

West Virginia Purchasing Division **Procedures Handbook**

STATE OF WEST VIRGINIA

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ISSUANCE DATE: June 8, 2018

REVISION DATE: October 26, 2018

The West Virginia *Purchasing Division Procedures Handbook*
October 26, 2018

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Procedures Handbook

INTRODUCTION

The *Purchasing Division Procedures Handbook* is a helpful tool for all procurement officers, managers and employees to use in learning more about programs, procedures and services administered through the Purchasing Division.

This handbook was prepared with the assistance of purchasing professionals throughout West Virginia state government. It offers guidance for those who are new to the state purchasing process as well as those more experienced individuals. Each section offers specific information and procedures which should prove helpful to users in making sound, cost-efficient decisions.

As the Director of the West Virginia Purchasing Division, I strongly recommend the use of this handbook by all state procurement officers and their respective staffs. Our goal is to simplify and clarify the state's procurement process while ensuring fair and open competition with proper documentation of all purchasing transactions.

Because the Purchasing Division has responsibilities beyond procurement, information on our other programs, such as travel, fixed assets and surplus property are also included within the appendices of this handbook.

This handbook provides each of us with a sound reference ensuring accuracy and consistency as we perform our procurement duties and responsibilities within West Virginia state government. My office is always open for questions, concerns and suggestions. I invite you to visit our Internet website at WVPurchasing.gov and our intranet site at <http://intranet.state.wv.us/admin/purchase>.

Sincerely,



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

SECTION 1: GENERAL INFORMATION

1.0 GENERAL INTRODUCTION

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

1.2 Statutory Authorization: The Purchasing Division was created, and its duties are defined in the W. Va. Code § 5A-3-1 *et seq.* According to the Code, “the Purchasing Division was created for the purpose of establishing centralized offices to provide purchasing, and travel services to the various state agencies.” The Purchasing Division offers many other services to state agencies, political subdivisions and the vendor community. These 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 W. Va. 148 C.S.R. 1. This Legislative Rule is included in this manual in **Appendix D** and serves as an explanation and clarification of operative procedures for the purchase of commodities and services by the Purchasing Division. It applies to all spending units of state government, except those statutorily exempted.

1.4 Required Use of Handbook: State procurement officers and their support staffs are required to use this handbook to perform procurement and other related activities.

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

The agency designated procurement officer is responsible for the following:

- Keep apprised of the current statutory and regulatory requirements for state purchasing through training opportunities offered by the Purchasing Division, in accordance with the West Virginia Code of State Rules;
- Serve as the first point of contact to provide guidance to internal agency staff regarding purchasing issues;
- Coordinate communication and serve as the point of contact between the agency and the Purchasing Division;
- Review and approve specifications prior to submitting requisitions to the Purchasing Division;
- Review bids and concur with agency recommendation for award prior to submission to the Purchasing Division;
- Maintain proper documentation and files for public record;
- Ensure that his or her agency's procurement staff receives proper training, both internally and externally, for agency-delegated processes as well as those for formal procurements; and
- Perform other related procurement duties as needed.

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

Acquisition and Contract Administration Section:

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

Communication and Technical Services Section:

- Communication
- Professional Development
- Information Technology
- Imaging and Records Retention
- PO Encumbrance
- Vendor Registration
- Bid Distribution/Receipt

Program Services Section:

- State and Federal Surplus Property Programs
- Travel Management
- Inventory Management (Fixed Assets)

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

1.7 Disclaimer: The *Purchasing Division Procedures Handbook* is provided for reference purposes only. This handbook may be amended or changed at any time at the discretion of the Purchasing Director to ensure compliance with the laws, rules and procedures of the Purchasing Division and the State of West Virginia. Exceptions to these guidelines require written requests to and approval by the Purchasing Director.

1.8 Public Records: All records in the Purchasing Division related to purchase orders and contracts are considered public records, although the timing of the release of certain documents to the public does vary. Documents like the solicitation and any addenda are released for public viewing as part of the bidding process so those documents become public as soon as they are released. Similarly, bids may be viewed immediately after bid opening pursuant to W. Va. 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 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 W. Va. 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 W. Va. Code § 29B-1-4, but the Purchasing Division makes no guarantee that such a request will be honored.

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

All records maintained at the agency level related to purchase orders and/or contracts are also considered public records. State agencies must refer to and follow the same procedures as the Purchasing Division when making public records available. As an example, agencies are responsible for making bids immediately available after the bid opening to the public when processing under its agency delegated procurement procedures. Similarly, the agency delegated contract file must be made available to inquiring parties after contract award.

Agency delegated contracts and supporting documentation should be maintained until the agency obtains permission to destroy the documents from the Legislative Auditor's office pursuant to W. Va. Code § 5A-3-11(h). Agencies should review bids for the inadvertent inclusion of social security numbers or other protected health information. Questions regarding the redaction of information, if any, should be directed to the agency's privacy officer.

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

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

1.10 wvOASIS Enterprise Resource Planning (ERP) System: The state's enterprise resource planning (ERP) system, which is referred to as wvOASIS, is a comprehensive suite of software modules that provide for statewide administrative functions, including financial management, procurement, asset management, personnel administration, payroll, time reporting and benefits administration. This system is used for advertising solicitations of \$10,000 and more and awarding all procurements exceeding \$2,500.

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

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

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

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

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

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

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

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

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

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

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

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

Any vendor whose right to bid on state purchases has been suspended by the Director under the authority of W. Va. 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 W. Va. Code § 5A-3-3, the Purchasing Director has authority to issue a notice to cease and desist to a spending unit when the director has credible evidence that a spending unit has violated competitive bidding or other requirements established by this article and the rules promulgated hereunder. Failure to abide by such notice may result in penalties set forth in section seventeen of this article.

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

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

Additionally, agencies are not permitted to use the State Purchasing Card or the General Accounting Expenditures (GAX) document as a payment method intended to bypass the procurement process.

SECTION 2: DEFINITIONS, ABBREVIATIONS AND ACRONYMS

2.0 DEFINITIONS, ABBREVIATIONS AND ACRONYMS

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

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

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

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

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

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

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

Bid - Anything that a vendor submits in response to a solicitation that constitutes an offer to the State and includes, but is not limited to, documents submitted in response to request for

quotation, proposals submitted in response to a request for proposal or proposals submitted in response to an expression of interest.

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

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

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

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

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

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

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

Cooperative Contracting - 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. Cooperative Contracting requires prior approval by the Purchasing Director.

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

Direct Award - A procurement method that allows for the direct purchase of commodities or services when it is believed that only one vendor can supply the needed commodity or service under the circumstances.

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 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 W. Va. Code 5G-1, as "those professional services of an architectural or engineering nature as well as incidental services that members of those professions and those in their employ may logically or justifiably perform."

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

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

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

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

Lease - A written agreement between the owner of equipment (lessor) and a state agency (lessee) by which the owner agrees to give the agency permission to use the equipment for a predetermined fee (rental) for a period exceeding 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 years, which is required on roofing projects.

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

Master Agreement - A generic term used for a contract that covers a period of time in which all terms, conditions and prices are specified except for quantity. This is also known as an open-end contract.

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

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

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

Open-End Contract - A generic term used for a contract that covers a period of time in which all terms, conditions and prices are specified except for quantity. This is also known as a master agreement.

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

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 - In accordance with W. Va. Code §§ 5A-3-10a and 5-22-1(i), the state is prohibited from awarding a contract to any bidder that owes a debt to the state or any of its political subdivisions. Vendors are required to sign, notarize and submit the *Purchasing Affidavit* to the Purchasing Division, or the agency in a delegated procurement, affirming under oath that it is not in default on any monetary obligation owed to the state or any of its political subdivisions.

Purchasing Bulletin - An electronic publication made available on the Vendor Self-Service portal (VSS) as part of the wvOASIS system used to advertise purchases expected to exceed \$10,000 for most agencies in West Virginia's state government.

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

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

Rental - Temporary compensation or fee paid for the use of any equipment usually for a period of less than 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.

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

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

Stringing - Issuing a series of requisitions or dividing or planning procurements to circumvent the \$25,000 threshold or otherwise avoid the use of sealed bids.

Tie Bid - When two 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 email based on commodities and services noted at the time of registration; review awarded contracts; perform inquiries pertaining to awards; view payment status and update company contact information, including mail and email addresses.

Vendor Preference - A numerical preference used during the evaluation of bids when comparing in-state and out-of-state bidders, pursuant to W. Va. Code § 5A-3-37, which applies only to (1) motor vehicles and (2) construction and maintenance equipment and machinery used in highway and other infrastructure projects.

Reciprocal Preference - The state of West Virginia applies a reciprocal preference to all solicitations for commodities and printing, in accordance with W. Va. Code § 5A-3-37(b). In effect, non-resident vendors receiving a preference in their home state will see that same preference granted to West Virginia resident vendors bidding against them in West Virginia.

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

SECTION 3: ACQUISITION PLANNING

3.0 ACQUISITION PLANNING

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

When preparing for a purchase prior to the actual bidding process, the following steps should be taken:

- Define need
- Consider acquisition and delivery lead time
- Create specifications for the commodity or service
- 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 or service to perform a specific function is one of the most important tasks in the procurement process. The agency must take into consideration the problem to be resolved and what alternatives or options are available to satisfy the need. See **Appendix F: Purchasing Decision Path**.

3.3 Acquisition and Delivery Lead Time

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

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

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

commodity or service. Consideration must be given to market conditions which will affect delivery. Custom-made and complex items of equipment normally take longer to obtain than in-stock items.

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

Specifications must not unnecessarily inhibit competition. W. Va. 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, W. Va. § 148 C.S.R. 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.

Standardization: One exception to the inability to favor a brand or vendor is the standardization process outlined in W. Va. Code § 5A-3-61 and **Section 7.14**.

Specifications used in the procurement process shall be retained with the purchasing file for each purchase order. Written specifications are required for purchases between \$10,000 and \$25,000 at the agency level to ensure vendors are being provided a fair opportunity to quote comparable products.

A good specification should contain language that is the following:

- Clearly understandable to both the buyer and the seller
- Complete
- Concise
- Identifiable wherever possible with some brand or specification already on the market
- Verifiable
- Reasonable
- Legible

No reference may be made in a solicitation to external published specifications without the express, written approval of the Purchasing Director. When external published specifications are referenced in a Request for Quotation or Request for Proposal, a copy of those specifications must be included with the solicitation.

3.4.1 Types of Specifications: There are four 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 or more manufacturer’s commodity description(s), model number(s) and quality level.

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

A spending unit that uses a brand or vendor name to describe a needed commodity or service must also list in the specifications the mandatory components of that commodity or service that the reference to a brand or vendor name is intended to capture. A vendor’s equality with the brand or vendor name will be evaluated on the basis of the mandatory components only.

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

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

When using a brand name specification, the words “or equal” must be inserted to inform vendors that alternate bids will be considered. The general name of the items, e.g., air blowers, automobiles, etc., should be listed first; the manufacturer and model number of the item should follow immediately. Literature should be requested to accompany any alternate bid which can verify that the alternate bid complies with the specifications.

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

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

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

An agency may not draft specifications to match a vendor’s description of its commodity or service to the exclusion of others or draft specifications that are so restrictive that only one desired vendor can meet the requirements without adequate justification for the restrictions. Reduced need for training, maintaining

consistency in inventory, staff familiarity and other similar objectives will not be sufficient to justify restrictions in specifications.

3.4.1.4 Standardization specifications are those that refer to a specific brand of product, without allowance for equal brands. This type of specification can only be used if the agency has established a standard through the process contained in W. Va. Code § 5A-3-61. See also **Section 7.14** for more information.

3.4.2 Preparing Specifications and Purchase Descriptions: Most state agencies have a procurement officer who is responsible and knowledgeable in state purchasing guidelines as well as their own agency procedures. It is important to note that questions from agency personnel relating to purchasing issues should be directed first to the respective agency procurement officer rather than directly to the Purchasing Division. If the agency procurement officer needs assistance, they are encouraged to contact the appropriate state buyer in the Acquisition and Contract Administration Section of the Purchasing Division for assistance in preparing specifications. (See **Appendix C**)

When preparing a *Requisition*, if the agency currently has a contract for the needed commodity or service, submit the existing contract number and expiration date with the *Requisition* when submitting to the assigned buyer in the Purchasing Division. If this is a new contract, also indicate this information to the Purchasing Division buyer. This information will assist the buyer in developing timelines for bidding and acquiring a new contract prior to the expiration of the existing contract.

