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CABINET SECRETARY

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

W. MICHAEL SHEETS
DIRECTOR

March 11, 2021

B.J. Chestnut, Procurement Manager
Department of Environmental Protection
601 57th Street SE
Charleston, West Virginia 25304

Dear B.J. Chestnut:

This is to transmit the final copy of the Purchasing Review of the West Virginia Department of Environmental Protection.

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

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

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

Respectfully,

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

W. Michael Sheets, CPPO
Director
West Virginia Purchasing Division

Enclosure

cc: Tammy Thornton, Assistant Chief of Business Operations, Department of Environmental Protection
Harold Ward, Cabinet Secretary, Department of Environmental Protection

WV PURCHASING DIVISION INSPECTION REPORT

DEPARTMENT OF ENVIROMENTAL PROTECTION

Environmental Protection

FISCAL YEAR
2020

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INTRODUCTION

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

The Purchasing Division Inspection Services Unit conducted a remote inspection of the West Virginia Department of Environmental Protection for the period of July 1, 2019 to June 30, 2020. Notice of the inspection was provided on October 13, 2020, and the inspection commenced on December 10, 2020 through December 14, 2020. The results of the inspection are contained within this report.

SCOPE

The scope of the inspection was focused on determining whether the West Virginia Department of Environmental Protection's procurement transactions for the period of July 1, 2019 to June 30, 2020 were, in all material respects, in compliance with applicable provisions of the West Virginia Code, the Code of State Rules and the Purchasing Division Procedures Handbook in effect during that time period.

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

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

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

SUMMARY

During the period under review, the spending unit processed 12,276 procurement transactions with a value of \$12,781,449.71. (These amounts are approximate, subject to reporting limitations from wvOASIS (including possible data entry error) and errors caused by elimination of duplicate results). Of those transactions, the Inspector selected 501 for review which represents approximately 4% of the total. This inspection of 501 selected transactions yielded 72 findings associated with 98 of the selected transactions. This means that approximately 20% of the transactions reviewed had one or more instances of noncompliance with applicable provisions of the West Virginia Code, the Code of State Rules and the Purchasing Division Procedures Handbook. The findings are further illustrated in the attached Findings Grid and Grading Sheet.

The inspection also revealed that on 32 occasions, the spending unit failed to obtain competitive bids as required by the applicable dollar level of spend. That number is comprised of 2 instances of failing to bid at the central level (also known as stringing), and 30 instances of failing to bid at the delegated level. Any instances of failure to bid at the central level will be reported to the Legislature as required by the West Virginia Code.

Based on the findings contained in this report, the Purchasing Division recommends the spending unit work to improve any areas of noncompliance. Given that the agency received a score of 76.3% C on the inspection and there was a pattern of findings or one or more cases of stringing, the first step must be the completion of a Corrective Action Plan. A request for which will be provided to you after this inspection is finalized.

Grading Sheet

West Virginia Department of Environmental Protection FY2020 Statistics

Transactions Reviewed	501
Non-Conformance Rate (See Summary Page)	20.0%
Conformance Rate	80.0%

Findings Summary				
Finding Category	Number of Findings	Finding Percentage	Points possible	Points Received
Failure to Bid at Central Level (Stringing)	2	0.40%	30	18
Internal Resources not utilized	2	0.40%	15	12
Statewide Contract not utilized	4	0.80%	15	12
Failure to Bid at Delegated Level	30	5.99%	15	9
Vendor Registration unverified/wrong fee code	0	0.00%	5	5
Failure to verify Compliance Checks	10	2.00%	5	4
Purchasing Affidavit Not Included	2	0.40%	5	4
Wvoasis Award Document Not Issued	2	0.40%	3	2.4
Asset Tag/Number not affixed	0	0.00%	3	3
Certification of Non-Conflict of Interest not included	10	2.00%	3	2.4
Miscellaneous Issue	10	2.00%	1	0.8
Total	72		100	72.6

Overall Agency Score	
Non-Conformance & Findings Average	Overall Letter Grade
76.3%	C

Scale (See Weight Application*)
91.66 -- 100 = A
83.33 -- 91.66 = B
75 -- 83.33 = C
66.66 -- 75 = D
<66.66 = F

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

EXHIBIT A: DETAILED INSPECTION FINDINGS

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

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

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

Transactions in Violation: (2 Instances)

