

Purchasing Division Procedures Handbook

PURCHASING DIVISION

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Welcome!

The *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 West Virginia 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, additional resources 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 promoting 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,

A handwritten signature in black ink, appearing to read 'W. Michael Sheets'.

W. Michael Sheets, CPPO, Director
West Virginia Purchasing Division

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 defined in W. Va. 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 services include but are not limited to acquisition and contract administration, disposal and redistribution of surplus property, travel management, purchase order encumbrance, and inventory management.

1.3 Regulatory Authorization: The Purchasing Division functions in adherence to its W. Va. CSR § 148-1-1 through 14. This link to the Purchasing Division’s Legislative Rule can be found in [Appendix A](#) 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 Compliance with Handbook: State procurement officers and their support staff are required to abide by 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 W. Va. CSR § 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.

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, he or she is encouraged to contact his or her agency's assigned Purchasing Division buyer within the Acquisitions and Contract Administration Section of the Purchasing Division.



Note: A listing of Purchasing Division buyer-agency assignments can be found online at www.state.wv.us/admin/purchase/byrassign.pdf.

The agency designated procurement officer is required to:

- 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;
- Serve as the first point of contact to provide guidance to internal agency staff regarding purchasing issues;
- 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 agency procurement staff receives proper training, both internally and externally, for agency-delegated processes as well as those for central procurements; and
- 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:

Acquisitions and Contract Administration Section:

- Process all purchases expected to exceed \$25,000
- Statewide contracts
- Inspection services
- Contract management

Communication and Training Section:

- Communication with internal and external stakeholders
- Publication management, including newsletters, annual reports, forms, and more
- Professional development, including webinars, in-person trainings, and online on-demand trainings
- West Virginia Procurement Certification Program
- Annual Agency Purchasing Conference
- Special event planning

Business and Technical Services Section:

- Information technology
- Imaging and records retention
- Purchase order 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 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 contracts are considered public records, although the timing of the release of certain documents to the public does vary. All records maintained at the agency level related to contracts are also considered public records. State agencies must refer to and follow the same document availability schedule as the Purchasing Division when making public records available.

1.8.1. Document Availability Schedule:

1.8.1.1. Solicitation documents, including the initial solicitation and any addenda, are released for public viewing as part of the bidding process.

1.8.1.2. Bids are released for public viewing immediately after the scheduled bid opening for a solicitation pursuant to W. Va. Code § 5A-3-11(g).



Note: *The Purchasing Division publishes copies of all bids to its website. These bids can be accessed online at www.state.wv.us/admin/purchase/bids.*

1.8.1.3. Purchase orders and other award documents become available for public viewing after the funds have been encumbered and/or the contract officially awarded.

1.8.1.4. The contract file and all documents contained therein, including but not limited to the evaluation, contract award, notice of contract cancellation, vendor disqualifications, scoring sheet, agency recommendations for award, etc., become public information after an award has been made or a solicitation has been cancelled.

1.8.2. Document Disclosure Policy: As noted in the Agency and Purchasing Master Terms and Conditions, a vendor’s entire response to a solicitation and the resulting contract are public documents that will be disclosed in their entirety without notice. This is true even if the vendor attempts to avoid disclosure by marking the proposal as exempt from disclosure. Two examples include listing the proposal as “confidential” or “proprietary”. Freedom of Information Act (FOIA) exemptions may be applied by the state at the request of the agency so long as the agency confirms the exemption with the Purchasing Division in advance.

1.8.3. Document Review/Copies: The Purchasing Division allows interested parties to view records in person at its office during normal business hours. Electronic copies of records are made available when copies are requested in writing. Paper copies are available in special circumstances.

1.8.4. Document Destruction: Copies of contract files must be maintained until the Purchasing Division, or the agency for delegated procurements, obtains permission to destroy the documents from the Legislative Auditor's Office pursuant to W. Va. Code § 5A-3-11(h).

1.8.5. Privacy Concerns: Agencies should review documents prior to disclosure to ensure that the inadvertent disclosure of social security numbers or other protected information does not occur. Questions regarding the redaction of information, if any, should be directed to the agency's legal counsel and privacy officer.

1.9 Ethics: 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 Criminal/Penalty Statutes: The laws that govern the public purchasing process are strict and demand the highest degree of discretion and ethical behavior. Those and other laws impose criminal penalties (fines and incarceration) and personal liability on the violator for knowing violations.

W. Va. Code § 5A-3-17: Purchases or contracts violating article void; personal liability: Under this statute, a purchase order or contract award in violation of bidding laws and rules will become void, and any individual charged with responsibility for the purchase order or contract award held personally liable for the costs accrued through the purchase order or contract, if the evidence presented by the State proves that the individual acted knowingly and willfully.

W. Va. Code § 5A-3-29: Penalty for violation of article: Any person who violates a provision of the procurement laws 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.

§ 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.

1.11 Cease and Desist Authority: In accordance with W. Va. 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 W. Va. 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.

1.12 No Personal Use: 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.

1.13 GAX Prohibition: Agencies are not permitted to use the State Purchasing Card or the General Accounting Expenditures (GAX) document as a payment method intended to bypass the procurement process.

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 some 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 W. Va. Code § 5A-1 is provided.

ACT – A wvOASIS designation for an agency contract issued under delegated authority for a fixed amount with renewal years available.

ADO – See Delivery Order.

AMA – See Master Agreement.

APO – See Purchase Order.

Award Date – The award date is the date a contract is completed and sent to the vendor. For procurements processed by the Purchasing Division, the award date is the date the contract is encumbered and delivered.

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

Blackout Period – A period during the central solicitation process in which all communication must be routed through the Purchasing Division (from the time the requisition is submitted until the contract is awarded).

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

CCT – A wvOASIS designation for a centralized contract issued through the Purchasing Division for a fixed amount with renewal years available.

CDO – See Delivery Order.

CMA – See Master Agreement.

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

Contract – An agreement between a state spending unit and a vendor where the state spending unit agrees to purchase a commodity, service, or both, from the vendor in exchange for monetary compensation.

CPO – See Purchase Order.

Delivery Order – A written order to the contractor against a master agreement authorizing quantities of commodities and/or services to be delivered in accordance with all terms, conditions, and prices stipulated in the original contract. Delivery orders can be issued as Central Delivery Orders (“CDO”) if approved by the Purchasing Division or Agency Delivery Orders (“ADO”) if processed solely by the agency. Utilizing Delivery Orders to order from master agreements is not mandated by the Purchasing Division in instances where the West Virginia State Auditor’s Office has authorized another method for ordering from a contract but is a best practice.

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

Master Agreement – A generic term used for a contract that covers a period of time in which all terms, conditions and prices are specified except for quantity. This is also known as an open-end contract. Master agreements can be issued as Central Master Agreements (“CMA”) if solicited through the Purchasing Division or Agency Master Agreements (“AMA”) if issued at the agency delegated level.

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

Purchase Order – A term generically utilized to reference the State’s issuance of a document awarding a contract to a vendor. In wvOASIS, purchase orders reference contracts that do not contain renewals. Purchase orders in wvOASIS can be issued as Central Purchase Orders (“CPO”) if solicited through the Purchasing Division or Agency Purchase Orders (“APO”) if issued at the agency delegated level.

Purchasing Affidavit – In accordance with W. Va. Code §§ 5A-3-10a and 5-22-1(i), the state is prohibited from awarding a contract to any bidder that owes a debt to the state or any of its political subdivisions. Similarly, beginning July 1, 2022, for all contracts of \$100,000 or more, vendor must certify that they are not currently engaged in, and will not for the duration of the contract engage in a boycott of Israel Vendors. Vendors are required to sign, notarize and submit the Purchasing Affidavit to the Purchasing Division, or the agency in a delegated procurement, affirming under oath all of the above.

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.

Solicitation – A written or oral attempt made by the state to obtain bids or proposals for the purpose of entering into a contract.

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 W. Va. 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 \$25,000 threshold or otherwise avoid the use of sealed bids.

Unit Price – The cost per unit of the commodity or service (e.g. per ton, per labor hour, or per foot).

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 commodities and services currently out for bid. The VSS portal also allows vendors to receive solicitation notifications by email 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 email addresses.

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

SECTION 3: ACQUISITION PLANNING

3.0 ACQUISITION PLANNING

An effective procurement strategy begins with proper planning. As an agency procurement officer, it is critical that you:

1. **Track Spend:** Monitoring your agency's spend both on and off issued contracts will allow you to make more accurate projections about future needs as well as better determine what spending threshold (delegated v. central) the upcoming purchase for a given commodity or service will fall within. Tracking spend allows an agency to gauge when it is approaching a spending threshold that requires more rigorous bidding requirements.



Note: There are three ways to track an agency's spend with any given vendor for a defined period of time. These include using Business Intelligence reports **WV-FIN-AP-055I** (i.e. all transactions) and **WV-FIN-AP-026** (i.e. spend for single or multiple selected vendors), which can be found within myApps, as well as going to the VCUST table in *wvOASIS*, searching by the Vendor ID, and clicking on the Vendor Transaction History link at the bottom of the page.



Note: In addition to tracking spend by vendor, agencies may also track spend by commodity code using Business Intelligence report **WV-FIN-PROC-CC-001**. If you do not have access to run reports in Business Intelligence, contact your agency's *wvOASIS* representative.

2. **Track Contracts:** Knowing when existing contracts are set to expire and how long replacing an expiring contract will take is critical to ensuring that the agency does not experience a gap in service.



Note: Agencies can track their expiring contracts using Business Intelligence report **WV-FIN-PROC-042**, which can be found within myApps, by typing in their department number and the current date. The report displays all master agreements and term contracts separated into two lists - centralized contracts and agency contracts - and can be filtered by number of days until expiration.

- 3. Anticipate Future Needs and Act Accordingly:** The procurement laws of the state of West Virginia are based on the assumption that agency personnel adequately plan for future needs. Procurement officers must work with the necessary personnel within their agencies to ensure this planning occurs.
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Note: Compliance with competitive bidding requirements and Purchasing Division oversight is not dependent on the source of funds. Federal funds are just as much subject to competitive bidding and Purchasing Division oversight as state funds.

3.1 Pre-Requisition Considerations:

3.1.1. Understand the Need: Assuming that adequate planning has occurred and the procurement is not the result of a known and recurring need, the first step in the procurement process is to understand the need and identify any existing commodity or service that can meet that need. If this is a known and recurring need, defining the need may not be necessary, but ensuring the need still exists and has not changed will be required.

3.1.2. Conduct Research: To gain a better understanding of the commodity or service needed before any steps are taken to prepare a solicitation, the agency should analyze industry standards for the commodity or service, research the market for vendors who can supply the commodity or service, and more.

3.1.2.1. Research Methods: There are several methods for conducting market research. Below are some of the proven methods:

- A. Independent Research:** Review trade publications, journals, vendor materials, and other information publicly available on the internet and through other sources.
- B. Consult Agency Experts:** End users within the agency or other state agencies can be a great source of information for the commodities and services they need. Procurement officers should consult with the end users at the earliest stages of a procurement.
- C. Communicate with Multiple Vendors in the Market:** It may be appropriate to communicate with multiple vendors that provide the needed commodities or services to gain a better understanding of how to structure the procurement. The Purchasing Division recommends that procurement officers engage more than one vendor in the relevant market whenever possible to avoid accusations of bias or favoritism. Keep in mind that communication with vendors must end when the solicitation is submitted to the Purchasing Division for central bidding.
- D. Engage Consultants:** A separate procurement to contract with a consultant or expert to provide advice can be a part of market research. It is important to note, however, that any individual, corporation, or firm (except as provided by a statewide contract) paid to provide a custom design or write specifications is not permitted to competitively bid on the solicitation for the commodity or service that was designed. This removes the possibility of the designer developing specifications that only he or she can meet, thereby restricting other vendors from competing for the award of the contract. This also prevents the appearance of impropriety, protecting the integrity of the competitive bid process.
- E. Request for Information (RFI):** Spending units may request that the Purchasing Division issue a Request for Information (RFI) to obtain written information from vendors for the purpose of developing a Request for Quotation (RFQ) or a Request for Proposal (RFP).



Note: *The Purchasing Division is required to issue all RFIs. An RFI cannot be used to make an award of a contract. Its sole purpose is to obtain written information about a commodity or service.*

F. Past Purchases of Same or Similar Commodity/Service: Spending units can research solicitations previously advertised within wvOASIS for the same or similar commodities or services. As part of this research, agency procurement officers may review the specifications included with those solicitations, and if processed at the central level, may also review bids received (posted on the Purchasing Division's website) or review the official contract file to see which vendors responded to a solicitation (used to compile the list of suggested vendors).

3.1.2.2. Important Considerations: When conducting market research, agency procurement officers should consider the following:

- A. Vendors/Products in the Market:** Identify vendors and/or commodities in the current market that can meet the agency's need.
- B. Variation in Competing Products/Services:** Understand how the various vendors and/or commodities in the market differ, and design inclusive specifications that maximize competition.
- C. Relevant Industry Standards:** Design a solicitation that adheres to current industry standards so that vendors can understand and submit a bid responsive to the solicitation.
- D. Licensing or Regulatory Requirements:** Agency procurement officers must identify any special licensing or regulatory requirements that apply to the commodity or service so that such requirements are accurately listed in the solicitation and incorporated into the resulting contract.
- E. Acquisition and Delivery Lead Time:** Agency procurement officers should consider the length of time that it will take to conduct the purchasing process, receive the commodity or service, and begin using it. This is known as lead time, and there are generally two types. They include:
 - a. Administrative Lead Time:** Administrative lead time, which should be determined for all purchases, is the time required to prepare documents, solicit and evaluate bids, and award a contract. This time can vary depending on the dollar value of the solicitation, promptness of the agency to complete required tasks, responsiveness of vendors, and the complexity of the solicitation. Agencies should also consider the expiration of funds when planning administrative lead time.
 - b. Delivery Lead Time:** Delivery lead time is the time required for the awarded vendor to deliver commodities and/or services. This time can

vary widely by industry, commodity, or service. Consideration must be given to market conditions which can affect delivery times. Additionally, custom-made and complex items of equipment normally take longer to obtain than in-stock items.

3.1.3. Check Internal/Mandatory Sources: Prior to issuing a solicitation or making a purchase, agency procurement officers must review all internal sources and mandatory contracts as detailed below. If the commodity or service is available from an internal or mandatory source, then it must be obtained from that source.

3.1.3.1. Internal Sources

A. Surplus Property: The West Virginia State Agency for Surplus Property (WVSASP) operates a state and federal surplus property program.

The WVSASP, which provides oversight for the disposal of property no longer needed by state agencies, including trade-ins against the purchase of new property, makes retired property available to other state agencies, eligible public and nonprofit organizations, and the general public. If the agency is seeking a used commodity and the State Surplus Property program has that commodity at the required quality level, that used commodity must be obtained from WVSASP.

Agencies do not have authority to dispose of any property regardless of value without written approval from the WVSASP, and all methods of property disposal must be coordinated through them.



Note: In addition to surplus property retired by the state of West Virginia, the WVSASP also coordinates the donation of property retired by the federal government in accordance with the Federal Property and Administrative Services Act of 1949. Federal property is available to state and local public entities and non-profit organizations who have a current *Application for Eligibility* on file. The WVSASP is required by the U.S. General Services Administration to charge a low service fee for acquired donated federal property.

For additional information on the State and Federal Surplus Property Programs, state agencies are encouraged to refer to the West Virginia Surplus Property Operations Manual at

www.state.wv.us/admin/purchase/surplus/surplus_operations_manual.pdf
or visit its website at WVSurplus.gov.

Any questions concerning the disposal or sale of state surplus property or the screening or acquisition of federal property should contact the West Virginia State Agency for Surplus Property at the information contained below:

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

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

- B. Commodities and Services Provided by Correctional Industries:** In accordance with W. Va. Code § 25-7-5, all offices, departments, institutions, and agencies of the state are required to purchase all articles or products they require from Correctional Industries if those articles or products are produced or manufactured by Correctional Industries.

For specific details on available commodities and services, contact Correctional Industries at (304) 558-6054 or visit www.wvcorrectionalindustries.com.

3.1.3.2. Mandatory Contracts

- A. Statewide Contracts:** W. Va. Code § 5A-3-5 and W. Va. 148 C.S.R. § 1-6.5.b authorize the Purchasing Director to create standard specifications used to establish statewide contracts for commonly used commodities and services that are needed on a repetitive basis.



Note: Statewide contracts are mandatory for use unless otherwise noted on the statewide contracts webpage at www.state.wv.us/admin/purchase/swc.

Waiver: 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;
- the price of the good or service can be found from a different source at a substantially lower cost for the exact same item, with the quality and all other specifications being equal; or
- the vendor has refused to perform.

Any waiver granted must be retained in the agency file for the transaction to which the waiver applies.



Note: A list of current statewide contracts is maintained on the Purchasing Division's website. That list can be accessed at www.state.wv.us/admin/purchase/swc.

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- B. Commodities and Services Provided by Sheltered Workshops:** W. Va. Code § 5A-3-10 and 5A-3A-4 mandate the purchase of commodities and services from sheltered workshops whenever they offer needed commodities and services that meet certain quality and price standards comparable to open-market sources. To comply with this mandate, the Purchasing Division established statewide contracts with the Central Non-profit entity, WVARF, to identify the goods and services available.
- C. Existing Open-End Contracts:** Once established, agencies are required to use their delegated and central open-end contracts to obtain the commodities or services covered by the contract. Failure to do so exposes the state to a potential breach of contract.



Note: There are multiple ways to look up agency delegated and central open-end contracts within *wvOASIS*. Two of the proven methods include searching within the *wvOASIS* Document Catalog by document code, department number, and/or Document ID, or by searching for the procurement folder by jumping to the PRCUID table and searching by Procurement Folder number.

Waiver: Agencies may request a waiver from the Purchasing Division for 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.

3.2 Preparing the Requisition: Once the procurement officer understands the need, has conducted adequate research, and determined that no internal or mandatory source or contract meets the need, it is time to prepare the requisition that will enable the agency to obtain the needed commodity or service from a vendor. In the case of an agency delegated procurement, a formal requisition may not be required, but the same general steps and considerations should be followed to develop the procurement.

3.2.1. Select the Appropriate Procurement Method: The first step in preparing the requisition is to determine the appropriate procurement method. The various procurement methods have differing processes, documentary requirements, and legal procedures that impact the requisition. Later sections of this handbook discuss these different methods and their requirements in more detail.

3.2.2. Develop Specifications if Required by the Procurement Method and Spending Threshold: Both Requests for Quotations (RFQ) (the most common procurement method) and Requests for Proposals (RFP) require specifications to complete the competitive bidding mandate associated with those procurement methods. Specifications involve a series of concise statements explaining the type of commodity or service needed, as well as its quality level and any 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). Written specifications are required to facilitate bidding for purchases of \$10,000 or more to ensure vendors are being provided a fair opportunity to quote comparable products. Specifications used in the procurement process must be retained with the purchasing file.



Note: Specifications are the foundation of any awarded contract. Agency procurement officers are encouraged to spend a sufficient amount of time preparing, reviewing, and editing specifications before the requisition is submitted to the Purchasing Division or a solicitation is advertised at the agency-delegated level to ensure they encompass all of the agency's needs and requirements.

3.2.2.1. Types of Specifications: There are multiple types of specifications used separately and/or in combination to communicate requirements for commodities and services to the vendor:

- A. Performance Specification:** This type of specification is based on the specific performance needs of the agency. The performance specification places less emphasis on how a product is made or service is accomplished and more emphasis on how the product performs or what the service results in.
- B. Design Specification:** This type of specification provides the vendor with a design or elements of a design that must be met.
- C. "Brand Name(s) or Equal":** This type of specification is based on one 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, and any use of a brand name (other than brand names used to describe what the State already has) must be followed by the phrase "or equal" to inform vendors that alternate bids will be considered. The specifications must also list the mandatory components of the commodity or service that the reference to the brand or vendor name is intended to capture. A vendor's equality with the brand or vendor name will be evaluated based on the mandatory components only.

Any spending unit request to disqualify a vendor on the grounds that the vendor has bid an unequal product must detail the mandatory component that is considered unequal and explain why.

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 on which equivalency will be evaluated.

When using a brand name specification, the general name of the items, e.g., air blowers, automobiles, etc., should be listed first; and the manufacturer and model number of the item should immediately follow. Literature should be requested to accompany any alternate bid to verify that the alternate bid complies with the specifications.

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.

