



WEST VIRGINIA PURCHASING DIVISION

# PROCEDURES HANDBOOK

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## STATE OF WEST VIRGINIA

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The West Virginia Purchasing Division Procedures Handbook  
*July 1, 2007*

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WEST VIRGINIA PURCHASING DIVISION

# **PROCEDURES HANDBOOK**

## **INTRODUCTION**

**Welcome! ...**The **West Virginia Purchasing Division Procedures Handbook** is a helpful tool for all procurement officers, managers and employees to use in learning more about programs, procedures and services administered through the Purchasing Division.

This handbook was prepared with the assistance of purchasing professionals throughout West Virginia state government. It offers guidance for those who are new to the state purchasing process as well as those more experienced individuals. Each section offers specific information and instructions which should prove helpful to users in making sound, cost-efficient decisions.

As the Director of the West Virginia Purchasing Division, I strongly recommend the use of this handbook by all state procurement officers and their respective staffs. Our goal is to simplify and clarify the state's procurement process while ensuring fair and open competition with proper documentation of all purchasing transactions.

Because the Purchasing Division has responsibilities beyond procurement, information on our other programs, such as travel, fixed assets, and surplus property are also included within the appendix of this handbook.

This handbook provides each of us with a sound reference ensuring accuracy and consistency as we perform our procurement duties and responsibilities within West Virginia state government. My office is always open for questions, concerns and suggestions. I invite you to visit our Internet website at ***WVPurchasing.gov*** and our intranet site at **<http://intranet.state.wv.us/admin/purchase>**.

Sincerely,

Dave Tincher, Director  
West Virginia Purchasing Division



# PROCEDURES HANDBOOK

## SECTION 1: GENERAL INFORMATION

### 1.0 GENERAL INTRODUCTION

**1.1 Mission Statement:** The mission of the West Virginia Purchasing Division is to provide valued services to our customers by making sound and effective decisions in accordance with state law. As a customer-driven organization, we strive to exercise prudent and fair spending practices in acquiring quality goods and services in a timely fashion at the lowest possible price; to continually improve the services we offer to maximize the efficiency of state government; and to provide leadership and guidance to our customers – state agencies, vendors, legislators and the general public – while building lasting business relationships.

**1.2 Statutory Authorization:** The Purchasing Division was created and its duties are defined in the *West Virginia Code*, §5A-3-1 *et seq.* According to the Code, “the Purchasing Division was created for the purpose of establishing centralized offices to provide purchasing, travel, and leasing services to the various state agencies.” The Purchasing Division offers many other services to state agencies, political subdivisions, and the vendor community. These programs include, but are not limited to, Acquisition and Contract Administration, Surplus Property Program, Travel Management, Purchase Order Encumbrance and Inventory Management.

**1.3 Regulatory Authorization:** The Purchasing Division functions in adherence to its *Legislative Rules and Regulations (148 CSR 1)*. This Legislative Rule is included in this manual in Appendix D and serves as an explanation and clarification of operative procedures for the purchase of commodities and services by the Purchasing Division. It applies to all spending units of state government, except those statutorily exempted.

**1.4 Required Use of Handbook:** State procurement officers and their support staffs are required to use this handbook to perform procurement and other related activities.

**1.5 Organization:** The Purchasing Division is organizationally structured under the West Virginia Department of Administration. The sections within the division are detailed below:

#### **Acquisition and Contract Administration Section:**

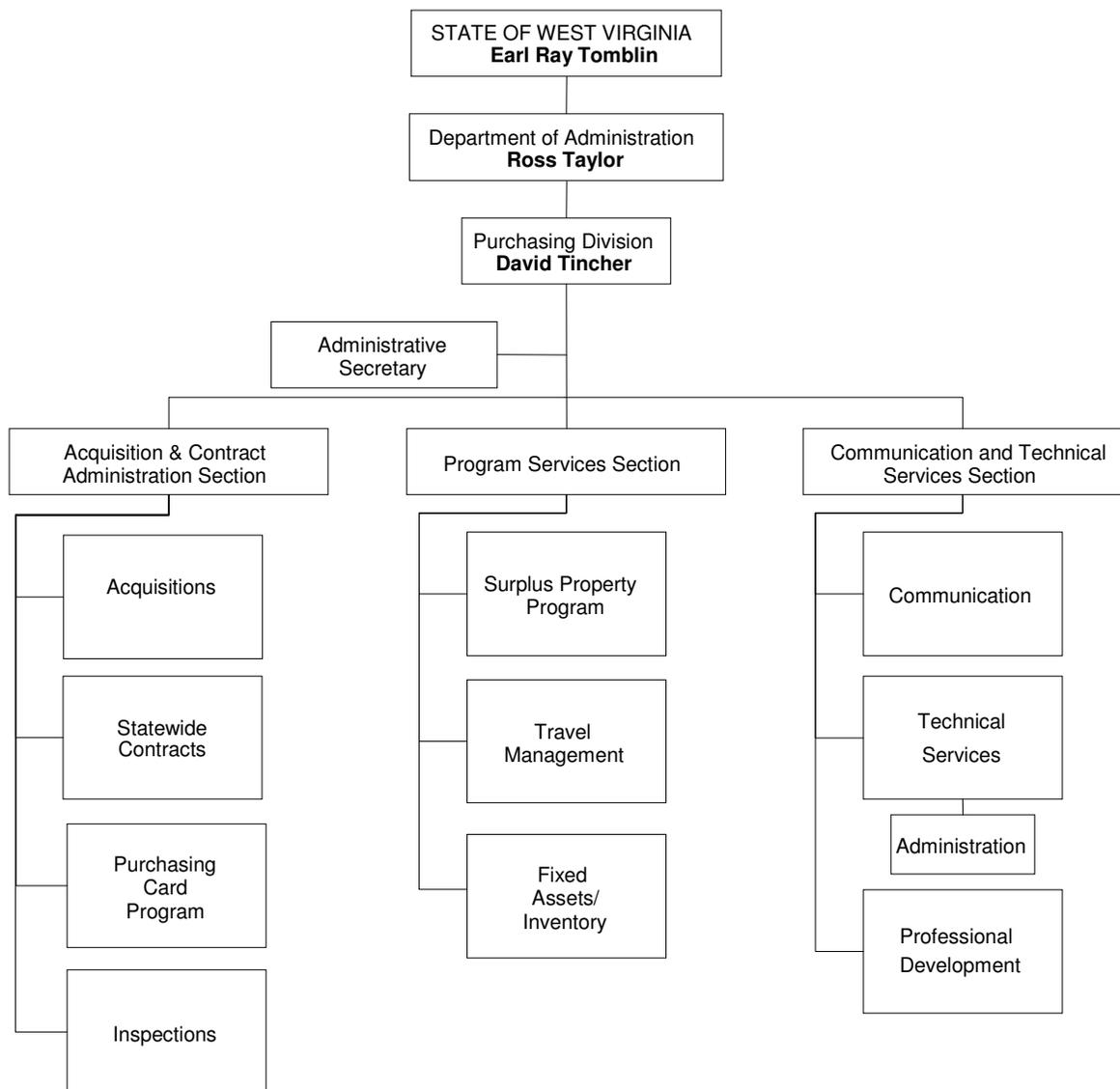
- Process all purchases expected to exceed \$25,000
- Statewide Contracts
- Inspection Services
- Contract Management

**Communication and Technical Services Section:**

- Communication
- Professional Development
- Information Technology
- Imaging and Records Retention
- PO Encumbrance
- Vendor Registration
- Bid Distribution/Receipt

**Program Services Section:**

- State and Federal Surplus Property Programs
- Travel Management
- Inventory Management (Fixed Assets)



**1.6 Disclaimer:** The Purchasing Division Procedures Handbook is provided for reference purposes only. This handbook may be amended or changed at any time at the discretion of the Purchasing Director to ensure compliance with the laws, rules and procedures of the Purchasing Division and the State of West Virginia. Exceptions to these guidelines require written requests to and approval by the Purchasing Director.

**1.7 Public Records:** All records in the Purchasing Division related to purchase orders and contracts are considered public records. The only exemptions to disclosure of information are listed in the **West Virginia Code** §29B-1-4. All bids, proposals or offers submitted by vendors shall become public information and are available for inspection during normal business hours. All public information may be released with or without a Freedom of Information request.

The submission of any information to the Purchasing Division by a vendor puts the risk of disclosure on the vendor. Upon the written request of a vendor, the Purchasing Division will make a reasonable effort not to disclose information that is within the guidelines of §29B-1-4. The Purchasing Division does not guarantee non-disclosure of any information to the public.

Copies of records are available upon written request from the vendor. A cost of 50 cents per page (minimum of \$10) is charged to furnish copies. Copy charges must be paid in advance. Copies of most bids can be obtained from the Purchasing Division website ([www.state.wv.us/admin/purchase/bids](http://www.state.wv.us/admin/purchase/bids)).

**1.8 Ethics:** State procurement officers have the responsibility of purchasing commodities used in the operation of public programs and services in the most effective and efficient method available. In performing this task, certain guidelines based on the **West Virginia Code** must be followed. Our ethical standards must be of the highest degree since public funds are being used.

The Purchasing Division abides by the *Code of Ethics* created by the National Institute of Governmental Purchasing (NIGP), which is found in Appendix F.

**1.9 Automated Purchasing System:** The automated purchasing system, referred to as TEAM (*Team Effort for Acquisition Management*) officially went into effect July 15, 1991, to enable state agencies to enter requisitions electronically. The goal of the system was to improve the access, efficiency and management of information regarding the procurement of commodities and services necessary to operate state government.

TEAM offers many beneficial features, including but not limited to, online requisition entry, internal agency approval procedures, statistics compilation, RFQ preparation, and purchase order information and status. Training is available to new and experienced users. State agencies should refer to the TEAM Training Handbook with their questions. For additional information, please call (304) 558-2314.

**1.10 Violations:** The laws that govern the public purchasing process are strict and demand the highest degree of discretion and ethical behavior. The **West Virginia Code** addresses penalties for violating purchasing procedures:

**§5A-3-17: Purchases or contracts violating article void; personal liability**

If a spending unit purchases or contracts for commodities contrary to the provisions stated in the *Code* or the rules and regulations, such purchase or contract shall be void and of no effect. The head of such spending unit shall be personally liable for the costs of such purchase or contract and, if already paid out of state funds, the amount may be recovered in the name of the state in an appropriate action instituted therefore.

**§5A-3-29: Penalty for violation of article**

Any person who violates a provision of the *Code*, except where another penalty is prescribed, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail not less than ten (10) days nor more than one (1) year, or fined not less than \$10 dollars nor more than \$500, or both, in the discretion of the court.

**§5A-3-30: Obtaining money and property under false pretenses or by fraud from state; penalties**

It shall be unlawful for any person to obtain from the state under any contract made under the *Code*, by false pretense, token or representation, or by delivery of inferior commodities, with intent to defraud, any money, goods or other property, and upon violation thereof, such person shall be guilty of a felony, and, upon conviction thereof, shall be confined in the penitentiary not less than one (1) year nor more than five (5) years, and be fined not exceeding \$1,000.

**§5A-3-31: Corrupt combinations, collusions or conspiracies prohibited; penalties**

It shall be unlawful for any person to corruptly combine, collude or conspire with one (1) or more persons with respect to the purchasing or supplying of commodities or printing to the state under the *Code* if the purpose or effect is either to lessen competition, or cause the state to pay a higher price, or cause one prospective vendor to be preferred over another.

**§5A-3-32: Power of Director to suspend right to bid; notice of suspension**

The Director shall have the power and authority to suspend, for a period not to exceed one (1) year, the right and privilege of a vendor to bid on state purchases when the Director has reason to believe that such vendor has violated any of the provisions of the purchasing law or rules and regulations.

**§5A-3-33: Review of suspension by Cabinet Secretary**

Any vendor whose right to bid on state purchases has been suspended by the Director under the authority of *West Virginia Code* §5A-3-32, shall have the right to have the Director's action reviewed by the Cabinet Secretary (of the Department of Administration), who shall have the power and authority to set aside such suspension.



# PROCEDURES HANDBOOK

## SECTION 2: DEFINITIONS, ABBREVIATIONS AND ACRONYMS

### 2.0 DEFINITIONS, ABBREVIATIONS AND ACRONYMS

**2.1 Scope:** When using this handbook, it is important to begin by defining various terms that are used in the state procurement process and in other programs administered by the Purchasing Division. Below are several of these terms and their definitions:

**Agency** - For the purpose of this handbook, *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 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 or services that are frequently purchased that 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 which was competitively bid, evaluated, awarded and maintained by the state agency. This contract is for purchases under \$25,000 annually and for commodities and services that are frequently purchased that are not on a statewide contract.

**Agency Delegated Purchase Order** - A form (*WV-88*) which may be used by an agency to procure items within its delegated small purchase authority.

**Award Date** - For purchases over \$25,000, the award date is the date of encumbrance by the Purchasing Division.

**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 Cost Cycle (LCC), and Expression of Interest (EOI).

**Bid** - A competitive offer made by a seller.

**Bid Bond** – A bond in which a third party agrees to be liable 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.

**Bid Opening** - A firmly established date and time for the public opening of responses to a solicitation.

**Buyer** - An employee of the Purchasing Division whose primary assignment is purchasing commodities or services on behalf of the state.

**Change Order** - A document (*WV-35 for formal procurements or an Agency Purchase order, WV-88, or TEAM generated purchase order for agency delegated purchases*) which is used when it becomes necessary to amend, clarify, change or cancel purchasing documents issued by the Purchasing Division.

**Commodity** - Supplies, materials, equipment, contractual services and any other articles or things used by or furnished to a department, agency or institution of state government.

**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.

**Direct Purchase** - A transaction in which a purchase is made from a sole source vendor.

**Electronic** - Electrical, digital, magnetic, optical, electromagnetic or any other similar technology.

**Electronic Transmission** – Any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval and reproduction of information by the recipient.

**Emergency** - A purchase made when unforeseen circumstances arise, including delays by contractors, delays in transportation and 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 hardship resulting from neglect, poor planning or lack of organization by the spending unit. Failure to plan does not make it an emergency situation.

**Evaluation of Bids** - After the bid opening, the process of examining all offers in order to determine the bidder's responsibility, responsiveness to requirements, conformance to specifications and other characteristics important to the recommendation or selection for award.

**Expendable Commodities** - Commodities which, when used in the ordinary course of business, will become consumed or of no market value.

**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.

**Fixed Assets** - Reportable property with an acquisition cost of \$1,000 or more **and** has a life of one (1) year or more.

**Freight Terminology** - Terms used to specify the point of origin and destination, stating the responsible party for bearing freight charges and when title passes to another.

**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).

**Justification** - A written explanation of an award which must be retained as a public record available for inspection when not awarding to the lowest bidder.

**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 for on behalf of the state in a construction project.

**Lease** - A written agreement between the owner of equipment (lessor) and a state agency (lessee) by which the owner agrees to give the agency permission to use the equipment for a predetermined fee (rental) for a period exceeding thirty (30) days. Title does not pass from the lessor to the lessee.

**Lease Purchase** - A written agreement in which the lease payments are applied, in whole or in part, as installment payments for equity or ownership upon completion of the agreement. Title transfers with the last installment payment to the lessee.

**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 or due dates.

**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 which 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.

**Nonprofit Workshops** - An establishment where manufacture or handiwork is carried on, which is operated either by a public agency, a cooperative, a nonprofit private corporation, or nonprofit association, in which no part of the net earning inures, or may lawfully inure, to the benefit of any private shareholder or individual. It is operated for the primary purpose of providing remunerative employment to blind or severely disabled persons who cannot be absorbed into the competitive labor market and which shall be approved, as evidenced by a certificate of approval, by the State Board of Vocational Education, Division of Vocational Rehabilitation.

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

**Piggybacking** - Utilizing any existing open-end contract of the federal government, agencies of other states, other public bodies or other state agencies to which the requesting agency was not an original party. Piggybacking requires prior approval by the Purchasing Director.

**Pre-bid Conference** - A meeting between vendors and agency personnel which offers 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.

**Prevailing Wages** - Fair minimum rate of wages, including fair minimum overtime and holiday pay, determined by the West Virginia Division of Labor that must be paid to laborers, workmen, or mechanics on all contracts for the construction of a public improvement.

**Printing** - Services including printing, binding, ruling, lithographing, engraving and other similar services.

**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 issued by the Purchasing Division (***WV-16***) used to execute a purchase transaction with a vendor. It serves as notice to a vendor that an 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.

**Purchasing Bulletin** – An electronic publication posted weekly by the Purchasing Division on its website advertising purchases expected to exceed \$25,000 for all agencies under the Purchasing Division’s jurisdiction.

**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.

**Removable Property** - Any personal property not permanently affixed to or forming a part of real estate.

**Renewal** -When an existing contract is renewed for an additional time period in accordance with the terms and conditions of the original contract.

**Rental** - Temporary compensation or fee paid for the use of any equipment usually for a period of less than thirty (30) days.

**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 Quotation (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.

**Requisition** - A written or electronic request by an agency for the purchase of commodities and services.

**Services** - Work performed by a vendor that does not consist primarily of tangible commodities.

**Ship To** - The destination to which the commodity is to be delivered.

**Spending Unit** - A department, agency or institution of state government for which an appropriation is requested, or to which an appropriation is made by the Legislature.

**Sole Source** - The only vendor that can supply a needed commodity or service.

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

**Specifications** - A detailed description of a commodity or service to be included in a solicitation or bid or an awarded contract.

**Standard Exhibit** - Standardized language developed and approved by the Purchasing Division and Attorney General's office which establishes contract clauses such as life of contract, price adjustment and ordering procedures.

**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.

**Stringing** - Issuing a series of requisitions or purchase orders to circumvent competitive bidding or to defeat the State Purchasing Card transaction or delegated purchasing limit.

**TEAM** (*Team Effort for Acquisition Management*) - The state's automated purchasing system.

**Terms of Sale** - Stipulations made within the contract regarding the transaction.

**Tie Bid** - When two (2) or more bids of equal terms and amount or score are received in response to a solicitation.

**Unit Price** - The cost per unit of the commodity or service.

**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**.

**WVFIMS** (*West Virginia Financial Information Management System*) - The state's automated accounting system.

**WVFIMS Documents** - Documents generated within the West Virginia Financial Information Management System, including the following:

“**I**” document is the generated document when payment has been made.

“**P**” document is a WVFIMS purchase order coversheet generated by the agency when a requisition is prepared and submitted to the Purchasing Division.

“**X**” document is a WVFIMS coversheet generated at the agency level for changes to a P-document.



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## SECTION 3: PURCHASING LEVELS OF AUTHORITY

### 3.0 PURCHASING LEVELS OF AUTHORITY

**3.1 General:** Competitive bidding is the foundation of public purchasing in the State of West Virginia.

There are two (2) levels of purchasing authority, depending upon the dollar value of the purchase:

**(1) Agency Delegated Acquisitions** (performed by the state agency for procurements \$25,000 or less)

**(2) Formal Acquisitions** (processed by the Purchasing Division for procurements over \$25,000).

State agencies have a procurement officer who is responsible and knowledgeable in state purchasing guidelines as well as their own agency procedures. All purchases must be approved by the secretary or head of the spending unit, or a designee, whose name shall be filed with the Director of Purchasing. The person(s) named should take available purchasing training and have responsibility for the function of purchasing. Each spending unit shall process all purchases through this person(s), who shall be responsible for correspondence and communication with the Purchasing Division. It is important to note that questions from agency personnel relating to purchasing issues should be directed **first** to the respective agency procurement officer rather than directly to the Purchasing Division. All purchasing transactions, including emergency and sole source procurements, should be conveyed to the Purchasing Division through the primary state agency designated procurement officers.

**3.2 Agency Delegated Acquisitions (\$25,000 or Less):** 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. State agencies should 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.

Agencies must indicate “not to exceed” an amount of \$25,000, which will allow the State Auditor’s Office to determine if the involvement of the Purchasing Division and Attorney General’s Office is required.

Purchases made under Agency Delegated authority are processed at the agency level. Therefore, requisitions, purchase orders or other documentation should be retained by the agency and not forwarded to the Purchasing Division.

**Agency personnel are always encouraged to use West Virginia vendors for delegated purchases.** Utilizing our resident vendors helps to strengthen our overall state economy. Refer to Vendor Registration requirements in Section 5 for more information.

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. All bids should be documented on a **Verbal Bid Quotation Summary (WV-49)**. A “no bid” is not considered a bid.

Purchases \$5,000.01 to \$25,000 require three (3) **written** bids, where possible, the lowest bid meeting specifications must be awarded the purchase order/contract. Agencies should use the **Request for Quotation (WV-43)** to document those vendors solicited and their responses. Signed fax or electronic bids are acceptable. A vendor choosing to submit a bid or a written change to a bid by electronic transmission accepts full responsibility for transmission and receipt of the bid or written change to a 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 file.

For technical purchases, please refer to **Section 4.6.1.4**.

For more information on agency delegated purchasing authority, see Section 6.

**3.3 Formal Acquisitions (Over \$25,000):** The Purchasing Division of the Department of Administration is responsible for acquiring all commodities and services on behalf of the state. Agencies under the executive branch of state government are required to process purchases estimated to exceed \$25,000 through the Purchasing Division, unless statutorily exempt.

The Purchasing Division has the authority to make, 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.

Additional information on formal procedures for purchases over \$25,000 may be found in Section 7.



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## SECTION 4: ACQUISITION PLANNING

### 4.0 ACQUISITION PLANNING

**4.1 General:** The effective purchase of needed commodities and services begins with proper planning. The first step is to determine the commodity or service that is needed, the quantity, the quality level, delivery location and time frame.

When preparing for a purchase **prior to the actual bidding process**, the following steps should be taken:

- Define need
- Consider acquisition and delivery lead time
- Create specifications for the commodity
- Research the market
- Explore internal sources, considerations and approvals
- Check mandatory resources
- Prepare the requisition and maximum budgeted amount
- Identify possible vendors

**4.2 Define Need:** Determining the exact requirements for a commodity to perform a specific function is one of the most important tasks in the procurement process. The agency must take into consideration the problem to be resolved and what alternatives or options are available to satisfy the need. See **Appendix M – Ten Steps of the Purchasing Process**.

### 4.3 Acquisition and Delivery Lead Time

**4.3.1 Administrative Lead Time:** Administrative lead time is required for all purchases. The average time required to prepare, solicit, evaluate and make an award varies depending upon the dollar value, responsiveness of vendors offering the commodity and the complexity of the requisition.

**Agencies should always consider the expiration of funds when planning administrative lead time.**

**4.3.1.1 Backdating Documents:** All agreements, many change orders and other documents require an effective date, at which time the vendor may begin to supply the commodities or services as specified. The **West Virginia Code §5A-3-1 et seq**, requires the Purchasing Division to authorize purchases on behalf of state agencies, and the Attorney General’s office to approve those purchases “as to form” before the contract is legal and binding. Verbal approval by agency personnel is prohibited for a vendor to proceed without a properly executed

purchase order and is considered an illegal act. The **West Virginia Code** §5A-3-17, §5A-3-29, and §5A-3-31, establishes personal responsibility and penalties for noncompliance. Backdating transactions resulting from sole source determination or any other documents may not be honored.

