be completed prior to the bid opening time and date. The state accepts no responsibility for the unsuccessful and/or incomplete transmission of bids by electronic transmission. Bids submitted via facsimile may not be sealed until receipt by the Purchasing Division. The Purchasing Division makes no guarantee of confidentiality and accepts no responsibility for completeness of bids or transmission.

Any bonds submitted via fax should be followed by an original bond received by the Purchasing Division within two (2) business days.

Bid Opening

It is the vendor's responsibility to see that the bid arrives at the Purchasing Division prior to the established bid opening date and time to be considered. If delivering bids in person, vendors must submit their bid to the receptionist immediately upon arrival. Any bid that has been received by the Purchasing Division staff is considered to be in the possession of the Purchasing Division and will not be returned for any reason. No extension of time will be granted.

Any bid inadvertently scheduled to open on any day that is not a regularly scheduled work day of the Purchasing Division will be opened at the same hour on the next

regularly scheduled work day unless an addendum is issued with a different bid opening date and time.

The Purchasing Division does not assume any responsibility related to the successful delivery of bids to the Purchasing Division. Vendors should allow adequate time for the successful delivery of bids to the Purchasing Division. Failure to deliver or the non-receipt of these bid forms at the Purchasing Division prior to the appointed date and time are grounds for rejection of the bids.

At the time of the bid opening, Purchasing Division representatives will meet in a public forum to open all bids for that scheduled date and time. The bids are opened in the Purchasing Division's Bid Room at 2019 Washington Street, East, in Charleston, West Virginia, unless otherwise specified in the solicitation. A Purchasing Division representative will read aloud pertinent data relevant to the bid. No discussion or decision regarding the bids/proposals submitted will be made at that time. Following the bid opening, any individual attending the bid opening may review the opened bids/proposals and subsequently scanned images of the bids received. These bids may also be viewed by visiting:

<http://www.state.wv.us/admin/purchase/bids>

Special Requirements

- **Bonds**

The Purchasing Division may require a bond or deposit as part of the bidding process as defined in the RFQ specifications. This requirement is mandatory for construction contracts in excess of \$25,000; however, it may also be used for a requisition of any commodity or service. The applicability and amount of bonds and/or deposit required of a vendor is determined by the Purchasing Director at any time, if, in his or her judgment, the security is necessary to safeguard the state from undue risk or potential loss. The bonds or deposit serve as a guarantee that if the contract is awarded to such bidder, that bidder will enter into the contract for the work specified in the bid.

The vendor may submit a certified check (for projects under \$100,000), cashier's check, certificate of deposit, bond or other alternate form of acceptable security. Any bond or other security must be provided by a surety authorized to do business in West Virginia.

The three most common types of bonds, aside from a bid bond, used in the state purchasing process are performance, labor and material, and maintenance.

- *Performance bonds*: a bond in which a surety agrees to be liable to pay a certain amount of money in the event a vendor fails to perform a contract as bid; this bond is usually for the full amount of the contract.

- *Labor and materials payment bonds*: a bond submitted by the apparent successful vendor upon request of the state to ensure payment of labor and materials purchased or contracted for on behalf of the state in a construction project.
- *Maintenance bonds*: a bond provided as a warranty of normally two (2) years, which is required on roofing projects.

When any contract is satisfactorily completed on which a surety bond or other deposit has been previously submitted, the vendor should request the agency to release the bond(s). The agency shall certify the completion of the project, in writing, to the Purchasing Division. Upon receipt of the notification, the Purchasing Division shall return the check or deposit to the vendor.

In cases where an error is made in the bid and the vendor requests that his or her bid be rejected, the 5% bid bond or 5% of the amount of the bid may be forfeited to the State of West Virginia. Repeated bidding errors may result in the vendor being declared non-responsible and ineligible to continue doing business with the State of West Virginia.

- **Samples**

In some instances, the Purchasing Director may require sample commodities to be submitted with bids which must be submitted at no charge to the state. If the samples are to be returned, instructions must be submitted for returning the samples at the vendor's own expense. Any samples left over thirty (30) days after the date of the bid opening, without return instructions, will be disposed of at the discretion of the Purchasing Director.

- **Product Testing**

Any testing of specific brands of commodities, which may lead to future purchases restricting competition, must have pre-approval, in writing, by the Purchasing Division. State agencies are to submit a description of the proposed testing with complete details including, but not limited to, the specific brand and names of vendors involved in the test; the brands and vendors that may be excluded in the future; the length and cost of the test; the cost of potential future purchases after the test; and all other agency and vendor information about the product testing that should be publicly disclosed in the interest of open business.