1 Instance Grouped

<u>Date</u>	<u>Description</u>	<u>Vendor</u>	<u>Amount</u>	<u>Invoice</u>
05/04/2020	Truck topper & tool box	American Campers Inc	\$2,328.48	PRCC,20*36735
12/06/2019	Truck tonneau cover	Custom Detail of WV	\$309.99	PRCC,20*80656
01/10/2020	Truck nurf bars & toolbox	High Mountain On Off Road	\$720.00	PRCC,20*91947
12/03/2019	Truck topper	Leonard Building & Truck	\$2,445.99	PRCC,20*86640
02/13/2020	Truck toolbox	Lowes #01671	\$299.00	PRCC,20*06281
05/18/2020	Truck topper & nurf bars	Mr Eds Auto Sales	\$2,350.00	PRCC,20*42219
11/21/2019	Truck tonneau cover	Real Truck	\$649.00	PRCC,20*86619
06/16/2020	Truck cover & accessories	Ridge Runner	\$623.95	PRCC,20*02229
01/17/2020	Truck toolbox & accessories	SP Decked Storage	\$1,424.99	PRCC,20*04533
11/13/2019	Truck light bars	Speedtech Lights	\$583.37	PRCC,20*65769
02/12/2020	Truck topper and nurf bars	Steve S Vans and Accessories	\$2,413.00	PRCC,20*06277

Continued

<u>Date</u>	<u>Description</u>	<u>Vendor</u>	<u>Amount</u>	<u>Invoice</u>
01/15/2020	Truck tonneau cover	Thornhill Chrysler	\$650.00	PRCC,20*04178
01/24/2020	Truck toolbox	Tractor Supply Co #1535	\$429.99	PRCC,20*01137
06/03/2020	Truck floor mats & accessories	Weathertech Direct	\$118.95	PRCC,20*42779

Additional Detail: During the period under review, the agency spent a total of \$50,914.11 with the selected vendors which exceeds the formal bid limit of \$25,000.00. This finding states 1 instance. Due to grouping of failure to bid at central level for truck accessories, the transactions reviewed without obtaining bids totals 14 and will reflect this in the Transaction Non-Conformance Rate of the Grading Sheet.

<u>Date</u>	<u>Description</u>	<u>Vendor</u>	<u>Amount</u>	<u>Invoice</u>
12/27/19	Lab filtering supplies	Preiser Scientific Inc	\$386.00	PRCC,20*93366

Additional Detail: The agency spent \$28,208.00 with the listed vendor during the fiscal year under review.

Purchasing Division Recommendation:

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

Issue 2: Internal Resource Not Utilized

Authority: W. Va. Code §§ 25-7-5 and 5A-3-10; Procedures Handbook Section 3.6.1

Explanation: State law mandates that certain social welfare programs be utilized prior to a spending unit obtaining commodities and services in the open market. Those programs include the Sheltered Workshops established to assist disabled individuals in finding employment, and the Correctional Industries program that provides prison inmates with meaningful work. The transactions listed below should have been obtained from one of these programs, or a waiver should have been obtained. The inspection revealed that the transactions were outside of the internal programs and no waiver was granted.

Transactions in Violation: (2 Instances)

<u>Date</u>	<u>Description</u>	<u>Vendor</u>	<u>Amount</u>	<u>Invoice</u>
09/20/2019	Posters	Dri Printing Services	\$444.87	PRCC,20*38923
08/22/2019	Name badges	Name Badges Int'l	\$208.06	PRCC,20*24693

Additional Detail: West Virginia Correctional Industries provides posters and name badges and should have been utilized. There was no waiver present in the file.

Purchasing Division Recommendation:

1. The Purchasing Division recommends that the spending unit personnel become familiar with what is available from internal sources and either procure those commodities and services from internal sources or obtain a waiver from the Purchasing Division.
2. The Purchasing Division recommends that the spending unit's procurement officer participate in training on this topic offered by the Purchasing Division and ensure that all procurement staff understand how to comply with this requirement moving forward.

