



West Virginia Purchasing Division

VENDOR PROCUREMENT GUIDE

**An Informational Guide to Vendors Interested in Marketing
Commodities and Services to the State of West Virginia**

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WEST VIRGINIA PURCHASING DIVISION

VENDOR PROCUREMENT GUIDE

INTRODUCTION

Welcome! ...The **West Virginia Vendor Procurement Guide** is a helpful tool for businesses to use in learning more about programs, procedures and services administered through the Purchasing Division.

Prepared by the West Virginia Purchasing Division, this resource offers guidance for those who wish to do business with our state government. Each section offers specific information and instructions which should prove helpful to our vendor community.

As the Director of the West Virginia Purchasing Division, I strongly recommend the use of this reference guide by businesses. 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.

This **Vendor Procurement Guide** has been modeled from our **Purchasing Division Procedures Handbook**, which is used as a technical resource by agency procurement officers throughout West Virginia state government. This guide has been customized to focus on procedures and issues related to our vendor community so that it may serve as an effective informational tool when doing business with our state.

On behalf of the Purchasing Division, I encourage you to participate in the competitive bidding process within our state government and welcome you as a potential supplier of products and services to the state of West Virginia!

Sincerely,

Dave Tincher, Director
West Virginia Purchasing Division



WEST VIRGINIA PURCHASING DIVISION

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SECTION 1: GENERAL INFORMATION

1.0 GENERAL INTRODUCTION

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

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

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

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

Acquisition and Contract Administration Section:

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

Communication and Technical Services Section:

- Communication
- Professional Development

- Information Technology
- Imaging and Records Retention
- 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.

1.5 Disclaimer: The Vendor Procurement Guide is provided for reference purposes only. This resource 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. If there is a conflict between the **Vendor Procurement Guide** and the laws and rules relating to state procurement, state law will always prevail.

1.6 Public Records: All records in the Purchasing Division related to purchase orders and contracts are considered public records, although the timing of the release of certain documents to the public does vary.

Documents like the solicitation and any addenda are released for public viewing as part of the bidding process so those documents become public as soon as they are released. Similarly, bids may be viewed immediately after bid opening pursuant to West Virginia Code §5A-3-11(g). Other information relating to the evaluation and eventual award will not be made public until after an award has been made. An award is considered complete only if the contract has been signed by the Purchasing Division, approved as to form by the Attorney General's Office, encumbered and placed in the U.S. mail. When contract award information is released prior to a contract award, that information may be incorrect, premature or erroneous and cause work to begin or vendors to protest.

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

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

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

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

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

1.8 Privacy Notice: Vendors should be aware of the Purchasing Division's Privacy Notice regarding information collected indicated below when submitting a bid or documentation. This notice is below:

Privacy Notice: The Purchasing Division is required to collect certain information as stated in **West Virginia Code** §5A-3-12, other applicable sections of the **West Virginia Code**, the Vendor Registration and Disclosure Statement forms, and other documents to facilitate the State bidding and contract administration processes.

That information is generally obtained by the Purchasing Division through the Vendor Registration and Disclosure Statement form or vendors' submitted responses to solicitations, but may be obtained in other forms and formats. All information collected is stored in a secure environment, but unless specifically protected under State law, any information provided to the Purchasing Division may be inspected by or disclosed to the public.

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

1.10 Vendor Resource Center: The Purchasing Division's website offers a centralized location for information relative to our vendor community. The *Vendor Resource Center* provides information, including a link to wvOASIS, the state procurement officers listing, the terms and conditions for contracts and purchase orders as well as instructions to vendors, bids received for solicitations, forms and other links to helpful web resources.

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

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

If a spending unit purchases or contracts for commodities or services contrary to the provisions stated in the *Code* or the rules and regulations, such purchase or contract shall

be void and of no effect. The spending officer of such spending unit, or any other individual charged with responsibility for the purchase or contract, shall be personally liable for the costs of such purchase or contract and, if already paid out of state funds, the amount may be recovered in the name of the state in an appropriate action instituted therefore. *Provided*, that the state establishes by a preponderance of the evidence that the individual acted knowingly and willfully.

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

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

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

It shall be unlawful for any person to obtain from the state under any contract made under the *Code*, by false pretense, token or representation, or by delivery of inferior commodities, with intent to defraud, any money, goods or other property, and upon violation thereof, such person shall be guilty of a felony, and, upon conviction thereof, shall be confined in the penitentiary not less than one year nor more than five years, and be fined not exceeding \$10,000.

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

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

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

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

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

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

1.11.1 Additional Authority

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

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

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

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



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SECTION 2: DEFINITIONS, ABBREVIATIONS AND ACRONYMS

2.0 DEFINITIONS, ABBREVIATIONS AND ACRONYMS

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

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

Agency Open-End Contract - A legal and binding instrument between the state agency and a vendor to exclusively provide a commodity which was competitively bid, evaluated, and awarded by the Purchasing Division and maintained by the state agency. This contract may be for unlimited dollars and for commodities or services that are frequently purchased that are not on a statewide contract.

Agency Delegated Open-End Contract - A legal and binding instrument between the state agency and a vendor to exclusively provide a commodity which was competitively bid, evaluated, awarded and maintained by the state agency. This contract is for purchases under \$25,000 annually and for commodities and services that are frequently purchased that are not on a statewide contract.

Agency Delegated Purchase Order - A transaction which may be used by an agency to procure items within its delegated small purchase authority.

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

Best Value Procurement - Purchasing methods used in awarding a contract based on evaluating and comparing all established quality criteria where cost is not the sole determining factor in the award. This includes Requests for Proposals (RFP) and Expressions of Interest (EOI).

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

Bid Bond – A bond in which a third party agrees to be liable to pay a certain amount of money in the event a selected bidder fails to accept the contract as bid. This bond is usually five percent (5%) of the total bid amount.

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

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

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

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

Competitive Bidding - The process by which individuals or firms compete for an opportunity to supply specified commodities and services by submitting an offer in response to a solicitation.

Contract - An agreement between a state spending unit and a vendor relating to the procurement of commodities or services, or both.

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

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

Emergency - A purchase made when unforeseen circumstances arise, including delays by contractors, delays in transportation and unanticipated volume of work. A report of any such purchase, together with a record of competitive bids upon which it was based, is to be submitted to the Purchasing Director. Emergency purchases are not used for hardship resulting from neglect, poor planning or lack of organization by the spending unit. Failure to plan does not make it an emergency situation.

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

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

Expendable Commodities - Commodities which, when used in the ordinary course of business, will become consumed or of no market value within the period of one year or less.

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

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

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

Labor and Materials Payment Bond - A bond submitted by the apparent successful vendor upon request of the state to ensure payment of labor and materials purchased or contracted for on behalf of the state in a construction project.

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

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

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

Mandatory Terms - All terms and conditions in the written specification which are absolute and the compliance with cannot be waived. Failure to comply with mandatory terms shall require the vendor to be disqualified. Mandatory terms are indicated by the use of the terms *shall, will or must*.

Non-Mandatory Terms - All terms and conditions in the written specification which are not absolute. Non-mandatory terms are indicated by the use of the terms *may, should, preferred or could*, and are understood to be permissive and shall not be used to disqualify any vendor.

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

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

Open-End Contract - A generic term used for a contract that covers a period of time in which all terms, conditions and prices are specified with the exception of quantity.

Performance Bond - A bond in which a surety agrees to be liable to pay a certain amount of money in the event a vendor fails to perform a contract as bid. This bond is usually for the full amount of the contract.

