

Special Purchases and Processes



Objectives

- ▶ Discuss emergency procurement requirements, including pre-approvals, bids, and documentation
- ▶ Provide an overview of direct award procurements, including market research, advertisement, and award of a contract
- ▶ Discuss the steps required for an agency to piggyback an existing contract
- ▶ Highlight the Purchasing Division's List of Commodities and Services Identified as Impossible to Bid and requirements of the agency and vendor when such a purchase is made



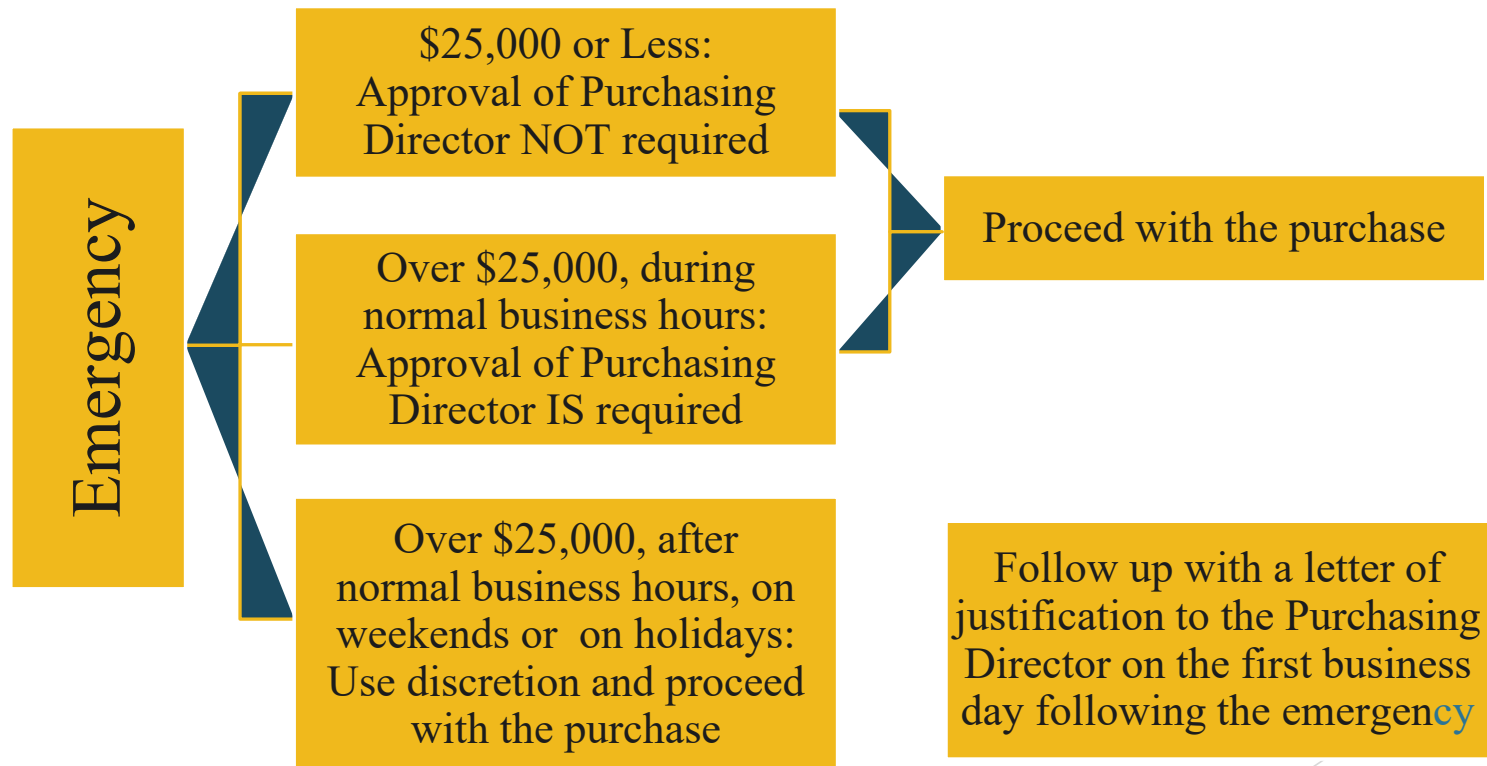
What is an emergency purchase?