Issue 3: Statewide Contract Not Utilized

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

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

Transactions in Violation: (4 Instances)

<u>Date</u>	<u>Description</u>	<u>Vendor</u>	<u>Amount</u>	<u>Invoice</u>	<u>SW Contract</u>
06/29/2020	Pest control	Dodson Pest Charleston	\$50.00	PRCC,21*03268	PESTCTR
10/19/2019	Discharge hoses	Garrett Industrial Supply	\$2,261.66	PRCC,20*56216	INDEQP
03/12/2020	Shop vacs & harness kits	Lowes #00675	\$333.63	PRCC,20*17684	INDEQP
07/11/2019	Impact driver kits	The Home Depot 4802	\$205.07	PRCC,2005936	INDEQP

Additional Detail: The transactions listed above must be purchased from the Statewide Contacts indicated.

Purchasing Division Recommendation:

1. The Purchasing Division recommends that the spending unit personnel become familiar with what is available from statewide contracts and either procure those commodities and services from statewide contracts or obtain a waiver from the Purchasing Division.
2. The Purchasing Division recommends that the spending unit's procurement officer participate in training on this topic offered by the Purchasing Division and ensure that all procurement staff understand how to comply with this requirement moving forward.

Issue 4: Failure to bid at delegated level

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

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

Transactions in Violation: (30 Instances)

24 Instances

<u>Date</u>	<u>Description</u>	<u>Vendor</u>	<u>Amount</u>	<u>Invoice</u>
02/14/2020	Promotional items	4Imprint	\$1,106.54	PRCC,20*09228
11/04/2019	Rental cylinders	Airgass North	\$65.86	PRCC,20*59584
02/18/2022	Apple stylus pens	Apple.com/us	\$534.00	PRCC,20*07619
02/06/2020	TV's	Bestbuycom	\$1,509.98	PRCC,20*04075
04/14/2020	Digital cameras	Bestbuycom	\$457.98	PRCC,20*30309
02/25/2020	Diesel	Bruceton Petroleum	\$1,212.89	PRCC,20*15750
03/23/2020	Propane	Bruceton Petroleum	\$1,571.56	PRCC,20*23805
04/09/2020	Printing on backpacks	Dynamic Graphics LLC	\$1,905.52	PRCC,20*27665
06/24/2020	Tick test kits	E P A Enterprizes Inc	\$233.92	PRCC,20*00850
06/19/2020	Sampling equipment	Forestry Suppliers Inc	\$255.00	PRCC,20*05224
10/18/2019	Lab testing materials	Hach Company	\$850.77	PRCC,20*48753
04/06/2020	Equipment repair	In Charleston Blueprints	\$325.00	PRCC,20*25890
04/16/2020	Sensor parts & service	In Situ Inc	\$961.04	PRCC,20*33462
05/19/2020	Device recertification	Mesa Labs	\$724.00	PRCC,20*42774
06/23/2020	Security system repair	Newtech Systems Inc	\$233.37	PRCC,21*03508
12/26/2019	Logger repairs	Onset Computer Corp	\$2,123.00	PRCC,20*90286
11/05/2019	Boat motors	Rodger Smith Marine	\$2,300.00	PRCC,20*61913
02/11/2020	Information database	Smartsheet	\$458.43	PRCC,20*07617

Continued

<u>Date</u>	<u>Description</u>	<u>Vendor</u>	<u>Amount</u>	<u>Invoice</u>
04/01/2020	Pump kits for analyzers	Teledyne Instruments Inc	\$607.00	PRCC,20*28606
06/19/2020	Lab equipment and supplies	Thomas Scientific Holding	\$522.66	PRCC,20*03685
06/09/2020	Water treatment parts & equipment	USA Blue Book	\$78.29	PRCC,20*43188
06/02/2020	Analyslides	VWR International Inc	\$1,002.65	PRCC,20*43461
08/19/2019	Cell booster	Ubersignal.com	\$1,799.96	PRCC,20*24691
06/30/2020	Signal booster	Wilsonamplifiers.com	\$399.99	PRCC,20*05224

Additional Detail: Although the individual transaction listed above falls below the verbal bid limit, the agency aggregate spends for each vendor exceeded \$2,500.00 for the fiscal year under review.

2 instances

<u>Date</u>	<u>Description</u>	<u>Vendor</u>	<u>Amount</u>	<u>Invoice</u>
07/10/2019	Promotional items	Discountmugs.com	\$2,758.50	PRCC,20*05940
08/30/2019	Hazardous waste disposal	Enviroserve Inc Cleveland	\$3,975.00	PRCC,20*28343

Additional Detail: Documentation for the transactions listed above showed no evidence of verbal bids and no justification for a direct-award purchase.