The Purchasing Division may not accept any agreements, change orders or other documents which set an effective date that precedes the date of arrival in the Purchasing Division by more than 20 calendar days. All documents beyond 20 days may be returned unapproved. Any exceptions must be approved by the Purchasing Director.

**4.3.2 Delivery Lead Time:** Order or ship time is the time after award that is required by suppliers to fill an order and deliver by designated means (truck, rail or air) to the delivery point. These times vary widely by industry or commodity. Consideration must be given to market conditions which will affect delivery. Custom-made and complex items of equipment normally take longer to obtain than in-stock items.

**4.4 Specifications:** Specifications can either enhance or inhibit competition. In accordance with **West Virginia Code** §5A-3-11, competition must be sought, whenever possible. This can be accomplished by describing products and services in a manner which meets the agency's needs and encourages competition. Specifications used in the procurement process shall be retained with the purchasing file for each purchase order. Written specifications are required for purchases between \$5,000 and \$25,000 at the agency level to ensure vendors are being provided a fair opportunity to quote comparable products.

A specification is a concise statement explaining the type of product or service, the quality level, special requirements in design, performance, delivery and usage. Specifications must not be restrictive (locking in a specific vendor and limiting competition) or be vague (allowing a vendor to provide a lower than acceptable quality level product or service).

A good specification should contain language that is the following:

- Clearly understandable to both the buyer and the seller
- Complete
- Concise
- Identifiable wherever possible with some brand or specification already on the market
- Verifiable
- Reasonable
- Legible

No reference may be made in a solicitation to external published specifications without the express, written approval of the Purchasing Director. When external published specifications are referenced in a Request for Quotation or Request for Proposal, a hard copy of those specifications must be included with the solicitation.

**4.4.1 Types of Specifications:** There are three (3) types of specifications used separately and/or in combination to communicate requirements for goods and services to the vendor:

**4.4.1.1 A “Brand Name(s) or Equal” Specification** is based upon **one (1) or more** manufacturer’s commodity description(s), model number(s) and quality level. The manufacturer’s commodity numbers must be easily identified in a current publication that is available to most vendors. Commodity descriptions must be sufficiently detailed, and specify only the required features needed for the application. Unless a feature or requirement is specifically listed on the requisition, it shall not be used to disqualify a vendor.

**4.4.1.2 A Performance Specification** is based upon the specific performance needs of the purchaser. The performance specification is less structured as to how the product is made, and more structured as to how well it performs. Total ownership cost for operating and maintaining the product may be an element of the specification.

**4.4.1.3 A Design Specification** concentrates on the dimensional and other physical requirements of an item being purchased. The design specification is used when the commodity has to be specially made to meet the purchaser’s **unique** needs.

Combinations of the above may be used to communicate clear specifications to vendors. A performance specification may refer to a nationally accepted testing procedure for a commodity; a design specification may indicate the physical size and dimension of the commodity; and a brand name or equal specification may be used to indicate a desired quality level.

**4.4.2 West Virginia Standard Specifications:** According to *West Virginia Code* §5A-3-5, the Purchasing Director shall promulgate and adopt standard specifications based on scientific and technical data for appropriate commodities, which shall establish the quality to which such commodities to be purchased and services to be contracted for by the state must conform. These standard specifications, which are prepared and adopted by the Purchasing Division for various products and services, are written with the input of state agencies and vendors for products and services that are used by many state agencies. By using standard specifications, the state is assured of an acceptable quality that meets the state’s needs. These standard specifications shall include information relating to the cost of maintenance and expected life of the commodities, services or printing when the Director determines there are nationally accepted standards for commodities, services or printing.

**4.4.3 Assistance in Preparing Specifications, Purchase Descriptions:** Most state agencies have a procurement officer who is responsible and knowledgeable in state purchasing guidelines as well as their own agency procedures. It is important to note that questions from agency personnel relating to purchasing issues should be directed **first** to the respective agency procurement officer rather than directly to the Purchasing Division. If the agency procurement officer needs assistance, they are encouraged to contact the appropriate state buyer in the Acquisition and Contract Administration Section of the Purchasing Division for assistance in preparing specifications. (See Appendix C).

**4.4.4 Format:** When preparing a **Purchase Requisition (WV-35)**, a specification format should be used. If the agency currently has a contract for the needed commodity or service, submit the existing contract number and expiration date with the **Purchase Requisition** when submitting to the assigned buyer in the Purchasing Division. If this is a new contract, also indicate this information to the Purchasing Division buyer. This information will assist the buyer in developing timelines for bidding and acquiring a new contract prior to the expiration of the existing contract.

The **Purchase Requisition** must include the following:

Total Estimated Value of this Requisition: This is the amount that the agency expects to pay for this product or service. This amount is based upon past contracts for these products and/or services and market research.

Maximum Budgeted Amount: This is the maximum available funding determined by the agency at the time of submitting a Request for Quotations or Proposals to the Purchasing Division. This amount is required on all Purchase Requisitions. For purposes of determining the agency's ability to negotiate, under **West Virginia Code §5A-3-11a**, this amount cannot be changed after bid opening.

### **Quantity**

The total quantity requisitioned and the unit of measure, such as cases, each, pounds, etc., must be shown in the appropriate column.

### **Type of Purchase**

The type of purchase should be identified in capital letters as the heading of the description of the **Purchase Requisition**. For additional information on types of purchases, see **Section 4.7.1**.

### **Description**

When using a brand name specification, the words "OR EQUAL" must be inserted to inform vendors that alternate bids will be considered. The general name of the items, e.g., air blowers, automobiles, etc., should be listed first; the manufacturer and model number of the item should follow immediately. Literature should be requested to accompany any alternate bid which can verify that the alternate bid complies with the specifications. The description shall contain the essential requirements that clarify the quality level or indicate the features that are important to the function of the item/service being purchased.

Make sure the **Purchase Requisition** and any attachments are in compliance with the following:

- Appropriate for photocopying
- Neatly typed
- Free of typographical errors
- Approved by an authorized agency representative

The information entered on the requisition is a reflection on the agency and the State of West Virginia. Please insist on high quality work. Improperly completed requisitions or inferior quality will be returned to the agency for correction.

The buyer may request electronic copies of specifications from state agencies in order to expedite the procurement process. Agency designated procurement officers are strongly encouraged to submit their requisitions to the Purchasing Division electronically by e-mailing ***Purchasing.Requisitions@wv.gov***.

**4.4.4.1 Specification Templates:** Several sets of templates related to Request for Quotation purchases are available for use by state agencies to streamline processing transactions. The templates relate to such specification types as Catalog Discount Request for Quotation Standard Format, One-Time Purchase Request for Quotation Standard Format and Open-End Request for Quotation Standard Format. These templates are available on the Purchasing Division's intranet site at:

***<http://intranet.state.wv.us/admin/purchase/procedures.html>***

**4.4.5 Design Services/Consultant:** Any individual, corporation, or firm (except as provided by a statewide contract) paid to custom design or write specifications for a modular office system, computer system, construction or any other project or contract shall not be permitted to competitively bid to provide the product or service that was designed. This removes the possibility of the designer developing specifications that only the designer can meet or restrict another vendor from meeting. This also prevents the appearance of any impropriety, thereby protecting the integrity of the competitive bid process.

**4.4.6 Product Testing:** Any testing of specific brands of products, which may lead to future purchases restricting competition, must have pre-approval, in writing, by the Purchasing Division.

Agencies should 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, etc.

Agencies may call vendors for information or copies of specifications for consideration of a particular brand or manufacturer without jeopardizing the vendor's ability to compete in the bid process as long as the vendor does not receive compensation or any form of favoritism.

**4.5 Research the Market:** When preparing specifications, it may be necessary to research the market to gain a better understanding of equipment, its technology, compatibility and availability.

**4.5.1 Request for Information (RFI):** The Purchasing Division recognizes only one (1) formal method for requesting written information from vendors for the purpose of developing a Request for Quotation (RFQ) or a Request for Proposal (RFP). That method is a Request for Information (RFI).

An RFI shall be used at the discretion of the agency or the Purchasing Division; it is not a mandatory prerequisite to the issuance of an RFQ or an RFP. An RFI should be used when appropriate expertise or information is lacking to develop adequate specifications for an RFQ or RFP. This process allows for the assistance of multiple vendors who have expertise and can provide information in the area of concern.

RFI's can be processed at the agency delegated level (\$25,000 or less) or by the Purchasing Division for high dollar procurements. RFI's for commodities and services over \$25,000 must be advertised by the Purchasing Division. An RFI shall not be used to make an award of a purchase order or contract.

**4.5.2 Trade-In:** The trade-in process consists of two steps. First, any agency desiring to utilize the trade-in process should ensure that bids for a new item include prices with the trade-in and without the trade-in. Second, the agency should submit the bids and any other required documentation to the West Virginia State Agency for Surplus Property (WVSASP) to seek approval for the trade-in prior to awarding the contract for the new item.

If the trade-in is approved, the agency shall forward a signed copy of the cover sheet with a status of "AAP" to the Purchasing Division buyer (or to the agency buyer if an agency delegated purchase of new items), who will then award a purchase order and ensure that the appropriate credit for the trade-in is received. The agency must then submit documentation verifying receipt of the credit to WVSASP and WVSASP will verify the application of the credit and complete the retirement. If the original cost of the items to be traded in is less than \$1,000 and is not listed in the Fixed Asset System, the asset must be added to the Fixed Asset System for trade-in purposes.

Only one-for-one trade-ins will be considered and items may be traded only for the same type of item. Trade-ins will not be authorized for items purchased from statewide contracts or sole source vendors, unless it is in the best interest of the state and approved by WVSASP.

It is important to note that the value of the new items without consideration of the trade-in allowance is the value to be used for determining the purchase process and also the value to be reflected on the agency's fixed assets.

A trade-in allowance does not allow a state agency to alter or circumvent the purchasing process.

For additional information on trading in equipment, please see the Surplus Property Operations Manual in Appendix G.

**4.6 Define Sources:** In the planning process, it is mandatory that agencies review all internal sources and mandatory resources as detailed below.

#### **4.6.1 Internal Sources, Considerations and Approvals**

**4.6.1.1 Surplus Property:** The West Virginia State Agency for Surplus Property operates a state and federal surplus property program.

The State Property Program consists of property no longer needed within state government agencies which is made available to eligible public and nonprofit organizations. The property may also be made available to the general public through competitive public auctions and sealed bids.

In addition to the state Property Program, a federal Property Program is administered. The program serves all eligible organizations and acts as a clearinghouse by offering new and used equipment at reduced costs for acquisition.

In addition to the availability of surplus property, another function of this program is to approve the disposal of property no longer needed by the agencies, including trade-ins against the purchase of new property.

Agencies do not have authority to dispose of any property regardless of value without written approval from the West Virginia State Agency for Surplus Property. All methods of property disposal **must** be coordinated through Surplus Property.

State agencies are encouraged to refer to the West Virginia Surplus Property Operations Manual (see [Appendix G](#)) or visit its website at **WVSurplus.gov**.

Any questions concerning the disposal or sale of state surplus property should be directed to the West Virginia State Agency for Surplus Property at the address below:

**West Virginia State Agency for Surplus Property  
2700 Charles Avenue  
Dunbar, West Virginia 25064**

**(304) 766-2626  
1-800-576-7587**

**4.6.1.2 Commodities and Services Provided by Correctional Industries:** In accordance with **West Virginia Code** §25-7-5, all offices, departments, institutions and agencies of the state which are supported in whole or in part by this state shall purchase, and all political subdivisions of this state may purchase, all articles or products which they require from the commissioner, if those articles or products are produced or manufactured by correctional industries, as provided by article 7 of Chapter 25 of the West Virginia Code. No state office, department, institution or agency may purchase an article or product which correctional industries produces from any other source, unless specifically excepted from the provisions of §25-7-5 pursuant to §25-7-6.

These commodities and services must meet certain quality and price standards which are comparable to open-market sources. Use of Correctional Industries does not require bidding.

In accordance with **West Virginia Code** §25-7-6, exceptions from the mandatory purchase provisions of §25-7-5 may be granted when a correctional industries article or product does not meet the reasonable requirements of the requesting state office, department, institution or agency, or when the requisition cannot be fulfilled because of insufficient supply or other reason. No state office, department, institution or agency may evade the requirements of §25-7-5, or of §25-7-6, by making insubstantial variations from the characteristics of correctional industries products or articles.

Correctional Industries offers a wide variety of products and services to state agencies. In addition to being the preferred contractor for wooden furniture, it also provides other types of furniture, Braille, welding, engraved signs, mattresses, custom signs, tags, janitorial supplies, linens, seating, detergents, inmate clothing, upholstery and decals. Correctional Industries is the sole source supplier for all printing and quick copy services.

For specific information on available commodities and services, contact Correctional Industries at (304) 558-6054 or visit <http://www.wvcorrectionalindustries.com>.

**4.6.1.3 Commodities and Services Provided by Sheltered Workshops:** All state agencies are required by **West Virginia Code** §5A-3-10, to purchase commodities and services from sheltered workshops whenever such commodities and services are available and meet certain quality and price standards which are comparable to open-market sources. Use of sheltered workshops does not require bidding for commodities and services included in the WVARF statewide contract. Commodities and services not included in the WVARF statewide contract require competitive bidding.

If the West Virginia Association of Rehabilitation Facilities is unable to provide the requested commodities and services, a written notice will be provided by WVARF advising the agency that their request is unable to be met at that time and competition may be sought in accordance with the state purchasing procedures. For specific information on the sheltered workshops or the available commodities and services, contact WVARF at (304) 766-4894, or visit [www.state.wv.us/admin/purchase/swc](http://www.state.wv.us/admin/purchase/swc).

**4.6.1.4 Technology:** The **West Virginia Code** §5A-6 requires that the Chief Technology Officer (CTO), in conjunction with the Information Services & Communications Division (IS&C) of the Department of Administration, review and approve all data processing procurements for state agencies.

All infrastructure purchases, regardless of dollar value, require CTO approval prior to submission of a request to use any type of solicitation. Since the CTO may require changes by the agency, the Purchasing Division's review of documentation without CTO approval may not be practical. All state entities, with the exception of Constitutional Officers, Higher Education and K-12, shall request approval for, at a minimum, but not limited to, the purchase of servers, storage device, routers, hubs, switches, firewalls, video conferencing and telephone

equipment, including PBX system. The applicable infrastructure purchases also include infrastructure software of all types, whether it is e-mail applications, anti-virus software or any other interoperability application.

Different than infrastructure purchases in the previous paragraph, state agencies may procure computer application software and other non-infrastructure software, as well as IT consulting services with an estimated value of less than \$10,000 without CTO approval, but must provide copies of agency purchase orders to the CTO. **All purchases of computer hardware, software and consulting services in excess of \$10,000 must have prior approval of the CTO before it can be processed.** Such proposed purchases must be submitted to the Office of Technology for review and evaluation, and the results will be forwarded to the CTO for final approval.

**The agency must obtain approval from the CTO prior to submitting purchasing transactions to the Purchasing Division.**

**4.6.1.5 Other Considerations:** Depending upon the commodity, there are certain requirements to consider when preparing specifications.

On any contract for the construction of a public improvement, the vendor and any subcontractors utilized by the vendor shall pay a rate or rates of wages which shall not be less than the fair minimum rate or rates of wages (prevailing wage), as established by the West Virginia Division of Labor under the **West Virginia Code** §21-5A-1 et seq. and available at <http://www.sos.wv.gov/administrative-law/wagerates/Pages/default.aspx>. The vendor shall be responsible for ensuring compliance with prevailing wage requirements and determining when prevailing wage requirements are applicable. The required contract provisions contained in the **West Virginia Code of State Rules** §42-7-3 are specifically incorporated by reference.

Other considerations should include the contractor's license, certificate of insurance, and Workers' Compensation, unemployment compensation and bonds. (See Sections 6.2.3 and 7.2.19 for additional information.)

**Recycled Products:** In accordance with **West Virginia Code** §22-15A-21, all agencies and instrumentalities are encouraged, to the maximum extent possible, to purchase recycled products.

Recycled paper products shall be given a price preference of ten percent, provided, however, that priority shall be given to paper products with the highest postconsumer content. Agencies should remove any language in the specifications that discriminate against recycled products. The use of disposable and single-use products should be eliminated, to the maximum extent possible. Compost in all land maintenance and landscaping activities are to be used by state agencies and the use of composted or deep stacked poultry litter products, certified by the Commissioner of Agriculture as being free from organisms that are not found in poultry litter produced in this state, have priority unless determined to be economically unfeasible by the agency.

**Required Attachments:** A **Purchasing Affidavit** is a required attachment on written Request for Quotations (RFQ) for all purchases exceeding \$5,000. In addition, the **Vendor Preference Certificate** is attached to all RFQ's with the exception of construction projects (See Appendix B).

#### **4.6.2 Mandatory Contracts**

**4.6.2.1 Statewide Contracts:** **West Virginia Code** §5A-3-5, authorizes the Purchasing Director to promulgate and adopt standard specifications based on scientific and technical data for appropriate commodities and services, which establishes the quality to which such commodities and services to be purchased and services to be contracted for by the state must conform. These standard specifications are used to establish statewide contracts for commodities that are needed on a repetitive basis and are established for the benefit of state spending units. (See Appendix E).

No agency may be exempt from using statewide contracts without prior written approval from the Purchasing Director. When such prior written approval is obtained, it must be retained with the purchase order file for each transaction to which the approval applies.

The commodities and services available on statewide contracts are to be used for official purposes only and are not available for employees of a spending unit for their personal use.

**Use of the State Purchasing Card shall not to be used as a payment method to circumvent purchases from established contracts.**

**4.6.2.2 Agency Open-End Contracts (Over \$25,000):** Upon request by the state agency, the Purchasing Division establishes agency open-end contracts through competitive bid for commodities and services needed on a repetitive basis. Once established, the agency is required to use this contract.

**Piggybacking on agency open-end contracts may be permitted upon written approval of the Purchasing Director.**

**4.6.2.3 Agency Delegated Contracts (\$25,000 or Less):** The agency is required to use its established contracts through the life of the contract. Piggybacking on agency delegated open-end contracts is discouraged as it may exceed \$25,000.

#### **4.6.3 Piggybacking Contracts:** **West Virginia Code** §5A-3-19 states:

*"the Purchasing Director may, upon the recommendation of a state spending unit, participate in, sponsor, conduct, or administer a cooperative purchasing agreement or consortium for the purchase of commodities or services with agencies of the federal government, agencies of other states, other public bodies or other state agencies, if available and financially advantageous. At the discretion of the director, bids may be*

*solicited to determine whether participation in such a cooperative purchasing agreement or consortium is financially advantageous. The Department of Administration may approve administrative fees, not to exceed the amount of fifty thousand dollars (\$50,000), necessary to participate in a cooperative purchasing agreement. Fees which exceed fifty thousand dollars are subject to the competitive bid requirements of this article."*

The **Code of State Rules** 148 CSR 1 7.9 address these types of contracts as follows:

*7.9. Purchases from contracts issued by other public agencies and entities*

*7.9.1. The Director may approve a request by a spending unit to make a purchase from contracts issued by agencies of the federal government, agencies of other states, other public bodies or other state agencies. The Director may require the use of a contract issued by another public organization or a spending unit to make a purchase from contracts issued by other public agencies and entities.*

*The Director may participate in cooperative purchases with other public agencies and entities. In all cases, these contracts or cooperative arrangements shall be from valid properly awarded contracts and considered by the Director to be available and financially advantageous and comparable to what can be obtained by competitive bid. The Director shall require spending units to prove that their requests to use such contracts:*

*(a) Do not conflict with existing State of West Virginia contracts unless the prices on the contracts issued by other public agencies and entities is substantially lower than the state contract based on an equal comparison. No price comparison may be based on differing specifications as determined by the Director;*

*(b) Will not cause a West Virginia vendor that offers like products and services to lose substantial business, unless the Director determines based on submitted documentation from the spending unit that the difference in price is so great that the State's best interest is served by using the contracts issued by other public agencies and entities; and*

*(c) Does not cause extensive hardship to any spending unit offered preference under the West Virginia Code.*

*7.9.2. All requests to use such contracts shall be submitted in advance to the Director with necessary evidence and documentation. The Director shall approve only those requests submitted with evidence that justifies use of such contracts. Any request that is not supportable shall be returned to the spending unit.*

For more information on how to utilize these types of contracts, please visit Section 8.8. under Special Acquisitions.

## **4.7 Preparation of the Requisition**

**4.7.1 Types of Transactions:** Identified below are six (6) types of purchases: one-time or single purchases; open-end contracts; professional service contracts; emergency purchases; lease and lease-purchases; and direct purchases.

**4.7.1.1 One-Time/Single Purchase:** This method is used to purchase commodities or services that are not considered repetitive. State agencies must submit a completed ***Purchase Requisition (WV-35)*** to the Purchasing Division and a completed WVFIMS coversheet.

**4.7.1.2 Open-End Contracts:** The Purchasing Division issues both statewide contracts and agency open-end contracts. The Purchasing Division, at its discretion or upon request of any state agency, may establish a contract for specific commodities and services required. These open-end contracts are convenient for recurrent purchases. For agency open-end contracts, the state agency determines its specific needs and submits a ***Purchase Requisition (WV-35)*** to the Purchasing Division for competitive bid.

After the contract is established, a “release” may be required to order commodities or services.

**4.7.1.2.1 Releases:** All release orders must reference the complete open-end contract number.

**Not Requiring Purchasing Division Approval:** Most releases do not require advance approval from the Purchasing Division. All releases anticipated to cost \$250,000 or less may be released directly by the agency according to the contract ordering instructions in the existing contracts.

Releases anticipated to cost in excess of \$250,000 require advance approval from the Purchasing Division and shall follow the procedures below. No agency shall issue a series of releases anticipated to cost \$250,000 or less to circumvent this requirement.

### **Releases to a Single Vendor Contract**

Should an agency anticipate issuing a release on an existing open-end contract that may exceed \$250,000, the agency procurement officer must send a memorandum to the Purchasing Division for approval. The memorandum must include a synopsis of the purchase, the item(s), the participating vendor, the bidding information, any award justification (as appropriate), and the amount.

Only after written approval from the Purchasing Division may the agency process the release to the vendor.

**Requiring Purchasing Division Approval:** Some contract releases, in any amount, require the advance approval of the Purchasing Division. When this is a requirement in the contract, it will be stated in the ordering procedures contained in the open-end contract. A ***Purchase Requisition, WV-35***, is used for this type of release order. The ***WV-35*** should be clearly identified as a “Special Release Order.” A WVFIMS coversheet must be submitted with the ***Purchase Requisition***.

Agencies should always refer to the ordering procedures on all statewide contracts for proper instructions.

**4.7.1.3 Professional Service Contracts:** These 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. (See Section 9)

**4.7.1.4 Emergency Purchases:** In accordance with ***West Virginia Code §5A-3-15***, purchases may be necessary when unforeseen causes arise; however, emergency purchases are not used for hardship resulting from neglect, poor planning, or lack of organization by the spending unit.

An emergency purchase is a purchase which can be made only if and after the Purchasing Director, exercising sound judgment and discretion, concludes in good faith and upon reasonable and sufficient grounds that some unforeseen or unexpected circumstance has suddenly created a situation requiring that commodities or services be immediately purchased by a state spending unit and the Purchasing Director in writing authorizes such a purchase. 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.

