



MARY JANE PICKENS  
ACTING CABINET SECRETARY

STATE OF WEST VIRGINIA  
DEPARTMENT OF ADMINISTRATION  
PURCHASING DIVISION  
2019 WASHINGTON STREET, EAST  
CHARLESTON, WEST VIRGINIA 25305-0130  
October 20, 2021

W. MICHAEL SHEETS  
DIRECTOR

Linda Lyter, Executive Director  
Board of Funeral Service Examiners  
179 Summers Street, Suite 319  
Charleston, West Virginia 25301

Dear Executive Director, Linda Lyter:

This is to transmit the final copy of the Purchasing Review of the West Virginia Board of Funeral Service Examiners.

During the final review of the report and associated information, it was discovered the Board has the picture and biography of John McDowell, a consultant, posted to their web site. We believe that this may be a violation of the Ethics Act prohibition against using a public position for the private gain of another and suggest that you contact the WV Ethics Commission for their advice on the matter.

A preliminary copy of this report was submitted to your agency for comment. Where significant comments were returned by your agency, we have included those as part of this final review report.

A Corrective Action Plan Request will follow requesting your response to all the compliance issues identified in this report.

Thank you for your cooperation and that of your staff during this review.

Respectfully,

A handwritten signature in blue ink, appearing to read "W. Michael Sheets".

W. Michael Sheets, CPPO  
Director  
West Virginia Purchasing Division

Enclosure

cc: Grady Bowyer, Office Manager, West Virginia Board of Funeral Service Examiners

# WV PURCHASING DIVISION INSPECTION REPORT

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## *BOARDS & COMMISSIONS*

*West Virginia Board of Funeral Service Examiners*

FISCAL YEAR  
2021

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## **INTRODUCTION**

The Purchasing Division is broadly charged with the development and oversight of the procurement functions of state spending units under its authority. That authority is found in Chapter 5A, Article 3 of the West Virginia Code, and Title 148, Series 1, of the West Virginia Code of State Rules. That mandate requires that the Purchasing Division “appoint inspectors to review and audit spending unit requests and purchases and other transactions and performance.” W. Va. CSR § 148-1-4.14. The Purchasing Division’s Inspection Services Unit performs this function by regularly conducting inspections of all spending units subject to Purchasing Division oversight.

The Purchasing Division Inspection Services Unit conducted a remote inspection of the West Virginia Board of Funeral Service Examiners for the period of July 1, 2020, through June 30, 2021. Notice of the inspection was provided on August 5, 2021, and the inspection commenced on August 19, 2021. The results of the inspection are contained within this report.

## SCOPE

The scope of the inspection was focused on determining whether the West Virginia Board of Funeral Service Examiners' procurement transactions for the period of July 1, 2020, through June 30, 2021, were, in all material respects, in compliance with applicable provisions of the West Virginia Code, the Code of State Rules and the Purchasing Division Procedures Handbook in effect during that time period.

Inspectors utilized spending unit payment transactions to identify potential violations with a primary focus on those transactions processed at the spending unit level without Purchasing Division involvement. Those transactions included, but were not limited to, agency delegated procurements, Section 9 procurements, agency delivery orders, General Accounting Expenditure ("GAX") payments, and P-Card payments. Notwithstanding this general focus, however, Inspectors can review any transaction or internal procurement operating procedures that they deem relevant.

As noted above, the transaction review was conducted to ensure compliance with applicable provisions of the West Virginia Code, the Code of State Rules and the Purchasing Division Procedures Handbook. More specifically, the scope of the inspection included, but was not limited to, an examination to determine if any of the following infractions had been committed:

- (1) Failure to bid at central level (Stringing)[Required to be reported to the Legislature twice annually]
- (2) Failure to bid at delegated level,
- (3) Statewide contract not utilized,
- (4) Vendor registration unverified and wrong vendor fee exemption code utilized
- (5) Failure to verify compliance checks
  - a. Unemployment
  - b. Workers' compensation
  - c. Vendor status with Secretary of State's office
  - d. Debarred vendor list
- (6) Failure to include notarized Purchasing Affidavit,
- (7) Failure to issue wvOASIS procurement award document,
- (8) Lack of compliance with fixed asset requirements (asset tags),
- (9) Failure to include Certification of Non-Conflict of Interest form,
- (10) Miscellaneous Issues
  - a. Improper award (Unjustified award to other than lowest responsible bidder meeting specifications),
  - b. Leases exceeding six months not processed centrally
  - c. Other as needed

## SUMMARY

During the period under review, the spending unit processed 164 procurement transactions with a value of \$39,944.49. These amounts are approximate, subject to reporting limitations from wvOASIS (including possible data entry error) and errors caused by elimination of duplicate results. Of those transactions, the Inspector selected 10 for review which represents approximately 4% of the total. This inspection of 10 selected transactions yielded 15 findings associated with 7 of the selected transactions. This means that approximately 70% of the transactions reviewed had one or more instances of noncompliance with applicable provisions of the West Virginia Code, the Code of State Rules and the Purchasing Division Procedures Handbook. The findings are further illustrated in the attached Findings Grid and Grading Sheet.

