

THE BUYERS NETWORK

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Agencies Encouraged to Follow Best Practices for Drafting Contracts

*This is the third part of a three-part series on contract drafting, which will address some of the best practices to utilize when drafting a contract. In the first and second parts of this series, General Counsel Jimmy Meadows outlined contract formation and the key components to drafting a contract, as well as common contract drafting mistakes. Please refer to the August and September 2016 issues of **The Buyers Network**, respectively, to view the first and second parts of this series.*

General Counsel Jimmy Meadows said there are some best practices that agency procurement officers should remember when drafting contracts. Following these tips will ensure a contract that is understandable and complete. These best practices are as follows:

Understand What You Draft

It is crucial to have an understanding of the subject matter for which you are developing specifications. For example, when purchasing lumber from the home improvement retailers, it is important to know that a 2x4 piece of lumber is not actually 2 inches by 4 inches. If you measure the boards, a 2x4 is actually



Purchasing Division's General Counsel Jimmy Meadows answers questions during a training class. Meadows wrote this three-part series to help agency procurement officers identify how to enhance their contract drafting.

1.5 inches thick by 3.5 inches wide. The reason for this is that 2x4 actually represents the measurement of the rough lumber before it is smoothed out and finished for retail sale. That process eliminates about a ½ inch in width and depth.

Please see CONTRACT DRAFTING, page 4

INSIDE...

- **Director's Comments:**
Successful Strategic Sourcing Meetings Come to an End in 2016. More Planned for Later in the Year
- **Statewide Contract for Office Supplies Updated**
- **Vehicle Mileage Reimbursement Calculator Available for Planning**
- **Expiring Contracts Reports Now Available**

Bond Forms Now Updated and Available on Purchasing's Website

The West Virginia Purchasing Division recently updated several of its bond forms to make necessary adjustments related to construction projects.

The forms that changed include performance bonds, which are surety bonds issued by an insurance company or a bank to guarantee satisfactory completion of a project by a contractor; maintenance bonds, which function as an insurance policy on construction projects to make sure a contractor will either correct any defects that arise or compensate the owner for those defects; and labor and material payment bonds, which are typically issued with performance bonds and cover payment for all equipment, labor, materials, and services in the event the contractor fails to pay for them under the terms of the contract.

The main change to these forms included removing the requirement for a "raised" corporate seal. Although the corporate seal is still a requirement, it is not required to be raised. Previously, contractors bidding on projects requiring these bonds had to obtain a

Please see BOND UPDATES, page 5

THE DIRECTOR'S COMMENTS

Successful Strategic Sourcing Meetings Come to an End in 2016, More Planned for Later This Year

By Purchasing Director Dave Tincher

As 2016 came to an end, so too did the strategic sourcing meetings for Fiscal Year 2017 – at least for now. The meetings, which were implemented as a way to open lines of communication between state agencies and the Purchasing Division, have been a collaborative effort between the two to plan for future procurements, seek more cost-efficient solutions, rectify any issues and improve the efficiency of the public procurement process.

The Purchasing Division conducted its first ever strategic sourcing meeting in late June 2016 with the General Services Division. State agencies with a high dollar volume of procurements for Fiscal Year 2016 were selected for these planning meetings. Other agencies included the Adjutant General's Office, the Division of Natural Resources, Division of Corrections, Division of Public Transit, the State Police and the Division of Highways.

The final meeting, which was conducted in late November with the Department of Health and Human Resources, brought to a close this very successful initiative of planning and preparing for future procurements as well as discussing current and ongoing contracts.

Each meeting was carefully planned

to ensure that both parties would benefit from its subject matter. Prior to meeting, the Purchasing Division supplied the agency with a copy of the agenda, along with additional documentation which would be discussed during the meeting.

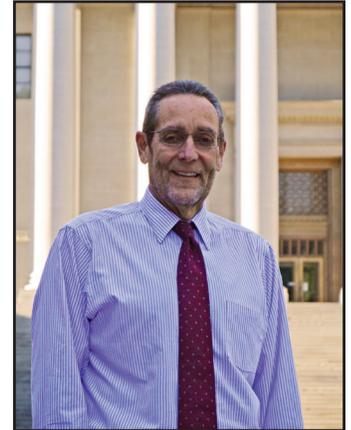
The agency, in turn, was asked to submit its plan of action for all contracts on its Expiring Contracts Report, noting if the agency plans to rebid, renew or cancel the contract. The agency also prepared a list of upcoming purchases planned for the next year as well as offered a copy of its organizational chart.

