



WEST VIRGINIA PURCHASING DIVISION

PROCEDURES HANDBOOK

STATE OF WEST VIRGINIA

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The West Virginia Purchasing Division Procedures Handbook
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TABLE OF CONTENTS

<u>Introduction</u>	
<u>Section 1</u>	General Introduction
<u>Section 2</u>	Definitions, Abbreviations and Acronyms
<u>Section 3</u>	Acquisition Planning
<u>Section 4</u>	Vendor Registration Requirements
<u>Section 5</u>	Agency Delegated Acquisition Procedures
<u>Section 6</u>	Formal Acquisition Procedures
<u>Section 7</u>	Special Acquisitions
<u>Section 8</u>	Quality Assurance
<u>Section 9</u>	Exempt Purchases
APPENDICES	
<u>Appendix A</u>	Purchasing Division Directory
<u>Appendix B</u>	Purchasing Forms
<u>Appendix C</u>	Buyer Assignments and Statewide Contracts
<u>Appendix D</u>	West Virginia Code of State Rules
<u>Appendix E</u>	Statewide Contract Listing
<u>Appendix F</u>	NIGP Code of Ethics
<u>Appendix G</u>	Surplus Property Operations Manual
<u>Appendix H</u>	[Reserved]
<u>Appendix I</u>	Pre-Bid Conference Sign-in Sheet
<u>Appendix J</u>	Request for Proposal Standard Format
<u>Appendix K</u>	Change Order Language

<u>Appendix L</u>	Unemployment/Workers' Compensation (Sample Letter)
<u>Appendix M</u>	The Purchasing Decision Path
<u>Appendix N</u>	Sole Source Determination
<u>Appendix O</u>	Agency Process Checklists
<u>Appendix P</u>	Expression of Interest Standard Format
<u>Appendix Q</u>	Attorney General's Office Instruction for Use of Agreement Addendum (WV-96)
<u>Appendix R</u>	Vendor Code of Conduct
<u>Appendix S</u>	Vendor Preference Scenarios



WEST VIRGINIA PURCHASING DIVISION

PROCEDURES HANDBOOK

INTRODUCTION

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 procedures 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 appendices 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,

Mike Sheets, 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, and travel 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 *West Virginia Code of State Rules (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 Role of the Procurement Officer: All purchases must be approved by the secretary or head of the spending unit, or a designee, whose name must be filed with the Director, in accordance with the *West Virginia Code of State Rules* 148-1-3. The person(s) named, recognized as the agency designated procurement officer, must take at least 10 hours each fiscal year of available purchasing training. Each spending unit must process all purchases through this person(s), who should review all specifications and documentation for compliance prior to submitting to the Purchasing Division.

The agency designated procurement officer is responsible for the following:

- Keep apprised of the current statutory and regulatory requirements for state purchasing through training opportunities offered by the Purchasing Division, in accordance with the *West Virginia Code of State Rules*;

- Coordinate communication and serve as the point of contact between the agency and the Purchasing Division;
- Review and approve specifications prior to submitting requisitions to the Purchasing Division;
- Review bids and concur with agency recommendation for award prior to submission to the Purchasing Division;
- Maintain proper documentation and files for public record;
- Ensure that his or her agency's procurement staff receives proper training, both internally and externally, for agency-delegated processes as well as those for formal procurements;
- Perform other related procurement duties as needed.

1.6 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)

To view the most recent organizational chart for the Purchasing Division, please visit <http://www.state.wv.us/admin/purchase/orgchart.pdf>.

1.7 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.

1.8 Public Records: All records in the Purchasing Division related to purchase orders and contracts are considered public records, although the timing of the release of certain documents to the public does vary. Documents like the solicitation and any addenda are released for public viewing as part of the bidding process so those documents become public as soon as they are released. Similarly, bids may be viewed immediately after bid opening pursuant to West Virginia Code § 5A-3-11(g).

State agencies must refer to and follow the same procedures as the Purchasing Division when making public records available. As an example, agencies are responsible for making bids immediately available after the bid opening to the public when processing under its agency delegated procurement procedures.

Other information relating to the evaluation and eventual award will not be made public until after an award has been made. 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.

The Purchasing Division generally publishes copies of bid documents and contract awards in an effort to comply with public disclosure requirements. It also makes all disclosable documents related to the public procurement available for inspection during normal business hours and through Freedom of Information requests. Potential exemptions from the broad disclosure requirements are listed in the **West Virginia Code** §29B-1-4.

A vendor's submission of any information to the Purchasing Division puts the risk of disclosure on the vendor. A vendor may request (as described in the General Terms and Conditions) that certain information be exempted from disclosure under **West Virginia Code** §29B-1-4, but the Purchasing Division makes no guarantee that such a request will be honored.

Copies of records are available upon written request from the vendor. An electronic copy of imaged documentation may be obtained. Copies of most bids can be obtained from the Purchasing Division's website (www.state.wv.us/admin/purchase/bids).

1.9 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**.

1.10 wvOASIS Enterprise Resource Planning (ERP) System: The state's enterprise resource planning (ERP) system, which is referred to as wvOASIS, is a comprehensive suite of software modules that provide for statewide administrative functions, including financial management, procurement, asset management, personnel administration, payroll, time reporting and benefits administration. This system is used for advertising solicitations \$5,000 and more and awarding all procurements in excess of \$2,500.

1.11 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 or services contrary to the provisions stated in the *Code* or the legislative rule, such purchase or contract shall be void and of no effect. The spending officer of such spending unit, or any other individual charged with responsibility for the purchase or contract, 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. *Provided*, that the state establishes by a preponderance of the evidence that the individual acted knowingly and willfully.

§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 days nor more than one year, or fined not less than \$10 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 year nor more than five years, and be fined not exceeding \$10,000.

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

It shall be unlawful for any person to corruptly act alone or combine, collude or conspire with one or more persons with respect to the purchasing or supplying of services, commodities or printing to the state under the *Code* if the purpose or effect of such action, combination, collusion or conspiracy is either to lessen competition among prospective vendors, or cause the state to pay a higher price than would be or would have been paid in the absence of such action, combination, collusion or conspiracy, or cause one prospective vendor or vendors to be preferred over one or more other prospective vendor or vendors. Any person who violates any provision of this section is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than one nor more than five years, and be fined not exceeding \$10,000.

§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 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.

1.11.1 Additional Authority

In accordance with **West Virginia Code** §5A-3-3, the Purchasing Director has authority to issue a notice to cease and desist to a spending unit when the director has credible evidence that a spending unit has violated competitive bidding or other requirements established by this article and the rules promulgated hereunder. Failure to abide by such notice may result in penalties set forth in section seventeen of this article.

The **West Virginia Code** §5A-1-10(b) additionally outlines that the secretary of the Department of Administration shall issue a notice to cease and desist to any spending unit when the secretary has credible evidence that a spending unit has failed, whenever possible, to purchase commodities and services on a competitive basis or to use available statewide contracts. Failure to abide by such notice may result in penalties set forth in 5A-3-17 as noted above. These provisions fall outside of the Purchasing Division's authority; therefore, this provision applies to those agencies exempt from the Purchasing Division.

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

Additionally, the use of the State Purchasing Card shall not to be used as a payment method to circumvent contracts.



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” has the same meaning as “spending unit.” This definition includes any department, bureau, division, office, board, commission, authority, agency, or institution of state government for which an appropriation is requested by the Governor, or to which an appropriation is made by the Legislature, unless a specific exemption from *West Virginia Code* §5A-1 is provided.

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 transaction which may be used by an agency to procure items within its delegated small purchase authority.

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.

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) and Expression of Interest (EOI).

Bid – Anything that a vendor submits in response to a solicitation that constitutes an offer to the State and includes, but is not limited to, documents submitted in response to request for quotation, proposals submitted in response to a request for proposal, or proposals submitted in response to an expression of interest.

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 which is used when it becomes necessary to amend, clarify, change or cancel purchasing documents issued by the Purchasing Division.

Commodity - Supplies, materials, equipment, 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 between a state spending unit and a vendor relating to the procurement of commodities or services, or both.

Delivery Order - A written order to the contractor against a master agreement authorizing quantities of commodities and/or services to be delivered all in accordance with the terms, conditions, and prices stipulated in the original contract.

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.

Encumbrance - A process which ensures that funding is available for the payments relating to a specific purchase order or contract.

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 within the period of one year or less.

Expression of Interest - A Best Value Procurement tool used for architectural and engineering services which is defined in **West Virginia Code** §5G-1, as “those professional services of an architectural or engineering nature as well as incidental services that members of those professions and those in their employ may logically or justifiably perform.”

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

General Terms and Conditions - Standard clauses and requirements developed by the Purchasing Division and incorporated into solicitations and resulting contracts.

Grant - The furnishing of assistance, financial or otherwise, to any person or entity to support a program authorized by law.

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.

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*.

Master Agreement - 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. This is also known as an open-end contract.

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.

Non-profit 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 non-profit 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. This is also known as a master agreement.

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.

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

Procurement - The buying, purchasing, renting, leasing or otherwise obtaining of commodities or services.

Protest - A formal, written complaint filed by a vendor regarding specifications or an award

Public funds - Funds of any character, including federal monies, belonging to or in the custody of any state spending unit.

Purchase Order - A document issued by the Purchasing Division 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 made available on the Vendor Self-Service portal (VSS) as part of the wvOASIS system used to advertise purchases expected to exceed \$5,000 for most agencies in West Virginia's state government.

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, which is used to solicit written bids. Conformity to specifications and price are the only factors used in the evaluation process.

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 - An electronic request in wvOASIS by an agency for the purchase of commodities and services.

Services - The furnishing of labor, time, expertise or effort, not involving the delivery of a specific end commodity or product other than one that may be incidental to the required performance.

Sole Source Purchase - A procurement method that allows for the direct purchase of commodities or services from a vendor when only one vendor can supply the 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.

