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STATE OF WEST VIRGINIA  
**DEPARTMENT OF ADMINISTRATION**  
**PURCHASING DIVISION**  
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DAVID TINCHER  
DIRECTOR

## **MEMORANDUM**

**TO:** All Agency Procurement Officers

**FROM:** Dave Tincher, Director  
West Virginia Purchasing Division 

**DATE:** June 14, 2007

**SUBJECT:** Revision to the Non-Competitive / Exempt List  
of Commodities and Services

In accordance with §5A-3-10 of the *West Virginia Code*, a 'purchase of and contract for commodities, printing and services shall be based, whenever possible, on competitive bids.'

**Legislative Rule and Regulations** for the Purchasing Division (148CSR) states that the Purchasing 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 units 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 supercedes or replaces the Attorney General's authority to approve contracts as to form.

On August 2, 2006, the Purchasing Division issued such list, replacing Section 9 of the Purchasing Division Policies and Procedures Handbook. Please note, in red, additional changes to this section (Non-competitive/exempt list of commodities and services), effective immediately.

Thank you for your cooperation.

DT:dmh

West Virginia Purchasing Division  
**NON-COMPETITIVE / EXEMPT LIST OF  
COMMODITIES AND SERVICES**

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

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

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

*The Director shall:*

*(a) Ensure that purchases and contracts for commodities, services or printing are based on competitive bid where possible. The director may establish a list of commodities and services that are not possible to bid. Purchases of the commodities and services on this list have been preapproved by the Purchasing Division shall be made directly by the spending unit. A contract or purchase order for these commodities and services is not required to be approved by the Purchasing Division. This preapproval by the Purchasing Division does not supersede or replace approval as to form by the West Virginia Attorney General's Office Commodities and services to be included on this list shall be approved by the director prior to each fiscal year. Spending units may request commodities and services to be added to the list with justification and explanation of why bids are not possible.*

In accordance with the **Legislative Rule and Regulations 148CSR1 [7.5.2-3]**, the Purchasing Director has the authority to reject sole source requests whenever competition is believed to be available. The spending unit must provide written documentation to the Purchasing Director setting forth the basis for the sole source procurement and the specific efforts made to determine the availability of the other sources.

This requirement must be followed regardless of the monetary amount. For sole source purchases under \$25,000, written documentation must be included on file at the agency location rather than submit to the Purchasing Division.

The following commodities and services comprise the Non-Competitive / Exempt List of Commodities and Services and may be purchased directly by spending units without advertisement or bid:

1. **Aviation Fuel:** *(Excluding bulk purchases for delivery to state dispensing stations)*

2. **Cash Advances:** In accordance with §§5A-3-17(2) of the *West Virginia Code*, the head of any spending unit, or the financial governing board of any institution, may, with the approval of the Purchasing Director, make requisitions upon the State Auditor for a sum to be known as an advance allowance account, in no case to exceed five percent of the total of the appropriations for any such spending unit, and the State Auditor shall draw his warrant upon the State Treasurer for such account; and all such advance allowance accounts shall be accounted for by the head of the spending unit or institution once every thirty days or more often if required by the State Auditor or Purchasing Director.
3. **Employee Expense Accounts and Reimbursements**
4. **Fees Imposed by Other Government Entities**
5. **Grants:** State agencies shall use a grant as the legal instrument reflecting a relationship between state government and a local government or other recipient whenever:
  - (1) the principal purpose of the relationship is the transfer of money, property, services or anything of value to the local government or other recipient in order to accomplish a public purpose of support or stimulation authorized by federal and/or state statute rather than by acquisition, by purchase, lease or barter, of property or services for the direct benefit or use of the state government; and, (2) no substantial involvement is anticipated between the executive agency acting for the state government and the local government or other recipient during the performance of the contemplated activity.
6. **Hospitality:** Hospitality expenses include food, non-alcoholic beverages, facility rental, entertainment and other expenses **relating to conducting state business**. All hospitality events for functions estimated to cost \$25,000 or greater must have prior approval of the Purchasing Division, while those costing less than \$25,000 may be submitted for payment without approval of the Purchasing Division. A Request for Hospitality Form TMP 3.0 must accompany the invoice regardless of the amount.
7. **Entertainers:** Individuals and/or groups contracted at the request of the state to entertain or to assist in the production of entertainment.
8. **Interagency Agreements:** Interagency Agreements do not need to be processed by the Purchasing Division. However, no check will be issued in payment for Interagency Agreements, as payment will be made only by WVFIMS adjusting entry. In no event shall Interagency Agreements be used to subvert the requirement of competitive bidding.
9. **Media License Fees:** *(Program license fees for radio or television)*