The inspection also revealed that on 4 occasions, the spending unit failed to obtain competitive bids as required by the applicable dollar level of spend. That number is comprised of 0 instances of failing to bid at the central level (also known as stringing), and 4 instances of failing to bid at the delegated level. Any instances of failure to bid at the central level will be reported to the Legislature as required by the West Virginia Code.

Based on the findings contained in this report, the Purchasing Division recommends the spending unit work to improve any areas of noncompliance. Given that the agency received a score of 43.5% F on the inspection, the first step must be the completion of a Corrective Action Plan. A request for which will be provided to you after this inspection is finalized.

## Grading Sheet

### West Virginia Board of Funeral Service Examiners FY2021 Statistics

#### Conformance Rate & Score (100 Points Possible)

<b>Transactions Reviewed</b>	10	<b>Points Possible</b>	100
<b>Non-Conformance Rate (See Summary Page)</b>	70.0%	<b>Points Deducted</b>	70
<b>Conformance Rate</b>	30.0%	<b>Points Received (Conformance Score)</b>	30

#### Findings Summary & Score (100 Points Possible)

Finding Category	Number of Findings	Finding Percentage	Points possible	Points Received (Finding Score)
Failure to Bid at Central Level (Stringing)	0	0.00%	30	30
Failure to Bid at Delegated Level	4	40.00%	20	0
Statewide Contract not utilized	1	10.00%	15	9
Vendor Registration unverified/wrong fee code	1	10.00%	5	3
Failure to verify Compliance Checks	2	20.00%	5	1
Purchasing Affidavit Not Included	1	10.00%	5	3
Wvoasis Award Document Not Issued	4	40.00%	5	0
Asset Tag/Number not affixed	1	10.00%	5	3
Certification of Non-Conflict of Interest not included	0	0.00%	5	5
Miscellaneous Issue	1	10.00%	5	3
<b>Total</b>	<b>15</b>		<b>100</b>	<b>57</b>

#### Overall Agency Score

Conformance & Findings Average	Overall Letter Grade
<b>43.5%</b>	<b>F</b>

#### Scale (See Weight Application\*)

90 -- 100 = A
80 -- 89.9 = B
70 -- 79.9 = C
60 -- 69.9 = D
<60 = F

The Finding Summary and Number of Findings does not directly correlate with the Transactions Reviewed and Non-Conformance Rate because each transaction can yield multiple findings, and findings like stringing can include multiple transactions in a single finding.

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## **EXHIBIT A: DETAILED INSPECTION FINDINGS**

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### **Issue 1: Failure to bid at central level (Stringing)**

**Authority:** W. Va. Code § 5A-3-10; Procedures Handbook Section 6

**Explanation:** State law mandates that the Purchasing Division competitively bid for the purchase of commodities and services estimated to exceed twenty-five thousand dollars. The law also prohibits a spending unit from issuing a series of requisitions or divide or plan procurements to circumvent this twenty-five thousand dollar threshold. The transactions listed below violated this legal mandate and will be reported to the West Virginia Legislature as required by law.

**Transactions in Violation: (0 Instances)**

**Purchasing Division Recommendation:**

1. The Purchasing Division recommends that the spending unit establish central contracts through the Purchasing Division for each of the items included above and any other commodities or services that will exceed \$25,000 in a rolling 12 month period.
2. The Purchasing Division recommends that the spending unit utilize wvOASIS to create reports that will allow the spending unit to track spend and determine when spending is closing to exceeding the \$25,000 limit.
3. The Purchasing Division recommends that the spending unit forecast future needs for its commodities and services to determine in advance what should be procured at the central level.
4. The Purchasing Division recommends that the spending unit's procurement officer participate in training on this topic offered by the Purchasing Division and ensure that all procurement staff understand how to comply with this requirement moving forward.



**Issue 2: Failure to bid at delegated level**

**Authority:** W.Va. Code § 5A-3-11(a); W.Va. CSR § 148-1-7.2; Procedures Handbook Section 5

**Explanation:** The Purchasing Division has established competitive bidding requirements that spending units must follow when procuring commodities and services below \$25,000.01, and above \$2,500.00. For those transactions listed below, the spending unit has failed to obtain and document competitive bids as required.

**Transactions in Violation: (4 Instances)**

<u>Date</u>	<u>Description</u>	<u>Vendor</u>	<u>Amount</u>	<u>Invoice</u>
11/10/2020	Exam Development/Publish	Funeral Exm	\$2,050.00	PRCC,PC21286733
2/28/2021	National Board Exams	Intl Conference of Funeral Svc Exam Bds	\$560.00	GAX,2100075667
6/30/2021	John C McDowell LLC	Consulting Fees	\$520.00	GAX,2200002820

**Additional Detail:** Although the individual transactions listed above fall below the verbal bid limit, the agency issued WV-48 agreements to the vendors exceeding the \$2,500 threshold.

<u>Date</u>	<u>Description</u>	<u>Vendor</u>	<u>Amount</u>	<u>Invoice</u>
5/26/2021	Paypal LogicalOper	Remote Monitoring/Managing	\$235.00	PRCC,PC21299504

**Additional Detail:** Although the individual transaction listed above falls below \$2,500.01, the agency aggregate spend for that vendor exceeded the verbal bid threshold.

