

Revisions to Title 148 of Code of State Rules Clarify Critical Aspects of State Procurement

With the passing of Senate Bill 142 during the 2015 Legislative Session, the West Virginia Purchasing Division and agencies required to procure under its authority can expect some changes to Title 148, Series 1 of the *Code of State Rules*. The updates clarify critical aspects of the requirements set forth in *West Virginia Code* §5A-3. Be sure to check the May issue of *The Buyers Network* for more details on these changes.

Below is a high-level listing of some of the changes made as part of this legislation:

Training for designees (CSR 148-1-3)

- Requires all spending unit procurement designees to take at least 5 hours annually of available purchasing training.

Remedies (CSR 148-1-5)

- Outlines state remedies, including but not limited to the Director's authority to cancel a contract, re-award a contract, and suspend or debar a vendor.

Registration, Advertising, Bidding, and Awarding (CSR 148-1-6)

- Clarifies vendor registration requirements, including those vendors required to register and pay the annual fee and those exempted from such requirements.

Reverse Auctions (CSR 148-1-12)

- Outlines authority of spending unit to request from the Purchasing Director that a reverse auction be utilized to procure commodities.
- Requires vendors participating in a reverse auction to be prequalified.
- Defines "pre-qualification."
- Requires that a reverse auction be advertised in the same manner as a request for quotation.
- Outlines award procedures for reverse auctions.



Legislative Changes

Additional information on changes affecting state purchasing procedures will be addressed in next month's issue of *The Buyers Network*.

Please see **RULES, Page 3**

INSIDE...

- **Director's Comments:**
Clarification of Processes and Procedures to be Focus of Informational Sessions at Open House
- Agencies Encouraged to Recognize Difference Between Sole Source and Section 9 Procurements
- Purchasing Division Welcomes New Staff

Eighth Annual Open House Set for May 5

Is your calendar marked yet? The eighth annual Purchasing Division Open House is set for Tuesday, May 5, from 10 a.m. – 2 p.m.

As part of the Open House, Purchasing staff will conduct four 30-minute informational sessions. Registration will be provided on a first-come, first-served basis. The topics for these sessions include:

- Know the Rules, They're Changing – 10:30–11 a.m.
- I'm New to Purchasing... Understand the Steps – 11:15–11:45 a.m.
- Know the Rules, They're Changing – 12:30–1 p.m.
- Vendor Registration Creation and Maintenance – 1:15–1:45 p.m.

Purchasing staff will be present throughout the day to answer questions. Agency purchasers are encouraged to bring agency-specific materials to have on-hand when discussing procurements with their buyer.

Refreshments will be available throughout the event. Additionally, agency purchasers in attendance will be eligible to enter a drawing to win a complimentary registration to the 2015 Agency Purchasing Conference.

State procurement officers are encouraged to RSVP for this event by contacting Chad Williamson at 304.558.2315 or chad.b.williamson@wv.gov by April 30.

Clarification of Processes and Procedures to be Focus of Informational Sessions at Open House

By Purchasing Director Dave Tincher

Following the completion of the 2015 Legislative Session, several bills which successfully moved forward to the Governor's Office for signature will have a slight impact on some of the Purchasing Division's current policies and procedures.

Specifically, Senate Bill 356, which was signed into law during last year's Legislative Session, required the Purchasing Division to promulgate legislative rules. Those rules were introduced during this year's session as Senate Bill 142 and revised various sections of Title 148, Series 1 of the *Code of State Rules*.

Some of the changes include added procedures for master contracts with direct ordering, reverse auctions,

change orders, purchase order encumbrance, and more. Additional information on these changes can be found in the article on Page 1.

Upon implementation of the new rules, the Purchasing Division will notify agencies of any changes made to its policies and procedures. In addition to direct communication through e-mail, the Purchasing Division has scheduled two informational sessions as part of its Open House on Tuesday, May 5.