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

Pre-bid Conference - A meeting between vendors and agency personnel which offers an opportunity to emphasize and clarify critical aspects of a solicitation, eliminates misunderstanding and permits vendor input. Vendor attendance may be mandatory or voluntary as specified in the bid document.

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

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

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

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

Purchase Order - A document issued by the Purchasing Division used to execute a purchase transaction with a vendor. It serves as notice to a vendor that an award has been made.

Purchasing Affidavit - A form required to be completed by all vendors prior to the award of a contract. In accordance with **West Virginia Code** §5A-3-10A, no contract or renewal of any contract may be awarded by the state or any of its political subdivisions to any vendor or prospective vendor when the vendor is a debtor and the debt owed is an amount greater than \$1,000 in the aggregate.

Purchasing Bulletin - An electronic publication made available on the Vendor Self-Service portal (VSS) as part of the wvOASIS system is used to advertise purchases expected to exceed \$25,000 for all agencies in West Virginia's state government.

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

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

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

Request for Information (RFI) - A document used to solicit information to assist in preparing specifications for a Request for Quotation (RFQ) or Request for Proposal (RFP). No award can be made from an RFI.

Request for Quotation (RFQ) - A document, containing the specifications or scope of work and all contractual terms and conditions, which is used to solicit written bids. Conformity to specifications and price are the only factors used in the evaluation process.

Request for Proposals (RFP) - A Best Value Procurement tool used to acquire professional and other services where the scope of work may not be well defined and cost is not the sole factor in determining the award. All criteria by which the bidders will be evaluated must be contained within the bid document.

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

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

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

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

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

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

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

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

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

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

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

Vendor Preference - A numerical preference used during the evaluation of bids when comparing in-state and out-of-state bidders, pursuant to ***West Virginia Code*** §5A-3-37.

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



VENDOR PROCUREMENT GUIDE

SECTION 3: ACQUISITION PLANNING

3.0 ACQUISITION PLANNING

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

When agency procurement officers prepare for a purchase **prior to the actual bidding process**, they follow these steps:

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

3.2 Define Need: Determining the exact requirements for a commodity to perform a specific function is one of the most important tasks in the procurement process. The agency must take into consideration the problem to be resolved and what alternatives or options are available to satisfy the need.

3.3 Acquisition and Delivery Lead Time

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

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

3.3.2 Delivery Lead Time: Delivery Lead Time is the time required for the awarded vendor to deliver commodities or services. These times vary widely by industry, commodity, or service. Consideration must be given to market conditions which will affect delivery. Custom-made and complex items of equipment normally take longer to obtain than in-stock items.

3.4 Specifications:

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

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

Specifications used in the procurement process shall be retained with the purchasing file for each purchase order. Written specifications are required for purchases between \$5,000 and \$25,000 at the agency level to ensure vendors are being provided a fair opportunity to quote comparable products.

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

3.4.1.1 A "Brand Name(s) or Equal" Specification is based upon **one (1) or more** manufacturer's commodity description(s), model number(s) and quality level. Spending units may not use brand or vendor names to restrict competition; however, if brand names are used to adequately describe a needed commodity or service, the brand or vendor name must be followed by the phrase "or equal" to promote and encourage competition.

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

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

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

3.4.2 West Virginia Standard Specifications: According to **West Virginia Code** §5A-3-5, the Purchasing Director shall promulgate and adopt standard

specifications based on scientific and technical data for appropriate commodities, which shall establish the quality to which such commodities to be purchased and services to be contracted for by the state must conform. These standard specifications, which are prepared and adopted by the Purchasing Division for various products and services, are written with the input of state agencies and vendors for products and services that are used by many state agencies. By using standard specifications, the state is assured of an acceptable quality that meets the state's needs. These standard specifications shall include information relating to the cost of maintenance and expected life of the commodities, services or printing when the Director determines there are nationally accepted standards for commodities, services or printing.

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

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

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

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

Agencies should submit a description of the proposed testing with complete details including, but not limited to: the specific brand and names of vendors involved in the test; the brands and vendors that may be excluded in the future; the length and cost of the test; the cost of potential future purchases after the test, etc.

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

3.5 Research the Market: When preparing specifications, it may be necessary for the Purchasing Division buyer or the agency procurement officer to research the market to gain a better understanding of equipment, its technology, compatibility and availability.

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

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

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

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

3.6.1 Internal Sources, Considerations and Approvals

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

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

The public may acquire state surplus property through this program.

In addition to the State Property Program, a Federal Property Program is administered. The program serves all eligible organizations and acts as a clearinghouse by offering new and used equipment at reduced costs for acquisition. Any questions concerning the sale of state surplus property should be directed to the West Virginia State Agency for Surplus Property at the address below:

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

WVSurplus.gov

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

3.6.1.2 Commodities and Services Provided by Correctional

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

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

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

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

For specific information on available commodities and services, contact Correctional Industries at (304) 558-6054 or visit:

www.wvcorrectionalindustries.com

3.6.1.3 Commodities and Services Provided by Sheltered Workshops:

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

If the West Virginia Association of Rehabilitation Facilities (WVARF) is unable to provide the requested commodities and services, a written notice will be provided by WVARF advising the agency that their request is unable to be

met at that time and competition may be sought in accordance with the state purchasing procedures. For specific information on the sheltered workshops or the available commodities and services, contact WVARF at (304) 766-4894, or visit:

www.state.wv.us/admin/purchase/swc

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

All infrastructure purchases, regardless of dollar value, require CTO approval prior to submission of a request to use any type of solicitation. Since the CTO may require changes by the agency, the Purchasing Division's review of documentation without CTO approval may not be practical. All state entities, with the exception of Constitutional Officers, Higher Education and K-12, shall request approval for, at a minimum, but not limited to, the purchase of servers, storage device, routers, hubs, switches, firewalls, video conferencing and telephone equipment, including PBX system. The applicable infrastructure purchases also include infrastructure software of all types, whether it is e-mail applications, anti-virus software or any other interoperability application.

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

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

3.6.1.5 Other Considerations: Certain commodities or services may have additional statutory, regulatory, or other requirements that must be considered when preparing specifications.

For example, Healthcare contracts are subject to HIPAA and require the inclusion of a Business Associate Addendum. Construction contracts require prevailing wage, contractor's licenses, drug free workplace compliance; and all construction contracts require a certificate of insurance, Workers' Compensation coverage, unemployment compensation and bonds.

Prevailing Wage Rates: Vendors shall be responsible for ensuring compliance with prevailing wage requirements and determining when prevailing wage requirements are applicable.

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

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

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

3.6.2 Mandatory Contracts

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

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

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

contract. Agencies may request a waiver from an open-end contract if the vendor is unable to deliver the commodity or service by the required delivery date, assuming that the spending unit is not imposing an unreasonable delivery deadline, the vendor is unresponsive to ordering requests, or the vendor has refused to perform.

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

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

3.7.2 Open-End Contracts: The Purchasing Division issues both statewide contracts and agency open-end contracts. The Purchasing Division, at its discretion or upon request of any state agency, may establish a contract for specific commodities and services required. These open-end contracts are convenient for recurrent purchases. For agency open-end contracts, the state agency determines its specific needs and submits a **Requisition** to the Purchasing Division for competitive bid. Open-end contracts are processed as master agreements in *wvOASIS*.

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

3.7.3 Professional Service Contracts: These contracts are used to obtain specific professional expertise which is not available within state government. Examples of professional services may be legal, architectural, medical, dental, engineering and other consultant services.