Spending Unit - A department, bureau, division, office, board, commission, authority, agency or institution of state government for which an appropriation is requested by the Governor, or to which an appropriation is made by the Legislature, unless a specific exemption from **West Virginia Code** §5A-1 is provided.

Statewide Contract – An open-end contract issued by the Purchasing Division and made available to all state agencies to purchase frequently used commodities and services.

Stringing - Issuing a series of requisitions or dividing or planning procurements to circumvent the twenty-five thousand dollar threshold or otherwise avoid the use of sealed bids.

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 - Any person or entity that may, through contract or other means, supply the state or its subdivisions with commodities and services, and lessors of real property.

Vendor Self-Service (VSS) Portal – This feature incorporates the vendor registration function as well as the ***West Virginia Purchasing Bulletin***, which includes commodities and services currently out for bid. The VSS portal also allows vendors to receive solicitation notifications by e-mail based on commodities and services noted at the time of registration; review awarded contracts; perform inquiries pertaining to awards; view payment status and update company contact information, including mail and e-mail addresses.

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.

wvOASIS – An enterprise resource planning (ERP) system used by the state of West Virginia to process all financial transactions, including procurement.



PROCEDURES HANDBOOK

SECTION 3: ACQUISITION PLANNING

3.0 ACQUISITION PLANNING

3.1 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

3.2 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** – The Purchasing Division Decision Path.

3.3 Acquisition and Delivery Lead Time

3.3.1 Administrative Lead Time: Administrative lead time is the time required to prepare documents, solicit bids, evaluate bids and make a contract award; can vary depending upon factors like the dollar value of the solicitation, agency promptness in fulfilling its role, responsiveness of vendors, and the complexity of the requisition; and is a part of all purchases.

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

3.3.2 Delivery Lead Time: Delivery Lead Time is the time required for the awarded vendor to deliver commodities or services. These times vary widely by industry, commodity, or service. 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.

3.4 Specifications: 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 overly restrictive (locking in a specific vendor and limiting competition) or vague (allowing a vendor to provide a lower than acceptable quality level product or service).

Specifications must not unnecessarily inhibit competition. West Virginia Code § 5A-3-3(10) states that: “The Director shall assure that the specifications and descriptions in all solicitations are prepared so as to provide all potential suppliers-vendors who can meet the requirements of the state an opportunity to bid and to assure that the specifications and descriptions do not favor a particular brand or vendor.” Similarly, **West Virginia Code of State Rules**, 148-1-6.5a states that no person may write specifications, or attempt to influence the drafter of specifications, to limit competition, or favor or disfavor a particular brand or vendor.

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 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 copy of those specifications must be included with the solicitation.

3.4.1 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:

3.4.1.1 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. Spending units may not use brand or vendor names to restrict competition; however, if brand names are used to adequately describe a needed commodity or service, the brand or vendor name must be followed by the phrase “or equal” to promote and encourage competition.

A spending unit that uses a brand or vendor name to describe a needed commodity or service must also list in the specifications the mandatory components of that commodity or service that the reference to a brand or vendor

name is intended to capture. A vendor's equality with the brand or vendor name will be evaluated on the basis of the mandatory components only.

Any spending unit request to disqualify a vendor on the grounds that the vendor has bid an unequal product must be accompanied by written justification listing the mandatory component that is unequal and explaining how the product bid is unequal.

For example: A brand name manufacturer's commodity numbers referenced in specifications must be easily identified in a current publication that is available to most vendors and must also include the required features upon which equivalency will be evaluated.

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.

3.4.1.2 A Performance Specification is based upon the specific performance needs of the purchaser. The performance specification places less emphasis on how the product is made, and more emphasis on how the product performs.

3.4.1.3 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.

An agency may not draft specifications to match a vendor's description of its commodity or service to the exclusion of others or draft specifications that are so restrictive that only one desired vendor can meet the requirements without adequate justification for the restrictions. Reduced need for training, maintaining consistency in inventory, staff familiarity, and other similar objectives will not be sufficient to justify restrictions in specifications.

3.4.2 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.

West Virginia Code of State Rules 148-1- 7.4 provides additional guidance, noting that the state may secure open-end contracts to obtain commodities, services or printing to supply the repetitive needs of the state in the form of statewide contracts, blanket orders or agency contracts. If the Purchasing Director establishes a statewide contract, all spending units covered by the contract are required to use it. The Purchasing Director may grant waivers on a case-by-case basis to a state agency to purchase outside of the mandatory contract; however, the agency must show that one of the following conditions exists:

- Vendor is unable to deliver the commodity or service by the required delivery date, assuming that the agency is not imposing an unreasonable delivery deadline;
- Vendor is unresponsive to ordering requests;
- Vendor has refused to perform.

3.4.3 Preparing Specifications and 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**).

- When preparing a **Requisition**, if the agency currently has a contract for the needed commodity or service, submit the existing contract number and expiration date with the **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 **Requisition** must include the following:
 - 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. **NOTE:** On requisitions in w/OASIS, the Maximum Budgeted Amount field does not pre-encumber or reserve funds in any way. It is primarily used to determine whether negotiations are allowed (when all bids exceed available funds.)

Quantity

The total quantity requisitioned (or an estimated quantity amount based on past usage for an open-end contract) and the unit of measure, such as cases, each, pounds, etc., must be provided.

Type of Purchase

The type of purchase should be identified in the **Requisition**. For additional information on types of purchasing transactions, see **Section 3.7.1**.

Description

The description of the commodity or service should be contained in 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 **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.

3.4.3.1 Specification Templates: Several sets of templates related procurement transactions have been developed and are mandatory 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. Other than in blank spaces where the agency must fill in information as indicated, agencies must not change the language in the templates unless expressly approved by the Purchasing Director. These templates are available on the Purchasing Division's intranet site at:

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

3.4.4 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.

3.4.5 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.

3.5 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.

3.5.1 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 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.

The Purchasing Division is required to issue any and all RFIs. An RFI shall not be used to make an award of a purchase order or contract.

3.5.2 Trade-In: The trade-in process is not delegated to agencies. In any situation where a trade-in is anticipated, the procurement must be bid as a central procurement transaction through the Purchasing Division. The trade-in process consists of multiple steps.

First, any agency desiring to utilize the trade-in process must develop specifications to accompany the **Centralized Purchasing Requisition (CRQS)** requesting that bids include a price for the new item only and prices that reflect the value the bidder proposes to attribute to the trade-in. The agency must receive written approval from the West Virginia State Agency for Surplus Property (WVSASP) to pursue the trade-in option; the approval must be included with the Requisition when submitting to the Purchasing Division.

Second, after the bid opening, the agency must obtain written approval for the trade-in from the West Virginia State Agency for Surplus Property by attaching the bids submitted in response to the solicitation along with any other required documentation. The submission must be with an FD document created in wvOASIS with the disposition method of "trade-in" identified.

Third, if the trade-in is approved by WVSASP, the agency must submit its award recommendation to the Purchasing Division buyer who will ensure that the credit for the trade-in is properly applied on the contract document. If WVSASP approval is not granted, the Purchasing Division will proceed with the award to the lowest responsible bidder without the trade-in option.

Fourth, the agency must then submit documentation to WVSASP verifying receipt of the credit for the trade-in. WVSASP will then 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 wvOASIS, the asset must be added to wvOASIS 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 for fixed asset purposes is the full value of the new items, including money paid for the asset and the value attributed to the trade in. The wvOASIS system automatically includes the money paid for the asset in the fixed asset system, but it does not automatically account for trade-in value. The agency must create a Fixed Asset Increase document and use that document to add the trade-in value to the new asset.

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**.

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

3.6.1 Internal Sources: Each agency must first determine that the commodity or service being sought is not offered by an internal source. Those internal sources are noted below:

3.6.1.1 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 by the state government agency retiring the equipment, which is then made available to other state agencies, eligible public and nonprofit organizations and the general public. If the State Surplus Property program has the needed commodity at the required quality level, it must be obtained from the West Virginia State Agency for Surplus Property.

In addition to the availability of surplus property, another function of the West Virginia State Agency for Surplus Property 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**

3.6.1.2 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 exempted from the provisions of §25-7-5 pursuant to §25-7-6.

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:

www.wvcorrectionalindustries.com

3.6.1.3 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.

3.6.2 Mandatory Contracts

3.6.2.1 Statewide Contracts: *West Virginia Code* §5A-3-5 and *West Virginia Code of State Rules* §148-1-6.5.b. authorize 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**).

If the Director establishes a statewide contract, agencies are required to purchase the commodities and services available on that contract from the contract holder. Agencies may request a waiver from a statewide contract if the vendor is unable to deliver the commodity or service by the required delivery date, assuming that the spending unit is not imposing an unreasonable delivery deadline, the vendor is unresponsive to ordering requests, or the vendor has refused to perform. When approval waiver is granted, it must be retained by the agency with the purchase order file for each transaction to which the approval applies.

3.6.2.2 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. Agencies may request a waiver from an open-end contract if the vendor is unable to deliver

the commodity or service by the required delivery date, assuming that the spending unit is not imposing an unreasonable delivery deadline, the vendor is unresponsive to ordering requests, or the vendor has refused to perform.

3.7 Preparation of the Requisition

3.7.1 Types of Transactions: Identified below are six (6) types of purchases: one-time or single purchases; open-end contracts; professional service contracts; emergency purchases; and sole source purchases.

3.7.1.1 One-Time/Single Purchase: This method is used to purchase commodities or services that are not considered repetitive. State agencies must submit a **Requisition** to the Purchasing Division.

3.7.1.2 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 **Requisition** to the Purchasing Division for competitive bid. Open-end contracts are processed as master agreements in wvOASIS.

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

3.7.1.2.1 Delivery Orders: All delivery orders must reference the complete open-end contract number.

Not Requiring Purchasing Division Approval: Most delivery orders do not require advance approval from the Purchasing Division. All delivery orders of \$250,000 or less may be released directly to the vendor by the agency in the form of an **Agency Delivery Order (ADO)**, unless ordering instructions contained in the contract require Purchasing Division approval. In most cases, open-end contracts will contain ordering instructions with additional details about ordering. Agencies are required to follow any such instructions contained in open-end contracts.