10. **Medical Fees:** Fees for medical services (behavioral and physical) from individual doctors, dentists, clinics, hospitals, audiologists, county medical examiners, physical and occupational therapists, behavioral counseling and evaluations, etc. for patients, inmates and clients where the state is responsible for payment. This does not include inmate health care management, hospital management, consulting, etc. for state agencies.
11. **Postage:** (Stamps, metering, overnight services, i.e., Federal Express, Airborne, UPS, etc.). Does not include postage available from statewide contracts.
12. **Professional Association Dues**
13. **Promotional:** All promotional items, events or functions estimated to exceed \$5,000 must have prior approval of the Travel Management Office of the Purchasing Division, while those costing \$5,000 or less may be submitted for payment without approval of the Purchasing Division. Promotional expenditures may include display booths, promotional items at trade shows or similar events. Promotional items, except for sole source items, shall be purchased under the normal purchasing guidelines.
14. **Railroad Car Hire Fees:** National association fees required from all railroads to monitor the location and use of railroad cars for the owners. Bar codes on railroad cars are scanned into a computer database which in turn notifies the owner of the location and remits the user fees to the appropriate owner.
15. **Resale Items:** Items that are acquired specifically for resale by the state agency to the general public should be selected on the basis of quality and customer demand.
16. **Shipping Charges and Freight:** *(Not connected in any way to a formal encumbered purchase order or agency purchase order for the delivery of goods)*
17. **Student Activities:** *(Lecturers, entertainers, athletic events, referees, etc.)*
18. **Subscriptions:** *(Newspapers and publications)*
19. **Training Activities:** *(Lecturers, honorariums, copyrighted test and training materials, etc.)*
20. **Tuition, Stipends, Accreditations and Registration Fees**
21. **Utilities (Regulated Services by the Public Service Commission):** *(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]). Agency Purchase Order, WV-88 or Agreement, WV-48,*

is required for cable service and trash hauling in excess of \$1,000 per year. Propane gas and coal must be competitively bid.

22. **Attorneys and Law Firms:** Must be preapproved by the West Virginia Attorney General's Office. Includes hearing examiners.
23. **Advertising:** Any advertisement placed directly with newspapers, trade magazines, etc. Does not include radio, broadcast television, cable television, etc. Does not include any indirect placement, promotional items, advertising consultant services, broadcast of Lottery prize drawings, etc.
24. **Governor's Mansion Furnishings:** Any unique or handmade items used by mansion occupants purchased with public funds. Includes furnishings donated. Includes all furnishings that remain in the mansion throughout future administrations. Does not include commercially available items from more than one source.
25. **Artwork and Historical Items:** Includes purchase of and service to artwork and historical items, i.e. restoring governors' portraits, refurbishing chandeliers, etc. Must receive written approval from the Purchasing Division prior to making any purchase.
26. **Subject Matter Experts and Witnesses:** For administrative hearings and legal procedures. Does not include agency consulting services nor ex-employees retained by their agency or hired by another agency.
27. **Court Ordered Placements:** Children placed by West Virginia courts or the West Virginia Department of Health and Human Resources at various educational and/or behavioral centers.
28. **Medical Fees, Emergency Trauma Reimbursement:** Provides for the Department of Health and Human Resources to remit fees to State of West Virginia Level I or Level II Emergency Medical Services trauma physicians for services rendered, to supplement insurance premiums and other costs when required to maintain certain levels of certification. Limited to qualified trauma physicians that meet the overall trauma performance requirements determined by the Office of Emergency Medical Service guidelines. The physicians to be contracted with will have credentials to meet the identified needs of a Level I or Level II trauma center.