D. Standardization Specifications: These specifications refer to a specific brand of product, without allowance for equal brands. This type of specification can only be used if the agency has established a standard through the process contained in W. Va. Code § 5A-3-61. See also [Section 7.14](#) for more information.

E. RFP Specifications: Requests for proposals require a unique set of specifications that heavily focus on desirable non-mandatory items with a much lighter focus on mandatory specifications. The goal is to allow the vendor community to describe how their solution will accomplish the desired outcome in a way that can be subjectively evaluated and scored.

3.2.2.2. Specification Templates: Several sets of templates have been developed for use by state agencies to streamline processing transactions. Templates, or standard formats as they are often referred to, have been developed for catalog discount RFQ purchases, one-time RFQ purchases, RFQs for open-ended purchases, HVAC/elevator maintenance, and others.



Note: Specification templates are available on the Purchasing Division's website in a format that can be modified to fit the agencies' specific needs and can be accessed at www.state.wv.us/admin/purchase/forms.html.



Note: Agency procurement officers may search *wvOASIS* for examples of specifications drafted by other agencies for the same commodity/service.

3.2.2.3. External References in Specifications: 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.

3.2.3. Requisitions Should Include:

3.2.3.1. Reference to Prior Contract: The agency should include the contract number and expiration date for the most recent contract containing the commodity or service when submitting the requisition to the assigned Purchasing Division buyer. If the requisition will result in a new contract, that should also be indicated information to the Purchasing Division buyer.

3.2.3.2. List of Possible Vendors: Agencies should provide a list within *wvOASIS* or by email of potential vendors that offer the good or service being solicited. Identifying vendors as part of the requisition process ensures vendors are made aware of solicitations published by the state of West Virginia for the goods or services they offer. Locating vendors selling a particular product or service can be performed in several ways, including:

- A. Internet searches;
- B. Reference sources, such as the yellow pages in a telephone book, and other business listings;
- C. Suppliers' catalogs, which not only offer local distributors but provide descriptive information on their products for the current market;
- D. Meeting with business representatives; and
- E. *wvOASIS*.



Note: Agency procurement officers can identify vendors by commodity code within *wvOASIS*. To run the report, Vendors by Commodity, open WV-FIN-VN-010 within Business Intelligence in *wvOASIS* and click “Refresh All.” Upon entering the commodity’s eight-digit code and the commodity’s two-digit “segment” number (which is the first two digits of the commodity code), a report will identify all vendors from *wvOASIS*’s VCUST table who have indicated that they can provide the commodity based on that commodity code or one with a similar code family to what your agency is seeking.

3.2.4.Requisitions Must Include:

3.2.4.1. Maximum Budgeted Amount: This is the maximum available funding available for the purchase of the good or service as determined by the agency at the time they submit a requisition to the Purchasing Division. For purposes of determining the agency’s ability to negotiate in accordance with W. Va. Code § 5A-3-11a, this amount cannot be changed after bid opening.



Note: On requisitions in *wvOASIS*, the Maximum Budgeted Amount field does not pre-encumber or reserve funds in any way. It is primarily used to determine whether negotiations are permitted if all bids exceed available funds.

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

3.2.4.3. Specifications: The specifications should be complete and written in a way that allows for competitive bidding.

3.2.4.4. Type of Purchase: The type of purchase should be identified in the requisition submitted to the Purchasing Division. There are two types of purchases primarily used by the Purchasing Division. These include one-time purchases and open-end contracts.

A. One-Time/Single Purchases: This method is used to purchase commodities and services that are not considered repetitive. State agencies must submit a requisition to the Purchasing Division.

B. Open-End Contracts: This method is used to fulfill an agency's recurring procurement needs, even when the agency is unsure of how much of a good or service will be required.



Note: Open-end contracts are processed as master agreements within *wvOASIS*. Agency-delegated open-end contracts are identified as Agency Master Agreements (“AMA”), while central open-end contracts are identified as Central Master Agreements (“CMA”).

Once an open-end contract is established, a delivery order should be processed to obtain commodities or services from the contract, unless another method is permitted by the West Virginia State Auditor's Office. See [Section 3.8.1.2](#) for more information on delivery orders.

3.2.4.5. All Required Agency Approvals: All necessary approvals should be obtained and emailed to the Purchasing Division buyer, scanned into the procurement folder, or approved in *wvOASIS* workflow before the requisition is submitted to the Purchasing Division.

3.2.4.6. Completed General Terms and Conditions: Agencies must complete the General Terms and Conditions (using the master copy maintained by the Purchasing Division) to include as part of every written solicitation issued through, and contract awarded by, the Purchasing Division. The master copy of the Agency General Terms and Conditions is also available and mandated for use by state agencies using their delegated purchasing procedures. Both master copies of the Agency and Purchasing General Terms and Conditions can be found in the Agency Resource Center of the Purchasing Division's website at www.state.wv.us/admin/purchase/arc.



Note: When submitting the requisition within *wvOASIS*, agencies must select the “Attached” option in the Terms and Conditions dropdown field and then manually upload the completed General Terms and Conditions (the most current version of the terms and conditions can be found online at the link above) as a PDF document. The prepopulated terms and conditions contained within the other dropdown options do not allow for manual entry on items like insurance requirements, bonding, etc. and therefore cannot be used.



Note: The revision date on the terms and conditions document must not be removed or altered in any way.

3.2.4.7. Federal Funding Requirements: Any requisition utilizing federal funding that includes special requirements in addition to or different than normal purchasing requirements must be identified when submitted.

3.2.5. Special Considerations for Contract Terms:

3.2.5.1. Initial Contract Term:

- A. Standard Term:** The Purchasing Division allows for a standard initial contract term of one year.
- B. Software Maintenance Exception:** Software contracts with maintenance may have an extended initial term of up to five years. Advanced approval is not required.
- C. Construction Project Exception:** Construction contracts often require a term of more than one year. Advanced approval of the contract term in these instances is not required.
- D. All Other Exceptions:** Advanced approval is required to have a contract term that exceeds one year, except for the software maintenance and construction project exceptions listed above. Requests for an extended initial term should be limited to contracts with larger upfront costs and complex programs or projects. Such requests must be made to the Purchasing Division in writing and contain

adequate justification. Approval of the extended term must be maintained in the contract file.

3.2.5.2. Renewals: The Purchasing Division allows contracts to be renewed for three successive one-year periods or multiple renewal periods of less than one year, provided that the multiple renewal periods do not exceed a total of 36 months. Contract renewals are processed in wvOASIS as a change order. Any contract renewal requesting a time other than one year must be approved by the Purchasing Division in advance.

Documentation: Contract renewal requests must be submitted in wvOASIS and must include a signed confirmation from both the vendor and the agency requesting the renewal. Additional documentation may be required on a case-by-case basis. Any request for renewal should be submitted to the Purchasing Division at least 30 days prior to the expiration date of the initial contract term or appropriate renewal term. Automatic renewal of any contract is prohibited. Purchasing Division approval is not required on agency delegated or exempt purchases.



Note: Agencies are not permitted to extend any contract beyond the time that is stated in the contract once all renewals are exhausted.

3.2.5.3. Insurance: Agencies are required to include insurance mandates in solicitations. BRIM has developed an insurance guide that provides an overview of various insurance policies, coverage limits and other information (see [Appendix C](#)). Agencies may access information about these topics and more at <https://brim.wv.gov>.

A. Establishing Coverages and Limits: The master copies of the Agency and Purchasing General Terms and Conditions allow agencies to select the most common types of insurance required of a vendor by checking the appropriate boxes and inserting coverage limits. In instances of uncertainty, the Board of Risk and Insurance Management (BRIM) assists agencies in determining what types of insurance are needed and what coverage levels should be required.

BRIM has stated that every contract should, at the very least, require the vendor to show evidence of Commercial General Liability and Workers' Compensation coverage, and in most cases, automobile coverage. Additionally, no agency is permitted to release a solicitation without mandated insurance coverages

without BRIM's express approval. Adequate insurance coverage ensures that the vendor remains liable for any damages caused.

Any inquiries about proper insurance requirements in a solicitation should be directed to:

Deputy Director and Underwriting Manager
West Virginia Board of Risk & Insurance Management
1124 Smith Street, Suite 4300
Charleston, WV 25301
Phone: (304) 766-2646, ext. 57609
Fax: (304) 558-6004
Melody.A.Duke@wv.gov

- B. Proof of Coverage:** Once the insurance requirements have been determined and included in the solicitation, the Purchasing Division will request the vendor to provide documentation confirming that the required insurance coverage has been obtained. That coverage is documented using the Accord form, which will show insurance coverage during a stated period. On delegated procurements, the agency will obtain the Accord form.

As part of the contract administration/management function, the agency must ensure that the mandated insurance coverages are maintained over the life of the contract. This will require the agency to request a copy of a new insurance verification form prior to the expiration of the prior form. Subsequent insurance verification forms obtained by the agency should be kept in the contract file.

- C. Additional Insured:** Vendors are required to list the state as an additional insured on all mandated insurance policies processed by the Purchasing Division unless the Purchasing Director waives this requirement. Agencies are strongly encouraged to require that vendors list the state as an additional insured on delegated transactions as BRIM has identified this as a best practice for state contracting.

3.2.5.4. Shipping/Delivery Terms:

- A.** All specifications for commodities must include delivery terms that allow for a fair evaluation of delivery costs.
- B.** Purchasing Division templates call for the vendor to pay for and take on the risk of loss associated with delivery by mandating Free on Board (F.O.B.) Destination.

- a. **F.O.B. Destination:** This designation indicates that the vendor is responsible for the delivery of the goods from the point of origin to a specified delivery point and is liable for the cost of shipping and any risk associated with the delivery. The title passes from the vendor to the agency when the goods are received at the destination. This is the preferred method of shipment because it facilitates an equal comparison of price among vendors.
 - b. **F.O.B. Origin:** This designation indicates that the agency is responsible for the delivery of the goods from the point of origin to a specified delivery point. The title passes from the vendor to the agency at the origin of the shipment. The agency is the owner of the goods while they are in transit and is liable for any risk associated with the delivery. The cost of freight is determined by the contract terms, and any use of this delivery method requires that the price evaluations account for delivery costs to ensure an accurate price comparison between vendor bids/proposals.
- C. Loss or Damage in Shipment:** The filing of claims for loss or damage to merchandise while in transit is the responsibility of the party holding the title during shipment. The title to the commodities is determined by the F.O.B. point indicated on the purchase order.



Note: When industry norms require something other than F.O.B. Destination, the specifications must incorporate the delivery cost into the specifications and pricing page to accurately capture those costs.

3.2.5.5. Bonds and Liquidated Damages:

- A. Bonds:** State Code mandates that bidders provide bonds intended to protect other parties prior to bidding on or receiving certain contracts. The most common examples are found in construction contracts. In other instances, agencies can choose to mandate certain bonds be provided. Below are the types of bonds used in the state purchasing process:
 - a. **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 and must be provided with the bid to be effective.

Agencies are not permitted to require bid bonds unless there is a statutory requirement to do so. A vendor submitting a bid bond electronically will be required to submit the original bond within two business days of the bid opening date.

- b. Labor and Materials Payment Bond** – A bond obtained by the apparent successful vendor in construction contracts that is intended to serve the same purpose as a mechanic’s lien in the private sector. The bond provides laborers and material suppliers working on, or providing materials for, a construction project with protection against non-payment. When non-payment occurs, the laborer or material supplier can seek payment from the surety issuing the bond. Agencies are not permitted to require labor and material payment bonds unless there is a statutory requirement to do so.
- c. Performance Bond** – A bond obtained by the apparent successful vendor for the benefit of the State in which a surety agrees to be liable for a vendor’s failure to satisfactorily perform the contract. This bond is usually for the full amount of the contract and can be utilized outside of construction contracts, but agencies must ensure that the vendors in the industry have the willingness/ability to obtain the bond.
- d. Maintenance Bond** – A bond obtained by the apparent successful vendor for the benefit of the State in which the surety agrees to provide a warranty for work associated with roofing projects. Such bonds are normally valid for two years.



Note: The Purchasing Division recommends that an agency not require bonds unless it is either common in the industry or mandated by law since a vendor’s failure to provide the requisite bonds will disqualify that vendor from receiving a contract award.



Note: Any effort by an agency to collect on a bond should begin with the legal counsel for that agency. Collecting on a bond signifies a breach of contract and should involve the Attorney General’s Office.

- B. Liquidated Damages:** A contract provision that determines in advance the measure of damages a vendor is obligated to pay for failing to meet one or more contractual requirements. It is important that liquidated damages be reasonably related to the harm caused to be legally enforceable.
- C. Bonus Payments:** Provisions that call for extra or additional payments for meeting certain milestones ahead of schedule are known as bonus payments. The Attorney General's Office has issued an opinion that bonus payments for contracts issued by the state of West Virginia are illegal.

3.2.6. Quality Assurance: All requisitions and their attachments should be submitted by the agency in a manner that is neatly typed, free of typographical errors, and saved in a format that can be easily exported or photocopied for electronic purposes. Any information submitted as part of the requisition and duplicated within the solicitation is a reflection on the agency making the request and the state of West Virginia as a whole, and the West Virginia Purchasing Division expects high quality work. Improperly completed requisitions or submissions of an inferior quality will be returned to the agency for correction or improvement.

3.3 Submitting the Requisition:

3.3.1. Submissions in wvOASIS: Requisitions for central purchases must be submitted to the Purchasing Division in wvOASIS using the appropriate requisition type to convey the final contract type needed for the solicitation. It is at the agency's discretion whether to require requisitions within wvOASIS for agency-delegated procurements.



Note: Agencies must discern the type of contract needed prior to entering the requisition in wvOASIS. The requisition type will limit the type of award that can be issued for each solicitation.

3.3.1.1. Requisition Type:

- A. CRQS:** Agencies must submit a CRQS document in wvOASIS for contracts that will be awarded for a one-time purchase of goods or service (CPO or CCT).
- B. CRQM:** Agencies must submit a CRQM document in wvOASIS for contracts that will be awarded as open-end (CMA).

3.3.1.2. Award Document/Procurement Type ID: Agencies must select the award type/procurement type ID needed for a solicitation when submitting the requisition within *wvOASIS*. Each award type has certain functionality and limitations.

- A. CPO:** This award type is used for contracts that indicate a one-time purchase or are issued for construction projects, with no renewals. Contracts of this type awarded under an agency's delegated authority should be designated as an APO.
- B. CCT:** This award type is used for fixed price contracts with a defined quantity and renewals. Contracts of this type awarded under an agency's delegated authority should be designated as an ACT.
- C. CMA:** This award type is used for open-end contracts that will require a subsequent release order by an agency to obtain the needed commodities or services. Contracts of this type awarded under an agency's delegated authority should be designated as an AMA.

3.3.1.3. Solicitation Type: Agencies will need to identify the type of procurement method that is appropriate for their specific needs prior to submitting any requisition within *wvOASIS*. Examples of various procurement methods are discussed in more detail in later sections of this Handbook but generally include RFQs, RFPs, direct awards, etc. The solicitation type should be indicated in the requisition.

3.3.1.4. Line Type (Item v. Service): When preparing a requisition or solicitation within *wvOASIS*, agencies must identify the line type. There are three line types:

- A. Item:** Item line type is typically used to procure commodities or even hourly rates.
- B. Service:** Service line type is typically used for construction, consulting, or other contracts with progress payments in which payment amounts cannot be predetermined.
- C. Catalog:** Catalog line type is used when the agency desires to implement the *wvOASIS* catalog upload feature to assist in the automation of the delivery order process.



Note: If the line type selected is “item” and the quantity is listed as “one,” agencies will only be permitted in *wvOASIS* to make one payment against that line item before that commodity line is closed. Partial payments are not permitted against a line item with a quantity of “one”.



Note: The catalog feature in *wvOASIS* requires the use of a specific spreadsheet format for pricing that is only applicable in a narrow range of bidding scenarios. Due to the limitations, this feature is rarely used.

3.4 Blackout Period:

3.4.1. Central Procurement: Evaluators and spending unit personnel are not permitted to communicate without prior approval from the Purchasing Division with any vendor about an existing solicitation or any component of the solicitation from the time a requisition is submitted to the Purchasing Division for public advertisement until an award is made, in accordance with the W. Va. § 148 C.S.R. 1-6.6b. All communication regarding the solicitation must be directed to the Purchasing Division during this period. Nothing in this subsection, however, prevents the evaluators and spending unit personnel from communicating with a vendor about existing contracts or other matters unrelated to the solicitation in question.



Note: A violation of the blackout period may result in failure of the solicitation, removal of the offending party from the existing or future evaluation teams, mandatory training for the offender on the blackout period, and even criminal penalties depending upon the nature of the communication.

3.4.2. Delegated Procurement: The Purchasing Division strongly recommends that the agency limit contact with vendors relating to agency delegated solicitations to the greatest extent possible from the time a solicitation is put out for bid until it is awarded.

3.5 Solicitation:

3.5.1. Issuance: After review and approval of the requisition, the Purchasing Division will take the documentation provided and release it as a solicitation. Agency delegated procurements will be released as solicitations by the agency without review and approval by the Purchasing Division.

3.5.2. Modification: Solicitations can be modified by addenda.

3.6 Bid Opening Date and Time: State law mandates that bids and/or proposals submitted in response to solicitations be opened publicly at the date and time stated in the solicitations. 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.



Note: In *wv*OASIS, the bid opening date and time are referred to as the “bid closing.” The Purchasing Division schedules all bid openings at 1:30 p.m. To avoid confusion from vendors, agencies are encouraged to schedule their agency delegated bid openings for any time other than 1:30 p.m.

3.7 Evaluation Period: After bids are opened, a review and evaluation of the bids are required. State agencies review the bids first, then submit their recommendation(s) for award, along with any justification, to the Purchasing Division.



Note: Following a bid opening conducted by the Purchasing Division, agency procurement officers can access electronic copies of the bids received on the Purchasing Division’s website at www.state.wv.us/admin/purchase/Bids. Once bids become available, the agency procurement officers should immediately begin their evaluation. Paper copies will only be provided to the agencies if the bids are too large to post electronically.

State agencies must submit a recommendation for award to the Purchasing Division within five business days of the bid opening date, except for Request for Proposals (RFP) and Expressions of Interest (EOI). RFP and/or EOI recommendations for award must be received within 10 business

days. The agency's failure to review bids and provide its recommendation for award to the Purchasing Division in a timely manner may result in bid expiration, project delays, a longer procurement process, and/or cancellation of the solicitation. In instances where these submission deadlines cannot be met, the agency should communicate its reason(s) to the Purchasing Division.

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 W. Va. Code § 5A-3-31. By signing this certification, available online at www.state.wv.us/admin/purchase/forms.html, the evaluator(s), advisor(s) and agency procurement officer(s) verify that (1) their service on the evaluation committee does not violate W. Va. Code § 5A-3-31, § 6B-2-5, or any other relevant code section; (2) their service on the evaluation committee does not create a conflict of interest with any of the participating vendors; and (3) they have not had or will not have contact relating to the solicitation with any participating vendors between the time of the bid opening and the award recommendation without prior approval of the Purchasing Division.



Note: Agency procurement officers should discuss any conflicts of interest with potential committee members prior to commencement of the evaluation. If a potential committee member identifies a possible conflict, he or she should be removed from consideration for the evaluation process.

The non-conflict of interest requirement applies to all transaction types processed through the Purchasing Division, as well as for all transactions exceeding \$2,500 that are processed under an agency's delegated authority. Agencies may adopt this policy at their discretion for purchases \$2,500 or less.

The certification for central purchases must be submitted following these time frames:

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

3.8 Contract Award: Central awards are contract awards issued by the Purchasing Division for central purchases. For central contracts, the encumbrance date is the date of the contract award. Agencies are responsible for the issuance of contract awards for delegated procurements. See Delegated Award below.

3.8.1. Effect of Contract Award:

3.8.1.1. Notice to Proceed: Unless otherwise stated, the Purchasing Division's general terms and conditions establish the award date as the date a vendor can begin to perform under the contract.

3.8.1.2. Master Agreements: Master agreements, also known as open-end contracts, require ordering instructions for the contract before any work can begin. Agencies are required to follow these instructions when applicable, unless the West Virginia State Auditor's Office has approved an alternate ordering method. Ordering instructions may include the issuance of a delivery order. All delivery orders must reference the complete open-end contract number.