**Purchasing Division Recommendation:**

1. The Purchasing Division recommends that the spending unit follow the requirements associated with each delegated spending limit.
2. The Purchasing Division recommends that the spending unit utilize wvOASIS to create reports that will allow the spending unit to track spend and determine when spending is closing to exceeding spending limits.
3. The Purchasing Division recommends that the spending unit forecast future needs for its commodities and services to determine in advance what should be competitively bid at delegated verbal and written bid levels.
4. The Purchasing Division recommends that the spending unit's procurement officer

participate in training on this topic offered by the Purchasing Division and ensure that all procurement staff understand how to comply with this requirement moving forward.

**Issue 3: Statewide Contract Not Utilized**

**Authority:** W. Va. CSR § 148-1-7.4.c.; Procedures Handbook Section 3.6.2

**Explanation:** The Purchasing Division has authority to establish contracts at a statewide level to secure economies of scale that would not be possible on an agency by agency basis. Once established, the Purchasing Division can mandate that spending units utilize those statewide contracts. For the transactions listed below, the spending unit has obtained the commodity or service in question outside of an available statewide contract without a valid waiver.

**Transactions in Violation: (1 Instance)**

<u>Date</u>	<u>Description</u>	<u>Vendor</u>	<u>Amount</u>	<u>Invoice</u>	<u>SW Contract</u>
7/9/2020	Cardstock Paper	Paper Direct	\$249.00	PRCC,PC21002058	<u>OFFICE</u>

**Additional Detail:** Applicable items were not purchased from the Statewide Contract and no waiver from the Purchasing Division was present.

**Purchasing Division Recommendation:**

1. The Purchasing Division recommends that the spending unit personnel become familiar with what is available from statewide contracts and either procure those commodities and services from statewide contracts or obtain a waiver from the Purchasing Division.
2. The Purchasing Division recommends that the spending unit's procurement officer participate in training on this topic offered by the Purchasing Division and ensure that all procurement staff understand how to comply with this requirement moving forward.
3. Agencies should issue a delivery order to obtain goods or services from central open-end contracts unless the West Virginia State Auditor's Office has approved an alternate ordering and payment method.
4. The Purchasing Division recommends that the spending unit's procurement officer participate in training on this topic offered by the Purchasing Division and ensure that all procurement staff understand how to comply with this requirement moving forward.

**Issue 4: Vendor Registration Unverified/Wrong Vendor Fee Exemption Code Utilized**

**Authority:** W. Va. CSR § 148-1-6.1; Procedures Handbook Section 4

**Explanation:** The agency must verify that the vendor is registered, and the registration fee paid, if applicable. The registration process includes having the proper disclosure of information in the wvOASIS vendor/customer account. Certain vendors are exempted from paying the vendor registration fee mandated by the authority referenced above. wvOASIS has created fee exemption codes that allow the spending unit to designate the appropriate exemption code on a transactional basis.

**Transactions in Violation: (1 Instance)**

<u>Date</u>	<u>Description</u>	<u>Vendor</u>	<u>Amount</u>	<u>Invoice</u>
6/30/2021	Consulting Fees	John C McDowell LLC	\$520.00	GAX,2200002820

**Additional Detail:** Although the transaction is below bid limits, the agreement is for \$15,000.00 and should have contained documentation for that dollar amount. Vendor Registration verification must be obtained and kept in the file at the time of the transaction.

**Purchasing Division Recommendation:**

1. The Purchase Division recommends that the spending unit only utilize vendor fee exemption codes for transactions that would permit a vendor to avoid paying the vendor registration fee.
2. The Purchasing Division recommends that the spending unit's procurement officer participate in training on this topic offered by the Purchasing Division and ensure that all procurement staff understand how to comply with this requirement moving forward.
3. The Purchasing Division recommends that the spending unit contact the Vendor Registration section within the Purchasing Division if there is uncertainty about when and how to apply a vendor fee exemption code.

**Issue 5: Failure to Verify Compliance Checks**

**(Workers Comp, Unemployment, Sec. of State, Debarment)**

**Authority:** W. Va. CSR § 148-1-6.1.e.; Procedures Handbook Section 5.3.1.6.

**Explanation:** The authority cited above requires that a vendor be licensed and in good standing in accordance with all state and local laws and requirements by any state or local agency of West Virginia, including, but not limited to, the West Virginia Secretary of State's Office, the West Virginia Tax Department, West Virginia Insurance Commission, or other state agencies or political subdivisions prior to being awarded a contract. The mandated compliance checks were not included in the transactions listed below.

**Transactions in Violation: (2 Instances)**

<u>Date</u>	<u>Description</u>	<u>Vendor</u>	<u>Amount</u>	<u>Invoice</u>
6/30/2021	Consulting Fees	John C McDowell LLC	\$520.00	GAX,2200002820
5/26/2021	Paypal LogicalOper	Remote Monitoring/Managing	\$235.00	PRCC,PC21299504

**Additional Detail:** Although the above transactions fall below the limit requiring Verification Searches to be present, there were WV-48 agreements present that exceeded the amount. Compliance Checks must be verified and kept in the file at the time of the transaction.