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

An emergency purchase is a purchase which can be made only if and after the Purchasing Director, exercising sound judgment and discretion, concludes in good faith and upon reasonable and sufficient grounds that some unforeseen or unexpected circumstance has suddenly created a situation requiring that commodities or services be immediately purchased by a state spending unit and the Purchasing Director in writing authorizes such a purchase. A report of any such purchase, together with a record of competitive bids upon which it was based, is to be submitted to the Purchasing Director.

Agencies must first examine mandatory contracts and other internal sources for availability of the product or service and utilize such.

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

www.state.wv.us/admin/purchase/EmergencyProcs2.html

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

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

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

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

For sole source purchases expected to exceed \$25,000, the Purchasing Division will advertise the potential sole source purchase with the respective terms and conditions in the **West Virginia Purchasing Bulletin** to ensure no other vendor may provide this commodity or service.

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

Sole Source purchases require an original signed vendor quotation, a signed letter of justification from the agency and, if the vendor offers alternative terms and conditions, an **Agreement Addendum (WV-96)**.

If a vendor(s) does respond, indicating they can provide the commodity or services advertised, the sole source **Requisition** will be canceled and the agency must resubmit a new **Requisition**, with detailed specifications. The Purchasing Division will process this requisition competitively and advertise in the **West Virginia Purchasing Bulletin** accordingly. Backdating

transactions resulting from sole source determination or any other documents may not be honored.

3.8 Terms and Conditions: Terms and conditions are included to express the intent of the State of West Virginia. Purchasing Master Terms and Conditions are a part of every written solicitation issued through and contract awarded by the Purchasing Division. Agency Master Terms and Conditions are also available for use by state agencies utilizing their delegated purchasing procedures. Both the Agency Master and Purchasing Master Terms and Condition may be found in the Vendor Resource Center of the Purchasing Division's website at:

www.state.wv.us/admin/purchase/vrc

3.9 Life of Contract: Contracts should be issued for no more than a twelve (12) month period or cite a specific time for completion for the project or service. A solicitation for a contract that includes an option on the part of the state to extend or renew the contract for an additional period may be advantageous and may be considered. In instances where there may be larger upfront costs or for extremely complex programs or projects where an initial contract term in excess of 12 months is needed, the agency must request approval of the longer term and must provide justification. If price adjustments are permitted during the contract period, the conditions under which they are authorized must be specified in the original solicitation and resulting contract. All contracts should be reviewed during the contract period to determine if the need still exists for the commodities or services, if prices are fair and reasonable based on the current market conditions, and if performance is satisfactory.

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

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

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

A letter of justification must also be included, stating pertinent reasons for its recommendation to renew the existing contract. These factors include, but are not

limited to, vendor performance, market conditions and other analytical measures which indicate that renewing the contract is in the best interest of the state.

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

For more information on pre-bid conferences, visit **Section 6.2.8**.

3.13 Bid Opening Date and Time: When establishing an opening date and time, buyers and/or agency personnel should allow for holiday mail disruptions as well as time required for vendors to respond. In wvOASIS, the bid opening date and time are referred to as the “bid closing.”

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

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

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

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

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

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

Agencies should suggest to the Purchasing Division buyer at least three (3) potential vendors who may be qualified to bid on the solicitation. Vendors are encouraged to create an account in the Vendor Self Service (VSS) portal in wvOASIS and register for specific commodities that reflect what they sell in order to be automatically notified of upcoming bid opportunities.



WEST VIRGINIA PURCHASING DIVISION

VENDOR PROCUREMENT GUIDE

SECTION 4: VENDOR RESPONSIBILITIES

4.0 VENDOR REGISTRATION:

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

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

Vendor Registration and Disclosure Statement and Small, Women-, and Minority-owned Business Certification Application (WV-1 and WV-1A) can be downloaded from the Purchasing Division web site at:

www.state.wv.us/admin/purchase/vrc/pforms.htm

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

- (1) Purchasing card vendors providing travel related services are not required to register with the Purchasing Division.
- (2) Purchasing card vendors receiving an aggregate total yearly payment less than \$25,000.00 from a spending unit are not required to register with the Purchasing Division.
- (3) Any company or corporation, or subsidiary of the company or corporation, listed on any nationally recognized stock exchange is not required to register with the Purchasing Division.

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

4.1.1 WV-1: Vendors are encouraged to register through the Vendor Self-Service portal through the *wvOASIS* system. A vendor may choose to submit a paper form

in lieu of registration through wvOASIS. The WV-1 form should be completed by vendors that receive purchase orders or contracts for competitive commodities or services exceeding an aggregate amount of \$2,500. The **WV-1** form requires payment of the \$125 annual fee. The vendor's check and the **WV-1** form are to be mailed directly to the Purchasing Division. Upon payment of this fee, the vendor will receive access to the **West Virginia Purchasing Bulletin**, which contains upcoming bid opportunities and downloadable bid documents.

4.1.2 WV-1A: Vendors are encouraged to register through the Vendor Self-Service portal through the wvOASIS system. A vendor may choose to submit a paper form in lieu of registration through wvOASIS. The WV-1A form should be completed by vendors that receive purchase orders or contracts for sole source or competitive commodities or services of an aggregate amount of \$2,500 or less in any one (1) fiscal year.

The agency name and mailing address will appear on the front page of the WV-1A form. The vendor is to complete Part I of the form and return to the requesting agency.

4.2 Vendor Fee:

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

- (1) Purchasing card vendors providing travel related services are not required to pay the registration fee.
- (2) Purchasing card vendors receiving an aggregate total yearly payment less than \$25,000.00 from a spending unit are not required to pay the registration fee.
- (3) Vendors receiving orders for goods or services of \$2,500 or less, regardless of payment method, are not required to pay the registration fee.
- (4) Vendors providing a good or service under a sole source solicitation are not required to pay the registration fee. The fee is considered waived by the Director for all sole source providers.
- (5) Any vendor can be exempted from paying the registration fee if the Director determines that waiving the registration fee would be in the best interest of the State of West Virginia. The Director has determined that waiving the registration fee in the following two instances is in the best interest of the State.

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

Vendors Offering Commodities and Services Under Section 9 - Vendor registration fee is waived and, therefore, not required for a vendor providing commodities or

services under only Section 9 of the **Purchasing Division Procedures Handbook**. A vendor that provides commodities or services under other procurement methods and under Section 9 is required to pay the registration fee.

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

4.3 Vendor Hold: Vendors not exempt from paying the \$125 annual fee will be placed on 'prevent new order status' until payment of the fee is received. In order for agencies to know which vendors are eligible to receive purchase orders, the "prevent new order" feature of wvOASIS is used. Vendors with this status cannot receive purchase orders in excess of \$2,500. Agencies wishing to purchase competitive items from vendors with the 'prevent new order' status should inform such vendors that the fee is required and refer them to the Purchasing Division for payment and registration procedures.

Vendors will be removed from 'prevent new order' status when the vendor has paid the fee; or temporarily when an agency must process an individual purchase order in the wvOASIS system under \$2,500. An agency's request to temporarily remove a vendor from this status must be made in writing to the Purchasing Division indicating the reason for this action.

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

A list of currently approved SWAM vendors is available at the Purchasing Division's website at www.state.wv.us/admin/purchase/VendorReg.html.

West Virginia Code of State Rules §148-2-1 et seq. requires vendors to re-certify every two years in order to continue compliance. The recognized designations for SWAM include:

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

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

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

Africa and who is regarded as such by the community of which this person claims to be a part.

