
MANAGING YOUR VENDOR

2019 AGENCY PURCHASING CONFERENCE

REASONS FOR CONTRACT CONFLICT

- Different interpretations
- Unforeseen circumstances
- Vendor in over its head (can't fulfill obligations)
- Mistake made in bidding
- Malicious acts - fraud/greed

MEETING OF THE MINDS – ESTABLISHING EXPECTATIONS

- Reduce Conflict Before It Happens
 - Well understood need
 - Industry research
 - Good specs (sufficiently detailed, clear, and unambiguous)

- Examples:
 - Cloud v. non-cloud solutions
 - Delivery locations and timing
 - Elevator restarts
 - Clearly defined payment amounts and process
 - Software solution not satisfactory
 - Cell phones as item scanners

VENDOR SELECTION

- Specifications
 - Vendor must meet mandated qualification requirements to be selected
- Examples:
 - Licenses (Contractor, reseller, dealer, professional)
 - Certifications
 - Years of Experience/Projects Completed



VENDOR SELECTION

- Lowest “**Responsible**” Bidder

- “Responsible” in this context means “a vendor who has the capability to fully perform the contract requirements, and the integrity and reliability which will assure good-faith performance.” W.Va. Code § 5A-1-1.

- Lowest “**Qualified Responsible**” Bidder

- “Is ready, able, and willing to timely furnish the labor and materials required to complete the contract; is in compliance with all applicable laws of the State of West Virginia; and has supplied a valid bid bond or other surety authorized or approved by the contracting public entity.” W.Va. Code § 5-22-1

VENDOR SELECTION

- Vendor must not be debarred
 - Federal Debarment automatically checked by wvOASIS
 - State Debarment - must check manually
www.state.wv.us/admin/purchase/debar.html




VENDOR SELECTION

← → ↻ ⓘ Not secure | www.state.wv.us/admin/purchase/debar.html

Apps Governor Bills Signed WestlawNext Signon CLEAR Newspapers Bill Status - West Virg Purchasing WV SOS - Business & NASPO.org Associati WSJ http--online.wsj

Debarred Vendor List

[WV.gov](#) | [Administration](#) | [Purchasing](#) | Debarred Vendor List

[A++](#) | [A](#) | [A--](#) TRANSLATE 

Pursuant to **West Virginia Code** §5A-3-33c and 33d, the State of West Virginia and its political subdivisions may not solicit offers from, award contracts to, or consent to subcontract with a debarred vendor during the debarment period.

Below is a list of vendors who are currently debarred from doing business with the State of West Virginia.

Vendor Name:	Gerry E. Barton
Vendor Address:	Route 1, Box 185 Valls creek, WV 24815
Debarment Date:	February 23, 2011
Debarment Period:	Permanent
Debarment Scope:	All Commodities and Services

CONTRACT ADMINISTRATION / OVERSIGHT

■ Monitor the Vendor

- **READ YOUR CONTRACT!!!**
- Ensure contract milestones met
- Confirm hours worked
- Review all invoices against contract for accuracy
- Review work product
- Perform proper receiving procedures for commodities
- Hire an expert when needed (architect or consultant)



CONTRACT ADMINISTRATION / OVERSIGHT

- Expert Managers
 - Consultants
 - Architects
- Will not absolve State of responsibility
 - Must now administer/oversee two contracts



CONTRACT ADMINISTRATION/OVERSIGHT

- Retainage, Progress Payments, Liquidated Damages
 - What are the differences?
 - Advantages vs. disadvantages?
 - Only useful if built into solicitation/contract

- Examples:
 - wvOASIS
 - Construction



CONTRACT ADMINISTRATION/OVERSIGHT

- Don't Be Afraid to Challenge the Vendor
 - Remember you represent the State
 - Vendor can't be paid until you are satisfied
 - Both of these give you negotiating leverage



BREACH OF CONTRACT

- When it's clear, resolution can be easy
 - Negotiation isn't "did breach occur," but will it be cured and how much is owed.
- Examples:
 - Adorama – intentional failure to deliver, not so fast!
 - Fence Vendor – Not a dollar more than contracted for!
 - OT Hotwire – No you can't connect that wire there!
 - REAP Bags – Your suppliers want more money, we don't care!