Agencies must first examine mandatory contracts and other internal sources for availability of the product or service and utilize such. For information on mandatory contracts and internal sources, see **Section 4: Acquisition Planning, 4.6 Define Sources**.

- **Declared State of Emergencies by Governor:** In accordance with §15-5-6(g) of the ***West Virginia Code***, the governor has the authority to suspend certain laws, rules and/or regulations regarding the acquisition of commodities and services by public organizations in the event the governor declares an emergency. When emergency needs relate directly to the declared state of emergency, these procedures are available and outlined on the Purchasing Division’s website at:

<http://www.state.wv.us/admin/purchase/EmergencyProcs2.html>

- **Emergency Purchases \$25,000 or Less:** A minimum of three (3) bids, if possible, should be obtained. Original written bids and written agency justification shall be attached to the agency file. Agency Master Terms and conditions should also be included in requests for bids in emergency situations to the extent that the emergency permits. An **Agency Purchase Order, WV-88**, or a **TEAM generated Purchase Order**, is required if the purchase exceeds \$2,500. Purchasing Division approval is not required for emergencies \$25,000 or less at the agency delegated level.
- **Emergency Purchases over \$25,000:** When an emergency situation occurs during normal business hours, written approval of the Purchasing Director or his/her designee must be obtained prior to making a purchase or execution of any work. A written explanation from the primary state agency designated procurement officer must be provided immediately. If an emergency occurs after business hours, on a holiday or weekend, the primary state agency designated procurement officer may proceed with the emergency purchase and provide immediate written justification of the action to the Purchasing Director on the first working day following the emergency.

A minimum of three (3) bids, if possible, shall be obtained. The awarded vendor must be properly registered with the Purchasing Division. Original written bids shall be attached to the **Purchase Requisition**, and submitted to the Purchasing Division with a letter of justification or a copy of the Director's or designee's written approval along with the **Purchase Requisition** and a completed WVFIMS coversheet. A minimum of three (3) bids shall be obtained, if possible. **Original, signed written bids** shall be attached to the **Purchase Requisition**, and submitted to the Purchasing Division with a letter of justification or a copy of the Director's or designee's written approval. Depending upon the amount of the emergency purchase, Agency Master or Purchasing Master Terms and conditions and other relevant documentation, should also be included in requests for bids in emergency situations to the extent that the emergency permits. Emergency contracts are subject to the same terms and conditions as traditional contracts so it is important to notify vendors of the requirements contained in the terms and conditions as early in the process as possible. The Purchasing Division recognizes that certain emergency situations do not allow time for written bid requests. In those situations it is understandable that terms and conditions will not be addressed until after the emergency situation has been resolved. To access the Purchasing Master Terms and Conditions and Agency Master Terms and Conditions, please visit the Purchasing Division's website at:

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

**4.7.1.5 Equipment Leases and Lease Purchases:** Lease and lease purchase of equipment are methods by which a state agency may obtain equipment and make payments for the use of the equipment over a period of time.

Leases and lease purchases are subject to annual funding authority of the Legislature. The state agency must provide the required funding over the life of the agreement. A reduction in funds or an administrative freeze shall not be sufficient justification to cancel a lease or lease purchase agreement. No lease or lease purchase can be canceled without approval of the Purchasing Division.

Total lease payments should not exceed the original purchase price of the equipment.

State agencies may be authorized by the Purchasing Division to purchase equipment currently under lease if the Purchasing Division competitively bids the lease originally. Each request will be evaluated on its own merits by the Purchasing Division. Approval is required by the Purchasing Division.

**4.7.1.5.1 Lease-Purchase Agreements:** The Finance Division of the Department of Administration administers the Master Lease Purchase Financing Agreement for the state of West Virginia. The minimum purchase cost to consider a lease-purchase as an option is \$100,000.00. When borrowing money, a letter of justification must be prepared, signed by the agency head, and submitted to the Purchasing Division.

If the agency is approved to utilize a Lease Purchase against the Master Lease Purchase Financing Agreement, the agency will solicit bids for the equipment to be financed through normal procurement methods. The agency must provide a copy of the approved letter of justification with its **Purchase Requisition** (WV-35) and note that the resulting purchase will be financed under the Master Lease Purchase Financing Agreement. This requisition must also be routed through the Finance Division. Please note that no financial document will be generated for the purchase order.

After the contract is prepared and approved as to form, by the Attorney General's Office, the contract is held in the Purchasing Division while the release order is generated and approved. A copy of the unencumbered contract will be submitted to the Finance Division in order to execute the Appendix to the Master Lease. The agency will work directly with the Finance Division to facilitate the execution of the Lease Appendix. As time schedules are very sensitive in the execution of the Lease Appendix, the agency and the Finance Division should inform the Purchasing Division Buyer of any deadlines with issuing the documents. The financial document (P-doc) will be issued with the release order.

**4.7.1.6 Sole Source Procurement:** In a sole source situation, competition is not available. The commodity or service is only available from one (1) source.

Regardless of the dollar amount, written justification is required with the following criteria to be used by the Purchasing Division to determine validity of the request:

- (a) The item cannot be obtained through ordinary purchasing procedures;

- (b) The item is unique and not available from any other source; or
- (c) The item is available from a State spending unit or other institution with preference under the West Virginia Code, provided the price, availability, and quality are comparable to those in the open market.

Agencies are encouraged to solicit competition rather than process a sole source request. The Purchasing Director has authority to reject sole source requests whenever competition is believed to be available.

**4.7.1.6.1 Sole Source Procurement – \$25,000 or Less:** If an item is unique and possesses specific characteristics that are available from only one source, an **Agency Purchase Order (WV-88 or TEAM generated purchase order)** must be completed.

A written, signed quotation from the sole source vendor and written justification from the primary state agency designated procurement officer for purchases over \$2,500 must be obtained. Signed fax or electronic quotations are acceptable. A specific description, Agency Master Terms and Conditions, FOB point of shipment and price must be included in the signed quotation. *(A quotation may also be accepted on the vendor's letterhead).*

The spending unit must maintain written documentation at their location certifying that no other sources are available and that the spending unit exhausted all attempts to secure competition.

**4.7.1.6.2 Sole Source Procurements More than \$25,000:** Whenever an item is unique and possesses specific characteristics that the agency views as being available from only one source, the primary state agency designated procurement officer is to submit to the Purchasing Division a formal request in writing, in accordance with **West Virginia Code §5A-3-10c**.

This written request, **Sole Source Request for Consideration (WV-65)**, must include the basis for the sole source procurement and the specific efforts made to determine the availability of other sources. Included with this request must be the **Purchase Requisition**, marked as Sole Source, with a general description of the commodity and service, along with the vendor's quote.

The **Purchasing Affidavit, Non-Conflict of Interest Certification**, an electronic copy of the language for the sole source determination advertisement (See **Appendix N**), and the Purchasing Master Terms and Conditions should be submitted after the **Sole Source Request for Consideration (WV-65)** has been approved by the Purchasing Director

and returned to the agency. The agency shall not negotiate any of the terms and conditions with the vendor until the Purchasing Division has reviewed and approved the potential purchase for advertisement.

The Purchasing Division will advertise the potential sole source purchase with the respective terms and conditions in the **West Virginia Purchasing Bulletin** to ensure no other vendor may provide this commodity or service.

Should no vendor respond to the sole source advertisement, the agency's **Purchase Requisition** will be processed as a sole source purchase. A signed bid quotation from the sole source vendor must also be submitted with the completed **Purchase Requisition (WV-35)**. A specific description, terms, FOB shipping point, and price must be included in the signed quotation. *(The quotation may be on the vendor's letterhead).*

Sole Source purchases require an original signed vendor quotation, a signed letter of justification from the agency and, if the vendor offers alternative terms and conditions, an **Agreement Addendum (WV96)**. A WVFIMS P-document is also required for encumbrance purposes, unless the purchase order is an open-end contract.

If a vendor(s) does respond, indicating they can provide the commodity or services advertised, the sole source **Purchase Requisition** will be canceled and the agency must resubmit a new **Purchase Requisition**, with detailed specifications. The Purchasing Division will process this requisition competitively and advertise in the **West Virginia Purchasing Bulletin** accordingly. Backdating transactions resulting from sole source determination or any other documents may not be honored.

**4.7.2 Terms and Conditions:** Terms and conditions are included to express the intent of the State of West Virginia. Purchasing Master Terms and Conditions are a part of every written solicitation issued through and contract awarded by the Purchasing Division. Agency Master Terms and Conditions are also available for use by state agencies utilizing their delegated purchasing procedures. Both the Agency Master and Purchasing Master Terms and Condition may be found in the Agency Resource Center of the Purchasing Division's website at **<http://www.state.wv.us/admin/purchase/arc/default.html>**. Information and assistance in the preparation or use of additional special terms and conditions not contained in this manual may be obtained by contacting the Purchasing Division.

**4.7.3 Life of Contract:** Contracts should be issued for no more than a twelve (12) month period or cite a specific time for completion for the project or service. A solicitation for a contract that includes an option on the part of the state to extend or renew the contract for an additional period may be advantageous and may be considered. In instances where there may be larger upfront costs or for extremely complex programs or projects where an initial contract term in excess of 12 months is needed, the agency must request approval of the longer term and must provide justification. If price adjustments are permitted during the contract period, the conditions

under which they are authorized must be specified in the original solicitation and resulting contract. All contracts should be reviewed during the contract period to determine if the need still exists for the commodities or services, if prices are fair and reasonable based on the current market conditions, and if performance is satisfactory.

**4.7.4 Renewals:** The standard terms and conditions used by the Purchasing Division indicate a specified date, on which the contract becomes effective, and extend for a period of one (1) year or until such “reasonable time” thereafter as is necessary to obtain a new contract or renew the original contract. The “reasonable time” period shall not exceed twelve (12) months. During this “reasonable” time, the vendor may terminate the contract for any reason upon giving the Purchasing Director thirty (30) days written notice.

Unless specific provisions are stipulated in the contract document, the terms, conditions and pricing established are firm for the life of the contract.

Contracts that contain renewal provisions may be renewed upon the mutual written consent of the spending unit and vendor, submitted to the Purchasing Director thirty (30) days prior to the expiration date. A letter of justification must also be included, stating pertinent reasons for its recommendation to renew the existing contract. These factors include, but are not limited to, vendor performance, market conditions and other analytical measures which indicate that renewing the contract is in the best interest of the state.

Renewals shall be in accordance with the terms and conditions of the original contract and are usually limited to two (2) successive one (1) year periods.

**4.7.5 Change Orders:** All changes to existing contracts must be approved by the Purchasing Division and the Attorney General’s Office (as to form) prior to the commencement of any work. Any change request of a purchase order in excess of ten percent (10%) of the original contract amount (aggregate) is strongly discouraged. The agency must provide the Purchasing Director written justification. The Purchasing Director, at his discretion, may grant a change in any amount if unforeseen circumstances have occurred and such change is in the best interest of the State of West Virginia. This percentage guideline applies to most contracts, but cannot be applied in all types of contracts. For example, this guideline can and should be applied to lump sum type of contracts. For contracts awarded on an “open ended” basis, such as hourly rates, this guideline may not be practical. In those cases or in other situations when an agency may not apply the ten percent (10%) guideline, the agency should contact the appropriate Purchasing Division buyer. See **Section 7.7** “Changes and Reinstatements” for additional information.

**4.7.6 Contract Cancellation:** The Purchasing Director reserves the right to cancel any contract or purchase order upon written notice to the vendor under any one of the following conditions including, but not limited to:

- (a) The vendor agrees to the cancellation;

- (b) The vendor has obtained the contract by fraud, collusion, conspiracy, or in conflict with any statutory or constitutional provision of the State of West Virginia;
- (c) Failure to conform to contract requirements or standard commercial practices;
- (d) The existence of an organizational conflict of interest is identified; or
- (e) Funds are not appropriated or an appropriation is discontinued by the legislature for the acquisition.

Notwithstanding other provisions of this subsection, the Director may cancel a purchase order or contract for any reason or for no reason, upon 30 days' notice to the vendor.

**4.7.7 Pre-Bid Conferences:** When appropriate, the Purchasing Division recommends that agencies conduct "pre-bid conferences" on major acquisitions early in the solicitation cycle to provide an opportunity to emphasize and clarify critical aspects of the solicitation, eliminate misunderstandings and encourage vendor participation. These conferences are conducted by the state agency with potential bidders when solicitations for complex, large dollar requirements are specified.

For more information on pre-bid conferences, visit **Section 7.2.10**.

**4.7.8 Response Time:** When establishing an opening date and time, buyers and/or agency personnel should allow for holiday mail disruptions as well as time required for vendors to respond.

**4.7.9 Evaluation Period:** After bids are opened, a review and evaluation of the bids received is required. The Purchasing Division may immediately award certain open-end contracts without the necessity of the agency's review when the Purchasing Division believes this action is in the best interest of the state of West Virginia. However, when an award has not been immediately made by the Purchasing Division, state agencies may be involved in the evaluation process by reviewing bids, making recommendations and providing justification.

State agencies are encouraged to review the bids when posted online at the Purchasing Division's website. Paper copies will only be provided to the agencies if the bids are too large to post electronically.

If the state agency is involved in the evaluation process, a recommendation for award must be received in the Purchasing Division within five business days of the bid opening date, with the exception of Request for Proposals (RFP) and Expressions of Interest (EOI). RFP and/or EOI recommendations for award must be received within 10 business days.

Failure to comply with these established deadlines may result in the agency requisition being cancelled, unless extenuating circumstances exist. It is the responsibility of the agency to provide justification for keeping a requisition open after these time frames.

The Purchasing Division requires all evaluators and/or advisor(s) of solicitations, despite the type of transaction, to sign a **Certification of Non-Conflict of Interest**, in accordance with the **West Virginia Code** §5A-3-31 (see **Appendix B**). The Purchasing Division also requires that the agency procurement officer also sign this certification. By signing this certification, the evaluator(s), advisor(s) and agency procurement officer attest that: (1) his or her service on the evaluation committee is not in violation of West Virginia Code § 5A-3-31, § 6B-2-5, or any other relevant code section; (2) his or her service on the evaluation committee does not create a conflict of interest with any of the participating vendors; and (3) he or she has not had or will not have contact relating to the solicitation identified herein with any participating vendors between the time of the bid opening and the award recommendation without prior approval of the Purchasing Division. Agency procurement officers should discuss the non-conflict of interest issue with potential committee members to ensure that individuals who may have a conflict are not chosen to participate as evaluation committee members.

Please note that this requirement applies to all transaction types. This certification must be submitted at the following time frames:

- Requests for Proposals (RFP) / Expressions of Interests (EOI): Agencies must submit this certification prior to beginning the evaluation of an RFP or EOI.
- Requests for Quotations and All Other Transaction Types: The evaluator(s) must sign the Certification for Non-Conflict of Interest and submit, along with the recommendation for award, to the Purchasing Division.

This certification applies to all transactions processed through the Purchasing Division. In addition, it is required for agency delegated purchases exceeding \$5,000. Agencies may adopt this policy at their discretion for purchases \$5,000 or less.

Blackout Period: Information regarding the contract award, such as the name of the potential vendor and the amount, may only be released **after** an official award is complete. An award is considered complete only if the contract has been signed by the Purchasing Division, approved as to form by the Attorney General's Office, encumbered and placed in the U.S. mail. When contract award information is released *prior* to a contract award, that information may be incorrect, premature or erroneous and cause work to begin or vendors to protest.

Delays may occur due to a number of factors, such as agency evaluation of bids, bond and insurance requests, Office of Technology / IS&C review/approval, etc.

No person should contact any bidding vendor with regard to the solicitation at hand prior to the award of the contract, without approval of the Purchasing Division.

**4.8 Identify Possible Vendors:** In order to achieve the goal of competitive bidding, a minimum of three (3) bids is required, when possible.

Agency personnel are encouraged to use West Virginia vendors for delegated purchases, when possible, while maintaining compliance with state purchasing guidelines.

Locating vendors selling a particular product or service can be performed in a number of ways, including:

- Reference sources, such as the telephone book's yellow pages and other business listings;
- Supplier's catalogs, which not only offer local distributors but provides descriptive information on their products and current technology of the market;
- Meeting with business representatives;
- TEAM automated purchasing system; and
- Utilizing the Internet.

Agencies should suggest to the Purchasing Division buyer at least three (3) potential vendors who may be qualified to bid on the solicitation. It is important to include the vendor's company name, contact person, mailing address, telephone number, fax number and email address.

**4.9 Federal Funding Requirements:** Any requisition utilizing federal funding which includes special requirements in addition to or different than normal purchasing requirements must be identified when submitted. All special requirements, particularly regarding advertising, must be provided in a separate memorandum and attached to the requisition.



# PROCEDURES HANDBOOK

## SECTION 5: VENDOR RESPONSIBILITIES

### 5.0 VENDOR REGISTRATION:

This section will address the requirements established for vendors who wish to do business with the State of West Virginia.

**5.1 Requirements:** Vendors doing business with the State of West Virginia must be registered by having a ***Vendor Registration and Disclosure Statement and Small, Women-, and Minority-owned Business Certification Application (WV-1 or WV-1A)*** form) on file with the Purchasing Division in accordance with ***West Virginia Code §5A-3-12***. The ***Legislative Rule and Regulation, CSR148***, states that, except for purchasing card vendors providing travel-related services or receiving an aggregate total yearly payment less than \$25,000 from a spending unit, all vendors are required to register with the Purchasing Division. It is the agency's responsibility to make sure vendors are properly registered with the Purchasing Division prior to issuing a purchase order either verbally or in writing. Agencies must retain proof of verification of registration with each Purchase Order file. This is usually accomplished by taking a screen print from TEAM prior to issuance of the purchase order.

**5.1.1 WV-1:** This form is to be completed by vendors who wish to participate in the competitive bid process and receive purchase orders exceeding an aggregate amount of \$1,000. The ***WV-1*** form requires payment of the \$125 annual fee. The vendor's check and the ***WV-1*** form are to be mailed directly to the Purchasing Division. Upon payment of this fee, the vendor will receive access to the ***West Virginia Purchasing Bulletin***, which contains upcoming bid opportunities and downloadable bid documents.

**5.1.2 WV-1A:** This form is to be completed by vendors 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.

**It is imperative that agencies include their agency name and mailing address on the front page of the *WV-1A* form prior to sending it to the vendor.** The vendor is to complete Part I of the form and return to the requesting agency.

The agency procurement officer should review the form for completeness and legibility, complete Part II, sign the form and forward to the Purchasing Division for processing. All incomplete or illegible ***WV-1A*** forms will be returned to the agency procurement officer for disposition. Incomplete ***WV-1A*** forms received in the Purchasing Division without the requesting agency name on the front page of the form and with Part II not completed will not be processed but retained temporarily in a pending file. Part II of the ***WV-1A*** form must be completed by the agency and signed by the agency procurement officer.

Agencies should make certain that vendors are not already registered with the Purchasing Division prior to requesting a vendor to become registered. Agency personnel not having access to the TEAM vendor file should contact their agency procurement officer, rather than the Purchasing Division, for vendor registration verification.

Agencies are responsible to furnish the appropriate **Vendor Registration and Disclosure Statement and Small, Women-, and Minority-owned Business Certification Application** to vendors with which it wishes to do business, whether the business is registering as a new vendor or updating its vendor registration information with the Purchasing Division. Agencies should always furnish the vendor the name and telephone number of an agency contact person in the event the vendor has questions for the agency.

**Vendor Registration and Disclosure Statement and Small, Women-, and Minority-owned Business Certification Application (WV-1 and WV-1A forms)** can be downloaded from the Purchasing Division web site at: ([www.state.wv.us/admin/purchase/vrc/pforms.htm](http://www.state.wv.us/admin/purchase/vrc/pforms.htm)).

**5.2 Vendor Fee:** According to the **Legislative Rule, CSR148**, except for purchasing card vendors providing travel-related services or receiving an aggregate total yearly payment less than \$25,000 from a spending unit, vendors receiving orders for goods or services exceeding \$1,000, regardless of payment method, shall pay an annual fee of \$125 to the Purchasing Division.

Companies, corporations or persons having multiple outlets for their commodities or services and are all operating under the same FEIN (Federal Employer Identification Number) must pay one \$125 annual fee.

#### Government Entities-Registration

All state agencies, cities, counties, municipalities and political subdivisions doing business with the state must register using their FEIN. Only applicable information on the **WV-1A** form needs to be provided. No fee is required.

**5.3 Vendor Hold:** Vendors not exempt from paying the \$125 annual fee or vendors who have not responded to the two (2) renewal notifications will be placed on 'hold status' until payment of the fee is received.

In order for agencies to know which vendors are eligible to receive purchase orders, the "Vendor Hold Feature" of TEAM is used. The "H" in the Order Hold field on the TEAM VOS screen indicates ineligibility. Vendors placed on hold cannot receive purchase orders in excess of \$1,000.

Vendors who are considered by the Purchasing Division as sole source suppliers and do not participate in the competitive bid process may be exempt from paying the annual fee.

Agencies wishing to purchase competitive items from vendors placed on hold should inform such vendors that the fee is required and refer them to the Purchasing Division for payment and registration procedures.

Vendors will be removed from hold when the vendor has paid the fee; or temporarily when an agency must process an individual purchase order in the TEAM automated purchasing system under \$1,000. An agency's request to temporarily remove a vendor from hold must be made in writing to the Purchasing Division indicating the reason for this action.

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

State agencies may view the list of currently approved SWAM vendors at the Purchasing Division's website at <http://www.state.wv.us/admin/purchase/VendorReg.html>.

***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 include:

**5.4.1. Minority-owned Business**, which means a business that is at least fifty-one percent owned by one or more minority individuals or in the case of a corporation, partnership, or limited liability company or other entity, at least fifty-one percent of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more minority individuals and both the management and daily business operations are controlled by one or more minority individuals.

A "minority individual" means an individual who is a citizen of the United States or a noncitizen who is in full compliance with United States immigration law and who satisfies one or more of the following definitions:

African American means a person having origins in any of the original peoples of Africa and who is regarded as such by the community of which this person claims to be a part.

Asian American means a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands, including, but not limited to, Japan, China, Vietnam, Samoa, Laos, Cambodia, Taiwan, Northern Mariana, the Philippines, a U.S. territory of the Pacific, India, Pakistan, Bangladesh, or Sri Lanka and who is regarded as such by the community of which this person claims to be a part.

Hispanic American means a person having origins in any of the Spanish-speaking peoples of Mexico, South or Central America, or the Caribbean Islands or other Spanish or Portuguese cultures and who is regarded as such by the community of which this person claims to be a part.

Native American means a person having origins in any of the original peoples of North

America and who is regarded as such by the community of which this person claims to be a part or who is recognized by a tribal organization.

**5.4.2. Small Business** means a business, independently owned or operated by one or more persons who are citizens of the United States or non-citizens who are in full compliance with United States immigration law, which, together with affiliates, has two hundred fifty or fewer employees, or average annual gross receipts of \$10 million or less averaged over the previous three years.