- A. Agency Delivery Order:** Agencies should issue an agency delivery order to obtain goods or services from agency-delegated open-end contracts (up to an aggregate total of \$25,000) or to obtain goods or services in the amount of \$250,000 or less from central open-end contracts, unless the West Virginia State Auditor's Office has approved an alternate ordering method, and unless ordering instructions contained in the contract require Purchasing Division approval.
- B. Central Delivery Order:** Agencies should issue a central delivery order through the Purchasing Division to obtain goods or services over \$250,000 from central open-end contracts unless the West Virginia State Auditor's Office has approved an alternate ordering method.
- C. Special Delivery Order Approval:** 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 instructions.

3.9 Special Considerations:

3.9.1. 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 direct award purchase be adequately reviewed, publicized, and approved.

Any testing of specific brands of products, which may lead to future purchases restricting competition, must be completed in accordance with the standardization procedures contained in W. Va. Code § 5A-3-61.

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 so long as the vendor does not receive compensation or any form of favoritism.

3.9.2. Vendor Preference:

3.9.2.1 Traditional Vendor Preference: Vendors that meet certain requirements are entitled to a price preference when bidding on 1) motor vehicles and 2) construction and maintenance equipment and machinery used in highway and other infrastructure projects.

Vendors must request the preference in writing at the time of bid submission and provide (at the time of bid submission) all documentation necessary to prove its entitlement to the preference requested to be eligible. A link to the vendor preference request form has been included in the General Terms and Conditions.

This preference is applied by increasing the bids of all vendors except for the vendor who requested the preference. Given the complexity of preference evaluations and the necessary documentation, it is strongly recommended that the Purchasing Division buyer assist the agency in evaluating specific situations relating to this preference.

3.9.2.2 Reciprocal Preference: The state of West Virginia allows for a reciprocal preference for the solicitation of commodities and printing when requested by a West Virginia resident vendor during the bidding process, and when proper documentation is received in accordance with W. Va. Code § 5A-3-37(b). When bidding against out-of-state vendors, this sanction allows West Virginia resident vendors to receive a preference equal to the preference that those non-resident vendors receive in their home states.

In order to receive the reciprocal preference, vendors must identify themselves as a West Virginia vendor, provide (at the time of bid submission) all documentation required by W. Va. CSR § 148-1-6.4.d.1. to prove its status as a resident of West Virginia, and request in writing (at the time of bid submission) that reciprocal preference be applied. A link to the vendor preference request form has been included in the Master Terms and Conditions. The required documentation must include, but is not limited to:

- A.** A Certificate of Good Standing from the West Virginia Tax Division;
- B.** Documentation filed with the Secretary of State showing the state of incorporation, the address of all officers, the corporate headquarters, the address of the principal place of business, and other pertinent information. Entities not required to file with the Secretary of State may provide an affidavit

confirming that the headquarters or principal place of business is in West Virginia, along with a copy of a utility bill in the name of the business entity;

- C. A copy of the most recent personal property tax ticket showing taxes have been paid; and
- D. An affidavit confirming that the business entity has paid all applicable business taxes imposed by Chapter 11 of the West Virginia Code.

3.9.2.3 SWAM Preference: A non-resident vendor certified as a small, women-owned, or minority-owned (SWAM) business, pursuant to W. Va. Code § 5A-3-59, must be provided the same preference made available to any resident vendor when requested. The SWAM rules found in W. Va. § 148 C.S.R. 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 with the bid and must be properly certified under the rules governing certification pursuant in W. Va. § 148 C.S.R. 22-1 et seq. The Vendor Preference Request form can be accessed online at www.state.wv.us/admin/purchase/forms.html.

3.9.3. Special Forms:

3.9.3.1. HIPAA and the Business Associate Addendum: The State 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 it applies or not is not an acceptable practice. Similarly, designating the type of protected health information on the BAA as “all health information” is not acceptable.

3.9.3.2. Purchasing Affidavit: A Purchasing Affidavit must be attached to any written Request for Quotations (RFQ).

3.9.3.3. Unacceptable Vendor Terms: In accordance with W. Va. Code § 5A-3-62, various terms that violate state law are automatically void without any action being required on the part of the State. Those automatically voided terms include those things previously listed on the WV-96 form.



Note: This should help to expedite terms negotiations, and in many cases, eliminate the need for the WV-96 Agreement Addendum. If you have questions about this contact your agency's designated buyer.



Note: Agencies must still be aware of concerns surrounding privacy security and specific requirements related to their agency. Those items are not modified by W. Va. Code § 5A-3-62.

3.9.4. Other Considerations:

3.9.4.1. Recycled Products: All agencies and instrumentalities are encouraged, to the maximum extent possible, to purchase recycled products in accordance with W. Va. Code § 22-15A-21.

Recycled paper products are given a price preference of ten percent, with priority given to paper products with the highest post consumer content. Agencies should remove any language in the specifications that discriminate against recycled products. Furthermore, the use of disposable and single-use products should be eliminated, where 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, should be given priority unless determined to be economically unfeasible by the agency.

3.10 Rebidding of Open-End Contracts Over \$1,000,000:

Agencies are required to submit specifications for any open-ended contract at least 12 months prior to the expiration of the contract or final renewal if the contract is continuing in nature and exceeds \$1,000,000. The agency and the Purchasing Division must then ensure that the contract is awarded within six months of the date specifications are approved by the Purchasing Division, in accordance with W. Va. Code § 5A-3-10(f).

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 through the West Virginia Purchasing Division and the scope of the vendor registration program administered by the West Virginia Purchasing Division.

W. Va. Code § 5A-3-12 requires vendors to be fully registered with the Purchasing Division to do business with state agencies. That registration process includes a disclosure of information and payment of a \$125 annual fee.

Agencies can access vendor registration records within the VCUST table in the wvOASIS 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:

4.1.1. Disclosure of Information: Vendors doing business with the State of West Virginia are required to disclose certain information as part of the registration process. That information can be entered directly by the vendor into the Vendor Self-Service portal within wvOASIS at wvOASIS.gov. Vendors may also provide the required registration information by completing a Vendor Registration and Disclosure Statement and Small, Women-, and Minority-owned Business Certification Application (WV-1/WV-1A) and submitting the form to the Purchasing Division. The vendor registration forms may be downloaded from the Purchasing Division’s website at www.state.wv.us/admin/purchase/vrc/forms.html.



Note: Disclosure of Information contains at least two (2) owners or officers associated with the business entity and the name, city, state, and phone number of the financial institution where the entity's assets are located. See the Vendor Registration and Disclosure Statement and Small, Women-, and Minority-owned Business Certification Application (WV-1/WV-1A) for more information and instructions. The WV-1 form is to be used for typical vendor registrations and to register small, women-, and minority-owned businesses. The WV-1A form should be used to register direct award vendors whose aggregate total of goods or services sold to state agencies amounts to \$2,500.00 or less in one year. No fee is required for the WV-1A but disclosure of information is required.

Exemptions from Vendor Registration: Certain categories of vendors are exempted from the registration requirements under W. Va. § 148 C.S.R. 1-6.1. Those exempted entities are as follows:

1. Purchasing card vendors providing travel-related services;
2. Purchasing card vendors receiving an aggregate total yearly payment less than \$25,000.00 from a spending unit; and
3. Any company or corporation, or subsidiary of the company or corporation, listed on any nationally recognized stock exchange.

It is the agency's responsibility to make sure vendors are properly registered in wvOASIS prior to awarding a vendor a contract.

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



Note: Agencies should confirm in *wvOASIS* that a vendor is already registered prior to making any purchase. This will ensure multiple vendor accounts are not created. Multiple vendor accounts generate bidding confusion for the vendor and award issues for the agency and/or the Purchasing Division.

4.1.2. Fee Payment: A payment of the \$125 annual fee is required as part of the vendor registration process. 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.

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.

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

Exemptions from Fee Payment: Under W. Va. § 148 C.S.R. 1-6.1, the following transactions can be processed with a vendor that has not paid the annual \$125 fee:

- A. Purchasing card vendors providing travel related services;
- B. Vendors paid only by the State purchasing card that receive aggregate total yearly payments of less than \$25,000.00 from a spending unit;
- C. Vendors receiving orders for goods or services for a statewide aggregate of \$2,500 or less, from all spending units, regardless of payment method; and
- D. Vendors providing a good or service under a direct award solicitation are not required to pay the registration fee in connection with that direct award contract.
- E. 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:

- a. **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.
- b. **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.

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.



Note: Using the “Jump To” field in *wvOASIS*, agency procurement officers can search the acronym, VNREGEX, to find a department’s available vendor registration fee exemption codes using its department code. The proper vendor registration fee exemption code for the specific agency transaction, if applicable, must be entered on the award document to a vendor that is on “Prevent New Orders” hold. Please note that the disclosure of information is still required for these vendors.

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 Hold: All vendors that have not paid

the \$125 annual fee will be placed on “Prevent New Orders” status until payment of the fee is received. Vendors with “Prevent New Orders” status cannot receive purchase orders through wvOASIS unless they pay the registration fee, or an appropriate fee exemption code is applied.



Note: Use of the appropriate vendor registration fee exemption code allows the “Prevent New Orders” hold to be bypassed on a transactional basis. Use of any transactional exemption code from VNREGEX is tracked and recorded for use by the Purchasing Division Inspection Services Unit, and failure to use these codes appropriately may result in an inspection report finding.

Use of the appropriate fee exemption code allows the “Prevent New Orders” hold to be bypassed on a transactional basis. Use of any transactional exemption code from VNREGEX is tracked and recorded for use by the Purchasing Division inspectors. Improper use of the fee exemption codes will lead to inspection findings and other improvement measures being implemented by the Purchasing Division. For more information on the proper use of fee exemption codes, visit <http://intranet.state.wv.us/admin/purchase/VendorReg.html>.

Fee exemption codes are never an appropriate way to facilitate a purchase from an existing statewide contract or a centrally processed and competitively bid agency contract. Agencies wishing to purchase from vendors holding such contracts with the “Prevent New Orders” status 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.

4.2 Small, Women-, and Minority-owned Business Certification (SWAM): As required by W. Va. Code § 5A-3-59, the West Virginia Purchasing Division incorporated the 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. W. Va. § 148 C.S.R. 2-1 et seq. requires vendors to recertify every two years to remain compliant.

State agencies may view an updated list of approved SWAM vendors at the Purchasing Division’s website at 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*.

4.2.1. SWAM Designation: The recognized designations for SWAM include:

- Minority-owned businesses,
- Small businesses, and
- Women-owned businesses.

For additional information relating to these SWAM designations, visit www.state.wv.us/admin/purchase/VendorReg.html.

4.2.2. Agency Reporting of SWAM Use: State agencies are required by W. Va. Code § 5A-3-59(b) to submit annual progress reports on small, women- and minority-owned business procurements to the Purchasing Division of the Department of Administration. This reporting is accomplished with two reports, when applicable.

4.2.2.1. Non-Purchasing Card Transactions with SWAM Vendors: A report is available in *wvOASIS* Business Intelligence, WV-FIN-PROC-039, to assist agency purchasers in reporting procurement transactions with non-Purchasing Card vendors. The agency procurement officer must run the report for the specific department code, date and sign the report’s cover page to certify that the report is complete and accurate and submit it to the Purchasing Division. Should the agency have no purchases with any SWAM vendors for that fiscal year, the cover page should also include a statement confirming this fact.

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.

4.2.2.2. Purchasing Card Transactions with SWAM Vendors: A report is available in *wvOASIS* Business Intelligence, WV-FIN-AP-061, to capture Purchasing Card transactions with SWAM vendors. Utilizing Business Intelligence is the preferred method of reporting for these Purchasing Card SWAM transactions. The agency procurement officer must run the report for the specific department code, date and sign the report’s cover page to certify that the report is complete and accurate.

If an agency is unable to access *wvOASIS* Business Intelligence, the Purchasing Division also maintains a SWAM Reporting Tool on its intranet site under Processes and Procedures. This intranet page may be accessible at <http://intranet.state.wv.us/admin/purchase/procedures.html>. At the end of each fiscal

year, this Excel spreadsheet may be completed noting all contracts or purchase orders issued to SWAM vendors paid by the Purchasing Card.

Regardless of the method used by state agencies to report their Purchasing Card transactions with SWAM vendors, the report may be submitted electronically to the Purchasing Division through the Purchasing.Division@wv.gov email account. Any agency that has not done business with a SWAM vendor using the Purchasing Card does not need to submit the report.

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 www.state.wv.us/admin/purchase/VendorReg.html.

SECTION 5: AGENCY DELEGATED ACQUISITION PROCEDURES

(Purchases \$25,000 or Less)

5.0 AGENCY DELEGATED ACQUISITION PROCEDURES:

5.1 Delegation of Authority: In accordance with the West Virginia Code and 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 can make purchases of commodities or services in the amount of \$25,000 or less without processing a formal requisition through the Purchasing Division so long as the requirements governing the delegated procurement process are followed. Delegated authority is broken down into three spending categories or thresholds.

When processing purchases under their delegated authority, agencies must mirror central procurement procedures applicable to the relevant spending threshold to the greatest extent possible. This includes, but is not limited to, using the most current purchasing forms developed and maintained by the Purchasing Division. All purchasing forms can be accessed online at www.state.wv.us/admin/purchase/forms.html.

Prior to seeking competitive bids, please review and complete the applicable steps outlined in [Section 3: Acquisition Planning](#).

5.2 Delegated Spending Thresholds: The Purchasing Division has established three spending thresholds within an agency's delegated authority. Each threshold has its own bidding and documentation requirements, as described below.

5.2.1. Spending Thresholds:

5.2.1.1. Bids Not Required (\$0.00 to \$2,500.00):

- Competitive bids are not required but are encouraged when possible.

5.2.1.2. Verbal Bids Required (\$2,500.01 to \$10,000.00):

- A minimum of three verbal bids are required, when possible, and the lowest bid meeting specifications must be awarded the contract. All bid documentation must be kept in the agency file.

- Agencies are permitted to solicit bids within this threshold using *wvOASIS*; however, it is not required.
- All verbal bids must be documented and recorded for public record.
- A *wvOASIS* procurement award document is required for purchases exceeding \$2,500.
- Signed faxed or electronic (*wvOASIS* or emailed) bids are acceptable.
- Screen prints from Internet sites in which the commodity or service is for sale and can be purchased directly can substitute as a verbal bid.
- A “no bid” is not considered a bid.



Note: Verbal bids can be documented using the Verbal Bid Quotation Summary (WV-49) form. This form is not required, but the information it contains is required for the agency file.

5.2.1.3 *wvOASIS* Solicitation and Paper/*wvOASIS* Bids Required (\$10,000.01 to \$25,000.00):

- Bids solicited through *wvOASIS* are required and the lowest bid meeting specifications must be awarded the contract.
- All bids must be present in the file. - An Agency Request for Quotations (ARFQ) within *wvOASIS* must be used for solicitations in this threshold.
- The date and time of the bid opening must be included within the solicitation and should be scheduled for a time other than 1:30 PM.
- A *wvOASIS* procurement award document is required.
- Signed, faxed bids or electronic (*wvOASIS*) bids are acceptable.
- Screen prints from Internet sites are not acceptable as a valid bid for this threshold.

5.2.2. Calculation of Thresholds: State agencies should continuously monitor their expenditures to ensure that the total amount spent for the same or similar commodity or service, within any 12-month period, does not exceed an applicable spending threshold without the proper level of documentation and bidding.

No agency is permitted to issue a series of requisitions to circumvent the \$25,000 threshold or any established delegated 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.

The following examples highlight instances in which an agency will have exceeded the \$25,000 limit:

- A.** Making a one-time payment of \$25,000.01 or more to a single vendor within a 12-month period;
- B.** Making multiple payments to a single vendor, for the same or similar commodity or service, that aggregate to \$25,000.01 or more within a 12-month period;
- C.** Making multiple payments to multiple vendors for the same commodity or service that aggregate to \$25,000.01 or more within a 12-month period; and
- D.** Making monthly lease payments of \$2,083.33 or more for 12 consecutive months.

The 12-month period is a rolling period that begins with the effective date of a contract and involves any purchase of the same or similar commodity or service made within the preceding 12 months.



Note: Executing or renewing an agency delegated contract may lead to a bid limit violation if the spend associated with that action causes the aggregate to exceed the \$25,000 bid limitation.

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:

- A.** Suspend or reduce purchasing authority for that spending unit;
- B.** Require the spending unit to provide additional reports and documentation relating to purchases of \$25,000 or less for Purchasing Division review;

- C. Require the agency to submit to additional oversight that the Purchasing Director deems appropriate; or
- D. Require that agency personnel responsible for purchases of \$25,000 or less participate in remedial training provided by the Purchasing Division.

5.3 The Bid Process (\$10,000.01 to \$25,000 or any amount solicited through wvOASIS): The agency delegated purchasing process requires that the agency take certain steps to complete the procurement after the acquisition planning process. These steps are explained below:

5.3.1. Requests for Quotations: The Request for Quotation (RFQ) should be used as the standard method of procurement to acquire all commodities and services (other than architectural/engineering services). Use of another method authorized by W. Va. Code § 5A-3-1, et seq. may be permissible but should be the exception rather than the rule. Section 3 provides more detail on preparing the RFQ for publication.

5.3.1.1. Award Criteria: Pursuant to W. Va. Code § 5A-3-11(e), an RFQ for commodities or services must be awarded to the lowest responsible bidder. Similarly, under W. Va. Code § 5-22-1(c), an RFQ for construction must be awarded to the lowest qualified responsible bidder. In both cases, the award is completely objective, going to the lowest bid submission meeting all mandatory requirements. If a bid fails to meet a mandatory requirement, that bid is disqualified.

5.3.1.2. Public Notice: State agencies are required to publicly advertise solicitations expected to exceed \$10,000 in the West Virginia Purchasing Bulletin, which can be found in the Vendor Self-Service portal within wvOASIS. Agencies must advertise delegated solicitations for a period of no less than 10 business days. If exceptional circumstances exist that require a shorter advertisement period, the agency must receive prior approval from the Purchasing Division. The RFQ must have an established date and time for the bid opening, after which bids will no longer be accepted.

5.3.1.3. Electronic Submission of Bids: A vendor choosing to submit a bid or a written change to a bid by electronic submission 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.

5.3.1.4. Evaluation of Bids: Bids are received, opened, and evaluated by the agency to ensure compliance with all mandatory requirements and determine the lowest responsible bidder. Bids must be sealed until the date and time set for the bid opening, which must be open to the public. All bids should be stamped with the date and time of receipt.

5.3.1.4.1. Tie Bids: Occasionally two or more bids of equal terms and amount are received in response to a solicitation resulting in a tie bid. Agencies have not been granted the authority to break tie bids. Therefore, any instance in which an agency receives two equal bids for the same solicitation must inform the Purchasing Division, who will handle breaking the tie.

There are several methods that can be used to break a tie bid. Those methods include allowing the vendors to submit a best and final offer, flip a coin, or draw a card. Any other impartial method considered prudent by the Purchasing Director may also be used, but in all cases, a witness must be present when resolving the tie. The method used and its results must be properly documented, along with the signature of all witnesses, and placed in the agency file. Vendors affected by the tie should be notified and given an opportunity to attend the tie breaker.



Note: The authority to break tie bids has not been granted to agencies. When an agency receives two bids equal in price and terms for an agency-delegated solicitation, the agency should make the Purchasing Division aware, who will resolve the tie bid.

5.3.1.4.2. Errors in Bids: When a vendor has inadvertently submitted a bid that contains an error, that vendor may submit a new bid or bid modification to supersede the original bid or request a bid withdraw prior to the bid opening date and time. If the vendor discovers the error after the bid opening has occurred, the vendor may request in writing, within a reasonable time, that its erroneous bid submission be rejected. For the request to be considered, the following conditions must exist and be proven by the vendor:

- A.** An error was made;
- B.** The error materially affected the bid;
- C.** 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
- D.** Enforcement of the part of the bid in error would be unconscionable.

To reject a bid, the agency 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.

In instances where the pricing page contains the error, the unit price always prevails. When the mathematical error is clear and recalculation is warranted, the agency may recalculate the vendor's extension (total) pricing based on the unit price provided in the bid. The vendor's original documentation, however, cannot be modified. Any recalculation must be documented separately and retained in the agency file.

5.3.1.5. Award Process: After the evaluation of all bids by the agency personnel, an award is made to the lowest responsible bidder who meets the mandatory specifications.

5.3.1.5.1. Award to Other Than Low Bid: If an award is made to a vendor who is not the lowest bidder, the agency must include a detailed justification (signed by the evaluators) in the agency file explaining why the lowest bidder was not awarded the contract. That documentation is considered public record and must be made available for inspection upon request.

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

5.3.2. Vendor Compliance: Prior to awarding a vendor a contract, the agency must verify that the vendor is in compliance with the requirements indicated below. If the contract being awarded is for goods or services exceeding the \$2,500 "no bid" threshold, the agency must retain documentation verifying compliance in the agency file.