3 Instances

<u>Date</u>	<u>Description</u>	<u>Vendor</u>	<u>Amount</u>	<u>Invoice</u>
06/26/2020	Instrument repair	Fondriest Environmental	\$1,652.00	PRCC,20*02688
06/29/2020	Environmental testing equipment	Fondriest Environmental	\$649.92	PRCC,20*02687
01/30/2020	Non-hazardous waste disposal	Veolia Environmental	\$1,600.00	PRCC,20*99590

Additional Detail: Although the individual transactions listed above falls below \$2,500.01, the agency aggregate spend for each vendor exceeded the \$10,000.00 threshold.

1 Instance Grouped

<u>Date</u>	<u>Description</u>	<u>Vendor</u>	<u>Amount</u>	<u>Invoice</u>
11/20/2019	Boots	Amzn Mktp US ZU2BA1Y13	\$179.95	PRCC,20*82195
03/20/2020	Boots	Andrews Boots and Workwear	\$166.05	PRCC,20*30320
07/17/2019	Boots	Bates Footwear.com	\$111.29	PRCC,20*12061
11/19/2019	Boots	Beckley Rural King	\$130.00	PRCC,20*86619
03/05/2020	Boots	Bennys Boot Hill Inc.	\$341.82	PRCC,20*14957
07/02/2019	Boots	Bettys Boot	\$72.21	PRCC,20*03110
11/26/2019	Boots	Bridgeport Equip & Tool	\$121.95	PRCC,20*82188
03/17/2020	Boots	Cabela's Promotions	\$531.91	PRCC,20*29345
10/18/2019	Boots	Charleston Dept Store	\$111.98	PRCC,20*57075
11/22/2019	Boots	Keen Inc.	\$150.00	PRCC,20*82356
07/24/2019	Boots	Kenetrek Boots Retail	\$247.62	PRCC,20*11402
02/13/2020	Boots	Kipling Shoe Company	\$265.48	PRCC,20*05855
11/07/2019	Boots	Lowerys Boots and Shoes	\$169.99	PRCC,20*65762
12/08/2019	Boots	Merrell.com	\$133.75	PRCC,20*82527
12/05/2019	Boots	Moosejaw.com	\$191.96	PRCC,20*84898
12/18/2019	Boots	Northwest River Supplies	\$284.48	PRCC,20*90388
01/03/2020	Boots	Park Center Sporting	\$155.90	PRCC,20*92669
08/24/2019	Boots	Shoe Carnival Inc	\$165.83	PRCC,20*27090
12/03/2019	Boots	Shoe Dept 1140	\$119.98	PRCC,20*82184
10/11/2019	Boots	Sperrytopsider.com	\$137.75	PRCC,20*51007
11/20/2019	Boots	Sportsmans Warehouse	\$139.99	PRCC,20*80280
10/03/2019	Boots	Tacticalgear.com	\$194.98	PRCC,20*48254
11/17/2019	Boots	The Orvis Company Inc	\$901.96	PRCC,20*76018
11/30/2019	Boots	Wolverine.com	\$127.20	PRCC,20*86636

<u>Date</u>	<u>Description</u>	<u>Vendor</u>	<u>Amount</u>	<u>Invoice</u>
07/18/2019	Boots	Workboots.com	\$189.94	PRCC,20*11217
12/04/2019	Boots	www.wills-vegan-shoes	\$150.00	PRCC,20*18891

Additional Detail: During the period under review, the agency spent a total of \$24,772.78 with the selected vendors which exceeds the bid limit threshold of \$10,000.00. This finding states 1 instance. Due to grouping of failure to bid at designated level for boots, the transactions reviewed without obtaining bids totals 26 and will reflect this in the Transaction Non-Conformance Rate of the Grading Sheet.

Purchasing Division Recommendation:

1. The Purchasing Division recommends that the spending unit follow the requirements associated with each delegated spending limit.
2. The Purchasing Division recommends that the spending unit utilize wvOASIS to create reports that will allow the spending unit to track spend and determine when spending is closing to exceeding spending limits.
3. The Purchasing Division recommends that the spending unit forecast future needs for its commodities and services to determine in advance what should be competitively bid at delegated verbal and written bid levels.
4. The Purchasing Division recommends that the spending unit's procurement officer participate in training on this topic offered by the Purchasing Division and ensure that all procurement staff understand how to comply with this requirement moving forward.