Requiring Purchasing Division Approval: Any agency issuing a delivery order on an existing open-end contract that exceeds \$250,000 must process the delivery order as a **Central Delivery Order (CDO)**. No agency shall issue a series of delivery orders anticipated to cost \$250,000 or less to circumvent this requirement. Delivery orders of \$250,000 or less should be processed as an ADO as described in the preceding paragraph.

As noted above, some contract delivery orders, 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.

Agencies should always refer to the ordering procedures on all open-end or statewide contracts for proper instructions prior to attempting to issue a delivery order.

3.7.1.3 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.

3.7.1.4 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 3: Acquisition Planning, 3.6 Define Sources**.

- **Declared State of Emergencies by Governor:** In accordance with §15-5-6 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. 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. As soon as the emergency situation allows, the original written bids or the proposed contract with the vendor, whichever applies, shall be attached to the **Requisition**, and submitted to the Purchasing Division with a letter of justification or a copy of the Director's or designee's written emergency approval for contract review and approval by the Purchasing Division and the Attorney General's office (as to form). 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:

www.state.wv.us/admin/purchase/arc/default.html

3.7.1.5 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.

3.7.1.5.1 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** 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 maintained in the agency file. Signed fax or electronic quotations are acceptable. A specific description, Agency Master Terms and Conditions, delivery terms 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.

3.7.1.5.2 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 be completed in its entirety (with the vendor quote and any other necessary attachments) and include the basis for the sole source procurement and the specific efforts made to determine the availability of other sources.

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.

According to the **West Virginia Code of State Rules**, should the advertisement cause inquiry and concern or requests to bid by prospective bidders or other interested parties, the Purchasing Director may: (a) reject the sole source request and require the spending unit to submit a requisition for public advertisement and formal bidding; (b) accept the sole

source request and process the sole source purchase; or (c) take other action as necessary.

Should no vendor respond to the sole source advertisement, the agency's **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 **Requisition**. 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)**.

If a vendor(s) does respond, indicating they can provide the commodity or services advertised and the Director determines the matter should be bid, the sole source **Requisition** will be canceled and the agency must resubmit a new **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 shall not be honored.

The Purchasing Director must issue prior approval or disapproval for the purchase of used equipment directly from the vendor without competitive bids. If disapproved, the Purchasing Director must return the request to the agency and direct another method of purchasing. Approval to purchase used equipment using this purchasing method is contingent upon meeting all requirements applicable to a sole source procurement.

3.7.2 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 www.state.wv.us/admin/purchase/arc. 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.

3.7.2.1. 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.

3.7.2.2 Renewals: The standard terms and conditions used by the Purchasing Division indicate a specified date, on which the contract becomes effective, and extends for a period of one (1) year. This contract may be renewed upon the written consent of the agency, and the vendor, with approval of the Purchasing Division and the Attorney General's office, as to form.

Any request for renewal should be submitted to the Purchasing Division 30 days prior to the expiration date of the initial contract term or appropriate renewal term. A contract renewal shall be in accordance with the terms and conditions of the original contract. Renewal of a contract is usually limited to three successive one year periods or multiple renewal periods of less than one year, provided that the multiple renewal periods do not exceed 36 months in total. Automatic renewal of any contract is prohibited. Purchasing Division approval is not required on agency delegated or exempt purchases. Attorney General approval may be required for vendor terms and conditions. Agencies are not permitted to extend any contract beyond the time that is stated in the contract.

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

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.

3.7.3 Bid Opening Date and 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. In wV OASIS, the bid opening date and time are referred to as the "bid closing." To avoid confusion from vendors, agencies are encouraged not to schedule their bid openings at the Purchasing Division's 1:30 p.m. bid opening time.

3.7.4 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 advisor(s) of solicitations, despite the type of transaction, and the agency procurement officer, to sign a **Certification of Non-Conflict of Interest**, in accordance with the **West Virginia Code** §5A-3-31 (see **Appendix B**). 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 \$2,500. Agencies may adopt this policy at their discretion for purchases \$2,500 or less.

3.7.4.1 Blackout Period: In accordance with the **West Virginia Code of State Rules** Section 148-1-6.6b, from the time a requisition is submitted to the Purchasing Division for public advertisement until an award is made, evaluators and spending unit personnel are not permitted to communicate with vendors about the solicitation or any component thereof without prior approval from the Purchasing Division. All communication regarding the solicitation must be

directed to the Purchasing Division until an award has been made. Nothing in this subsection, however, shall prevent the evaluators and spending unit personnel from communicating with a vendor about existing contracts or other matters unrelated to the solicitation in question.

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

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;
- wvOASIS enterprise resource planning 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. Vendors are encouraged to create an account in the Vendor Self Service (VSS) portal in wvOASIS and register for specific commodities that reflect what they sell in order to be automatically notified of upcoming bid opportunities.

3.9 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.

3.10 Special Considerations

3.10.1 Special Approvals

3.10.1.1 Technology: (See **Section 7.3**)

3.10.1.2 Capitol Building Commission: (See **Section 7.2**)

3.10.1.3 Fleet Management Office: (See **Section 7.12**)

3.10.2 Other Considerations: Special Forms

3.10.2.1 HIPAA and the Business Associate Addendum: The State's Privacy Office has developed a ***Business Associate Addendum*** ("BAA") to establish the responsibilities of the applicable parties over safeguarding and paying for damage associated with unauthorized disclosures of protected health information. This requirement only applies when the vendor will have access to protected health information.

The BAA must be properly completed by the agency and submitted to the Purchasing Division with the solicitation to be advertised. Any agency that is unsure as to when and how to complete and include the BAA in a solicitation should coordinate with that agency's privacy officer. Including the BAA in all solicitations whether or not it applies is not acceptable. Similarly, designating the type of protected health information on the BAA as "all health information" is not acceptable.

3.10.2.2 Purchasing Affidavit: 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 RFQs, with the exception of construction projects (See **Appendix B**).

3.10.2.3 Agreement Addendum (WV-96): The *Agreement Addendums* (WV-96 and WV-96A [for software]) are documents that can be utilized to counter a vendor's submission of alternate terms and conditions. The WV-96 and WV-96A should never be included in the outgoing solicitation. It is only utilized after it is clear from the vendor's bid that alternate terms and conditions have been proposed.

3.10.3 Other Considerations:

3.10.3.1 Construction: Certain commodities or services may have additional statutory, regulatory, or other requirements that must be considered when preparing specifications. Construction contracts require a contractor's licenses, drug free workplace compliance; and all construction contracts require a certificate of insurance, Workers' Compensation coverage, unemployment compensation and bonds.

3.10.3.2 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.



PROCEDURES HANDBOOK

SECTION 4: VENDOR REGISTRATION REQUIREMENTS

4.0 VENDOR REGISTRATION REQUIREMENTS AND PROGRAM SCOPE:

This section will address the requirements established for vendors who wish to do business with the State of West Virginia and the scope of the vendor registration program administered by the West Virginia Purchasing Division.

West Virginia Code §5A-3-12 requires vendors to be fully registered to do business with state agencies, by providing the disclosure of information and payment of a \$125 annual fee.

The state's vendor file is found on the VCUST table in the wvOASIS enterprise resource planning system. The Purchasing Division encourages all stakeholders to utilize the vendor/customer records designated as the "headquarters" account in the case of multiple VCUST records for the same vendor/customer.

Vendor registration information for state agency procurement officers can be found on the Purchasing Division's intranet at <http://intranet.state.wv.us/admin/purchase/VendorReg.html>, including the *Vendor Registration Guide for State Agencies*, which provides additional details on vendor registration procedures with wvOASIS.

4.1 Requirements: Vendors doing business with the State of West Virginia must be registered through the Vendor Self-Service portal of the state's wvOASIS enterprise resource planning system. The Vendor Self-Service portal may be accessed at wvOASIS.gov. Vendor may also register by completing a **Vendor Registration and Disclosure Statement and Small, Women-, and Minority-owned Business Certification Application (WV-1 or WV-1A)** and submitting to the Purchasing Division, in accordance with **West Virginia Code** §5A-3-12. These forms may be downloaded from the Purchasing Division's website at www.state.wv.us/admin/purchase/vrc/pforms.htm.

The **West Virginia Code of State Rules, CSR148**, states that, all vendors must register with the Purchasing Division prior to being awarded a contract, except that the following categories of vendors are exempt from this registration requirement.

- (1) Purchasing card vendors providing travel-related services are not required to register with the Purchasing Division.
- (2) Purchasing card vendors receiving an aggregate total yearly payment less than \$25,000.00 from a spending unit are not required to register with the Purchasing Division.

(3) Any company or corporation, or subsidiary of the company or corporation, listed on any nationally recognized stock exchange is not required to register with the Purchasing Division.

It is the agency's responsibility to make sure vendors are properly registered in wvOASIS.

To avoid multiple records for a particular vendor, agency procurement officers should ensure that vendors are not already registered with the Purchasing Division. Agency personnel not having access to the wvOASIS vendor file should contact their agency procurement officer for vendor registration verification. The agency's designated procurement officer is the appropriate contact person within your agency who is best equipped to provide guidance and answers regarding the program and its requirements. The Purchasing Division intranet site also has a dedicated section for vendor registration for state agency purchasers, which is located at intranet.state.wv.us/admin/purchase/VendorReg.html.