**5.4.3. Women-owned Business** means a business concern that is at least fifty-one percent owned by one or more women who are citizens of the United States or non-citizens who are in full compliance with United States immigration law, or in the case of a corporation, partnership or limited liability company or other entity, at least fifty-one percent of the equity ownership interest is owned by one or more women who are citizens of the United States or noncitizens who are in full compliance with United States immigration law, and both the management and daily business operations are controlled by one or more women who are citizens of the United States or non-citizens who are in full compliance with United States immigration law.

Frequently-asked questions about the SWAM Certification Program may be found at:

***[http://www.state.wv.us/admin/purchase/VendorRegFAQ.html#SWAM\\_faq](http://www.state.wv.us/admin/purchase/VendorRegFAQ.html#SWAM_faq)***

As an agency requirement of the SWAM procurement certification, **West Virginia Code** §5A-3-59 (b) requires state agencies to submit annual progress reports on small, women- and minority-owned business procurements to the Purchasing Division of the Department of Administration.

To assist agencies in collecting and maintaining this data, the Purchasing Division created a SWAM Reporting Tool, which is available on the Purchasing Division's intranet under *Processes and Procedures*. This intranet page may be accessible at the following link:

***<http://intranet.state.wv.us/admin/purchase/procedures.html>***

At the end of each fiscal year, this Excel spreadsheet must be completed noting all contracts or purchase orders issued to SWAM vendors. The information to be noted includes the fiscal year, vendor name, TEAM number, contract/purchase order number, description, total amount, and date of award. This report may be submitted electronically to the Purchasing Division through the ***[purchasing.requisitions@wv.gov](mailto:purchasing.requisitions@wv.gov)*** email account.

Should an agency purchaser receive any questions relating to the vendor registration procedures or the SWAM certification, the vendor should be directed to the Purchasing Division's Vendor Registration webpage which focuses on these programs. This webpage may be accessed directly at:

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



# PROCEDURES HANDBOOK

## SECTION 6: AGENCY DELEGATED ACQUISITION PROCEDURES

### 6.0 AGENCY DELEGATED ACQUISITION PROCEDURES:

This section will address purchases of \$25,000 or less which are processed by state spending units.

**6.1 Definition of Authority:** In accordance with the *Legislative Rules and Regulations*, state agencies may make purchases in the amount of \$25,000 or less of certain commodities and services.

The \$25,000 limit shall be determined based on any of the following conditions:

1. A one-time payment of \$25,000 or less made within a twelve (12) month period.
2. Monthly payments of \$2,083.33 or less for twelve (12) consecutive months.
3. Periodic payments made in any dollar amount as long as the total amount is \$25,000 or less in a twelve (12) month period.

The twelve (12) month period begins with the effective date of the contract. Purchase orders and/or contracts which are renewed or extended for a period of one (1) year and meet one (1) of the above conditions shall also be considered as having met the \$25,000 limitation requirement.

State agencies are encouraged to use the State Purchasing Card as a payment method for purchases, whenever possible, in accordance with State Purchasing Card guidelines.

It is expected that procurements made under delegated authority will mirror, to the greatest extent possible, formal procurement procedures. It is further expected that the forms used in the bidding process will be the most recent version approved by the Purchasing Division, which are available on the Purchasing Division's Internet and intranet sites.

Issuing a series of requisitions or purchase orders to circumvent competitive bidding or to defeat the State Purchasing Card transaction or delegated purchasing limit, commonly referred to as "stringing," is prohibited by law. The Purchasing Director has the authority to suspend or reduce purchasing authority for any spending unit that fails to report multiple contract awards that are deemed by the Director to circumvent the \$25,000 threshold within a twelve (12) month period. In the event of suspension or reduction of purchasing authority, the Director shall prescribe revised procedures and limits which may require all spending unit purchases, regardless of amount, be made by the Purchasing Division.

Most state agencies have a procurement officer who is responsible and knowledgeable in state purchasing guidelines as well as their own agency procedures. It is important to note that questions from agency personnel relating to purchasing issues should be directed **first** to the respective agency procurement officer rather than directly to the Purchasing Division. If the agency procurement officer needs assistance, they are encouraged to contact the appropriate state buyer in the Acquisition and Contract Administration Section of the Purchasing Division for assistance in preparing specifications. (See Appendix C).

Amounts spent with vendors are viewed comprehensively. State agencies should 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.

**Agency personnel are encouraged to use West Virginia vendors for delegated purchases, when possible, while maintaining compliance with state purchasing guidelines.** A vendor preference is required for agency delegated purchases. For more details regarding this preference, please see **Section 7.3**.

**6.1.1 Purchases \$2,500 and Less:** Competitive bids are not required, but are encouraged when possible.

Prior to seeking competitive bids, agencies must first check the following mandatory contracts or internal resources: statewide contract or agency open-end contract existing for the commodity or service, Surplus Property, Correctional Industries and the West Virginia Association of Rehabilitation Facilities. If the product/service is available from one of these sources but that source is not able to supply the product/service, a waiver must be obtained and retained with the purchase order file for each transaction to which the waiver applies.

**6.1.2 Purchases \$2,500.01 to \$5,000:** A minimum of three (3) **verbal** bids are required, *when possible*, and the lowest bid meeting specification must be awarded the purchase order/contract. All bids must be present in the file.

Bids shall be documented and recorded for public record. (See *Appendix B for Verbal Bid Quotation Summary form, WV-49*). An **Agency Purchase Order, WV-88**, or **TEAM-generated Purchase Order** is required for purchases exceeding \$2,500. Awards are to be made only to vendors who are properly registered with the Purchasing Division. Signed fax bids or electronic bids are acceptable. Screen prints from Internet sites are not acceptable as a valid bid.

Prior to seeking competitive bids, agencies must first check the following mandatory contracts or internal resources: statewide contract or agency open-end contract existing for the commodity or service, Surplus Property, Correctional Industries and the West Virginia Association of Rehabilitation Facilities.

**6.1.3 Purchases \$5,000.01 to \$25,000:** A minimum of three (3) **written** bids are required, *when possible*, and the lowest bid meeting specification must be awarded the purchase order/contract. All bids must be present in the file.

A **Request for Quotations form, WV-43, or TEAM-generated RFQ** (See [Appendix A](#)) should be used for documenting and making these requests. In all cases, state agencies must attempt to obtain at least three (3) written bids for a product or service. A “no bid” is not considered a bid. The date and time of the bid opening shall be published on the Request for Quotation. An **Agency Purchase Order (WV-88) or TEAM-generated Purchase Order** is required. Signed fax bids or electronic bids are acceptable. Screen prints from Internet sites are not acceptable as a valid bid.

A vendor choosing to submit a bid or a written change to a bid by electronic transmission accepts full responsibility for transmission and receipt of the bid or written change to a bid. The state accepts no responsibility for the unsuccessful and/or incomplete transmission of bids by electronic transmission.

Prior to seeking competitive bids, agencies must first check the following mandatory contracts or internal resources: statewide contract or agency open-end contract existing for the commodity or service, Surplus Property, Correctional Industries and the West Virginia Association of Rehabilitation Facilities.

**6.2 The Bid Process:** The agency delegated purchasing process requires certain steps to be taken to complete the purchasing cycle after the acquisition planning process. These steps are explained below:

**6.2.1 Solicitation of Bids:** In order to achieve the goal of competitive bidding, a minimum of three (3) bids is required, when possible. For agency delegated purchasing (procurements \$25,000 or less), care must be taken to solicit vendors capable of providing the necessary products or services.

For procedures relating to technology purchases, visit **Section 4: Acquisition Planning, 4.6.1.4 Technology.**

**Agency personnel are encouraged to use West Virginia vendors for delegated purchases.**

**6.2.1.1 Requests for Quotations:** The Request for Quotation (RFQ) should be used to acquire all tangible property (i.e., equipment, supplies, etc.). The RFQ is required for all purchases between \$5,000.01 and \$25,000. Exceptions to this requirement may be granted by the Purchasing Director.

An RFQ consists of:

- (1) a detailed description of, or specification for, the item(s) being purchased;
- (2) delivery date, if required;
- (3) bid price per unit of the item(s);
- (4) any applicable maintenance; and
- (5) quantities of all items.

Each item should be identified by a model number or some other specific identification. Prices cannot be altered after bids are opened. The RFQ should have a date and time for the bid opening, after which bids will no longer be accepted. All bids should be stamped with the date and time of receipt.

**6.2.2 Evaluation of Bids:** Bids are received, opened and examined by the agency to ensure compliance with all specifications and determination of the lowest responsible bidder. Bids shall be sealed until the date and time set for the bid opening, which shall be open to the public. While bidder information and amount bid are available for public inspection at this time, agency personnel should not discuss award scenarios with the public during the evaluation period. For guidance relating to the release of contract information, please refer to 4.7.9.

**6.2.2.1 Additive / Alternative Options (Add-on or Deduct):** In construction contracts, there are projects for which alternative options may be requested of the participating bidders. Depending upon funding resources, these options may be included in the evaluation of the bids. When preparing the specifications, agency purchasers must put the alternatives in the order of importance to the agency, with the first alternative being the most essential to the project should additional funding be available. It is highly recommended that additives / alternatives are to be awarded in the order listed. Any exceptions require pre-approval by the Purchasing Director.

**6.2.3 Award Process:** After the evaluation of all bids by the agency personnel, an award is made to the lowest responsible bidder who meets the specifications. Generally defined, a responsible bidder is able to furnish the required needs of the organization as requested in the specifications.

If an award is made to other than the lowest bidder, a detailed justification as to why the lowest bidder was not considered “responsible” must be written and retained for public record and inspection. The justification must be signed by the evaluator(s) and retained as part of the bid file.

All contracts should be entered into for a firm, fixed price per unit of goods or service. In such cases where the nature of the procurement prohibits a firm, fixed price, a detailed written justification must be included in the file.

A public record of all purchasing transactions must be kept on file at the agency location, and subject to inspection at the discretion of the Purchasing Division. This file must also include a Certificate of Non-Conflict of Interest, Unemployment / Workers’ Compensation verification search, specifications used for the bidding process, any and all attempts to obtain competitive bids and a TEAM screen print of the VOS screen indicating that the vendor is properly registered and not on “hold.” Agencies which use TEAM for delegated purchasing are exempt from this requirement.

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. Agency personnel must check the following website to verify compliance: Workforce West Virginia's Unemployment Compensation/Workers' Compensation Defaulted Accounts (UC/WC) (<http://intranet.state.wv.us/BEP/ucwcdef/default.htm>) to ensure the vendor is listed and in compliance for unemployment compensation or proof that such coverage is not required. Agency personnel must also check the Insurance Commission's Employer Violator System (EVS) (<https://icomp.wvinsurance.gov/Login/EmpViolator.asp>) and the OIC Defaulted Employer Lookup (<http://apps.wvinsurance.gov/defaulted/>) for Workers' Compensation defaults owed to the Insurance Commission. If the vendor appears on either of the Insurance Commission's websites, agencies may not do business with them. A copy of the online verification database search is to be maintained in the file. To verify Workers' Compensation coverage, agency purchasers may search the Insurance Commission's Coverage Validation System or obtain a copy of the Workers' Compensation insurance certificate which should be maintained in the file and is also acceptable. (See **Appendix L** for sample letter notifying the vendor of the areas for which it is in default);
- Verification that the vendor is not debarred by the state or federal governments. In accordance with **West Virginia Code** § 5A-3-33c, the Purchasing Director has the primary responsibility for administering the debarment process. The U.S. General Services Administration maintains the federal website, located at <https://www.sam.gov/portal/public/SAM>, which must also be checked prior to a contract award. Additionally, the Purchasing Division maintains a list of vendors declared as debarred by the state of West Virginia, which may be accessed at: <http://www.state.wv.us/admin/purchase/Debar.html>;
- 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. To search for a business or corporation with the Secretary of State's office, visit <http://apps.sos.wv.gov/business/corporations>.
- **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) (See **Appendix B**)

**6.2.3.1 Tie Bids:** When purchasing commodities and services of \$25,000 or less, occasionally two (2) or more bids of equal terms and amount are received in response to a solicitation, thus, resulting in a *tie bid*. If multiple awards are not made, the tie bid(s) must be resolved. The preferred method for resolving tie bids is the flip of a coin, draw of a card, or any other impartial method. A witness must be present when resolving the tie and documentation of the method and results, with signatures of all witnesses, must also be included in the file.

**6.2.3.2 Errors in Bids:** The Purchasing Division's *Legislative Rule* guides the division in cases of errors in bids for purchases over \$25,000. It is recommended that agencies follow these procedures when processing delegated purchases (\$25,000 or less).

If an error is discovered by the agency or the Purchasing Division, the burden of proof and timely action for request of relief is the vendor's responsibility. The request for relief must be made in writing by the vendor to the agency within five (5) working days from the bid opening date.

Erroneous bids may be rejected after the bid opening if all the following reasons are met:

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

In order to reject a bid, the public file must contain documented evidence that all of the above conditions exist. The vendor must specifically identify the error(s), and provide documentation to substantiate the claim that the error(s) materially affected the bid and enforcement of the part of the bid in error would be unconscionable.

The unit price prevails if there is an error in the extension.

**6.3 Receiving Procedures:** In accordance with the West Virginia State Auditor's receiving report requirements (*Code of State Rules*, §155-1-4), materials must be opened and inspected within 24 hours of receipt, otherwise the state agency may be subject to difficulty in obtaining an adjustment. Agencies must verify the shipment against the specifications in the purchase order and retain a copy of the receiving report prepared for the Auditor's office with the purchasing file. For receipt of services, a receiving report similar in form to that required by the Auditor's office shall be completed, signed and retained with the purchasing file.

Approved formats for receiving reports are:

- (1) Receiving report form issued by the State Auditor's office, WVSAO RR1
- (2) Electronic receiving report approved by the State Auditor's office
- (3) TEAM system generated receiving report

In cases where receiving reports are retained by another office of the spending unit and the volume of receiving reports would create a storage problem, spending units may include a memorandum to file in the purchasing file indicating the storage location of the receiving

reports. The actual reports shall be produced on demand, in accordance with the **Code of State Rules**, §148-1-4.16.

Agencies must verify quantities received. [If quantities do not match the purchase order, insist on a correction of the packing slip. After all corrections have been made, request that the driver sign all shipping documents before leaving. Do not accept any alternate or substitution without Purchasing Division's approval of commodities and services awarded by the Purchasing Division.]

Several days before the promised delivery of a commodity, the agency should follow-up with the vendor to determine if the promised delivery date will be met. Concurrently, the needs of the end-user in the organization should be monitored to determine the difficulties that may occur if delivery is delayed. It should also be determined from the vendor, during the follow-up procedure, as to the method of shipment to be used - *motor freight, parcel post or other carrier*. The name of the carrier, expected date and time of delivery and pro-number on the bill of lading should be obtained prior to shipment from the vendor.

**6.3.1 Inspection:** In accordance with **West Virginia Code** §5A-3-9, the Purchasing Director reserves the right to inspect the commodities delivered or services rendered to assure conformance with contractual requirements. The agency shall perform this inspection on all delivered commodities and services. Nonconformity is to be reported to the Purchasing Director and the chief officer of the spending unit purchasing such commodities for remedial action.

**6.3.2 Proper Receiving Techniques:** Any person receiving commodities is responsible for performing all of the inspection steps described below.

#### Receipt of Commodities and Services

The state agency shall check the shipment to determine if commodities are in conformance with the purchase order or contract and verify the following:

#### **Commodities:**

The make, model number, brand name and general description of the item(s) delivered match the specifications on the purchase order.

The quantity received agrees with the purchase order quantity, packing list and bill of lading. An actual count is necessary to assure receipt of all items.

#### **Services:**

Labor services must match the frequency (*daily, weekly, monthly, etc.*) and duration (*number of hours, days, etc.*) described in the purchase order or contract (*janitorial, security, etc.*).

Service contracts that require the vendor to provide consultant reports, audit reports, statistics or recommendations must be as specified in the purchase order or contract.

Service contracts that require the vendor to perform a particular service, such as elevator maintenance or carpet cleaning, must have all tasks completed as described in the purchase order or contract.

**Loss or Damage in Shipment:** Filing of claims for loss or damage to merchandise in shipment is the responsibility of the party having title to merchandise during shipment. The title to the commodities is determined by the FOB point on the purchase order.

**FOB Destination:** Title remains with vendor until goods are received and accepted by the state agency.

**FOB Shipping Point:** Title passes to the state agency immediately when goods are given to a common carrier at the time of shipment. The state agency is responsible for any and all damages or losses while merchandise is in transit. If damages occur to merchandise in shipment, it is the state agency's responsibility to file a claim on behalf of the state.

### **Obvious Loss or Damage**

FOB Destination: Note all losses or damages on receiving papers, sign and have driver sign. Write the word "Refused" on receiving papers. Do not accept merchandise with obvious damage from carrier under any circumstances.

FOB Shipping Point: Note all losses or damages on receiving papers, sign and have driver sign. Retain all merchandise in the condition in which it was received and notify both the carrier and seller in writing and by telephone within five (5) working days. The carrier will send a representative to investigate the claim.

### **Concealed Damage and Losses**

FOB Destination: The damage or loss may become evident when uncrating. If this is the case, stop uncrating and retain all merchandise and crating in exactly the same condition in which it was received. Notify the vendor immediately in writing and by telephone. Do not use any of the merchandise and do not destroy any packaging material.

FOB Shipping Point: Follow the same procedure as in the above paragraph. The state agency must notify and file a claim with the carrier.

**6.3.3 Freight Terminology:** Freight or shipping terms should always be included in a contract which you have initiated with a particular vendor. Purchase orders should have a specified point of origin and destination plus carrier to be used. Misunderstanding of the freight terms may cause problems in the receiving end of the purchase. In accordance with the National Institute of Governmental Purchasing's (NIGP) Public Procurement Dictionary of Terms (2008), the definitions for Free on Board (F.O.B.) Destination and Free on Board (F.O.B.) Origin are noted as follows:

**Free on Board (F.O.B.) Destination:** Where the seller or consignee delivers the materials to a specified delivery point. The cost of shipping and the risk of loss are borne by the seller or consignee. Title passes when delivery is received by the buyer at destination. Seller has total responsibility until shipment is delivered.

**Free on Board (F.O.B.) Origin:** Title is transferred from seller to buyer at the origin of the shipment. Buyer owns the goods in transit and files any claims. Buyer has total responsibility. The payment of the freight charges is determined by contract terms.

**6.4 Payment Process:** To promote good public relations and to avoid interest on late payments, state agencies should establish internal procedures to expedite payment of vendor's invoices. Please refer to the Payment Processing Guide issued by the State Auditor's Office (304-558-2261) for all questions regarding invoice processing.

**6.4.1 State Purchasing Card:** When possible, the spending unit is encouraged to use the State Purchasing Card. Use of the State Purchasing Card, however, is not justification to avoid utilizing statewide or agency contracts, but is simply a method of payment.

Agencies must use statewide contracts, unless specifically exempt by the Purchasing Director. For more information, refer to the State Auditor's Office Purchasing Card Program Procedures located at:

***<https://www.wvsao.gov/PurchasingCard/StateGovernment/Forms.aspx>***

**6.5 Fixed Assets:** After payment has been made to the vendor and the I-document and/or S-document numbers established, reportable property must be added to the WVFIMS Fixed Assets System.

**6.6 Public Records:** All records maintained at the agency level related to purchase orders and/or contracts are considered public records. (Refer to Section 1.7)

**6.7 Attorney General's Office Instructions for Use of WV-96:** The Attorney General's Office has provided instructions for the use of the Agreement Addendum (WV-96) for agency delegated purchases. The instructions are included in **Appendix Q** of this handbook.

**6.8 Changes:** Occasionally, it becomes necessary to amend, clarify, change or cancel purchasing documents. Depending upon the type of change required and the original document used, the document used to accomplish the change is an **Agency Purchase Order (WV-88 or TEAM generated purchase order)**, designated "Change Order" as the type of purchase. A contract change order is required whenever the change affects the payment provision, time for completion of the work and/or the scope of the work.

Renewals of existing contracts and price changes may only be executed if language exists in the original contract specifically allowing such. The **Purchasing Affidavit** is required only for renewals of existing contracts.

All agreements, many change orders and other documents require an effective date, at which time the vendor may begin to supply the commodities and services as specified. Changes to

the original purchase order must be sequentially numbered in the appropriate space. To effect the change, written concurrence from the vendor is required. The explanation of change to an existing contract must be described with sufficient detail and clarity that any individual could review and generally understand the contract and change.

Any change of a purchase order in excess of ten percent (10%) of the original contract amount (aggregate) is strongly discouraged, and changes that will cause the original contract amount to exceed \$25,000 during the course of a year are forbidden.



# PROCEDURES HANDBOOK

## SECTION 7: FORMAL ACQUISITION PROCEDURES

### 7.0 FORMAL ACQUISITION PROCEDURES

**7.1 Definition of Authority:** All requisitions for commodities and services over \$25,000 must be submitted to the Purchasing Division using **TEAM** or a **Purchase Requisition, WV-35**, for formal competitive bidding.

The Purchasing Division will perform the following tasks:

- Review the bid specifications;
- Select prospective bidders (*in addition to those recommended by the agency*);
- Advertise in the **West Virginia Purchasing Bulletin**;
- Request and receive bids;
- Evaluate bids; and
- Award the purchase to the lowest responsible bidder.

State agencies may also be requested to review and evaluate the bids and recommend an award; however, this additional review adds time to the process.

The vendor is responsible for submitting a correct and accurate bid to the Purchasing Division by the specified bid opening time and date. Signed fax bids are acceptable but receipt of bid must be completed prior to the bid opening time and date. Any bonds submitted via fax should be followed by an original bond received by the Purchasing Division within two (2) business days. A vendor choosing to submit a bid or a written change to a bid by electronic transmission accepts full responsibility for transmission and receipt of the bid or written change to a bid. The state accepts no responsibility for the unsuccessful 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.

**7.2 The Bid Process:** Formal bid procedures have been developed for procurements exceeding \$25,000 which are processed through the Purchasing Division. For procedures relating to technology purchases, visit **Section 4: Acquisition Planning, 4.6.1.4 Technology**. The steps in this process are detailed below:

**7.2.1 Solicitation of Bids:** The Purchasing Division utilizes various mechanisms to solicit competition from responsible vendors. Two most often used solicitation techniques are Requests for Quotations and Best Value Procurement.

**7.2.2 Requests for Quotations:** The Request for Quotation (RFQ) is used to acquire all tangible property (i.e., equipment, supplies, etc.).

An RFQ consists of the following:

- (1) a detailed description of, or specification for, the item(s) being purchased;
- (2) delivery date, if required;
- (3) bid price per unit of the item(s);
- (4) any applicable maintenance; and
- (5) quantities of all items.

Each item should be identified by a model number or some other specific identification. Prices cannot be altered after bids are opened.

**7.2.3 Best Value Procurement:** Best Value Procurement is a purchasing method used to acquire services where the specifications or scope of work may not be well-defined or cost is not the sole factor in determining the award. Best Value Procurement techniques, including Requests for Proposals (RFP's), Expressions of Interest (EOI), Life Cycle Cost (LCC) and Design-Build, are used to solicit proposals from potential bidders, taking into consideration the vendors' ability, resources, experience and proposed methods to provide the required services.