The *Requisition* must include the following:

- *Maximum Budgeted Amount:* This is the maximum available funding determined by the agency at the time of submitting a Request for Quotations or Proposals to the Purchasing Division. This amount is required on all Purchase Requisitions. For purposes of determining the agency's ability to negotiate, under W. Va. Code § 5A-3-11a, this amount cannot be changed after bid opening. Note: On requisitions in wvOASIS, the Maximum Budgeted Amount field does not pre-encumber or reserve funds in any way. It is primarily used to determine whether negotiations are allowed (when all bids exceed available funds).
- *Quantity:* The total quantity requisitioned (or an estimated quantity amount based on past usage for an open-end contract) and the unit of measure, such as cases, each, pounds, etc., must be provided.
- *Type of Purchase:* The type of purchase should be identified in the *Requisition*. For additional information on types of purchasing transactions, see **Section 3.7.1**.
- *Description:* The description of the commodity or service should be contained in the specifications. The description shall contain the essential requirements that clarify the quality level or indicate the features that are important to the function of the item/service being purchased.

Make sure the *Requisition* and any attachments are in compliance with the following:

- Appropriate for photocopying
- Neatly typed
- Free of typographical errors
- Approved by an authorized agency representative

The information entered on the requisition is a reflection on the agency and the state of West Virginia. Please insist on high quality work. Improperly completed requisitions or inferior quality will be returned to the agency for correction.

3.4.2.1 Specification Templates: Several sets of templates related procurement transactions have been developed and are mandatory for use by state agencies to streamline processing transactions. The templates relate to such specification types as Catalog Discount Request for Quotation Standard Format, One-Time Purchase Request for Quotation Standard Format and Open-End Request for Quotation Standard Format. Other than in blank spaces where the agency must fill in information as indicated, agencies must not change the language in the templates unless expressly approved by the Purchasing Director. These templates are available on the Purchasing Division's intranet site at <http://intranet.state.wv.us/admin/purchase/procedures.html>.

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

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

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

3.5 Research the Market: When preparing specifications, it may be necessary to research the market to gain a better understanding of equipment, its technology, compatibility and availability.

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

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

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

3.6 Internal Sources: Prior to issuing a solicitation, it is mandatory that agencies review all internal sources and mandatory contracts as detailed below. If the commodity or service is available from an internal source or mandatory contract, then it must be obtained in that manner.

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

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

The State Property Program consists of property no longer needed by the state government agency retiring the equipment, which is then made available to other state agencies, eligible public and nonprofit organizations and the general public. If the State Surplus Property program has the needed commodity at the required quality level, it must be obtained from the West Virginia State Agency for Surplus Property.

In addition to the availability of surplus property, another function of the West Virginia State Agency for Surplus Property is to approve the disposal of property no longer needed by the agencies, including trade-ins against the purchase of new property.

Agencies do not have authority to dispose of any property regardless of value without written approval from the West Virginia State Agency for Surplus Property. All methods of property disposal must be coordinated through Surplus Property.

For additional information on the this program, state agencies are encouraged to refer to the *West Virginia Surplus Property Operations Manual* at www.state.wv.us/admin/purchase/surplus/surplus_operations_manual.pdf or visit its website at WVSurplus.gov.

Any questions concerning the disposal or sale of state surplus property should be directed to the West Virginia State Agency for Surplus Property at the address below:

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

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

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

In accordance with W. Va. 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 direct award supplier for all printing and quick copy services.

For specific details 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 W. Va. Code § 5A-3-10, to purchase commodities and services from sheltered workshops whenever such commodities and services are available and meet certain quality and price standards which are comparable to open-market sources. Use of sheltered workshops does not require bidding for commodities and services included in the WVARF statewide

contract. Commodities and services not included in the WVARF statewide contract require competitive bidding.

If the West Virginia Association of Rehabilitation Facilities is unable to provide the requested commodities and services, a written notice will be provided by WVARF advising the agency that their request is unable to be met at that time and competition may be sought in accordance with the state purchasing procedures. For specific information on the sheltered workshops or the available commodities and services, contact WVARF at (304) 766-4894, or visit <http://www.state.wv.us/admin/purchase/swc/default.html>.

3.6.2 Mandatory Contracts

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

Waiver: Agencies may request a waiver from a statewide contract if the vendor is unable to deliver the commodity or service by the required delivery date, assuming that the spending unit is not imposing an unreasonable delivery deadline, the vendor is unresponsive to ordering requests, or the vendor has refused to perform. When a 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: Once established, agencies are required to use their delegated and central open-end contracts to obtain the commodities or services covered by the contract. Failure to do so exposes the state to a potential breach of contract.

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

3.7 Preparation of the Requisition

3.7.1 Determining the Need for a One-Time Purchase or an Open-End Contract: Before proceeding with the competitive bid process, an agency must determine whether a purchase should be processed as a one-time purchase or if the agency should solicit an open-end contract for recurring purchases. Below is information related to these types of transactions.

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

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

After the contract is established, a delivery order must be processed to obtain commodities or services from the contract, unless otherwise requested and approved in writing by the West Virginia Purchasing Division and State Auditor's Office.

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

Not Requiring Purchasing Division Approval: Most delivery orders from Agency or Central Master Agreements (i.e. open-end contracts) do not require advance approval from the Purchasing Division. The agency must process an *Agency Delivery Order (ADO)* directly to the vendor to obtain goods or services in the amount of \$250,000 or less from these contracts, unless ordering instructions contained in the contract require Purchasing Division approval. In most cases, open-end contracts will contain ordering instructions with additional details about ordering. Agencies are required to follow any such instructions contained in open-end contracts.

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

As noted above, some contract delivery orders, in any amount, require the advance approval of the Purchasing Division. When this is a requirement in the contract, it will be stated in the ordering instructions.

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

3.7.2 Terms and Conditions: Terms and conditions are included to express the intent of the State of West Virginia. Purchasing Master Terms and Conditions are a part of every written solicitation issued through and contract awarded by the Purchasing Division. Agency Master Terms and Conditions are also available and mandated for use by state agencies utilizing their delegated purchasing procedures. Both the Agency Master and Purchasing Master Terms and Condition may be found in the Agency Resource Center of the Purchasing Division's website at <http://www.state.wv.us/admin/purchase/arc/default.html>.

3.7.3 Initial Contract Term: The Purchasing Division allows for a standard initial contract term of one year. Software contracts with maintenance may have an extended initial term of up to five years. Contracts that require a time period of more than one year for completion, like construction projects, are acceptable in instances where there may be larger upfront costs or for extremely complex programs or projects. Such requests must be made to the Purchasing Division in writing and contain adequate justification. Approval of the extended term must be maintained in the contract file.

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

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

Agencies are not permitted to extend any contract beyond the time that is stated in the contract.

3.7.5 Insurance: BRIM has developed an insurance guide that provides an overview of various insurance policies, coverage limits and other information (see **Appendix G**). Agencies may access information about these topics and more at <https://brim.wv.gov>.

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

BRIM has stated that every contract should, at the very least, require the vendor to show evidence of Commercial General Liability and Workers' Compensation coverage, and in most cases, automobile coverage. Additionally, no agency is

permitted to release a solicitation without mandated insurance coverages without BRIM's express approval. Adequate insurance coverage ensures that the vendor remains liable for any damages caused.

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

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

3.7.5.2. Proof of Coverage: Once the insurance requirements have been determined and included in the solicitation, the Purchasing Division will request the vendor to provide documentation confirming that the required insurance coverage has been obtained. That documentation is usually the Accord form, which will show insurance coverage during a stated period.

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

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

3.7.6 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." To avoid confusion from vendors, agencies are encouraged not to schedule their agency delegated bid openings at 1:30 p.m., the bid opening time utilized by the Purchasing Division.

3.7.7 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

will be involved in the evaluation process by reviewing bids, making recommendations and providing justification.

State agencies must review the bids when posted online at the Purchasing Division's website. Paper copies will only be provided to the agencies if the bids are too large to post electronically.

State agencies must submit a recommendation for award to the Purchasing Division within five business days of the bid opening date, with the exception of Request for Proposals (RFP) and Expressions of Interest (EOI). RFP and/or EOI recommendations for award which must be received within 10 business days. Failure to timely review bids and recommend an award may result in bid expiration, project delays, a longer procurement process and/or cancellation of the solicitation. In instances where these submission deadlines cannot be met, the agency should communicate their reason(s) to the Purchasing Division.

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

Agency procurement officers should discuss the non-conflict of interest issue with potential committee members to ensure that individuals who may have a conflict are not chosen to participate as evaluation committee members.

Please note that this requirement applies to all transaction types. This certification must be submitted at the following time frames:

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

This certification applies to all transactions processed through the Purchasing Division. In addition, it is required for agency delegated purchases exceeding \$2,500. Agencies may adopt this policy at their discretion for purchases \$2,500 or less.

3.7.7.1 Blackout Period: In accordance with the W. Va. § 148 C.S.R. 1-6.6b, from the time a requisition is submitted to the Purchasing Division for public

advertisement until an award is made, evaluators and spending unit personnel are not permitted to communicate with vendors about the solicitation or any component thereof without prior approval from the Purchasing Division. All communication regarding the solicitation must be directed to the Purchasing Division until an award has been made. Nothing in this subsection, however, shall prevent the evaluators and spending unit personnel from communicating with a vendor about existing contracts or other matters unrelated to the solicitation in question.

3.8 Identify Possible Vendors: To achieve the goal of competitive bidding, a minimum of three 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 potential vendors who may be qualified to bid on the solicitation. It is important to include the vendor's company name, contact person, mailing address, telephone number, fax number and email address.

3.9 Federal Funding Requirements: Any requisition utilizing federal funding which includes special requirements in addition to or different than normal purchasing requirements must be identified when submitted. All special requirements, particularly regarding advertising, must be provided in a separate memorandum and attached to the requisition.

3.10 Special Considerations

3.10.1 Vendor Preference

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

Vendors must request the preference in writing and the time of bid submission to be eligible. A link to the vendor preference request form has been included in the Master Terms and Conditions.

This preference is applied by increasing the bids of other vendors in comparison with the preference recipient. Given the complexity of preference evaluations, it is

strongly recommended that the Purchasing Division buyer assist the agency in evaluating specific situations relating to this preference.

3.10.1.2 Reciprocal Preference: The state of West Virginia applies a reciprocal preference to all solicitations for commodities and printing in accordance with W. Va. Code § 5A-3-37(b). In effect, non-resident vendors receiving a preference in their home states will see that same preference granted to West Virginia resident vendors bidding against them in West Virginia.

In order to receive the reciprocal preference, vendors must identify themselves as a West Virginia vendor and request in writing at the time of bid submission that it be applied. A link to the vendor preference request form has been included in the Master Terms and Conditions.

3.10.1.3 SWAM Preference: A non-resident vendor certified as a small, women-owned, or minority-owned (SWAM) business, pursuant to W. Va. Code § 5A-3-59, shall be provided the same preference made available to any resident vendor. The SWAM rules found in W. Va. § 148 C.S.R. 22-9 further explain that a non-resident SWAM business will receive the highest preference made available to a resident vendor in the solicitation for which the SWAM business has submitted a bid. In order to obtain this preference, however, a non-resident SWAM business must identify itself as such in writing with the bid and must be properly certified under the rules governing certification pursuant in W. Va. § 148 C.S.R. 22-1 et seq. A link to the vendor preference request form has been included in the Master Terms and Conditions.

3.10.2 Special Forms

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

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

3.10.2.2 Purchasing Affidavit: A *Purchasing Affidavit* is a required attachment on written Request for Quotations (RFQ).

3.10.2.3 Agreement Addendum (WV-96): The *Agreement Addendums* (WV-96 and WV-96A [for software]) are documents that can be utilized to counter a

vendor's submission of alternate terms and conditions. The WV-96 and WV-96A should never be included in the outgoing solicitation. It is only utilized after it is clear from the vendor's bid that alternate terms and conditions have been proposed.

3.10.3 Other Considerations:

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

Additive / Alternative Options (Add-on or Deduct): In construction contracts, there are projects for which alternative options may be requested of the participating bidders. Pursuant to W. Va. Code § 5-22-1(e), if the pricing pages contain alternates/add-ons, there must be no more than five listed and the alternates/add-ons must be selected in the order of priority listed on the pricing pages. The first alternate/add-on must be selected before the second alternate/add-on can be selected and so on. Any unaccepted alternate contained within a bid shall expire 90 days after the date of the opening of bids for review.