A. Purchasing Division Registration: Vendors must be properly registered with the Purchasing Division, which 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, and payment of the annual fee (where required);

B. Workers' Compensation/Unemployment: Verification of current unemployment fee status and Workers' Compensation coverage is required to ensure the vendor is not in default with Workers' Compensation and Employment Compensation, in accordance with the W. Va. Code § 21A-2-6. wvOASIS automatically verifies compliance prior to contract award provided the award is being made in wvOASIS;

- C. Federal Debarment:** Verification that the vendor is not debarred by the federal government is required. *wvOASIS* automatically verifies this federal compliance prior to award provided the award is being made in *wvOASIS*.
- D. State Debarment:** Verification that the vendor is not debarred by the state of West Virginia is required. The Purchasing Division maintains a list of vendors debarred by the state of West Virginia, which may be accessed online at www.state.wv.us/admin/purchase/debar.html. Agencies must verify this compliance prior to contract award;
- E. Secretary of State:** Unless a waiver is obtained from the Secretary of State's Office, every vendor organized as a business entity must have a certificate of authority and be in good standing with the Secretary of State's Office. To search for a business with the Secretary of State's Office, visit <http://apps.sos.wv.gov/business/corporations>. Any vendor that cannot be found or shows a status of "revoked" or "dissolved" is not eligible for award until the issue is resolved. Agencies must verify this compliance manually prior to award and include a copy of the relevant record in the agency file.



Note: Keep in mind that this Secretary of State requirement applies generally to businesses that operate as separate legal entities and does not apply to sole proprietors and general partnerships.

F. Other: In accordance with the W. Va. § 148 C.S.R. 1-6.1.e, the vendor must be licensed and in good standing with any and all state and local law and requirements.

G. Purchasing Affidavit.

5.3.3. When Three Bids Not Possible: The following are instances in which obtaining three competitive bids may not be possible.

- A. Emergency Situations** – Agencies are permitted to declare a delegated emergency. The file should contain all documentation necessary to substantiate the declared emergency.
- B. Solicitations Advertised in *wvOASIS* with Less Than Three Bids Received** – An agency that advertises a delegated solicitation in *wvOASIS* is not required to obtain three bids if less than three bidders respond. This provision does not apply to an agency that has issued flawed or unlawfully restrictive specifications.

C. Direct Awards – Agencies are permitted to complete a direct award procurement at the agency delegated level if certain requirements are met. See [Section 5.4.2](#).

5.4 Other Procurement Methods:

5.4.1. Architectural and Engineering: Architectural and engineering (A&E) services must be procured in accordance with W. Va. Code § 5G-1-1 et seq. These procurements are unique in several respects, most notably that cost is not submitted in the vendor's response and that the normal delegated limits previously discussed do not apply. W. Va. Code § 5G-1-1 et seq. creates a distinction between procurements on A&E projects of \$250,000 or less and those that exceed \$250,000. In both cases, however, the final contract must be processed by the Purchasing Division.

5.4.1.1 Architectural and Engineering Projects (\$250,000 or Less): In the procurement of architectural and engineering (A&E) services for projects estimated to cost \$250,000 or less (which includes construction costs and architectural fees), competition must be sought by the agency.

The agency shall conduct discussions with three or more professional firms solicited on the basis of known or submitted qualifications for the assignment and 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 issued.

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

Change orders for projects estimated to cost \$250,000 or less, which include construction and architectural fees, but subsequently exceed \$250,000 in total, may not be approved and may necessitate a rebid of the project.

Note: W. Va. 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. Therefore, an Expression of Interest (EOI) anticipating a cost of \$25,000 or less would be processed in accordance with the laws, rules, and procedures applicable to EOIs under \$250,000.

5.4.2. Direct Award: A direct award is a procurement method that allows a contract to be issued to a vendor without competitive bidding when circumstances allow. Agencies are encouraged to solicit competition through an RFQ rather than process a direct award request, but may make a direct award if::

- A.** The spending unit documents written justification showing that the direct award is in the best interest of the state;
- B.** The spending unit documents written confirmation that there is no other source or that no other source would be willing or able to replace the existing source without a detrimental effect on the spending unit;
- C.** The intent to make a direct award is publicly advertised for no less than 10 business days in the West Virginia Purchasing Bulletin, which can be found in the Vendor Self-Service portal within *wvOASIS*; and
- D.** No other vendor expresses an interest in providing the commodity or service in question.

The requirements listed above have been included in the Direct Award for Consideration (Agency Delegated) (WV-65A) form.

5.4.2.1. Direct Award (\$25,000 or less): Agencies must follow the process outlined below to issue a direct award at the delegated level.

5.4.2.1.1. Direct Award (\$0 to \$2,500): No documentation is required but completing the WV-65A form and publicly posting the direct award is always encouraged.

5.4.2.1.2. Direct Award (\$2,500.01 to \$25,000): The agency must complete the WV-65A form and have it signed and approved by the agency procurement officer. If approved, the agency must advertise the direct award procurement in wvOASIS for at least 10 business days with a copy of the signed quote, a copy of any contractual documents proposed by the vendor, and a completed master copy of the Agency General Terms and Conditions.

If a vendor expresses a reasonable interest in providing the commodity or service, the agency procurement officer must cancel the direct award and re-bid the solicitation competitively.

Agencies must maintain all documentation in the procurement file, including its justification to make the award and any documentation awarding the contract.

5.4.3. Emergency Purchases (\$25,000 or Less): Purchasing Division approval is not required for standard emergencies expected to cost \$25,000 or less. W. Va. Code § 5A-3-15 grants the Purchasing Director authority to make emergency procurements without completing the more formal bidding process. That authority has been delegated to agencies for procurements of \$25,000 or less. Please keep in mind that emergency purchases are not used for hardship resulting from neglect, poor planning, or lack of organization by the spending unit.

The agency designated procurement officer must reasonably and ethically conclude that the situation requires an immediate purchase by a state spending unit. Once the agency has designated a situation as an emergency, it should obtain three bids, if possible, and award the contract to the lowest responsible vendor. A completed master copy of the Agency General Terms and Conditions should be included in any request for quotation, to the extent that the emergency permits.

Documentation memorializing the procurement officer's determination that an emergency procurement is warranted, along with the request for quotations issued (if any), bids obtained (if any), and the resulting contract must be maintained in the agency file.



Note: In a declared state of emergency, the governor has the authority to suspend the application of any law or rule that interferes with the emergency response. When a suspension of law or rule occurs, the agency is permitted to procure the commodities and services related to the emergency response in a manner described in the governor's declaration and/or subsequent communication issued by the Governor's Office or the Purchasing Division.

5.5 Commodity and Service Receiving Procedures:

5.5.1. Initial Inspection: The agency must inspect all delivered commodities and services upon receipt. Any nonconformity of the commodities received or services rendered with the contract must be reported to the procurement officer responsible for the procurement for corrective action and to the Purchasing Director, in accordance with W. Va. Code § 5A-3-9.

5.5.2. Proper Receiving Techniques: Any person receiving commodities or services for the agency is responsible for performing all inspection steps described below.

5.5.2.1. Commodities: The person receiving the commodities must check all commodity shipments by performing the following tasks:

- A.** Within 24 hours of receipt of the commodities, the agency should:
 - a.** Verify the make, model number, brand name, and general description of the commodities received match the specifications on the purchase order or contract.
 - b.** Determine if all commodities received arrive in an acceptable condition. If there is obvious damage to the commodities, the agency should document all losses or damages on the receiving papers, write the word "Refused," and then sign it and have the driver sign it. The agency should not accept merchandise with obvious damage from the carrier under any circumstances.

If the damage or loss becomes evident when uncrating the commodities, the receiver should immediately stop uncrating them and retain all merchandise and crating in exactly the same condition in which it was received. The procurement officers responsible for the purchase should

then notify the vendor immediately in writing and by telephone to inform them of the damage or loss. The agency must not use any of the merchandise, nor destroy the packaging material.

- c. Verify the quantity of commodities received matches with the contract quantity, packing list, and bill of lading. An actual physical count is necessary to verify receipt of all items. When the quantity of commodities received does not match the quantity indicated within the contract, the receiving agency must request a correction be made to the packing slip immediately. Once the correction(s) have been made, the driver should sign the shipping documents before leaving. Agencies should not accept any alternate or substitute commodity without prior Purchasing Division approval.
- B. Prepare the receiving report required by the Auditor's Office and retain a copy of the receiving report with the agency file. In cases where receiving reports are retained by another office within the spending unit and the volume of receiving reports would create a storage problem, spending units may include a memorandum within the agency file indicating the storage location of the receiving reports. The actual reports must be made available on demand, in accordance with the W. Va. C.S.R. § 148 1-4.14.
 - C. Enter all reportable assets into the wvOASIS Fixed Asset System and affix asset tags, where appropriate, as described in the [Surplus Property Operations Manual; Part II: wvOASIS Fixed Asset Training](#).

5.5.2.2. Services: The state agency must monitor services as they are rendered and billed to ensure that the services conform to the specifications. Additionally, the agency must:

- A. Ensure that billing for services matches the frequency (daily, weekly, monthly, etc.) and duration (number of hours, days, etc.) described in the contract (janitorial, security, etc.).
- B. Ensure that any required reports, analysis, statistics, or recommendations are received as specified in the contract.
- C. Create a receiving report as required by the Auditor's office that is signed and retained with the agency file. In cases where receiving reports are retained by another office within the spending unit and the volume of receiving reports would create a storage problem, spending units may include a memorandum within the agency file indicating the storage location of the receiving reports. The actual

reports must be made available on demand, in accordance with the W. Va. C.S.R. § 148 1-4.14.

5.6 Payment Process: To promote good public relations, state agencies should establish internal procedures to expedite payment of vendor invoices. Any questions regarding invoice processing may be directed to the State Auditor's Office at (304) 558-2251.

5.7 Fixed Assets: Once the commodity becomes the property of the spending unit, the property must be added to the wvOASIS Fixed Asset System. For more information on what is considered a reportable asset, refer to the Surplus Property Operations Manual online at www.state.wv.us/admin/purchase/surplus/surplus_operations_manual.pdf.

5.8 Change Orders: Occasionally, it becomes necessary to amend, clarify, change, or cancel contract documents. This is done through a change order. A contract change order is required whenever the change affects a provision of the contract.

Changes to the original contract must be sequentially numbered. The change order must include a statement explaining the change and provide sufficient detail and clarity so that any individual could review and generally understand the contract and subsequent change.

5.9 Contract Cancellation: The agency may cancel any contract 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;
- 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; or
- G. The contract was awarded in error.

The agency may also cancel a contract for any reason with 30 days written notice to the vendor.

If 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 any additional time for the vendor to perform a remedy.

5.10 File Documentation: Purchases made under an agency's delegated authority are processed at the agency level. Therefore, requisitions, contracts/purchase orders, or any other documentation should be retained by the agency. A public record of all purchasing transactions must be kept on file at the agency location and is subject to inspection at the discretion of the Purchasing Division or upon any Freedom of Information Act request made by an individual or entity. This file must contain any verification checks not automatically performed in wvOASIS; signed Certifications of Non-Conflict of Interest; specifications used for the bidding process, and any and all attempts to obtain competitive bids.

5.11 Items Not Delegated to the Agency: Some purchasing processes have not been delegated to the agency and still require handling by the Purchasing Division. A list of those processes is contained below:

- A. Requests for Information
- B. Multiple award contracts
- C. Cooperative purchasing
- D. Requests for Proposal
- E. Protest resolutions
- F. Tie bid resolutions
- G. Negotiations
- H. Discussion and Final Offer
- I. Waivers from open-ended contracts

SECTION 6: CENTRAL ACQUISITION PROCEDURES

(Purchases Exceeding \$25,000)

6.0 CENTRAL ACQUISITION PROCEDURES:

6.1 Central Bidding Authority: All requisitions for commodities and services exceeding \$25,000 must be submitted to the Purchasing Division using wvOASIS for central competitive bidding.

6.2 Competitive Bidding: The central purchasing process requires the agency and the Purchasing Division take certain steps to complete the procurement process after acquisition planning has occurred. The Purchasing Division utilizes various mechanisms to solicit competition from responsible vendors. Two of the most often used procurement methods are Requests for Quotations (“RFQ”) and best value procurement (Requests for Proposals (“RFP”) and Expressions of Interest (“EOI”)).

6.2.1. Requests for Quotations: The Request for Quotations (RFQ) method of procurement should be used as the standard to acquire all commodities and services (other than architectural/engineering services). Use of another method authorized by W. Va. Code § 5A-3-1, et seq. may be permissible but should be the exception rather than the rule. [Section 3: Acquisition Planning](#) provides more detail on preparing the request for quotation for publication.

6.2.1.1. Award Criteria: An RFQ for commodities or services must be awarded to the lowest responsible bidder, in accordance with W. Va. Code § 5A-3-11(e). Similarly, under W. Va. Code § 5-22-1(c), an RFQ for construction projects must be awarded to the lowest qualified responsible bidder. In both cases, the award is completely objective, going to the lowest bid submission meeting all mandatory requirements. If a vendor’s bid fails to meet a mandatory requirement, then that bid is disqualified.

6.2.1.2. Public Notice: The Purchasing Division must publicly advertise all purchases expected to exceed \$25,000. Solicitations are typically advertised in *wvOASIS*. The standard advertisement period for noncomplex procurements is 10 business days. If exceptional circumstances exist that require an advertisement period other than 10 business days, the agency must indicate that at the time the requisition is submitted to the Purchasing Division. Solicitations will not be released for public advertisement until all required documentation and approvals have been obtained.

6.2.1.3. Addenda: During the bid process, it may be necessary to alter the solicitation. Alterations to the solicitation require a formal written addendum, which must be generated by the agency to address the change. The addendum is advertised and issued to all prospective bidders by the Purchasing Division.

Addenda can be used to add, delete, or change specifications or attachments; publish a copy of the pre-bid meeting attendee list; answer technical questions or seek requests for clarification or product substitutions (the latter on construction projects); extend or alter bid schedule dates/times; and more.

The agency must notify the Purchasing Division buyer of the requested change. The buyer will then post the addendum in *wvOASIS*.

When submitting a request for an addendum to the Purchasing Division, the agency should provide the following where applicable:

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

Upon receipt, review and approval, the Purchasing Division will issue the addendum in *wvOASIS*.

Documentation for addenda should be received by the Purchasing Division from the agency no less than seven calendar days prior to the current scheduled bid opening date. For complex transactions, such as construction bids, Requests for Proposals, or complex Requests for Quotations, the agency should submit the addenda no less than 14 calendar days prior to the current scheduled bid opening to allow vendors ample time to prepare and submit bid responses inclusive of the change(s). The Purchasing Division may, at its discretion, extend the bid opening date if determined to be in the best interest of the state of West Virginia.

6.2.1.4. Bid/Proposal Submission: The vendor is responsible for submitting a correct and accurate bid or proposal to the Purchasing Division by the specified bid opening date and time. Bids may be submitted for most procurements in wvOASIS. However, alternative delivery methods include:

- **Fax:** Faxed bids provided that the entirety of the bid is received by the Purchasing Division prior to the bid opening date and time;
- **Hand Delivery:** Hand delivery of paper bids; and
- **Mail:** Paper bids delivered through the United States Postal Service or other courier. Bids delivered by the United States Postal Service or other courier are only considered received once the Purchasing Division has actual physical possession of the sealed bid.

The Purchasing Division will not accept bids, any modifications of bids, or addendum acknowledgment forms by email transmission.

Any bond submitted by a vendor via wvOASIS or fax should be followed by an original bond delivered to the Purchasing Division within two business days.

6.2.1.5. Bid Opening: Bid opening dates for central procurements are established by the Purchasing Division and are open to the public either in person or electronically. Vendors are not required to attend. Bid openings are conducted by the Purchasing Division at the date, time, and location specified in the solicitation and/or any addenda.

During the bid opening, all bids received are opened and the vendor name, along with total bid price if readily available, is read aloud. 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 contract file, and posted on the Purchasing Division’s website with all other bids.

6.2.1.6. Evaluation and Award: Agencies should consider the following when the Request for Quotations process is used to solicit bids at the central level:

A. Agency Review of Bids and Submission of Award Recommendation:

Following a central bid opening for a Request for Quotations, the agency responsible for the solicitation must review all bids received, identify the vendor with the lowest cost, and ensure compliance with all mandatory requirements. Once the agency determines the low bid meeting all mandatory requirements, it must submit to the Purchasing Division a recommendation for award memorandum along with a list of compliance checks that must be resolved prior to award of a contract/purchase order (see Subsection B).

- a. **Award to Vendor Other than Low Bid:** If the low-cost vendor is not recommended for an award, a thorough written justification explaining why the lost cost vendor is not recommended must be signed by the evaluator(s) included in the official contract file and retained for public record and inspection.
- b. **Bids Available Online:** State agencies are encouraged to review the bids when posted online. The Bids Received webpage contains all bids, electronic and paper, received by the Purchasing Division, which are arranged by bid opening date and solicitation number. Bids can be accessed on the Purchasing Division's website at www.state.wv.us/admin/purchase/Bids. Paper copies will only be provided to agencies upon request or if the bids are too large to post electronically.



Note: Recommendations for award should be received by the Purchasing Division as quickly as possibly following the bid opening date. Failure to quickly evaluate bids and submit the agency's recommendation for award may result in the cancellation of the solicitation.

- c. **Tie Bids:** Occasionally two or more bids of equal terms and amount are received in response to a solicitation, resulting in a tie bid. When tie bids are received for a central procurement, the Purchasing Division must break the tie. This is typically done by allowing the vendors with the equal bid to submit a best and final offer, flip of a coin, or draw a card. Any other impartial method considered prudent by the Purchasing Director may be used, but in all cases, a witness must be present when resolving the tie. The method used and its results must be properly documented, along with the signature of all witnesses, and placed in the official contract file. Vendors affected by the tie should be notified and given an opportunity to attend the tie breaker.
- d. **Errors in Bids:** When a vendor has inadvertently submitted a bid that contains an error, that vendor may submit a new bid or bid modification to supersede the original bid, or request a bid withdraw prior to the bid opening date and time. If the vendor discovers the error after the bid opening has occurred, the vendor may request in writing, within a reasonable time, that its erroneous bid submission be rejected. For the

request to be considered, all of the following conditions must exist and be proven by the vendor:

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.

To reject a bid, the official contract 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.

In instances where the pricing page contains the error, the unit price always prevails. When the mathematical error is clear and recalculation is warranted, the Purchasing Division can recalculate the vendor's extension (total) pricing based on the unit price provided in the bid. The vendor's original documentation, however, cannot be modified. Any recalculation must be documented separately and retained in the official contract file.

B. Vendor Compliance Checks: Prior to awarding a vendor a contract, the agency must verify that the vendor is in compliance with the requirements indicated below and submit with the award for recommendation a list of compliance issues that need to be resolved prior to the award of the contract.

- a. **Purchasing Division Registration:** Vendors must be properly registered with the Purchasing Division, which 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, and payment of the annual fee (where required).
- b. **Workers' Compensation/Unemployment:** Verification of current unemployment fee status and Workers' Compensation coverage is required to ensure the vendor is not in default with Workers' Compensation and Employment Compensation, in accordance with the W.

Va. Code § 21A-2-6. wvOASIS automatically verifies compliance prior to contract award.

- c. **Federal Debarment:** Verification that the vendor is not debarred by the federal government is required. wvOASIS automatically verifies this federal compliance prior to award.
- d. **State Debarment:** Verification that the vendor is not debarred by the state of West Virginia is required. The Purchasing Division maintains a list of vendors debarred by the state of West Virginia, which may be accessed online at www.state.wv.us/admin/purchase/debar.html.
- e. **Secretary of State:** Unless a waiver is obtained from the Secretary of State's Office, every vendor must have a certificate of authority and be in good standing with the Secretary of State's office. To search for a business or corporation with the Secretary of State's Office, visit <http://apps.sos.wv.gov/business/corporations>. Any vendor that cannot be found or shows a status of "revoked" or "dissolved" is not eligible for award until the issue is resolved. Agencies must verify this compliance manually prior to submitting an award recommendation and include a copy of the relevant records in the contract file. Keep in mind that this requirement applies generally to businesses that operate as separate legal entities and does not apply to sole proprietors and general partnerships.
- f. **Other:** In accordance with the W. Va. § 148 C.S.R. 1-6.1.e, the vendor must be licensed and in good standing with any and all state and local law and requirements.
- g. **Purchasing Affidavit.**
- h. **Interested Party Disclosure Form:** W. Va. Code § 6D-1-2 requires that vendors submit to the Purchasing Division a disclosure of interested parties for contracts with an actual or estimated value of \$1,000,000 or more before a contract can be awarded. Additionally, the vendor must submit to the agency a supplemental disclosure within 30 days of contract completion or termination. The disclosures must be made using the form prescribed and approved by the West Virginia Ethics Commission. To access this form, visit the Purchasing Division's website at www.state.wv.us/admin/purchase/forms.html.