**7.2.4 Requests for Proposals:** Requests for Proposals (RFP's) shall have a minimum estimated value of \$250,000. All procurements under this dollar amount must use another purchasing method unless approved by the Purchasing Director.

The Purchasing Director or his/her designee must approve the use of all RFP's prior to release. To acquire this approval, prior to development of the RFP, please submit in writing the justification for utilizing this process and if this purchase order/contract will replace a current purchase order/contract. If it does replace an existing purchase order/contract, the agency should identify the current vendor and purchase order number. *Please note that the time required to process an RFP is longer than other purchasing methods and requires significant agency personnel time. Agencies are cautioned in writing specifications containing an excessive number of mandatory requirements. Mandatory requirements cannot be scored and cannot be waived. If an agency establishes mandatory requirements in the RFP, vendors must demonstrate they meet the mandatory requirements. Failure to meet the mandatory requirements must result in disqualification. Waiving mandatory response requirement is strictly prohibited.*

**Standard Format** (See Appendix J): All Requests for Proposals shall 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 one hundred (100) point total, cost shall represent a minimum of thirty (30) of the one hundred (100) total points in the criteria.

Proposal Format and Content: Proposals shall be requested and received in two (2) distinct parts: technical and cost. The cost portion shall be sealed in a separate envelope and will not be opened initially.

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 Purchasing Division will not accept bids, modification of bids, or addendum acknowledgment forms by e-mail transmission. Acceptable delivery methods include hand-delivery, delivery by courier or facsimile.

Technical Bid Opening: The Purchasing Division will open only the technical proposals on the date and time specified in the Request for Proposal. The Purchasing Division representative will read aloud the names of those who responded to the solicitation and confirm that the original package contained a separately sealed cost proposal.

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 within 10 days. Vendors must score a minimum of 70% (49 points) of the total technical points possible (*minimum acceptable score*) in order to be considered. Vendors not attaining the *minimum acceptable score* shall be disqualified and removed from further consideration. If the buyer approves the committee’s recommendation, the information will be forwarded to an internal review committee within the Purchasing Division. The assigned Purchasing Division buyer for the specific agency should participate in the final consensus meeting in an advisory capacity. Agencies are required to contact the designee at least one week prior to the meeting with the date and time.

Cost Bid Opening: Upon approval of the technical evaluation from the internal review committee, the Purchasing Division shall schedule a time and date to publicly open and read aloud all cost proposals, including those proposals from vendors not meeting the *minimum acceptable score*. The agency and the vendors shall be notified of this date.

Cost Evaluation: The evaluation committee will review the cost proposals, assign appropriate points and make a final consensus recommendation to the Purchasing Division. **West Virginia Code** §5A-3-37 provides an opportunity for qualifying vendors to request preference for their residency status when the vendors submit their bids. Such preference is an evaluation method only and will be applied only to the cost portion of the bid in accordance with the **West Virginia Code**. A certificate of application is used to request this preference. A West Virginia vendor may be eligible for up to two 2.5% preferences in the evaluation process. The Purchasing Division will make the determination of the Vendor Preference, if applicable.

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 signed in the Purchasing Division, forwarded to the Attorney General's Office for approval as to form, encumbered and mailed to the appropriate parties.

**Evaluation Committee:** The Purchasing Division requires a committee of at least three (3) and recommends no more than five (5) persons knowledgeable of the service to be acquired. The agency must receive approval from the Purchasing Division to request more than five (5) members to this committee. The agency may invite individuals to serve as advisors who are subject matter experts, knowledgeable in the area of discussion. The advisors may assist the evaluation committee members (referred to as evaluators) in the evaluation process. The agency will identify and justify the evaluation committee members and advisors to the Purchasing Division prior to the release of the RFP.

To ensure that there is no conflict of interest, the evaluators and/or advisor(s) are required by the Purchasing Division to sign a **Certification of Non-Conflict of Interest**, in accordance with the **West Virginia Code** §5A-3-31 (see **Appendix B**). The Purchasing Division also requires that the agency procurement officer also sign this certification. By signing this certification, the evaluator(s), advisor(s) and agency procurement officer attest that: (1) his or her service on the evaluation committee is not in violation of West Virginia Code § 5A-3-31, § 6B-2-5, or any other relevant code section; (2) his or her service on the evaluation committee does not create a conflict of interest with any of the participating vendors; and (3) he or she has not had or will not have contact relating to the solicitation identified herein with any participating vendors between the time of the bid opening and the award recommendation without prior approval of the Purchasing Division. Agency procurement officers should discuss the non-conflict of interest issue with potential committee members to ensure that individuals who may have a conflict are not chosen to participate as evaluation committee members.

State agencies must submit the signed certification to the Purchasing Division prior to beginning the evaluation of an RFP or EOI.

The agency procurement officer or a member of the agency procurement staff, who is skilled in purchasing techniques and procedures, shall be present at evaluation committee meetings and serve on the evaluation committee as a full voting member unless the agency can provide written justification detailing the reason(s) why this requirement cannot be met. Such request must be approved by the Purchasing Division prior to performing any evaluation. *(The Purchasing Division reserves the right to accept or reject agency appointed committee members and to appoint committee members directly to provide proper representation. A non-state employee shall not serve as voting member of the evaluation committee.)* To ensure there is no conflict or influence on the committee members' decision process, the evaluation should take place with only the designated evaluators and advisors present.

If the participating vendors are required to conduct an oral presentation, the agency is permitted to invite other individuals, in addition to the evaluators and advisors, to attend these demonstrations.

The Purchasing Division buyer may observe the committee evaluation and answer procedural issues and provide general process oversight.

The Purchasing Division has created an internal Request for Proposal Evaluation Committee to review all agency evaluation committee recommendations prior to making the award.

**Evaluation Training:** All evaluation committee voting members must receive RFP evaluation training prior to commencing the evaluation. This training should be completed within a year of any evaluation. The Purchasing Division buyer will meet with the agency committee at the first evaluation meeting after the bid opening and provide committee training and general review of the proposals.

The purpose of this training is to ensure that the committee is knowledgeable of the proper evaluation procedure and the purchasing process. This training may be conducted by the Purchasing Division buying staff, by online training module available at the Purchasing Division's website or by agency procurement officers as determined by the Purchasing Division.

After the training, members will review all proposals independently and later meet to evaluate and assign points to each proposal. (See Appendix J for Standard RFP Evaluation Format). A Purchasing Division representative or agency procurement officer, at the discretion of the Purchasing Director, may be present to observe and ensure that proper procedures are followed in the final evaluation and assignment of scores.

**Committee Recommendation:** The committee will meet and deduct points based on the criteria and prepare a consensus recommendation signed by all members which is submitted to the Purchasing Division for approval. The members shall not average points and must reach a consensus decision. The Purchasing Director reserves the right to appoint a new member(s) or excuse existing members, if it is determined to be in the best interest of the state.

Since subjective *criteria* are used for the evaluation, it is not uncommon for vendors to *challenge* the award of an RFP. A challenge is likely to add delays to the process. If the committee's recommendation is acceptable to the Purchasing Division, the contract award will be processed. Any exception to these procedures must be approved by the Purchasing Director.

**7.2.5 Expression of Interest:** The Purchasing Division uses Expressions of Interest (EOI) primarily in the selection of Architectural and Engineering Services.

For guidance on processing Expressions of Interest, refer to Section 8.1 and Appendix P for the EOI standard format.

**7.2.6 Life Cycle Cost:** This Best Value Procurement tool incorporates not only the purchase price of a piece of equipment, but all operating and related costs over the life of the equipment, including but not limited to maintenance, downtime, energy costs, and salvage value. It focuses on the total cost of ownership rather than the initial purchase price. When Life Cycle Cost is used, it must be clearly stated in the specifications. In accordance with **West Virginia Code** 5A-3-11(b) Life Cycle Cost may be considered “provided, that the cost of maintenances and expected life of the commodities must be taken into consideration if the director determines there are nationally accepted industry standards for the commodities being purchased.”

**7.2.7 Product Testing:** Agencies may encounter situations in which it may be prudent to test products or services for the purpose of reducing costs or improving efficiencies. In these situations, if the anticipated action or result, lead to standardization or reduction in competition, agencies must contact the Purchasing Division for review and approval. This action will assure that appropriate laws, rules and regulations are followed and that any potential reduction of competition or any potential sole source purchase be adequately reviewed, publicized and approved.

**7.2.8 Design-Build:** This Best Value Procurement tool combines project design and construction within a single contract when applied to building renovations and new construction. In accordance with the **West Virginia Code** §5-22A-1 and *Legislative Rule* 148 Series 11, specific instances are set forth where this process may be utilized. All requisitions must be accompanied with a letter of approval by the Design Build Board, chaired by the Cabinet Secretary of the Department of Administration prior to submitting the RFP to the Purchasing Division for bidding.

**7.2.9 Selection of Vendors:** The **West Virginia Purchasing Bulletin**, which is available to all paid registered vendors, consists of general descriptions of all requisitions expected to exceed \$25,000. Vendors may request bid packages by telephone, electronic mail, fax or via the Internet. Competition is always encouraged on all requisitions.

**7.2.10 Pre-Bid Conferences:** The Purchasing Division recommends agencies to consider conducting pre-bid conferences on major acquisitions early in the bid process to provide an opportunity to explain and clarify critical aspects of the solicitation, eliminate misunderstandings and encourage vendor participation. These conferences are conducted by the state agency with potential bidders when solicitations for complex, large dollar requirements are specified.

The Purchasing Division may participate in these pre-bid conferences. In all cases, it is very important for the agency procurement officer or designee who is trained and knowledgeable of the state procurement process to attend these conferences.

Vendor attendance at conferences may be optional or mandatory, as described in the bid document. If mandatory attendance is required, only bids or proposals from those vendors represented at the conference will be accepted. If participating vendors sign the official “sign-in sheet” while the meeting is in progress, then the vendors will be treated as if they were present for the entire conference and will be deemed to have the

knowledge that they would have had if attending the entire conference. Teleconference attendance is prohibited unless specified in the bid document.

“Sign-in sheets” for mandatory pre-bid conferences should contain the following: name of company, person attending (signature and printed name), address, telephone number and facsimile number. The header information on the sheets should include the requisition number and the date and time of the pre-bid conference. The original sheet must be submitted to the Purchasing Division. No one (1) individual may represent more than one (1) vendor. (See **Appendix I**).

It is recommended that pre-bid conferences be scheduled on Tuesdays through Thursdays between 10 a.m. and 3 p.m. to encourage more participation.

A sample agenda for a pre-bid conference is as follows:

### **Conference Opening (*Purchasing Representative*)**

- Offers opening remarks (Welcome attendees and introduce yourself)
- Identify the project by RFQ or RFP number and generic scope of work
- Provide the “sign-in sheet”
- Make available a few extra copies of the bid documents
- Remind all attendees to complete the “sign-in sheet” (Emphasize the importance of the “sign in sheet”)
- Introduce the user agency representatives
- Review important general information items:
  - o Inquiries
  - o Vendor Registration
  - o Oral Statements
  - o Bid proposal submission process
  - o Schedule of events
  - o Bonding Requirements (Bid, performance, etc.)

### **Specification Discussion (*Agency Representatives*)**

Agency personnel will open the technical specifications for discussion by item with all attendees. Items that all parties, including the agency and Purchasing Division representatives, agree need to be amended by addendum will be recorded by the agency to aid in preparing the addendum.

All clarifying statements and questions shall to be addressed on an addendum. Once the discussion of the technical specifications has concluded, the agency representative requests the Purchasing representative to discuss “General Terms and Conditions” of the solicitation.

Questions are received and discussed.

### **General Terms and Conditions Discussion (*Purchasing Representatives*)**

Purchasing representatives will discuss the part “General Terms & Conditions” and then proceed to discuss the format, evaluation, and, in the use of RFPs, the cost proposals and Minimum Acceptable Score (MAS) concept.

Questions are received and discussed.

### **Conclusion (*Both Agency and Purchasing Representatives*)**

Purchasing representatives will review items to be included in the addendum if at all possible. For items deferred, the information will be addressed in the addendum after management has had an opportunity to consider the issue.

Agency personnel should close with remarks and thank everyone for attending.

**7.2.11 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.

The agency must submit a **Purchase Requisition** WV-35 (including: description of change, amended budget amount/maximum budget amount-if applicable, and signature of authorized agency representative) to the Purchasing Division to issue the addendum. The agency should also include the following where applicable:

- Specification changes, additions, or noted deletions
- Pre-bid attendee list
- An attachment listing each technical question with a corresponding answer
- Revised or added sketches, drawings and/or charts

**Note:** Documents should be submitted electronically by the agency at ***purchasing.requisitions@wv.gov***. If documents are oversized or contain color images, etc., the agency may be required to provide additional copies for distribution. Upon receipt, review and approval, the Purchasing Division will issue the addendum and distribute to all known bidders (those attending the pre-bid meeting, receiving bid packages, suggested vendors, etc.). Addenda are available in the **West Virginia Purchasing Bulletin** to all registered vendors upon issuance. Additional bid time may be required to distribute addenda.

Addenda should be received by the Purchasing Division from the agency within seven (7) calendar days prior to the current scheduled bid opening date. For complex transactions, such as construction bids, Requests for Proposals, or complex Requests for Quotation, the Purchasing Division should receive from the agency the addenda within 14 calendar days prior to the current scheduled bid opening to allow bidders ample time to prepare and submit bid responses. The Purchasing Division may, at its discretion, extend the bid opening date if it deems to be in the best interest of the state of West Virginia.

Agency personnel may view the completed addendum on the state intranet at <http://intranet.state.wv.us/admin/purchase/Newbul.htm>. Agencies without intranet access may contact their designated Purchasing Division buyer.

**7.2.12 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. Fax bids are acceptable, but receipt of bid must be completed prior to the bid opening time and date. The Purchasing Division will not accept bids, modification of bids, or addendum acknowledgment forms by e-mail transmission. Acceptable delivery methods include hand-delivery, delivery by courier or facsimile.

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

**7.2.13 Establish Bid Opening:** Formal bid opening dates are established by the Purchasing Division, based on the complexity of the purchase, and are open to the public. Vendors are not required to attend. Bid openings may be delayed due to the need for pre-bid conferences, issuance of addenda or other unforeseen factors.

At the bid opening, all bids are opened and read aloud. Bids shall not be considered if the vendor fails to submit the respective bid to the Purchasing Division by the specified date and time of the bid opening.

As a convenience to the public, proposals are scanned and made available on the Purchasing Division's website shortly after the bid opening at <http://www.state.wv.us/admin/purchase/bids>. However, if the proposal contains oversized drawings or is too large to scan, the Purchasing Division will attempt to scan and publish all pertinent bid information while noting that some pages were necessarily omitted. In all cases, the proposal will be available for public viewing by appointment. Bids that are not received by the date and time of the bid opening will be stamped as "Bid Received Late," maintained with the official file and posted on this website upon receipt with the other bids.

After the bid opening, vendors may request copies of any proposal in accordance with the Purchasing Division's established fee for Freedom of Information (FOIA) requests. Convenience copies received by the Purchasing Division will be forwarded to the agency for evaluation.

**7.2.14 Public Notice:** Purchasing Division is required to make public notice of purchases expected to exceed \$25,000. This is usually accomplished by advertising in the *West Virginia Purchasing Bulletin*. Although the Purchasing Division establishes cut-off dates for public notice, the agencies are required to allow at least five (5) working days prior to the publication cut-off date to permit adequate time for the buyer's review. Those not received within this time frame will not be published in the issue currently being prepared, and will be advertised in the following issue.

**7.2.15 Securities/Bonds:** Instruments are occasionally demanded from the successful vendor by the Purchasing Division prior to bid or award to ensure performance or to minimize financial risks to the State of West Virginia in the event of default.

**7.2.16 Bonds:** The Purchasing Director may require a bond or deposit as part of the bidding process. This requirement is most often used for construction contracts, however, it may be used for any commodity or service if determined to be in the best interest of the state.

The Director shall determine the applicability and amount of bonds or deposit required of a vendor at any time, if, in his or her opinion, the security is necessary to safeguard the state from undue risk. The bonds or deposit serve as a guarantee that if the contract is awarded to such bidder, that bidder will enter into a contract for the work specified in the bid.

Below are types of bonds used in the state purchasing process:

**Bid Bond** – A bond in which a third party agrees to be liable to pay a certain amount of money in the event a selected bidder fails to accept the contract as bid. This bond is usually required for five percent (5%) of the total bid amount. Faxed bids that contain bid bonds, or any other bond should be submitted with the bid and the vendor should provide the original bonds within two (2) working days of the bid opening dates.

**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 for on behalf of the state in a construction project.

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

**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.

**7.2.17 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 or due dates.

**7.2.18 Bonuses:** Provisions in any requisition or contract that specifies a monetary reward for early completion of a project shall be strictly prohibited and illegal.

**7.2.19 Evaluation and Award:** Once bids are received, they are examined by the Purchasing Division to ensure compliance with all specifications.

When the Request for Quotation process is used, competitive bids are received, properly evaluated and an award is made to the **lowest responsible bidder** meeting specifications, in accordance with the **West Virginia Code** §5A-3-11.

After a proper evaluation, if an award is made to other than the lowest responsible bidder, a thorough written justification signed by the evaluator(s) must be inserted into the file and retained for public record and inspection.

If using the Request for Proposal process, certain stipulations must be met and an evaluation committee is formed to review all proposals. (See **Section 7.2.4**).

Prior to an award, a vendor must be in compliance with the following requirements:

- Properly registered with the Purchasing Division by completing the appropriate form and paying the annual fee, if applicable;
- Good standing in accordance with the **West Virginia Code** §21A-2-6, concerning verification of current unemployment fee status and Workers' Compensation coverage. This verification is required to ensure the vendor is not in default with Workers' Compensation and Employment Compensation. Agency personnel must check the following website to verify compliance: Workforce West Virginia's Unemployment Compensation/Workers' Compensation Defaulted Accounts (UC/WC) (<http://intranet.state.wv.us/BEP/ucwcdef/default.htm>) to ensure the vendor is listed and in compliance for unemployment compensation or proof that such coverage is not required. Agency personnel must also check the Insurance Commission's Employer Violator System (EVS) (<https://icomp.wvinsurance.gov/Login/EmpViolator.asp>) and the OIC Defaulted Employer Lookup (<http://apps.wvinsurance.gov/defaulted/>) for Workers' Compensation defaults owed to the Insurance Commission. If the vendor appears on either of the Insurance Commission's websites, agencies may not do business with them. A copy of the online verification database search is to be maintained in the file. To verify Workers' Compensation coverage, agency purchasers may search the Insurance Commission's Coverage Validation System or obtain a copy of the Workers' Compensation insurance certificate which should be maintained in the file and is also acceptable. (See **Appendix L** for sample letter notifying the vendor of the areas for which it is in default);
- Verification that the vendor is not debarred by the state or federal governments. In accordance with **West Virginia Code** § 5A-3-33c, the Purchasing Director has the primary responsibility for administering the debarment process. The U.S. General Services Administration maintains the federal website, located at <https://www.sam.gov/portal/public/SAM>, which must also be checked prior to a contract award. Additionally, the Purchasing Division maintains a list of vendors declared as debarred by the state of West Virginia, which may be accessed at: <http://www.state.wv.us/admin/purchase/Debar.html>;

- 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. To search for a business or corporation with the Secretary of State's office, visit <http://apps.sos.wv.gov/business/corporations>;
- Sign and submit the **Purchasing Affidavit** which is required on all contracts. (See **Appendix B**);
- Sign and submit the **Agreement Addendum (WV-96)** which is required when vendor submits alternate terms and condition with their bid. (See **Appendix B**). The Attorney General's Office has provided instructions for the use of the Agreement Addendum (WV-96) for purchases processed through the formal acquisition process. The instructions are included in **Appendix Q** of this handbook.

The Purchasing Division may immediately award certain open-end contracts without the necessity of the agency's review when the Purchasing Division believes this action is in the best interest of the state of West Virginia. However, when an award has not been immediately made by the Purchasing Division, state agencies may be involved in the evaluation process by reviewing bids, making recommendations and providing justification. State agencies are encouraged to review the bids when posted online at the Purchasing Division's website. Paper copies will only be provided to the agencies if the bids are too large to post electronically. If the state agency is involved in the evaluation process, a recommendation for award must be received in the Purchasing Division within five business days of the bid opening date, with the exception of Request for Proposals (RFP) and Expressions of Interest (EOI). RFP and/or EOI recommendations for award must be received within 10 business days. Failure to comply with these established deadlines may result in the agency requisition being cancelled, unless extenuating circumstances exist. It is the responsibility of the agency to provide justification for keeping a requisition open after these time frames.

**7.2.19.1 Additive / Alternative Options (Add-on or Deduct):** In construction contracts, there are projects for which alternative options may be requested of the participating bidders. Depending upon funding resources, these options may be included in the evaluation of the bids. When preparing the specifications, agency purchasers must put the alternatives in the order of importance to the agency, with the first alternative being the most essential to the project should additional funding be available. It is highly recommended that additives / alternatives are to be awarded in the order listed. Any exceptions require pre-approval by the Purchasing Director.

For guidance relating to the release of contract information, please refer to 4.7.8.

**7.2.20 Tie Bids:** Occasionally two (2) or more bids of equal terms and dollar amount are received in response to a solicitation, thus, resulting in a *tie bid*. If multiple awards are not made, then the tie bid(s) must be resolved. The preferred method for resolving tie bids is the flip of a coin, draw of a card or any other impartial method.

The Purchasing Division must make the final decision in tie bid situations exceeding \$25,000.

**7.2.21 Erroneous Bids:** If an error is discovered by the vendor or the Purchasing Division, the burden of proof and timely action for request of relief is the vendor's responsibility. The request for relief must be made in writing by the vendor to the Director of Purchasing or his/her designee within five (5) working days from the bid opening date.

**Purchasing Division Rules and Regulations**, 148 CSR 1-5.2.G, offers the Purchasing Director or his/her designee the authority to reject an erroneous bid after the bid opening according to the following criteria:

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

In order to reject a bid, the public file must contain documented evidence that all of the above conditions exist.

The vendor must specifically identify the error(s) and provide documentation to substantiate the claim that the error(s) materially affected the bid and enforcement of the part of the bid in error would be unconscionable.

**7.2.22 Multiple Awards:** The Director may elect to award a contract to more than one vendor when the Director determines such action would be in the best interest of the State of West Virginia.

In arriving at a determination, the Purchasing Director will consider the following factors, insofar as they are applicable:

- (1) The quality, availability and reliability of the supplies, materials, equipment or services and their adaptability to the particular use required;
- (2) The ability, capacity and skill of the bidder;
- (3) The sufficiency of the bidder's financial resources;
- (4) The bidder's ability to provide maintenance, repair parts and service;
- (5) The compatibility with existing equipment;

(6) The need for flexibility in evaluating new products on a large scale before becoming contractually committed for all use; and

(7) Any other relevant factors.

A written explanation will be included in the public file in situations where a multiple award is deemed necessary.

**7.2.23 Negotiation When All Bids Exceed Available Funds:** Spending units shall submit a valid maximum budgeted amount for each requisition or Request for Proposal to the Purchasing Division, which cannot be changed after the bid opening. The Purchasing Division will not disclose this information to the bidders at any time.