4.1.1 Vendors Providing Competitive Commodities and Services: Vendors are encouraged to register through the Vendor Self-Service portal through the wvOASIS system. A vendor may choose to submit a paper form in lieu of registration through wvOASIS. The ***Vendor Registration and Disclosure Statement and Small, Women, and Minority-owned Business Certification*** (WV-1) form should be completed by vendors that receive purchase orders or contracts for competitive commodities or services exceeding an aggregate amount of \$2,500. A payment of the \$125 annual fee is required. If the vendor elects to complete the WV-1 form rather than to electronically register, the vendor's check and the ***WV-1*** form are to be mailed directly to the Purchasing Division. The vendor is able to view the ***West Virginia Purchasing Bulletin*** in the Vendor Self-Service portal, which contains upcoming bid opportunities and downloadable bid documents.

If the agency procurement officer receives the WV-1 form (without payment) and chooses to input the information directly into wvOASIS in a VCC document, the account should be placed on "Prevent New Orders" hold and the Registration Date fields should be left blank under the "Disbursement Options" tab. The WV-1 should then be forwarded to the Purchasing Division.

4.1.2 Vendors Exempt from Annual Fee on Transactional Basis: There are cases when a vendor may be providing commodities and services that are exempted on a transactional basis from paying the \$125 fee. Because Vendor Registration procedures are applied to an individual transaction, not a particular vendor, the Purchasing Division must evaluate whether the \$125 annual fee is required for that particular transaction based on state law, rule and procedures.

In wvOASIS, the VNREGEX screen contains a list of each department's available fee-exemption codes. The proper vendor fee-exemption code for the specific agency transaction, if applicable, is entered on the award document to a vendor that is on "Prevent New Orders" hold. Agency designated procurement officers should be consulted when questions arise. The option for the agency to appropriately use a fee-

exemption code for a particular transaction is **not** an exemption from the Disclosure of Information requirement of the vendor registration process.

It is the agency's responsibility to use the appropriate exemption code for each applicable transaction. Documentation should be maintained in the agency file and only used for specific situations defined by that particular exemption.

4.2 Vendor Fee: According to the *West Virginia Code of State Rules, CSR148*, all vendors shall pay to the Purchasing Division, an annual registration fee of \$125 prior to being awarded a contract, except that the following categories of vendors are exempt from this requirement.

(1) Purchasing card vendors providing travel related services are not required to pay the registration fee.

(2) Purchasing card vendors receiving an aggregate total yearly payment less than \$25,000.00 from a spending unit are not required to pay the registration fee.

(3) Vendors receiving orders for goods or services of \$2,500 or less, regardless of payment method, are not required to pay the registration fee.

(4) Vendors providing a good or service under a sole source solicitation are not required to pay the registration fee. The fee is considered waived by the Director for all sole source providers.

(5) Any vendor can be exempted from paying the registration fee if the Director determines that waiving the registration fee would be in the best interest of the State of West Virginia. The Director has determined that waiving the registration fee in the following two instances is in the best interest of the State.

Government Entities-Registration: All state agencies, cities, counties, municipalities and political subdivisions doing business with the state must register using their TIN. Only applicable information needs to be provided. No fee is required.

Vendors Offering Commodities and Services Under Section 9 - Vendor registration fee is waived and, therefore, not required for a vendor providing commodities or services specified under Section 9 of the *Purchasing Division Procedures Handbook*. Be reminded that a vendor may provide commodities or services on a transactional basis under Section 9 and not be required to pay the fee; however, should the same vendor be used for other competitive procurement methods, the registration fee would be required of that vendor.

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

4.3 Vendor Hold: Vendors not exempt from paying the \$125 annual fee will be placed on "Prevent New Orders" status until payment of the fee is received.

In order for agencies to know which vendors are eligible to receive purchase orders, the "Prevent New Orders" feature of wvOASIS is used. Vendors with "Prevent New Orders" status cannot receive purchase orders through wvOASIS. However, if the statewide aggregate spend for this vendor is under \$2,500, and the transaction does not cause spend to this vendor to surpass that threshold, a transactional exemption code for the agency from the VNREGEX table in wvOASIS can be utilized for processing the award document. Statewide spend to a vendor can be researched through the VISTA system. Use of any transactional exemption code from VNREGEX is tracked and recorded for use by the Purchasing Division Inspection Unit.

Agencies wishing to purchase competitive items from vendors with the "Prevent New Orders" status set "For All Departments" should inform such vendors that the vendor registration fee is required. Helpful information is available on the Purchasing Division website for payment and registration procedures.

Vendors will be removed from "Prevent New Orders" status when upon review and confirmation the vendor has paid the fee and has provided the required disclosure of information. These actions must be submitted to and approved by the Purchasing Division. The "Prevent New Orders" hold will not be removed for vendors exempt from paying the fee if the vendor's aggregate payment amount remains under \$2,500 for the current fiscal year. A transactional exemption code must be used in the wvOASIS award document.

4.4 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. As a result, vendors may apply to become SWAM-certified if they fall within the business categories defining a small, women-, and minority-owned business. Vendors are encouraged to add this information through Vendor Self-Service in the "Business Type" portion of their wvOASIS vendor/customer account.

State agencies may view an updated list of approved SWAM vendors at the Purchasing Division's website at <http://www.state.wv.us/admin/purchase/VendorReg.html>. Agencies are encouraged to first review this information in VCUST under the "Business Type" tab in the Document Navigator of the vendor/customer account in wvOASIS.

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:

4.4.1. 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.

4.4.2. 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.

4.4.3. 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

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.

A report is available in wvOASIS Business Intelligence to assist agency purchasers in meeting this requirement. The Report ID is **WV-FIN-PROC-039**. This report will satisfy the requirements by the Purchasing Division; however, the agency procurement officer must date and sign to certify on the cover page that the report is complete and accurate prior to submitting to the Purchasing Division. Should the agency have no purchases with any SWAM vendors for that

fiscal year, the cover page needs to be signed, dated and submitted noting that no purchases were made during that fiscal year with SWAM vendors.

Please note that all purchasing transactions processed under agency delegated authority or through the Purchasing Division on your agency's behalf must be reported. This report is due at the end of each fiscal year.

Purchasing Card transactions with SWAM vendors are not captured using the **WV-FIN-PROC-039** report; therefore, 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, wvOASIS 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.division@wv.gov*** e-mail 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 5: AGENCY DELEGATED ACQUISITION PROCEDURES (Purchases \$25,000 or Less)

5.0 AGENCY DELEGATED ACQUISITION PROCEDURES

5.1 Definition of Authority: In accordance with the *West Virginia Code of State Rules*, the Purchasing Division has delegated the ability to process procurements of \$25,000 or less to state agencies. This means that state agencies may make purchases of commodities or services in the amount of \$25,000 or less without processing a formal **Requisition** through the Purchasing Division. The delegated authority is further stratified into three categories of procurement discussed in more detail in **Section 5.1.1** below.

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.

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 an applicable bid threshold without the proper level of documentation and bidding.

No agency shall issue a series of requisitions to circumvent the \$25,000 threshold. Violation of the \$25,000 threshold is commonly referred to as "stringing," and is prohibited by law. Instances of stringing must be reported to the Legislature.

As an example, an agency will have exceeded the \$25,000 limit in each of the following scenarios:

1. Agency makes a one-time payment of \$25,000.01 or more to a single vendor within a twelve (12) month period.
2. Agency makes multiple payments to a single vendor that aggregate to \$25,000.01 or more within a twelve (12) month period.
3. Agency makes multiple payments to multiple vendors for the same commodity or service that aggregate to \$25,000.01 or more within a 12-month period.
4. Agency makes monthly lease payments of \$2,083.34 or more for twelve (12) consecutive months.

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.

If an agency fails to comply with the procedures and requirements established for purchases of \$25,000 or less, the Purchasing Director has the ability to:

- Suspend or reduce purchasing authority for that spending unit;
- Require the spending unit to provide additional reports and documentation relating to purchases of \$25,000 or less for Purchasing Division review;
- Require the agency to submit to additional oversight that the Purchasing Director deems appropriate; or,
- Require that agency personnel responsible for purchases of \$25,000 or less participate in remedial training provided 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**).

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. A vendor preference is required for agency delegated purchases. For more details regarding this preference, please see **Section 6.3**.

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

5.1.2 Purchases \$2,500.01 to \$5,000: A minimum of three (3) **verbal** bids are required, *when possible*, and the lowest bid meeting specifications 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**, WV-49). A wvOASIS procurement award document 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. A “no bid” is not considered a bid.

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

An **Agency Request for Quotation** 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. A wvOASIS procurement award document 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.

5.2 The Bid Process: The agency delegated purchasing process requires that the agency take certain steps to complete the purchasing cycle after the acquisition planning process. These steps are explained below:

5.2.1 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 3: Acquisition Planning, 3.6.1.4 Technology**.

5.2.1.1 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 must have an established 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.

5.2.2 Public Notice: State agencies are required to make public notice of purchases expected to exceed \$5,000. This is usually accomplished by advertising the solicitation in the *West Virginia Purchasing Bulletin*. The standard advertisement period for non-complex procurement is 10 business days. If exceptional circumstances exist which require a shorter or longer advertisement period, the agency must receive approval from the Purchasing Division.

5.2.3 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. Agencies are responsible for making bids immediately available 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. The complete contract file is considered public record and is available to the public after the award of the contract. For guidance relating to the release of contract information, please refer to **Section 1.7**.

5.2.3.1 Additive / Alternative Options (Add-on or Deduct): In construction contracts, there are projects for which alternative options may be requested of the participating bidders. Pursuant to *West Virginia Code* §5-22-1(e), if the pricing pages contain alternates/add-ons, there must be no more than seven listed, and the alternates/add-ons will be selected in the order of priority listed on the pricing pages.

The first alternate/add-on must be selected before the second alternate/add-on can be selected and so on. Provided, that the agency may accept an alternate out of the listed order if acceptance would not affect determination of the lowest qualified responsible bidder. Any unaccepted alternate contained within a bid shall expire 150 days after the date of the opening of bids for review.

5.2.4 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.

If an award is made to other than the lowest bidder, a detailed justification as to why the lowest bidder was not awarded the contract 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.