C. Purchasing Division Review: The Purchasing Division will review the agency's recommendation for award and all relevant documentation to verify that the award recommendation is appropriate. The Purchasing Division will also work with the vendor to resolve any identified compliance issues.

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.

D. Purchasing Division Award: After the Purchasing Division has reviewed the agency's recommendation for award, confirmed that it is appropriate, and verified that the vendor is in compliance with the various items listed herein, the Purchasing Division will award the contract to the lowest responsible bidder, or lowest qualified responsible bidder, as applicable.

6.2.2. Requests for Proposals: The Request for Proposals (RFP) method of procurement is necessary when an agency understands the desired result but lacks the understanding of how to achieve that end result, making the development of mandatory specifications difficult. The RFP does not rely solely on price. Instead, vendors are provided the opportunity to submit a technical proposal, as well as a cost proposal. Both proposals must be sealed separately and submitted together, and the highest combined score taken from the evaluation of both is awarded the contract.



Note: Agencies should be aware that the time required to process an RFP is longer than other procurement methods and requires significant agency personnel time and resources to complete.

To assist in the RFP process, the Purchasing Division developed an RFP packet of modifiable forms and documents that it makes available to agencies. These include: RFP Agency Approval Request (WV-110) form; RFP Evaluation Committee Designation (WV-111) form; RFP Technical Evaluation Committee Scoring Memorandum template (WV-112); RFP Technical Scoring Spreadsheet; and an RFP Recommendation for Award Memorandum template (WV-113).

All RFPs must be developed using the RFP standard format maintained by the Purchasing Division. That form, as well as the others contained in the RFP packet, can be accessed on the Purchasing Division's website at www.state.wv.us/admin/purchase/forms.html.

6.2.2.1. Award Criteria: Pursuant to W. Va. Code § 5A-3-10b, an RFP is awarded to the highest scoring responsive and responsible bidder. The award is based on a subjective technical evaluation, where the agency first determines that all mandatory requirements have been met. It then assigns a subjective point value to the vendor's response to the non-mandatory specifications, followed by an objective point value based on the vendor's cost proposal and the cost score evaluation formula.

6.2.2.2. Limitations: RFPs are limited to procurements with an estimated value of \$100,000 or more, unless the Purchasing Director provides express written approval to utilize the RFP method for a smaller procurement.

6.2.2.3. Approval Request: The Purchasing Director or his/her designee must approve the use of the RFP method of procurement for an agency before an RFP is developed and advertised. Agencies should make this request for approval by completing the West Virginia Purchasing Division Request for Proposal: Agency Approval Request (WV-110) form and submitting it to the Purchasing Division .

6.2.2.4. RFP Development: After obtaining Purchasing Division approval to use the RFP method of procurement, the agency may begin developing and drafting the RFP. When preparing the RFP, the agency must take the following items into account:

- A. RFP Template:** Agencies must utilize the RFP template maintained by the Purchasing Division when preparing the RFP.
- B. Proposal Format:** Proposals from vendors must be requested and received in two distinct parts: technical and cost. All cost information must be contained in the cost proposal, which must be sealed and submitted in a separate envelope from the technical proposal. Vendors must not include cost information in the technical proposal, which ensures that the technical proposal can be evaluated purely on its own merit.
- C. Minimal Mandatory Requirements:** Agencies should avoid writing RFPs that contain an excessive number of mandatory specifications and should focus instead on the desirable goals and objectives that it wishes to accomplish. Mandatory specifications cannot be waived, and any proposal that fails to meet a mandatory specification will be disqualified. Before establishing a specification as mandatory in an RFP, the agency must decide whether it is willing to disqualify any one, or all, vendors if the specification is not met. If the agency is not willing to disqualify one or more vendors over their ability to meet the specification, then the specification should not be mandated. The presence of a large number of mandatory specifications in an RFP suggests that the agency can adequately describe what it needs and should instead use the RFQ method of procurement.

- D. Focus on Outcome, Not Process:** The RFP process is intended to provide vendors with a desired outcome or goals and objectives, while giving vendors the opportunity to tell the state how they can achieve those outcomes, goals, and/or objectives. Too many mandatory specifications that focus on process requirements limit the number of possible solutions and lends itself more to the RFP method of procurement.
- E. Evaluation Criteria:** All evaluation criteria must be clearly defined in the specifications section of the RFP and based on a 100-point total score. This score consists of a technical score of 70 points possible and a cost score of 30 points possible. Any deviation from this point allocation must be approved in writing by the Purchasing Director.



Note: Some agencies request a point scale of 1,000, with 700 points allocated to the technical score and 300 for the cost score to provide for more granularity in scoring.

- F. Cost Proposals:** Agencies must design a pricing page that allows for a fair comparison of vendor cost proposals. Doing so requires that all costs be accounted for within the cost evaluation and that those costs be fairly and accurately comparable across all vendors.

6.2.2.5. Public Notice: The Purchasing Division must advertise the RFP in the West Virginia Purchasing Bulletin, which can be found in the Vendor Self-Service portal within wvOASIS. The Purchasing Division works with the agency to determine an appropriate amount of time for public advertisement of the solicitation, which cannot be less than 10 business days.

RFPs will not be released for public advertisement until all required documentation and approvals have been obtained by the agency.

6.2.2.6. Addenda: During the purchasing process, it may be necessary to alter the solicitation. Alterations to the solicitation require a formal written addendum. The addendum is advertised and issued to all prospective bidders by the Purchasing Division. The process for the issuance of addenda for RFPs is the same as that for RFQs.

The agency should submit the completed addenda to the Purchasing Division no less than 14 calendar days prior to the current scheduled bid opening to allow bidders ample

time to prepare and submit bid responses inclusive of the change(s). The Purchasing Division may, at its discretion, extend the bid opening date if addenda are received later, or if determined to be in the best interest of the state of West Virginia.

6.2.2.7. Proposal Submission: The vendor is responsible for submitting a complete and accurate proposal (both technical and cost) to the Purchasing Division by the specified bid opening date and time. RFP submissions are not permitted in wvOASIS. Acceptable delivery methods include: faxed bids provided the entirety of the faxed bid is received by the Purchasing Division prior to the bid opening date and time; hand delivery of paper bids; and paper bids delivered by the United States Postal Service or other courier. Bids delivered by United States Postal Service or other courier are only considered received once the Purchasing Division has the physical possession of the bid. The Purchasing Division will not accept proposals, modification of proposals, or addendum acknowledgment forms by email transmission.

6.2.2.8. Bid Openings: RFPs require a two-part bid opening. Technical proposals are opened first and fully evaluated prior to cost proposals being opened.

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

6.2.2.8.2. Cost Bid Opening: After the technical evaluation, discussed in more detail below, has been approved by an internal review committee within the Purchasing Division, a date and time is scheduled to publicly open and read aloud all cost proposals. The agency and vendors will be notified in advance of the cost bid opening date.

6.2.2.9 Proposal Evaluations:

6.2.2.9.1. RFP Evaluation Committee: Prior to the release of the RFP for public advertisement, the agency must notify the Purchasing Division of the evaluation committee members selected to evaluate any proposals received by completing the Request for Proposal: Evaluation Committee Designation (WV-111) form, accessible on the Purchasing Division's website at www.state.wv.us/admin/purchase/forms.html, and submitting it to the Purchasing Division for approval.

A. Committee Size: The agency must assign an odd number of individuals (typically three or five) to serve on the RFP evaluation committee. The

individuals selected should be knowledgeable of the service to be acquired.

- B. Advisors:** The agency may invite subject matter experts to serve as advisors to the RFP evaluation committee. The advisors may assist the evaluation committee members (referred to as evaluators) in the evaluation process but may not evaluate, score, or vote on the proposal's final evaluation.
- C. Procurement Officer Role:** The agency designated procurement officer must 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.

The agency procurement officer must serve as the chairperson or co-chairperson for the RFP evaluation committee. In this role, the procurement officer must mediate all discussions related to the evaluation and assist with time management of the evaluation process.

The agency procurement officer must also prepare the consensus of the committee and submit the *RFP Recommendation for Award Memorandum* (WV-113) to the Purchasing Division.

- D. Non-State Employees:** A non-state employee may not under any circumstances serve as a voting member of the RFP evaluation committee.
- E. Purchasing Division Approval:** The names and other relevant information of all RFP evaluation committee members and advisors must be submitted to the Purchasing Division for approval prior to the release of the RFP using the *RFP Evaluation Committee Designation* (WV-111) form. The submission must include justification for any identified advisors and/or requests to have more than five evaluators on the evaluation committee. The Purchasing Division reserves the right to accept or reject agency appointed committee members and to appoint committee members directly to provide proper representation. The Purchasing Director also 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.
- F. Certification of Non-Conflict of Interest:** To minimize the risk of conflict of interest, each member of the RFP evaluation committee and any advisors are required to sign a Certification of Non-Conflict of Interest, in accordance with W. Va. Code § 5A-3-31. State agencies must submit the

signed certification to the Purchasing Division prior to beginning the evaluation of an RFP. The Purchasing Division also requires that the agency procurement officer sign this certification even in instances where the procurement officer is not serving on the evaluation committee.

By signing this certification, the evaluator(s), advisor(s) and agency procurement officer(s) attest that: (1) their service on the evaluation committee is not in violation of W. Va. Code § 5A-3-31, §6B-2-5, or any other relevant code section; (2) their service on the evaluation committee does not create a conflict of interest with any of the participating vendors; and (3) they have 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.



Note: A copy of the Certification of Non-Conflict of Interest form can be found on the Purchasing Division's website forms page at www.state.wv.us/admin/purchase/forms.html.

G. Evaluation Training: The designated agency procurement officer serving on the RFP evaluation committee must complete RFP evaluation training within one year prior to commencing the evaluation. All other voting committee members are encouraged but not required to take this training. The Purchasing Division buyer, upon request, may meet with the agency committee at the first evaluation meeting after the bid opening to answer any questions related to the RFP evaluation process and to conduct a general review of the proposals.

The purpose of RFP evaluation training is to ensure that the committee is knowledgeable of the proper evaluation procedures related to this best value procurement method. This training is offered bi-annually as part of the Purchasing Division's Training Program, as a workshop during the Agency Purchasing Conference, and on demand through the state's Learning Management System, CourseMill. Individual agency trainings may also be conducted if deemed necessary by the Purchasing Division.

6.2.2.9.2. Technical Evaluation: Once the RFP evaluation committee members have been approved and the technical bids have opened, the evaluation committee will begin its technical evaluation. The technical evaluation must be completed prior to the cost bid opening. The evaluation committee must review the technical proposals, ensure compliance with mandatory requirements of the RFP, assign appropriate points using the RFP Technical Scoring Spreadsheet, and make a final written consensus scoring recommendation to the as soon as possible using the RFP Technical Evaluation Committee Scoring Memorandum (WV-112).

- A. Evaluation Meeting Attendees:** To ensure there is no conflict or influence on the committee members during the RFP evaluation process, the evaluation should take place with only the designated evaluators and advisors present.
- B. Mandatory Requirement Evaluation:** The RFP evaluation committee must determine if the technical proposals meet the mandatory requirements contained in the RFP. Any proposal that fails to meet a mandatory requirement is disqualified and removed from further consideration.
- C. Technical Score Evaluation:** Once the agency has determined which proposals met all mandatory requirements, the evaluation committee will evaluate those technical proposals that met the mandatory requirements and assign appropriate point scores to the non-mandatory specifications in the RFP, and to certain aspects of mandatory requirements where permitted. Those scorable components of the RFP generally include the approach and methodology to achieving the goals and objectives and the approach and methodology to complying with mandatory requirements, qualifications, and experience.

During this evaluation, all proposals begin with the maximum score. The evaluation committee then deducts points for any identified deficiencies in each proposal. Technical proposals may be compared against one another to determine the best in class solution. Those proposals that exceed the mandatory requirements or the non-mandatory desirables should be assigned the maximum points in that category, with lesser solutions assigned an appropriately lower score. No partial points are permitted in the

technical evaluation, and all deductions issued for each proposal must include justification, with fairness and consistency. The technical evaluation may include oral presentations conducted by the vendors.



Note: If an evaluator or agency personnel discover that cost information has been included in the technical proposal, the Purchasing Division must be notified immediately and the evaluation paused. In some cases, the Purchasing Division may resolve the situation by removing the cost information from the technical proposal and removing the evaluation committee members that saw the cost information.



Note: Partial point deductions are not permitted in the technical evaluation. All deductions must be whole numbers. Agencies that desire more granularity may request additional points prior to releasing the RFP.

D. Oral Presentations: The RFP process allows the agency to require vendors to conduct an oral presentation for the purpose of explaining or clarifying the submitted proposal. Oral presentations are included in the technical evaluation and become part of the total technical score. The oral presentation is not an opportunity to change or modify the submitted proposal. If the agency elects to conduct oral presentations, it will be noted in the RFP. The agency may invite other individuals, in addition to the evaluators and advisors, to attend these presentations.



Note: All vendors should be allowed an opportunity to participate in oral presentations even if they missed a mandatory requirement given that the oral presentation may clarify the issue to such an extent that it becomes clear that a mandatory requirement was not missed.

E. Minimum Acceptable Score: Proposals must obtain a minimum acceptable score of 70% of the total technical points possible (i.e. 49 out of 70 points in most cases) to be considered for the award. Vendors not attaining the minimum acceptable score will be disqualified and removed from further consideration.

F. Technical Scoring Submission: Once the RFP evaluation committee reaches a consensus scoring recommendation on the technical evaluation, the committee chairperson will submit the committee's scoring to the Purchasing Division buyer using the RFP Technical Evaluation Committee Scoring Memorandum (WV-112). The chairperson should include in the recommendation an analysis of the technical proposals with the scores and any justification(s) for point deductions.

The consensus recommendation represented in the RFP Technical Evaluation Committee Scoring Memorandum (WV-112) must be signed by all committee members and must not rely upon average points to reach a consensus.

G. Purchasing Division Internal Review Committee: If approved by the Purchasing Division buyer, the consensus recommendation will be forwarded to the internal review committee within the Purchasing Division. If the internal review committee approves the technical scoring recommendation, the Purchasing Division will set the date and time for the cost bid opening. The internal review committee is generally comprised of the Purchasing Director and Assistant Director of the Acquisitions and Contract Administration section but may include other personnel as the Purchasing Director deems appropriate.

6.2.2.9.3. Cost Evaluation Approval and Award: Once the cost proposals have been opened, the agency's RFP evaluation committee reviews the cost proposals, and using the cost formula, assigns an appropriate cost score to each proposal that was not disqualified during the technical evaluation. Once a cost score is assigned to each cost proposal, the evaluation committee combines the technical and cost scores to make a final consensus recommendation for contract award to the Purchasing Division using the RFP Recommendation for Award Memorandum (WV-113). Assuming the Purchasing Division concurs with the recommendation, the contract will be processed for award.

6.3 Other Procurement Methods:

6.3.1. Expressions of Interest (Architectural and Engineering Services): Architectural and engineering services must be procured in accordance with W. Va. Code § 5G-1-1 et seq. These procurements are unique in several respects, most notably that cost is not submitted in the vendor's initial response and that the normal delegated limits previously discussed do not apply. W. Va. Code 5G creates a distinction between procurements on projects of \$250,000 or less and those that exceed \$250,000. In both cases, however, the final contract must be processed by the Purchasing Division.

6.3.1.1. Projects Exceeding \$250,000: In the procurement of architectural and engineering services for projects estimated to cost more than \$250,000 (which includes construction costs and the architectural fee) agencies must utilize the Expression of Interest ("EOI") method of procurement that must be processed centrally through the Purchasing Division. The following steps should be considered during this process.

- A. Creating the EOI:** All EOIs exceeding \$250,000 must be submitted to the Purchasing Division using the EOI Standard Format for processing as a central procurement. The EOI Standard Format can be found online at [LINK](#).
- B. Public Notice:** Once the EOI has been prepared, it must be advertised in the Vendor Self-Service within *wvOASIS* and as a Class II legal ad as required by West Virginia Code.
- C. Evaluating the EOI Responses:**
 - a. EOI Evaluation Committee:** Prior to the release of the EOI for public advertisement, the agency must notify the Purchasing Division of the evaluation committee members selected to evaluate any proposals received. Purchasing Division approval of the committee is required before the committee may commence an evaluation.
 - **Committee Size:** The agency must assign an odd number of individuals (typically three to five) to serve on the EOI evaluation committee. The individuals selected should be knowledgeable of the service to be acquired.
 - **Advisors:** The agency may invite subject matter experts to serve as advisors to the EOI evaluation committee. The advisors may assist the evaluation committee members (referred to as evaluators) in the evaluation process but may not evaluate, score, or vote on the response's final evaluation.

- **Procurement Officer Role:** The agency designated procurement officer must 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.

The agency procurement officer must serve as the chairperson or co-chairperson for the EOI evaluation committee and must mediate all discussions related to the evaluation and assist with time management of the evaluation process.

- **Non-State Employees:** A non-state employee may not under any circumstances serve as a voting member of the EOI evaluation committee.
- **Purchasing Division Approval:** The names and other relevant information of all EOI evaluation committee members and advisors must be submitted to the Purchasing Division for approval prior to the release of the EOI. The submission must include justification for any identified advisors and/or requests to have more than five evaluators on the evaluation committee. The Purchasing Division reserves the right to accept or reject agency appointed committee members and to appoint committee members directly to provide proper representation. The Purchasing Director also reserves the right to appoint a new member(s) if determined to be in the best interest of the state.
- **Certification of Non-Conflict of Interest:** To minimize the risk of conflict of interest, each member of the EOI evaluation committee and any advisors are required to sign a Certification of Non-Conflict of Interest, in accordance with W. Va. Code § 5A-3-31. State agencies must submit the signed certification to the Purchasing Division prior to beginning the evaluation of an EOI. The Purchasing Division also requires the agency procurement officer to sign this certification even in instances where the procurement officer is not serving on the evaluation committee.

By signing this certification, the evaluators, advisors and agency procurement officer(s) attest that: (1) their service on the evaluation committee is not in violation of W. Va. Code § 5A-3-31, § 6B-2-5, or any other relevant code section; (2) their service on the evaluation committee does not create a conflict of interest with any of the participating vendors; and (3) they have 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.

b. Evaluation: Following the bid opening of EOI responses, the evaluation committee must complete the following steps:- Initial Evaluation: The EOI evaluation committee must evaluate the statements of qualifications and performance data and other material submitted in response to the EOI and then develop a “short list” (minimum of three firms) which, in their opinion, are best qualified to perform the desired service.

- **Short List Interview:** After the EOI evaluation committee has developed a short list of at least three vendors that it feels are most qualified to perform the desired service, they must interview those firms to discuss their anticipated concepts and proposed methods of approach to the assignment, including clarification of qualifications and performance data, the scope of services offered, and time needed to complete the project.
- **Short List Ranking:** After conducting interviews with the firms on the short list, the EOI evaluation committee must then rank, in order of preference, at least three firms deemed to be the most highly qualified based on the matters discussed during those interviews. That list must be shared with the agency and then submitted to the Purchasing Division for approval prior to the price and scope negotiations.

The committee will include with the ranked list a written justification and score sheet with a complete explanation of all points deducted to clearly indicate why the firms were ranked the way they were.

- **Price and Scope Negotiations:** The EOI evaluation committee will then commence negotiations with the highest-ranked firm first to discuss the scope of service and price. If the negotiations fail to result in a satisfactory contract, the agency may continue discussions with the next highest-ranked firm in the same manner, continuing down the list until a satisfactory contract is negotiated.

In no situation, after negotiations have been terminated with a firm will negotiations be reopened. Once successful negotiations conclude with any vendor, the agency must send the negotiated contract to the Purchasing Division to be properly issued. If the agency fails to negotiate a satisfactory contract with any of the ranked firms, the EOI will need to be cancelled and rebid.