If all bids meeting requirements exceed this budgeted amount, the Purchasing Division may negotiate a lower price within budget with the lowest bidder. If the negotiation does not lead to the budget amount being met, the Director may negotiate a lower price with the next lowest bidder and continue negotiations with participating bidders after negotiation closes with the preceding bidder. **It is vital that all incoming requisitions state the maximum budgeted amount for the transaction.** This information is requested on the Purchasing Requisition (*WV35*). See **Appendix B**.

If the agency does not provide its budgeted amount for the requisition prior to the bid opening, the Purchasing Division is unable to negotiate, in accordance with ***West Virginia State Code***, §5A-3-11a.

**7.2.24 Discussion and Final Offers:** The Director may conduct discussions to obtain best and final offers from bidders to assure full understanding of solicitation requirements. If the Director determines that a best and final offer is necessary from one vendor, all vendors shall be afforded the opportunity to provide best and final offers. All best and final offers shall be treated like a formal bid, except that advertising is not required. All bidders shall provide their best and final offers to the Purchasing Division prior to the date and time specified.

Government construction contracts and supplies and materials are exempt from this negotiation method.

**7.3 Vendor Preference:** ***West Virginia State Code*** §5A-3-37 provides an opportunity for a qualifying vendor to request at the time it submits its bid, preference for its residency status. This preference does not apply to construction. Such preference is an evaluation method only and will be applied only to the cost bid in accordance with the ***West Virginia Code*** and as specified herein. 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 determinations as to whether the Vendor Preference is applicable. Please note that when applying vendor preference with the Request for Proposal process, the preference is applied only to the bid price prior to calculating total cost points.

There are different scenarios of eligibility using the Vendor Preference. It is therefore strongly recommended that the Purchasing Division buyer assist the agency in evaluating specific situations relating to this preference.

The Vendor Preference should be applied using the following five step process shown below. The process is also illustrated by three specific examples shown below.

- Step 1:** Calculate the effect of each Vendor Preference (2.5% and 5%) on out-of-state bids by multiplying the out-of-state bids by 1.025 or 1.05 as appropriate.
- Step 2:** Compare resident vendors' bids to out-of-state vendors' preference adjusted bids. (A vendor that receives a 2.5% preference will have its bid compared to the out-of-state vendors' bids adjusted for the 2.5% preference by multiplying the out-of-state vendors' bids by 1.025. Similarly, the vendor that receives a 5% preference will have its bid compared to out-of-state vendors' bids adjusted for the 5% preference.)
- Step 3:** If an out-of-state vendor's bid is lower than all in-state vendors' bids after preference adjustments and comparisons to the in-state vendors' bids, then the out-of-state vendor should be declared the winning vendor. If the out-of-state bid adjusted for preference is higher than an in-state bid then move to Step 4. (If multiple out-of-state vendors are lower than all in-state vendors after preference adjustments and comparisons then award to the lowest out-of-state vendor).
- Step 4:** Compare In-State Vendor bids without regard to preference (Only necessary if not awarded to out-of state vendor in step 3 above).
- Step 5:** Award to lowest In-State Vendor identified in Step 4 above. (Only if not awarded to out-of state vendor in step 3 above).

**Example #1:**

Vendors	Original Bids	Preference Given
Resident Vendor #1	\$114,000.00	5%
Out-of State-Vendor	\$109,000.00	None

**Step 1: Calculation of Preference Adjustment:**

<b>Out-of-State Vendor Original Bid</b>	\$109,000.00
<b>Preference Adjusted Bid (Original bid multiplied by 1.05)</b>	\$114,450.00

**Step 2: Comparison:**

	In-State Vendor Bid	Out-of-State Vendor Bid with Preference Adjustment	Comparison Result
Resident Vendor #1 (5% Preference)	\$114,000.00	\$114,450.00	Out-of-State Bid is Higher

Skip Step 3 and 4 since out-of-state vendor is high and only one in-state vendor bid.

**Step 5: Award to in-state vendor.**

**Example #2:**

<b>Vendors</b>	<b>Original Bids</b>	<b>Preference Given</b>
Resident Vendor #1	\$110,000.00	None
Resident Vendor #2	\$112,500.00	2.5%
Resident Vendor #3	\$115,000.00	5.0%
Out-of State Vendor	\$109,000.00	None

**Step 1: Calculation of Preference Adjustment**

<b>Out-of-State Vendor Original Bid</b>	\$109,000.00
<b>Bid Adjusted for 2.5% Preference</b> (Original bid multiplied by 1.025)	\$111,725.00
<b>Bid Adjusted for 5% Preference</b> (Original bid multiplied by 1.05).	\$114,450.00

**Step 2: Comparison**

<b>In-State Vendors</b>	<b>In-State Vendor Bid</b>	<b>Out-of-State Vendor Bid Adjusted for Preference Requested</b>	<b>Comparison Result</b>
Resident Vendor #1 (No Preference)	\$110,000.00	\$109,000.00	Out-of-State bid is lower
Resident Vendor #2 (2.5% Preference)	\$112,500.00	\$111,725.00	Out-of-State bid is lower
Resident Vendor #3 (5% Preference)	\$115,000.00	\$114,450.00	Out-of-State bid is lower

**Step 3: Award to out-of-state vendor.**

**Example #3:**

<b>Vendors</b>	<b>Original Bids</b>	<b>Preference Given</b>
Resident Vendor #1	\$110,000.00	None
Resident Vendor #2	\$112,500.00	2.5%
Resident Vendor #3	\$114,000.00	5.0%
Out-of State-Vendor	\$109,000.00	None

**Step 1: Calculate Preference Adjustment:**

<b>Out-of-State Vendor Bid</b>	\$109,000.00
<b>Bid Adjusted for 2.5% Preference</b>	\$111,725.00
<b>Bid Adjusted for 5% Preference</b>	\$114,450.00

**Step 2: Comparison:**

<b>In-State Vendors</b>	<b>In-State Vendor Bid</b>	<b>Out-of-State Vendor Bid Adjusted for Preference Requested</b>	<b>Comparison Result</b>
Resident Vendor #1 (No Pref.)	\$110,000.00	\$109,000.00	Out-of-State bid is lower
Resident Vendor #2 (2.5% Pref)	\$112,500.00	\$111,725.00	Out-of-State bid is lower
Resident Vendor #3 (5% Pref)	\$114,000.00	\$114,450.00	Out-of-State Bid is Higher

Skip **Step 3** since out-of-state vendor's bid adjusted for preference is higher than an in-state vendor's bid.

**Step 4: Comparison of In-State Vendors without regard to preference:**

<b>In-State Vendors</b>	<b>In-State Vendor Bid</b>	
Resident Vendor #1	\$110,000.00	Lowest in-state bidder
Resident Vendor #2	\$112,500.00	Higher than Vendor #1
Resident Vendor #3	\$114,000.00	Higher than Vendor #1

**Step 5: Award to lowest In-State vendor: Resident Vendor #1 Wins**

**7.3.1 Preference for West Virginia Veterans:** *West Virginia State Code* §5A-3-37(a)(5) & (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%.

**7.3.2 Preference for Non-Resident Small, Woman, and Minority-Owned**

**Businesses:** *West Virginia State Code* §5A-3-37(a)(7) provides that a non-resident vendor certified as a small, women-owned, or minority-owned ("SWAM") business, pursuant to *West Virginia State Code* §5A-3-59, shall be provided the same preference made available to any resident vendor. This certification may assist resident small, women and minority-owned businesses when soliciting business in other states. The SWAM rules found in *West Virginia Code of State Rules* §148-22-9 further explain that a non-resident SWAM business will receive the highest preference made available to a resident vendor in the solicitation for which the SWAM business has submitted a bid.

In order to obtain this preference, however, a non-resident SWAM business must identify itself as such in writing on the Vendor Preference Certificate available from the

Purchasing Division and submit with its bid. Additionally, the vendor must have indicated on the **Vendor Registration and Disclosure Statement and Small, Women, and Minority-owned Business Certification Application** (WV-1 or WV-1A) that they qualify for this certification under question 4(A). The vendor must be properly certified under the rules governing certification pursuant in **West Virginia Code of State Rules §148-22-1 et seq.**

In the event that no preference is made available to a resident vendor in a particular solicitation, the non-resident SWAM business will not receive a preference. Additionally, any preference granted to a non-resident SWAM business shall not be applied between or among West Virginia resident vendors and non-resident SWAM businesses.

Agencies are required to maintain a list on the prescribed form from the Purchasing Division listing all SWAM vendors for which they have contracted during the fiscal year and submit such list to the Purchasing Division.

The SWAM rules also require State agencies to report, in a manner prescribed by the Purchasing Director, procurement transactions in the preceding fiscal year with SWAM businesses.

**7.4. Contract Commencement:** With the exception of certain approved emergency contracts, the encumbrance date is the earliest date that a vendor may commence work on any contract. No authority may be given to the vendor by the agency or any other entity to commence work unless an encumbered contract has been processed by the Purchasing Division and received by the vendor.

In regard to construction projects, when an architectural or engineering (A/E) firm is employed, construction does not commence until such time as the A/E firm gives the contractor a Notice to Proceed. Copies of all Notices to Proceed shall be provided to the Purchasing Division at the same time as the contractors receive their notification.

Contracts with a Notice to Proceed clause in the contract require start and end dates of all ones (11/11/11) on the P-document agency coversheet. When the start and end dates have been established by the vendor and agency, the agency must change the dates in accordance with the agreed start and end time by executing a Type 1 Adjustment. The Type 1 Adjustment is to be electronically approved to the Org. 1200 (State Auditor's Office).

The Type 1 Adjustment coversheet and Notice to Proceed verification letter, if applicable, must be submitted to the State Auditor's Office and a copy sent to the appropriate Purchasing Division buyer.

A change order must be issued to cover all additional time extensions. The change order along with the X-document (Type 2 Adjustment - Contract Change Order), justification from the agency and confirmation from the vendor must be submitted to the Purchasing Division specifying the exact date of the extension or completion.

**7.5. Contract Management:** Contract management provides for assurance that the state receives service or commodities meeting requirements before payment is made. Construction contracts are excluded by law.

**7.5.1** Except for government construction contracts, the Purchasing Director shall prescribe contract management procedures for contracts for commodities and services in the amount of \$1 million or less. These procedures may include, but are not limited to:

(a) establishing payment benchmarks to assure the state receives value prior to remitting payment;

(b) conducting regular meetings between spending unit and vendor to assess contract performance;

(c) training spending unit personnel to manage contracts; or

(d) using the Office of Technology Project Manager for its projects.

**7.5.2** For contracts for commodities and services in an amount exceeding \$1 million, the following contract management procedures apply:

**7.5.2.1. Post Award Conferences**

The agency administrator responsible for administering the contract shall hold a post award conference with the contractor to ensure a clear and mutual understanding of all contract terms and conditions and the respective responsibilities of all parties. The agenda for the conference shall include, at a minimum, the introduction of all participants and identification of agency and contractor key personnel and discussion of the following items:

(1) The scope of the contract, including specifications of what the agency is buying;

(2) The contract terms and conditions, particularly any special contract provisions;

(3) The technical and reporting requirements of the contract;

(4) The contract administration procedures, including contract monitoring and progress measurement;

(5) The rights and obligations of both parties and the contractor performance evaluation procedures;

(6) An explanation that the contractor will be evaluated on its performance both during and at the conclusion of the contract and that such information may be considered in the selection of future contracts;

(7) Potential contract problem areas and possible solutions;

(8) Invoicing requirements and payment procedures, with particular attention to whether payment will be made according to milestones achieved by the contractor; and

(9) An explanation of the limits of authority of the personnel of both the agency and the contractor.

#### **7.5.2.2 Monitoring**

The agency shall develop a comprehensive and objective monitoring checklist which:

(1) Measures outcomes;

(2) Monitors compliance with contract requirements; and

(3) Assesses contractor performance.

#### **7.5.2.3 Reports**

The agency shall make the following reports to the Director, on a schedule established by the Director, but not less frequently than once a year:

##### Status Reports

Status reports describe the progress of the work; track the organizational structure of the statement of work in terms of phases, segments, deliverables and products; and describe what work is complete and what work is pending and contrast that status against the contract schedule. If there are any unresolved issues that the agency is contractually obligated to resolve, those issues should be included in the status report and a resolution should be requested.

##### Activity Reports

Activity reports describe all activity on the project, regardless of whether substantial progress has been made toward completion of the project. If payment is based on the number of completed transactions, these activities must be specifically set out in the report.

**7.5.6 Inspection:** In accordance with the *West Virginia Code* §5A-3-9, the Purchasing Director reserves the right to inspect whether commodities delivered or services provided conform to contractual requirements. Nonconformity is to be reported to the Purchasing Director and the chief officer of the spending unit purchasing such commodities for remedial action.

**7.6 Encumbrances:** The Purchasing Division's Communication and Technical Services Section encumbers all purchase orders executed by the Purchasing Division over \$25,000.

Requisitions submitted to the Purchasing Division are to be accompanied with a WVFIMS Purchase Order Agency Coversheet (P-document) for purchase orders to be encumbered by the Purchasing Division's Communication and Technical Services Unit. The WVFIMS agency coversheet should contain all the information known by the agency at the time the requisition is prepared.

Open-end Contracts do not need a WVFIMS Purchase Order Coversheet.

## **7.7 Changes and Reinstatements:**

**7.7.1 Changes:** Occasionally, it becomes necessary to amend, clarify, change or cancel purchasing documents. Depending upon the type of change required and the original document submitted, the document used to accomplish the change is a ***Purchase Requisition (WV-35)***. A contract change order is required whenever the change affects the payment provision, time for completion of the work and/or the scope of the work.

All changes must be approved by the Purchasing Division and the Attorney General's Office, as to form, prior to commencement of any work. Violations may result in penalties. The ***Purchasing Affidavit*** is required only for renewals of existing contracts.

All agreements, many change orders and other documents require an effective date, at which time the vendor may begin to supply the commodities and services as specified. The ***West Virginia Code*** §5A-3-1 *et seq.* requires the Purchasing Division to authorize purchases on behalf of state agencies and the Attorney General's office to approve those purchases *as to form* before the contract is legal and binding. The Purchasing Division will not accept any agreements, change orders or other documents which set an effective date that precedes the date of arrival in the Purchasing Division by more than twenty (20) calendar days. All documents beyond twenty (20) days will be returned unapproved. Any exceptions must be approved by the Purchasing Director.

Changes to the original purchase order must be sequentially numbered in the appropriate space. To effect the change, written concurrence from the vendor is required. The explanation of change to an existing contract must be described with sufficient detail and clarity that any individual could review and generally understand the contract and change.

***Purchase Requisition (WV-35)*** designated "Change Order" as the type of purchase is used to change an existing contract's specifications, terms, prices, quantities, etc. A WVFIMS Agency Purchase Order Coversheet (X-document) may be required. If required, submit the coversheet with the ***Purchase Requisition*** to the Purchasing Division. In addition, insert the X- document number one line below the Change Order number on the ***WV-35***.

Any change request of a purchase order in excess of ten percent (10%) of the original contract amount (aggregate) is strongly discouraged. The Purchasing Director, at his/her discretion, may grant a change in any amount if unforeseen circumstances have occurred and such change is in the best interest of the State of West Virginia. This percent guideline applies to most contracts, but cannot be applied in all types of

contracts. For example, this guideline can and should be applied to lump sum type of contracts. For contracts awarded on an “open ended” basis, such as hourly rates, this guideline may not be practical. In those cases or in other situations when an agency may not apply the ten percent (10%) guideline, the agency should contact the appropriate Purchasing Division buyer.

**7.7.2 Reinstatements:** Upon occasion, it may become necessary to reinstate a closed purchase order. Reinstatements should be processed on a **Purchase Requisition (WV-35)** (see Appendix B) and reflect the original purchase order number. **Purchase Requisitions** that are closed prior to a purchase order being issued may be reinstated in some cases. Requests must be submitted to the Purchasing Division on a **Purchase Requisition** and prior approval of a buyer is required.

**7.7.3 Standard Change Order Language:** Standard purchase order language has been developed for use by the Purchasing Division in order to clarify the *intent* of the changes to contracts.

Purchasing Division buyers are required to use this approved verbiage when renewing, extending, canceling and making other changes to original contracts. (See Appendix K for specific language). By establishing standard language, the vendor, agency and other entities in state government which review these contract changes will mutually understand the intended action to be initiated.

**7.8 Protest Procedures:** The Purchasing Division’s Legislative Rules and Regulations (*148 CSR 1*) provide participating vendors with the right to protest specifications and purchase order awards.

**7.8.1 Submission of Protest:** Protests based on bid specifications must be submitted no later than five (5) working days prior to bid opening. Protest of purchase order or 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. Protests received after these dates may be rejected at the option of the Purchasing Director.

All protests shall be submitted in writing to the Purchasing Division and contain the following information:

- (a.) the name and address of the protestor;
- (b.) the requisition, purchase order or contract numbers;
- (c.) a statement of the grounds of protest;
- (d.) supporting documentation (if necessary); and
- (e.) the resolution or relief sought.

Failure to submit this information shall be grounds for rejection of the protest by the Director of the Purchasing Division.

**7.8.2 Protest Review:** The Purchasing Director or his/her designee shall review the matter of protest and issue a written decision. A hearing may be conducted at the option of the Purchasing Director or assigned designee.

Continuation or delay of the purchase order or contract award while the protest is considered is at the discretion of the Purchasing Director.

The Purchasing Division may refuse to review any protests when the matter involved is the subject of litigation before a court of competent jurisdiction; if the merits have previously been decided by a court of competent jurisdiction; or if it 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.



# PROCEDURES HANDBOOK

## SECTION 8: SPECIAL ACQUISITIONS

### 8.0 SPECIAL ACQUISITIONS:

The procurement of certain commodities and services have limitations or require special procedures.

#### 8.1 Architectural and Engineering

**8.1.1 Projects Exceeding \$250,000:** In the procurement of architectural and engineering services, including those professional services of an architectural or engineering nature, for projects estimated to exceed \$250,000 (construction cost and architectural fees), an Expression of Interest shall be requested of interested firms by the Purchasing Division. Special procedures in the selection of architectural and engineering services are required in accordance with Chapter 5G of the **West Virginia Code**. Agencies must use the standard EOI format for projects expected to exceed \$250,000.

The expression of interest shall include a statement of qualifications and performance data and may include anticipated concepts and proposed methods of approach to the project. The project must be announced by public notice.

An evaluation committee shall consist of three (3) to five (5) representatives of the agency. The agency procurement officer must be a voting member of the EOI evaluation committee. The committee shall:

- (a) Evaluate the statements of qualifications and performance data and other material submitted;
- (b) Develop a “short list” (minimum of three [3] firms) which, in their opinion, are best qualified to perform the desired service; and
- (c) Interview each firm on the “short list” and 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 time to complete project.

The committee will rank no less than three (3) firms deemed to be the most highly qualified on the basis of the matters discussed during the interview, in order of preference, and present such list to the state agency and the Purchasing Division. The committee will forward its recommendation to the Purchasing Division along with a written justification as to the selection of the firm. The justification must provide a score

sheet with complete explanation of all points deducted to clearly indicate how the firms were ranked. The committee will then commence negotiations as to scope of service and price with the highest qualified firm.

If the agency fails to negotiate a satisfactory contract with the highest qualified firm at a fee determined to be fair and reasonable, negotiations as to scope of services and price with the firm of second choice will commence. Failing that, negotiations as to scope of service and price will be undertaken with the third most qualified firm. In no situation, after negotiations have been terminated with a firm, will negotiations be reopened.

If the agency fails to negotiate a satisfactory contract with any of the selected firms, in order of their competence and qualifications, they will rebid.

**8.1.2 Projects \$250,000 or Less:** In the procurement of architectural and engineering services for projects estimated to cost less than \$250,000 (which includes construction cost and architectural fee), competition shall be sought by the agency.

The agency shall conduct discussions with three (3) or more firms solicited on the basis of known or submitted qualifications for the assignment and the scope of services prior to the awarding of any contract. The Purchasing Master Terms and Conditions must be included with the negotiated contract that is submitted to the Purchasing Division, so that all vendors are aware of the requirements of the potential contract.

Price may not be discussed prior to selecting the highest rated firm.

The agency and the initially selected firm shall further develop the scope of services and, at this time, discuss price. If negotiations fail to result in a satisfactory contract, the agency may commence negotiations with the next ranked firm in the same manner, continuing until a satisfactory contract is negotiated.

Once negotiations conclude with the selected vendor, the agency must send the negotiated contract to the Purchasing Division to be properly executed.

If a judgment is made that special circumstances exist and that seeking competition is not practical, the agency may, with the prior approval of the Purchasing Director, select a firm on the basis of previous satisfactory performance and knowledge of the facilities and agency's needs.

Change order for projects estimated to cost less than \$250,000 (which includes construction and architectural fee) that far exceeds \$250,000 may not be approved and may necessitate a rebid.

## **8.2 Capitol Improvements**

**8.2.1 State Capitol Complex:** Pursuant to the *West Virginia Code* §4-8-5, "No contract or contracts which will result in physical changes to the state Capitol or any approaches, structures or facilities incidental thereto shall be let, nor shall any physical changes be made not requiring a contract, until approval of the commission has been obtained."

The Code requires the Capitol Building Commission to review and either approve or reject all plans recommending substantial physical changes inside or outside the state Capitol or surrounding complex, including the public meeting rooms, hallways and grounds which affect the appearance thereof. The surrounding complex shall include the governor's mansion and other buildings used by the governor as part of his residence; the state science and cultural center; all state office buildings located in the immediate vicinity of the state Capitol and the roadways, structures and facilities which are incidental to such buildings. Substantial physical change means any permanent physical changes that alter the appearance of the public areas of the Capitol and surrounding complex.

The approval of the Capitol Building Commission is mandatory before any contract may be bid for work requiring a substantial physical change, or before changes are initiated if the work is not done under a contract.

**8.2.2 State-Owned Office Buildings:** Pursuant to the *West Virginia Code* §4-8-4, "The Capitol Building Commission shall review and approve or reject all plans recommending substantial physical changes inside or outside the state capitol building or surrounding complex, including the public meeting rooms, hallways and grounds, which affect the appearance thereof. The approval of the commission is mandatory before a contract may be let for work which constitutes a substantial physical change, or before changes are started if the work is not done under a contract. As used in this article, the surrounding complex shall include the governor's mansion and other buildings used by the governor as part of his residence, the state science and cultural center, all state office buildings located in the immediate vicinity of the state capitol, and the roadways, structures and facilities which are incidental to such buildings. As used in this article, substantial physical change shall include, but not be limited to, permanent physical changes that alter the appearance of the public areas of the capitol building and surrounding complex. The secretary of the department of administration shall promulgate rules and regulations, pursuant to the provisions of chapter twenty-nine-a of this code, which rules and regulations shall be subject to the approval of the capitol building commission, to implement the provisions of this article." In addition, *West Virginia Code* §4-8-4 states that no contract or contracts which will result in physical changes to the capitol building or any approaches, structures or facilities incidental thereto shall be let, nor shall any physical changes be made not requiring a contract, until approval of the commission has been obtained.

### **8.3 Data Processing Equipment or Software**

The *West Virginia Code* §5A-6 requires that the Chief Technology Officer (CTO), in conjunction with the Information Services & Communications Division (IS&C) of the Department of Administration, review and approve all data processing procurements for state agencies.