Issue 5: Vendor Registration Unverified/Wrong Vendor Fee Exemption Code Utilized

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

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

Transactions in Violation: (0 Instances)

Purchasing Division Recommendation:

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

Issue 6: Failure to Verify Compliance Checks

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

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

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

Transactions in Violation: (10 Instances)

<u>Date</u>	<u>Description</u>	<u>Vendor</u>	<u>Amount</u>	<u>Invoice</u>
11/29/2019	Snow removal	Clear G Construction	\$1,102.89	PRC,20*23927
06/30/2020	Lawn care	Frostys Lawn Care	\$1,375.00	PRM,20*04464
06/30/2020	Subscription	Thomson Reuters West	\$2,186.15	PRC,21*03344

Additional Detail: Although each of the above transactions fall below the limit requiring Verification Searches to be present, there were agency agreements for over \$2,500.00 each.

<u>Date</u>	<u>Description</u>	<u>Vendor</u>	<u>Amount</u>	<u>Invoice</u>
09/26/2019	Audit	Brown Edwards & Company	\$13,050.00	PRM,20*16781
07/10/2019	Promotional Items	Discountmugs.com	\$2,758.50	PRCC,20*05940
03/31/2020	Calibration	Envionics Inc	\$3,369.35	PRCC,20*55953
08/30/2019	Waste disposal	Enviroserve Inc Cleveland	\$3,975.00	PRCC,20*28343
12/26/2019	Subscription	Thomson West TCD	\$2,912.57	PRCC,20*98583
06/30/2020	Tire disposal	Tire & Rubber Inc	\$3,177.00	PRCC,21*02228
11/20/2019	Training	WV Coal Association Inc	\$8,550.00	PRM,20*62728

Purchasing Division Recommendation:

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

Issue 7: Purchasing Affidavit Not Included

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

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

Transactions in Violation: (2 Instances)

<u>Date</u>	<u>Description</u>	<u>Vendor</u>	<u>Amount</u>	<u>Invoice</u>
06/26/2020	Instrument repair	Fondriest Environmental	\$1,652.00	PRCC,21*02688
06/29/2020	Testing equipment	Fondriest Environmental	\$649.92	PRCC,21*45936

Additional Detail: Although the individual transactions listed above falls below \$2,500.01, the agency aggregate spend for each vendor exceeded the \$10,000.00 threshold.

Purchasing Division Recommendation:

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

Issue 8: wvOASIS Award Document Not Issued

Authority: Procedures Handbook Section 5.2.2

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

Transactions in Violation: (2 Instances)

<u>Date</u>	<u>Description</u>	<u>Vendor</u>	<u>Amount</u>	<u>Invoice</u>
07/10/2019	Promotional Items	Discountmugs.com	\$2,758.50	PRCC,20*05940
08/30/2019	Waste disposal	Enviroserve Inc Cleveland	\$3,975.00	PRCC,20*28343

Purchasing Division Recommendation:

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

Issue 9: Asset Tag Not Affixed

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

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

Transactions in Violation: (0 Instances)

Purchasing Division Recommendation:

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

Issue 10: Cert. of Non-Conflict Not Included

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

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

Transactions in Violation: (10 Instances)

<u>Date</u>	<u>Description</u>	<u>Vendor</u>	<u>Amount</u>	<u>Invoice</u>
10/22/2019	Calibration	In White Industrial	\$1,350.00	PRCC,20*60452
06/30/2020	Subscription	Thomson Reuters West	\$2,186.15	PRC,21*03344

Additional Detail: Although each of the above transactions fall below the limit requiring a certificate of non-conflict to be present, there were agency agreements for over \$2,500.00 each.

<u>Date</u>	<u>Description</u>	<u>Vendor</u>	<u>Amount</u>	<u>Invoice</u>
12/27/2019	Software maintenance	Aquaticinfo	\$3,937.50	PRCC,20*96677
05/04/2020	Attorneys	Bailey & Glasser LLP	\$36,390.50	PRC,21*00875
07/10/2019	Promotional Items	Discountmugs.com	\$2,758.50	PRCC,20*05940
08/30/2019	Waste disposal	Enviroserve Inc Cleveland	\$3,975.00	PRCC,20*28343
05/22/2020	Legal services	Hissam Forman Donovan	\$33,434.50	PRC,21*01621
12/26/2019	Subscription	Thomson West TCD	\$2,912.57	PRCC,20*98583
06/30/2020	Tire disposal	Tire & Rubber Inc	\$3,177.00	PRCC,21*02228
11/20/2019	Training	WV Coal Association Inc	\$8,550.00	PRM,20*62728

Purchasing Division Recommendation:

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

Issue 11a: Miscellaneous (Not following Statewide Contract Ordering Requirements)

Authority: Procedures Handbook Section 3.7.1.2.1

Explanation: 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.