Following these preparations, each scheduled meeting kicked off with a welcome from Purchasing and introductions of those in attendance, followed by a quick review of the meeting agenda. The remainder of the meeting consisted of agency personnel interacting openly with Purchasing while discussing everything from internal controls, procedures and approvals for both the agency and Purchasing Division to upcoming purchases, the inspections process, training issues and opportunities, and legal matters.

The discussion point of internal controls within the agency is especially important during the dialogue. This component includes clarification of approval patterns, workflow and agency delegated limits. The Purchasing Division shared its levels of authority and processes as well during the meetings.

Purchasing personnel ended each discussion with a highlight of recent changes to purchasing law, rule and procedures, including those impacting the master terms and conditions, the subcontractor list requirement and prevailing wage rates.

I am pleased with the discussion these meetings have generated and the relationships which have been forged as a result. I look forward to resuming these meetings near the close of Fiscal Year 2017. Thank you to each of the agencies which took part and for your ongoing commitment to improving our working relationships. Let's make 2017 the best year yet for state procurement!



Change to Platform for Office Supplies Contract

On December 15, 2016, a merger between Office Depot and OfficeMax, the vendor that was awarded the statewide contract for office supplies, resulted in the vendor moving all of its users from the OfficeMax platform to the Office Depot B2B platform. This migration between platforms included all

Office DEPOT®
OfficeMax®

Now one company.

products on the current statewide contract.

Unique OfficeMax usernames and passwords transitioned to the Office Depot website, which can be accessed at www.business.officedepot.com. Because the business sites are so similar, no new training is required to complete transactions on Office Depot's website. Please be aware that personal shopping list(s) did not transfer from OfficeMax; however, the order history from OfficeMax accounts will be available on the Office Depot B2B site for reference.

If you have any questions regarding Office Depot B2B or experience issues logging in, please contact Office Depot Account Manager Mick Bell at 304.781.7766 or mick.bell@officedepot.com.

West Virginia State Agency for Surplus Property Finalizes Facility Improvements

The West Virginia State Agency for Surplus Property (WVSASP) has been working hard to improve its facility. With a new warehouse building erected, paving of the vehicle and parking lot completed, and an automatic gate installed, only a few small projects remain.

Development on the new WVSASP warehouse began in 2015 with removal of the old auction site and vehicle lot. From there, a new building was built to serve as the warehouse and staff office location. The new building contains more than 19,000 square feet of space, with nearly 15,000 square feet of storage space and more than 4,000 square feet of office space.

Throughout this process, WVSASP remained opened and continued to serve state agencies, eligible organizations and the general public. The improvements around the property, which include a climate-controlled showroom and convenient checkout area, will allow WVSASP to provide better service to its customers for years to come.

If you have not been to see the new facility, WVSASP invites you to visit 2700 Charles Avenue in Dunbar. A special open house for eligible organizations, including state agencies, will be held in April and a Customer Appreciation Day will be held this summer. For more information on these future events as well as ongoing deals, “Like” the WVSASP Facebook page at www.facebook.com/wvsurplus or subscribe to the mailing list at www.state.wv.us/admin/purchase/surplus/Subscribe.html.



The West Virginia State Agency for Surplus Property (WVSASP) has made many improvements recently including paving of the vehicle sales and customer parking lots and the installation of an automatic gate at the sales parking lot. These improvements will help WVSASP staff better serve customers.

Purchasing Division Recognizes its Latest Recipients Earning Their Basic Certification

The Purchasing Division is pleased to recognize Mark Atkins, Alicia Sodder and Sherri Weathersbee as the latest recipients in its West Virginia Procurement: Basic Certification program.

Atkins, a Senior Buyer for the Purchasing Division, worked in the private sector for many years before coming to state government. In 2007, Atkins began working in roles where purchasing was his primary responsibility. After many years in the coal industry, Atkins decided to pursue a career with the Purchasing Division.