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. 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 contain any verification checks not automatically performed in wvOASIS; Certificate of Non-Conflict of Interest; specifications used for the bidding process, and any and all attempts to obtain competitive bids.

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

- Vendor registration process (must be registered and the fee paid, if applicable). The registration process includes having the proper disclosure of information in the wvOASIS vendor/customer account, such as the Owner/Officer Information and Banking Information listed under the “Disclosures” tab. It is also recommended that the Finance Division have a current W-9 on file for the vendor. This is indicated under the “Hold Payment” portion of the “Disbursement Options” tab of the wvOASIS vendor/customer account;
- 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. **wvOASIS automatically verifies compliance prior to award;**
- Verification that the vendor is not debarred by the federal government. wvOASIS automatically verifies this federal compliance prior to award. Additionally, the Purchasing Division maintains a list of vendors declared as debarred by the state of West Virginia, which may be accessed at: **www.state.wv.us/admin/purchase/Debar.html. Agencies must verify this compliance prior to award;**
- In accordance with the **Code of State Rules** 148 CSR 6.1.e, the vendor must be licensed and in good standing with any and all state and local law and requirements, including proper registration and good standing with the Secretary of State’s office and the State Tax Department, regardless of payment method. To search for a business or corporation with the Secretary of State’s office, visit **<http://apps.sos.wv.gov/business/corporations>. Agencies must verify this compliance prior to award;**
- **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**)

5.2.4.1 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. When tie bids are received, the Purchasing Director shall break the tie by allowing the tied vendors to make a final offer, flip of a coin, draw of the cards, or any other impartial method considered prudent by the Director. 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. Vendors affected by the tie should be notified and given an opportunity to attend the tie breaker.

5.2.4.2 Errors in Bids: The Purchasing Division's *West Virginia Code of State Rules* 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 and should be received by 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.

5.3 Receiving Procedures: In accordance with the West Virginia State Auditor's receiving report requirements (*West Virginia 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.

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 **West Virginia Code of State Rules**, §148-1-4.14.

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.

5.3.1 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.

5.3.2 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) received 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.

5.3.3 Freight Terminology and Loss/Damage: Freight or shipping terms should always be included in a contract. Purchase orders should have a specified point of origin and destination. 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. This is the preferred method of shipment as it easily facilitates a comparison of price among multiple vendors.

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. Any use of this delivery method requires that the price evaluations account for delivery costs to ensure an accurate price comparison.

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. Damage during shipment must be resolved by the seller.

If the damage is obvious 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. If the damage or loss becomes evident when uncrating, 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: 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.

If there is obvious loss or damage, 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.

If the damage or loss becomes evident when uncrating 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.

5.4 Payment Process: To promote good public relations 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.

5.4.1 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>

5.5 Fixed Assets: After payment has been made to the vendor, reportable property must be added to the Fixed Assets module of wvOASIS.

5.6 Agency Delegated 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**). Agency delegated contracts and supporting documentation should be maintained until the agency obtains permission to destroy the documents from the Legislative Auditor's office pursuant to **West Virginia Code** §5A-3-11(h).

5.7 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.

5.8 Changes: Occasionally, it becomes necessary to amend, clarify, change or cancel purchasing documents. 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. See **Section 6.7** for more on Changes to Contracts

5.9 Contract Cancellation: The agency may cancel a contract or purchase order obtained through the agency delegated process 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.
- (f) Violation of any federal, state, or local law, regulation or ordinance.

The agency may also cancel a purchase order or contract for any reason, upon 30 days' written notice to the vendor.

In the event that a vendor fails to honor any contractual term or condition, or violate any provision of federal, state, or local law, regulation, or ordinance, the agency may request the vendor remedy the contract breach or legal violation within a time frame the agency determines to be appropriate. If the vendor fails to remedy the contract breach or legal violation then the agency may cancel immediately without providing the vendor an opportunity to perform a remedy.



PROCEDURES HANDBOOK

SECTION 6: FORMAL ACQUISITION PROCEDURES (Purchases Exceeding \$25,000)

6.0 FORMAL ACQUISITION PROCEDURES

6.1 Definition of Authority: All requisitions for commodities and services over \$25,000 must be submitted to the Purchasing Division using wvOASIS 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.

**It is important to note that the state agency may be involved in the evaluation process by submitting a recommendation for award to the Purchasing Division. However, for formal acquisitions, the Purchasing Division is the only entity that has the authority to issue or modify contracts.*

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. E-mail bids are not acceptable and will be rejected.

6.2 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 7.3 Data Processing Equipment or Software**. The steps in this process are detailed below:

6.2.1 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.

6.2.2 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.

6.2.3 Best Value Procurement: Best Value Procurement is a purchasing method used to acquire primarily 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 methods include Requests for Proposals (RFP's) and Expressions of Interest (EOI)..

6.2.4 Requests for Proposals: Requests for Proposals (RFPs) are limited to procurements with an 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 a 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 should 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.

All proposals submitted first are evaluated to determine if they meet all mandatory requirements. Once it is established which proposals have met all mandatory requirements, the proposals are evaluated for the non-mandatory qualifications, experience, goals and objectives as outlined in the RFP. During this evaluation, all proposals begin with the maximum score. Deficiencies are noted through point deductions. No partial points are applied except for cost. All deductions issued for each proposal must include justification, with fairness and consistency.

Vendors must score a minimum of 70% (49 points in most cases) 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.

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 Approval and Award: The evaluation committee will review the cost proposals, assign appropriate points and make a final consensus recommendation to the Purchasing Division through the Purchasing Division buyer. Award is based upon the highest scoring vendor.

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 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 one year prior to the evaluation. The Purchasing Division buyer may 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.

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

For guidance on processing Expressions of Interest, refer to Section 7.1 and **Appendix P** for the EOI standard format.

6.2.6 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, 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.

6.2.7 Selection of Vendors: The *West Virginia Purchasing Bulletin* consists of general descriptions of all requisitions expected to exceed \$5,000. Vendors may access the *West Virginia Purchasing Bulletin* through the Vendor Self Service portal at www.wvOASIS.gov. Vendors may also request bid packages by telephone, electronic mail, fax or via the Internet. Competition is always encouraged on all requisitions.

6.2.8 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.

6.2.9 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 **Requisition** (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

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** 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.

6.2.10 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.

6.2.11 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.

Bids that are not received by the date and time of the bid opening will be noted 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.

6.2.12 Public Notice: The Purchasing Division is required to make public notice of purchases expected to exceed \$25,000. This is usually accomplished by advertising the solicitation in the *West Virginia Purchasing Bulletin*. The standard advertisement period for noncomplex procurements is 10 business days. If exceptional circumstances exist which require a shorter or longer advertisement period, the agency must indicate such at the time the requisition is submitted to the Purchasing Division.

Additionally, the Purchasing Division requires sufficient time for our staff to perform various functions, including but not limited to, reviewing specifications and ensuring that all pre-approvals and other requirements have been met in advance of advertising the solicitation in the *West Virginia Purchasing Bulletin*. Agencies should allow at least five (5) working days prior to advertisement for this extensive review. Should the documentation received require additional information, the advertisement of the solicitation will not be released until all proper supporting documentation is obtained.

6.2.13 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.

6.2.14 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.

6.2.15 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.

6.2.16 Bonuses: Provisions in any requisition or contract that specifies a monetary reward for early completion of a project is prohibited and considered illegal.

6.2.17 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 6.2.4**).

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

- Vendor registration process (must be registered and the fee paid, if applicable). The registration process includes having the proper disclosure of information in the wvOASIS vendor/customer account, such as the Owner/Officer Information and Banking Information listed under the "Disclosures" tab. It is also recommended that the Finance Division have a current W-9 on file for the vendor. This is indicated under the "Hold Payment" portion of the "Disbursement Options" tab of the wvOASIS vendor/customer account;
- 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. wvOASIS automatically verifies compliance prior to award.

- Verification that the vendor is not debarred by the federal government. wvOASIS automatically verifies this federal compliance prior to award. Additionally, the Purchasing Division maintains a list of vendors declared as debarred by the state of West Virginia, which may be accessed at www.state.wv.us/admin/purchase/Debar.html. **Agencies must verify this compliance prior to award;**
- In accordance with the **West Virginia Code of State Rules** 148 CSR 6.1.e, the vendor must be licensed and in good standing with any and all state and local law and requirements, including proper registration and good standing with the Secretary of State's office and the State Tax Department, regardless of payment method. 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);
- **Agreement Addendums (WV-96 or WV-96A)** (required when vendors submit alternate terms and condition with their bid) (See **Appendix B**); and,
- **Interested Party Disclosure Form: West Virginia Code** §6D-1-2 requires that for contracts with an actual or estimated value of at least \$100,000, the vendor must submit to the Purchasing Division a disclosure of interested parties to the contract, prior to contract award. That disclosure must occur on the form prescribed and approved by the WV Ethics Commission. A copy of that form is included with this solicitation or can be obtained from the WV Ethics Commission. "Interested parties" means: (1) A business entity performing work or service pursuant to, or in furtherance of, the applicable contract, including specifically sub-contractors; (2) the person(s) who have an ownership interest equal to or greater than 25% in the business entity performing work or service pursuant to, or in furtherance of, the applicable contract; and (3) the person or business entity, if any, that served as a compensated broker or intermediary to actively facilitate the applicable contract or negotiated the terms of the applicable contract with the state agency: Provided, That subdivision (2) shall be inapplicable if a business entity is a publicly traded company: Provided, however, That subdivision (3) shall not include persons or business entities performing legal services related to the negotiation or drafting of the applicable contract.

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.

6.2.17.1 Additive / Alternative Options (Add-on or Deduct): In construction contracts, there are projects for which alternative options may be requested of the participating bidders. Pursuant to **West Virginia Code §5-22-1(e)**, If the Pricing Pages contain alternates/add-ons, there must be no more than seven listed, and the alternates/add-ons will be selected in the order of priority listed on the Pricing Pages. The first alternate/add-on must be selected before the second alternate/add-on can be selected and so on. Provided, that Agency may accept an alternate out of the listed order if acceptance would not affect determination of the lowest qualified responsible bidder. Any unaccepted alternate contained within a bid shall expire one hundred fifty days after the date of the opening of bids for review.