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

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

Native American means a person having origins in any of the original peoples of North America and who is regarded as such by the community of which this person claims to be a part or who is recognized by a tribal organization.

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

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

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

www.state.wv.us/admin/purchase/VendorRegFAQ.html#SWAM_faq

For more information on vendor registration or SWAM requirements, please visit:

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



VENDOR PROCUREMENT GUIDE

SECTION 5: AGENCY DELEGATED ACQUISITION PROCEDURES

5.0 AGENCY DELEGATED ACQUISITION PROCEDURES:

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

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

This means that state agencies may make purchases of commodities or services in the amount of \$25,000 or less without processing a formal *Requisition* through the Purchasing Division. The delegated authority is further stratified into three categories of procurement discussed in more detail in below. It is expected that procurements made under delegated authority will mirror, to the greatest extent possible, formal procurement procedures.

Amounts spent with vendors are viewed comprehensively. State agencies should continuously monitor their expenditures with vendors to ensure that the total amount spent with a given vendor, within any 12-month period, does not exceed an applicable bid threshold without the proper level of documentation and bidding.

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

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

1. Agency makes a one-time payment of \$25,000.01 or more to a single vendor within a twelve (12) month period.
2. Agency makes multiple payments to a single vendor that aggregate to \$25,000.01 or more within a twelve (12) month period.
3. Agency makes multiple payments to multiple vendors for the same commodity or service that aggregate to \$25,000.01 or more within a 12 month period.
4. Agency makes monthly lease payments of \$2,083.33 or more for twelve (12) consecutive months.

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

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

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

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

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

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

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

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

An RFQ consists of:

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

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

have an established date and time for the bid opening, after which bids will no longer be accepted. All bids are to be stamped with the date and time of receipt.

5.2.1.2 Advertisement of Solicitations: The State of West Virginia provides a list of all bid opportunities expected to cost \$5,000 or more in Vendor Self-Service (VSS), as a part of the wvOASIS system, which may be accessed at wvOASIS.gov. This listing, referred to as the **West Virginia Purchasing Bulletin**, is updated continually and categorizes solicitations by commodities and services.

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

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

5.2.3 Award Process: After the evaluation of all bids by the agency personnel, an award is made to the lowest responsible bidder who meets the specifications. If an award is made to other than the lowest bidder, a detailed justification as to why the lowest bidder was not considered "responsible" must be written and retained for public record and inspection. The justification must be signed by the evaluator(s) and retained as part of the bid file.

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

Purchases made under Agency Delegated authority are processed at the agency level. Therefore, requisitions, purchase orders or other documentation should be retained by the agency and not forwarded to the Purchasing Division. A public record of all purchasing transactions must be kept on file at the agency location, and subject to inspection at the discretion of the Purchasing Division. This file must also include a Certificate of Non-Conflict of Interest, Unemployment / Workers' Compensation verification search, specifications used for the bidding process, and any and all attempts to obtain competitive bids.

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

- Vendor registration process (must be registered and the fee paid, if applicable);

In accordance with the **West Virginia Code** §21A-2-6, verification of current unemployment fee status and Workers' Compensation coverage is required to ensure the vendor is not in default with Workers' Compensation and Employment Compensation. **wvOASIS automatically verifies compliance prior to award,**

- Verification that the vendor is not debarred by the federal governments. wvOASIS automatically verifies this federal compliance prior to award. Additionally, the Purchasing Division maintains a list of vendors declared as debarred by the state of West Virginia, which may be accessed at www.state.wv.us/admin/purchase/Debar.html. **Agencies must verify this compliance prior to award;**
- In accordance with the **Code of State Rules** 148 CSR 6.1.e, the vendor must be licensed and in good standing with any and all state and local law and requirements, including proper registration with the Secretary of State's office and the State Tax Department, regardless of payment method. **Agencies must verify this compliance prior to award;**
- **Purchasing Affidavit** (required on all contracts exceeding \$5,000); and,
- **Agreement Addendum (WV-96)** (required when vendors submit alternate terms and condition with their bid) (See **Appendix B**)

5.2.3.1 Tie Bids: When purchasing commodities and services of \$25,000 or less, occasionally two (2) or more bids of equal terms and amount are received in response to a solicitation, thus, resulting in a *tie bid*. If multiple awards are not made, the tie bid(s) must be resolved. When tie bids are received, the Purchasing Director shall break the tie by allowing the tied vendors to make a final offer, flip of a coin, draw of the cards, or any other impartial method considered prudent by the Director. Vendors affected by the tie should be notified and given an opportunity to attend the tie breaker.

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

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

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

- (1) An error was made;

(2) The error materially affected the bid;

(3) Rejection of the bid would not cause a hardship on the state agency involved other than losing an opportunity to receive commodities and services at a reduced cost; and

(4) Enforcement of the part of the bid in error would be unconscionable.

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

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

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

In cases where receiving reports are retained by another office of the spending unit and the volume of receiving reports would create a storage problem, spending units may include a memorandum to file in the purchasing file indicating the storage location of the receiving reports. The actual reports shall be produced on demand, in accordance with the **West Virginia Code of State Rules** §148-1-4.14.

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

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

5.3.1 Inspection: In accordance with **West Virginia Code** §5A-3-9, the Purchasing Director reserves the right to inspect the commodities delivered or services rendered to assure conformance with contractual requirements. The agency shall perform this inspection on all delivered commodities and services.

Non-conformity is to be reported to the Purchasing Director and the chief officer of the spending unit purchasing such commodities for remedial action.

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

Free on Board (F.O.B.) Destination: Where the seller or consignee delivers the materials to a specified delivery point. The cost of shipping and the risk of loss are borne by the seller or consignee. Title passes when delivery is received by the buyer at destination. Seller has total responsibility until shipment is delivered. This is the preferred method of shipment as it easily facilitates a comparison of price among multiple vendors.

Free on Board (F.O.B.) Origin: Title is transferred from seller to buyer at the origin of the shipment. Buyer owns the goods in transit and files any claims. Buyer has total responsibility. The payment of the freight charges is determined by contract terms. Any use of this delivery method requires that the price evaluations account for delivery costs to ensure an accurate price comparison.

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

FOB Destination: Title remains with vendor until goods are received and accepted by the state agency. Damage during shipment must be resolved by the seller.

If the damage is obvious note all losses or damages on receiving papers, sign and have driver sign. Write the word "Refused" on receiving papers. Do not accept merchandise with obvious damage from carrier under any circumstances. If the damage or loss becomes evident when uncrating, stop uncrating and retain all merchandise and crating in exactly the same condition in which it was received. Notify the vendor immediately in writing and by telephone. Do not use any of the merchandise and do not destroy any packaging material.

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

If there is obvious loss or damage, note all losses or damages on receiving papers, sign and have driver sign. Retain all merchandise in the condition in which it was received and notify both the carrier and seller in writing and by

telephone within five (5) working days. The carrier will send a representative to investigate the claim.

If the damage or loss becomes evident when uncrating stop uncrating and retain all merchandise and crating in exactly the same condition in which it was received. Notify the vendor immediately in writing and by telephone. Do not use any of the merchandise and do not destroy any packaging material.