- ▶ Purchase necessary when unforeseen causes arise
 - ▶ Delays by contractors
 - ▶ Delays in transportation
 - ▶ Unanticipated volume of work
- ▶ Short-term solution to a problem until it can be properly bid
- ▶ Emergencies are not a result of neglect, poor planning, or lack of organization by the spending unit



An Emergency Occurs:

What happens next?



In all cases...

Pre-Approvals

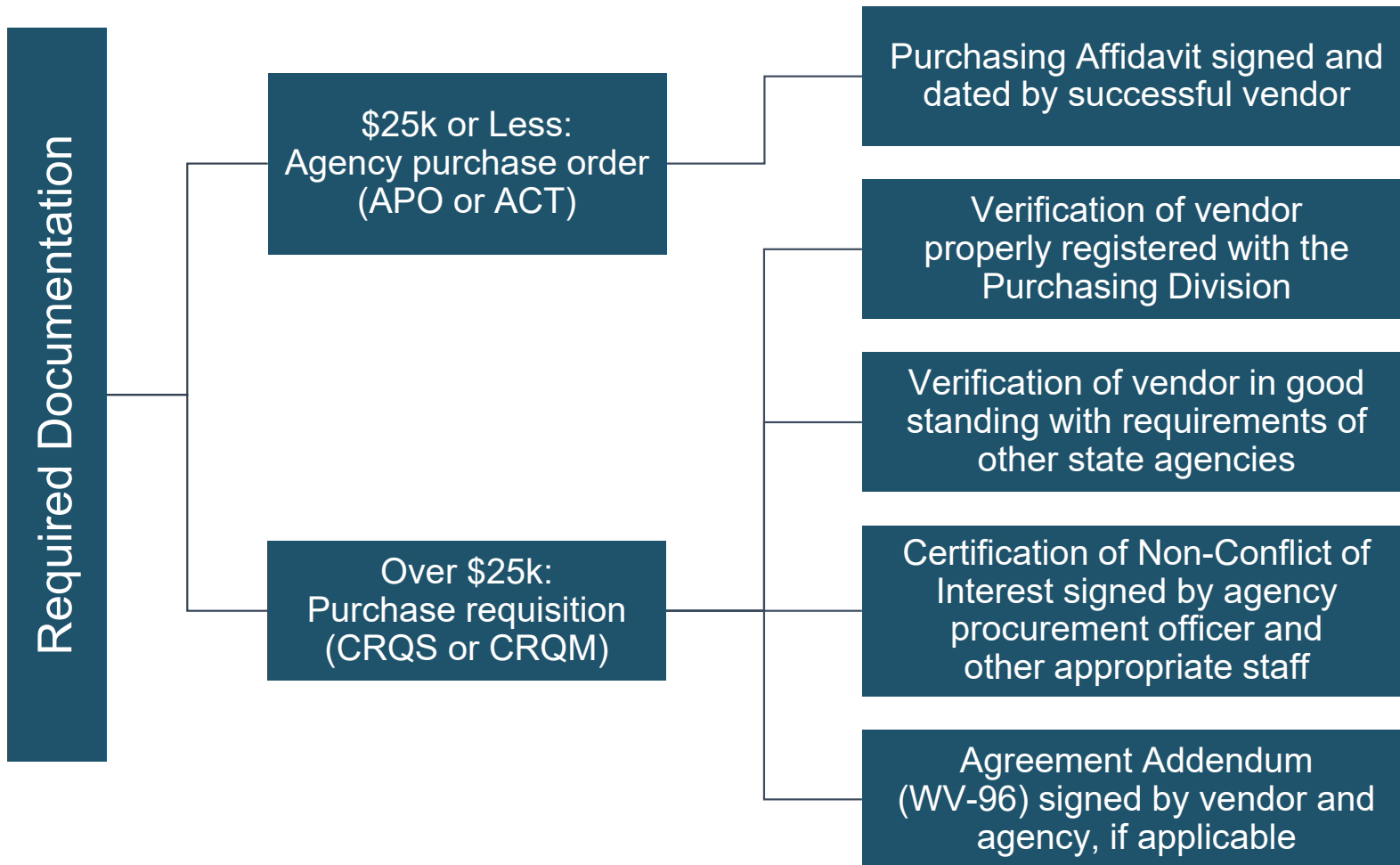
- Obtain pre-approvals, when applicable (such as CTO approval)