For guidance relating to the release of contract information, please refer to **Section 1.7**.

6.2.18 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. When tie bids are received, the Purchasing Director shall break the tie by allowing the tied vendors to make a final offer, flip of a coin, draw of the cards, or any other impartial method considered prudent by the Director. The Purchasing Division must make the final decision in tie bid situations exceeding \$25,000.

6.2.19 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 and received by the Director of Purchasing or his/her designee within five (5) working days from the bid opening date.

West Virginia Code of State Rules, 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.

6.2.20 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. The ability to approve and solicit multiple award contracts has not been delegated to agencies for procurements under \$25,000. Any need for such contracts must be processed as a formal procurement.

6.2.21 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 **Requisition**. 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. The ability to negotiate as described in this section has not been delegated to the agencies for procurements under \$25,000.

6.2.22 Discussion and Final Offers: As provided in the bid solicitation, 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.

The ability to conduct discussion and final offers has not been delegated to the agencies for procurements under \$25,000.

6.2.23 Reverse Auctions: This purchasing process may be utilized to procure commodities, upon approval by the Purchasing Director. The requesting agency must provide the Purchasing Division with an explanation of how the reverse auction process would be fair, economical and in the best interest of the state. Additionally, written documentation must be provided by the agency verifying that the commodities to be procured are subject to low price volatility; have specifications that are common and not complex; vary little between suppliers; are sourced primarily based on price, with limited ancillary considerations; require little collaboration from suppliers; and are sold by a large, competitive supply base.

When soliciting bids for commodities, the Purchasing Division may be considered the spending unit and may rely on information provided by one or more agencies that will use the contract in satisfying the requirements necessary to utilize a reverse auction.

6.2.23.1 Pre-qualifications: All reverse auctions conducted must be preceded by a prequalification of vendors. Only vendors that have completed prequalification for the auction will be permitted to participate. Prequalification will be completed as follows:

- Notice of Reverse Auction: If the Director approves the agency's request to use the reverse auction, the agency will then prepare specifications to describe the commodity being procured by reverse auction and list any mandatory requirements the vendor must meet. The agency must provide that information to the Purchasing Director, along with any additional documentation deemed necessary. The Purchasing Division will ensure that an adequate description of the contemplated reverse auction is included and will advertise for the auction through the ***West Virginia Purchasing Bulletin***.
- Prequalification Bid: Any vendor desiring to participate in the reverse auction must submit a prequalification bid to the Purchasing Division before the deadline contained in the advertisement of specifications. Failure to submit a prequalification bid prior to the deadline will result in automatic disqualification from participation in the reverse auction. The Purchasing Director may request additional information from a vendor to

assist in evaluating a vendor's prequalification bid.

- **Prequalification Request Review:** Each prequalification bid submitted prior to the applicable submission deadline will be evaluated to ensure compliance with all specifications and mandatory requirements. All vendors that are in compliance with the specifications and mandatory requirements will be notified that they have been approved to participate in reverse auction. Vendors that are not in compliance with the specifications and mandatory requirements will be notified that their request to participate in the reverse auction has been denied. A vendor that has been approved will be provided with the necessary information to participate, which may include website addresses, log-in information, etc. A vendor that has been denied will be provided with notice and, upon request, be provided with a reason for the denial.

6.2.23.2 Reverse Auction Bidding: The prequalified vendors will be granted access to participate in the reverse auction either physically or electronically depending upon the format of the auction. Each prequalified vendor may submit bids until the time for bidding has expired. Any bid that a vendor submits during the reverse auction process will supersede all prior bids submitted by that vendor.

6.2.23.3 Award: The lowest responsible bidder within the time period allowed for the reverse auction will be awarded a contract. If the Purchasing Director determines that a vendor identified as the lowest responsible bidder has failed to meet a mandatory requirement contained in the specifications or if the vendor fails to consummate the contract after bidding, the Purchasing Director may reject the bid of that vendor or cancel an award that has been made and move to award to the next lowest responsible bidder.

6.2.24 Master Contract and Direct Ordering Process: An agency that desires to establish a master contract with subsequent direct ordering process as defined in **West Virginia Code** §5A-3-10e(b)(4) must first provide written justification and obtain the written approval from the Purchasing Director.

Any request by a state agency to establish a master contract must include the following items:

- Identification and a detailed description of the commodity to be covered by the master contract;
- One or more requirements that each vendor must meet in order to be approved for the master contract, which may include, but are not limited to, experience, quality assurance, licensing, delivery terms and quantity terms;
- An estimation of the quantity and price of the commodity to be purchased over the terms of the contract; and,
- Forms, if any, that will be utilized in the direct ordering procedure bidding process.

6.2.24.1 Advertisement: Once the Purchasing Director approves a request to solicit master contracts, the documentation contained in the request, along with any additional documentation deemed necessary will be compiled. The vendor community will be notified of the opportunity to obtain a master contract through the *West Virginia Purchasing Bulletin*.

The justification must contain:

- A clause stating that the state is seeking a master contract that will permit all awarded vendors an opportunity to participate in the direct ordering process;
- An explanation of how bids will be submitted and evaluated through the direct ordering process;
- A clause limiting the master contract to a term of one year, and;
- Language setting dollar thresholds for direct ordering process purchases.

6.2.24.2 Evaluation and Award: At the date and time provided in the advertisement, the Purchasing Division will publicly open vendor responses at a bid opening. Vendors' responses will be evaluated and each vendor meeting all qualifications will be awarded a master contract that allows the vendor to participate in the direct ordering process.

6.2.24.3 Direct Ordering Process: The limitations include that no single order under the master contract and direct ordering process is permitted to exceed \$1,000,000 for information technology commodity purchases or \$50,000 for other commodities unless a written request to exceed these limits is approved by the Purchasing Director in writing. If all bids returned under the direct ordering process are over the applicable order threshold, the agency must cancel the direct order process and solicit bids through the normal competitive bidding process. If the agency solicits bids and one or more vendors submit bids over the dollar threshold, the agency may only award to the vendors that submit bids under the threshold. The Purchasing Director may set lower limits for the direct order process if determined to be appropriate.

Requests for Bids: An agency, or the Purchasing Division when acting as a spending unit, that desires, to purchase a commodity identified in the master contract must notify each vendor that has been awarded a master contract of the request. The notice must contain any commodity specific requirements, the total quantity of the commodity being sought, the deadline by which the vendors must submit bids, and the location to which bids must be submitted.

Direct Order Bid Opening: At the established date, time and place, the agency or the Purchasing Division will open all bids in a public bid opening and announce the vendors' bid prices for all bids.

Evaluation and Award: After bids have been opened, the agency, or the Purchasing Division when acting as a spending unit, shall evaluate the bids received to ensure that the bid submissions comply with the requirements contained in the master contract and the rests for bids. The agency, or the

Purchasing Division when acting as a spending unit, shall award the direct order to the lowest responsible bidder that has complied with all requirements. The agency must reject any bid that fails to comply with the requirements contained in the master contract and the requests for bids. The agency shall provide the following notices related to the evaluation and award:

- The lowest responsible bidder must be notified that it has won the direct order process and may begin the process of filling the order;
- The vendors that do not submit the lowest bid must be notified that their bids were not the lowest and they will not be selected to provide the commodity; and,
- Any vendor that submits a bid that is rejected must be notified of the rejection and upon request, the vendor must be provided with a reason for that rejection.

Any agency utilizing the direct ordering process must maintain records of all requests for bids, bids received, bids awarded, bids rejected and other correspondence related to the direct ordering process. The Purchasing Division may institute oversight procedures that require agencies to provide notices to the Purchasing Division and obtain approvals from the Purchasing Division prior to using the direct order process. The Purchasing Division may also choose to conduct the direct order process on the agency's behalf, if determined additional oversight is warranted.

6.3 Vendor Preference: *West Virginia 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 included in **Appendix S**.

- 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).

6.3.1 Preference for West Virginia Veterans: *West Virginia 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%.

6.3.2 Preference for Non-Resident Small, Woman, and Minority-Owned Businesses: *West Virginia 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 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.

6.4 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 agency 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.

A change order must be issued to cover all contract changes. For more information on change orders, see Section 6.7.

6.5 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. This function is the sole responsibility of the agency.

6.5.1 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.

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

6.5.2.1. 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.

6.5.2.2 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.

6.5.2.3 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.

6.5.3 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.

6.6 Encumbrances: The Purchasing Division's Communication and Technical Services Section encumbers all purchase orders executed by the Purchasing Division over \$25,000. Encumbrance is the process which ensures that funding is available for the payments relating to the specific purchase order or contract.

Requisitions submitted to the Purchasing Division are to include proper encumbrance information for purchase orders to be encumbered by the Purchasing Division's Communication and Technical Services Unit. Agencies must designate the appropriate account(s) from which funds to pay for a contract will be taken prior to a contract being awarded, unless the contemplated contract is a type that cannot be encumbered. Open-end contracts do not need to be encumbered.

Prior to issuing a contract, the Purchasing Division will verify the amount of funds encumbered is appropriate and that the account being encumbered matches what the agency has requested. Contract must be encumbered prior to issuance in the following amounts:

- One-time Purchases in Current Fiscal Year: A contract for one-time purchase to be completed in the current fiscal year must encumber the full contract amount.
- Contract Spanning Multiple Years: A contract that will span multiple fiscal years must be encumbered at least the amount of funds that will be spent under the contract in the current fiscal year;
- Contract to Begin in a Future Year: A contract that will be awarded prior to the end of a current fiscal year but will become effective after that same fiscal year has ended is not required to encumber funds prior to issuance of the contract.