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

6.3.2. Direct Award: A direct award is a method of procurement that allows a contract to be issued to a vendor without competitive bidding when circumstances allow. Agencies are encouraged to solicit competition through an RFQ rather than process a direct award request but may make a direct award if the following steps are followed:

- A.** The spending unit requests in writing approval from the Purchasing Division to process a direct award;
- B.** The spending unit documents written justification showing that the direct award is in the best interest of the state;
- C.** The spending unit documents written confirmation that there is no other source or that no other source would be willing or able to replace the existing source without a detrimental effect on the spending unit;
- D.** The intent to make a direct award is publicly advertised for no less than 10 business days in the West Virginia Purchasing Bulletin, which can be found in the Vendor Self-Service portal within wvOASIS; and
- E.** No other vendor expresses an interest in providing the commodity or service in question.

The requirements listed above have been included in the Direct Award for Consideration (WV-65).

6.3.2.1. Direct Award Exceeding \$25,000: All direct award solicitations exceeding \$25,000 must be processed centrally through the Purchasing Division. The agency must complete the Direct Award for Consideration (WV-65) form, have it approved and signed by the agency's designated procurement officer, and then submit it to the Purchasing Division for review and approval.

Once the WV-65 is approved and sent back to the agency, the agency must submit a requisition to the Purchasing Division in wvOASIS, which will be used to advertise the direct award procurement for no less than 10 business days, and must include a copy of the WV-65, a signed quote, and a copy of any contractual documents proposed by the vendor.

If a vendor expresses an interest in providing the commodity or service during the advertisement period, the Purchasing Division will determine the validity of the request and whether the solicitation will need to be canceled and bid competitively.

The Purchasing Affidavit, the Certification of Non-Conflict of Interest, and the Purchasing Master Terms and Conditions should be submitted after the WV-65 has been approved by the Purchasing Director and returned to the agency. The agency must not negotiate any of the terms and conditions with the vendor until the Purchasing Division has reviewed and approved the potential purchase for advertisement.

6.3.3. Emergency Purchases (More Than \$25,000): W. Va. Code § 5A-3-15 grants the Purchasing Director the authority to make emergency procurements without completing the formal bidding process. However, requests and contracts for emergency procurements that exceed \$25,000 must be handled centrally through the Purchasing Division. Please keep in mind that emergency purchases cannot be used for hardship resulting from neglect, poor planning, or lack of organization by the spending unit.

An emergency purchase can only be made if the Purchasing Director reasonably and ethically concludes upon reasonable and sufficient grounds that commodities or services must be immediately purchased by a state spending unit.

- A. Emergency Procurement Request:** To initiate an emergency procurement, the spending unit must request approval from the Purchasing Director to complete the purchase.
 - a. Emergency Request During Business Hours:** When an emergency occurs during normal business hours, written approval of the Purchasing Director or his/her designee must be obtained prior to making a purchase or allowing a vendor to perform any work. That request must include a description of the emergency, the scope of the purchase required to alleviate the emergency, the expected cost of the purchase, and the time during which the emergency contract would be effective. The request should come from the agency designated procurement officer.
 - b. Emergency Request Outside Normal Business Hours:** When an emergency occurs after business hours, on a holiday, or on weekend, the 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 business day following the emergency. If the nature of the emergency purchase is such that obtaining advanced approval from the Purchasing Division is still possible, the agency should do so.

- B. Obtain Three Bids, If Possible:** Once approval for the emergency purchase has been granted, the agency must obtain a minimum of three bids, if possible, and if the nature of the emergency allows.
- C. Authorizing Work:** Once approval for the emergency purchase has been obtained along with three bids, unless circumstances do not permit three bids to be obtained, the agency may proceed with the purchase, authorize work to begin, etc.
- D. Emergency Contract:** Any emergency purchase processed as a standard emergency will require the creation of a contract in wvOASIS. To accomplish this, the agency must, as soon as the emergency situation allows, compile all relevant documentation relating to the emergency purchase and submit it to the Purchasing Division using a requisition within wvOASIS. The documentation should include all correspondence relating to the emergency approval, a copy of the actual approval (or justification if the emergency occurred after business hours), a copy of any solicitation used to obtain bids, original copies of written bids or verbal quotes (if any were obtained), the proposed contract with the vendor, the vendor quote, vendor forms, etc. The Purchasing Division will review and approve the requisition and create the contract award/purchase order for submission to the Attorney General's Office for approval as to form.
- E. Purchasing Division Terms and Conditions:** 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 Purchasing Division General Terms and Conditions and obtain vendor consent to those terms as early in the process as possible. The Purchasing Division recognizes that certain emergency situations do not allow time to solicit written bids. In those situations, it is understandable that terms and conditions will not be addressed until after the emergency has been resolved. To access the master copies of the Agency and Purchasing General Terms and Conditions, visit www.state.wv.us/admin/purchase/arc.
- F. Vendor Compliance:** Any vendor granted an emergency contract is required to be properly registered with the Purchasing Division and must be in compliance with all vendor compliance checks discussed in more detail under the RFQ subsection.
- G. Contract Submission Deadline:** If more than 30 days have passed from the time the agency receives approval from the Purchasing Director for the emergency purchase and the date of submission of the documents for award, the agency procurement officer

must include justification with its documentation, signed by the agency head, indicating the reason for the lapse in time.



Note: In a declared state of emergency, the governor has the authority to suspend the application of any law or rule that interferes with the emergency response. When a suspension of law or rule occurs, the agency is permitted to procure the commodities and services related to the emergency response in a manner described in the governor's declaration and/or subsequent communication issued by the Governor's Office or the Purchasing Division.

6.4 Contract Commencement: Except for certain approved emergency contracts, the encumbrance date is the earliest date that a vendor may commence work on any contract. No approval 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.

Regarding construction projects, when an architectural or engineering firm is employed, construction does not commence until the agency gives the contractor a Notice to Proceed. Copies of all Notice to Proceed documents must be provided to the Purchasing Division in the form of a change order request at the same time the contractors receive their notification.

For more information on change orders, see **Section 6.7**.

6.5 Contract Management: Contract management ensures the state receives services or commodities meeting all contract requirements before payment is made. Construction contracts are excluded by law. This function is the sole responsibility of the agency.

6.5.1. Contracts of \$1 Million or Less: 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:

- A. The scope of the contract, including specifications of what the agency is buying;
- B. The contract terms and conditions, particularly any special contract provisions;
- C. The technical and reporting requirements of the contract;
- D. The contract administration procedures, including contract monitoring and progress measurement;
- E. The rights and obligations of both parties and the contractor performance evaluation procedures;
- F. 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;
- G. Potential contract problem areas and possible solutions;
- H. Invoicing requirements and payment procedures, with particular attention to whether payment will be made according to milestones achieved by the contractor; and
- I. 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:

- A. Measures outcomes;

B. Monitors compliance with contract requirements; and

C. (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:

A. 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.

B. 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.

6.6 Encumbrance: Encumbrance is the process by which funds are identified and attached to a particular contract. This action occurs in wvOASIS when applicable and ensures that funding is available for the payments relating to that contract. The Purchasing Division's Business and Technical Services Section encumbers applicable purchase orders executed by the Purchasing Division exceeding \$25,000.

6.6.1. Agency Account Designation: In a requisition submitted to the Purchasing Division, agencies must designate the appropriate account(s) that will be used to pay for a contract, and those funds will be reserved prior to a contract being awarded, unless the intended contract is a type that cannot be encumbered, such as open-end contracts.

6.6.2. Encumbrance Process and Amounts: Prior to issuing a contract, the Purchasing Division verifies that the amount of funds encumbered is appropriate and that the account being encumbered matches what the agency has requested. Contracts must be encumbered prior to issuance in the following amounts:

6.6.2.1. One-time Purchases in Current Fiscal Year: An agency issuing a contract for a one-time purchase to be completed in the current fiscal year must encumber the full contract amount.

6.6.2.2. Contract Spanning Multiple Fiscal Years: An agency issuing a contract that will span multiple fiscal years must encumber at least the amount of funds that will be spent under the contract in the current fiscal year;

6.6.2.3. Contract to Begin in a Future Fiscal Year: An agency issuing a contract that will be awarded prior to the end of a current fiscal year but become effective in the next fiscal year is not required to encumber funds prior to issuance of the contract.

6.6.2.4. Open-end and Statewide Contracts: An open-end or statewide contract issued by the Purchasing Division does not require funds be encumbered prior to the issuance of the contract.

6.7 Contract Changes and Cancellations:

6.7.1. Changes: Occasionally, it becomes necessary to amend, clarify, change, or cancel contracts and/or purchase documents. These changes are accomplished through a formal change order processed by the Purchasing Division and approved by the Attorney General's Office (as to form) in the same manner that the original contract is processed and approved.

6.7.1.1. Change Order Request: Any change order request submitted to the Purchasing Division must include:

- A.** Identification of the contract being changed.
- B.** An explanation of the change described with sufficient detail and clarity that any individual could review and generally understand the contract change.
- C.** Written agreement from the vendor (in most cases, but not all).
- D.** Additional documentation may be requested by the Purchasing Director to aid in the review.

6.7.1.2. Change Order Rejection: If the Purchasing Director determines the change order request is not properly justified, not adequately documented, or is inappropriate for some other reason, the change order may be rejected.

6.7.1.3. Sequential Numbering: Changes to the original contract must be sequentially numbered.

6.7.1.4. Advance Approval: Any change to an existing contract that adds work that was not part of the original contract, or changes contract cost, 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.



Note: W. Va. CSR § 148-1-6.8.f does 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.

6.7.1.5. Administrative Changes: Administrative changes to contracts may be made after the fact with subsequent approval by the Purchasing Division and the Attorney General's Office (as to form). However, it is preferred that such changes be made in advance, whenever possible. Examples of administrative changes include:

- A. Changing a vendor's name;
- B. Changing a vendor's address;
- C. Correcting a clerical mistake made by the state;
- D. Adding a renewal/extension year that was originally contemplated in the contract, provided that no new commodities/services or increases in price are included;
- E. Closing out a contract where the quantity was originally unknown or estimated or 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;
- F. Including Notice to Proceed documentation;
- G. Changing a contract utilized to facilitate the mandatory procurement of commodities and services from non-profit workshops, pursuant to W. Va. Code § 5A-3-10(e); and
- H. Any other administrative change not included may be approved by the Purchasing Director on a case-by-case basis.

6.7.1.6. Cost Changes More Than Ten Percent (10%): Any change order request that either exceeds, or causes the cumulative change order total to exceed, ten percent (10%) of the original contract amount is strongly discouraged. The Purchasing Director, at his discretion, may grant a change in any amount if unforeseen circumstances have occurred and such a change is in the best interest of the state of West Virginia.

6.7.2. Contract Cancellation:

6.7.2.1. Cancellation for Cause: The Purchasing Director reserves the right to cancel any contract or purchase order upon written notice to the vendor under any one of the conditions including but not limited to the following:

- 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.** The vendor fails to conform to contract requirements or standard commercial practices;
- D.** The existence of an organizational conflict of interest is identified;
- E.** Funds are not appropriated or an appropriation is discontinued by the legislature for the acquisition;
- F.** A violation of any federal, state, or local law, regulation, or ordinance occurs; or
- G.** The contract was awarded in error.

6.7.2.2. Cancellation for Convenience: Under the Code of State Rules, every contract issued by the Purchasing Division is required to include a clause allowing the state to cancel for any reason or no reason with 30 calendar days-notice to the vendor. This clause has been included in the Agency and Purchasing Division General Terms and Conditions.

6.7.3. Vendor Opportunity to Cure Prior to Cancellation: In the event that a vendor fails to honor any contractual term or condition, or violates 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 he or she determines to be appropriate. If the vendor fails to remedy the contract breach or legal violation or the Purchasing 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 the contract immediately without providing the vendor an opportunity to perform a remedy.

6.8 Protest Procedures: The Code of State Rules (W. Va. CSR § 148-1-8) provides vendors with the opportunity to protest specifications and contract awards.

6.8.1. Submission of Protest: Protests based on specifications must be submitted no later than five business days prior to the scheduled bid opening. Protests of purchase orders/contract awards must be submitted no later than five business 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.

6.8.2. Protest Form: All protests must 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 number(s);
- C. a statement of the grounds of the protest;
- D. supporting documentation (if applicable); and
- E. the resolution or relief sought by the vendor.

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

6.8.3. Protest Review: Upon receiving a protest, the Purchasing Director or his/her designee review all the grounds for the protest and any supporting documentation, and then issue a written decision. A hearing may be conducted at the discretion of the Purchasing Director or his/her assigned designee, if the situation merits one.

The Purchasing Director may choose to continue or delay a contract award while the protest is considered, or may refuse to review a protest if the matter involves the subject of litigation before a court of competent jurisdiction, if the merits of the protest have previously been decided by a court of competent jurisdiction, or if it has been decided in a previous protest by the Purchasing Division.

6.8.4. Protests Not Delegated: All protests, regardless of dollar amount, must be directed to the Purchasing Division, and any protest incorrectly submitted to the agency must be forwarded by that agency to the Purchasing Division for further review. A protest incorrectly delivered to the agency will not be considered received until it reaches the Purchasing Division, and an agency's failure to deliver a protest received directly to the Purchasing Division will have no impact (including an extension) on the period during which the protests will be accepted. The protesting vendor is responsible for delivering the protest to the Purchasing Division.

6.8.5. Reverse Auction Protests: A vendor may submit a protest of specifications related to a reverse auction up to five business days prior to the prequalification bid submission deadline. A protest of a prequalification decision must be submitted within five business days of the prequalification approval or denial. A protest of the award must be submitted within five business days of award.

6.8.6. Prequalification Agreement and Delegated Prequalification Bidding Protests: A vendor may protest the specifications of a prequalification agreement or the delegated prequalification bidding up to five business days before the prequalification agreement opening date and five business days before the delegated prequalification bidding opening date. Any vendor wishing to protest the award of a prequalification agreement or delegated prequalification bidding may do so up to five business days after the prequalification agreement award and within five business days after the delegated prequalification bidding award.

6.9 Special Considerations:

6.9.1. Pre-Bid Conferences: Regardless of the procurement method used, the Purchasing Division recommends that agencies consider conducting pre-bid conferences on high dollar, complex acquisitions early in the bid process to provide an opportunity to explain and clarify critical aspects of the solicitation requirements, eliminate misunderstandings, and encourage vendor questions and participation.

6.9.1.1. Conference Oversight: Pre-bid conferences are conducted by the state agency initiating the solicitation. The Purchasing Division may participate in these pre-bid conferences at the Purchasing Division's discretion. 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 and facilitate these conferences.

6.9.1.2. Mandatory Attendance: If a Pre-bid conference is mandated, only bids or proposals from those vendors represented at the conference will be accepted. If participating vendors sign the official sign-in sheet at any point 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 approved by the Purchasing Division.

6.9.1.3. Sign-In Sheet Requirements: Sign-in sheets for mandatory pre-bid conferences should contain the following fields: name of company, person attending (signature and printed name) on behalf of the vendor, physical address, telephone number, and email address. The header information on the sheets should include the solicitation number and the date and time of the pre-bid conference. The original sign-in sheet must be submitted to the Purchasing Division.

6.9.1.4. One Vendor Per Attendee: No one individual is permitted to represent more than one vendor at the pre-bid conference. Any individual that does attempt to represent two or more vendors will be required to select one vendor to which the individual's attendance will be attributed. The vendor(s) not selected will be deemed to have not attended the pre-bid conference unless another individual attended on their behalf. The required attribution of attendance to a single vendor should be addressed during the pre-bid conference but may occur at any time deemed appropriate by the Purchasing Division.

6.9.1.5. Recommended Pre-bid Conference Time: Agencies are encouraged to schedule pre-bid conferences on Tuesdays through Thursdays between 10 a.m. and 3 p.m. to encourage more vendor participation.

6.9.1.5. Sample Pre-bid Conference Agenda: Generally, a pre-bid conference should take place as follows:

Conference Opening

- A. Offer opening remarks (Welcome attendees and introduce yourself)
- B. Identify the project by RFQ or RFP number and generic scope of work
- C. Remind all attendees to sign in on the sign-in sheet (Emphasize the importance of the "sign in sheet," particularly for mandatory pre-bid conferences)
- D. Make available a few extra copies of the bid documents
- E. Review important general information items:
 - a. Inquiries and question/answer period
 - b. Vendor registration requirements
 - c. Inform that Oral statements are not binding, and encourage vendors to submit questions in writing to the Purchasing Division buyer responsible for the solicitation
 - d. Bid proposal submission process
 - e. Schedule of events

Specification Discussion (Agency Representatives)

- F. Open up the technical specifications for discussion by item with all attendees. Items that all parties agree need to be amended by addendum will be recorded by the agency to aid in preparing the addendum.
- G. Explain that all clarifying statements and questions will be addressed with an addendum.
- H. Discuss Purchasing Master Terms and Conditions of the solicitation.
- I. Address and further discuss outstanding questions.

Conclusion

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

6.9.2. Multiple Awards: The Purchasing 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. Agencies are required to complete and submit the Multiple Award Determination (WV-70) form with the requisition when a multiple award may be necessary. In arriving at a determination, the Purchasing Director will consider the following factors:

- A. The quality, availability, and reliability of the supplies, materials, equipment, or services and their adaptability to the particular use required;
- B. The ability, capacity, and skill of the bidder;
- C. The sufficiency of the bidder's financial resources;
- D. The bidder's ability to provide maintenance, repair parts, and service;
- E. The compatibility with existing equipment;
- F. The need for flexibility in evaluating new products on a large scale before becoming contractually committed for all use; and
- G. Any other relevant factors.

A written explanation must be included in the official contract 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 central procurement.

6.9.3. Negotiation When All Bids Exceed Available Funds: In rare occasions, agencies may be permitted to negotiate a lower price than what was bid. Guidelines for situations that permit this privilege are detailed below.

6.9.3.1. Maximum Budget Required: Negotiation is only permitted when the maximum budget amount has been exceeded by all bidders. Agencies must include a valid maximum budgeted amount with each requisition submitted to the Purchasing Division, which cannot be changed after the bid opening. Neither the Purchasing Division nor the agency can disclose this information to the bidders at any time prior to the conclusion of the procurement process. Failure to submit a maximum budget amount eliminates the ability to negotiate.

6.9.3.2. Negotiation Must Get Within Budget: If all bids meeting the mandatory requirements exceed the solicitation's maximum budgeted amount, the Purchasing Division may negotiate a lower price, that must be within budget to be acceptable, with the lowest bidder.

6.9.3.3. Negotiation Must be Linear: If the negotiation does not lead to the budget amount being met, the Purchasing Director may negotiate a lower price with the next lowest bidder and continue negotiations with participating bidders after negotiation closes with the preceding bidder until a successful negotiation is conducted. The agency cannot return to negotiations with a bidder after the initial negotiation with that bidder has closed. If negotiations fail with all bidders, the solicitation must be cancelled and rebid.

6.9.3.4. Negotiation Not Delegated: The ability to negotiate as described in this section has not been delegated to the agencies for procurements under \$25,000.

6.9.4. Discussion and Final Offers: The Purchasing Director may conduct discussions to obtain best and final offers from bidders in limited circumstances.

6.9.4.1. Must Be Included in Solicitation: Discussion and final offers can only occur if provided for in the solicitation.

6.9.4.2. Not Just for Price Reduction: Discussion and final offers may be used for purposes of clarification and to assure a full understanding of, and responsiveness to, solicitation requirements.

6.9.4.3. Must Apply to All Bidders: If the Purchasing Director determines that a discussion and final offer is necessary from one bidder, all responsive and responsible bidders must be permitted to provide discussion and final offers.

6.9.4.4. Must Be Formal Process: Discussion and final offers must be treated like a formal bid, except that advertising in wvOASIS is not required. All bidders must provide their discussion and final offers to the Purchasing Division prior to the date and time specified.6.9.4.5. Does Not Apply to Construction or Supplies/Materials: Solicitations for government construction contracts and supplies and materials contracts cannot include discussion and final offers.

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

SECTION 7: SPECIAL ACQUISITION PROCEDURES

7.0 SPECIAL ACQUISITION PROCEDURES: The procurement of certain commodities and services have limitations or require special procedures. Those special procedures are discussed in this section.

7.1. Construction: Construction contracts require additional documentation and requirements, including but not limited to, a contractor's license, drug free workplace compliance, and bonds.

7.1.1. 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 W. Va. Code § 5-22-1(e), if the pricing pages contain alternates/add-ons, there must be no more than five listed and the alternates/add-ons must 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. Any unaccepted alternate contained within a bid shall expire 90 days after the date of the opening of bids for review.