**Purchasing Division Recommendation:**

1. The Purchasing Division recommends that the spending unit perform all compliance checks mandated by the Handbook and properly document those compliance checks in the contract file.
2. The Purchasing Division recommends that the spending unit's procurement officer participate in training on this topic offered by the Purchasing Division and ensure that all procurement staff understand how to comply with this requirement moving forward.

**Issue 6: Purchasing Affidavit Not Included**

**Authority:** W. Va. Code §§ 5A-3-10a and 5-22-1; Procedures Handbook Section 5.3.1.6.

**Explanation:** West Virginia law has several restrictions against awarding a contract to a vendor that owes a debt to the State or its political subdivisions. The Purchasing Affidavit must be signed by the vendor prior to contract award to obtain assurance that the vendor is in compliance with the statutory mandates.

**Transactions in Violation: (1 Instance)**

<u>Date</u>	<u>Description</u>	<u>Vendor</u>	<u>Amount</u>	<u>Invoice</u>
6/30/2021	Consulting Fees	John C McDowell LLC	\$520.00	GAX,2200002820

**Additional Detail:** Although the transaction is below the limit requiring a Purchasing Affidavit, the agreement is for \$15,000.00, and should have contained documentation for that dollar amount.

**Purchasing Division Recommendation:**

1. The Purchasing Division recommends that the spending unit obtain a properly completed Purchasing Affidavit and maintain a copy in the contract file for all transactions exceeding \$10,000.00 (the threshold for obtaining written bids).
2. The Purchasing Division recommends that the spending unit's procurement officer participate in training on this topic offered by the Purchasing Division and ensure that all procurement staff understand how to comply with this requirement moving forward.

**Issue 7: wvOASIS Award Document Not Issued**

**Authority:** Procedures Handbook Section 5.2.2

**Explanation:** The Purchasing Division Procedures Handbook requires that a procurement award document be issued for all purchases exceeding \$2,500 in value. This requirement ensures that the transaction is recorded in wvOASIS in a way that allows it to be easily identified and tracked and helps to prevent spending in violation of procurement laws, rules, and procedures.

**Transactions in Violation: (4 Instances)**

<u>Date</u>	<u>Description</u>	<u>Vendor</u>	<u>Amount</u>	<u>Invoice</u>
11/10/2020	Exam Development/Publish	Funeral Exm	\$2,050.00	PRCC,PC21286733
2/28/2021	National Board Exams	Intl Conference of Funeral Svc Exam Bds	\$560.00	GAX,2100075667
6/30/2021	John C McDowell LLC	Consulting Fees	\$520.00	GAX,2200002820

**Additional Detail:** Although the transactions are below \$2,500.01, the agreements exceed the \$2,500.00 threshold.

<u>Date</u>	<u>Description</u>	<u>Vendor</u>	<u>Amount</u>	<u>Invoice</u>
5/26/2021	Paypal LogicalOper	Remote Monitoring/Managing	\$235.00	PRCC,PC21299504

**Additional Detail:** Although the transaction is below \$2,500.01, the agency aggregate spend for that vendor exceeded the threshold.

**Purchasing Division Recommendation:**

1. The Purchasing Division recommends that the spending unit issue a purchase order through wvOASIS and maintain a copy in the contract file for all transactions exceeding \$2,500.00.
2. The Purchasing Division recommends that the spending unit's procurement officer participate in training on this topic offered by the Purchasing Division and ensure that all procurement staff understand how to comply with this requirement moving forward.

**Issue 8: Asset Tag Not Affixed**

**Authority:** W. Va. Code § 5A-3-34; Surplus Property Operations Manual, Part II, Section 1.4

**Explanation:** The Surplus Property Operations Manual requires that all reportable assets must have a numbered identification tag affixed to the asset. Agencies are responsible for obtaining and placing the proper tags on the assets. This method of tagging assets helps to easily identify state assets during physical inspection and to guard against asset theft.

**Transactions in Violation: (1 Instance)**

<u>Date</u>	<u>Description</u>	<u>Vendor</u>	<u>Amount</u>	<u>Invoice</u>
10/20/2020	Computers	Dell Marketing LP	\$1,059.00	PRC,2100023971

**Purchasing Division Recommendation:**

1. The Purchasing Division recommends that the spending unit obtain a properly affix asset tags to all reportable assets. In conjunction with this, the spending unit must maintain accurate inventory records in wvOASIS.
2. The Purchasing Division recommends that the spending unit's procurement officer participate in training on this topic offered by the Purchasing Division and ensure that all procurement staff understand how to comply with this requirement moving forward.



**Issue 9: Cert. of Non-Conflict Not Included**

**Authority:** W. Va. Code §§ 5A-3-31 and 6B-2-5; Procedures Handbook Section 3.7.7.

**Explanation:** The Purchasing Division requires all evaluators, advisors, and the agency procurement officer, despite the type of transaction, to sign a Certification of Non-Conflict of Interest form prior to contract award to ensure compliance with W. Va. Code § 5A-3-31 and § 6B-2-5 by affirming that they do not have a conflict of interest and did not communicate with the vendor during the solicitation, evaluation, and award period.