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

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

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

www.wvsao.gov/PurchasingCard/StateGovernment/Forms.aspx

5.5 Changes: Occasionally, it becomes necessary to amend, clarify, change or cancel purchasing documents. A contract change order is required whenever the change affects the payment provision, time for completion of the work and/or the scope of the work. See **Section 6.7** for more on Changes to Contracts

5.6 Contract Cancellation: The agency may cancel a contract or purchase order obtained through the agency delegated process upon written notice to the vendor under any one of the following conditions including, but not limited to:

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

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

In the event that a vendor fails to honor any contractual term or condition, or violate any provision of federal, state, or local law, regulation, or ordinance, the agency may request the vendor remedy the contract breach or legal violation within a time frame the agency determines to be appropriate. If the vendor fails to remedy the contract breach or legal

violation then the agency may cancel immediately without providing the vendor an opportunity to perform a remedy.



WEST VIRGINIA PURCHASING DIVISION

VENDOR PROCUREMENT GUIDE

SECTION 6: FORMAL ACQUISITION PROCEDURES

6.0 FORMAL ACQUISITION PROCEDURES

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

The Purchasing Division will perform the following tasks:

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

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

The vendor is responsible for submitting a correct and accurate bid to the Purchasing Division by the specified bid opening time and date. Signed fax bids are acceptable but receipt of bid must be completed prior to the bid opening time and date. Any bonds submitted via fax should be followed by an original bond received by the Purchasing Division within two (2) business days. A vendor choosing to submit a bid or a written change to a bid by electronic transmission accepts full responsibility for transmission and receipt of the bid or written change to a bid. The state accepts no responsibility for the unsuccessful or incomplete transmission of bids by electronic transmission. Bids submitted via facsimile may not be sealed until receipt by the Purchasing Division. The Purchasing Division makes no guarantee of confidentiality and accepts no responsibility for completeness of bids or transmission. E-mail bids are not acceptable and will be rejected.

6.2 The Bid Process: Formal bid procedures have been developed for procurements exceeding \$25,000 which are processed through the Purchasing Division. For procedures relating to technology purchases, visit **Section 3: Acquisition Planning, 4.6.1.4 Technology**. The steps in this process are detailed below:

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

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

An RFQ consists of the following:

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

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

6.2.3 Best Value Procurement: Best Value Procurement is a purchasing method used to acquire services where the specifications or scope of work may not be well-defined or cost is not the sole factor in determining the award. Best Value Procurement methods include Requests for Proposals (RFPs) and Expressions of Interest (EOI).

6.2.4 Requests for Proposals: Requests for Proposals (RFPs) are limited to procurements estimated value of \$250,000. All procurements under this dollar amount must use another purchasing method unless approved by the Purchasing Director.

The Purchasing Director or his/her designee must approve the use of all RFP's prior to release. To acquire this approval, prior to development of the RFP, please submit in writing the justification for utilizing this process and if this purchase order/contract will replace a current purchase order/contract. If it does replace an existing purchase order/contract, the agency should identify the current vendor and purchase order number.

Please note that the time required to process an RFP is longer than other purchasing methods and requires significant agency personnel time. Agencies are cautioned in writing specifications containing an excessive number of mandatory requirements. Mandatory requirements cannot be scored and cannot be waived. If an agency establishes mandatory requirements in the RFP, vendors must demonstrate they meet the mandatory requirements. Failure to meet the mandatory requirements must result in disqualification. Waiving mandatory response requirement is strictly prohibited.

Standard Format (See **Appendix H**): All Requests for Proposals shall follow the standard format defined by the Purchasing Division. This format addresses required areas and enables the agency to modify the background and scope of work to meet its needs.

Evaluation Criteria: All evaluation criteria must be clearly defined in the specifications section and based on a 100 point total score. Based on a one hundred (100) point total, cost shall represent a minimum of thirty (30) of the one hundred (100) total points in the criteria.

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

Proposal Submission: **West Virginia Code** §5A-3-11 states that "the bid must be received by the Purchasing Division prior to the specified date and time of the bid opening. The failure to deliver or the non-receipt of the bid by the Purchasing Division, prior to the appointed date and hour, shall result in the rejection of the bid." The Purchasing Division will not accept bids, modification of bids, or addendum acknowledgment forms by e-mail transmission. Acceptable delivery methods include hand-delivery, delivery by courier or facsimile.

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

Technical Evaluation: An evaluation committee shall review the technical proposals, assign appropriate points and make a final written consensus recommendation to the Purchasing Division buyer within 10 days.

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

Vendors must score a minimum of 70% (49 points) of the total technical points possible (*minimum acceptable score*) in order to be considered. Vendors not attaining the *minimum acceptable score* shall be disqualified and removed from further consideration. If the buyer approves the committee's recommendation, the information will be forwarded to an internal review committee within the Purchasing Division.

Cost Bid Opening: Upon approval of the technical evaluation from the internal review committee, the Purchasing Division shall schedule a time and date to publicly open and read aloud all cost proposals, including those proposals from

vendors not meeting the *minimum acceptable score*. The agency and the vendors shall be notified of this date.

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

Once approved by the buyer, the contract is signed in the Purchasing Division, forwarded to the Attorney General's Office for approval as to form, encumbered and mailed to the appropriate parties.

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

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

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

The agency procurement officer or a member of the agency procurement staff, who is skilled in purchasing techniques and procedures, shall be present at evaluation committee meetings and serve on the evaluation committee as a full voting member unless the agency can provide written justification detailing the reason(s) why this requirement cannot be met. Such request must be approved by the Purchasing Division prior to performing any evaluation. *(The Purchasing Division reserves the right to accept or reject agency appointed committee members and to appoint committee members directly to provide proper representation. A non-state employee shall not serve as voting member of the evaluation committee.)* To

ensure there is no conflict or influence on the committee members' decision process, the evaluation should take place with only the designated evaluators and advisors present.

If the participating vendors are required to conduct an oral presentation, the agency is permitted to invite other individuals, in addition to the evaluators and advisors, to attend these demonstrations. The Purchasing Division buyer may observe the committee evaluation and answer procedural issues and provide general process oversight.

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

Evaluation Training: All evaluation committee voting members must receive RFP evaluation training prior to commencing the evaluation. This training should be completed within one year prior to the evaluation.

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

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

6.2.5 Expression of Interest: The Purchasing Division uses Expressions of Interest (EOI) in the selection of Architectural and Engineering Services. For guidance on processing Expressions of Interest, refer to **Section 7.1** and **Appendix J** for the EOI standard format.

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

6.2.7 Selection of Vendors: The **West Virginia Purchasing Bulletin** consists of general descriptions of all requisitions expected to exceed \$5,000. Vendors may access the **West Virginia Purchasing Bulletin** through the Vendor Self Service portal at **wvOASIS.gov**. Vendors may request bid packages by telephone,

electronic mail, fax or via the Internet. Competition is always encouraged on all requisitions.

6.2.8 Pre-Bid Conferences: The Purchasing Division recommends agencies to consider conducting pre-bid conferences on major acquisitions early in the bid process to provide an opportunity to explain and clarify critical aspects of the solicitation, eliminate misunderstandings and encourage vendor participation. These conferences are conducted by the state agency with potential bidders when solicitations for complex, large dollar requirements are specified. Additionally, these conferences may provide vendors an opportunity to conduct site visits to gain a better understanding of the project.

The Purchasing Division may participate in these pre-bid conferences. In all cases, it is very important for the agency procurement officer or designee who is trained and knowledgeable of the state procurement process to attend these conferences. Vendor attendance at conferences may be optional or mandatory, as described in the bid document. If mandatory attendance is required, only bids or proposals from those vendors represented at the conference will be accepted. If participating vendors sign the official "sign-in sheet" while the meeting is in progress, then the vendors will be treated as if they were present for the entire conference and will be deemed to have the knowledge that they would have had if attending the entire conference. Teleconference attendance is prohibited unless specified in the bid document.