The informational sessions will discuss the changes to the rules as well as



other legislation affecting state procurement, the Purchasing Division's legislative audit recommendations, upcoming Section 9 changes and other *Purchasing Division Procedures Handbook* updates.

We invite you to attend this annual event and meet with our Purchasing Division staff. It will also give you an

opportunity to network with your peers and enjoy refreshments. Furthermore, we look forward to continuing to maintain a transparent and proactive relationship, while informing you of any changes to our processes and procedures.

Agencies Encouraged to Recognize Difference Between Sole Source and Section 9 Procurements

What's the Difference?

Section 9 commodities and services that are non-competitive and exempt from purchasing processing. The revised list, which goes into effect July 1, 2015, may be viewed at www.state.wv.us/admin/purchase/news.html.

Sole Source commodities and services have only one known source. More details can be found in Section 4.7.1.6 of the *Purchasing Division Procedures Handbook*.

In recent years, the Purchasing Division has noticed a degree of confusion between procurements that qualify as sole source and those as non-competitive, exempt commodities and services as noted in Section 9 of the *Purchasing Division Procedures Handbook*. Though they seem similar at first glance, there are significant variances that make a big difference in how an agency should approach purchasing the commodity or service needed.

For starters, only those items specified in Section 9 are eligible for an exemption from bidding. Purchasing Division approval is not required for Section 9 procurements, unless specifically noted. If the commodity or service needed is not listed in Section 9, then it must be procured through another acquisition method. For example, the commodity or service may qualify as a sole source instead.

The best place to start when determining whether an item is considered sole source is the *Sole Source Request for Consideration* (WV-65) form. The agency procurement officer should conduct market research and provide justification that they attempted to find other sources by talking to experts in the field and searching the Internet. Once these options have been exhausted, an explanation needs to be documented on the WV-65 as to why only one vendor can supply what the agency

needs. It is important to note that the information requested on this form is mandated by *West Virginia Code*. The Purchasing Division cannot process the procurement as a sole source without this documentation.

Once the agency has submitted the WV-65 to its designated Purchasing Division buyer, the Purchasing Director must determine that there is sufficient justification to proceed with the sole source procurement. In other words, the agency must provide the Director with enough credible information to allow the sole source procurement to proceed to the next phase, the advertisement in the *West Virginia Purchasing Bulletin*.

"*West Virginia Code* says the Purchasing Division must publish the potential sole source and provide other vendors the opportunity to indicate an interest," stated Jimmy Meadows, Purchasing Division attorney.

Any vendor who expresses an interest in the sole source advertisement must provide documentation that it can, in fact, provide the commodity or service in question. If the interest and documentation is valid, the solicitation will need to be resubmitted for competitive bidding.

Please see PROCUREMENTS, Page 6

RULES

Continued from Page 1

Master Contract; Direct Ordering Process (CSR 148-1-13)

- Requires spending units wishing to establish a master contract with a subsequent direct ordering process to provide justification and obtain written pre-approval from the Director.
- Outlines advertising requirements relating to master contracts with direct ordering bidding procedures.
- Outlines limitations to the master contract and direct ordering process.

Change Orders (CSR 148-1-14)

- Adds procedures relating to contract change orders, including review and approval, change order submission, documentation, rejection, Attorney General approval as to form, and timing of work.

Encumbrance (CSR 148-1-15)

- Adds procedures relating to encumbrance, including account designation, Purchasing Division review, and encumbrance amounts.
- Further outlines clarification of encumbrance procedures for one-time purchases, contracts spanning multiple years, contracts to begin in a future year, and open-ended and statewide contracts.

Expressions of Interest Utilized for Architectural and Engineering Services

The West Virginia Purchasing Division utilizes several best value procurement methods when determined to be in the best interest of the state. Best value procurements emphasize value over price and consider factors such as vendor qualifications, experience, project approach, and more.