**Transactions in Violation: (0 Instances)**

**Purchasing Division Recommendation:**

1. The Purchasing Division recommends that the spending unit include a properly completed Certification of Non-Conflict of Interest form prior to contract award for all transactions exceeding \$2,500.00 and maintain a copy in the contract file.
2. The Purchasing Division recommends that the spending unit's procurement officer participate in training on this topic offered by the Purchasing Division and ensure that all procurement staff understand how to comply with this requirement moving forward.

**Issue 10: Miscellaneous (Office of Technology Approval)**

**Authority:** Procedures Handbook Section 7.2

**Explanation:** The Purchasing Division’s Procedures Handbook states All telecommunications systems, upgrades, and expansions, regardless of cost, must be approved prior to bidding by the Information Services and Communications Division. All telecommunications purchases must be approved by the Chief Technology Officer. This policy is vitally important to maintain the integrity and compatibility of the state’s massive voice and data telecommunications system.

**Transactions in Violation: (1 Instance)**

<u>Date</u>	<u>Description</u>	<u>Vendor</u>	<u>Amount</u>	<u>Invoice</u>
9/4/2020	Windows software	Microsoft Store	\$105.93	PRCC,PC21031203

**Purchasing Division Recommendation:**

1. The Purchasing Division recommends that the agency apply for and receive Office of Technology approval prior to the purchase of any telecommunication products. Failure to do so could cause issues with the state’s voice and data telecommunications system. Approval memo must be maintained and kept in the procurement file.
2. The Purchasing Division recommends that the agency 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>.
3. The Purchasing Division recommends that the spending unit’s procurement officer participate in training on the topics listed herein that are offered by the Purchasing Division and ensure that all procurement staff understand how to comply with this requirement moving forward.

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## EXHIBIT B: COMPARISON WITH PRIOR INSPECTIONS

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A previous inspection of the West Virginia Board of Funeral Service Examiners was conducted in August of 2019. The review consisted of 7 selected transactions from an approximate 110 total transactions from July 1, 2017, through June 30, 2018. This review resulted in 9 findings associated with 3 of the selected transactions. This indicated that 43% of the transactions reviewed during the inspection had one or more problems of potential nonconformity with Purchasing Division laws, rules, and/or regulations. When comparing the statistics from FY 2018 to the current FY 2021 inspection, below is a summary of the issues identified during the FY 2018 inspection, as compared to the findings from the current inspection.

<b>Summary of Problem Transactions</b>		
<b><i>Findings</i></b>	<b><i>FY 2018</i></b>	<b><i>FY 2021</i></b>
Failure to Bid at Central Level (Stringing)	0	0
Failure to Bid at Delegated Level	1	4
Statewide Contract not utilized	1	1
Vendor Registration unverified/wrong Fee Code	2	1
Failure to verify Compliance Checks	1	2
Purchasing Affidavit not included	0	1
wvOasis Award Document not issued	2	4
Asset Tag/Number not affixed	0	1
Cert. of Non-Conflict of Interest not included	2	0
Miscellaneous Issue	0	1
<b><i>Total</i></b>	<b>9</b>	<b>15</b>

There are multiple training resources available from the Purchasing Division in-house training program, as well as, through on-line training modules. These training resources would assist in educating procurement staff in purchasing procedures/requirements. Additional information can be obtained by contacting Samantha Knapp, Staff Development Specialist, at (304) 558-7022 or by visiting the Purchasing Division's website <http://www.state.wv.us/admin/purchase/training/default.html>.

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## **EXHIBIT C: AGENCY TRAINING REPORT**

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**Importance of Training:** The Purchasing Division has found that training in procurement significantly improves the ability of the spending unit to comply with applicable provisions of the West Virginia Code, the Code of State Rules and the Purchasing Division Procedures Handbook.

**Statutory Requirements:**

- W. Va. Code § 5A-3-60 requires that 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.
- W. Va. CSR § 148-1-3.2 mandates that all designated procurement officers receive 10 hours of procurement training annually.

**Available Training:** The Purchasing Division has implemented a very robust training program that is available to all procurement officers subject to Purchasing Division oversight. That training includes:

- Online Modules
- Webinars
- Live Training Sessions
- Annual conferences
- Basic and Advanced Procurement Certification Programs
- Agency Specific Targeted Training

**Training:** The Purchasing Division records indicate that during the inspection period the following individuals within the spending unit have obtained training at our annual Purchasing Conference as shown below:

**There were no attendees from the Board of Funeral Service Examiners.**

**Purchasing Division Recommendations:**

The Purchasing Division recommends that all procurement officers, regardless of their status as designated or undesignated, participate in at least 10 hours of training annually and that all officials subject to the training requirements in W. Va. Code § 5A-3-60 take the required 2 hours of Purchasing and P-Card Training.