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

6.2.9 Addenda: During the bid process, it may be necessary to alter bidding documents. To facilitate a change to a solicitation after issuance for bid in the **West Virginia Purchasing Bulletin**, a formal written addendum is required. The addendum is generated by the agency to address the change and is issued to prospective bidders by the Purchasing Division.

A formal addendum is necessary to: add, delete or change specifications or attachments; provide a copy of the pre-bid attendee list; answer technical questions, requests for clarification, or requests for product substitutions (*on construction projects*); extend or alter bid schedule dates/times; or any other such change to the issued bidding documents.

6.2.10 Bid Submission: The vendor is responsible for submitting a correct and accurate bid to the Purchasing Division by the specified bid opening time and date. Fax bids are acceptable, but receipt of bid must be completed prior to the bid opening time and date. Upon receipt of a vendor's bid, the Purchasing Division becomes the custodian of the bid and cannot return the bid to the vendor for any reason. Should the vendor wish to change the bid, the vendor must submit an additional bid that would supersede the original bid.

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

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

Refer to the checklist below when submitting bids/proposals for purchases expected to exceed **\$25,000**:

CHECKLIST
Submitting Bids/Proposals Exceeding \$25,000

- Have you signed your bid/proposal, if submitting a paper bid?
- Have you included the required bid bonds, if applicable?
- Are you responding by the date and time as established for the opening?
- If offering an alternate as an *"or equal"* option, did you clearly follow the specification instructions?
- Have you supplied the original bid to the Purchasing Division, if submitting a paper bid?
- Have you met the mandatory requirements stated in the bid?
- Have you attended the mandatory pre-bid conference, if applicable?
- Have you responded appropriately to the mandatory addenda (*changes to the original RFQ*), if applicable?

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

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

Bids that are not received by the date and time of the bid opening will be noted as "Bid Received Late," maintained with the official file and posted on this website upon receipt with the other bids.

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

6.2.12 Public Notice: The State of West Virginia provides a list of all bid opportunities expected to cost \$5,000 or more in Vendor Self-Service (VSS), as a part of the wvOASIS system, which may be accessed at **wvOASIS.gov**. This listing, referred to as the **West Virginia Purchasing Bulletin**, is updated continually and categorizes solicitations by commodities and services.

Paid, registered vendors will receive e-mail notifications when solicitations containing commodities and/or services of interest are posted. These paid, registered vendors may also receive purchase orders and contracts exceeding \$2,500 for competitive commodities and services.

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

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

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

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

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

Labor and Materials Payment Bond - A bond submitted by the apparent successful vendor upon request of the state to ensure payment of labor and materials purchased or contracted for on behalf of the state in a construction project.

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

Performance Bond - A bond in which a surety agrees to be liable to pay a certain amount of money in the event a vendor fails to perform a contract as bid. This bond is usually for the full amount of the contract.

6.2.15 Liquidated Damages: A specified contract provision which entitles the state to demand a set monetary amount determined to be a fair and equitable repayment to the state for loss of service due to vendor's failure to meet specific completion or due dates.

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

6.2.17 Evaluation and Award: Once bids are received, the evaluation process commences.

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

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

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

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

- Properly registered with the Purchasing Division by completing the appropriate form and paying the annual fee, if applicable;
- Good standing in accordance with the **West Virginia Code** §21A-2-6, concerning verification of current unemployment fee status and Workers' Compensation coverage. **wvOASIS automatically verifies compliance prior to award**, Verification that the vendor is not debarred by the federal governments. wvOASIS automatically verifies this federal compliance prior to award. Additionally, the Purchasing Division maintains a list of vendors declared as debarred by the state of West Virginia, which may be accessed at www.state.wv.us/admin/purchase/Debar.html. **Agencies must verify this compliance prior to award**;
- In accordance with the **Code of State Rules** 148 CSR 6.1.e, the vendor must be licensed and in good standing with any and all state and local law and requirements, including proper registration with the Secretary of State's office and the State Tax Department, regardless of payment method. **Agencies must verify this compliance prior to award**; Sign and submit the **Purchasing Affidavit** which is required on all contracts. (See **Appendix B**);
- Sign and submit the **Agreement Addendum (WV-96)** which is required when vendor submits alternate terms and condition with their bid. (See **Appendix B**).

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

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

6.2.18 Tie Bids: Occasionally two (2) or more bids of equal terms and dollar amount are received in response to a solicitation, thus, resulting in a *tie bid*. If multiple awards are not made, then the tie bid(s) must be resolved. When tie bids are received, the Purchasing Director shall break the tie by allowing the tied vendors to make a final offer, flip of a coin, draw of the cards, or any other impartial method considered prudent by the Director. The Purchasing Division must make the final decision in tie bid situations exceeding \$25,000.

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

West Virginia Code of State Rules 148 CSR 1-5.2.G offers the Purchasing Director or his/her designee the authority to reject an erroneous bid after the bid opening according to the following criteria:

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

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

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

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

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

- (1) The quality, availability and reliability of the supplies, materials, equipment or services and their adaptability to the particular use required;
- (2) The ability, capacity and skill of the bidder;
- (3) The sufficiency of the bidder's financial resources;
- (4) The bidder's ability to provide maintenance, repair parts and service;
- (5) The compatibility with existing equipment;
- (6) The need for flexibility in evaluating new products on a large scale before becoming contractually committed for all use; and
- (7) Any other relevant factors.

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

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

If all bids meeting requirements exceed this budgeted amount, the Purchasing Division may negotiate a lower price within budget with the lowest bidder. If the negotiation does not lead to the budget amount being met, the Director may negotiate a lower price with the next lowest bidder and continue negotiations with participating bidders after negotiation closes with the preceding bidder. If the agency does not provide its budgeted amount for the requisition prior to the bid opening, the Purchasing Division is unable to negotiate, in accordance with **West Virginia State Code** §5A-3-11a. The ability to negotiate as described in this section has not been delegated to the agencies for procurements under \$25,000.

6.2.22 Discussion and Final Offers: The Director may conduct discussions to obtain best and final offers from bidders to assure full understanding of solicitation requirements. If the Director determines that a best and final offer is necessary from one vendor, all vendors shall be afforded the opportunity to provide best and final offers. All best and final offers shall be treated like a formal bid, except that

advertising is not required. All bidders shall provide their best and final offers to the Purchasing Division prior to the date and time specified.

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

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

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

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

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

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

vendors that are in compliance with the specifications and mandatory requirements will be notified that they have been approved to participate in reverse auction. Vendors that are not in compliance with the specifications and mandatory requirements will be notified that their request to participate in the reverse auction has been denied. A vendor that has been approved will be provided with the necessary information to participate, which may include website addresses, log-in information, etc. A vendor that has been denied will be provided with notice and, upon request, be provided with a reason for the denial.