It is important to note that agencies may contact a vendor to obtain information about or copies of specifications relating to a specific brand or manufacturer. This information may be used to assist in drafting specifications for the agency's future solicitations. Providing such information upon request will not jeopardize the vendor's ability to

compete in the bid process as long as the vendor does not receive compensation or favored treatment in future procurements.

- **Additional Requirements**

Additional requirements to those mentioned above may be contained in the specifications. If specified, the Purchasing Director may require that vendors awarded a contract show proof of adequate public liability and property damage insurance, and of workers' compensation coverage. Relating to construction contracts, the state may require the successful vendor to furnish a certificate of Builder's Risk Insurance providing coverage for 100% of the actual cash value of the project until it is complete and accepted by the owner.

Other special requirements will be clearly defined in the RFQ/RFP. Total compliance is necessary before a purchase order can be issued.

Bid Rejection at Vendor's Request

The Purchasing Director may, at his discretion, reject an erroneous bid after the bid opening if **all** of the following conditions exist and can be proven:

- (1) A clerical error was made; and
- (2) The error materially affected the bid; and
- (3) Rejection of the bid would not cause hardship on the state agency involved other than losing an opportunity to receive commodities or services at a reduced cost; and
- (4) Enforcement by the state on the part of the bid in error would be unconscionable.

Information Prior to Award

If vendors desire to review copies of bids prior to the award or issuance of a purchase order, they may do so by visiting the Purchasing Division website where copies of the bids received are posted:

<http://www.state.wv.us/admin/purchase/bids>

Contract Award

In accordance with **West Virginia Code §5A-3-11**, all purchases based on advertised bid requests or contracts "shall be awarded to the lowest responsible bidder(s), taking into consideration the qualities of the commodities and services to be supplied, their conformity with specifications, their suitability to the requirements of the government,

the delivery terms and, if the director determines there are nationally accepted industry standards, cost of maintenance and the expected life of the commodities.”

A responsible vendor must be capable of producing the desired commodities or services, adhering to the desired quality standards, and delivering the prescribed quantity at the appropriate delivery rate.

All pertinent information will be considered in determining the responsibility of a vendor. The most frequently considered factors are listed below:

- Facilities
- Financial ability
- Organizational background
- Experience with similar work
- Scheduling procedures
- Labor relations
- Quality control
- Ability to furnish securities

For contract awards using Best Value Procurement methods, the award must be made to the highest scoring responsive and responsible bidder whose bid is determined, in writing, to be the most advantageous to the state, taking into consideration all evaluation factors set forth in the Best Value solicitation, in accordance with **West Virginia Code §5A-3-10b**.

Prior to an award, a vendor must be in compliance with the following requirements and the agency shall retain documentation in the file:

- Vendor registration process (must be registered and the fee paid, if applicable);
- In accordance with the *West Virginia Code §21A-2-6*, verification of current unemployment fee status and Workers' Compensation coverage is required to ensure the vendor is not in default with Workers' Compensation and Employment Compensation;
- In accordance with the *Code of State Rules 148 CSR 6.1.7*, the vendor must be licensed and in good standing with any and all state and local law and requirements, including proper registration with the Secretary of State's office, if applicable;
- *Purchasing Affidavit* (required on all contracts exceeding \$5,000); and,
- *Agreement Addendum (WV-96)* (required when vendors submit alternate terms and condition with their bid)

Quantity Discounts

Unless otherwise specified in the solicitation, discounts must be reflected in the unit price of the commodities or services and not in the form of an overall discount to be considered in evaluating and awarding a purchase order. Discounts offered outside of the unit price column will be taken, but will not be computed and evaluated in the awarding of a purchase order.

Contract Price Adjustments

For contracts, a firm, fixed price is preferable. Adjustments can only be considered when the original RFQ/RFP contains provisions expressly allowing price adjustment. In some cases where a product's market commonly involves wide price fluctuations (i.e. paper, petroleum products, etc.), it is impractical for vendors to bid a firm, fixed price over a long period of time.

In these circumstances, RFQs include, and contracts are awarded with, provisions for upward and/or downward price adjustments, provided that any upward adjustment must be based upon the increased cost of material to the vendor.