7.2 Capitol Improvements: The approval of the Capitol Building Commission is required before any contract may be bid for work requiring a substantial physical change to the state capitol building or surrounding complex, before work begins if not done under a contract, and prior to processing change orders above \$40,000. See W. Va. Code § 4-8-4 and 5.

Change Orders: In all instances constituting a substantial physical change, the approval of the commission is mandatory before work on a change order in excess of \$40,000 is begun and includes all areas occupied by the Legislature, the Governor, and the Supreme Court of Appeals.

"Substantial physical change" means any permanent physical changes that alter the appearance of the public areas of the Capitol and surrounding complex.

"Surrounding complex" means 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.

7.3 Information Technology Equipment, Services and Software: W. Va. 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.

Please reference West Virginia Office of Technology CTO Policy # CTO-19-001 for guidance, which can be found at <https://technology.wv.gov/security/Pages/policies-issued-by-the-cto.aspx>.

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 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 to issue a direct award 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 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 W. Va. § 148 C.S.R. 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 (WV-40) form. 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 participate in, purchase from, or lead a cooperative contract. Failure to provide the information requested on the WV-40 form will result in the request being rejected.

If the Agency's request to utilize a cooperative contract arrangement is approved, the documentation required will vary depending on the type of cooperative contract being utilized. The most common form of cooperative contracting is joining or using a cooperative contract after the fact. In all cases, the WV-40 must be utilized and the contract approved by the Purchasing Division and the Attorney General's Office as to form.

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 Vehicles: Approval by the Fleet Management Division 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 Division. 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 Division approval.

7.9 Used Property: State agencies may purchase used equipment through the normal competitive bid process or through direct award after first checking the item availability with the West Virginia State Agency for Surplus Property and documenting this contact in the official file.

7.10 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 W. Va. Code §§ 12-1-7 and 12-3A-6.

7.11 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 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.

7.12 Grants: In accordance with W. Va. 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 benefiting a spending unit will result, the sub-grant is not subject to the competitive bidding requirements.

7.13 Trade-In: The state has the ability to trade in used equipment to offset the purchase cost of new equipment if the procedures outlined below are followed. The trade-in process is not delegated to agencies, so any trade-in will be processed as a central procurement through the Purchasing Division regardless of dollar amount.

Step 1. 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.

Step 2. After developing the solicitation, the agency must receive written approval from the West Virginia State Agency for Surplus Property (WVSASP) to pursue the trade-in option;

Step 3. The requisition and the WVSASP approval must be submitted to the Purchasing Division for review, approval, and competitive bid.

Step 4. 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.

Step 5. 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.

Step 6. 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 direct award 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 at www.state.wv.us/admin/purchase/surplus/surplus_operations_manual.pdf.

7.14 Standardization: Pursuant to W. Va. Code § 5A-3-61, agencies are permitted to standardize upon certain commodities by utilizing the process described below. Standardization will allow the agency to specify a brand of product for competitive bidding or other appropriate procurement method without the need to consider other brands.

- A. Standardization is limited to commodities that:** (1) represent a core function of the spending unit's mission; (2) would yield a savings of time and money if standardized; and (3) either require testing or evaluation to determine accuracy or consistency or require interoperability in a larger system or network. Savings of time and money must be shown without considering the traditional procurement process or the standardization process.
- B. Standardization Duration:** Any standardization established under this section must be valid for no more than four years. Upon expiration, the spending unit establishing the standardization may either take no action, which would allow the standardization to expire, or undertake the process outlined in this section to establish a new standard.
- C. Standardization Process:** A spending unit desiring to establish a standard must use the following process:
 - a.** The head of the spending unit must identify the commodity to be standardized and request approval from the Purchasing Director to establish a standard using the Standardization Request and Notice Form (WV-80). The head of the spending unit shall provide to the director written certification and supporting evidence verifying that the requirements for standardization have been met.
 - b.** The spending unit must identify the individual or individuals that will be evaluating the commodity for standardization. Each individual must certify that he or she has no conflict of interest and can evaluate the information used to standardize without favoritism or bias. At least one individual involved in the standardization evaluation must

be the spending unit's procurement officer. If the spending unit has no procurement officer, the individual responsible for the spending unit's procurement must participate in the evaluation.

- c. The spending unit must advertise the intent to standardize as a request for information in the system used at that time to solicit competitive bids. The Purchasing Division has developed a Standardization (RFI) Standard Format to aid in development of the request for information. The spending unit should also identify all known entities that would have an interest in providing a commodity for evaluation and ensure that they receive notice of the request for information. The request for information must be advertised and allow for responses for no less than 30 calendar days. The request for information must notify the vendor community of the following:
 - i. That the spending unit is attempting to standardize state procurements for the commodity in question;
 - ii. That any entity interested in having its products considered for standardization should provide information on the benefits and drawbacks of that entity's products;
 - iii. Any evaluation criteria that the spending unit will use in the standardization decision;
 - iv. The date and time by which documentation must be provided; and
 - v. The approximate date and time by which a decision will be made.
- d. If the spending unit desires to conduct product testing, it must notify vendors in the request for information and establish a time period during which tests will be performed. Vendors may provide commodities for demonstration, testing and evaluation so long as such items are provided at no cost and no risk to the state. A written record describing the nature of the testing performed and a written record of the results of that testing shall be produced pursuant to any testing conducted on all the commodities being considered. The written record of testing and results shall be provided to the Purchasing Division and preserved.

The process must be conducted in a manner that provides all interested parties an equal opportunity. For example, if one vendor is allowed to make an in-person demonstration, then all vendors must be afforded the same opportunity. Similarly, if one vendor is allowed to provide a sample, then all vendors must have that same opportunity. Any testing undertaken by the spending unit must be uniformly applied to all commodities. In effect, the same evaluation process, testing methods, presentation

opportunities, and other evaluation techniques will be applied uniformly to every vendor that submits a commodity for consideration.

- e. The spending unit will evaluate the information received in response to the request for information, information the spending unit has obtained from its own research, the results of any product testing and anything else the spending unit finds relevant to establish a pending standardization.
 - f. The spending unit must advertise the pending standardization as a request for information in the system used at that time to solicit competitive bids for a minimum of 15 calendar days. The request for information must notify the vendor community and any vendor who has participated in the standardization evaluation process of the following:
 - i. The pending decision to standardize, including any brand name that has been tentatively selected the standard;
 - ii. The rationale for the selection made in the pending standardization;
 - iii. That comments may be submitted for review for a period of 15 calendar days from the date of the advertisement;
 - iv. The date and time by which a final decision will be made, which will be no less than three days after the comment period has ended; and
 - v. The location where the final decision will be posted.
 - g. The spending unit must review the comments submitted in response to the pending standardization advertisement and make any adjustments that it deems necessary.
 - h. The head of the spending unit shall notify the director of a selection of the standard commodity, and the director shall post the results of the standardization decision on the Purchasing Division's website. The spending unit shall also specifically notify any vendor who participated in the standardization evaluation process of the results in writing, within five business days of the final standardization selection.
- D. Appeal:** Any vendor that participated in the standardization process may appeal the standardization decision to the head of the spending unit. The head of the spending unit shall consider the appeal in accordance with the administrative procedures established in Administrative Procedures Act contained in W. Va. Code 29A.
- E. Standardization Effect:** Once a standard has been established, the Purchasing Division is authorized to solicit competitive bids on behalf of the spending unit in the form of a request for quotation for the standardized commodity.

7.15 Reverse Auctions: Upon approval from the Purchasing Director, this purchasing process may be utilized to procure commodities that meet the following criteria:

- A. Are subject to low price volatility;
- B. Have specifications that are common and not complex;
- C. Vary little between suppliers;
- D. Are sourced primarily based on price, with limited ancillary considerations;
- E. Require little collaboration from suppliers; and
- F. Are sold by a large, competitive supply base.

The requesting agency must provide the Purchasing Division with written documentation of how the commodity meets these criteria as well as an explanation of how the reverse auction process would be fair, economical and in the best interest of the state.

The Purchasing Division conducts all reverse auctions and may rely upon information provided by one or more agencies that will use the contract.

7.15.1. Prequalifications: 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:

- A. 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 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 reverse auction is included and will advertise for the auction through the Vendor Self-Service within wvOASIS.
- B. 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. 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.
- C. 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 the 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. Approved vendors will be provided with the necessary information to participate, which may include website addresses, login information, etc. Denied vendors will be provided with notice and, upon request, be provided with a reason for the denial.

7.15.2. 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 that bidding has expired. Any bid that a vendor submits during the reverse auction process will supersede all prior bids submitted by that vendor.

7.15.3. Award: The lowest responsible bidder within the 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 complete the contract as bid, the Purchasing Director may reject the bid of that vendor or cancel the award that has been made and move to the next lowest responsible bidder.

7.16 Prequalification Agreement and Delegated Prequalification Bidding: In accordance with W. Va. Code § 5A-3-10e(b)(4), this procurement method establishes a list of prequalified vendors from which agencies can subsequently obtain bids through a delegated process for commodities and services covered by the prequalification agreement. This process was formerly known as secondary bidding.

7.16.1. Approval Request: An agency that desires to establish a prequalification agreement with subsequent delegated prequalification bidding must first provide written justification and obtain the written approval from the Purchasing Director. Any request by a state agency to establish a prequalification agreement must include the following:

- A.** Identification and a detailed description of the commodity or service to be covered by the prequalification agreement;
- B.** One or more requirements that each vendor must meet in order to be approved for the prequalification agreement, which may include, but are not limited to, experience, quality assurance, licensing, delivery terms and quantity terms;
- C.** An estimation of the quantity and price of the commodity or service to be purchased over the terms of the contract; and
- D.** Forms, if any, that will be utilized in the delegated prequalification bidding.

7.16.2. Advertisement for Prequalification Agreement: Once the Purchasing Director approves an agency's request to solicit prequalification agreements, the vendor community will be notified through the West Virginia Purchasing Bulletin, which can be found in the Vendor Self-Service portal within wvOASIS. The notice must contain:

- A. A clause stating that the state is seeking a prequalification agreement that will permit all awarded vendors an opportunity to participate in the delegated prequalification bidding process;
- B. An explanation of how bids will be submitted and evaluated through the delegated prequalification bidding;
- C. A clause limiting the prequalification agreement to a term of three years; and
- D. Language setting dollar thresholds for delegated prequalification bidding process purchases.

7.16.3. Evaluation and Award of Prequalification Agreements: At the date and time provided in the advertisement, the Purchasing Division will publicly open vendor responses at a bid opening. Vendor responses will be evaluated and each vendor meeting all qualifications will be awarded a prequalification agreement that allows the vendor to participate in the delegated prequalification bidding.

7.16.4. Requests for Bids: An agency that desires to purchase a commodity or service identified in the prequalification agreement must notify each vendor that has been awarded a prequalification agreement of the request. The notice must contain any commodity-specific or service-specific requirements, the total quantity of the commodity or service being sought, the deadline by which the vendors must submit bids, and the location to which bids must be submitted.

7.16.5. Delegated Prequalification Bid Opening: At the established date, time and place, the agency will open all bids in a public bid opening and announce the vendors' bid prices.

7.16.6. Evaluation and Award of Delegated Prequalification Bids: After bids have been opened, the agency shall evaluate the bids received to ensure that the bid submissions comply with the requirements contained in the prequalification agreement and requests for bids. The agency shall award the contract/purchase order to the lowest responsible bidder. The agency must reject any bid that fails to comply with the requirements contained in the prequalification agreement and request for bids. The agency shall provide the following notices related to the evaluation and award:

- A. The lowest responsible bidder must be notified that it has won the delegated prequalification bidding and may begin the process of filling the order;
- B. 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,
- C. 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.

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

7.16.8. Dollar Limit: No single order under the prequalification agreement and delegated prequalification bidding is permitted to exceed \$1,000,000 unless a written request to exceed this limit is approved by the Purchasing Director in writing. If all bids submitted under the delegated prequalification bidding process exceed the applicable order threshold, the agency must cancel the delegated prequalification bidding process and solicit bids competitively through the normal bid process. If one or more vendor submits a bid exceeding 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 delegated prequalification bidding process if determined to be appropriate.

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. The agency must also conduct adequate market research to allow it to prepare the specifications.



Note: A successful purchase begins with proper planning. This includes but is not limited to understanding the agency's need, conducting proper market and vendor research, and allowing adequate time to prepare documents, solicit and evaluate bids, and award a contract. See Section 3.0 Acquisition Planning for more information.

8.1.2. Develop and Submit Solicitation: Each agency is responsible for preparing the specifications and other solicitation documents that are necessary for the appropriate procurement process. If the procurement is expected to be more than \$25,000, the agency will submit those documents to the Purchasing Division for processing.

8.1.3. Review Bids/Documents and Make Award Recommendation: After bids are opened (or documents are obtained in the case of a direct award) the agency is responsible for reviewing the bids/documents to determine the appropriate vendor for contract award. If the procurement is more than \$25,000, the agency will make an award recommendation to the Purchasing Division.

8.1.4. Receiving: State agency personnel must verify the shipment of commodities with the specifications in the purchase order while reporting any discrepancies, obvious damages or shortages based upon the purchase order specifications. (See Section 5.5)



Note: Agencies are required to meet certain receiving report requirements in accordance with the State Auditor's Office guidelines. This includes inspecting any materials procured within 24 hours of receiving them to verify the shipment against the specifications in the purchase order for compliance. See **Section 5.5: Commodity and Service Receiving Procedures** for more on this requirement.

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

8.1.6. Inventory: Once payment has been made to the vendor, reportable property must be added to the *wvOASIS* Fixed Assets System. (Please refer to the Surplus Property Operations Guide at www.state.wv.us/admin/purchase/surplus/surplus_operations_manual.pdf).



Note: Reportable assets, which are assets with an acquisition cost of \$1,000.00 or more and a useful life of one year or more, must be entered into the *wvOASIS* Fixed Asset System. There are three exceptions to this rule: (1) all firearms, regardless of cost must be entered; (2) all computers with an acquisition cost of \$500.00 or more must be entered; and (3) all vehicles leased for more than one (1) year, regardless of cost, must be entered. See Section 2.3 of the Surplus Property Operations Manual for more information on reportable assets.

8.1.7. 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 reported to the agency's assigned Purchasing Division buyer using 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.

8.1.7.1. 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.

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.



issues.

Note: All Vendor Performance Report forms submitted by agencies are filed with the Purchasing Division Vendor Registration Office to centralize vendor performance history and to provide future reference regarding long-term vendor

8.1.8. Agency Failure to Comply: If an agency fails to comply with the procedures and requirements established for purchases of \$25,000 or less, or shows significant deficiencies in the processing of transactions exceeding \$25,000, the Director has the ability to:

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

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 for procurements over \$25,000 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.

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. Purchasing Inspections: In accordance with the W. Va. § 148 C.S.R. 1-4.14, the Purchasing Director appoints inspectors to review and audit spending unit requests and purchases and other transactions and performance that fall under the authority of the division. Inspectors also provide relevant training for agency personnel and must be provided access at any and all times to records, reports and other documents as needed.

The primary focus of inspections is on purchases under the delegated agency purchasing authority (less than \$25,000) but inspectors may request documentation for formal purchases, if needed. Final agency inspection reports are available at www.state.wv.us/admin/purchase/Inspection/inspectReports.html.

8.2.5. 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 W. Va. 148 C.S.R. 1, "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.

8.2.5.1. Mandatory Training: In accordance with W. Va. 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 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.
- D.** Debar a vendor on the basis of one or more of the grounds for debarment contained in W. Va. Code §§ 5A-3-33b through 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.

SECTION 9: LIST OF COMMODITIES AND SERVICES IDENTIFIED AS IMPOSSIBLE TO BID

Impossible to Bid List Creation: The Director of the Purchasing Division “may establish a list of commodities and services that are not possible to submit for competitive bid.” See W. Va. Code § 5A-3-10 and the W. Va. CSR § 148 -1-4.1. In accordance with that authority, the Director has identified those items that cannot be competitively bid in this List of Commodities and Services Identified as Impossible to Bid (hereinafter “Impossible to Bid List”) shown below.

A spending unit may request that commodities or services be added to the Impossible to Bid List by completing and submitting a WV-67 form entitled “Section 9 Impossible to Bid List Addition Request Form.” Pursuant to W. Va. CSR § 148-1-4.1, 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. That information must be included on the WV-67 form. Requests for additions to the list will be considered yearly prior to the new fiscal year on July 1.

Competitive Bidding Not Required: Spending units may purchase the commodities and services on the list directly from the vendor and are not required to have contracts for the purchase of those items approved by the Purchasing Division unless otherwise noted below with the applicable item.

Documentation Requirements: Even though competitive bidding and Purchasing Division approval are not required for most Impossible to Bid List procurements, the spending unit must continue to follow documentation requirements associated with the applicable spend threshold, unless otherwise noted below with each item. For example, all vendors must complete vendor registration with the Purchasing Division, Secretary of State Registration, and the Purchasing Affidavit. Additionally, the spending unit must complete compliance checks such as vendor debarment, workers compensation, etc., prior to completing the transaction. The use of a purchase order is required on all purchases over \$2,500, and spending units must continue to submit contracts to the Attorney General’s office for approval, as to form, in accordance with that Office’s requirements.

Registration Fee Waiver: The Director has also determined that pursuant to W. Va. C.S.R. § 148-1-6.1.c.5, waiving the vendor registration \$125 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. This waiver only applies to transactions conducted under Section 9 of the handbook. If the vendor in question also obtains contracts through competitive bidding, direct award, or some other method, fee payment will be required.

Guidance: The Section 9 Applicability 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 Impossible to Bid List. This form is only to be used when the applicability of a Section 9 item is questionable or unclear.

Impossible to Bid List: The following items comprise the Impossible to Bid List of commodities and services that may be purchased directly by spending units without advertisement or bid.

1. **Advertising:** This item includes any advertisement placed directly with newspapers, trade magazines, internet publications, social media or billboards. This item includes broadcast television and radio advertisements placed directly with the broadcaster or publisher. Additionally, this item includes participation fees for trade shows, conferences or conventions. This item does not include any indirect placement, promotional items or advertising consultant services.
2. **Artwork and Historical Items:** This item 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 item must obtain written approval from the Purchasing Division prior to making any purchase.
3. **Attorneys and Law Firms:** This item includes hiring attorneys and law firms in an official attorney-client capacity. Nothing in this item eliminates the approval or oversight residing within the Attorney General's office.
4. **Aviation Fuel:** This item includes the purchase of aviation fuel but excludes bulk purchases for delivery to state dispensing stations.
5. **Governmental Agencies:** This item 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. Governmental entities are not required to register with the Secretary of State's Office so that compliance check is not required. Additionally, if the governmental entity is a West Virginia state agency then the Purchasing Affidavit is not required.

6. **Court Ordered Placements:** This item 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 item 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 item includes expenses for food, beverages, facility rental and entertainment relating to conducting state business.
9. **Media License Fees:** This item includes program license fees for radio or television.
10. **Medical Fees:** Included in this item 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 item 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 item is body transportation for corpses and indigent burial expenses and direct award 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 item 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 item includes stamps and other non-competitive mailing services from the United States Postal Service, but this does not include services available from statewide contracts. The Purchasing Affidavit and Secretary of State registration are not required for transactions processed under this item.
12. **Professional Association Dues:** This item 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 item includes national association fees required from all railroads to monitor the location and use of railroad cars for the owners.

14. **Resale Items:** This item 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 item includes obtaining investigative services and the services of a subject matter expert or witness that is intended to help prepare for, or will be utilized in, administrative or legal hearings/proceedings. This item does not include agency consulting services or former employees retained by their agency or hired by another agency.
16. **Subscriptions and publications:** This item includes newspapers, textbooks and publications – electronic and hard copy – purchased directly from the publisher.
17. **Training Activities:** This item includes lecturers, honorariums, copyrighted test and training materials, test monitors/examination proctors, and registration fees, where competition is not available.
18. **Utilities Regulated by the Public Service Commission:** This item 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 item does not include propane gas, coal and satellite television, all of which must be competitively bid.
19. **Department of Agriculture:** Approved items 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 item 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 all documentation requirements listed above but spending units should comply with those requirements where possible.
21. **Intellectual Property:** This item 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 item in no way applies to software.
22. **Emergency Services (Non-Construction and Non-Architectural/Engineering "A/E"):** This item 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 item must be approved by the Purchasing Division Director in advance in accordance with the procedures for commodities outlined in W. Va. 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 Sections 5 and 6 of the Purchasing Division Procedures Handbook).