3.10.3.2 Recycled Products: In accordance with W. Va. 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.

SECTION 4: VENDOR REGISTRATION REQUIREMENTS

4.0 VENDOR REGISTRATION REQUIREMENTS AND PROGRAM SCOPE:

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

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

Agencies can access vendor registration records within the VCUST table in the wvOASIS system. The Purchasing Division encourages all stakeholders to utilize the vendor/customer records designated as the “headquarters” account in the case of multiple VCUST records for the same vendor/customer.

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

4.1 Requirements:

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

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

- (1) Purchasing card vendors providing travel-related services;

(2) Purchasing card vendors receiving an aggregate total yearly payment less than \$25,000.00 from a spending unit; and

(3) Any company or corporation, or subsidiary of the company or corporation, listed on any nationally recognized stock exchange.

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

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

4.1.2 Fee Payment: A payment of the \$125 annual fee is required as part of the vendor registration process. If the vendor elects to complete the WV-1 form rather than to electronically register, the vendor's check and the WV-1 form are to be mailed directly to the Purchasing Division.

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

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

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

(1) Purchasing card vendors providing travel related services;

(2) Purchasing card vendors receiving an aggregate total yearly payment less than \$25,000.00 from a spending unit;

(3) Vendors receiving orders for goods or services for a statewide aggregate of \$2,500 or less, regardless of payment method;

(4) Vendors providing a good or service under a direct award solicitation are not required to pay the registration fee in connection with that direct award contract; and

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

- *Government Entities-Registration:* All state agencies, cities, counties, municipalities and political subdivisions doing business with the state must register using their TIN. Only applicable information needs to be provided. No fee is required.
- *Vendors Offering Commodities and Services Under Section 9:* Vendor registration fee is waived and, therefore, not required for a vendor providing commodities or services specified under Section 9 of the *Purchasing Division Procedures Handbook*. Be reminded that a vendor may provide commodities or services on a transactional basis under Section 9 and not be required to pay the fee; however, should the same vendor be used for other competitive procurement methods, the registration fee would be required of that vendor.

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

In wvOASIS, the VNREGEX screen contains a list of each department's available fee-exemption codes. The proper vendor fee-exemption code for the specific agency transaction, if applicable, is entered on the award document to a vendor that is on "Prevent New Orders" hold. Agency designated procurement officers should be consulted when questions arise. The option for the agency to appropriately use a fee-exemption code for a particular transaction is not an exemption from the Disclosure of Information requirement of the vendor registration process.

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

4.2 Vendor Hold: All vendors that have not paid the \$125 annual fee will be placed on "Prevent New Orders" status until payment of the fee is received. Vendors with "Prevent New Orders" status cannot receive purchase orders through wvOASIS unless they pay the registration fee, or an appropriate fee exemption code is applied.

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

Fee exemption codes are never an appropriate way to facilitate a purchase from an existing statewide contract or a centrally processed and competitively bid agency contract. Agencies wishing to purchase from vendors holding such contracts with the “Prevent New Orders” status should inform such vendors that the vendor registration fee is required. Helpful information is available on the Purchasing Division website for payment and registration procedures.

Vendors will be removed from “Prevent New Orders” status when upon review and confirmation the vendor has paid the fee and has provided the required disclosure of information.

4.3 Small, Women-, and Minority-owned Business Certification (SWAM): As required by W. Va. Code § 5A-3-59, the West Virginia Purchasing Division incorporated the SWAM Certification Application as part of the Vendor Registration & Disclosure Statement. As a result, vendors may apply to become SWAM-certified if they fall within the business categories defining a small, women-, and minority-owned business. Vendors are encouraged to add this information through Vendor Self-Service in the “Business Type” portion of their wvOASIS vendor/customer account. W. Va. § 148 C.S.R. 2-1 et seq. requires vendors to re-certify every two years to remain compliant.

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

4.3.1 SWAM Designation: The recognized designations for SWAM include:

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

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

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

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

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

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

If an agency is unable to access wvOASIS Business Intelligence, the Purchasing Division also maintains a SWAM Reporting Tool on its intranet site under *Processes and Procedures*. This intranet page may be accessible at <http://intranet.state.wv.us/admin/purchase/procedures.html>. At the end of each fiscal year, this Excel spreadsheet may be completed noting all contracts or purchase orders issued to SWAM vendors paid by the Purchasing Card.

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

Should an agency purchaser receive any questions relating to the vendor registration procedures or the SWAM certification, the vendor should be directed to the Purchasing Division's Vendor Registration webpage which focuses on these programs. This webpage may be accessed directly at <http://www.state.wv.us/admin/purchase/VendorReg.html>.

SECTION 5: AGENCY DELEGATED ACQUISITION PROCEDURES (Purchases \$25,000 or Less)

5.0 AGENCY DELEGATED ACQUISITION PROCEDURES

5.1 Definition of Authority: In accordance with the West Virginia Code of State Rules, the Purchasing Division has delegated the ability to process procurements of \$25,000 or less to state agencies. This means that state agencies may make purchases of commodities or services in the amount of \$25,000 or less without processing a formal *Requisition* through the Purchasing Division. The delegated authority is further explained in three levels of procurement discussed in more detail in **Section 5.2**.

It is expected that procurements made under delegated authority will mirror, to the greatest extent possible, formal procurement procedures. It is further expected that the forms used in the bidding process will be the most recent version approved by the Purchasing Division, which are available on the Purchasing Division's Internet and intranet sites.

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

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

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 12-month period.
2. Agency makes multiple payments to a single vendor that aggregate to \$25,000.01 or more within a 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 12 consecutive months.

The 12-month period is a rolling period that begins with the effective date of the contract and extends back 12 months. As time passes, that 12-month period moves forward in the same way. Purchase orders and/or contracts which are renewed or extended for a period of one year and meet one of the above conditions shall also be considered a violation of the \$25,000 bid limitation.

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

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

Prior to seeking competitive bids, please complete the appropriate steps outlined in **Section 3: Acquisition Planning**.

5.2 Delegated Spending Thresholds: The Purchasing Division has established the following spending thresholds within the agency delegated authority, each with bidding and documentation requirements described below.

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

5.2.2 Purchases \$2,500.01 to \$10,000: A minimum of three verbal bids are required, when possible, and the lowest bid meeting specifications must be awarded the purchase order/contract. All bids must be present in the file.

Agencies are permitted to solicit bids within this threshold using the *West Virginia Purchasing Bulletin*; however, it is not required.

Bids shall be documented and recorded for public record. (See **Appendix B** for *Verbal Bid Quotation Summary* [WV-49]). A *wvOASIS* procurement award document is required for purchases exceeding \$2,500. Awards are to be made only to vendors who are properly registered with the Purchasing Division. Signed fax bids or electronic bids are acceptable. Screen prints from Internet sites in which the commodity or service is for sale and may be procured can substitute for a verbal bid. A “no bid” is not considered a bid.

5.2.3 Purchases \$10,000.01 to \$25,000: A minimum of three written bids are required, when possible, and the lowest bid meeting specifications must be awarded the purchase order/contract. All bids must be present in the file.

An Agency Request for Quotation should be used for documenting and making these requests. In all cases, state agencies must attempt to obtain at least three written bids for a product or service. A “no bid” is not considered a bid. The date and time of the bid opening shall be published on the Request for Quotation and the solicitation must be advertised in wvOASIS. A wvOASIS procurement award document is required. Signed fax bids or electronic bids are acceptable. Screen prints from Internet sites are not acceptable as a valid bid.

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

5.3.1 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 \$10,000.01 and \$25,000. Exceptions to this requirement may be granted by the Purchasing Director.

An RFQ consists of:

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

Each item should be identified by a model number or some other specific identification. Prices cannot be altered after bids are opened. The RFQ must have an established date and time for the bid opening, after which bids will no longer be accepted. All bids should be stamped with the date and time of receipt.

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

5.3.1.2 Public Notice: State agencies are required to publicly advertise solicitations expected to exceed \$10,000 in the *West Virginia Purchasing Bulletin*, accessed within the Vendor Self-Service portal within wvOASIS. Agencies must advertise delegated solicitations for a period of no less than 10 business days. If exceptional circumstances exist which require a shorter advertisement period, the agency must receive prior approval from the Purchasing Division.

5.3.1.3 Evaluation of Bids: Bids are received, opened and examined by the agency to ensure compliance with all specifications and determination of the lowest responsible bidder. Bids shall be sealed until the date and time set for the bid opening, which shall be open to the public.

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

5.3.1.4.1 Award to Other Than Low Bid: If an award is made to other than the lowest bidder, a detailed justification as to why the lowest bidder was not awarded the contract must be written and retained for public record and inspection. The justification must be signed by the evaluator(s) and retained as part of the bid file.

5.3.1.5. Firm Fixed Pricing: 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.

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

- **Purchasing Division Registration:** Vendors must be properly registered with the Purchasing Division, which includes having the proper disclosure of information in the wvOASIS vendor/customer account, such as the Owner/Officer Information and Banking Information listed under the “Disclosures” tab, and payment of the annual fee (where required). It is also recommended that the Finance Division have a current W-9 on file for the vendor. This is indicated under the “Hold Payment” portion of the “Disbursement Options” tab of the wvOASIS vendor/customer account;
- **Workers’ Compensation/Unemployment:** In accordance with the W. Va. 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;
- **Federal Debarment:** Verification that the vendor is not debarred by the federal government. wvOASIS automatically verifies this federal compliance prior to award.
- **State Debarment:** Verification that the vendor is not debarred by the State of West Virginia. The Purchasing Division maintains a list of vendors 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;
- **Secretary of State:** Unless a waiver is obtained from the Secretary of State’s office, every vendor must have a certificate of authority and be in good standing with Secretary of State’s office. To search for a business or corporation with the Secretary of State’s office, visit

<http://apps.sos.wv.gov/business/corporations>. Any vendor that cannot be found or shows a status of “revoked” or “dissolved” is not eligible for award until the issue is resolved. Agencies must verify this compliance manually prior to award and include a copy of the relevant records on the contract file.

- Other: In accordance with the W. Va. § 148 C.S.R. 1-6.1.e, the vendor must be licensed and in good standing with any and all state and local law and requirements.
- Purchasing Affidavit; and,
- Agreement Addendum (WV-96) (required when vendors submit alternate terms and conditions with their bid) (See **Appendix B**)

5.3.1.7 Tie Bids: When purchasing commodities and services of \$25,000 or less, occasionally two 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 best and final offer, flip of a coin, draw of the cards, or any other impartial method considered prudent by the Director. A witness must be present when resolving the tie and documentation of the method and results, with signatures of all witnesses, must also be included in the file. Vendors affected by the tie should be notified and given an opportunity to attend the tie breaker. Breaking of tie bids has not been delegated to the agencies and must be handled by the Purchasing Division.

5.3.1.8 Errors in Bids: The West Virginia Code of State Rules guides the division in cases of errors in bids for purchases over \$25,000. It is recommended that agencies follow these procedures when processing delegated purchases (\$25,000 or less).

If an error is discovered by the agency or the Purchasing Division, the burden of proof and timely action for request of relief is the vendor’s responsibility. The request for relief must be made in writing by the vendor and should be received by the agency within five business 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.

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

5.3.1.10 When Three Bids Not Possible: The following are instances where obtaining three competitive bids is not possible.

1. Emergency – Agencies are permitted to declare a delegated emergency. The file should contain all documentation necessary to substantiate the declared emergency.
2. Solicitation Advertised in wvOASIS and Less Than Three Bids Received – An agency that advertises a delegated solicitation in wvOASIS is not required to obtain three bids if less than three bidders respond. This provision does not apply to an agency that has issued flawed or unlawfully restrictive specifications.
3. Direct Award – Agencies are permitted to complete a direct award procurement at the agency delegated level if certain requirements are met. See **Section 5.4.2**.

5.4 Other Procurement Methods

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

5.4.1.1 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 or more firms solicited on the basis of known or submitted qualifications for the assignment and scope of services prior to the awarding of any contract. The Purchasing Master Terms and Conditions must be included with the negotiated contract that is submitted to the

Purchasing Division so that all vendors are aware of the requirements of the potential contract.