Expressions of Interest (EOI) are one such best value procurement method. EOIs are primarily used in the selection of architectural and engineering services and permit the state to award a contract to the most qualified vendor based on demonstrated competence and qualification for the service(s) required at a fee determined to be fair and reasonable.

EOIs must include a statement of qualifications and performance data and may include anticipated concepts and proposed methods of approach to the project.

The agency processing the EOI must form an evaluation committee of three to five representatives from the agency.

The committee shall:

1. Evaluate the statements of qualification, performance data and other materials submitted;
2. Develop a "short list" (minimum of three firms) which, in their opinion, are best qualified to perform the desired service; and
3. Interview each firm on the "short list" to discuss anticipated concepts and proposed methods of approach to the assignment, including clarification of qualifications and performance data, the scope of services offered and needed

Please see EOI, Page 5



What's Your Question?

Why does the state competitively bid for commodities and services?

Competitive bidding is utilized by the state of West Virginia to ensure the most fair and transparent purchasing process possible. Competitive bidding allows for public advertisement of state solicitations and ensures a level playing field for all vendors to participate in the state purchasing process.

Though many think that pricing is the primary consideration, it is not. Factors such as quality, pricing, and competition are also considered.

The sections of *West Virginia Code* that govern the competitive bid process are listed below.

§5A-3-3. "The director, under the direction and supervision of the secretary, shall be the executive officer of the Purchasing Division and shall have the power and duty to: ... (2) Ensure that the purchase of or contract for commodities and services shall be based, whenever possible, on competitive bid."

Please see QUESTION, Page 5

THE BUYERS NETWORK

Purchasing Division
State Capitol Complex
2019 Washington Street, East
Charleston, WV 25305-0130
Telephone: (304) 558-2306

Earl Ray Tomblin
Governor

Jason Pizatella
Secretary
Department of Administration

David Tincher
Director, Purchasing Division

Diane Holley-Brown
Samantha Knapp
Editors

Aimee Cantrell
Chad Williamson
Contributing Reporters

Expression of Interest

To learn more about Expressions of Interest and other best value procurement methods, visit the Purchasing Division Procedures Handbook at: www.state.wv.us/admin/purchase/Handbook.

Clay Transitions into New Role as Contract Manager

The West Virginia Purchasing Division is pleased to announce that Greg Clay is the new state purchasing contract manager in its Contract Management Unit, effective March 16. Previously a Senior Buyer in the Division's Acquisition and Contract Administration section, Clay is a resident of Beckley.

He earned his bachelor's degree in business administration from Concord University and worked in procurement for the mining industry for more than 20 years before joining to the Purchasing Division.

In his spare time, Clay breeds English bulldogs with his wife and enjoys spending time at his farm in Tazewell, VA.



Greg Clay was recently named the state purchasing contract manager, overseeing the Contract Management Unit of the Purchasing Division.

Interested in past issues of *The Buyers Network*? Be sure to check them out on the Purchasing Division's website at: www.state.wv.us/admin/purchase/BN/bnlist.html



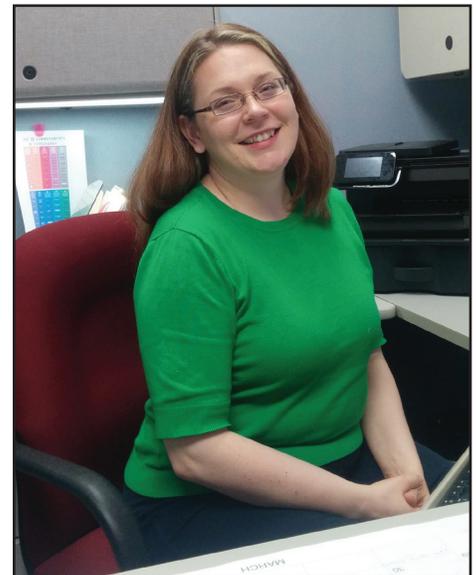
Katrina Dufourny, left, and Ashley Williams joined the Purchasing Division as Office Assistant IIs, working in the Communication and Technical Services Section.