These provisions must be included in the specifications of the bid. Increases must be substantiated in a manner acceptable to the Purchasing Director (i.e. governmental benchmarks, general market increases, published price lists which offer the same price to all customers, or other criteria which the Purchasing Director deems acceptable.)

All price adjustment requests must be initiated by the vendor. **Price escalations are generally not allowed unless a specific provision is provided for in the final contract or purchase order.**

Multiple Awards

Any time that an RFQ contains more than one item, the state reserves the right to award each item separately or to award the final purchase order based on the low total bid; the Purchasing Division will use the method which is in the best interest of the state in determining the award.

When the state awards a purchase order, the normal process is to award one purchase order for all items bid. However, in some instances, there may be differences in the amounts quoted for individual items. In these circumstances, the buyer may award two or more orders to take advantage of the potential cost savings.

A vendor may submit a bid under the qualification that "all or none" be accepted. Please note, however, in certain circumstances this stipulation could result in the disqualification of the entire bid when substantial savings can be achieved by splitting the purchase order.

Tie Bids

In accordance with the **Code of State Rules 148 CSR 1**, when tie bids are received, the award is made by the flip of a coin, draw of the cards, best and final offer or any other impartial method considered prudent by the Purchasing Director.

Basis of Award

The successful bidder must meet or exceed the specifications. Awards to an RFQ cannot be made at a higher price for additional quality above what was established in the specifications, which is referred to as “gold-plating” and is not considered a valid basis for awarding a bid.

Awards made using an RFP method are based on an evaluation criterion as specified in the RFP. (See **Section 6**, "*Best Value Purchasing / Request for Proposals [RFP]*")

In order to receive any award in excess of \$5,000, the vendor must be in good standing with the West Virginia Workers Compensation requirements. A Purchasing Affidavit must also be signed indicating that the vendor does not owe the state any debt, including those from an assessment, penalty, fine, or tax, which exceed \$1,000.

Purchase Order

The Purchasing Division issues formal purchase orders and contracts for purchases exceeding \$25,000. A formal purchase order is the final document authorizing you to deliver commodities or services (unless written notice to proceed is required) at a definite price, to a specific location, at an agreed time.

A note of caution: Never begin service performance or make a product delivery until the purchase order or contract is received from the Purchasing Division; to proceed otherwise is to do so at the vendor's own financial and/or legal risk.

Purchases of \$25,000 or less are processed at the agency level and not procured through the Purchasing Division; however, purchase orders are used to complete the transaction for agency delegated purchases.

Political Subdivision Purchases

Most statewide contracts are available to political subdivisions, which include counties, local and municipal governments, boards of education, urban mass transportation authorities, volunteer fire departments, and other governmental bodies in West Virginia.

All invoices and correspondence concerning such transactions should be submitted directly to the political subdivision, **not to the State of West Virginia**.

Awards in the Best Interest of the State

The Purchasing Division evaluates bids and makes awards which are in the best interest of the state. If the Purchasing Division determines that no bid meets the specifications, all bids may be rejected and the specifications rewritten, clarified, and the requisition rebid.

Life Cycle Cost Procurement

The State of West Virginia has determined that the total cost of ownership for some equipment can be calculated. This total cost of ownership is called the "Life Cycle Cost" of the item. The Life Cycle Cost, which must be included in the RFQ/RFP, is calculated by adding the acquisition price and the recurring costs, then subtracting the residual value over the anticipated life of the item. Recurring costs usually include energy, supplies, labor, maintenance, and other costs that the state will incur after the initial purchase.

The trade-in value is subtracted from the sum of the acquisition price and recurring costs when it can be determined. Assuming other factors are equal, the vendor bidding the item with the lowest Life Cycle Cost will be awarded the purchase order. This process is used only when explained in the RFQ/RFP.

Life Cycle Cost formulas exist for certain items. Vendors offering such items are normally required to submit technical data to aid in the determination of the Life Cycle Cost of the item.

Information after Award

After a bid has been awarded, the successful bidder is notified by issuance of the purchase order or contract. All unsuccessful bidders will receive a fax and/or letter to notify them that they did not obtain the award.

After the award, all records of the Purchasing Division are available to be reviewed at no charge and/or copied during normal business hours, Monday through Friday, 8:15 a.m. to 4:30 p.m., holidays and weekends excluded. Our normal copy fee of 50 cents per page is applicable, with a \$10 minimum charge.