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

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

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

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

Change orders for projects estimated to cost less than \$250,000, which includes construction and architectural fees, but subsequently exceeds \$250,000, may not be approved and may necessitate a rebid.

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

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

- (1) The spending unit documents written justification showing that the direct award is in the best interest of the state;
- (2) The spending unit documents written confirmation that there is no other source or that no other source would be willing or able to replace the existing source without a detrimental effect on the spending unit;
- (3) The intent to make a direct award is publicly advertised for no less than 10 business days in the *West Virginia Purchasing Bulletin* within wvOASIS; and
- (4) No other vendor expresses an interest in providing the commodity or service in question.

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

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

\$0 to \$2,500: No documentation required but competition is always encouraged.

\$2,500.01 to \$25,000: Agency must complete the *Direct Award for Consideration* (WV-65A), the agency procurement officer must approve or disapprove the transaction, and if approved, advertise the direct award procurement in *wvOASIS* for not less than 10 business days. The agency must include with the posting a signed quote, a copy of any contractual documents proposed by the vendor and completed Agency Master Terms and Conditions.

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

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

5.4.3 Emergency Purchases: In accordance with W. Va. 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 can only be made if the state agency designated procurement officer, 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. A record of competitive bids must be maintained in the agency file.

Agencies must first examine mandatory contracts and other internal sources for availability of the product or service and utilize such. For information on mandatory contracts and internal sources, see **Section 3: Acquisition Planning, 3.6 Internal Sources**.

5.4.3.1 Emergency Purchases of \$25,000 or Less: A minimum of three bids, if possible, should be obtained. Original written bids and the agency's justification must be attached to the agency file. Agency Master Terms and Conditions should also be included and requests for bids in emergency situation, to the extent that the emergency permits. Purchasing Division approval is not required for emergencies expected to cost \$25,000 or less.

5.5 Commodity and Service Receiving Procedures: In accordance with the West Virginia State Auditor's receiving report requirements (W. Va. § 155 C.S.R. 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 W. Va. § 148 C.S.R. 1-4.14.

Agencies must verify quantities received. If quantities do not match the purchase order, the agency must 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, the method of shipment to be used, the name of the carrier, the expected date and time of delivery, and the tracking number.

5.5.1 Inspection: In accordance with W. Va. Code § 5A-3-9, the Purchasing Director reserves the right to inspect the commodities delivered or services rendered to assure conformance with contractual requirements. The agency shall perform this inspection on all delivered commodities and services. Nonconformity is to be reported to the Purchasing Director and the chief officer of the spending unit purchasing such commodities for remedial action.

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

Receipt of Commodities and Services

The state agency shall check the shipment to determine if commodities are in conformance with the purchase order or contract and verify the following:

- *Commodities:* The make, model number, brand name and general description of the item(s) received match the specifications on the purchase order.

The quantity received agrees with the purchase order quantity, packing list and bill of lading. An actual count is necessary to assure receipt of all items.

- *Services:* Labor services must match the frequency (daily, weekly, monthly, etc.) and duration (number of hours, days, etc.) described in the purchase order or contract (janitorial, security, etc.).

Service contracts that require the vendor to provide consultant reports, audit reports, statistics or recommendations must be as specified in the purchase order or contract.

Service contracts that require the vendor to perform a particular service, such as elevator maintenance or carpet cleaning, must have all tasks completed as described in the purchase order or contract.

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

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

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

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

F.O.B. 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.

F.O.B. 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 business 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.

5.6 Payment Process: To promote good public relations, state agencies should establish internal procedures to expedite payment of vendor's invoices. Any questions regarding invoice processing may be directed to the State Auditor's Office at (304) 558-2261.

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

Agencies must use statewide contracts, unless specifically exempt by the Purchasing Director. For more information, refer to the State Auditor's Office Purchasing Card Program Procedures located at <https://www.wvsao.gov/PurchasingCard/Default#Forms>.

5.6.2 Electronic Fund Transfer (EFT): Vendors and agencies not utilizing the Purchasing Card must utilize electronic funds transfer as a method of payment. The West Virginia Auditor's Office will only issue checks in rare circumstances. For more information, visit <http://www.wvsao.gov>.

5.7 Fixed Assets: After payment has been made to the vendor, reportable property must be added to the Fixed Assets module of wvOASIS. Please refer to *Surplus Property Operations Manual* at http://www.state.wv.us/admin/purchase/surplus/surplus_operations_manual.pdf.

5.8 Changes: Occasionally, it becomes necessary to amend, clarify, change or cancel purchasing documents. A contract change order is required whenever the change affects the payment provision, time for completion of the work and/or the scope of the work.

Changes to the original purchase order must be sequentially numbered in the appropriate space. 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.

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

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

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

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

5.10 File Documentation: 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. A public record of all purchasing transactions must be kept on file at the agency location, and subject to inspection at the discretion of the Purchasing Division. This file must contain any verification checks not automatically performed in *wvOASIS*; *Certification of Non-Conflict of Interest*; specifications used for the bidding process, and any and all attempts to obtain competitive bids.

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

6.0 FORMAL ACQUISITION PROCEDURES

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

The Purchasing Division will perform the following tasks:

- Review the bid specifications;
- Identify 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 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.*

6.2 Competitive Bidding: The Purchasing Division utilizes various mechanisms to solicit competition from responsible vendors. Two most often used solicitation techniques are Requests for Quotations (“RFQ”) and best value procurement. The RFQ method is the most commonly used and preferred method of competitive bidding. Best value procurement can be further broken down into Requests for Proposals (“RFP”) and Expressions of Interest (“EOI”). RFQs and RFPs are discussed in more detail below. EOIs are discussed in **Section 7**.

6.2.1 Requests for Quotations: The Request for Quotation (RFQ) is used to acquire most commodities and services, including construction.

Award Criteria: Pursuant to W. Va. Code § 5A-3-11(e), an RFQ for commodities or services must be awarded to the lowest responsible bidder. Similarly, under W. Va. Code § 5-22-1(c), an RFQ for construction must be awarded to the lowest qualified responsible bidder. In both cases, the award is completely objective, going to the lowest bid submission meeting the required specifications (also referred to as mandatory requirements). If a mandatory requirement is not met, then that bid is disqualified.

The outgoing RFQ must include:

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

The vendor provides the pricing in its bid response submitted to the Purchasing Division. Prior to the bid opening, a bid that has already been submitted cannot be modified; submission of the vendor's bid constitutes a binding offer. However, if a vendor wishes to make a change to its bid after submission, it may submit a subsequent bid to supersede the original bid.

6.2.1.1 Multiple Awards: The Purchasing Director may elect to award a contract to more than one vendor when the Director determines such action would be in the best interest of the state of West Virginia. Agencies are required to complete the *Multiple Award Determination (WV-70)* form at the time of requisition when a multiple award may be necessary. In arriving at a determination, the Purchasing Director will consider the following factors, insofar as they are applicable:

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

A written explanation will be included in the public file in situations where a multiple award is deemed necessary. The ability to approve and solicit multiple award contracts has not been delegated to agencies for procurements under \$25,000. Any need for such contracts must be processed as a formal procurement.

6.2.1.2 Selection of Vendors: State agency procurement officers are encouraged to submit a list of suggested vendors to the Purchasing Division

when processing formal solicitations. Doing so will ensure vendors are properly notified any time a solicitation is advertised for commodities and/or services which they can supply. Additionally, solicitations should utilize the appropriate UNSPSC commodity codes to ensure that vendors registered for those commodity codes are also notified of published solicitations.

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

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

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

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

The agency must submit a *Requisition* (including description of change, amended budget amount/maximum budget amount-if applicable, and signature of authorized agency representative) to the Purchasing Division to issue the addendum.

The agency should also include the following where applicable:

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

Upon receipt, review and approval, the Purchasing Division will issue the addendum and distribute to all known bidders (those attending the pre-bid meeting, receiving bid packages, suggested vendors, etc.). Addenda are available in the *West Virginia Purchasing Bulletin* upon issuance. Additional bid time may be required to distribute addenda.

Addenda should be received by the Purchasing Division from the agency within seven calendar days prior to the current scheduled bid opening date. For complex transactions, such as construction bids, Requests for Proposals or complex Requests for Quotation, the Purchasing Division should receive from the agency the addenda within 14 calendar days prior to the current scheduled bid opening to allow bidders ample time to prepare and submit bid responses. The Purchasing Division may, at its discretion, extend the bid opening date if it deems to be in the best interest of the state of West Virginia.

6.2.1.5 Bid Submission: The vendor is responsible for submitting a correct and accurate bid to the Purchasing Division by the specified bid opening time and date. Fax bids are acceptable, but receipt of bid must be completed prior to the bid opening time and date. The Purchasing Division will not accept bids, modification of bids or addendum acknowledgment forms by email 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 business days.

6.2.1.6 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 Act (FOIA) requests. Convenience copies received by the Purchasing Division will be forwarded to the agency for evaluation.

6.2.1.7 Evaluation and Award: When the Request for Quotation process is used, competitive bids are received, properly evaluated and an award is made to the lowest responsible bidder meeting specifications, in accordance with W. Va.

Code § 5A-3-11. Following the bid opening, the agency reviews all bids received to ensure compliance with all specifications. Once the agency determines the low bidder meeting specifications, it provides its recommendation to the Purchasing Division, which then verifies that the apparent successful vendor met all requirements.

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.

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

- Vendor registration process (must be registered and the fee paid, if applicable). The registration process includes having the proper disclosure of information in the wvOASIS vendor/customer account, such as the Owner/Officer Information and Banking Information listed under the “Disclosures” tab. It is also recommended that the Finance Division have a current W-9 on file for the vendor. This is indicated under the “Hold Payment” portion of the “Disbursement Options” tab of the wvOASIS vendor/customer account;
- In accordance with the W. Va. Code § 21A-2-6, verification of current unemployment fee status and Workers’ Compensation coverage is required to ensure the vendor is not in default with Workers’ Compensation and Employment Compensation. wvOASIS automatically verifies compliance prior to award.
- Verification that the vendor is not debarred by the federal government. wvOASIS automatically verifies this federal compliance prior to award. Additionally, the Purchasing Division maintains a list of vendors declared as debarred by the state of West Virginia, which may be accessed at <http://www.state.wv.us/admin/purchase/debar.html>. Agencies must verify this compliance prior to award;
- In accordance with the W. Va. § 148 C.S.R. 6.1.e, the vendor must be licensed and in good standing with any and all state and local law and requirements, including proper registration and good standing with the Secretary of State’s office and the State Tax Department, regardless of payment method. To search for a business or corporation with the Secretary of State’s office, visit <http://apps.sos.wv.gov/business/corporations>.
- *Purchasing Affidavit*;
- *Agreement Addendums* (WV-96 or WV-96A) (required when vendors submit alternate terms and condition with their bid) (See **Appendix B**);

and,

- *Interested Party Disclosure Form*: W. Va. Code § 6D-1-2 requires that for contracts with an actual or estimated value of at least \$1,000,000, the vendor must submit to the Purchasing Division a disclosure of interested parties to the contract, prior to contract award. Additionally, the vendor must submit to the agency a supplemental disclosure within 30 days of contract completion or termination. The disclosures must occur on the form prescribed and approved by the West Virginia Ethics Commission. To access this form, visit the Purchasing Division's intranet at <http://www.state.wv.us/admin/purchase/forms.html>.

The Purchasing Division may immediately award certain open-end contracts without the necessity of the agency's review when the Purchasing Division believes this action is in the best interest of the state of West Virginia. However, when an award has not been immediately made by the Purchasing Division, state agencies may be involved in the evaluation process by reviewing bids, making recommendations and providing justification. State agencies are encouraged to review the bids when posted online at the Purchasing Division's website. Paper copies will only be provided to the agencies if the bids are too large to post electronically.

If the state agency is involved in the evaluation process, a recommendation for award must be received in the Purchasing Division within five business days of the bid opening date, with the exception of Request for Proposals (RFP) and Expressions of Interest (EOI). RFP and/or EOI recommendations for award must be received within 10 business days. Failure to comply with these established deadlines may result in the agency requisition being cancelled unless extenuating circumstances exist. It is the responsibility of the agency to provide justification for keeping a requisition open after these time frames.

6.2.1.8 Tie Bids: Occasionally two 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 best and 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.