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**EXHIBIT D: AGENCY COMMENTS TO THE DRAFT REPORT**

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STATE OF WEST VIRGINIA  
West Virginia Board of Funeral Service Examiners  
179 Summers Street, Suite 319  
Charleston, WV 25301

**October 12, 2021**

Greg Clay, State Purchasing Contracts Manager  
State Purchasing Contracts Manager  
Department of Administration  
Purchasing Division  
2019 Washington Street, East  
Charleston, WV 25305

Dear Mr. Clay:

The comments to the Purchasing Audit are as follows:

**ISSUE # 2 Exam Development/Publish**

11/10/2020 - The International Conference of Funeral Service Examiners (hereinafter, The Conference) administers the WV Laws, Rules and Regulations examination (WV LRR) for the Board. This examination is outdated and has been outdated for many years. The Board is in the process of revising the questions and answers for the WV LRR examination. The total cost of the project is \$ 4,100.00. Due to financial constraints, the Board choose to pay one-half of the amount during FY 2021 and the remainder in FY 2022. The Conference agreed to this proposal and the remaining amount will be billed once the project is complete. It is impossible for the Board staff to conduct competitive bidding requirements in relation to this vendor due to it being the sole organization/vendor in the nation that administers the national and state funeral service examiners testing for funeral directors and embalmers. Cannot bid competitively when it is the only source available. In our opinion, this violation is unfair and should be removed from the inspection report due to this extenuating fact.

**ISSUE # 2 National Board Exams**

2/28/2020 - As stated above, The Conference is the sole organization/vendor that offers examinations for individuals to demonstrate knowledge and expertise in the funeral service profession. Applicants must pass the National Arts & Sciences exams and the WV LRR exam prior to applying for a state license and in order to meet the requirements for licensure. The Conference invoices the Board \$140.00 per candidate for administering the examination. It is

stated in our board rules the applicant shall submit payment for the state exam to the Board. We, in turn, reimburse The Conference \$140.00 per examination administered. Therefore again, it is impossible for Board staff to conduct the competitive bidding requirement when The Conference is the sole source entity in the US, Canada & Nova Scotia This is cost is a pass-through cost for the Board. The Conference is referenced in the Board's Series 1 Rules under Section 16-1-16, Fees and Subsection 16.11.3 in relation to the payment for the National Board Exams. Again, in our opinion, this violation is unfair and should be removed from the inspection report due to this extenuating fact

## **ISSUE # 2, 4, 5, 6 & 7 John C. McDowell, LLC**

### **ISSUE 2: Failure to Bid at Delegate Level**

6/30/2021 - There was a complete overhaul of the staff of this office in September 2019. New staff was hired without any prior experience of the funeral service profession. The Executive Director also serves as the Executive Director of Massage Therapy and Acupuncture Boards. The Funeral Board asked the current Executive Director to step in and assist the Funeral Board move forward. The Executive Director then hired the Office Manager, who is a retired Executive Director of another Chapter 30 Board and has served as a public member of two other Chapter 30 Boards. Neither had any knowledge of the Funeral Board's laws, rules, regulations or any knowledge of the profession of the funeral business.

Therefore, in order to understand the Board's office practices, the laws, rules regulations, and the profession itself; Mr. McDowell was hired as a funeral services consultant as soon as possible. Mr. McDowell served as a past Executive Director of the Funeral Board. He had also worked in the funeral service industry for approximately 35 years. He is an expert in pre-need funeral contracts and was a former casket salesperson. He also taught continuing education courses for the Board for many years. He had established working relationships with most of the funeral directors in the state. He had knowledge of the laws, rules, regulations, etc. which the new staff did not. Without his skill set and expertise, the staff would not have been able to complete the task of protecting the public or enforcing the laws and regulations on a day to day basis. There was no other person with his knowledge that was available within a short span of time which was absolutely necessary to assist with accomplishing the Boards directives in regards to the applications, review of documents and general funeral service questions. Due to the nature of the business and the time period involved, the Board needed someone to fulfill this consultant role as promptly as possible. The Board has no other knowledge of any other person that has the same qualifications/experience as a prior executive director for the board and the experience in the funeral business. This should be considered as a sole source vendor and is requested to be removed as a violation.

### **ISSUE 4: Vendor Registration Unverified**

Mr. McDowell was instructed to complete the vendor registration as soon as possible and on an annual basis. He has completed this at the beginning of every fiscal year prior to submitting an invoice for payment. This is now kept in his file.

### **ISSUE 5: Failure to Verify Compliance Checks**

Compliance Checks were obtained verbally from the vendor and he stated all were in good standing. Mr. McDowell is also and has been licensed through the West Virginia Insurance Commission in relation to his pre-need business over the years.

### **ISSUE 6: Purchasing Affidavit Not Included**

The Board did not have this document signed by the vendor and will commit to meeting this requirement in the future.

### **ISSUE 7: wvOasis Award Document Not Issued**

The Board staff did not enter the Oasis Award Document into the wvOasis Financial Management System as required. Some of the employees of the Board work for multiple Boards. Board staff will strive to meet this requirement in the future. Board staff does review the spending throughout the year to determine that it does not exceed the WV-48 Contract amount.