Transactions in Violation: (3 Instances)

<u>Date</u>	<u>Description</u>	<u>Vendor</u>	<u>Amount</u>	<u>Invoice</u>
08/22/2019	Tires	Appalachian Tire Products	\$560.00	PRCC,20*30393
11/19/2019	Tires	Bridgeport Tire and Supp.	\$122.08	PRCC,20*80452
08/13/2019	Tires	Kings Tire Service	\$549.00	PRCC,20*18878

Additional Detail: Spending Units(s) must issue a wvOASIS Agency Delivery Order (ADO) to the Goodyear Tire & Rubber Company for all contract items. The ADO must reference the approved Authorized Dealer with the Dealer location (address) in the Extended Description field. The agency must not pay the authorized dealer at any time.

Purchasing Division Recommendation:

1. The Purchasing Division recommends that the agency 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.
2. The Purchasing Division recommends the agency 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.
3. The Purchasing Division recommends the agency process a delivery order on an existing Central Master Agreement (i.e. open-end contract) that exceeds \$250,000 as a *Central Delivery Order (CDO)*.
4. The Purchasing Division recommends that the spending unit's procurement officer participate in training on the topics listed herein that are offered by the Purchasing Division and ensure that all procurement staff understand how to comply with this requirement moving forward.

Issue 11b: Miscellaneous (OT Approval)

Authority: Procedures Handbook Section 7.2

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

Transactions in Violation: (4 Instance)

<u>Date</u>	<u>Description</u>	<u>Vendor</u>	<u>Amount</u>	<u>Invoice</u>
08/12/2019	Software	Citrix Systems	\$982.26	PRCC,20*18882
07/15/2019	Software	Mytopo Trimble	\$240.00	PRCC,20*19356
04/20/2020	Software	Novalys	\$2,124.33	PRCC,20*36909
10/02/2019	IBM support software	Reliant Technology	\$2,394.76	PRCC,20*51022

Additional Detail: Office of Technology approval was not found in the file.

Purchasing Division Recommendation:

1. The Purchasing Division recommends that the agency apply for and receive Office of Technology approval prior to the purchase of any telecommunication products. Failure to do so could cause issues with the state’s voice and data telecommunications system. Approval memo must be maintained and kept in the procurement file.
2. The Purchasing Division recommends that the agency reference West Virginia Office of Technology CTO Policy # CTO-19-001 for guidance, which can be found at <https://technology.wv.gov/security/Pages/policies-issued-by-thecto.aspx>.
3. The Purchasing Division recommends that the spending unit’s procurement officer participate in training on the topics listed herein that are offered by the Purchasing Division and ensure that all procurement staff understand how to comply with this requirement moving forward.

Issue 11c: Miscellaneous (Third-party Booking)

Authority: West Virginia Code Section 12-3-11

Explanation: (Third-party Booking) Section 2.9 of the State Travel Policy states “Travelers must use state contracts for travel services or deal directly with the service vendor. Third Party Booking sites shall not be used.”

Transactions in Violation: (1 Instance)

<u>Date</u>	<u>Description</u>	<u>Vendor</u>	<u>Amount</u>	<u>Invoice</u>
10/03/2019	Hotel reservation	Hotelscom8023647111023	\$121.29	PRCC,20*47430

Additional Detail: The agency personnel used Hotels.com, which is a third-party booking site. This is not in compliance with the State of West Virginia Travel Rules.

Purchasing Division Recommendation:

1. The Purchasing Division recommends that the spending unit utilizes state contracts for travel services or deal directly with the service vendor. No third-party booking sites are not to be used for state business related travel.
2. The Purchasing Division recommends that the spending unit’s procurement officer follow all rules stated in the State of West Virginia Travel Rules and ensures all staff utilizing travel through the state agency know and comply with said rules.
3. The Purchasing Division recommends that the spending unit’s procurement officer participate in training on the topics listed herein that are offered by the Purchasing Division and ensure that all procurement staff understand how to comply with this requirement moving forward.