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

W. Va. § 148 C.S.R. 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.

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

If all bids meeting requirements exceed this budgeted amount, the Purchasing Division may negotiate a lower price within budget with the lowest bidder. If the negotiation does not lead to the budget amount being met, the Director may negotiate a lower price with the next lowest bidder and continue negotiations with participating bidders after negotiation closes with the preceding bidder. It is vital that all incoming requisitions state the maximum budgeted amount for the transaction. This information is requested on the *Requisition*. See **Appendix B**.

If the agency does not provide its budgeted amount for the requisition prior to the bid opening, the Purchasing Division is unable to negotiate, in accordance with W. Va. 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.

6.2.1.11 Discussion and Final Offers: As provided in the bid solicitation, the Director may conduct discussions to obtain best and final offers from bidders to assure full understanding of solicitation requirements. If the Director determines that a best and final offer is necessary from one vendor, all vendors shall be afforded the opportunity to provide best and final offers. All best and final offers shall be treated like a formal bid, except that advertising is not required. All bidders shall provide their best and final offers to the Purchasing Division prior to the date and time specified.

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

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

6.2.2 Requests for Proposals: Requests for Proposals (RFPs) are a procurement method that can be utilized when the method of achieving an objective is not well known, making the development of mandatory requirements difficult. Using this method, the lowest price is not the sole determining factor. Agencies should be aware that the time required to process an RFP is longer than other procurement methods and requires significant agency personnel time and resources to complete.

The Purchasing Division offers a Standard Format (See **Appendix H**) to assist agencies in developing RFPs. All Requests for Proposals must follow the standard format.

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

6.2.2.2 Approval Request: The Purchasing Director or his/her designee must approve the use of all RFPs prior to release. Agencies should request this approval in the form of a letter to the Purchasing Director. The letter should be sent prior to the development of the RFP and must include justification to show that the RFP is in the best interest of the state. The justification should include a description of the service being sought, an explanation of why the RFQ procurement method is not appropriate, any prior solicitation that has been utilized to procure the service in the past, the expected cost of the project, and any other pertinent information that the Director deems appropriate.

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

All vendors must be in compliance with various requirements, which are stated in subsection 6.2.1.7.

6.2.2.4 Mandatory Requirements: Agencies are cautioned in writing specifications containing an excessive number of mandatory requirements. Doing so would indicate that the agency could develop specifications for the RFQ procurement method. Mandatory requirements cannot be waived; therefore, a vendor's failure to meet any mandatory requirement will result in disqualification. Before including any mandatory requirement in an RFP, the agency must decide whether it is willing to disqualify any one vendor, or all vendors, if the requirement is not met. If the agency is not willing to disqualify a vendor, then the requirement should not be mandated.

6.2.2.5 Evaluation Criteria: All evaluation criteria must be clearly defined in the specifications section of the RFP and based on a 100-point total score. This score is comprised of a technical score of 70 points possible and a cost score of 30 points possible. Any deviation from this point allocation must be approved in writing by the Purchasing Director.

6.2.2.6 Proposal Format and Content: Proposals from vendors must be requested and received in two distinct parts: technical and cost. All cost information must be contained in the cost proposal, which must be sealed and submitted in a separate envelope from the technical proposal. Vendors must not include cost information in the technical proposal, which ensures that the technical proposal can be evaluated purely on its own merit.

6.2.2.7 Proposal Submission: The vendor's entire proposal, both technical and cost, 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 email transmission. Acceptable delivery methods include hand-delivery, delivery by courier or facsimile.

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

6.2.2.8.1 Technical Bid Opening: The Purchasing Division will open only the technical proposals on the date and time specified in the Request for 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.

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

6.2.2.9 Proposal Evaluations: As previously mentioned, the technical evaluation must be completed prior to the cost bid opening

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

The evaluation committee initially determines if the technical proposals meet the mandatory requirements contained in the RFP. Any proposal that fails to meet a mandatory requirement is disqualified.

The evaluation committee will then evaluate all technical proposals that met the mandatory requirements to assign appropriate point scores to the non-mandatory components in the RFP. Those non-mandatory components generally include the approach and methodology to achieving the goals and objectives, approach and methodology to comply with mandatory requirements, qualifications and experience.

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

Proposals must obtain a minimum acceptable score of 70% of the total technical points possible (i.e. 49 out of 70 points in most cases) to be considered for the award. Vendors not attaining the minimum acceptable score will be disqualified and removed from further consideration. The technical evaluation may include oral presentations conducted by the vendors. Additional information on oral presentations can be found in **Section 6.2.2.9.1.1**.

Once the evaluation committee reaches a consensus recommendation, the agency procurement officer will submit the committee's recommendation to the Purchasing Division buyer. The consensus recommendation must be signed by all committee members and must not rely upon average points to reach a consensus. 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. If approved by the Purchasing Division buyer, the consensus recommendation will be forwarded to the internal review committee within the Purchasing Division. If the internal review committee approves the technical recommendation, the Purchasing Division will set the date and time for the cost bid opening.

The internal review committee is generally comprised of the Purchasing Director and Assistant Director but may include other personnel as the Purchasing Director deems appropriate.

6.2.2.9.1.1 Oral Presentation: The RFP process allows the agency to require each vendor to conduct an oral presentation for the purpose of explaining or clarifying the submitted proposal. Oral presentations are included in the technical evaluation and become part of the total technical score. The oral presentation is not an opportunity to change or modify the submitted proposal. If the agency elects to conduct oral presentations, it will be noted in the RFP. The agency may invite other

individuals, in addition to the evaluators and advisors, to attend these presentations.

6.2.2.9.2 Cost Evaluation Approval and Award: Once the cost proposals have been opened, the agency evaluation committee reviews the cost proposals and using the cost formula, assigns an appropriate cost score to each proposal that has not been disqualified. Once a cost score has been assigned, the evaluation committee combines the technical and cost scores to make a final consensus recommendation for contract award to the Purchasing Division. Assuming the Purchasing Division concurs with the recommendation, the contract will be processed for award.

6.2.2.10 RFP Evaluation Committee: For RFP evaluations, the Purchasing Division requires a committee of at least three and recommends no more than five persons knowledgeable of the service to be acquired. The agency may also 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 procurement officer, who is skilled in purchasing techniques and procedures, must serve on the evaluation committee as a full voting member unless the agency can provide written justification detailing the reason(s) why this requirement cannot be met.

A non-state employee shall not serve as voting member of the evaluation committee.

The names and other relevant information for all evaluation committee members and advisors must be submitted to the Purchasing Division for approval prior to the release of the RFP. The submission must include justification for any identified advisors and/or requests to have more than five evaluators on the evaluation committee. The Purchasing Division reserves the right to accept or reject agency appointed committee members and to appoint committee members directly to provide proper representation.

To ensure there is no conflict or influence on the committee members' decision process, the evaluation should take place with only the designated evaluators and advisors present. The Purchasing Division buyer may, however, observe the evaluation process, answer procedural questions and provide general process oversight.

Certification of Non-Conflict of Interest: To minimize the risk of conflict of interest, each member of the evaluation committee and any advisors are required sign a Certification of Non-Conflict of Interest, in accordance with W. Va. Code § 5A-3-31 (see **Appendix B**). State agencies must submit the signed certification to the Purchasing Division prior to beginning the evaluation of an RFP.

The Purchasing Division also requires that the agency procurement officer sign this certification even if the procurement officer is not serving on the evaluation committee.

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 W. Va. 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.

6.2.2.11 Evaluation Training: All evaluation committee voting members must receive RFP evaluation training prior to commencing the evaluation. This training should be completed within one year prior to the evaluation. The Purchasing Division buyer may meet with the agency committee at the first evaluation meeting after the bid opening and provide committee training and general review of the proposals.

The purpose of this training is to ensure that the committee is knowledgeable of the proper evaluation procedure and the purchasing process. This training may be conducted by the Purchasing Division buying staff, by online training module available at the Purchasing Division's website or by agency procurement officers as determined by the Purchasing Division.

After the training, members will review all proposals independently and later meet to evaluate and assign points to each proposal. (See **Appendix H** for RFP Standard 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.

6.2.3 Pre-Bid Conferences: Regardless of the procurement method used, the Purchasing Division recommends agencies to consider conducting pre-bid conferences on high dollar, complex acquisitions early in the bid process to provide an opportunity to explain and clarify critical aspects of the solicitation, eliminate misunderstandings and encourage vendor participation. These conferences are conducted by the state agency with potential bidders.

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 individual may represent more than one vendor. (See **Appendix L**).

It is recommended that pre-bid conferences be scheduled on Tuesdays through Thursdays between 10 a.m. and 3 p.m. to encourage more participation.

A sample agenda for a pre-bid conference is as follows:

Conference Opening (Purchasing Representative)

- Offers opening remarks (Welcome attendees and introduce yourself)
- Identify the project by RFQ or RFP number and generic scope of work
- Provide the “sign-in sheet”
- Make available a few extra copies of the bid documents
- Remind all attendees to complete the “sign-in sheet” (Emphasize the importance of the “sign in sheet”)
- Introduce the user agency representatives
- Review important general information items:
 - o Inquiries
 - o Vendor Registration
 - o Oral Statements
 - o Bid proposal submission process
 - o Schedule of events
 - o Bonding Requirements (Bid, performance, etc.)

Specification Discussion (Agency Representatives)

Agency personnel will open the technical specifications for discussion by item with all attendees. Items that all parties, including the agency and Purchasing Division

representatives, agree need to be amended by addendum will be recorded by the agency to aid in preparing the addendum.

All clarifying statements and questions shall to be addressed on an addendum. Once the discussion of the technical specifications has concluded, the agency representative requests the Purchasing representative to discuss Master Terms and Conditions of the solicitation.

Questions are received and discussed.

Master Terms and Conditions Discussion (Purchasing Representatives)

Purchasing representatives will discuss the part “General Terms & Conditions” and then proceed to discuss the format, evaluation, and, in the use of RFPs, the cost proposals and Minimum Acceptable Score (MAS) concept.

Questions are received and discussed.

Conclusion (Both Agency and Purchasing Representatives)

Purchasing representatives will review items to be included in the addendum if at all possible. For items deferred, the information will be addressed in the addendum after management has had an opportunity to consider the issue.

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

6.2.4 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.

6.2.5 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 working days

of the bid opening dates. Agencies are not permitted to require bid bonds unless there is a statutory requirement to do so.

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 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.

6.2.6 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.

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

6.3 Other Procurement Methods

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

6.3.1.1 Projects Exceeding \$250,000: Pursuant to W. Va. Code § 5G-1-1, agencies must utilize the Expression of Interest (EOI) procurement method to solicit architectural and engineering services for projects estimated to exceed \$250,000. For purposes of determining the \$250,000 threshold, the project cost is calculated by combining the construction cost and associated architectural and engineering fees.

All EOIs exceeding \$250,000 must be submitted to the Purchasing Division using the EOI Standard Format for processing as a central procurement. The EOI Standard Format can be found in **Appendix I**.

The EOI will then be advertised in the *West Virginia Purchasing Bulletin* within wVOASIS and as a Class II legal ad as required by West Virginia Code.

Evaluation Committee: For the EOI evaluation committee, the Purchasing Division requires a committee of at least three and recommends no more than

five persons knowledgeable of the service to be acquired. The agency may also 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 procurement officer or a member of the agency procurement staff, who is skilled in purchasing techniques and procedures, must serve on the evaluation committee as a full voting member unless the agency can provide written justification detailing the reason(s) why this requirement cannot be met.

A non-state employee shall not serve as voting member of the evaluation committee.

The names and other relevant information for all evaluation committee members and advisors must be submitted to the Purchasing Division for approval prior to the release of the EOI. The submission must include justification for any identified advisors. Should the agency wish to have more than five evaluators on the evaluation committee or exclude a procurement professional from this committee, it must request to do so from the Purchasing Division. The Purchasing Division has the right to approve or reject this request and may appoint committee members or advisors directly to provide proper representation.

To ensure there is no conflict or influence on the committee members' decision process, the evaluation should take place with only the designated evaluators and advisors present. The Purchasing Division buyer may observe the committee evaluation, answer procedural issues and provide general process oversight.

Evaluation: Following the bid opening of EOI responses, the evaluation committee shall:

- (a) Evaluate the statements of qualifications and performance data and other material submitted;
- (b) Develop a "short list" (minimum of three 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 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.