Obtain Bids

- If less than \$25k, include original written bids in the agency file
- If over \$25k, include with the requisition sent to Purchasing
- If three bids cannot be obtained, include an explanation of the agency's attempt to get three bids

Provide Justification

- If low bid not the selected vendor, include agency justification in the file or with the documentation submitted to the Purchasing Division



Terms and Conditions in Emergency Situations

- ▶ Emergency contracts are subject to the same terms and conditions as traditional contracts
 - ▶ Notify vendors of the requirements contained in the terms and conditions as early in the process as possible
- ▶ Certain emergency situations do not allow time for written bid requests; in those situations, the terms and conditions should be addressed immediately after the emergency situation has been resolved



Posting of Emergency Purchase Approvals

- For transparency purposes, the Purchasing Division began posting all emergency purchase request approvals from January 1, 2019, forward.
- These can be viewed online at www.state.wv.us/admin/purchase/emergencyrequests.html

West Virginia Purchasing Division			
Emergency Purchase Requests			
WV.gov Administration Purchasing Transparency Emergency Purchase Requests			
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Emergency Purchase Requests			
To provide transparency in the state procurement process, the West Virginia Purchasing Division is posting below all emergency purchase requests approved from state agencies as of January 1, 2019.			
In accordance with West Virginia Code §5A-3-15, state agency 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.			
FY2019 Reporting Period			
State Agency	Request	Description	Date
Division of Motor Vehicles	Emergency Purchase	Produce Driver's License and Motor Vehicle Registration Renewal Notices for the period of 1/23/2019 to 7/31/2019.	01/15/2019
Office of Technology	Emergency Purchase	Emergency replacement contract for the CENTREEX statewide contract	01/28/2019
Division of Natural Resources	Emergency Purchase	Repair electrical panels and distribution wiring at French Creek Wildlife Center.	01/31/2019
Division of Highways	Emergency Purchase	Remediation of District 2 property after water damage and freezing within flooring and walls as a result of boiler pipe rupture.	02/01/2019
Division of Natural Resources	Emergency Purchase	Purchase and replace failed pump, motor, and damaged electrical components for recirculation system at the Reeds Creek Fish Hatchery.	02/04/2019
Division of Natural Resources	Emergency Purchase	Repairs at water treatment plant for Cacapon Resort State Park	02/11/2019
Veterans Nursing Facility	Emergency Purchase	Provide a six-month contract for skilled rehabilitative therapy services at the West Virginia Veterans Nursing Facility.	02/25/2019
Department of Agriculture	Emergency Purchase Cancellation	Replace roof on Craft House building at Cedar Lakes Conference Center.	03/01/2019
Department of Environmental Protection	Emergency Purchase	Replace and rebuild failed pump at Omega Mining Water Treatment Facility.	03/20/2019
Department of Environmental Protection	Emergency Purchase	Design and abatement services to stabilize and control mine discharge from Red Jacket Coal & Coke Company's Mitchell Branch Mine in North Matewan.	03/27/2019
General Services Division	Emergency Purchase	Repair main elevator in Building 23 in order to re-establish ADA access to public space on top floor of Beckley office building.	04/03/2019
Adjutant General/ Armory	Emergency Purchase	Obtain exploration and design services of a qualified civil engineering firm to repair a slip so normal vehicular traffic can resume to South Gate Road of the Briery Mountain training area at Camp Dawson, Kingwood.	04/03/2019

DOCUMENTS REQUIRED FROM AGENCY FOR AN EMERGENCY PURCHASE

Emergency Purchase: 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.