All bids or proposals submitted to the State Purchasing Division are considered public records and are available for inspection during normal official business hours at the Purchasing Division after the bid opening or may be viewed on the Purchasing Division's website at:

<http://www.state.wv.us/admin/purchase/Bids>

All other information, such as technical scores and reasons for disqualification, will not be available until after the contract award, pursuant to **West Virginia Code** §5A-3-11(h) and **West Virginia Code of State Rules** §148-1-6.2.5.

Purchasing Card Program

State agencies participate in a State Purchasing Card Program, which allows them to issue purchasing cards to designated employees for small business purchases.

Vendors who accept the Purchasing Card receive their payment directly from the credit card company currently contracted for this program within three to five days after the transaction has been made. Acceptance of the Purchasing Card is required as a condition of the bid for all commodity contracts.

For additional information on the State Purchasing Card Program, visit the State Auditor's Office's website at:

<https://www.wvsao.gov/PurchasingCard/>

Purchasing Division Decision Path

To assist vendors in the steps required by agency purchasers in making a purchase, the Purchasing Division has outlined its purchasing decision path for state agencies which is detailed below:

- **Step One:** Agency determines its need
- **Step Two:** Agency checks availability through internal resources
 - Correctional Industries, State Use Law (Sheltered Workshops) or West Virginia State Agency for Surplus Property
- **Step Three:** Agency determines availability through statewide or agency contract
- **Step Four:** Agency considers sole source and emergency purchases
- **Step Five:** Agency determines appropriate purchasing threshold
 - \$0 - \$2,500.00 No competition required
 - \$2,500.01 - \$5,000.00 Three verbal bids required
 - \$5,000.01 - \$25,000.00 Three written bids required

Section 7: Vendor Resolutions, Disputes and Protests

The state purchasing process begins with specifying in detail what commodity or service the agency needs. In turn, interested vendors offer a bid which meets or exceeds the specifications in the request for quotation or proposal. Should a problem or situation arise affecting a participating party (i.e. the Purchasing Division, state agencies, and registered vendors), the following procedures are established to assist in the resolution of these issues.

Vendor Performance

The state shall receive the commodities or services as specified in the request for quotation or proposal. If an agency deems the received commodities or services do not meet the specifications offered by a vendor, it is required to contact the vendor in an attempt to resolve all issues. The agency is to provide a description of the problem and the expectations of the outcome. Vendors should respond to the agency with clarification or possible solutions to the problem.

If this attempt does not resolve the issue(s), agencies are encouraged to complete the **Vendor Performance Form** (see **Appendix B**) detailing their complaint with the appropriate documentation. The **Vendor Performance Form** is submitted to the Purchasing Division and to the vendor providing the unsatisfactory commodity or service. The Purchasing Division responds to the agency's complaint by contacting the vendor to resolve the issue(s).

The **Vendor Performance Form** is generally the agency's final attempt to resolve the problem. The Purchasing Division uses all substantial documentation relating to the complaint to determine the appropriate action to take.

Vendor Protests

Vendors have the option of protesting certain decisions made by the Purchasing Division. Protests based on bid specifications must be submitted no later than five (5) working days **prior** to the bid opening. Protest of purchase order/contract awards 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. All protests must be submitted in writing to the Purchasing Director and contain the following information:

- (1) Name and address of the protestor,
- (2) Requisition/purchase order/contract number(s),
- (3) Statement of the grounds for protest,

(4) Supporting documentation (if necessary), and

(5) Resolution or relief sought.

Failure to submit this information will be grounds for rejection of the protest.

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

The Purchasing Division reserves the right to refuse to review any protest where the matter involved is the subject of litigation before a court of competent jurisdiction, has previously been decided on the merits by a court of competent jurisdiction, or has been decided in a previous protest by the Purchasing Division. The provisions of this subsection do not apply where the court requests, expects, or otherwise expresses interest in the decision of the state.

Debarment/Suspension of Vendors

The Purchasing Director has the authority to suspend a vendor's right and privilege to bid on state purchases and place the vendor on the State's Debarment List for a period, not to exceed one year, when the Director has reason to believe that such vendor has violated any provisions of the purchasing law or the rules and regulations.