Purchasing Welcomes Our New Staff

The West Virginia Purchasing Division is pleased to welcome Katrina Dufourny, Ashley Williams, and Aimee Cantrell to its staff. Both Dufourny and Williams are Office Assistant IIs and Cantrell is a Public Information Specialist II, all of whom are working within the Communication and Technical Services Section.

Dufourny graduated from West Virginia University, where she majored in English and obtained a minor in Communications. A resident of Charleston, Dufourny previously worked as a guest services representative at a downtown Charleston hotel. She notes one of her greatest achievements was teaching English as a second language to elementary and middle school students in Japan.

Williams was born on Shreveport Air Force Base in Bossier City, Louisiana, and later moved to Shinnston, where she graduated from high school. A resident of South Charleston, she attended Fairmont State University and is currently completing her degree in Psychology with Southern New Hampshire University. Prior to this position,



Aimee Cantrell is a Public Information Specialist II for the Purchasing Division.

she was a technical support agent with a major communications company.

Cantrell earned her bachelor's degree in English from West Virginia State University. Before joining the

Please see STAFF, Page 6

Purchasing Month Celebration



The Purchasing Division took the opportunity to celebrate March as Purchasing Month with a cake reception. Agency procurement officers were invited to visit the Purchasing Division on March 12 to share in the festivities and network with the Purchasing Division staff.

QUESTION

Continued from Page 3

§5A-3-10(a). “A purchase of and contract for commodities, printing and services shall be based, whenever possible, on competitive bids.”

§5A-3-10(b). “The director shall solicit sealed bids for the purchase of commodities and printing which is estimated to exceed twenty-five thousand dollars.”

§5A-3-11(a). “The director may make a purchase of commodities,

printing and services of \$25,000 or less in amount in the open market, but the purchase shall, wherever possible, be based on at least three competitive bids ...”

§5A-3-11(e). “All open market orders, purchases based on advertised bid requests or contracts made by the director or by a state department shall be awarded to the lowest responsible bidder or bidders...”

EOI

Continued from Page 3

time to complete project.

The committee should then rank the top three firms deemed to be the most highly qualified, in order of preference.

The committee may begin negotiations as to scope of service and price with the highest qualified firm.

If the agency fails to negotiate a satisfactory contract with that firm at a fee determined to be fair and reasonable, negotiations with the firm of second choice should commence, and

hence the third firm, if necessary. At no time may a negotiation reconvene after it has ended.

If the agency fails to negotiate a satisfactory contract with any of the selected firms, the contract must be re-bid.

To learn more about Expressions of Interest and other best value procurement methods, visit the Purchasing Division Procedures Handbook at:

www.state.wv.us/admin/purchase/Handbook.



In-House Training: April/May 2015

April

- Wednesday, April 8:
Specification Development & Contracts
9 a.m. - 11 a.m.
- Wednesday, April 15:
Vendor Registration Procedures & Vendor/Customer Creation & Maintenance (Webinar)
9 a.m. - 11 a.m.
- Wednesday, April 29:
Solicitation Process: From Pre-Planning to Post-Award
9 a.m. - 12 p.m.

May

- Wednesday, May 6:
Vendor Registration Procedures & Vendor/Customer Creation & Maintenance
9 a.m. - 11 a.m.
- Wednesday, May 20:
Travel Management
10 a.m. - 11 a.m.

Location

Purchasing Division's first floor conference room

Registration

For more information or to register, visit www.state.wv.us/admin/purchase/training/inhouse.html.