BREACH OF CONTRACT

- When it's not clear ...
 - Resolution is much more difficult.
 - If several people in the meeting (on your side) disagree, it's not clear.

- Examples:
 - Capitol Dome – What does “can't touch the dome” mean anyway?
 - Archaeological Dig – Whose fault is it and what did it cost?
 - The Stone is Staining – Yeah, but you picked it!
 - A Day Late – Can we withhold full payment?

PROOF OF BREACH

- **Documentation is key!**
- Proof is for judge, opposing counsel, newspaper
- Examples:
 - Vendor Performance Report – WV-82
 - Emails
 - Letters
 - Contract documents
 - Specifications missed
 - Deadlines missed
 - Vendor confirmation of failure (if possible)



REMEDIES FOR BREACH

- Demand Letter – tell the vendor it breached and demand it be fixed
 - In most cases, this will resolve the issue, or at least begin the dialogue
 - Get support from higher up before sending
 - Utilize attorneys to draft if not comfortable
- Demand Letter Components:
 - Always follow contract requirements for this if any exist (notice procedures).
 - Address to vendor rep familiar with contract (or higher)
 - Explain the failure
 - Point to the law or contract clause that was violated
 - Allow cure opportunity if appropriate
 - Threaten action if cure doesn't happen, or state action to be taken
 - Offer further discussion if needed

REMEDIES FOR BREACH

- Performance Bonds
 - Don't cancel contract – cancellation may eliminate bond
 - Breach letter to Surety and vendor
 - Surety will either object, hire firm to perform, or pay
- If Surety Objects
 - Breach of contract suit ensues
 - Get AG's Office involved earlier rather than later

REMEDIES FOR BREACH

- Immediate contract cancellation if one of the following occurred:
 - Vendor agreement
 - Contract obtained by fraud/collusion
 - Breach of Contract
 - Conflict of Interest identified
 - Funds not appropriated
 - Violation of law/rule/ordinance



REMEDIES FOR BREACH

- 30-day contract cancellation
 - Any reason or no reason
 - Must be reasonable decision though

CANCELLED

REMEDIES FOR BREACH

- Lawsuit for performance or damages
 - AG Office represents in suit – should include them up front
 - Circuit Court

REMEDIES FOR BREACH

- Suspension (W.Va. Code 5A-3-32, 33)
 - One year or less
 - Vendor has violated provisions of the purchasing law/rule/regulation
 - Notified by a certified mail
 - Must including reason for suspension
 - Can appeal to Sec. of Admin

- **MUST HAVE SOLID DOCUMENTATION**

REMEDIES FOR BREACH

- Debarment (W.Va. Code 5A-3-33d)
 - Nuclear option
 - Can permanently prohibit vendor from government contracting
 - 9 separate grounds
 - Requested by spending unit or Purchasing
 - Formal administrative process
 - Can apply to related parties
- MUST HAVE SOLID DOCUMENTATION



REMEDIES FOR BREACH

- Debarment Grounds (W.Va. Code 5A-3-33d)
 - (1) Fraud in obtaining or attempting to obtain a public contract or subcontract;
 - (2) Antitrust violation relating to the submission of offers;
 - (3) Crimes of dishonesty relating to contracting (fraud, bribery, forgery, etc.)
 - (4) Lack of business integrity that affects the present responsibility of the vendor;
 - (5) Default on obligations owed to the state;
 - (6) The vendor is not in good standing with a licensing board;

REMEDIES FOR BREACH

- Debarment Grounds (W.Va. Code 5A-3-33d)

- (7) Vendor attempts to circumvent bidding laws

- (8) Violation of the terms of a public contract or subcontract for

- failure to substantially perform;
 - Performance in violation of standards established by law or the trade or profession;
 - Use of substandard materials on one or more public contracts or
 - A repeated pattern or practice of failure to perform

- (9) Any other cause of a serious and compelling nature amounting to knowing and willful misconduct of the vendor that demonstrates a wanton indifference to the interests of the public and that caused, or that had a substantial likelihood of causing, serious harm to the public.

REMEDIES FOR BREACH

- Debarment (W.Va. Code 5A-3-33d)

- Examples:

- Bayliss & Ramey

- REAP Bag Provider

- Threatened

- Adorama

DON'T FORGET TO SIGN THE ATTENDANCE SHEET

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CONTACT US