- Open-end and Statewide Contracts: An open-end or statewide contract issued by the Purchasing Division is not required to have funds encumbered prior to the issuance of the contract.

6.7 Changes, Reinstatements and Cancellations:

6.7.1 Changes: Occasionally, it becomes necessary to amend, clarify, change or cancel purchasing documents.

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.

West Virginia Code of State Rules 148-1-6.8 provides the Purchasing Director with the authority and responsibility to review change orders as he or she reviews and approves the original contract. A spending unit wishing to change a contract must submit a request for the contract change to the Purchasing Division. Any change order request submitted to the Purchasing Division that requires vendor agreement must include the vendor's agreement in writing. Additional documentation may be requested by the Purchasing Director to aid in the review. If the Purchasing Director determines the request is not properly justified, the change order may be rejected.

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 to existing contracts that adds work or changes contract cost, and were not included in the original contract, must be approved by the Purchasing Division and the Attorney General's Office (*as to form*) prior to the implementation of the change or commencement of work affected by the change. This requirement is codified in the **West Virginia Code of State Rules** § 148-1-6.8.f. as follows:

Spending units must not permit vendors to perform work that the spending unit anticipates will be added to a contract through a change order until such time as the change order has been formally approved by the Purchasing Division and the Attorney General's office, encumbered by the Purchasing Division, and mailed to the vendor. This subsection related to timing of work does not apply to government construction contracts executed pursuant to W.Va. Code §5-22-1, et seq.

Administrative changes to contracts should be made after the fact with subsequent approval by the Purchasing Division and the Attorney General's Office (*as to form*) prior to the implementation of the change. Examples of administrative changes include:

1. Changing a vendor name
2. Changing a vendor's address
3. Correction of a clerical mistake made by the State

4. Adding a renewal/extension year that was originally contemplated in the contract, provided that no new commodities/services or increases in price are included.
5. Contract closeout where quantity required was originally unknown or estimated, unit prices were included in the original contract, unit prices are not modified as part of the change order, and the quantity required was less than originally anticipated.
6. Inclusion of the Notice to Proceed documentation.
7. Changes to a contract utilized to facilitate the mandatory procurement of commodities and services from non-profit workshops, pursuant to **West Virginia Code** §5A-3-10(e).
8. Any other administrative change not included may be approved by the Purchasing Director on a case-by-case basis.

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 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.

6.7.2. 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.
- (f) Violation of any federal, state, or local law, regulation or ordinance.

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.

In the event that a vendor fails to honor any contractual term or condition, or violate any provision of federal, state, or local law, regulation, or ordinance, the Purchasing Director may request the vendor remedy the contract breach or legal violation within a time frame the Director determined to be appropriate. If the vendor fails to remedy the contract breach or legal violation or the Director determines, at his or her sole discretion, that such a request is unlikely to yield a satisfactory result, then he or she may cancel immediately without providing the vendor an opportunity to perform a remedy.

6.8 Protest Procedures: The Purchasing Division's *West Virginia Code of State Rules (148 CSR 1)* provide participating vendors with the right to protest specifications and purchase order awards.

6.8.1 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.

6.8.2 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.

All protests, regardless of dollar amount should be directed to the Purchasing Division and any protests incorrectly submitted to the spending unit must be forwarded by the spending unit to the Purchasing Division for further review. A protest incorrectly delivered to the spending unit will not be considered received until it reaches the Purchasing Division. Responsibility for delivery of the protest to the Purchasing Division shall remain with the protesting vendor. A spending unit's failure to deliver the protest to the Purchasing Division shall not be grounds for extending the time for receipt of protests.

6.8.3 Reverse Auction Protests: A vendor desiring to submit a protest of specifications related to a reverse auction must submit the protest five (5) working days prior to the

prequalification bid submission deadline. A protest of a prequalification decision must be submitted within five (5) working days of the prequalification approval or denial. A protest of award must be submitted within five (5) working days of award.

6.8.4 Master Contract and Direct Order Protests: Any vendor desiring to protest the specifications of a master contract or the direct ordering process may do so prior to five (5) working days before the master contract opening date and five (5) working days before the direct ordering process opening date. Any vendor desiring to protest the award of a master contract or direct order may do so within five (5) working days of the master contract award and within five (5) working days of the direct order award.



PROCEDURES HANDBOOK

SECTION 7: SPECIAL ACQUISITIONS

7.0 SPECIAL ACQUISITIONS:

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

7.1 Architectural and Engineering

7.1.1 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 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 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. (The Purchasing Division reserves the right to accept or reject agency appointed committee members and/or 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.

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.

7.1.2 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 exceeds \$250,000 may not be approved and may necessitate a rebid.

West Virginia Code § 5G-1-1, et seq. does not provide for a separate process for the procurement of architectural or engineering services estimated to cost \$25,000 or less. An EOI anticipated costing \$25,000 less would be processed in accordance with the laws, rules, and procedures applicable to EOIs under \$250,000.

7.1.3 Non-Conflict Requirement for Expressions of Interest: To ensure that there is no conflict of interest in evaluating Expressions of Interest (EOIs), To ensure that there is no conflict of interest, the evaluators and 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 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.

7.2 Capitol Improvements

7.2.1 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.

7.2.2 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.

7.3 Information Technology Equipment, Services, and Software

West Virginia Code §5A-6-1, *et seq.*, provides that the Chief Technology Officer (CTO) may evaluate and make recommendations on the design and suitability of Information Technology (IT) equipment and related services, and may review and make recommendations on the purchase, lease or acquisition of information equipment and contracts for related services, including temporary IT staffing by all state spending units.

All infrastructure technology equipment procurement requests, regardless of dollar value, that will connect to the state network requires CTO approval prior to submission of a request to the Purchasing Division, as the CTO may require changes by the agency. 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 devices, computers, tablets,

routers, wireless access points (WAPS), hubs, switches, firewalls, video conferencing and telephone equipment, including PBX system. The applicable information technology purchases also include software of all types, whether it is e-mail applications, anti-virus software or any other interoperability application, if the software will be used in systems that connect to the state network.

State agencies may procure IT consulting services with an estimated value of less than \$10,000 without CTO approval.

7.4 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.

7.5 Equipment Leases: A lease is a method by which a state agency may obtain the right to use equipment and make payments for that use over a period of time. In pure lease procurements, ownership of the equipment remains with the vendor and the equipment is returned to the vendor at the expiration of the lease term.

Equipment leases will be obtained through requests for quotations.

An agency that desires to Purchase leased equipment, without a provision in the original solicitation to do so, either during or at the expiration of the lease term will be required issue a sole source procurement for the used equipment.

7.6 Lease Purchases: A lease purchase contract is a contract that includes periodic lease payments, and in some cases a final lump sum payment, with ownership of the equipment being vested in the agency immediately or at the lease term expiration. The minimum purchase cost to consider a lease-purchase as an option is \$500,000.00, unless the Director of the Purchasing Division grants an exception to this minimum amount. A letter of justification must be prepared, signed by the agency head, and submitted to the Purchasing Division prior to any attempt to enter into a Lease Purchase.

The State has a statewide Master Lease Purchase Financing Agreement issued by the Finance Division of the Department of Administration. Any request to enter into a lease purchase agreement other than the Master Lease Purchasing Financing Agreement must be approved in advance by the Purchasing Division. The Master Lease Purchase Financing Agreement is administered as described below.

If the agency is approved to utilize 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 **Requisition** 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.

7.7 Cooperative Contracts: Cooperative contracting is a term utilized to describe an agency's use of and/or adoption of an existing contract of another public entity or entering into a joint solicitation with other public entities. **West Virginia Code** provides authority for this in §5A-3-19 and **West Virginia Code of State Rules** Section 148-1-7.8 provides further guidance and restrictions on the use of this procurement method.

The requirements contained in the Code and the Rules have been compiled into the **Cooperative Purchasing Request, Justification and Approval** form (WV-40). An agency desiring to utilize the cooperative contracting process must submit the WV-40 form to the Purchasing Division prior to entering into a binding contract. The WV-40 serves as a request that the Purchasing Director consider granting the state agency permission to purchase from one of the above contract categories. Contracts identified as mandatory do not require submissions of the WV-40 for each purchase. Failure to provide the information requested on the WV-40 form will result in the request being rejected.

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

The ability to utilize cooperative contracting as described in this subsection has not been delegated to the agencies for procurements of \$25,000 or less.

7.8 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 **Requisition** (over \$25,000), or maintained with agency invoice or purchase order file (\$25,000 or less).

7.9 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.

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

7.11 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.

7.12 Vehicles: Approval by the Fleet Management Office is required to purchase vehicles, unless statutorily exempt. 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, but still must obtain Fleet Management Office approval.

7.13 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 **West Virginia Code of State Rules**, 148CSR7.5.e, the state agencies may also request that the Purchasing Director allow for the procurement of used equipment through the sole source procurement method.

7.14 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.

7.15 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 **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.

7.16 Grants: In accordance with **West Virginia Code** §5A-3-11(i), a grant awarded by the state is exempt from the competitive bidding requirements, unless the grant is used to procure commodities or services that directly benefit a spending unit. If a grant awarded to the state requires the procurement of commodities or services that will directly benefit a spending unit, the procurement is not exempt from the competitive bidding requirements. If a grant awarded to the state requires the state to transfer some or all of the grant to an individual, entity or vendor as a sub-grant to accomplish a public purpose, and no contract for commodities or services directly benefitting a spending unit will result, the sub-grant is not subject to the competitive bidding requirements.



PROCEDURES HANDBOOK

SECTION 8: QUALITY ASSURANCE

8.0 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.

8.1 Agency Responsibilities

8.1.1 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.

8.1.2 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 5.3**)

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

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

8.1.5 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.

8.1.5.1 Vendor Performance Report: 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 Report* is to be sent to the appropriate buyer of the Purchasing Division who is assigned to the agency at 2019 Washington Street, East, Charleston, WV 25305.

8.2 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.

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

8.2.2 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 6.2.4**).