The power and authority of suspension vested in the Purchasing Director may be exercised when there is a reason to believe that one of the following conditions exist:

- A vendor has exhibited poor performance in fulfilling its contractual obligations to the state in more than one purchase order or contract.
- A vendor has willingly breached any purchase order or contract entered into pursuant to the provisions of the Code or the Purchasing regulations.
- A vendor has violated any provisions of the Purchasing laws or regulations.
- A vendor has been convicted of any federal, state or local law punishable as a felony, which conviction arises from the vendor's acts or omissions directly related to the performance of the purchase order or contract entered into pursuant to **West Virginia Code §5A-3-1 et seq.**

When the Purchasing Division Director has reason to believe that the provisions of the Purchasing laws and regulations have been violated, the vendor will be notified by a certified letter containing the reason for such suspension. Any vendor notified of a suspension may request a hearing to be scheduled with the Director. If the hearing

confirms the suspension, the vendor may have the Director's action reviewed by the Secretary of the Department of Administration.

Further explanation of the suspension process may be found in §148-1-5.3 (Vendor's Rights and Duties) of the **Code of State Rules** 148 CSR 1, which is available at the Purchasing Division's website at:

<http://www.state.wv.us/admin/purchase>



West Virginia Purchasing Division

VENDOR PROCUREMENT GUIDE

APPENDICES

- Appendix A:** Purchasing Division Directory
- Appendix B:** Purchasing Forms
- Appendix C:** Agency / Buyer Assignments
- Appendix D:** Agency Procurement Officers Listing
- Appendix E:** Purchasing Exemptions
- Appendix F:** Existing Mandatory and Optional Contracts
- Appendix G:** Vendor Code of Conduct
- Appendix H:** Frequently Asked Questions

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APPENDIX A: PURCHASING DIVISION DIRECTORY

[Click here](#) for the Purchasing Division directory of services.

For a direct link, access:

<http://www.state.wv.us/admin/purchase/directory.html>

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APPENDIX B: PURCHASING FORMS

Download the following forms from the [Vendor Resource Center \(VRC\)](#) on the Purchasing Division's website at:

<http://www.state.wv.us/admin/purchase/vrc/pforms.htm>

- Vendor Registration and Disclosure Statement
- Agreement Addendum
- Purchasing Affidavit
- Resident Vendor Preference Certificate
- Employment History Disclosure Statement
- Bond Forms

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APPENDIX C: AGENCY / BUYER ASSIGNMENTS

[Click here](#) for the Purchasing Division buyer assignments.

For a direct link, access:

<http://www.state.wv.us/admin/purchase/byrassign.pdf>

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APPENDIX D: AGENCY PROCUREMENT OFFICERS LISTING

[Click here](#) for the list of agency procurement officers who may process agency delegated purchases (\$25,000 or less). Procurements expected to exceed \$25,000 are processed by the Purchasing Division. Appendix C includes the agency / buyer assignments.

For a direct link, access:

<http://www.state.wv.us/admin/purchase/vrc/agencyli.html>

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APPENDIX E: PURCHASING EXEMPTIONS

[Click here](#) for the list of exemptions to the Purchasing Division's statutory authority.

For a direct link, access:

<http://www.state.wv.us/admin/purchase/PurchasingExemptions/default.html>

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APPENDIX F: EXISTING MANDATORY STATEWIDE CONTRACTS

[Click here](#) for the established mandatory statewide contracts, which are available to state agencies.

For a direct link, access:

<http://www.state.wv.us/admin/purchase/swc>

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APPENDIX G: VENDOR CODE OF CONDUCT

[Click here](#) to view the **Vendor Code of Conduct**.

For a direct link, access:

<http://www.state.wv.us/admin/purchase/vrc/vendorconduct.pdf>

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APPENDIX H: FREQUENTLY ASKED QUESTIONS

In an effort to address the state procurement process, this list provides some of the most frequently asked questions posed by our participating vendors. A brief answer is offered to help clarify the topic addressed.

What should I do first if I wish to bid on state business?

To learn about bid opportunities, the vendor should first complete a Vendor Registration and Disclosure Statement (**Form WV-1 or WV-1A**) with the Purchasing Division in order to subscribe to the ***West Virginia Purchasing Bulletin***. Vendors are not required to register to bid on solicitations; however, to receive purchase orders for more than \$1,000, vendors must be properly registered and pay the annual fee of \$125.00, if applicable. Only paid, registered vendors receive a subscription to the ***West Virginia Purchasing Bulletin***.

Do all vendors have to pay the \$125 fee?