Non-Conflict Requirement for Expressions of Interest: To ensure that there is no conflict of interest in evaluating Expression of Interest (EOI) responses, each member of the evaluation committee and any advisors are required by the Purchasing Division to sign a *Certification of Non-Conflict of Interest*, in accordance with W. Va. Code § 5A-3-31 (see **Appendix B**).

The Purchasing Division also requires that the agency procurement officer sign this certification even if the agency procurement officer is not the procurement officer serving on the evaluation committee.

By signing this certification, the evaluators, advisors and agency procurement officer attest that: (1) his or her service on the evaluation committee is not in violation of W. Va. Code § 5A-3-31, § 6B-2-5, or any other relevant code section; (2) 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.

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

6.3.2 Direct Award: A direct award is a procurement method that provides a contract to a vendor without competitive bidding when circumstances allow. Agencies are encouraged to solicit competition rather than process a direct award request but may make a direct award if:

- (1) The spending unit requests a direct award in writing;

(2) The spending unit documents written justification showing that the direct award is in the best interest of the state;

(3) The spending unit documents written confirmation that there is no other source or that no other source would be willing or able to replace the existing source without a detrimental effect on the spending unit;

(4) The intent to make a direct award is publicly advertised for no less than 10 business days in the *West Virginia Purchasing Bulletin* within *wvOASIS*; and

(5) No other vendor expresses an interest in providing the commodity or service in question.

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

6.3.2.1 Direct Award Exceeding \$25,000: Statutory requirements have been incorporated into the *Direct Award for Consideration* (WV-65) form and the subsequent process. Agencies may request that the Purchasing Division make a direct award using this form, which must be approved and signed by the agency's designated procurement officer prior to submitting to the Purchasing Division for review. The agency must attach to the WV-65, a signed quote and a copy of any contractual documents proposed by the vendor.

If approved, the Purchasing Division will use the WV-65 to advertise for no less than 10 business days the intent to make a direct award. If a vendor expresses an interest in providing the commodity or service, the Purchasing Division will determine if the solicitation will need to be canceled and bid competitively.

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

6.3.3 Emergency Purchases: In accordance with W. Va. 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 can only be made if 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. A request for an emergency purchase must be made in writing to the Purchasing Director, providing the scope of the purchase to alleviate the emergency situation. 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. If more than 30 days have passed from the time the agency receives approval of the Purchasing Director for the emergency purchase and the date of submission of the documents for award, the agency procurement officer must include justification with its documentation, signed by the agency head, indicating the reason for the lapse in time.

Agencies must first examine mandatory contracts and other internal sources for availability of the product or service and utilize such. For information on mandatory contracts and internal sources, see **Section 3: Acquisition Planning**.

- **Declared State of Emergencies by Governor:** In accordance with W. Va. Code § 15-5-6, the governor has the authority to suspend certain laws, rules and/or regulations regarding the acquisition of commodities and services by public organizations in the event the governor declares an emergency. When emergency needs relate directly to the declared state of emergency, these procedures are available and outlined on the Purchasing Division's website at <http://www.state.wv.us/admin/purchase/EmergencyProcs2.html>.
- **Emergency Purchases Exceeding \$25,000:** When an emergency situation occurs during normal business hours, written approval of the Purchasing Director or his/her designee must be obtained prior to making a purchase or execution of any work. A written explanation from a state agency designated procurement officer must be provided immediately. If an emergency occurs after business hours, on a holiday or weekend, a state agency designated procurement officer may proceed with the emergency purchase and provide immediate written justification of the action to the Purchasing Director on the first business day following the emergency.

A minimum of three bids, if possible, shall be obtained. The awarded vendor must be properly registered with the Purchasing Division. As soon as the emergency situation allows, the original written bids or the proposed contract with the vendor, whichever applies, shall be attached to the requisition, and submitted to the Purchasing Division with a letter of justification or a copy of the Director's or designee's written emergency approval for contract review and approval by the Purchasing Division and the Attorney General's office (as to form). Depending upon the amount of the emergency purchase, Agency Master or Purchasing Master Terms and Conditions and other relevant documentation, should also be included in requests for bids in emergency situations to the extent that the emergency permits. Emergency contracts are subject to the same terms and conditions as traditional contracts, so it is important to notify vendors of the requirements contained in the terms and conditions as early in the process as possible.

The Purchasing Division recognizes that certain emergency situations do not allow time for written bid requests. In those situations, it is understandable that terms and conditions will not be addressed until after the emergency situation has been resolved. To access the Agency and Purchasing Master Terms and Conditions, please visit the Purchasing Division's website at www.state.wv.us/admin/purchase/arc/default.html.

6.4 Contract Commencement: With the exception of certain approved emergency contracts, the encumbrance date is the earliest date that a vendor may commence work on any contract. No authority may be given to the vendor by the agency or any other entity to commence work unless an encumbered contract has been processed by the Purchasing Division and received by the vendor.

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

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

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

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

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

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

6.5.2.1 Post Award Conferences

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

- (1) The scope of the contract, including specifications of what the agency is buying;

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

6.5.2.2 Monitoring

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

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

6.5.2.3 Reports

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

Status Reports

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

Activity Reports

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

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

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

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

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

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

6.7 Changes and Cancellations:

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

A contract change order is required whenever the change affects the payment provision, time for completion of the work and/or the scope of the work.

W. Va. § 148 C.S.R. 1-6.8 provides the Purchasing Director with the authority and responsibility to review change orders just 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. 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 W. Va. § 148 C.S.R. 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 may be made after the fact with subsequent approval by the Purchasing Division and the Attorney General's Office (*as to form*). However, it is preferred that such changes be made in advance, whenever possible. Examples of administrative changes include:

1. Changing a vendor name;
2. Changing a vendor's address;
3. Correction of a clerical mistake made by the state;
4. Adding a renewal/extension year that was originally contemplated in the contract, provided that no new commodities/services or increases in price are included;
5. Contract closeout where quantity required was originally unknown or estimated, unit prices were included in the original contract, unit prices are not modified as part of the change order, and the quantity required was less than originally anticipated;
6. Inclusion of the Notice to Proceed documentation;
7. Changes to a contract utilized to facilitate the mandatory procurement of commodities and services from non-profit workshops, pursuant to W. Va. Code § 5A-3-10(e); and

8. Any other administrative change not included may be approved by the Purchasing Director on a case-by-case basis.

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

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

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

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

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

6.8 Protest Procedures: The Purchasing Division's W. Va. 148 C.S.R. 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 business days prior to bid opening. Protest of purchase order or contract awards must be submitted no later than five business days after the award. The vendor is responsible for knowing the bid opening and award dates. Protests received after these dates may be rejected at the option of the Purchasing Director.

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 working days prior to the prequalification bid submission deadline. A protest of a prequalification decision must be submitted within five business days of the prequalification approval or denial. A protest of award must be submitted within five working days of award. For more information on reverse auctions, see **Section 7.15**.

6.8.4 Prequalification Agreement and Delegated Prequalification Bidding Protests: Any vendor desiring to protest the specifications of a prequalification agreement or the delegated prequalification bidding may do so prior to five business days before the prequalification agreement opening date and five business days before

the delegated prequalification bidding opening date. Any vendor desiring to protest the award of a prequalification agreement or delegated prequalification bidding may do so within five business days of the prequalification agreement award and within five working days of the delegated prequalification bidding award. For more information on prequalification agreement and delegated prequalification bidding protests, see **Section 7.16**.

SECTION 7: SPECIAL ACQUISITION PROCEDURES

7.0 SPECIAL ACQUISITIONS PROCEDURES: The procurement of certain commodities and services has limitations or require special procedures.

7.1 Capitol Improvements

7.1.1 State Capitol Complex: Pursuant to the W. Va. 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.

7.1.2 State-Owned Office Buildings: Pursuant to the W. Va. 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, W. Va. 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.

7.2 Information Technology Equipment, Services and Software

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

All infrastructure technology equipment procurement requests, regardless of dollar value, that will connect to the state network requires CTO approval prior to submission of a request to the Purchasing Division, as the CTO may require changes by the agency. All state entities, with the exception of the Legislative and Judicial branches of government, Constitutional Officers, Higher Education and K-12, shall request approval for, at a minimum, but not limited to, the purchase of servers, storage devices, computers, tablets, routers, wireless access points (WAPS), hubs, switches, firewalls, video conferencing and telephone equipment, including PBX system. The applicable information technology purchases also include software of all types, whether it is email applications, anti-virus software or any other interoperability application, if the software will be used in systems that connect to the state network.

All telecommunications systems, upgrades and expansions, regardless of cost, must be approved prior to bidding by the Information Services and Communications Division. **All telecommunications purchases must be approved by the Chief Technology Officer.** 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.

7.3 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.

7.4 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 direct award procurement for the used equipment.

7.5 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.

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

The requirements contained in the Code and the Rules have been compiled into the *Cooperative Purchasing Request, Justification and Approval* (WV-40) form. An agency

desiring to utilize the cooperative contracting process must submit the WV-40 form to the Purchasing Division prior to entering into a binding contract. The WV-40 serves as a request that the Purchasing Director consider granting the state agency permission to purchase from one of the above contract categories. Contracts identified as mandatory do not require submissions of the WV-40 for each purchase. Failure to provide the information requested on the WV-40 form will result in the request being rejected.

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

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

7.7 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).

7.8 Vehicles: Approval by the Fleet Management Division is required to purchase vehicles, unless statutorily exempt. Any request under the authority of the Fleet Management Office to increase an agency's fleet size must be approved by the Executive Director of the Fleet Management Division. 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 Division approval.

7.9 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 W. Va. § 148 C.S.R. 7.5.e, the state agencies may also request that the Purchasing Director allow for the procurement of used equipment through the direct award procurement method.

7.10 Banking Goods and Services: The Office of the State Treasurer must approve the acquisition of any kind of banking goods or services, which includes accepting payments and receiving funds via electronic commerce. Agencies must submit a request to the Office of the State Treasurer before issuing any Request for Proposal (RFP) or Request for Quotation (RFQ) or entering into any contract with another entity for banking goods or services, in accordance with W. Va. Code §§ 12-1-7 and 12-3A-6.

7.11 Radios and Microwave Equipment: In accordance with Governor's Executive Order 2-11, any purchase by a state spending unit or state agency, including purchases on behalf of state agencies, of two-way radio, microwave or satellite equipment and related services or purchases that utilize state or federal funds distributed to local entities by the state of West

Virginia which are not listed on the Statewide Interoperability Executive Committee's State Interoperable Radio Network (SIRN) Approved Compatibility Equipment List, shall obtain the prior written approval of the Statewide Interoperability Coordinator (SWIC) for any proposed purchase of goods and services. SWIC approval or verification that the equipment is on the Approved Compatibility Equipment List must be submitted with the *Requisition* to the Purchasing Division.

For a list of approved radios for use on the Statewide Interoperable Radio Network, visit <http://www.sirn.wv.gov/information/downloads/Pages/default.aspx>.

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

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

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

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

Step 1. Any agency desiring to utilize the trade-in process must develop specifications to accompany the *Centralized Purchasing Requisition* (CRQS) requesting that bids include a price for the new item only and prices that reflect the value the bidder proposes to attribute to the trade-in.

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

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

Step 4. Second, after the bid opening, the agency must obtain written approval for the trade-in from the West Virginia State Agency for Surplus Property by attaching the bids submitted in response to the solicitation along with any other required documentation. The submission must be with an FD document created in wvOASIS with the disposition method of “trade-in” identified.

Step 5. If the trade-in is approved by WVSASP, the agency must submit its award recommendation to the Purchasing Division buyer who will ensure that the credit for the trade-in is properly applied on the contract document. If WVSASP approval is not granted, the Purchasing Division will proceed with the award to the lowest responsible bidder without the trade-in option.

Step 6. The agency must then submit documentation to WVSASP verifying receipt of the credit for the trade-in. WVSASP will then verify the application of the credit and complete the retirement. If the original cost of the items to be traded in is less than \$1,000 and is not listed in wvOASIS, the asset must be added to wvOASIS for trade-in purposes.

Only one-for-one trade-ins will be considered, and items may be traded only for the same type of item. Trade-ins will not be authorized for items purchased from statewide contracts or direct award vendors, unless it is in the best interest of the state and approved by WVSASP.

It is important to note that the value of the new items for fixed asset purposes is the full value of the new items, including money paid for the asset and the value attributed to the trade in. The wvOASIS system automatically includes the money paid for the asset in the fixed asset system, but it does not automatically account for trade-in value. The agency must create a Fixed Asset Increase document and use that document to add the trade-in value to the new asset.