“It is important for me to gain as much knowledge and experience as possible in order to be able to provide a professional level of service to the Department of Administration and the state agencies to which we provide service,” explained Atkins. “I am very grateful to be working in the Purchasing Division along with so many talented and dedicated people. I intend to pursue all the training and advance certification opportunities available in the future so that I may continue to grow personally and professionally.”

Sodder, an Administrative Services Assistant II for the Department of Health and Human Resources, has been with the Bureau for Public Health since October 2014. Prior to this position, she worked for the Department of Transportation.

“I am excited that I am one of the first in the Bureau for Public Health’s Purchasing Unit to obtain this certification,” shared Sodder. “I believe this certification will allow me to be more con-

fident in my position and my overall knowledge of the purchasing process.”

Weathersbee, an Administrative Services Assistant I, has worked for the West Virginia State Tax Department since June 2015 but has worked for the state on and off since 1998. In her 11 years with the state, Weathersbee has worked in purchasing, accounting, inventory management, travel and purchasing card management.

“I believe that education is important and an individual should make every effort to learn all they can, whether it be for personal interest or to help their job performance,” said Weathersbee. “I have pursued the West Virginia Procurement: Basic Certification to better equip me for my career.”

Individuals who successfully complete the certification program are approved to use “WVPBC” or “WVPAC” after their names to designate their expertise.

State agency procurement officers interested in participating in the basic and/or advanced certification programs may review the requirements at www.state.wv.us/admin/purchase/training/Certification. Questions regarding the programs may be directed to Communication and Professional Development Manager Samantha Knapp at Samantha.S.Knapp@wv.gov or 304.558.7022.

The Purchasing Division would like to congratulate Atkins, Sodder and Weathersbee on this noteworthy accomplishment!

New Statewide Contract Awarded for Computers

A new statewide contract for desktop computers, laptops, tablets and accessories was awarded to HP Inc., effective October 1, 2016.

Hewlett Packard also served as the vendor for the previous contract, which went into effect in 2012 before expiring this past September.

The new contract is for electronic devices and accessories only. Any agency that requires service to be connected to a device will

need to use the CPHONE contract. To view this contract, visit www.state.wv.us/admin/purchase/swc/CPHONE.htm.

Buying through statewide contracts, which are mandatory for use, can offer significant benefits to state agencies, including time savings, obtaining the best value at the most competitive prices and establishing long-term relationships with vendors. Statewide contracts are established by the Purchasing Division to supply state agencies with commonly used commodities and services, including office supplies, vehicles, computers, and more.

To view the current listing of all of the available statewide contracts, visit www.state.wv.us/admin/purchase/swc.



Barnette Promoted to Senior Buyer

The Purchasing Division is pleased to announce the promotion of Charles Barnette to Senior Buyer.

Barnette, who joined the staff as a buyer in the Acquisition and Contract Administration section in March of 2016, primarily assists with purchases for the West Virginia Division of Highways.

"I am grateful for the opportunity and look forward to my future with the West Virginia Purchasing Division as a Senior Buyer," Barnette said.

A current resident of St. Albans, Barnette attended West Virginia State University. He graduated with an associate's degree in Computer Science and a bachelor's degree in English focusing on Professional Writing. Before joining the Purchasing Division, Barnette worked for five years as a buyer for Advanced Technical Solutions in Scott Depot.



Charles Barnette
Senior Buyer

CONTRACT DRAFTING

Continued from Page 1

Similarly, procurement officers should not use words they don't understand. Would you want to be the procurement officer "accepting" the liability as opposed to "excepting" it? Understand what you write.

Draft Accurately

The contract should be presented in a professional manner, which can be done by avoiding spelling and grammar errors, using appropriate titles and names, and capitalizing defined terms.

Ensure Clarity

Perhaps one of the most important tips is to never use ambiguous terms when drafting contracts. Ambiguity will almost always lead to an easy win for the vendor in a contract dispute. An ambiguous term is one that can have multiple meanings.

The meaning of any ambiguous term will be interpreted against the drafter. Since the State is the drafter, it will likely lose any lawsuit over an ambiguity.