Issue 11d: Miscellaneous (No Delivery Order Issued)

Authority: Procedures Handbook Section 3.7.1.2

Explanation: The Purchasing Division Procedures Handbook requires that a delivery order must be issued for all statewide contracts and agency open-end contracts unless otherwise stated in the contract ordering instructions. This requirement is 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.

Transactions in Violation: (1 Instance)

<u>Date</u>	<u>Description</u>	<u>Vendor</u>	<u>Amount</u>	<u>Invoice</u>
08/26/19	Battery	Taylor Blackburn Battery	\$244.04	PRCC,20*28361

Additional Details: The agency did not use an ADO when making a purchase from the applicable statewide contract.

Purchasing Division Recommendation:

1. The Purchasing Division recommends that the agency 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.
2. The Purchasing Division recommends the agency 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.
3. The Purchasing Division recommends the agency process a delivery order on an existing Central Master Agreement (i.e. open-end contract) that exceeds \$250,000 as a *Central Delivery Order (CDO)*.
4. The Purchasing Division recommends that the spending unit's procurement officer participate in training on the topics listed herein that are offered by the Purchasing Division and ensure that all procurement staff understand how to comply with this requirement moving forward.

Issue 11e: Miscellaneous (Purchasing Affidavit not completed)

Authority: Procedures handbook Section 2.1; West Virginia Code §5A-3-10a & 5.22.1(i)

Explanation: 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. Without the date of the signee, it is considered incomplete.

Transactions in Violation: (1 Instance)

<u>Date</u>	<u>Description</u>	<u>Vendor</u>	<u>Amount</u>	<u>Invoice</u>
06/30/2020	Tire disposal	Tire and Rubber Inc	\$3,177.00	PRCC,21*02228

Additional Detail: Affidavit was not dated by the vendor.

1. The Purchasing Division recommends that the agency reviews all documentation for correct and completed information before awarding the contract.
2. The Purchasing Division recommends that the spending unit's procurement officer participate in training on the topics listed herein that are offered by the Purchasing Division and ensure that all procurement staff understand how to comply with this requirement moving forward.

EXHIBIT B: COMPARISON WITH PRIOR INSPECTIONS

A previous inspection of the West Virginia Department of Environmental Protection was conducted in June of 2011. The review consisted of 932 selected transactions from an approximate 21,316 total transactions from July 1, 2009 through June 30, 2010. This review resulted in 56 findings associated with 242 of the selected transactions. This indicated that 26% of the transactions reviewed during the inspection had one or more problems of potential nonconformity with Purchasing Division laws, rules, and/or regulations. When comparing the statistics from 2010 to the current 2020 inspection, below is a summary of the issues identified during the 2010 inspection, as compared to the findings from the current inspection.

Summary of Problem Transactions		
<i>Findings</i>	2010	2020
Failure to Bid at Central Level (Stringing)	3	2
Internal Resources not utilized	1	2
Statewide Contract not utilized	4	4
Failure to Bid at Delegated Level	12	30
Vendor Registration unverified/wrong Fee Code	9	0
Failure to verify Compliance Checks	7	10
Purchasing Affidavit not included	9	2
wvOasis Award Document not issued	5	2
Asset Tag/Number not affixed	0	0
Cert. of Non-Conflict of Interest not included	4	10
Miscellaneous Issue	2	10
<i>Total</i>	56	72

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

EXHIBIT C: AGENCY TRAINING REPORT

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

Statutory Requirements:

- W. Va. Code § 5A-3-60 requires that All executive department secretaries, commissioners, deputy commissioners, assistant commissioners, directors, deputy directors, assistant directors, department heads, deputy department heads and assistant department heads are hereby required to take two hours of training on purchasing procedures and purchasing cards annually.
- W. Va. CSR § 148-1-3.2 mandates that all designated procurement officers receive 10 hours of procurement training annually.