All infrastructure purposes, regardless of dollar value, require CTO approval prior to submission of a request to use any type of solicitation. Since the CTO may require changes by the agency, the Purchasing Division's review of documentation without CTO approval may not be practical. All state entities, with the exception of Constitutional Officers, Higher Education and K-12, shall request approval for, at a minimum, but not limited to, the purchase of servers,

storage device, routers, hubs, switches, firewalls, video conferencing and telephone equipment, including PBX system. The applicable infrastructure purchases also include infrastructure software of all types, whether it is e-mail applications, anti-virus software or any other interoperability application.

Different than infrastructure purchases in the previous paragraph, state agencies may procure computer application software and other non-infrastructure software, as well as IT consulting services with an estimated value of less than \$10,000 without CTO approval, but must provide copies of agency purchase orders to the CTO. **All purchases of computer hardware, software and consulting services in excess of \$10,000 must have prior approval of the CTO before it can be processed.** Such proposed purchases must be submitted to the Office of Technology for review and evaluation, and the results will be forwarded to the CTO for final approval.

**The agency must obtain approval from the CTO prior to submitting purchasing transactions to the Purchasing Division.**

**8.4 Design Services or Consultant:** Any individual, corporation, or firm (except as provided by a statewide contract) paid to custom design or write specifications for a modular office system, computer system, construction or any other project or contract shall not be permitted to competitively bid to provide the product or service that was designed. This removes the possibility of the designer developing specifications that only the designer can meet or restrict another vendor from meeting. This also prevents the appearance of any impropriety, thereby protecting the integrity of the competitive bid process.

Agencies may call vendors for information or copies of specifications for consideration of a particular brand or manufacturer without jeopardizing the vendor's ability to compete in the bid process as long as the vendor does not receive compensation or any form of favoritism.

**8.5 Sole Source Purchases:** A sole source purchase is a transaction in which a purchase is made for a commodity or service that is unique and possesses specific characteristics that are available from only one known source.

For additional information on sole source procurements, please visit Section 4.7.1.6.

**8.6 Emergency Purchases:** In accordance with the *West Virginia Code* §5A-3-15, purchases may be necessary to be made when unforeseen causes arise; however, emergency purchases are not used for hardship resulting from neglect, poor planning or lack of organization by the spending unit.

For additional information on emergency purchases, please visit Section 4.7.1.4.

**8.7 Lease or Lease Purchase of Equipment:** Lease or lease purchase of equipment are methods by which a state agency may obtain equipment and make payments for the use of the equipment over a period of time.

Leases and lease purchases are subject to annual funding authority of the Legislature. The state agency must provide the required funding over the life of the agreement. A reduction in funds or an administrative freeze shall not be sufficient justification to cancel a lease or lease

purchase agreement. No lease or lease purchase can be canceled without approval of the Purchasing Division.

State agencies may be authorized by the Purchasing Division to purchase equipment currently under lease if the Purchasing Division competitively bid the lease originally. Each request will be evaluated on its own merits by the Purchasing Division. Approval is required by the Purchasing Division.

The minimum purchase price for this method should be \$100,000. Borrowing money is discouraged; however, if it is critical to the operation to gain financial assistance, it is vital to prepare a letter of justification and submit to the Purchasing Division. A mandatory statewide contract for financing is available to all agencies.

**8.8 Piggybacking Contracts:** In accordance with the *West Virginia Code* §5A-3-19, the Purchasing Director *“may, upon the recommendation of a state spending unit, participate in, sponsor, conduct, or administer a cooperative purchasing agreement or consortium for the purchase of commodities or services with agencies of the federal government, agencies of other states, other public bodies or other state agencies, if available and financially advantageous.”*

State agencies must complete a **Cooperative Purchasing Request, Justification and Approval** form (WV-40) to request that the Purchasing Director consider granting the state agency permission to purchase from one of the above contract categories. The completion of this form is required for each subsequent purchase from the respective contract unless the Purchasing Director designates the identified contract as mandatory. Contracts identified as mandatory do not require submissions of the WV-40 for each purchase.

The ***Cooperative Purchasing Request, Justification and Approval*** form (WV-40) requires the agency to indicate the type of contract (public cooperative entity, such as NASPO, WSCA, NJPA; federal government, such as GSA; state entity other than West Virginia; West Virginia state entity; or another public body); contract name and number; contract purpose; cost of contract purchase; verification requirements, including a copy of the valid contract and the release order; identification of existing state contracts; and West Virginia vendor impact.

Should a state agency receive approval through the WV-40 process from the Purchasing Division to piggyback an existing contract, the agency must complete a ***Purchasing Requisition*** (WV-35), attaching the WV-40 form, indicating a release to the approved contract. Please note that certain additional Purchasing Division forms, such as the ***(WV-96) Agreement Addendum, Purchasing Affidavit, Certificate of Non-Conflict***, may be applicable.

The ***Code of State Rules*** 148 CSR 1 7.9 address these types of contracts by stating:

*7.9. Purchases from contracts issued by other public agencies and entities*

*7.9.1. The Director may approve a request by a spending unit to make a purchase from contracts issued by agencies of the federal government, agencies of other states, other public bodies or other state agencies. The Director may require the use of a contract issued by another public organization or a spending*

*unit to make a purchase from contracts issued by other public agencies and entities.*

*The Director may participate in cooperative purchases with other public agencies and entities. In all cases, these contracts or cooperative arrangements shall be from valid properly awarded contracts and considered by the Director to be available and financially advantageous and comparable to what can be obtained by competitive bid. The Director shall require spending units to prove that their requests to use such contracts:*

*(a) Do not conflict with existing State of West Virginia contracts unless the prices on the contracts issued by other public agencies and entities is substantially lower than the state contract based on an equal comparison. No price comparison may be based on differing specifications as determined by the Director;*

*(b) Will not cause a West Virginia vendor that offers like products and services to lose substantial business, unless the Director determines based on submitted documentation from the spending unit that the difference in price is so great that the State's best interest is served by using the contracts issued by other public agencies and entities; and*

*(c) Does not cause extensive hardship to any spending unit offered preference under the West Virginia Code.*

*7.9.2. All requests to use such contracts shall be submitted in advance to the Director with necessary evidence and documentation. The Director shall approve only those requests submitted with evidence that justifies use of such contracts. Any request that is not supportable shall be returned to the spending unit.*

**8.9 Prevailing Wage Rates:** Fair minimum rate of wages, including fair minimum overtime and holiday pay, determined by the West Virginia Division of Labor, that must be paid to laborers, workmen, or mechanics on all contracts for the construction of a public improvement.

**8.10 Printing and Printing Equipment:** All printing and binding services must be performed by Correctional Industries or a letter of refusal must be attached to the **Purchase Requisition** (over \$25,000), or maintained with agency invoice or purchase order file (\$25,000 or less).

**8.11 Professional Services:** Professional service contracts provide a mechanism to acquire specific professional expertise. Unless specifically covered in Section 9, professional services shall be competitively bid.

**8.12 Rentals:** Rentals require an **Agreement Addendum [WV-96]** and shall not exceed thirty (30) days.

**8.13 Telecommunications Systems:** All telephone systems with a total cost (purchase price or total of lease purchase payments, including maintenance if selected by the agency at the time of award) over \$25,000 must be bid through the Purchasing Division. Upgrading of existing systems may be considered a sole source purchase, if the displaced equipment

represents less than 50% of the present day dollar value of the existing equipment, and the equipment remains under the terms and conditions of its original maintenance agreement. Expansion of existing systems not involving an upgrade and/or added features may be considered sole source purchases if the equipment remains under the terms and conditions of its original maintenance agreement.

All telecommunications systems, upgrades and expansions, regardless of cost, must be approved prior to bidding by the Information Services and Communications Division. **All telecommunications purchase orders greater than \$25,000 must be approved by the Chief Technology Officer of the Governor's Office of Technology.** Evaluation of bids will include installation, training and post-warranty maintenance. This policy is vitally important to maintain the integrity and compatibility of the state's massive voice and data telecommunications system.

**8.14 Vehicles:** Approval by the Fleet Management Office is required to purchase vehicles, unless statutorily exempt. Vehicles greater than 10,000 GVWR or that require a CDL to operate are outside of the scope of the Fleet Management Office. Any request under the authority of the Fleet Management Office to increase an agency's fleet size must be approved by the Executive Director of the Fleet Management Office. Vehicles ordered from the statewide contract, with options not included on the statewide contract, require a written quote (dealer cost) from the vendor, written agency justification, and approval of the Purchasing Director. All vehicle purchases, regardless of dollar amount, must be processed through the Purchasing Division. Purchases of vehicles from Surplus Property are exempt from Purchasing Division approval.

**8.15 Used Property:** State agencies may purchase used property through the normal competitive bid process after first checking the item availability with the West Virginia State Agency for Surplus Property and documenting this contact in the official file. In accordance with the **Code of State Rules**, 148CSR7.5.6, the Purchasing Director shall issue prior approval or disapproval for used equipment to be purchased directly without competitive bids. If disapproved, the Purchasing Director shall return the request to the spending unit and direct another method of purchasing.

**8.16 Banking Goods and Services:** The Office of the State Treasurer must approve the acquisition of any kind of banking goods or services, which includes accepting payments and receiving funds via electronic commerce. Agencies must submit a request to the Office of the State Treasurer before issuing any Request for Proposal (RFP) or Request for Quotation (RFQ) or entering into any contract with another entity for banking goods or services, in accordance with **West Virginia Code** §12-1-7 and §12-3A-6.

**8.17 Radios and Microwave Equipment:** In accordance with Governor's Executive Order 2-11, any purchase by a state spending unit or state agency, including purchases on behalf of state agencies, of two-way radio, microwave or satellite equipment and related services, or purchases that utilize state or federal funds distributed to local entities by the state of West Virginia which are not listed on the Statewide Interoperability Executive Committee's State Interoperable Radio Network (SIRN) Approved Compatibility Equipment List, shall obtain the prior written approval of the Statewide Interoperability Coordinator (SWIC) for any proposed purchase of goods and services. SWIC approval or verification that the equipment is on the

Approved Compatibility Equipment List must be submitted with the ***Purchase Requisition*** to the Purchasing Division.

For a list of approved radios for use on the Statewide Interoperable Radio Network, visit:

<http://www.sirn.wv.gov/information/downloads/Pages/default.aspx>

All contractual documents for two-way radio, microwave or satellite equipment and related services, including, but not limited to, land or tower leases, memorandums of understanding/agreement, training contracts, agreements or services, and purchasing or service contracts related to two-way radio, microwave or satellite equipment and related services for any agency of the state of West Virginia, and all local entities of the state of West Virginia which utilize state or federal funds distributed by the state of West Virginia, must be reviewed and approved by the SWIC to ensure compatibility with the SIRN, to promote the best possible value in purchasing, and to ensure all agencies participating in the SIRN and needing equipment and related services are covered by contractual documents.

Questions may be directed to the Statewide Interoperability Coordinator at (304) 766-5899.



# PROCEDURES HANDBOOK

## SECTION 9: EXEMPT PURCHASES

### **West Virginia Purchasing Division**

### **Non-Competitive / Exempt List of Commodities and Services**

In accordance with §5A-3-10 of the *West Virginia Code*:

*“...a purchase of and contract for commodities, printing and services shall be based, whenever possible, on competitive bids.”*

In accordance with the Code of State Rules 148CSR1-4,

*The Director shall:*

*(a) Ensure that purchases and contracts for commodities, services or printing are based on competitive bid where possible. The Director may establish a list of commodities and services that are not possible to submit for competitive bid. The Director shall approve the list before the beginning of each fiscal year and shall make the list available for public review. Spending unit may purchase the commodities and services on the list directly from the vendor and are not required to have contracts for purchase of those items approved by the Purchasing Division. A spending unit's request to add commodities and services to the list must be accompanied by written justification and an explanation of why competitive bids are not possible. Nothing in this section supersedes or replaces the Attorney General's authority to approve contracts as to form.*

In accordance with *West Virginia Code* §5A-3-10 and the *West Virginia Code of State Rules* §148-1-4, the Director has determined that it is not possible to obtain certain commodities and services through the competitive bidding process. The Director has identified those items that cannot be competitively bid in the Non-Competitive/Exempt List of Commodities and Services (hereinafter “Exempt List”) shown below.

Purchasing Division approval is not required for these Exempt List procurements, unless specifically noted. Vendor registration and all other requirements for the dollar amount of the purchase are mandatory for contracts for these commodities and services.

Except as outlined in the preceding paragraph, spending units purchasing from vendors under the Exempt List must continue to observe the standard purchasing procedure associated with a normal (non-Exempt List) purchase of the same dollar amount. For example, the use of a purchase order is required on all purchases over \$2,500. Similarly, spending units must continue to submit contracts to the Attorney General's office for approval, as to form.

Vendors providing commodities and services under the Exempt List must complete the necessary vendor registration forms.

The following items comprise the non-competitive/exempt list of commodities and services that may be purchased directly by spending units without advertisement or bid.

1. **Advertising:** This exemption includes any advertisement placed directly with newspapers, trade magazines, internet publications, etc. This exemption does not include broadcast television, cable television, or radio, with the exclusion of statewide radio advertising purchased directly from the broadcaster. It also does not include any indirect placement, promotional items, advertising consultant services, broadcast of Lottery prize drawings, etc.
2. **Artwork and Historical Items:** This exemption includes the purchase of and service to artwork and historical items, i.e. restoring governors' portraits, refurbishing chandeliers, etc. An agency attempting to procure commodities and services under this exemption must obtain written approval from the Purchasing Division prior to making any purchase.
3. **Attorneys and Law Firms:** This exemption includes attorneys, law firms, temporary hearing examiners, administrative law judges and court reporters for any agency. The term of a contract made pursuant to this exemption for temporary hearing examiners, administrative law judges or court reporters shall not exceed one year. The selection of attorneys and law firms must be pre-approved by the West Virginia Attorney General's Office. Such pre-approval is not required for hearing examiners, administrative law judges or court reporters; however, approval "as to form" by the Attorney General's Office is required for hearing examiners and administrative law judges. The selection of bond counsel is exempt.
4. **Aviation Fuel:** This exemption includes the purchase of aviation fuel, but excludes bulk purchases for delivery to state dispensing stations.
5. **Cash Advances:** In accordance with the *West Virginia Code*, §5A-3-17(2), the head of any spending unit, or the financial governing board of any institution, may, with the approval of the Purchasing Director, make requisitions upon the State Auditor for a sum to be known as an advance allowance account, in no case to exceed five percent (5%) of the total of the appropriations for any such spending unit, and the State Auditor shall draw his warrant upon the State Treasurer for such account; and all such advance allowance accounts shall be accounted for by the head of the spending unit or institution once every thirty (30) days or more often if required by the State Auditor or Purchasing Director.
6. **Contracts Between Governmental Agencies:** This exemption includes any contract between a state agency and any other governmental agency (state, local, federal) where no competition is available and the other governmental agency directly or indirectly provides the service. Examples include water line projects with local communities and environmental studies with federal agencies. This exemption does not include piggybacking existing contracts or any contracts with research corporations.
7. **Court Ordered Placements:** This exemption includes when placing children at various educational and/or behavioral centers when ordered by West Virginia courts or the West Virginia Department of Health and Human Resources.

8. **Employee Expense Accounts and Reimbursements:** This exemption covers payments to employee expense accounts and to employees as reimbursement. All vendor registration requirements are waived unless the employee is working as a contractor for the agency.
9. **Entertainers:** This exemption includes individuals and/or groups contracted at the request of the state to entertain or to assist in the production of entertainment.
10. **Fees Imposed by Other Government Entities (i.e., licenses, permits):** This exemption includes payment of fees imposed by other governmental entities (i.e., licenses, permits, etc.)
11. **Governor's Mansion Furnishings:** This exemption includes the purchase of any unique or handmade items used in the mansion purchased with public funds, donated, or that remain in the mansion for subsequent administrations. This exemption does not include commercially available items from more than one source.
12. **Grants and Cooperative Agreements:** Grants and Cooperative Agreements as defined in Section 2 of this Procedures Handbook are included in this exemption if the Grant or Cooperative Agreement meets the following requirements: (1) the principal purpose of the relationship must be the transfer of money, property, services or anything of value to the local government or other recipient in order to accomplish a public purpose of support or stimulation authorized by federal and/or state statute, (2) the relationship must not be to facilitate an acquisition, by purchase, lease or barter, of property or services for the direct benefit or use of the state government, and (3) the Grant or Cooperative Agreement must be targeted at specific recipients thereby making competition unavailable.
13. **Hospitality:** This exemption includes food, beverages, facility rental, entertainment and other expenses **relating to conducting state business**. A Request for Hospitality Form TMO 3.0, signed by the agency head or designee, must accompany the invoice regardless of the amount. The Purchasing Division does not need to approve TMO.3
14. **Media License Fees:** This exemption includes program license fees for radio or television.
15. **Medical Fees:** Included in this exemption are fees for medical services (behavioral and physical) from individual doctors, dentists, clinics, hospitals, laboratory testing facilities, audiologists, county medical examiners, physical and occupational therapists, behavioral counseling and evaluations, etc. for individual patients, inmates, students and clients where the state is responsible for payment for this one-time service. This exemption also includes programs designed for low income / uninsured patient care on an individual basis provided that the program is open to all service providers. Also, included in this exemption is body transportation for corpses and indigent burial expenses and sole source medical and psychological consultants for the purpose of determining Federal Social Security Administration Disability by the Disability Determination Services of the WV Division of Rehabilitation Services. Also included are medical fees for the purposes of determining vocational rehabilitation needs of clients of

the Division of Rehabilitation Services. This exemption does not include inmate health care management, hospital management, consulting services or agreements to provide services for groups of patients, inmates, students or clients, etc. for state agencies.

16. **Medical Fees, Emergency Trauma Reimbursement:** This exemption provides for the Department of Health and Human Resources to remit fees to State of West Virginia Level I or Level II Emergency Medical Services trauma physicians for services rendered to supplement insurance premiums and other costs when required to maintain certain levels of certification. Limited to qualified trauma physicians that meet the overall trauma performance requirements determined by the Office of Emergency Medical Service guidelines. The physicians to be contracted with will have credentials to meet the identified needs of a Level I or Level II trauma center.
17. **NASCAR:** This exemption only applies to NASCAR licensing or license plate manufacturing for West Virginia Division of Motor Vehicles.
18. **Postage:** This exemption includes stamps, metering, overnight services (i.e., Federal Express, Airborne, UPS, etc.), but this does not include postage available from statewide contracts.
19. **Professional Association Dues:** This exemption includes membership fees or association dues for professional associations (i.e., West Virginia Bar Association, West Virginia Board of Accountancy, etc.).
20. **Railroad Car Hire Fees:** This exemption includes national association fees required from all railroads to monitor the location and use of railroad cars for the owners. Bar codes on railroad cars are scanned into a computer database which in turn notifies the owner of the location and remits the user fees to the appropriate owner.
21. **Resale Items:** This exemption includes items that are acquired specifically for resale by the state agency to the general public (or for use by Correctional Industries in producing items for resale) that should be selected on the basis of quality and delivery constraints due to customer demand.
22. **Shipping Charges and Freight:** This exemption applies only to shipping charges and freight for items shipped or received that are not included in a contract or purchase order.
23. **System Maintenance:** This exemption applies to maintenance on all non-competitive proprietary software or bundled hardware/software system maintenance. This exemption does not include the purchase of new software, and does not apply to hardware or software maintenance, where multiple vendors are authorized by the manufacturer to provide service without voiding system warranties. The Office of Technology must pre-approve any purchase under this exemption.
24. **Student Activities:** This exemption includes lecturers, entertainers, athletic events, referees, teachers [for services requiring teacher certification by the West Virginia Department of Education], etc.

25. **Investigative Services; Subject Matter Experts and Witnesses:** This exemption includes obtaining investigative services and the services of a subject matter expert or witness for administrative hearings and legal procedures. This exemption does not include agency consulting services or former employees retained by their agency or hired by another agency.
26. **Subscriptions and publications:** This exemption includes newspapers, textbooks and publications – electronic and hard copy – purchased directly from the publisher.
27. **Training Activities:** This exemption includes lecturers, honorariums, copyrighted test and training materials, test monitors/examination proctors, etc., where competition is not available.
28. **Tuition, Stipends, Accreditations and Registration Fees:** This exemption includes payment of tuition, stipends, accreditations and registration fees. This exemption also includes students who are receiving monetary awards by a state agency. Vendor registration is not required under this exemption.
29. **Utilities (Regulated Services by the Public Service Commission):** This exemption includes natural gas, water, sewage, electric, telephone, garbage, cable television service, connection fees, trash hauling and dumpster rental [if only one **PSC** approved hauler is in the area]. An **Agency Purchase Order (WV-88 or TEAM generated purchase order) or Agreement, WV-48**, is required for cable service and trash hauling in excess of \$2,500 per year. This exemption does not include propane gas and coal, both of which must be competitively bid.
30. **Department of Agriculture Exemptions:** Approved exemptions for the West Virginia Department of Agriculture include purchase of livestock for sale to state institutions and the acquisition of bees for repopulation purposes.
31. **Court Ordered Payments:** This exemption includes court order payment. A copy of the court order must be maintained in the agency file, unless sealed and restricted by the respective judge. If the order is sealed and restricted, an explanation must be maintained in the agency file referencing the court order. Court order payments are exempt from the vendor registration requirement.
32. **Intellectual Property:** This exemption includes the West Virginia Lottery's purchase of licenses to intellectual property, such as copyrighted or trademarked material, for creative use in the development of lottery products, promotions, or advertising when the license can be obtained from only one source. This exemption in no way applies to software.



# PROCEDURES HANDBOOK

## SECTION 10: QUALITY ASSURANCE

### 10.0 QUALITY ASSURANCE:

Quality assurance is a partnership involving the state agency, the vendor and the Purchasing Division. The agency establishes the quality level by the specifications, and the Purchasing Division seeks to reduce cost and maintain quality through the competitive bid process. The agency and the Purchasing Division perform an evaluation of the offers by bidders to obtain maximum benefit for the tax dollars spent. The vendor's responsibility is to provide the quality level established by the specifications and accepted by the agency.

### 10.1 Agency Responsibilities

**10.1.1 Proper Acquisition Planning:** The agency's first step is to determine the commodity that is needed, the quantity, the quality level, delivery location and time frame. All offers in the evaluation process will be compared to the standards established in the specifications for award.

**10.1.2 Receiving:** State agency personnel must verify the shipment of commodities with the specifications in the purchase order while reporting of any discrepancies, obvious damages or shortages based upon the purchase order specifications. (See Section 6.3)

**10.1.3 Closing of Purchase Order:** Agencies should close all encumbered purchase orders in TEAM after receipt of commodities or last payment made.

**10.1.4 Inventory:** Once payment has been made to the vendor and the I-document established, reportable property must be added to the WVFIMS Fixed Assets System. (See Appendix G)

**10.1.5 Vendor Performance:** Vendor performance and product quality is crucial in the state purchasing process. When these factors do not meet expectations, the state agency designated procurement officers are strongly encouraged to contact the vendor and voice their concerns. Agency procurement officers must document all efforts made to resolve the problem and the complaints should be resolved expeditiously and courteously. It is the responsibility of the agency procurement officer to initiate all efforts to attempt to resolve the matter and to document his or her actions.