### **ISSUE # 2, 5, & 7 Logical Operators**

#### **Issue 2: Failure to Bid at Delegated Level**

5/26-2021 - Whereas the Board office is not on the state network and/or under the Office of Technology's maintenance; Logical Operators was hired several years ago by the previous staff to monitor the computers and back-up the database and files off-site. If we encountered a problem with our computers or network, Logical Operators can log into our computers remotely or come on-site to address any problem that may arise. The Board maintained this agreement on an ongoing basis to continue the provided services due to the professionalism and expertise with the Boards computer operating systems.

### **ISSUE 5: Failure to Verify Compliance Checks**

This vendor has operated on an ongoing basis with multiple licensing boards over the years and has never been in non-compliance with any of the boards.

### **ISSUE 7: wvOasis Award Document Not Issued**

Again, this vendor has been conducting business with state government on an ongoing basis for many years. The Board will strive to become compliant with this requirement.

### **ISSUE # 3 Statewide Contract Not Utilized**



7/9/2020 - When this order was placed, the Board's staff was following the ordering procedures ordered previously. We will check with the print shop to see if they have this particular type and style of paper. If so, we will utilize the print shop for this order. If they cannot provide this type of paper or style, we will seek a waiver.

#### **ISSUE # 8 Asset Tag Not Affixed**

10-20-2020 - This was an oversight and the tag will be ordered for the laptop and the information will be entered into the wvOasis fixed asset system as soon as possible.

#### **ISSUE # 10 Office of Technology Approval**

9/4/2020 - Windows Software - Whereas the Board is not under the Office of Technology or the statewide network, this software was an immediate necessary purchase as soon as the Board staff was made aware of the situation. The previous staff bought the computers at Office Depot and the operating software installed was Windows Home Edition. Due to security issues, the recommendation was made by Logical Operators to purchase and install Windows 10 Professional Edition as soon as possible to secure the computers as efficiently and effectively as possible. For

any future software purchases that may be needed, the Office of Technology will be contacted for approval prior to purchasing and installation.

In conclusion: the Board is grateful and appreciative of the audit findings. Although, we do not agree with all of the findings, we will take these recommendations into consideration and work towards becoming more compliant with the purchasing requirements in the future.

We are also requesting that some of these violations be removed from the report since a couple of the vendors are considered sole source by the Board and should not be subject to the competitive bidding requirements.

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**EXHIBIT E: PURCHASING DIVISION RESPONSE TO THE AGENCY  
COMMENTS**

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## SUMMARY OF AGENCY COMMENTS & PURCHASING DIVISION RESPONSE

On September 22, 2021, the West Virginia Purchasing Division provided the West Virginia Board of Funeral Service Examiners with a draft copy of the Purchasing Division Inspection Report for Fiscal Year 2021. Comments from the agency were received on October 12, 2021. There were 15 findings from 10 selected transactions reviewed by the Inspector. This indicates that approximately 70% of the transactions reviewed had one or more problems of potential nonconformity with Purchasing Division laws, rules and/or regulations.

<b>Agency Comments &amp; Purchasing Division Response</b>		
<b>Issue #</b>	<b>Agency Response</b>	<b>Purchasing Response</b>
#2	<p><b>Exam Development/Publish</b></p> <p>The International Conference of Funeral Service Examiners (hereinafter, The Conference) administers the WV Laws, Rules and Regulations examination (WV LRR) for the Board. This examination is outdated and has been outdated for many years. The Board is in the process of revising the questions and answers for the WV LRR examination. The total cost of the project is \$ 4,100.00. Due to financial constraints, the Board choose to pay one-half of the amount during FY 2021 and the remainder in FY 2022. The Conference agreed to this proposal and the remaining amount will be billed once the project is complete. It is impossible for the Board staff to conduct competitive bidding requirements in relation to this vendor due to it being the sole organization/vendor in the nation that administers the national and state funeral service examiners testing for funeral directors and embalmers. Cannot bid competitively when it is the only source available. In our opinion, this violation is unfair and should be removed from the inspection report due to this extenuating fact.</p>	<p><i>Reference Purchasing Handbook Appendix B: Purchasing Decision Path 4a.3:</i> 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. No ASSD was entered into WVoasis for the direct award and the WV-48 was signed for \$4,800.00. The finding stands.</p>
#2	<p><b>National Board Exams</b></p> <p>As stated above, The Conference is the sole organization/vendor that offers examinations for individuals to demonstrate knowledge and expertise in the funeral service profession. Applicants must pass the National Arts &amp; Sciences exams and the WV LRR exam prior to applying for a state license and in order to meet the requirements for licensure. The Conference invoices the Board \$140.00 per candidate for administering the examination. It is stated in our board rules the applicant shall submit payment for the state exam to the Board. We, in turn, reimburse The Conference \$140.00 per</p>	<p><i>Reference Purchasing Handbook Appendix B: Purchasing Decision Path 4a.3:</i> 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</p>