No. Vendors are exempt from paying the annual fee if they are supplying sole source commodities and services to West Virginia state agencies or aggregate competitive purchases of \$1,000 or less in any one (1) fiscal year. Vendor registration is still required to be completed. According to the ***Legislative Rule, CSR148***, Purchasing Card vendors providing travel-related services or receiving an aggregate total yearly payment less than \$25,000 from a spending unit are exempt from registration and the annual fee.

What is an F.E.I.N.?

F.E.I.N. stands for Federal Employer Identification Number. Vendors are assigned an F.E.I.N. by the Internal Revenue Service. Vendors who do not presently have a F.E.I.N. may obtain one by contacting the IRS and completing the SS-4 application. Vendors are to provide their Social Security number on the Vendor Registration and Disclosure Statement (**Form WV-1 or WV-1A**) in lieu of the F.E.I.N. if they have no employees. The Social Security Number is considered personally identifiable information (PII) and does not appear on any public documentation.

What happens if I can only bid on part of the items on a Request for Quotations?

Unless the bid specifically states that the entire list of items must be bid, vendors are able to complete only a portion of the Request for Quotations by submitting a partial bid and writing "No Bid" in the unit price column beside the items not available. Since some

awards are split between two or more vendors, the vendor may be awarded a purchase order for all or part of the items quoted. However, the vendor should also realize that it is not always practical or economically feasible to split some awards. In these cases, the award is made to the vendor submitting the most complete bid.

May I submit an “all or none” bid?

Since the state reserves the right to split awards, vendors have a right to qualify their bids if an award of a portion of the items in the Request for Quotation is not acceptable. The vendor simply should state “bids submitted are based on receiving the entire purchase order.” In this manner, the Purchasing Division will consider the bids as a whole and will consider not issuing a purchase order based on a portion of the items. Note, however, if the order is to be split among several vendors, the quotation based on all or none will be eliminated and will receive no awards.

What should I do if I do not understand the specifications?

Questions relating to the intent of the specifications or any other aspect of the Request for Quotations should be directed to the buyer responsible for purchasing the commodity or service.

May I bid if I cannot supply the brand listed on the Request for Quotations?

Requests for Quotations specifying a particular brand name also contain the words “Or Equal.” Therefore, vendors not handling the specified brand are encouraged to submit a bid for an item of equal or higher quality.

What happens if I make a mistake in the bid or need to make a revision?

Mistakes discovered or revisions necessary *prior* to the bid opening may be remedied by submitting a modified sealed bid to the Purchasing Division *prior* to the bid opening date and time. Any modified sealed bid should clearly indicate that it replaces a prior sealed bid and is the only sealed bid to be considered. Please note that the original bid will not be returned to the vendor. When a contradiction occurs, the most recent bid submitted will be considered.

What is a Buyer File?

The Buyer File refers to the particular buyer within the Purchasing Division who purchases commodities or services. Buyers are assigned to specific agencies, which is referred to as their file. A number is associated with each buyer; for example, Buyer 21.

If I am the low bidder, am I assured of getting the purchase order?

The award of a purchase order is made to the lowest responsible bidder, taking into consideration the quality of the items to be supplied, their conformity with specifications,

their suitability to the requirements of state government, and the delivery terms. Therefore, the low bidder will receive the award if all those conditions are met, except in Best Value Purchasing techniques where cost is not the sole determining factor for award.

Additionally, the Purchasing Director has the discretion to reject all bids if in the best interest of the state. In all cases where any bid is rejected, a written explanation of the reason for the rejection will be available in the Purchasing Division official file. If you have questions concerning the rejection of a bid, you may contact the appropriate buyer.

Can I receive a purchase order if my bid is only slightly higher than the low bid but my quality is much better?

No. If the state has defined the quality level which is required, the contract will be awarded to the lowest bidder who meets these minimum quality specifications.

How does the state evaluate the total cost of an item instead of the low bid price?

With increasing frequency, the Purchasing Division is developing formulas to calculate the total cost of ownership for commodities that will use a considerable amount of supplies or energy. When these costs can be easily ascertained or projected they are stated in the bid document and considered in the evaluation of the bids. The item with the lowest Life Cycle Cost shall be given the award, all other factors being equal.

How can I find what happened on a particular bid?