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

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

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

Individual Name:

Nora Adams

Attended 11 workshops (11 available)

Terri Casto

Attended 11 workshops (11 available)

Brooke Chambers

Attended 11 workshops (11 available)

B. J. Chestnut
Attended 11 workshops (11 available)

Betty Cox
Attended 10 workshops (11 available)

Vickie Derosa
Attended 11 workshops (11 available)

Paul Divita
Attended 9 workshops (11 available)

Katrina Dufourny
Attended 11 workshops (11 available)

Pamela Ford
Attended 11 workshops (11 available)

Billie Hancock
Attended 9 workshops (11 available)

Megan Jones
Attended 11 workshops (11 available)

Lindsey Leonard
Attended 11 workshops (11 available)

Cheryl Lewis
Attended 10 workshops (11 available)

Leah McAllister
Attended 11 workshops (11 available)

Lisa McComas
Attended 10 workshops (11 available)

April O'Dell
Attended 11 workshops (11 available)

Tonya Ombler
Attended 11 workshops (11 available)

Janice Palmer
Attended 4 workshops (11 available)

Leigh Ann Shaffer
Attended 10 workshops (11 available)

Rose Short
Attended 11 workshops (11 available)

J.D. Simpson
Attended 5 workshops (11 available)

Melanie Simpson
Attended 9 workshops (11 available)

Linda Stanley
Attended 11 workshops (11 available)

Tammy Thornton
Attended 11 workshops (11 available)

Roberta Vanness
Attended 9 workshops (11 available)

Sherri Weathersbee
Attended 11 workshops (11 available)

Dolly Weaver
Attended 11 workshops (11 available)

Rena Whitlock
Attended 11 workshops (11 available)

Larry Workman
Attended 10 workshops (11 available)

Purchasing Division Recommendations:

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

EXHIBIT D: AGENCY RESPONSE TO INSPECTION FINDINGS



west virginia department of environmental protection

Administrative Services
601 57th Street SE
Charleston, WV 25304-2345
304-926-0499 Phone
304-926-0452 Fax

Harold D. Ward, Cabinet Secretary
www.dep.wv.gov

March 3, 2021

Mr. Greg Clay, Contracts Manager
WV Purchasing Division
3019 Washington Street, East
Charleston, WV 25305

Dear Mr. Clay:

This correspondence is directed to address the findings within your Purchasing Review of the WV Department of Environmental Protection for the fiscal year of 2020. As mentioned in your letter dated February 16, 2021, it is mandatory that we respond to any instances of a violation of stringing. There were two instances of stringing identified by the review and the response to those findings and explanation is as follows:

DEP has operated in the past with the understanding that the monitoring of the spend within the Agency should be separated by the Division or Office. DEP is structured in the same manner as other agencies that operate under the Purchasing Division authority. DEP is one large Agency with numerous Offices and Divisions each with their own spending unit. While reviewing past inspections it was noted that other agencies are being reviewed by Division or Office and not as a whole Agency. If the Agency had been separated by the Spending Unit, one of the stringing violations would not be classified as such. Specifically, the truck accessories. These purchases were made across various Spending Units across the state at different times. Since some of the Divisions were not aware of the spending thresholds that they may have been in violation of, the DEP is escalating training on the spending thresholds and providing guidance on how to find the aggregated spend for commodities and vendors.

The DEP takes the findings seriously and will make every effort to correct the deficiencies that have been identified. Training sessions have already been scheduled and some have already taken place regarding statewide contract usage and requirements, training for Purchasing Card usage and requirements has been scheduled. Other areas of training are being identified. Additional monthly reviews of P-Card Cardholders transactions have been put in place. Audits are being conducted and violations are being communicated in writing to the Cardholders letting them know that this is a warning and that continual violations may result in their Purchasing

Card being revoked. Cardholders who have violations will be required to take additional purchasing trainings to gain a more thorough knowledge of the requirements. Also, in response to the stringing that was identified, specifications for future solicitations are currently being developed that will resolve the issues.

I am hopeful that my explanation will help you understand that the Agency does strive to do things correctly. I would like to discuss the spending limits within the Agency to understand why there is a discrepancy in how the Agency is reviewed compared to the other State Agencies to ensure that we have a clear understanding.

Sincerely,

Tammy S.
Thornton

Digitally signed by Tammy S. Thornton
DN: CN = Tammy S. Thornton email =
Tammy.S.Thornton@vrs.gov C = US O
= WV Department of Environmental
Protection OU = Business Operation
Date: 2021.03.03 09:11:50 -0500

Tammy S. Thornton, Asst. Chief
Business Operations Office

cc:

Randy Taylor, CFO
BJ Chestnut, Procurement Manager