- 23. Vaccines:** This item 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 item includes transcripts procured from court reporters who are employed by the court, judge or opposing counsel. These transactions are exempted from all documentation requirements listed above but spending units should comply with those requirements where possible.
- 25. Copies of Government Documents/Records Obtained from the Government:** This item includes fees paid to the government entity required to obtain records of court and administrative proceedings as well as documents filed in those proceedings, and charges paid to a government entity for other official documents or records obtained from that government entity. Examples of transactions that this item is intended to cover are fees associated with obtaining documents from the federal court's PACER system, similar fees charged by county or local courts for records, fees required to obtain official copies of real estate records from the County Clerk's Office, and FOIA fees.
- 26. Commodities or services for a shared facility arrangement with the U.S. Government:** Effective July 1, 2018, commodities or services contracted by the U.S. Government and provided to a state agency when those commodities or services are: (1) offered as part of a shared facility arrangement, and (2) those commodities or services for the State cannot be easily separated from those for the U.S. Government. The Purchasing Affidavit and Secretary of State registration are not required for transactions processed under this item.
- 27. Obtaining Commodities Through the Federal Surplus Property Program:** This item includes requests to obtain federal surplus property through the West Virginia State Agency for Surplus Property ("WVSASP"). Both the donation and fixed price sale methods of obtaining federal property are included. Agencies must facilitate the transaction through the WVSASP. The Purchasing Affidavit and Secretary of State registration are not required for transactions processed under this item. In the case of donated property, a Purchase Order would also not be

required. The necessary documentation to facilitate the transaction can be obtained from the WVSASP.

- 28. Local Fresh Produce Under the Farm Act:** This item includes fresh produce purchased to satisfy the requirements of the Department of Agriculture's Fresh Food Act which requires that at least 5% of fresh produce be purchased from in-state producers. The Act is codified as W. Va. Code section 19-37-1, et. seq. (the "Act").

Appendices

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APPENDIX A: FREQUENTLY USED LINKS

DESCRIPTION	LINK
Annual Report	www.state.wv.us/admin/purchase/Annualreport
Awarded Contracts and Change Orders	www.state.wv.us/admin/purchase/Awards/awarded.html
Bids Received	www.state.wv.us/admin/purchase/Bids
Buyer-Agency Assignments	www.state.wv.us/admin/purchase/byassign.pdf
Buyers Network, The	www.state.wv.us/admin/purchase/BN/bnlist.html
Contracts	
<i>Statewide Contracts</i>	www.state.wv.us/admin/purchase/swc
<i>Terms Agreements</i>	www.state.wv.us/admin/purchase/termsagreements.html
Emergency Purchase Request Approvals	www.state.wv.us/admin/purchase/emergencyrequests.html
Inspections Report Index	www.state.wv.us/admin/purchase/Inspection/inspectReports.html
Purchasing Division Legislative Rule	www.state.wv.us/admin/purchase/rules.html
Master Terms and Conditions	
<i>Agency</i>	www.state.wv.us/admin/purchase/TCA.pdf
<i>Central</i>	www.state.wv.us/admin/purchase/TCP.pdf
Procurement Officer Listing	www.state.wv.us/admin/purchase/vrc/agencyli.html
Purchasing Division Directory	www.state.wv.us/admin/purchase/directory.html
Purchasing Forms - Includes: - Agency Checklists - Pre-Bid Conference Sign-In Sheet - RFP Packet	www.state.wv.us/admin/purchase/forms.html

<p align="center">- Standard Format Templates</p>	
<p>Specification Index</p>	<p>www.state.wv.us/admin/purchase/specs</p>
<p>Surplus Property Operations Manual</p>	<p>www.state.wv.us/admin/purchase/surplus/surplus_operations_manual.pdf</p>
<p>Vendor Procurement Guide</p>	<p>www.state.wv.us/admin/purchase/vrc/VPG</p>
<p>wvOASIS</p>	<p>http://wvoasis.gov/</p>

APPENDIX B: PURCHASING DECISION PATH

1. Agency procurement officer receives request from agency employee for good or service.

1a. Check availability on mandatory contracts or through set aside programs. Statewide contracts. Open-end contracts. Correctional Industries. Sheltered workshops. If available, proceed with the purchase.

1b. Research and understand the need. Determine quantity, availability, vendors in market, potential competing goods/services, price range, agency's historic utilization and spend, etc. Talk to agency end users, conduct research on the current market, search the internet, talk to multiple vendors, issue an RFI, and/or review past purchases of the same or similar good/service.

2. Determine procurement method, type, and spend threshold.

2a. Determine procurement type. This includes one-time purchases and recurring need.

2b. Determine procurement method needed. This includes RFQs, RFPs, EOIs, direct awards, emergency purchases, Section 9, and others.

2c. Determine the spending threshold. The agency considers aggregate spend to determine if the procurement will fall under agency-delegated or central purchasing procedures.

3. Develop procurement documents, if required based on spending threshold.

3a. Delegated purchases \$25,000 or less.

3a.1. If RFQ or EOI procurement method is used, the agency develops specifications and prepares the solicitation.

3a.2. If the direct award method is used, the agency completes the Direct Award for Consideration (WV-65A) form for solicitations between \$2,500 and \$25,000.

3a.3. If an emergency purchase is required, the agency properly documents the agency file and proceeds with the purchase.

3a.4. If the purchase falls under Section 9: Impossible to Bid List, the agency develops the contract documents, properly documents the file, and proceeds with the purchase.

3a.5. RFPs are not permitted at this level of purchase.



Note: Soliciting goods or services between \$0-\$2,500 require no bids or documentation. Three verbal bids and a purchase order are required for purchases of \$2,500.01 to \$10,000. Specifications and public advertisement in *wvOASIS* are required for purchases of \$10,000.01 to \$25,000.



Note: Direct awards in the amount of \$0-\$2,500 require no advertising or documentation.

3b. Central purchases exceeding \$25,000.

3b.1. If RFQ, RFP, or EOI procurement method is used, agency develops the specifications, prepares the requisition, and submits it to the Purchasing Division.

3b.2. If the direct award method is used, the agency completes the Direct Award for Consideration (WV-65) form and submits it and any supporting documentation to the Purchasing Division.

3b.3. If an emergency purchase is required, the agency seeks approval for the purchase from the purchasing director. If the emergency occurs outside of normal business hours, the agency attempts to obtain three bids, proceeds with the work, and follows up with the Purchasing Division on the next business day with justification and all documentation.

3b.4. If the purchase falls under Section 9: Impossible to Bid List, the agency develops the contract documents, properly documents the file, and proceeds with the purchase.

4. Advertise solicitation, evaluate bids, and/or award contract.

4a. Delegated purchases \$25,000 or less.

4a.1. If the RFQ procurement method is used for purchases between \$10,000.01 to \$25,000, the agency prepares the solicitation and advertises it in *wvOASIS*, evaluates the bids received, and awards the contract.

4a.2. If the EOI procurement method is used, the agency advertises the solicitation in *wvOASIS*, evaluates and scores the proposals received, and conducts final negotiation of the contract. The Purchasing Division awards the contract.

4a.3. If the direct award method is used and the purchase will be between \$0 and \$2,500, no advertisement or documentation is required. The agency may proceed with the direct award. If the

direct award purchase will fall between \$2,500.01 and \$10,000, the agency publishes the Direct Award for Consideration (WV-65A) form in *wvOASIS* for public notice. If a vendor expresses valid interest in providing the good/service, the solicitation will be competitively bid. If no vendor expresses interest, the agency proceeds with awarding the contract.

4a.4. Emergency purchases at this level do not require public advertisement, but the agency should attempt to obtain three bids and award to the lowest responsive vendor.

4a.5. If the purchase falls under Section 9: Impossible to Bid List, no advertisement is required. The agency develops the contract documents, properly documents the file, and proceeds with the purchase.

4a.6. RFPs are not permitted at this level of purchase.



Note: Soliciting goods between \$0-\$2,500 require no bids or documentation. Three verbal bids and a purchase order are required for purchases of \$2,500.01 to \$10,000. Specifications and public advertisement in *wvOASIS* are required for purchases of \$10,000.01 to \$25,000. Some exceptions apply. See Section 5 of the Purchasing Division Procedures Handbook for more information.

4b. Central purchases exceeding \$25,000.

4b.1. If RFQ or RFP procurement method is used, the Purchasing Division advertises the solicitation, the agency evaluates the bids and/or scores the proposals, and the Purchasing Division awards the contract.

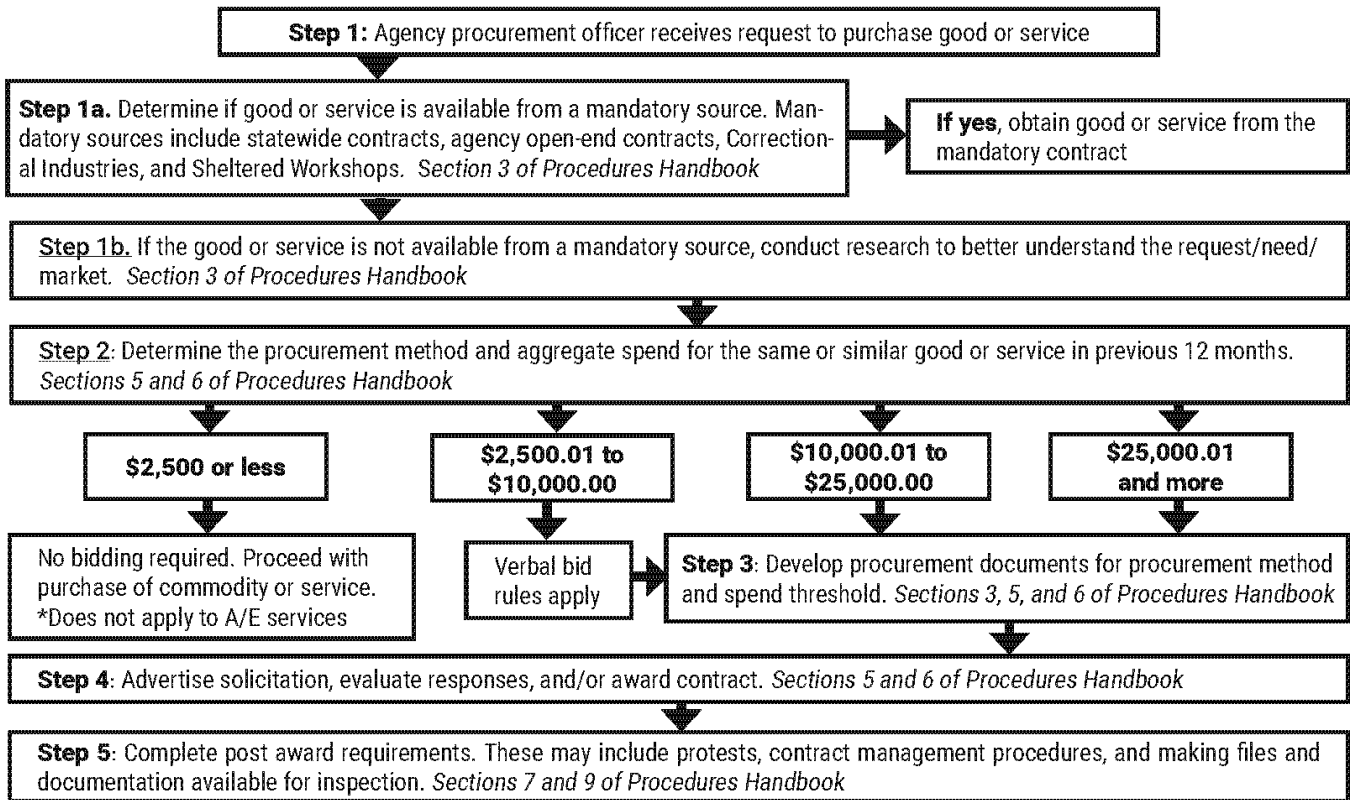
4b.2. If the EOI procurement method is used, the Purchasing Division advertises the solicitation in *wvOASIS*, and the agency evaluates and scores the proposals received and conducts final negotiation of the contract. The Purchasing Division awards the contract.

4b.3. If the direct award method is used, the Purchasing Division advertises the Direct Award for Consideration (WV-65) completed by the agency for public notice. If a vendor expresses valid interest in providing the good/service, the solicitation will be competitively bid. If no vendor expresses interest, the Purchasing Division proceeds with awarding the contract.

4b.4. Emergency purchases at this level do not require public advertisement but the agency must seek approval of the purchasing director. If the emergency occurs outside of normal business hours, the agency attempts to obtain three bids, proceeds with the work, and follows up with the Purchasing Division on the next business day with justification and all documentation.

5. Complete post award requirements. Consider vendor protests, conduct contract management procedures, and make purchasing documents available upon request. *Vendor protests have not been delegated to the agency. Forward any protests received to the Purchasing Division.

Step-by-Step Procurement Flow Chart



APPENDIX C: INSURANCE GUIDE

The West Virginia Board of Risk and Insurance Management developed an insurance guide to assist agency purchasers with their insurance requirements when preparing solicitations.

To view this guide, visit www.state.wv.us/admin/purchase/handbook/2019/insurance.pdf.

APPENDIX D: 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.

Renewals

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 _____.

Renewal Years/Months Remaining: _____

No other changes.

Renewal with Increase:

Change Order

Change Order No. XX is issued to renew the original contract according to all terms, conditions, and specifications contained in the original contract and all authorized change orders, except that the contract (unit prices, hourly rates, annual fee, etc.) is increased as defined in the attached documentation.

Effective date of renewal _____ through _____.

Renewal Years/Months 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, except that the contract (unit prices, hourly rates, annual fee, etc.) is decreased as defined in the attached documentation.

Effective date of renewal _____ through _____.

Renewal Years/Months remaining: _____

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 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.

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 specifications 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.

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

Effective date of cancellation _____

Administrative Change for Vendor Name/Number

When a Cancellation and Re-issue is Required:

Original Contract Language:

Change Order XX

Change Order No. XX is issued for administrative purposes only and is intended to change the name of the vendor from Vendor A (V/C account 0000*) to Vendor B (V/C account 0000*).

System limitations require that this contract be given a new number moving forward but the original contract, including all terms, conditions, prices, specifications, and change orders contained therein remain in full force and effect.

Effective date of change _____

New procurement folder: _____

No other changes.

New Contract Language:

This contract identified as _____ is created for administrative purposes only and is intended to change the name of the vendor identified in contract no. _____ from Vendor A (V/C account 0000*) to Vendor B (V/C account 0000*). System limitations require that this contract be given a new number moving forward but the original contract, including all terms, conditions, prices, specifications, and change orders contained therein remain in full force and effect.

Effective date of change _____
Old procurement folder: _____
No other changes.

When Only a Change Order is Required (No Reissue):

Change Order XX

Change Order No. XX is issued for administrative purposes only and is intended to change the name of the vendor from Vendor A (V/C account 0000*) to Vendor B (V/C account 0000*). The original contract, including all terms, conditions, prices, specifications, and change orders contained therein remain in full force and effect.

Effective date of change _____
No other changes.

When Assignment Occurs (Taxpayer Identification Number Changes):

Original Contract Language:

Change Order XX

Change Order No. XX is issued to assign the contract from Vendor A (V/C account 0000*) to Vendor B (V/C account 0000*). System limitations require that this contract be given a new number moving forward but the original contract, including all terms, conditions, prices, specifications, and change orders contained therein remain in full force and effect.

Effective date of change _____
New procurement folder: _____
No other changes.

New Contract Language:

This contract identified as _____ is created for administrative purposes only and is intended to assign contract no. _____ from Vendor A (V/C account

0000*) to Vendor B (V/C account 0000*). System limitations require that this contract be given a new number moving forward but the original contract, including all terms, conditions, prices, specifications, and change orders contained therein remain in full force and effect.

Effective date of change _____

Old procurement folder: _____

No other changes.

APPENDIX E: AGENCY PROCESS CHECKLISTS

The Purchasing Division maintains process checklists for agency use to ensure compliance with laws, rules, and procedures when making a purchase. These checklists are published on the Purchasing Division's Forms webpage at www.state.wv.us/admin/purchase/handbook/checklist.html as Word documents, which can be modified to meet the agency's unique needs and internal requirements.

The checklists maintained on the Purchasing Division's website include the following:

- A. Request for quotations
- B. Change orders
- C. Direct awards
- D. Central delivery orders
- E. Emergency purchases
- F. Expressions of interest for projects exceeding \$250,000
- G. Expressions of interest for projects under \$250,000
- H. Requests for proposals

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.

APPENDIX G: A GUIDE TO wvOASIS DOCUMENT SUBMISSION: HEADER DOCUMENTS

Revised: 3/25/2019

The West Virginia Purchasing Division developed a guide for state agency procurement officers when uploading documents to the Header within wvOASIS. This information can be found below:

Solicitation Request (i.e. CRQS/CRQM):

The Header needs to contain all documentation relevant to the approval and ultimate advertisement of the solicitation.

This documentation includes:

1. Purchasing Master Terms and Conditions - **(current and editable version)**
2. Specifications in Word format using appropriate templates
3. Applicable exhibits, such as pricing pages and/or project manuals for construction projects
4. Suggested vendors listed in the Vendor List or Free Form Vendor fields
5. Any applicable approvals, such as approval from the Attorney General's Office, Chief Technology Officer/IS&C, Capitol Building Commission, Surplus Property, and/or the Statewide Interoperability Executive Committee

Change Order:

The Header needs to contain all documentation relevant to the action of the change order. All documents should be added as a single file to the Header and labeled as **Change Order "XX."**

This documentation includes:

1. Renewal – signed letter from vendor agreeing to the renewal
2. Extension – signed letter from the vendor noting the dates of extension and reason
3. Notice to Proceed – signed letter and documentation from the agency establishing the start and end dates for the contract

4. Increase – signed letter from vendor regarding need for increase, effective date of change, invoices, spreadsheets, etc. to support the change
5. Decrease – signed letter from vendor stating all invoices have been paid and breakdown of costs to show original contract, effective date for change and any price changes to the contract

Addendum:

State agency procurement officers should be advised of the following related to documentation submission for addenda:

1. Any relevant information/documentation to the addendum should be submitted in an email to the assigned Purchasing Division buyer via a Word document, when possible. This allows the Purchasing Division to revise the responses or add additional information.
2. Any exhibits, drawings, revisions or any other documentation relevant to the addendum should be submitted to the assigned Purchasing Division buyer by email.

Central Delivery Order (CDO):

The Header needs to contain all documentation relevant to the action of the Central Delivery Order (CDO).

Examples include:

1. Motor Vehicle (MV or MVTRUCK) Statewide Contract
 - a. Completed and signed copies of the Fleet Management Vehicle Request Form
 - b. Pricing pages from the Central Master Agreement (CMA) showing the contract price of the vehicle
2. WVARF Janitorial (WVRFJAN) Statewide Contract
 - a. WVARF Service Agreement containing dates of service, location, and pricing executed by WVARF and the agency
 - b. Commodity or Service Fair Market Price Form
 - c. Any applicable exhibits
3. Security Guard Services (SECSVS) Statewide Contract
 - a. Security Guard Request Form – completed in its entirety

Other Helpful Information:

Below are some additional tips that state agency procurement officers may find helpful when processing documentation within wvOASIS:

1. Make sure the correct statewide contract is referenced on the Reference Tab.
2. Make sure the dates of service are correct on the commodity line(s).
3. Any documents from the vendor to be added to the Header, such as quotes, invoices or agreements, must include the vendor's signature.
4. Pricing page(s) from the original contract should be included to verify pricing from the master contract. Pricing pages will not need to be provided if commodity lines were used from the master contract. The Auditor's Office will need this pricing information to verify and pay per the awarded contract.
5. Effective 10/31/2018, state agencies seeking any loan or extension of credit from a bank or other financial institution must provide notice to, and receive approval from, the Governor's Office.

Additionally, below are some examples of language that may be included in extended descriptions:

1. MV Example:

Equipment Contract Release Order
SWC #MV16E
Class 11 Large Pick Up Regular Cab
Dodge Ram 2500 DJ7L62
Color: Silver
Fuel: Gas

2. WVARFJAN Example:

State Contract Release Order
SWC: WVRFJAN14
To provide janitorial services for the West Virginia Department Administration, General Services Division, Bldg. #1, per the attached documentation.
Dates of Service: 07/01/2017 through 06/30/2018

3. Security Guard Example:

Security Guard III: 1
Hours per Day: 10
Days per week: 5 (excluding state holidays)

Shift Hours: 7:00 AM - 5:00 PM
Paid half-hour lunch

Dates of Service: 10/6/2018 through 10/5/2019

Job Location: BUILDING 55
130 Stratton Street Logan, WV 25601