Agency Comments & Purchasing Division Response		
Issue #	Agency Response	Purchasing Response
	<p>examination administered. Therefore again, it is impossible for Board staff to conduct the competitive bidding requirement when The Conference is the sole source entity in the US, Canada &amp; Nova Scotia This is cost is a pass-through cost for the Board. The Conference is referenced in the Board's Series 1 Rules under Section 16-1-16, Fees and Subsection 16.11.3 in relation to the payment for the National Board Exams. Again, in our opinion, this violation is unfair and should be removed from the inspection report due to this extenuating fact</p>	<p>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. No ASSD was entered into WVoasis for the direct award and the WV-48 was signed for \$4,000.00. The finding stands.</p>
#2	<p><b>John C. McDowell, LLC</b>  There was a complete overhaul of the staff of this office in September 2019. New staff was hired without any prior experience of the funeral service profession. The Executive Director also serves as the Executive Director of Massage Therapy and Acupuncture Boards. The Funeral Board asked the current Executive Director to step in and assist the Funeral Board move forward. The Executive Director then hired the Office Manager, who is a retired Executive Director of another Chapter 30 Board and has served as a public member of two other Chapter 30 Boards. Neither had any knowledge of the Funeral Board's laws, rules, regulations or any knowledge of the profession of the funeral business.</p> <p>Therefore, in order to understand the Board's office practices, the laws, rules regulations, and the profession itself; Mr. McDowell was hired as a funeral services consultant as soon as possible. Mr. McDowell served as a past Executive Director of the Funeral Board. He had also worked in the funeral service industry for approximately 35 years. He is an expert in pre-need funeral contracts and was a former casket salesperson. He also taught continuing education courses for the Board for many years. He had established working relationships with most of the funeral directors in the state. He had knowledge of the laws, rules, regulations, etc. which the new staff did not. Without his skill set and expertise, the staff would not have been able to complete the task of protecting the public or enforcing the laws and regulations on a day to day basis. There was no other person with his knowledge that was available within a short span of time which was absolutely necessary to assist with accomplishing the Boards directives in regards to the applications, review of documents and general funeral service questions. Due to the nature of the business and the time period involved, the Board needed someone to fulfill this consultant role as promptly as</p>	<p><b>Reference Purchasing Handbook Appendix B: Purchasing Decision Path 4a.3:</b> 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. No ASSD was entered into WVoasis for the direct award and the WV-48 was signed for \$15,500.00. The finding stands.</p>

Agency Comments & Purchasing Division Response		
Issue #	Agency Response	Purchasing Response
	possible. The Board has no other knowledge of any other person that has the same qualifications/experience as a prior executive director for the board and the experience in the funeral business. This should be considered as a sole source vendor and is requested to be removed as a violation.	
#2	<p><b>Logical Operators, Failure to Bid at Delegated Level</b></p> <p>Whereas the Board office is not on the state network and/or under the Office of Technology's maintenance; Logical Operators was hired several years ago by the previous staff to monitor the computers and back-up the database and files off-site. If we encountered a problem with our computers or network, Logical Operators could log into our computers remotely or come on-site to address any problem that may arise. The Board maintained this agreement on an ongoing basis to continue the provided services due to the professionalism and expertise with the Boards computer operating systems.</p>	<p><i>Reference Purchasing Handbook Appendix B: Purchasing Decision Path 4a.3:</i> 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. No ASSD was entered into WV Oasis for the direct award and the WV-48 was signed for \$4,800.00. The finding stands.</p>
#5	<p><b>John C. McDowell, LLC Failure to Verify Compliance Checks</b></p> <p>Compliance Checks were obtained verbally from the vendor, and he stated all were in good standing. Mr. McDowell is also and has been licensed through the West Virginia Insurance Commission in relation to his pre-need business over the years.</p>	<p><i>Reference Purchasing Handbook 5.352 Vendor Compliance:</i> 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 <b>must retain documentation</b> verifying compliance in the agency file. The finding stands.</p>
#5	<p><b>Logical Operators, Failure to Verify Compliance Checks</b></p> <p>This vendor has operated on an ongoing basis with multiple licensing boards over the years and has never been in non-compliance with any of the boards</p>	<p><i>Reference Purchasing Handbook 5.352 Vendor Compliance:</i> 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 <b>must retain</b></p>

Agency Comments & Purchasing Division Response		
Issue #	Agency Response	Purchasing Response
		<b>documentation</b> verifying compliance in the agency file. The finding stands.
#10	<p><b>Office of Technology Approval</b> Windows Software - Whereas the Board is not under the Office of Technology or the statewide network, this software was an immediate necessary purchase as soon as the Board staff was made aware of the situation. The previous staff bought the computers at Office Depot and the operating software installed was Windows Home Edition. Due to security issues, the recommendation was made by Logical Operators to purchase and install Windows 10 Professional Edition as soon as possible to secure the computers as efficiently and effectively as possible. For any future software purchases that may be needed, the Office of Technology will be contacted for approval prior to purchasing and installation.</p>	<p>The WV Board of Embalmers and Funeral Directors since 2002 has been known as the WV Board of Funeral Services Examiners (WV Code 30-6-4). The WV Board of Funeral Services is currently supported and billed by OT for Security, Technical Support MS 0365, and mobile email access.</p>