8.2.3 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.

8.2.4 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 *West Virginia 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 must take at least 10 hours annually of 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.

8.2.4.1. Mandatory Training: In accordance with **West Virginia Code** §5A-3-60, all executive department secretaries, commissioners, deputy commissioners, assistant commissioners, directors, deputy directors, assistant directors, department heads, deputy department heads and assistant department heads are hereby required to take two hours of training on purchasing procedures and purchasing cards annually. The Director of the Purchasing Division and the State Auditor shall offer the two-hour training at least two times per year. The training shall be recorded by audio and visual means and shall be made available to the individuals listed above in the event they are unable to attend the training in person. The most current recording of the training is posted at www.state.wv.us/admin/purchase/training/mandatory.html.

All individuals required to take this training will be required to certify, in writing, on a form that is posted on the website above which verifies the date, time and location for which they took the training. Completed forms shall be returned to the Purchasing Division to be maintained.

8.3 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.

8.3.1 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.

8.3.2 Follow-Up with Suppliers:

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

8.3.3 Dispute Resolution:

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

8.3.4 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 (or next highest bidder if best value procurement). The vendor failing to honor contractual obligations is responsible for any increase in cost the state incurs as a result of the re-award;

(b) Declare a vendor non-responsible 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 West Virginia Code of State Rules; 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 West Virginia Code of State Rules.**

(d) Debar a vendor on the basis of one or more of the grounds for debarment contained in **West Virginia Code §§5A-3-33b-33f** or if the vendor has been declared ineligible to participate in procurement-related activities under federal laws and regulation. For a current list of debarred vendors declared by the Purchasing Division, please see www.state.wv.us/admin/purchase/debar.html.

8.3.5 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.



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; however, under the authority granted by the Director of Purchasing in the *West Virginia Code of State Rules* 148-1-6.1.c.5, the Director has determined that waiving the vendor registration fee for all vendors providing commodities or services under Section 9 of the *Purchasing Division Procedures Handbook* is in the best interest of the State. Accordingly, the vendor registration fee is waived and, therefore, not required for a vendor providing commodities or services under Section 9 of this handbook.

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.

Should agencies need guidance as to the usage of a Section 9 exemption, the Section 9 Exemption Opinion Request Form (WV-68) may be used to formally inquire about the Purchasing Division's opinion on whether a particular transaction is included in one of the existing categories of the Section 9 Exempt List. This form is only to be used when the applicability of a Section 9 exemption is questionable or unclear.

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, social media or billboards. This exemption includes broadcast television and radio advertisements placed directly with the broadcaster or publisher. Additionally, this exemption includes participation fees for trade shows, conferences or conventions. This exemption does not include any indirect placement, promotional items or advertising consultant services.
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 hiring attorneys and law firms in an official attorney-client capacity. Nothing in this exemption eliminates the approval or oversight residing within the Attorney General's office.
4. **Aviation Fuel:** This exemption includes the purchase of aviation fuel, but excludes bulk purchases for delivery to state dispensing stations.
5. **Governmental Agencies:** This exemption only includes: 1) contracts between governmental agencies and spending units when a state or federal law requires the commodity or service be obtained from the governmental agency (any contract or purchase order issued must cite the law and maintain a copy on file); and 2) regulatory fees legally imposed by government agencies
6. **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.
7. **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.
8. **Hospitality:** This exemption includes expenses for food, beverages, facility rental and entertainment **relating to conducting state business.**

9. **Media License Fees:** This exemption includes program license fees for radio or television.
10. **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.
11. **Postage:** This exemption includes stamps and other non-competitive mailing services from the United States Postal Service, but this does not include services available from statewide contracts.
12. **Professional Association Dues:** This exemption includes membership fees or association dues for professional associations that perform a licensing, certification or accreditation function for state employees or agencies (i.e., West Virginia State Bar, West Virginia Board of Accountancy, etc.).
13. **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.
14. **Resale Items:** This exemption includes items that are acquired specifically for resale by the state agency to the general public that should be selected on the basis of quality and delivery constraints due to customer demand.
15. **Investigative Services; Subject Matter Experts and Witnesses for Administrative Hearing and Legal Proceedings:** This exemption includes obtaining investigative services and the services of a subject matter expert or witness. This exemption does not include agency consulting services or former employees retained by their agency or hired by another agency.
16. **Subscriptions and publications:** This exemption includes newspapers, textbooks and publications – electronic and hard copy – purchased directly from the publisher.
17. **Training Activities:** This exemption includes lecturers, honorariums, copyrighted test and training materials, test monitors/examination proctors, registration fees, etc., where competition is not available.

18. **Utilities Regulated 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]. This exemption does not include propane gas, coal and satellite television, all of which must be competitively bid.
19. **Department of Agriculture Exemptions:** Approved exemptions for the West Virginia Department of Agriculture include purchase of livestock, the acquisition of bees for repopulation purposes, and commodity processing services for USDA donated foods.
20. **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 ordered payments are exempt from the vendor registration requirement.
21. **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.
22. **Emergency Services (Non-Construction and Non-Architectural/Engineering "A/E"):** This exemption includes non-construction and non-A/E services that must be procured on an emergency basis when (1) formal bidding would cause the government to lose the ability to perform some critical function for itself or citizens of the State of West Virginia or (2) formal bidding would delay a response to a declared state of emergency. Any use of this exemption must be approved by the Purchasing Division Director in advance in accordance with the procedures for commodities outlined in **West Virginia Code** § 5A-3-15, related rules, and the **Purchasing Division Procedures Handbook**. (For more information on emergencies related to construction or A/E services, please review the applicable law and Section 4 of the **Purchasing Division Procedures Handbook**).
23. **Vaccines**

This exemption includes vaccines purchased through contracts issued by the Centers for Disease Control (CDC).
24. **Transcripts from Court Reporters Employed by Court, Judge or Opposing Counsel**

This exemption includes transcripts procured from court reporters who are employed by the court, judge or opposing counsel.

APPENDIX

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



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:

- 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: WEST VIRGINIA CODE OF STATE RULES

Click Here for the *West Virginia Code of State Rules* affecting the Purchasing Division.

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



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

Below is language to be utilized when issuing a change order that it is to be entered into the wvOASIS Extended Description. This language will best describe the details related to the change to the original contract.

Standard Renewal:

Change Order

Change Order No. XX is issued 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: _____

No other changes.

All provisions of the original Contract and subsequent Change Orders not modified herein shall remain in full force and effect.

Renewal with Increase:

Change Order

Change Order No. XX is issued 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: _____

No other changes.

All provisions of the original Contract and subsequent Change Orders not modified herein shall remain in full force and effect.

Renewal with Decrease:

Change Order

Change Order No. XX is issued 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: _____

No other changes.

All provisions of the original Contract and subsequent Change Orders not modified herein shall remain in full force and effect.

Standard Extension of Contract:

Change Order

Change Order No. XX is issued 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 _____

No other changes.

All provisions of the original Contract and subsequent Change Orders not modified herein shall remain in full force and effect.

Standard Extension with Increase:

Change Order

Change Order No. XX is issued 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 _____

All provisions of the original Contract and subsequent Change Orders not modified herein shall remain in full force and effect.

Original Contract Price:

Change Order No. XX Increase:

Contract New Total:

No other changes.

Standard Extension with Decrease:

Change Order

Change Order No. XX is issued 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 _____

All provisions of the original Contract and subsequent Change Orders not modified herein shall remain in full force and effect.

Extend Contract From:

To:

Original Contract Price:
Change Order No. XX Decrease:
Contract New Total:
No other changes.

Construction Extension of Time Only:

Change Order
Change Order No. XX is issued 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 _____
No other changes.

All provisions of the original Contract and subsequent Change Orders not modified herein shall remain in full force and effect.

Construction Extension of Time and Increase:

Change Order
Change Order No. XX is issued 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 _____
Extend Contract From:

To:

Original Contract Price:
Change Order No. XX Increase:
Contract New Total:
No other changes.

All provisions of the original Contract and subsequent Change Orders not modified herein shall remain in full force and effect.

Cancellations:

Entire Contract/Purchase Order

Change Order
Change Order No. XX is issued to cancel this contract/purchase order in its entirety and all funds associated with the contact.

Effective date of cancellation _____

Partial Cancellation of Change Order

Change Order No. XX is issued 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 _____

All provisions of the original Contract and subsequent Change Orders not modified herein shall remain in full force and effect.



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
PROCEDURES HANDBOOK

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 *West Virginia Code of State Rules*, 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
PROCEDURES HANDBOOK

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
PROCEDURES HANDBOOK

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.

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

PROCEDURES HANDBOOK

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
PROCEDURES HANDBOOK

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

[Click here](#) for the instructions for use of the *Agreement Addendum* (WV-96 and WV-96A [for software]).

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



WEST VIRGINIA PURCHASING DIVISION

PROCEDURES HANDBOOK

APPENDIX R: VENDOR CODE OF CONDUCT

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

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



PROCEDURES HANDBOOK

APPENDIX S: VENDOR PREFERENCE SCENARIOS

Below are examples of various scenarios relating to Vendor Preference:

Example #1: Award to Resident Vendor Due to Preference Application

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

Out-of-State Vendor Original Bid	\$109,000.00
Preference Adjusted Bid (Original bid multiplied by 1.05)	\$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: Award to Non-Resident Vendor Because Preference Not Sufficient to Overturn Award

Vendors	Original Bids	Preference Given
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

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

Step 2: Comparison

In-State Vendors	In-State Vendor Bid	Out-of-State Vendor Bid Adjusted for Preference Requested	Comparison Result
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: Award to Resident Vendor When Application of Preference Leads to Conflicting Award

Vendors	Original Bids	Preference Given
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

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

Step 2: Comparison:

In-State Vendors	In-State Vendor Bid	Out-of-State Vendor Bid Adjusted for Preference Requested	Comparison Result
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

In-State Vendors	In-State Vendor Bid	
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