After all attempts have failed by the agency to resolve the issues, the complaint should immediately be referred to the appropriate buyer of the Purchasing Division, who is assigned to the agency, on the **Vendor Performance Report (WV-82)**, along with all

documentation noting all steps taken to try to resolve the problem. All written vendor responses must also be included in the packet sent to the Purchasing Division buyer.

**10.1.5.1 Vendor Performance Form:** The *Vendor Performance Report (WV-82)* is to be used to report all incidents of vendor performance, both positive and negative, even if a resolution has been reached.

When assistance is requested, a Purchasing Division official will notify the vendor directly in writing of the problem.

The *Vendor Performance Form* is to be sent to the appropriate buyer of the Purchasing Division who is assigned to the agency at 2019 Washington Street, East, P.O. Box 50130, Charleston, WV 25305.

**10.2 Purchasing Division Responsibilities:** The Purchasing Division is responsible for ensuring that the purchase of or contract for commodities and printing shall be based whenever possible on competitive bid.

**10.2.1 Specification Review:** The Purchasing Division will review all specifications submitted by an agency to ensure that the specifications are complete and open to competition.

**10.2.2 Evaluation:** The Purchasing Division staff reviews all evaluations and recommendations for award for validity and consistency. In Best Value Procurement techniques, the Purchasing Division requires and provides training to all agency evaluation committee members to ensure proper evaluation procedures are followed and quality evaluations are submitted in standard format. (See Section 7.2.1.2.1).

**10.2.3 Contract Administration:** Although the agency is responsible for monitoring vendor performance and compliance with the specifications on a daily basis, the Purchasing Division assists with dispute resolutions when needed. It is preferred that agency personnel and the vendor exhaust all avenues in an effort to resolve the dispute prior to the Purchasing Division's intervention. Situations where the vendor has breached contract or established a pattern of poor performance, the Purchasing Division may cancel the contract and/or suspend the vendor from further participation in the competitive bid process. In the event that bonds have been posted by the vendor, the Purchasing Division may also institute action to recover any damages identified from the vendor's surety.

**10.2.4 Training:** The Purchasing Division provides a variety of training to state agencies in an effort to increase the level of proficiency. Annual conferences are usually conducted for agency procurement officers.

In addition, on-going training is offered by the Purchasing Division in various methods, including the in-house training curriculum which offers classes throughout the year at the State Capitol Complex and online modules available on the Purchasing Division's website. Webinars on various topics are also offered throughout the year.

In order to be knowledgeable of purchasing requirements, laws and procedures, it is highly recommended that agency designated procurement contacts participate in the available purchasing training opportunities. In accordance with the **Code of State Rules** 148CSR1, *“all purchases must be approved by the secretary or head of the spending unit, or a designee, whose name shall be filed with the Director. The person(s) named should take available purchasing training and have responsibility for the function of purchasing. Each spending unit shall process all purchases through this person(s), who shall be responsible for correspondence and communication with the Purchasing Division.”*

The Purchasing Division strongly encourages agency procurement officers to provide additional internal training for their staff. Agency personnel should **always** consult with the agency procurement officer in all purchasing matters.

**10.3 Vendor Responsibilities:** Each vendor is solely responsible for delivering a bid to the Purchasing Division prior to the specified date and time of the bid opening. The official time clock of the Purchasing Division, for the purpose of receipt of bids, shall be displayed in the offices of the Purchasing Division. Vendors are responsible for the accuracy of the information on and in the bid envelopes.

**10.3.1 Compliance with Specifications:**

Successful vendors are required to meet or exceed the quality level accepted and specified on the final purchase order in addition to meeting delivery requirements.

**10.3.2 Follow-Up with Suppliers:**

To ensure delivery deadlines are met, the vendor should communicate and coordinate with its suppliers to fulfill delivery obligations.

**10.3.3 Dispute Resolution:**

The vendor is required to negotiate in good faith with agency personnel should a dispute arise.

**10.3.4 Remedies**

In the event that a vendor fails to honor any contractual term or condition, the Director may:

(a) Cancel the contract and re-award the purchase order to the next lowest bidder. The vendor failing to honor contractual obligations is responsible for all differences in costs;

(b) Declare a vendor non-responsible or non-responsive and refuse to award a purchase order. All such instances shall be substantiated in writing. The documentation shall be considered a public document and shall be available for inspection at all reasonable times; or

(c) Suspend, for a period not to exceed one (1) year, the right of a vendor to bid on state purchases when there is reason to believe the vendor has violated any of the provisions, terms, or conditions of a contract, this rule or state law. A suspended vendor may appeal the decision of the Director to the Secretary of Administration.

The following are adequate grounds for suspension:

(i) A vendor has exhibited a pattern of poor performance in fulfilling his or her contractual obligations to the state. Poor performance includes, but is not limited to, a vendor providing or furnishing commodities, services or printing, materials, or services late, or at a quantity or quality level below that which is specified in the contract.

(ii) The vendor has breached any contract entered into pursuant to the provisions of **West Virginia Code, §5A-3-1, or Legislative Rule**; or

(iii) The vendor has been convicted of any federal, state or local crime punishable as a felony, directly related to the performance of a contract entered into pursuant to **West Virginia Code, §5A-3-1 et seq. or Legislative Rule**.

### **10.3.5 Damages**

A vendor who fails to perform as required under a contract shall be liable for actual damages and costs incurred by the state.

If any merchandise delivered under a contract has been used or consumed by an agency and on testing is found not to comply with specifications, no payment may be approved by the Director for the merchandise until the amount of actual damages incurred has been determined.

The Purchasing Director shall seek to collect damages by following the procedures established by the Office of the Attorney General for the collection of delinquent obligations.

# **APPENDIX**

<b><u>Appendix A</u></b>	Purchasing Division Directory
<b><u>Appendix B</u></b>	Purchasing Forms
<b><u>Appendix C</u></b>	Buyer – Agency Assignments
<b><u>Appendix D</u></b>	Legislative Rules and Regulations
<b><u>Appendix E</u></b>	Statewide Contract Listing
<b><u>Appendix F</u></b>	NIGP Code of Ethics
<b><u>Appendix G</u></b>	Surplus Property Operations Manual
<b><u>Appendix H</u></b>	[Reserved]
<b><u>Appendix I</u></b>	Pre-Bid Conference Sign-in Sheet
<b><u>Appendix J</u></b>	Request for Proposal Standard Format
<b><u>Appendix K</u></b>	Standard Change Order Language
<b><u>Appendix L</u></b>	BEP Default Unemployment (Sample Letter)
<b><u>Appendix M</u></b>	The Purchasing Decision Path
<b><u>Appendix N</u></b>	Sole Source Determination
<b><u>Appendix O</u></b>	Agency Process Checklists
<b><u>Appendix P</u></b>	Expression of Interest Standard Format
<b><u>Appendix Q</u></b>	Attorney General's Office Instructions for Use of the Agreement Addendum (WV-96)



WEST VIRGINIA PURCHASING DIVISION

# **PROCEDURES HANDBOOK**

## **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>**.



WEST VIRGINIA PURCHASING DIVISION

# **PROCEDURES HANDBOOK**

## **APPENDIX B: PURCHASING FORMS**

Download the following forms from the Vendor Resource Center (VRC) on the Purchasing Division's Internet site at [www.state.wv.us/admin/purchase/forms](http://www.state.wv.us/admin/purchase/forms):

- Vendor Registration and Disclosure Statement and Small, Women-, and Minority-owned Business Certification Application
- Agreement Addendum
- Purchasing Affidavit
- Vendor Preference Certificate
- Employment History Disclosure Statement
- Bond Forms

State employees can search and download a variety of forms on the West Virginia State Employees Intranet. For a direct link, access <http://intranet.state.wv.us/admin/purchase>.



WEST VIRGINIA PURCHASING DIVISION

# **PROCEDURES HANDBOOK**

## **APPENDIX C: BUYER – AGENCY ASSIGNMENTS**

**Click here** for the Purchasing Division buyer assignments.

For a direct link, access **<http://www.state.wv.us/admin/purchase/byrassign.htm>**.



WEST VIRGINIA PURCHASING DIVISION

# **PROCEDURES HANDBOOK**

## **APPENDIX D: LEGISLATIVE RULES AND REGULATIONS**

**Click Here** for the Purchasing Legislative Rules and Regulations.

For a direct link, access **<http://www.state.wv.us/admin/purchase/newrules.pdf>**.



WEST VIRGINIA PURCHASING DIVISION

# **PROCEDURES HANDBOOK**

## **APPENDIX E: STATEWIDE CONTRACT LISTING**

**Click Here** for the current statewide contract listing.

For a direct link, access **<http://www.state.wv.us/admin/purchase/swc/>**.



# **PROCEDURES HANDBOOK**

## **APPENDIX F: NIGP CODE OF ETHICS**

The West Virginia Purchasing Division is an active member of the National Institute of Governmental Purchasing, Inc. and adopts as a policy the Code of Ethics which the Institute has initiated.

### **CODE OF ETHICS**

The Institute believes, and it is a condition of membership, that the following ethical principles should govern the conduct of every person employed by any public sector procurement or materials management organization.

1. Seeks or accepts a position as head or employee only when fully in accord with the professional principles applicable thereto, and when confident of possessing the qualifications to serve under those principles to the advantage of the employing organization.
2. Believes in the dignity and worth of services rendered by the organization and the social responsibilities assumed as a trusted public servant.
3. Is governed by the highest ideals of honor and integrity in all public and personal relationships, in order to merit the respect and inspire the confidence of the organization and the public being served.
4. Believes that personal aggrandizement or personal profit obtained through misuse of public or personal relationships is dishonest and not tolerable.
5. Identifies and eliminates participation of any individual in operational situations where a conflict of interest may be involved.
6. Believes that members of the Institute and its staff should at no time or under any circumstances, accept directly or indirectly, gifts, gratuities or other things of value from suppliers.
7. Keeps the governmental organization informed, through appropriate channels, of problems and progress of applicable operations, but personally remains in the background by emphasizing the importance of the facts.
8. Resists encroachment on control of personnel in order to preserve integrity as a professional manager. Handles all personnel matters on a merit basis. Political, religious, racial, gender and age considerations carry no weight in personnel administration in the agency being directed or served.

**9.** Seeks or dispenses no personal favors. Handles each administrative problem objectively and empathetically on the basis of principles and justice without discrimination.

**10.** Subscribes to and supports the professional aims and objectives of the National Institute of Governmental Purchasing, Inc.



WEST VIRGINIA PURCHASING DIVISION

# **PROCEDURES HANDBOOK**

## **APPENDIX G: SURPLUS PROPERTY OPERATIONS MANUAL**

**Click Here** to view the Surplus Property Operations Manual.

For a direct link, access

[http://www.state.wv.us/admin/purchase/surplus/surplus\\_operations\\_manual.pdf](http://www.state.wv.us/admin/purchase/surplus/surplus_operations_manual.pdf)



WEST VIRGINIA PURCHASING DIVISION

# **PROCEDURES HANDBOOK**

**APPENDIX H: [RESERVED]**



WEST VIRGINIA PURCHASING DIVISION

# **PROCEDURES HANDBOOK**

## **APPENDIX I: PRE-BID CONFERENCE SIGN-IN SHEET**

The following form is in PDF format. Use your [Acrobat Reader \(TM\)](#) to view and print it. Please click the highlighted link below.

### **Pre-Bid Conference Sign-In Sheet**

*(Please type or write legibly. The fax number is essential to contact the attendees in a timely manner.)*



WEST VIRGINIA PURCHASING DIVISION

# **PROCEDURES HANDBOOK**

## **APPENDIX J: REQUEST FOR PROPOSAL STANDARD FORMAT**

**Revised 06/08/2012**

Standardized language for the Request for Proposal method of purchasing (Select the file type you prefer):

- [RFP Preparation Instructions](#)
- RFP Standard Format ([Microsoft Word File](#))
- RFP Standard Format ([PDF File](#))



# **PROCEDURES HANDBOOK**

## **APPENDIX K: CHANGE ORDER LANGUAGE**

*Revised 06/06/00*

### **I. Renewals & Extensions**

#### ***Standard Renewal:***

To renew the original contract according to all terms, conditions, prices and specifications contained in the original contract including all authorized change orders.

Effective date of renewal \_\_\_\_\_ through \_\_\_\_\_.

Renewals Remaining: \_\_\_\_\_

#### ***Renewal With Increase:***

To renew and increase the original contract according to all terms, conditions, and specifications contained in the original contract and all authorized change orders. The contract (unit prices, hourly rates, annual fee, etc.) is increased as defined in the attached documentation.

Effective date of renewal \_\_\_\_\_ through \_\_\_\_\_.

Renewals remaining: \_\_\_\_\_

#### ***Renewal With Decrease:***

To renew and decrease the original contract according to all terms, conditions, and specifications contained in the original contract and all authorized change orders. The contract (unit prices, hourly rates, annual fee, etc.) is decreased as defined in the attached documentation.

Effective date of renewal \_\_\_\_\_ through \_\_\_\_\_.

Renewals remaining: \_\_\_\_\_

#### ***Standard Extension of Contract:***

To extend the original contract according to all terms, conditions, prices and specifications contained in the original contract and all authorized change orders. This extension shall not exceed \_\_\_\_\_ months and the contract shall expire on the final date as specified below. No change in contract total.

Effective date of extension \_\_\_\_\_ through \_\_\_\_\_

**Standard Extension With Increase:**

To extend and increase the original contract according to all terms, conditions, and specifications contained in the original contract including all authorized change orders. The contract (unit prices, hourly rates, annual fee, etc.) is increased as defined in the attached documentation. This extension shall not exceed twelve (12) months and the contract shall expire on the final date as specified below.

Effective date of extension \_\_\_\_\_ through \_\_\_\_\_

**Standard Extension With Decrease:**

To extend and decrease the original contract according to all terms, conditions, and specifications contained in the original contract including all authorized change orders. The contract (unit prices, hourly rates, annual fee, etc.) is decreased as defined in the attached documentation. This extension shall not exceed twelve (12) months and the contract shall expire on the final date as specified below.

Effective date of extension \_\_\_\_\_ through \_\_\_\_\_

**Construction Extension of Time Only:**

To extend the original contract to (insert specific date) according to all terms, conditions, prices, and specifications contained in the original contract including all authorized change orders. The extension of this contract is provided to (complete the project, or for payment purposes) only.

Effective date of change \_\_\_\_\_

**Construction Extension of Time and Increase:**

To extend and increase the original contract to (insert specific date) according to all terms, conditions, prices, and specification contained in the original contract including all authorized change orders. The extension of this contract is provided to (insert reason i.e. add additional items, excavation quantities, etc.).

Effective date of change \_\_\_\_\_

**II. CHANGE ORDER LANGUAGE**

**Simple Single Item Change:**

NOW READS:

Page 12. Discount from list price shall be 65%.

**IS CHANGED TO READ:**

Page 12. Discount from list price shall be 72%.

Effective date of change \_\_\_\_\_

**Multiple Item Change:**

<b>CONTRACT IS CHANGED</b>	<b>FROM</b>	<b>TO</b>
Item #1 Milk, gal	\$2.25/ea	\$2.05/ea
Item #12 Milk, Choc, 16oz.	.95/ea	1.05/ea.
Item #44 Sour Cream, 16oz.	.99/ea	.95/ea

**Cancellations:**

**Entire Contract/Purchase Order**

To cancel this contract/purchase order in its entirety and all funds associated with the contact.

Effective date of cancellation \_\_\_\_\_

**Partial Cancellation**

To cancel this contract/purchase order (uncompleted scope of work or undelivered commodities) and funds associated with the work or commodities undelivered.

Effective date of cancellation \_\_\_\_\_



WEST VIRGINIA PURCHASING DIVISION

# PROCEDURES HANDBOOK

## APPENDIX L: UNEMPLOYMENT/WORKERS' COMPENSATION VERIFICATION SAMPLE LETTER

### MEMORANDUM

TO: \_\_\_\_\_

FROM: \_\_\_\_\_, Senior Buyer  
Purchasing Division

DATE: \_\_\_\_\_

Re: *DEFAULT UNEMPLOYMENT / WORKERS COMPENSATION STATUS*

A bid was received from your firm for requisition number \_\_\_\_\_ and you are the apparent successful bidder. However, according to *West Virginia Code §21A-2-6*, the Purchasing Division is required to ensure your company is current with unemployment fee payments with Workforce West Virginia and that Workers Compensation insurance coverage is in effect during the life of the contract. These verifications are required prior to contract award. If you are not current with unemployment fees and we have been unable to verify current Workers Compensation coverage, you will be considered in "default," and we are prohibited from issuing a purchase order until problems are resolved.

Our information revealed that your firm is being reported in a "default" status with \_\_\_\_\_ and we are unable to proceed with the award. Therefore, you are hereby placed on notice that you have five (5) working days from the date of this memorandum to remedy the default status report allowing us to proceed with the award. Failure to remedy the default status in the specified time may be cause for rejection of your bid.

Please resolve this issue with the \_\_\_\_\_ immediately and allow us to proceed with the award. You may contact Workforce West Virginia regarding unemployment compensation issues at 304-558-1281 or 304-926-5000 (8:00 a.m. - 4:30 p.m. Monday - Friday, excluding holidays) or the Insurance Commission regarding Workers Compensation issues at 304-558-1200 (8:00 a.m. - 5:00 p.m., Monday - Friday, excluding holidays).

cc: Requisition File



**WEST VIRGINIA PURCHASING DIVISION**  
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## **APPENDIX M: THE PURCHASING DECISION PATH**

- **Step One – Determination of Need**
  - The agency must determine the product or service required, including quality level, quantity, delivery requirement and estimated cost.
  
- **Step Two – Availability through Internal Resources**
  - Once the need is established, the agency must determine if the product or service is available from internal resources, including Correctional Industries, the State Use Program (Sheltered Workshops) or the West Virginia State Agency for Surplus Property.
  - If available through Correctional Industries or the State Use Program (Sheltered Workshops), the product or service must be acquired through this manner. However, if the product or service is available, but not in the acquired time, quality, quantity or other factors, a written waiver must be issued from Correctional Industries or the State Use Program (Sheltered Workshops), in accordance with purchasing guidelines.
  
- **Step Three – Availability through Statewide or Agency Contract**
  - If the product or service is not available from internal resources, the agency must determine if that product or service is available from a statewide or agency contract. If available, the agency must purchase the product or service in accordance with purchasing guidelines as indicated within the statewide or agency contract. (Examples: office supplies, information processing equipment). No agency may be exempt from using statewide contracts without prior written approval from the Purchasing Director. When such prior written approval is obtained, it must be retained with the file.
  
- **Step Four – Sole Source and Emergency Purchases**
  - If the product or service is not available through an existing statewide or agency contract, the agency must determine if the purchase will be competitive, sole source (only one vendor who can provide this product or service) or an emergency.
  
- **Step Five – Agency Delegated Purchasing Procedures (\$25,000 or Less)**
  - If the competitive product or service is not available on a statewide or agency contract nor through an internal resource, the agency must utilize its delegated purchasing procedures IF the acquisition is estimated to cost \$25,000 or less.

- **Step Six – Formal Acquisitions (Over \$25,000)**
  - If the product or service does not meet the definition of sole source or an emergency, and is not available through internal resources or on an existing statewide or agency contract, it is considered a “formal acquisition” if it is expected to exceed \$25,000. Product purchases most often utilize the Request for Quotation process. If the purchase is a service, the agency must determine whether the Request for Quotation or the Request for Proposal process should be used. Once the process is determined, the agency develops the requisition and forwards to the Purchasing Division for processing.
  
- **Step Seven – Evaluation and Award**
  - After the official bid opening, all bids or proposals (depending upon the bid process used) are opened, evaluated, and an award is made in accordance with purchasing guidelines.
  
- **Step Eight – Purchase Order Encumbrance**
  - Encumbrance of purchase orders ensures that the agency has the appropriate funds to make the specific purchase. Except in an emergency, the encumbrance date is the earliest date that a vendor may commence on any contract.
  
- **Step Nine – Protest Procedures**
  - The Purchasing Division’s *Legislative Rules and Regulations*, 148 CSR 1, provide participating vendors with the right to protest specifications and purchase order awards.
  
- **Step Ten – Contract Management**
  - State agencies are responsible for establishing benchmarks for agency contracts to ensure that the product acquired or services to be rendered are offered in accordance with the contract specifications.
  
- **Step Eleven – Inspection**
  - **Code of State Rules** 148 CSR 1-4-16; 1-7-14: Director shall appoint inspectors to review and audit spending unit requests and purchases and other transactions and performance that fall under authority of the division
  - Inspectors may also provide relevant training for agency personnel.
  - Inspectors shall have access at any and all times to personnel, records, reports, and other documents, as needed
  - Agency shall inspect all materials, supplies, and equipment upon delivery to ensure compliance with the contract requirements and specifications.



WEST VIRGINIA PURCHASING DIVISION  
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**APPENDIX N: SOLE SOURCE DETERMINATION**

**Click Here** for the Sole Source Determination template.

For a direct link, access **<http://www.state.wv.us/admin/purchase/ssdform/>**.



**WEST VIRGINIA PURCHASING DIVISION**  
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**APPENDIX O: AGENCY PROCESS CHECKLISTS**

The purpose of these checklists is to assist representatives of state agencies who are charged with the task of handling the purchase of products and services on behalf of their agencies. Each checklist is available in either Adobe Acrobat or Microsoft Excel format.

<b>Checklist</b>	<b>Adobe Acrobat</b>
Request for Quotation	<a href="#">CL_RFQ.pdf</a> (18KB)
Change Order	<a href="#">CL_ChangeOrder.pdf</a> (18KB)
Direct Purchase Order	<a href="#">CL_DirectPurchase.pdf</a> (19KB)
Equipment Contract Order	<a href="#">CL_ECO.pdf</a> (17KB)
Emergency Purchase	<a href="#">CL_Emergency.pdf</a> (18KB)
Expression of Interest for projects over \$250,000	<a href="#">CL_EOI_Over250.pdf</a> (19KB)
Expression of Interest for projects under \$250,000	<a href="#">CL_EOI_Under250.pdf</a> (18KB)
Request for Proposal	<a href="#">CL_RFP.pdf</a> (19KB)

If you have any questions regarding these checklists, please contact a member of the buying staff at (304) 558-2306.



WEST VIRGINIA PURCHASING DIVISION  
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**APPENDIX P: EXPRESSION OF INTEREST STANDARD FORMAT**  
**Revised 06/08/2012**

Standardized language for the Expression of Interest method of purchasing.  
(Select the file type you prefer):

- [Microsoft Word File](#)
- [PDF File](#)



WEST VIRGINIA PURCHASING DIVISION  
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**APPENDIX Q: ATTORNEY GENERAL'S OFFICE INSTRUCTIONS FOR USE OF THE  
AGREEMENT ADDENDUM (WV-96)**

**Click here** for the Attorney General's Office instructions for use of the Agreement Addendum (WV-96).

For a direct link, access **<http://www.state.wv.us/admin/purchase/WV96AGinstructions/>**.



WEST VIRGINIA PURCHASING DIVISION  
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**APPENDIX R: 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>.