For more information

Administrative Services Manager
Samantha Knapp at 304.558.7022
or Samantha.S.Knapp@wv.gov

Current Statewide Contract Update

(As of March 15, 2015)

This page includes a listing of current changes made to statewide contracts issued by the Purchasing Division. Information and dates listed in this **Current Statewide Contract Update** are subject to change. All statewide contracts are available online at www.state.wv.us/admin/purchase/swc. For more information, please contact the buyer assigned to the specific statewide contract.

New Contracts

<u>Contract</u>	<u>Vendor</u>	<u>Description</u>	<u>Dates</u>
OIL15	Apollo Oil LLC	Oil, lubricants and grease	3/25/2015 -3/24/2016

Contract Renewals

<u>Contract</u>	<u>Vendor</u>	<u>Description</u>	<u>Dates</u>
DIGCOP12A	Komax Business Systems LLC	Digital copiers	3/1/2013 -2/29/2016
FOOD12B	U.S. Foods	Food service	1/12/2015 -1/11/2016
PAINT13	Sherwin Williams	Paint and paint supplies	4/1/2013 -3/31/2016

Contract Extensions

<u>Contract</u>	<u>Vendor</u>	<u>Description</u>	<u>Dates</u>
CEREAL12A	U.S. Foods	Cereals	5/7/2015 -5/6/2016

Miscellaneous Actions

<u>Contract</u>	<u>Vendor</u>	<u>Commodity</u>	<u>Description of change</u>
DIGCOP12	Komax Business Systems LLC	Digital copiers	Cancel contract and reissue under DIGCOP12A

PROCUREMENTS

Continued from Page 2

If it is determined, on the other hand, that the procurement is verified as a sole source, the agency may proceed with the purchase order award. Sole source procurements are compiled into a list and reported to the Legislature each July.

An agency should always conduct research to determine if a procurement is defined as sole source or a Section 9 exemption. "Section 9 procurements, while similar to sole sources in some regard, are significantly different," said Meadows. "The law states in various places that you must obtain competitive bids whenever possible. This language leaves open the possibility that there are circumstances when obtaining competitive bids is not possible."

The Section 9 exemption list is reviewed and approved before the beginning of each fiscal year. The new list will become effective on July 1, 2015.

FOR MORE INFORMATION

Below is a list of Purchasing Division buyers assigned to specific state agencies.

<u>BUYER</u>	<u>EMAIL</u>	<u>PHONE</u>
Guy Nisbet	Guy.L.Nisbet@wv.gov	558-2596
Bob Kilpatrick	Robert.P.Kilpatrick@wv.gov	558-0067
Frank Whittaker	Frank.M.Whittaker@wv.gov	558-2316
Tara Lyle	Tara.L.Lyle@wv.gov	558-2544
Crystal Rink	Crystal.G.Rink@wv.gov	558-2402
Evelyn Melton	Evelyn.P.Melton@wv.gov	558-7023
Beth Collins	Beth.A.Collins@wv.gov	558-2157
Stephanie Gale	Stephanie.L.Gale@wv.gov	558-8801
Laura Hooper	Laura.E.Hooper@wv.gov	558-4212
Misty Delong	Misty.M.Delong@wv.gov	558-8802
Melissa Pettrey	Melissa.K.Pettrey@wv.gov	558-0094
April Battle	April.E.Battle@wv.gov	558-2306

Contracts Reviewed

Statewide contracts are reviewed approximately three months prior to the actual expiration date. During this month, the following statewide contracts for which their expiration dates are approaching will be examined.

FLT	Trucks, over one-ton capacity
HOUSE	Housekeeping supplies
LARMS11	Microsoft products
SECSVS	Guard and security services
TEMP	Temporary employee services

STAFF

Continued from Page 4

Purchasing Division, she worked as a communications specialist and in various administrative roles in the private sector as well as within state government, including the West Virginia State Senate and the West Virginia State Auditor's Office. Cantrell lives in South Charleston with her husband and two daughters. In her spare time, she enjoys reading and learning how to play piano.

Please welcome Katrina, Ashley, and Aimee to the Purchasing Division family!