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

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

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

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

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

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

The justification must contain:

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

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

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

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

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

Evaluation and Award: After bids have been opened, the agency, or the Purchasing Division when acting as a spending unit, shall evaluate the bids received to ensure that the bid submissions comply with the requirements contained in the master contract and the rests for bids. The agency, or the Purchasing Division when acting as a spending unit, shall award the direct order to the lowest responsible bidder that has complied with all requirements. The agency must reject any bid that fails to comply with the requirements contained in the master contract and the requests for bids. The

agency shall provide the following notices related to the evaluation and award:

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

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

6.3 Vendor Preference: West Virginia Code §5A-3-37 provides an opportunity for a qualifying vendor to request at the time it submits its bid, preference for its residency status. This preference does not apply to construction. Such preference is an evaluation method only and will be applied only to the cost bid in accordance with the **West Virginia Code** and as specified herein. A certificate of application is used to request this preference. Generally, a West Virginia vendor may be eligible for two 2.5% preferences in the evaluation process. The Purchasing Division will make the determinations as to whether the Vendor Preference is applicable. Please note that when applying vendor preference with the Request for Proposal process, the preference is applied only to the bid price prior to calculating total cost points.

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

The Vendor Preference should be applied using the following five step process shown below.

- Step 1:** Calculate the effect of each Vendor Preference (2.5% and 5%) on out-of-state bids by multiplying the out-of-state bids by 1.025 or 1.05 as appropriate.
- Step 2:** Compare resident vendors' bids to out-of-state vendors' preference adjusted bids. (A vendor that receives a 2.5% preference will have its bid compared to the out-of-state vendors' bids adjusted for the 2.5% preference by multiplying the out-of-state vendors' bids by 1.025. Similarly, the vendor that receives a 5% preference will have its bid compared to out-of-state vendors' bids adjusted for the 5% preference.)

Step 3: If an out-of-state vendor's bid is lower than all in-state vendors' bids after preference adjustments and comparisons to the in-state vendors' bids, then the out-of-state vendor should be declared the winning vendor. If the out-of-state bid adjusted for preference is higher than an in-state bid then move to Step 4. (If multiple out-of-state vendors are lower than all in-state vendors after preference adjustments and comparisons then award to the lowest out-of-state vendor).

Step 4: Compare In-State Vendor bids without regard to preference (Only necessary if not awarded to out-of-state vendor in step 3 above)

Step 5: Award to lowest In-State Vendor identified in Step 4 above. (Only if not awarded to out-of-state vendor in step 3 above)

6.3.1 Preference for West Virginia Veterans: *West Virginia Code* §5A-3-37(a)(5) & (6) provides an opportunity for qualifying resident vendors who are a veteran of the United States armed forces, the reserves or the National Guard to request, at the time of bid, preference for their residency status. Resident veterans who qualify may receive a preference of 3.5%.

6.3.2 Preference for Non-Resident Small, Woman, and Minority-Owned Businesses: *West Virginia Code* §5A-3-37(a)(7) provides that a non-resident vendor certified as a small, women-owned, or minority-owned ("SWAM") business, pursuant to ***West Virginia Code* §5A-3-59**, shall be provided the same preference made available to any resident vendor. This certification may assist resident small, women and minority-owned businesses when soliciting business in other states.

The SWAM rules found in ***West Virginia Code of State Rules* §148-22-9** further explain that a non-resident SWAM business will receive the highest preference made available to a resident vendor in the solicitation for which the SWAM business has submitted a bid.

In order to obtain this preference, however, a non-resident SWAM business must identify itself as such in writing on the Vendor Preference Certificate available from the Purchasing Division and submit with its bid. Additionally, the vendor must have indicated on the ***Vendor Registration and Disclosure Statement and Small, Women, and Minority-owned Business Certification Application*** (WV-1 or WV-1A) that they qualify for this certification under question 4(A). The vendor must be properly certified under the rules governing certification pursuant in ***West Virginia Code of State Rules* §148-22-1 et seq.**

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

6.4. Contract Commencement: With the exception of certain approved emergency contracts, the encumbrance date is the earliest date that a vendor may commence work on any contract. No authority may be given to the vendor by the agency or any other

entity to commence work unless an encumbered contract has been processed by the Purchasing Division and received by the vendor.

In regard to construction projects, construction does not commence until such time as the Notice to Proceed is issued. Copies of all Notices to Proceed shall be provided to the Purchasing Division at the same time as the contractors receive their notification.

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

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

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

- (a) establishing payment benchmarks to assure the state receives value prior to remitting payment;
- (b) conducting regular meetings between spending unit and vendor to assess contract performance;
- (c) training spending unit personnel to manage contracts; or
- (d) using the Office of Technology Project Manager for its projects.

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

6.5.2.1. Post Award Conferences

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

- (1) The scope of the contract, including specifications of what the agency is buying;
- (2) The contract terms and conditions, particularly any special contract provisions;
- (3) The technical and reporting requirements of the contract;

- (4) The contract administration procedures, including contract monitoring and progress measurement;
- (5) The rights and obligations of both parties and the contractor performance evaluation procedures;
- (6) An explanation that the contractor will be evaluated on its performance both during and at the conclusion of the contract and that such information may be considered in the selection of future contracts;
- (7) Potential contract problem areas and possible solutions;
- (8) Invoicing requirements and payment procedures, with particular attention to whether payment will be made according to milestones achieved by the contractor; and
- (9) An explanation of the limits of authority of the personnel of both the agency and the contractor.

6.5.2.2 Monitoring

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

- (1) Measures outcomes;
- (2) Monitors compliance with contract requirements; and
- (3) Assesses contractor performance.

6.5.2.3 Reports

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

Status Reports

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

Activity Reports

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

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

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

6.7 Changes, Reinstatements and Cancellations:

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

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

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

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

Administrative changes to contracts should be made in advance and approved by the Purchasing Division and the Attorney General's Office (*as to form*) prior to the implementation of the change. However, administrative changes may be made prior to being approved by the Purchasing Division and the Attorney General's office. These administrative changes may include:

1. Changing a vendor name
2. Changing funding sources or accounting lines

3. Changing a vendor's address
4. Correction of a clerical mistake made by the State
5. Adding a renewal/extension year that was originally contemplated in the contract, provided that no new commodities/services or increases in price are included.
6. Contract closeout where quantity required was originally unknown or estimated, unit prices were included in the original contract, unit prices are not modified as part of the change order, and the quantity required was less than originally anticipated.
7. Inclusion of the Notice to Proceed documentation.
8. Changes made to sheltered workshop contracts which fall under the state set-aside program.
9. Any other administrative change not included may be approved by the Purchasing Director on a case-by-case basis.

Any change request of a purchase order in excess of ten percent (10%) of the original contract amount (aggregate) is strongly discouraged. The Purchasing Director, at his discretion, may grant a change in any amount if unforeseen circumstances have occurred and such change is in the best interest of the State of West Virginia.

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

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

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

In the event that a vendor fails to honor any contractual term or condition, or violate any provision of federal, state, or local law, regulation, or ordinance, the Purchasing Director may request the vendor remedy the contract breach or legal violation within a time frame the Director determined to be appropriate. If the vendor fails to remedy the contract breach or legal violation or the Director determines, at his or her sole discretion, that such a request is unlikely to yield a

satisfactory result, then he or she may cancel immediately without providing the vendor an opportunity to perform a remedy.

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

6.8.1 Submission of Protest: Protests based on bid specifications must be submitted no later than five (5) working days prior to bid opening. Protest of purchase order or contract awards must be submitted no later than five (5) working days after the award. The vendor is responsible for knowing the bid opening and award dates. Protests received after these dates may be rejected at the option of the Purchasing Director.

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

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

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

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

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

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

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

6.8.3 Reverse Auction Protests: A vendor desiring to submit a protest of specifications related to a reverse auction must submit the protest five (5) working days prior to the prequalification bid submission deadline. A protest of a prequalification decision must be submitted within five (5) working days of the prequalification approval or denial. A protest of award must be submitted within five (5) working days of award.