Vague terms are also to be used with

caution, but may in fact be used in contract drafting when deemed appropriate. Sometimes too much precision should be avoided for a small degree of vagueness, as shown below:

Precise – "Vendor must deliver the widgets to the Agency within 24 hours of the Agency's order."

Too Precise – "Vendor must deliver widgets to the Agency at 5:00 p.m. on the day after the order is received."

In the second sentence, the vendor technically breaches the contract if delivery is made at 4:59 p.m. or 5:01 p.m. Surely this was not the intent of the provision.

Ensure Consistency

It is important to be consistent when referencing individuals, commodities or services. For example, referring to the entity providing services to the state as the "winning bidder," "vendor," "contractor," "seller," "bidder" and its actual corporate name within the same contract document is unacceptable and can cause unnecessary confusion.

Be Concise

Within the contract, use as few words as possible to convey the intended meaning. One way to do this is to use active rather than passive voice. Do you know the difference? Here are some examples:

Active Voice – "Vendor shall perform the service and Agency shall pay \$100 per day."

Passive Voice – "Payment shall be received by Vendor in the amount of \$100 per day from Agency for all service performed by Vendor."

Ensure Legality of Provision

Lastly, never include or agree to a contract provision that violates a law or regulation. For example, the state is prohibited from paying for commodities and services in advance; therefore, this provision may not be incorporated into any contract.

Following these few simple best practices will help to ensure a state agency's contract is complete and leaves less room for confusion or misunderstanding.

Buyers Network

Vehicle Mileage Reimbursement Calculator Available for Planning

Calculating travel costs do not always have to be complicated and stressful. The West Virginia Purchasing Division's Travel Management Office has made available to state agencies a Vehicle Rental versus Reimbursement Calculator. Offered in an Excel format, this document will calculate the cost of renting a vehicle versus the cost of driving one's own car.

The main purpose of the reimburse-

ment calculator is to assist state workers in determining the most cost effective method of travel when traveling for state business. While changes in reimbursement amounts, contract rates and other costs associated with rentals may cause the results to fluctuate, this calculator is a good way to facilitate an estimated comparison and make an educated decision.

To access the calculator or to learn more about the statewide contract for rental vehicles, visit the State Travel Management Office website at www.state.wv.us/admin/purchase/travel/rental.html.

Please note that as of January 1, 2017, the reimbursement rate decreased to 53.5 cents per mile.

The Travel Management Office offers a reimbursement calculator to assist agencies in planning for state travel reimbursement. The reimbursement rate decreased to 53.5 cents per mile for 2017.

Input Variables	
Total Miles to be Traveled	109
Total Days in Trip	1
Car Rental Rate (Daily, Weekly)	\$36.99
Cost of Gasoline per Gallon	\$ 2.29
Mileage Reimbursement Rate	\$ 0.535
Rental Car Gas Mileage (MPG)	28
Calculated Results	
Own Car Cost	
Mileage	\$ 58.32
Rental Car Cost	
Rental	\$ 36.99
Refueling	8.91
Total	\$ 45.90

Input variables here

Which is most cost effective?

National Travel Provides Valuable Expertise to State Employees

Each year, the West Virginia Purchasing Division processes a variety of contracts that supply West Virginia state agencies with commonly used commodities and services. These contracts, known as statewide contracts, are mandatory for use by all state agencies and save the state substantial dollars through the economies of scale.

One of these statewide contracts, TRAVEL, provides travel management services to agencies and officials throughout the state. As the state's corporate travel management company, National Travel provides airline assistance for domestic and international reservations. This includes 24/7 emergency enroute assistance for flights booked online and with agent assistance.

This contract provides free access to National Travel's premier travel app, which includes flight alerts and notifications, allows for flight searches and

access to boarding passes, and provides driving directions and concierge services. National Travel also offers flight monitoring and can re-issue tickets during travel.

There are several different fees associated with National Travel. For reservations booked online for domestic or international travel, there is a \$7.00 fee; however, in the event that an online booking requires agent after a ticket has been issued, there is a \$20.00 intervention fee.

Agents are available by phone, fax or email for bookings as well. Agent-assisted reservations cost \$28.00 for domestic flights and \$34.00 for international travel that includes passport aid.