If you desire to review copies of bids before an award is made or before the issuance of a purchase order, you may do so by visiting the Purchasing Division website at **www.state.wv.us/admin/purchase/bids** where copies of the bids received are posted. After awards are made, all documentation of the official contract file is maintained at the Purchasing Division. Freedom of Information (FOIA) requests may be made to the Purchasing Division and submitted to the attention of:

FOIA Request
2019 Washington Street, East
P.O. Box 50130
Charleston, WV 25305

What can I do if I think my bid is evaluated unfairly?

The first step that vendors should take if they think their bid was evaluated unfairly is to review the official contract file. The official file contains all documentation and correspondence in the possession of the Purchasing Division as it relates to that specific contract.

All records of the Purchasing Division are available to be reviewed at no charge and/or copied during normal business hours, Monday through Friday, 8:15 a.m. to 4:30 p.m., holidays and weekends excluded. Our normal copy fee of 50 cents per page is applicable, with a \$10 minimum charge.

Vendors wishing to protest an award may do so by writing a letter of complaint to the Purchasing Director. Your letter must be submitted no later than 5 working days after the award and your complaint will be investigated. The vendor will then be informed of the results of the investigation.

What happens if the receiving agency will not accept my commodity after I have received a purchase order?

The purchase order authorizes the vendor to deliver the item described therein, including compliance with all specifications. State agencies are authorized to make a preliminary inspection upon delivery and reject all items that do not comply with the terms and conditions of the purchase order. When a vendor delivers an item in compliance with the purchase order and the state agency refuses to accept delivery, the buyer who approved the purchase should be contacted immediately. The buyer will investigate the matter and will give appropriate direction.

May I change a brand or model after I receive the purchase order?

Due to problems in receiving items from their manufacturer, vendors are occasionally unable to deliver the items specified on the purchase order. When the need to make a substitution arises, the vendor must contact the Purchasing Division buyer and explain the reason for the change.

A change order to the purchase order may be issued provided the item substituted is of equal or higher quality than the original item bid. Vendors must deliver such alternates at the same or lower price than the original brand and model bid.

How are orders invoiced and processed for payment?

Questions about invoicing and payments should be addressed to the State Auditor's Office for the appropriate procedures to be followed and timelines to payment. The State Auditor's Office can be reached by calling (304) 558-2261.

What is the Purchasing Affidavit that is attached to the bid specifications?

West Virginia Code §5A-3-10a requires that all vendors certify under the penalty of false swearing that the vendor and all related parties do not owe any debts exceeding \$1,000 in aggregate to the State of West Virginia. It is required by law that this form is to be notarized.

Is it true that my firm could be disqualified if I am in arrears with my Workers Compensation and/or Unemployment Compensation payments?

Yes. **West Virginia Code** §21A-2-6(17) prohibits any state agency from awarding a contract, purchase order, permit, license, franchise or grant until the vendor is found **not** to be in default with the Bureau of Employment Programs which includes both Workers Compensation and Unemployment Compensation.

The vendor will be given written notice of the default status report and will be offered reasonable time, upon the discretion of the Purchasing Director, to remedy the deficiency depending upon the urgency of the agency's need.

I keep seeing a Vendor Preference Certificate attached to all the bid packages. What does that mean to me? Does it decrease or increase my price?

West Virginia Code §5A-3-37A provides an opportunity for qualifying vendors to request (at the time of bid) preference for their residency status. Such preference is an evaluation method only and will be applied only to the cost bid in accordance with the **West Virginia Code**. A certificate of application is used to request this preference. Generally, a West Virginia vendor may be eligible for two 2.5% preferences in the evaluation process. The Purchasing Division will make the determination of the Resident Vendor Preference, if applicable.

This Code citation provides an opportunity for all vendors who meet the residency criteria to request that their bid be given preference over a lower bid received from an out-of-state (non-resident) vendor. The request must be made in writing at the time of bid and will not be applied in or among other West Virginia bidders.

The percentage preference is an evaluation tool only and does not actually increase or decrease any vendor's bid.

Are there any other Vendor Preference opportunities?

West Virginia Code §5A-3-37(5) and (6) provides an opportunity for qualifying resident vendors who are veterans of the United States armed forces, the reserves or the National Guard to request, at the time of bid, preference for their residency status. Resident veterans who qualify may receive a preference of 3.5%.

Additionally, application may be made for preference as a non-resident small, women- and minority-owned business, in accordance with **West Virginia Code** §5A-3-59 and **West Virginia Code of State Rules**.

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