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



VENDOR PROCUREMENT GUIDE

SECTION 7: SPECIAL ACQUISITIONS

7.0 SPECIAL ACQUISITIONS:

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

7.1 Architectural and Engineering

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

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

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

- (a) Evaluate the statements of qualifications and performance data and other material submitted;
- (b) Develop a "short list" (minimum of three [3] firms) which, in their opinion, are best qualified to perform the desired service; and
- (c) Interview each firm on the "short list" and discuss anticipated concepts and proposed methods of approach to the assignment, including clarification of qualifications and performance data, the scope of services offered and needed time to complete project.

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

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

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

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

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

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

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

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

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

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

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

7.2 Capitol Improvements

7.2.1 State Capitol Complex: Pursuant to the **West Virginia Code** §4-8-5, "No contract or contracts which will result in physical changes to the state Capitol or

any approaches, structures or facilities incidental thereto shall be let, nor shall any physical changes be made not requiring a contract, until approval of the commission has been obtained.”

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

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

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

7.3 Data Processing Equipment or Software

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

All infrastructure purposes, regardless of dollar value, require CTO approval prior to submission of a request to use any type of solicitation. Since the CTO may require changes by the agency, the Purchasing Division's review of documentation without CTO approval may not be practical. All state entities, with the exception of Constitutional Officers, Higher Education and K-12, shall request approval for, at a minimum, but not limited to, the purchase of servers, storage device, routers, hubs, switches, firewalls, video conferencing and telephone equipment, including PBX system. The applicable infrastructure purchases also include infrastructure software of all types, whether it is e-mail applications, anti-virus software or any other interoperability application.

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

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

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

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

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

Equipment leases will be obtained through requests for quotations.

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

7.6 Lease Purchases: A lease purchase contract is a contract that includes periodic lease payments, and in some cases a final lump sum payment, with ownership of the equipment being vested in the agency immediately or at the lease term expiration. The minimum

purchase cost to consider a lease-purchase as an option is \$500,000.00, unless the Director of the Purchasing Division grants an exception to this minimum amount. A letter of justification must be prepared, signed by the agency head, and submitted to the Purchasing Division prior to any attempt to enter into a Lease Purchase.

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

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

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

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

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

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

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

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

7.9 Professional Services: Professional service contracts provide a mechanism to acquire specific professional expertise. Unless specifically exempt, professional services shall be competitively bid.

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

7.11 Telecommunications Systems: All telephone systems with a total cost (purchase price or total of lease purchase payments, including maintenance if selected by the agency at the time of award) over \$25,000 must be bid through the Purchasing Division. Upgrading of existing systems may be considered a sole source purchase, if the displaced equipment represents less than 50% of the present day dollar value of the existing equipment, and the equipment remains under the terms and conditions of its original maintenance agreement. Expansion of existing systems not involving an upgrade and/or added features may be considered sole source purchases if the equipment remains under the terms and conditions of its original maintenance agreement.

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

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

7.13 Used Property: State agencies may purchase used property through the normal competitive bid process after first checking the item availability with the West Virginia State Agency for Surplus Property and documenting this contact in the official file. In accordance with the **West Virginia Code of State Rules**, 148CSR7.5.e, the Purchasing Director shall issue prior approval or disapproval for used equipment to be purchased directly without competitive bids. If disapproved, the Purchasing Director shall return the request to the spending unit and direct another method of purchasing.

7.14 Banking Goods and Services: The Office of the State Treasurer must approve the acquisition of any kind of banking goods or services, which includes accepting payments

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

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

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

www.sirn.wv.gov/information/downloads/Pages/default.aspx

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

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

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



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SECTION 8: QUALITY ASSURANCE

8.0 QUALITY ASSURANCE:

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

8.1 Agency Responsibilities

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

8.1.2 Receiving: State agency personnel must verify the shipment of commodities with the specifications in the purchase order while reporting of any discrepancies, obvious damages or shortages based upon the purchase order specifications. (See **Section 5.3**)

8.1.3 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 will document all efforts made to resolve the problem and the complaints to be resolved.

Should all attempts fail to resolve the issues, the complaint will immediately be referred to the appropriate buyer of the Purchasing Division, 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 will also be included in the packet sent to the Purchasing Division buyer.

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

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

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

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

8.2.4 Training: The Purchasing Division provides a variety of training to vendors in an effort to increase the level of proficiency. In addition, on-going training is offered by the Purchasing Division in various methods, including webinars and online modules available on the Purchasing Division's website. For more information on vendor resources, visit www.state.wv.us/admin/purchase/vrc.

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. In the case of electronic submission of bids, wvOASIS is the system utilized for bid submission. For more information on wvOASIS, visit wvOASIS.gov.

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. The vendor failing to honor contractual obligations is responsible for all differences in costs;

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

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

The following are adequate grounds for suspension:

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

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

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

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.



APPENDIX	
<u>Appendix A</u>	Purchasing Division Directory
<u>Appendix B</u>	Purchasing Forms
<u>Appendix C</u>	Buyer – Agency Assignments
<u>Appendix D</u>	West Virginia Code of State Rules
<u>Appendix E</u>	Statewide Contract Listing
<u>Appendix F</u>	NIGP Code of Ethics
<u>Appendix G</u>	Pre-Bid Conference Sign-in Sheet
<u>Appendix H</u>	Request for Proposal Standard Format
<u>Appendix I</u>	Sole Source Determination
<u>Appendix J</u>	Expression of Interest Standard Format
<u>Appendix K</u>	Vendor Code of Conduct



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APPENDIX A: PURCHASING DIVISION DIRECTORY

[Click here](#) **for the Purchasing Division directory of services.**

For a direct link, access www.state.wv.us/admin/purchase/directory.html



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APPENDIX B: PURCHASING FORMS

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

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



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APPENDIX C: BUYER – AGENCY ASSIGNMENTS

Click here for the Purchasing Division buyer assignments.

For a direct link, access www.state.wv.us/admin/purchase/byrassign.htm.



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APPENDIX D: WEST VIRGINIA CODE OF STATE RULES

Click Here for the Purchasing Legislative Rules and Regulations.

For a direct link, access www.state.wv.us/admin/purchase/rules.html.



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APPENDIX E: STATEWIDE CONTRACT LISTING

Click Here for the current statewide contract listing.

For a direct link, access www.state.wv.us/admin/purchase/swc.



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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.



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APPENDIX G: PRE-BID CONFERENCE SIGN-IN SHEET

Pre-Bid Conference Sign-In Sheet

(It is important for vendors to write legibly on this sign-in sheet. The fax number is essential to contact the attendees in a timely manner.)

For a direct link, access:

www.state.wv.us/admin/purchase/handbook/2007R24/signin.pdf



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APPENDIX H: REQUEST FOR PROPOSAL STANDARD FORMAT *REVISED 06/08/2012*

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

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



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APPENDIX I: SOLE SOURCE DETERMINATION

Click Here for the Sole Source Determination template.

For a direct link, access:

www.state.wv.us/admin/purchase/handbook/2007R21/ssdform.doc



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APPENDIX J: EXPRESSION OF INTEREST STANDARD FORMAT ***REVISED 08/01/2015***

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

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



WEST VIRGINIA PURCHASING DIVISION

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APPENDIX K: VENDOR CODE OF CONDUCT

Click here to view the Purchasing Division's **Vendor Code of Conduct**.

For a direct link, access:

www.state.wv.us/admin/purchase/vrc/VendorConduct.pdf