For more information regarding National Travel and other travel policies, visit the State Travel Management Office website www.state.wv.us/admin/purchase/travel.

BOND UPDATES

Continued from Page 1

raised seal if it was not included on the bond provided.

"We've been working closely with the Attorney General's office for some time to gain approval to make these changes," said Purchasing General Counsel Jimmy Meadows. "This change should reduce procurement time by allowing the bonds without a raised seal to be accepted rather than returned."

The bid bond form, which is issued in an attempt to guarantee that the winning bidder will undertake the contract under the terms at which they bid, was previously modified to remove the "raised" component of the corporate seal; therefore, this form did not change.

The revised forms also allow any authorized agent to sign, in addition to President, Vice President, Owner, Partner, Manager or Member. The supplementary conditions to the AIA documents were also updated with the names of current officials.

To view these revised forms, visit www.state.wv.us/admin/purchase/forms2.html.

THE BUYERS NETWORK

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Current Statewide Contract Update

(As of December 14, 2016)

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

Contract	Vendor	Commodity	Effective Date
MVTRUCK17C	Stephens Auto Center	Motor vehicles	11/15/16 -11/14/17
MVTRUCK17A	Bob Robinson Chevrolet	Motor vehicles	11/15/16 -11/14/17
MVTRUCK17B	Jim Robinson Ford	Motor vehicles	11/15/16 -11/14/17

Contract Extensions

Contract	Vendor	Commodity	Effective Date
NTIRE13A	Goodyear Tire & Rubber Co.	New Tires	11/15/16 -11/14/17

Contract Extensions

Contract	Vendor	Commodity	Effective Date
SWC*06C	Veritiv Operating Company	Paper Sandwich Bags	12/15/16 -12/14/17

Miscellaneous Actions

Contract	Vendor	Commodity	Description of Change
CPHONE13B	Verizon Wireless	Wireless	To extend the contract
EPORTAL16	WV Interactive	e-Government Portal	

FOR MORE INFORMATION

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

BUYER	E-MAIL	PHONE
<i>Supervisors</i>		
Tara Lyle	Tara.L.Lyle@wv.gov	558-2544
Guy Nisbet	Guy.L.Nisbet@wv.gov	558-2596
Frank Whittaker	Frank.M.Whittaker@wv.gov	558-2316
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Michelle Childers	Michelle.L.Childers@wv.gov	558-2063
Misty Delong	Misty.M.Delong@wv.gov	558-8802
Stephanie Gale	Stephanie.L.Gale@wv.gov	558-8801
Linda Harper	Linda.B.Harper@wv.gov	558-0468
Brittany Ingraham	Brittany.E.Ingraham@wv.gov	558-2157
Melissa Pettrey	Melissa.K.Pettrey@wv.gov	558-0094
Crystal Rink	Crystal.G.Rink@wv.gov	558-2402

Expiring Contract Reports Now Available on Intranet Site

The Purchasing Division is now posting monthly expiring-contract report to its website, which list open-end contracts for all state agencies that are scheduled to expire within 90 days.

The goal of the report is to help both the Purchasing Division and state agencies stay ahead of expiring contracts so they may be renewed or rebid and awarded in an appropriate time frame. This in turn prevents the agency from backdating or utilizing other means of procurement, such as emergency purchases, or going without needed goods or services.

“Agencies need to be thinking about expiring contracts ahead of time. If an agency has a contract that expires, the vendor must discontinue providing goods or services until the contract is either renewed or rebid. It can take a substantial amount of time to receive the necessary paperwork from the vendor to renew the contract. Developing specifications to solicit bids and award a new contract can take significantly longer. Failure to act promptly will make it difficult for the agency to meet its need while trying to resolve the issue,” said Buyer Supervisor Frank Whittaker. “We want to keep services flowing by helping the agencies stay aware of their expiring contracts, so they can adequately plan for their upcoming needs.”

To view the latest report, visit http://intranet.state.wv.us/admin/purchase/eArchive/2016_1202b.html. This report was generated by wvOASIS and the information is intended to serve as a guide for agency planning regarding specific contracts.

Any questions regarding a particular contract should be directed to the agency's Purchasing Division buyer.