



WEST VIRGINIA PURCHASING DIVISION

# PROCEDURES HANDBOOK

## SECTION 9: EXEMPT PURCHASES

### **West Virginia Purchasing Division**

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

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

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

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

*The Director shall:*

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

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

Purchasing Division approval is not required for these Exempt List procurements, unless specifically noted. Vendor registration and all other requirements for the dollar amount of the purchase are mandatory for contracts for these commodities and services; however, under the authority granted by the Director of Purchasing in the ***West Virginia Code of State Rules*** 148-1-4.17, the director has determined that waiving the vendor registration fee for all vendors providing commodities or services under Section 9 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.

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

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

1. **Advertising:** This exemption includes any advertisement placed directly with newspapers, trade magazines, internet publications, social media or bulletin boards. This exemption includes broadcast television and radio advertisements placed directly with the broadcaster or publisher. Additionally, this exemption includes participation fees for trade shows, conferences or conventions. This exemption does not include any indirect placement, promotional items or advertising consultant services.
2. **Artwork and Historical Items:** This exemption includes the purchase of and service to artwork and historical items, i.e. restoring governors' portraits, refurbishing chandeliers, etc. An agency attempting to procure commodities and services under this exemption must obtain written approval from the Purchasing Division prior to making any purchase.
3. **Attorneys and Law Firms:** This exemption includes hiring attorneys and law firms in an official attorney-client capacity. Nothing in this exemption eliminates the approval or oversight residing within the Attorney General's office.
4. **Aviation Fuel:** This exemption includes the purchase of aviation fuel, but excludes bulk purchases for delivery to state dispensing stations.
5. **Governmental Agencies:** This exemption only includes: 1) contracts between governmental agencies and spending units when a state or federal law requires the commodity or service be obtained from the governmental agency (any contract or purchase order issued must cite the law and maintain a copy on file); and 2) regulatory fees legally imposed by government agencies.
6. **Court Ordered Placements:** This exemption includes when placing children at various educational and/or behavioral centers when ordered by West Virginia courts or the West Virginia Department of Health and Human Resources.

7. **Entertainers:** This exemption includes individuals and/or groups contracted at the request of the state to entertain or to assist in the production of entertainment.
8. **Hospitality:** This exemption includes expenses for food, beverages, facility rental and entertainment **relating to conducting state business.**
9. **Media License Fees:** This exemption includes program license fees for radio or television.
10. **Medical Fees:** Included in this exemption are fees for medical services (behavioral and physical) from individual doctors, dentists, clinics, hospitals, laboratory testing facilities, audiologists, county medical examiners, physical and occupational therapists, behavioral counseling and evaluations, etc. for individual patients, inmates, students and clients where the state is responsible for payment for this one-time service. This exemption also includes programs designed for low income / uninsured patient care on an individual basis provided that the program is open to all service providers. Also, included in this exemption is body transportation for corpses and indigent burial expenses and sole source medical and psychological consultants for the purpose of determining Federal Social Security Administration Disability by the Disability Determination Services of the WV Division of Rehabilitation Services. Also included are medical fees for the purposes of determining vocational rehabilitation needs of clients of the Division of Rehabilitation Services. This exemption does not include inmate health care management, hospital management, consulting services or agreements to provide services for groups of patients, inmates, students or clients, etc. for state agencies.
11. **Postage:** This exemption includes stamps and other non-competitive mailing services from the United States Postal Service, but this does not include services available from statewide contracts.
12. **Professional Association Dues:** This exemption includes membership fees or association dues for professional associations that perform a licensing, certification or accreditation function for state employees or agencies (i.e., West Virginia State Bar, West Virginia Board of Accountancy, etc.).
13. **Railroad Car Hire Fees:** This exemption includes national association fees required from all railroads to monitor the location and use of railroad cars for the owners.
14. **Resale Items:** This exemption includes items that are acquired specifically for resale by the state agency to the general public that should be selected on the basis of quality and delivery constraints due to customer demand.

15. **Investigative Services; Subject Matter Experts and Witnesses for Administrative Hearing and Legal Proceedings:** This exemption includes obtaining investigative services and the services of a subject matter expert or witness. This exemption does not include agency consulting services or former employees retained by their agency or hired by another agency.
16. **Subscriptions and publications:** This exemption includes newspapers, textbooks and publications – electronic and hard copy – purchased directly from the publisher.
17. **Training Activities:** This exemption includes lecturers, honorariums, copyrighted test and training materials, test monitors/examination proctors, registration fees, etc., where competition is not available.
18. **Utilities Regulated by the Public Service Commission:** This exemption includes natural gas, water, sewage, electric, telephone, garbage, cable television service, connection fees, trash hauling and dumpster rental [if only one **PSC** approved hauler is in the area]. This exemption does not include propane gas, coal and satellite television, all of which must be competitively bid.
19. **Department of Agriculture Exemptions:** Approved exemptions for the West Virginia Department of Agriculture include purchase of livestock for sale to state institutions and the acquisition of bees for repopulation purposes.
20. **Court Ordered Payments:** This exemption includes court order payment. A copy of the court order must be maintained in the agency file, unless sealed and restricted by the respective judge. If the order is sealed and restricted, an explanation must be maintained in the agency file referencing the court order. Court ordered payments are exempt from the vendor registration requirement.
21. **Intellectual Property:** This exemption includes the West Virginia Lottery's purchase of licenses to intellectual property, such as copyrighted or trademarked material, for creative use in the development of lottery products, promotions, or advertising when the license can be obtained from only one source. This exemption in no way applies to software.
22. **Emergency Services (Non-Construction and Non-Architectural/Engineering "A/E"):** This exemption includes non-construction and non-A/E services that must be procured on an emergency basis when (1) formal bidding would cause the government to lose the ability to perform some critical function for itself or citizens of the State of West Virginia or (2) formal bidding would delay a response to a declared state of emergency. Any use of this exemption must be approved by the Purchasing Division Director in advance in accordance with the procedures for commodities outlined in **West Virginia Code § 5A-3-15**, related rules, and the **Purchasing Division Procedures Handbook**. (For more information on emergencies related to construction or A/E services, please

review the applicable law and Section 4 of the **Purchasing Division Procedures Handbook**).

EFFECTIVE 7/1/15