A trade-in allowance does not allow a state agency to alter or circumvent the purchasing process.

For additional information on trading in equipment, please see the Surplus Property Operations Manual at http://www.state.wv.us/admin/purchase/surplus/surplus_operations_manual.pdf.

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

Standardization is limited to commodities that: (1) represent a core function of the spending unit’s mission; (2) would yield a savings of time and money if standardized; and (3) either require testing or evaluation to determine accuracy or consistency or require interoperability in a larger system or network. Savings of time and money must be shown without considering the traditional procurement process or the standardization process.

Standardization Duration: Any standardization established under this section must be valid for no more than four years. Upon expiration, the spending unit establishing the standardization

may either take no action, which would allow the standardization to expire, or undertake the process outlined in this section to establish a new standard.

Standardization Process: A spending unit desiring to establish a standard must use the following process:

(1) The head of the spending unit must identify the commodity to be standardized and request approval from the Purchasing Director to establish a standard. The head of the spending unit shall provide to the director written certification and supporting evidence verifying that the requirements for standardization have been met.

(2) The spending unit must identify the individual or individuals that will be evaluating the commodity for standardization. Each individual must certify that he or she has no conflict of interest and can evaluate the information used to standardize without favoritism or bias. At least one individual involved in the standardization evaluation must be the spending unit's procurement officer. If the spending unit has no procurement officer, the individual responsible for the spending unit's procurement must participate in the evaluation.

(3) The spending unit must advertise the intent to standardize as a request for information in the system used at that time to solicit competitive bids. The spending unit should also identify all known entities that would have an interest in providing a commodity for evaluation and ensure that they receive notice of the request for information. The request for information must be advertised and allow for responses for no less than 30 calendar days. The request for information must notify the vendor community of the following:

(A) That the spending unit is attempting to standardize state procurements for the commodity in question;

(B) That any entity interested in having its products considered for standardization should provide information on the benefits and drawbacks of that entity's products;

(C) Any evaluation criteria that the spending unit will use in the standardization decision;

(D) The date and time by which documentation must be provided; and

(E) The approximate date and time by which a decision will be made.

(4) If the spending unit desires to conduct product testing, it must notify vendors in the request for information and establish a time period during which tests will be performed. Vendors may provide commodities for demonstration, testing and evaluation so long as such items are provided at no cost and no risk to the state. A written record describing the nature of the testing performed and a written record of the results of that testing shall be produced pursuant to any testing conducted on all the commodities being considered. The written record of testing and results shall be provided to the Purchasing Division and preserved.

(5) The spending unit will evaluate the information received in response to the request for information, information the spending unit has obtained from its own research, the results of

any product testing and anything else the spending unit finds relevant to establish a pending standardization.

(6) The spending unit must advertise the pending standardization as a request for information in the system used at that time to solicit competitive bids for a minimum of 15 calendar days. The request for information must notify the vendor community and any vendor who has participated in the standardization evaluation process of the following:

(A) The pending decision to standardize, including any brand name that has been tentatively selected the standard;

(B) The rationale for the selection made in the pending standardization;

(C) That comments may be submitted for review for a period of 15 calendar days from the date of the advertisement;

(D) The date and time by which a final decision will be made, which will be no less than three days after the comment period has ended; and

(E) The location where the final decision will be posted.

(7) The spending unit must review the comments submitted in response to the pending standardization advertisement and make any adjustments that it deems necessary.

(8) The head of the spending unit shall notify the director of a selection of the standard commodity, and the director shall post the results of the standardization decision on the Purchasing Division's website. The spending unit shall also specifically notify any vendor who participated in the standardization evaluation process of the results in writing, within five business days of the final standardization selection.

Appeal: Any vendor that participated in the standardization process may appeal the standardization decision to the head of the spending unit. The head of the spending unit shall consider the appeal in accordance with the administrative procedures established in Administrative Procedures Act contained in W. Va. Code 29A.

Standardization Effect: Once a standard has been established, the Purchasing Division is authorized to solicit competitive bids on behalf of the spending unit in the form of a request for quotation for the standardized commodity.

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

- 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.

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

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

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

- Notice of Reverse Auction: If the Director approves the agency's request to use the reverse auction, the agency will then prepare specifications to describe the commodity and list any mandatory requirements the vendor must meet. The agency must provide that information to the Purchasing Director, along with any additional documentation deemed necessary. The Purchasing Division will ensure that an adequate description of the reverse auction is included and will advertise for the auction through the *West Virginia Purchasing Bulletin* within wvOASIS.
- Prequalification Bid: Any vendor desiring to participate in the reverse auction must submit a prequalification bid to the Purchasing Division before the deadline contained in the advertisement. Failure to submit a prequalification bid prior to the deadline will result in automatic disqualification from participation in the reverse auction. The Purchasing Director may request additional information from a vendor to assist in evaluating a vendor's prequalification bid.
- 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 in compliance with the specifications and mandatory requirements will be notified that they have been approved to participate in the reverse auction. Vendors that are not in compliance with the specifications and mandatory requirements will be notified that their request to participate in the reverse auction has been denied. Approved vendors will be provided with the necessary information to participate, which may include website addresses, login information, etc. Denied vendors will be provided with notice and, upon request, be provided with a reason for the denial.

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

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

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

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

- Identification and a detailed description of the commodity to be covered by the prequalification agreement;
- One or more requirements that each vendor must meet in order to be approved for the prequalification agreement, which may include, but are not limited to, experience, quality assurance, licensing, delivery terms and quantity terms;
- 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 delegated prequalification bidding.

7.16.2 Advertisement for Prequalification Agreement: Once the Purchasing Director approves an agency's request to solicit prequalification agreements, the vendor community will be notified through the *West Virginia Purchasing Bulletin* within wVOASIS. The notice must contain:

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

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

7.16.4 Requests for Bids: An agency that desires to purchase a commodity identified in the prequalification agreement must notify each vendor that has been awarded a prequalification agreement of the request. The notice must contain any commodity-specific 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.

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

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

- The lowest responsible bidder must be notified that it has won the delegated prequalification bidding 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.

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

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

SECTION 8: QUALITY ASSURANCE

8.0 QUALITY ASSURANCE:

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

8.1 Agency Responsibilities

8.1.1 Proper Acquisition Planning: The agency's first step is to determine the commodity that is needed, the quantity, the quality level, delivery location and time frame. 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 5.5**)

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

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

8.1.5 Vendor Performance: Vendor performance and product quality is crucial in the state purchasing process. When these factors do not meet expectations, the state agency designated procurement officers are strongly encouraged to contact the vendor and voice their concerns. Agency procurement officers must document all efforts made to resolve the problem and the complaints should be resolved expeditiously and courteously. It is the responsibility of the agency procurement officer to initiate all efforts to attempt to resolve the matter and to document his or her actions.

After all attempts have failed by the agency to resolve the issues, the complaint should immediately be referred to the appropriate buyer of the Purchasing Division, who is

assigned to the agency, on the *Vendor Performance Report (WV-82)*, along with all documentation noting all steps taken to try to resolve the problem. All written vendor responses must also be included in the packet sent to the Purchasing Division buyer.

8.1.5.1 Vendor Performance Report: The *Vendor Performance Report (WV-82)* is to be used to report all incidents of vendor performance, both positive and negative, even if a resolution has been reached.

When assistance is requested, a Purchasing Division official will notify the vendor directly in writing of the problem.

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

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

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

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

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

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

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

8.2.5 Training: The Purchasing Division provides a variety of training to state agencies in an effort to increase the level of proficiency. Annual conferences are usually conducted for agency procurement officers.

In addition, on-going training is offered by the Purchasing Division in various methods, including the in-house training curriculum which offers classes throughout the year at the State Capitol Complex and online modules available on the Purchasing Division's website. Webinars on various topics are also offered throughout the year.

In order to be knowledgeable of purchasing requirements, laws and procedures, it is highly recommended that agency designated procurement contacts participate in the available purchasing training opportunities. In accordance with the W. Va. 148 C.S.R. 1, *“all purchases must be approved by the secretary or head of the spending unit, or a designee, whose name shall be filed with the Director. The person(s) named must take at least 10 hours annually of available purchasing training and have responsibility for the function of purchasing. Each spending unit shall process all purchases through this person(s), who shall be responsible for correspondence and communication with the Purchasing Division.”*

The Purchasing Division strongly encourages agency procurement officers to provide additional internal training for their staff. Agency personnel should always consult with the agency procurement officer in all purchasing matters.

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

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

8.3 Vendor Responsibilities: Each vendor is solely responsible for delivering a bid to the Purchasing Division prior to the specified date and time of the bid opening. The official time clock of the Purchasing Division, for the purpose of receipt of bids, shall be displayed in the

offices of the Purchasing Division. Vendors are responsible for the accuracy of the information on and in the bid envelopes.

8.3.1 Compliance with Specifications:

Successful vendors are required to meet or exceed the quality level accepted and specified on the final purchase order in addition to meeting delivery requirements.

8.3.2 Follow-Up with Suppliers:

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

8.3.3 Dispute Resolution:

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

8.3.4 Remedies:

In the event that a vendor fails to honor any contractual term or condition, the Director may:

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

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

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

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 W. Va. 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 W. Va. Code § 5A-3-1 et seq. or West Virginia Code of State Rules.

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

8.3.5 Damages:

A vendor who fails to perform as required under a contract shall be liable for actual damages and costs incurred by the state.

If any merchandise delivered under a contract has been used or consumed by an agency and on testing is found not to comply with specifications, no payment may be approved by the Director for the merchandise until the amount of actual damages incurred has been determined.

The Purchasing Director shall seek to collect damages by following the procedures established by the Office of the Attorney General for the collection of delinquent obligations.



Procedures Handbook

SECTION 9: EXEMPT PURCHASES

West Virginia Purchasing Division

Non-Competitive / Exempt List of Commodities and Services

In accordance with W. Va. Code § 5A-3-10:

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

In accordance with the W. Va. § 148 C.S.R. 1-4,

The Director shall:

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

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

Purchasing Division approval is not required for these Exempt List procurements, unless specifically noted. Vendor registration and all other requirements for the dollar amount of the purchase are mandatory for contracts for these commodities and services; however, under the authority granted by the Director of Purchasing in W. Va. § 148 C.S.R. 1-6.1.c.5, the Director has determined that waiving the vendor registration fee for all vendors providing commodities or services under Section 9 of the *Purchasing Division Procedures Handbook* is in the best interest of the State. Accordingly, the vendor registration fee is waived and, therefore, not required for a vendor providing commodities or services under Section 9 of this handbook.

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

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

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

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

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

17. **Training Activities:** This exemption includes lecturers, honorariums, copyrighted test and training materials, test monitors/examination proctors, registration fees, etc., where competition is not available.
18. **Utilities Regulated by the Public Service Commission:** This exemption includes natural gas, water, sewage, electric, telephone, garbage, cable television service, connection fees, trash hauling and dumpster rental [if only one PSC approved hauler is in the area]. This exemption does not include propane gas, coal and satellite television, all of which must be competitively bid.
19. **Department of Agriculture Exemptions:** Approved exemptions for the West Virginia Department of Agriculture include purchase of livestock, the acquisition of bees for repopulation purposes and commodity processing services for USDA donated foods.
20. **Court Ordered Payments:** This exemption includes court order payment. A copy of the court order must be maintained in the agency file, unless sealed and restricted by the respective judge. If the order is sealed and restricted, an explanation must be maintained in the agency file referencing the court order. Court ordered payments are exempt from the vendor registration requirement.
21. **Intellectual Property:** This exemption includes the West Virginia Lottery's purchase of licenses to intellectual property, such as copyrighted or trademarked material, for creative use in the development of lottery products, promotions or advertising when the license can be obtained from only one source. This exemption in no way applies to software.
22. **Emergency Services (Non-Construction and Non-Architectural/Engineering "A/E"):** This exemption includes non-construction and non-A/E services that must be procured on an emergency basis when (1) formal bidding would cause the government to lose the ability to perform some critical function for itself or citizens of the State of West Virginia or (2) formal bidding would delay a response to a declared state of emergency. Any use of this exemption must be approved by the Purchasing Division Director in advance in accordance with the procedures for commodities outlined in W. Va. Code § 5A-3-15, related rules, and the ***Purchasing Division Procedures Handbook***. (For more information on emergencies related to construction or A/E services, please review the applicable law and Sections 5 and 6 of the ***Purchasing Division Procedures Handbook***).
23. **Vaccines:** This exemption includes vaccines purchased through contracts issued by the Centers for Disease Control (CDC).
24. **Transcripts from Court Reporters Employed by Court, Judge or Opposing Counsel:** This exemption includes transcripts procured from court reporters who are employed by the court, judge or opposing counsel.
25. **Commodities or services for a shared facility arrangement with the U.S. Government:** Effective July 1, 2018, commodities or services contracted by the U.S. Government and provided to a state agency when those commodities or services are:

(1) offered as part of a shared facility arrangement, and (2) those commodities or services for the State cannot be easily separated from those for the U.S. Government.

APPENDICES

Appendix A Purchasing Division Directory
Appendix B Purchasing Forms
Appendix C Buyer Assignments and Statewide Contracts
Appendix D West Virginia Code of State Rules
Appendix E Statewide Contract Listing
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APPENDIX A: PURCHASING DIVISION DIRECTORY

Click here for the Purchasing Division directory of services.

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

APPENDIX B: PURCHASING FORMS

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

- Agreement Addendum
- Purchasing Affidavit
- Drug-Free Workplace Conformance Affidavit and Report Coversheet
- Disclosure of Interested Parties to Contracts
- Bond Forms
- Supplementary Conditions to AIA Forms
- Vendor Registration and Disclosure Statement and Small, Women-, and Minority-owned Business Certification Application
- Vendor Preference Certificate

State employees can search and download a variety of forms on the West Virginia State Employees Intranet. For a direct link, access <http://intranet.state.wv.us/admin/purchase>.

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APPENDIX C: BUYER – AGENCY ASSIGNMENTS

Click here for the Purchasing Division buyer assignments.

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

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APPENDIX D: WEST VIRGINIA CODE OF STATE RULES

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

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

APPENDIX E: STATEWIDE CONTRACT LISTING

Click Here for the current statewide contract listing.

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



APPENDIX F: THE PURCHASING DECISION PATH

- **Step One – Determination of Need**
 - The agency must determine the product or service required, including quality level, quantity, delivery requirement and estimated cost.

- **Step Two – Availability through Internal Resources**
 - Once the need is established, the agency must determine if the product or service is available from internal resources, including Correctional Industries, the State Use Program (Sheltered Workshops) or the West Virginia State Agency for Surplus Property.
 - If available through Correctional Industries or the State Use Program (Sheltered Workshops), the product or service must be acquired through this manner. However, if the product or service is available, but not in the acquired time, quality, quantity or other factors, a written waiver must be issued from Correctional Industries or the State Use Program (Sheltered Workshops), in accordance with purchasing guidelines.

- **Step Three – Availability through Statewide or Agency Contract**
 - If the product or service is not available from internal resources, the agency must determine if that product or service is available from a statewide or agency contract. If available, the agency must purchase the product or service in accordance with purchasing guidelines as indicated within the statewide or agency contract. (Examples: office supplies, information processing equipment). No agency may be exempt from using statewide contracts without prior written approval from the Purchasing Director. When such prior written approval is obtained, it must be retained with the file.

- **Step Four – Direct Award and Emergency Purchases**
 - If the product or service is not available through an existing statewide or agency contract, the agency must determine if the purchase will be competitive, direct award (only one vendor who can provide this product or service) or an emergency.

- **Step Five – Agency Delegated Purchasing Procedures (\$25,000 or Less)**
 - If the competitive product or service is not available on a statewide or agency contract nor through an internal resource, the agency must utilize its delegated purchasing procedures IF the acquisition is estimated to cost \$25,000 or less.

- **Step Six – Formal Acquisitions (Over \$25,000)**
 - If the product or service does not meet the definition of direct award or an emergency and is not available through internal resources or on an existing statewide or agency contract, it is considered a “formal acquisition” if it is expected to exceed \$25,000. Product purchases most often utilize the Request for Quotation process. If the purchase is a service, the agency must determine whether the Request for Quotation or the Request for Proposal process should be used. Once the process is determined, the agency develops the requisition and forwards to the Purchasing Division for processing.

- **Step Seven – Evaluation and Award**
 - After the official bid opening, all bids or proposals (depending upon the bid process used) are opened, evaluated, and an award is made in accordance with purchasing guidelines.

- **Step Eight – Purchase Order Encumbrance**
 - Encumbrance of purchase orders ensures that the agency has the appropriate funds to make the specific purchase. Except in an emergency, the encumbrance date is the earliest date that a vendor may commence on any contract.

- **Step Nine – Protest Procedures**
 - The Purchasing Division’s *West Virginia Code of State Rules*, 148 CSR 1, provide participating vendors with the right to protest specifications and purchase order awards.

- **Step Ten – Contract Management**
 - State agencies are responsible for establishing benchmarks for agency contracts to ensure that the product acquired or services to be rendered are offered in accordance with the contract specifications.

- **Step Eleven – Inspection**
 - *Code of State Rules* 148 CSR 1-4-16; 1-7-14: Director shall appoint inspectors to review and audit spending unit requests and purchases and other transactions and performance that fall under authority of the division
 - Inspectors may also provide relevant training for agency personnel.

- Inspectors shall have access at any and all times to personnel, records, reports, and other documents, as needed
- Agency shall inspect all materials, supplies, and equipment upon delivery to ensure compliance with the contract requirements and specifications.

APPENDIX G: INSURANCE GUIDE

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

For a direct link, access <http://www.state.wv.us/admin/purchase/handbook/2018/insurance.pdf>.

APPENDIX H: REQUEST FOR PROPOSAL STANDARD FORMAT

Below is the standardized language for the Request for Proposal method of purchasing.
(Select the file type you prefer):

- RFP Standard Format (Microsoft Word File)

APPENDIX I: EXPRESSION OF INTEREST STANDARD FORMAT

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

- EOI Standard Format (Microsoft Word File)

APPENDIX J: STANDARDIZATION STANDARD FORMAT

Below is the language to be used for the Standardization process. (Select the file type you prefer):

- Standardization (Microsoft Word File)

APPENDIX K: CHANGE ORDER LANGUAGE

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

Renewals

Standard Renewal:

Change Order

Change Order No. XX is issued to renew the original contract according to all terms, conditions, prices and specifications contained in the original contract including all authorized change orders.

Effective date of renewal _____ through _____.

Renewal Years/Months Remaining: _____

No other changes.

Renewal with Increase:

Change Order

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

Effective date of renewal _____ through _____.

Renewal Years/Months remaining: _____

No other changes.

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

Renewal with Decrease:

Change Order

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

Effective date of renewal _____ through _____.

Renewal Years/Months remaining: _____

No other changes.

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

Construction Extension of Time Only:

Change Order

Change Order No. XX is issued to extend the original contract to (insert specific date) according to all terms, conditions, prices, and specifications contained in the original contract including all authorized change orders. The extension of this contract is provided to (complete the project, or for payment purposes) only.

Effective date of change _____

No other changes.

Construction Extension of Time and Increase:

Change Order

Change Order No. XX is issued to extend and increase the original contract to (insert specific date) according to all terms, conditions, prices, and specification contained in the original contract including all authorized change orders. The extension of this contract is provided to (insert reason i.e. add additional items, excavation quantities, etc.).

Effective date of change _____

Extend Contract From:

To:

Original Contract Price:

Change Order No. XX Increase:

Contract New Total:

No other changes.

.

Cancellations:

Entire Contract/Purchase Order

Change Order

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

Effective date of cancellation _____

Partial Cancellation Change Order

Change Order No. XX is issued to cancel this contract/purchase order (uncompleted scope of work or undelivered commodities) and funds associated with the work or commodities

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

Effective date of cancellation _____

Administrative Change for Vendor Name/Number

When a Cancellation and Re-issue is Required:

Original Contract Language

Change Order XX

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

Effective date of change _____

New procurement folder: _____

No other changes.

New Contract Language:

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

Effective date of change _____

Old procurement folder: _____

No other changes.

When Only a Change Order is Required (No Re-issue):

Change Order XX

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

Effective date of change _____

No other changes.

When Assignment Occurs (Taxpayer Identification Number Changes):

Original Contract Language:

Change Order XX

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

Effective date of change _____

New procurement folder: _____

No other changes.

New Contract Language:

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

Effective date of change _____

Old procurement folder: _____

No other changes.



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APPENDIX L: PRE-BID CONFERENCE SIGN-IN SHEET

The following form is in PDF format. Use your Acrobat Reader (TM) to view and print it. Please click the link below.

<http://www.state.wv.us/admin/purchase/handbook/2018/signin.pdf>

Pre-Bid Conference Sign-In Sheet

(Please type or write legibly. The fax number is essential to contact the attendees in a timely manner.)

FIRM & REPRESENTATIVE NAME	MAILING ADDRESS	TELEPHONE & FAX NUMBERS
Company: _____	_____	PHONE
Rep: _____	_____	TOLL
Email Address: _____	_____	FREE
Company: _____	_____	PHONE
Rep: _____	_____	TOLL
Email Address: _____	_____	FREE
Company: _____	_____	PHONE
Rep: _____	_____	TOLL
Email Address: _____	_____	FREE
Company: _____	_____	PHONE
Rep: _____	_____	TOLL
Email Address: _____	_____	FREE
Company: _____	_____	PHONE
Rep: _____	_____	TOLL
Email Address: _____	_____	FREE
Company: _____	_____	PHONE
Rep: _____	_____	TOLL
Email Address: _____	_____	FREE
Company: _____	_____	PHONE
Rep: _____	_____	TOLL
Email Address: _____	_____	FREE
Company: _____	_____	PHONE
Rep: _____	_____	TOLL
Email Address: _____	_____	FREE
Company: _____	_____	PHONE
Rep: _____	_____	TOLL
Email Address: _____	_____	FREE

APPENDIX M: AGENCY PROCESS CHECKLISTS

The purpose of these checklists is to assist representatives of state agencies who are charged with the task of handling the purchase of products and services on behalf of their agencies. Each checklist is available in either Adobe Acrobat or Microsoft Excel format.

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

If you have any questions regarding these checklists, please contact a member of the buying staff at (304) 558-2306.

**APPENDIX N: INSTRUCTIONS FOR USE OF THE AGREEMENT
ADDENDUM (WV-96)**

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

For a direct link, access

<http://www.state.wv.us/admin/purchase/handbook/2018/WV96instructions.pdf>.

APPENDIX O: NIGP CODE OF ETHICS

The West Virginia Purchasing Division is an active member of the National Institute of Governmental Purchasing, Inc. and adopts as a policy the Code of Ethics which the Institute has initiated.

CODE OF ETHICS

The Institute believes, and it is a condition of membership, that the following ethical principles should govern the conduct of every person employed by any public-sector procurement or materials management organization.

1. Seeks or accepts a position as head or employee only when fully in accord with the professional principles applicable thereto, and when confident of possessing the qualifications to serve under those principles to the advantage of the employing organization.
2. Believes in the dignity and worth of services rendered by the organization and the social responsibilities assumed as a trusted public servant.
3. Is governed by the highest ideals of honor and integrity in all public and personal relationships, in order to merit the respect and inspire the confidence of the organization and the public being served.
4. Believes that personal aggrandizement or personal profit obtained through misuse of public or personal relationships is dishonest and not tolerable.
5. Identifies and eliminates participation of any individual in operational situations where a conflict of interest may be involved.
6. Believes that members of the Institute and its staff should at no time or under any circumstances, accept directly or indirectly, gifts, gratuities or other things of value from suppliers.
7. Keeps the governmental organization informed, through appropriate channels, of problems and progress of applicable operations, but personally remains in the background by emphasizing the importance of the facts.
8. Resists encroachment on control of personnel in order to preserve integrity as a professional manager. Handles all personnel matters on a merit basis. Political, religious,

racial, gender and age considerations carry no weight in personnel administration in the agency being directed or served.

9. Seeks or dispenses no personal favors. Handles each administrative problem objectively and empathetically on the basis of principles and justice without discrimination.

10. Subscribes to and supports the professional aims and objectives of the National Institute of Governmental Purchasing, Inc.

APPENDIX P: VENDOR CODE OF CONDUCT

The West Virginia Purchasing Division developed a code of conduct by which vendors should follow. To view the Purchasing Division's *Vendor Code of Conduct*, visit:

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