The information below is a checklist of agency responsibilities in processing an Emergency Purchase. Please note that while this information is accurate in most cases, there may be occasion where additional information may be needed or required.

CHECKLIST FOR EMERGENCY PURCHASES

v	DESCRIPTION
	Obtain Written Agency Justification for Emergency Purchase, Approved by Purchasing Director
	Agency submits Electronic Requisition and include copy of approval from Purchasing Director
	Pre-approvals , when applicable (such as Attorney General, Chief Technology Officer/IS&C, Capitol Building Commission, Surplus Property, Statewide Interoperability Executive Committee)
	Emergency Bids (at least three bids or explanation of efforts to obtain bids if three cannot be obtained) and master terms and conditions
	Signed and Dated Quote from Selected Vendor (written agency justification required if low bid is not selected). The Purchasing Master Terms and Conditions should be included with emergency bids to the extent that the emergency permits.
	Purchasing Affidavit signed and dated by successful vendor (may be provided through bid process).
	Verification of Vendor Properly Registered with the Purchasing Division
	Verification of Vendor in Good Standing (with all laws and requirements of the state, including Secretary of State, Insurance Commission, Federal and State Debarment, and Workers Compensation).
	Certification of Non-Conflict of Interest (signed by Agency Procurement Officer and other appropriate staff).
	Disclosure of Interested Parties , if applicable (signed by successful vendor; may be provided through bid process).
	WV-96 Agreement Addendum (or WV-96A for Software) signed by vendor and agency, if applicable.

Discussion Questions

1. You have a complex contract expected to expire in three months and no renewals left. You believe it will take a minimum of six months to prepare, solicit, evaluate, and award a new contract. Your Director wants the new contract in place as soon as the current one expires. Is this considered an emergency purchase?
2. If you are the procurement officer for your agency and an emergency occurs at night or on the weekend and you are unable to get ahold of your Director to approve an emergency purchase, what would you do?



Discussion Questions

3. Do emergency purchases require specifications? If you have time to write specifications, would this still be considered an emergency?
4. When an emergency occurs, what are the first steps you or your agency take?



Questions about Emergency Procurements?



What is a Direct Award Procurement?


- ▶ A procurement method that facilitates a contract being directly awarded to a vendor without competitive bidding.
- ▶ A direct award cannot be utilized unless the agency can show:
 - ▶ Its in the best interest of the State
 - ▶ Either competition is not available or no other source would be willing or able to replace the existing source without a detrimental effect on the spending unit.
 - ▶ The commodity or service is unavailable from existing contracts or entities like Correctional Industries or WVARF.



Direct Award Procurements:

\$25K or less

Complete Direct Award Request for Consideration (WV-65A); procurement officer must approve this form




Agency Sole Source Determination (ASSD/Agency-Level Direct Award); must be published in wvOASIS for a minimum of 10 business days



Agency Purchase Order (APO or ACT)



A written, signed quote from the vendor for procurements over \$2,500, including a specific description, Agency Master Terms and Conditions, FOB point of shipment, and price; faxed or electronic quotes are acceptable



Written documentation in the agency file certifying that no other sources are available and that the spending unit exhausted all attempts to secure competition

Direct Award Procurements:

Over \$25K

Submit to the Purchasing Division for approval a completed and detailed Direct Award Posting: Agency Request and Public Notice Form (WV-65)



After approval, submit the Purchasing Affidavit, Non-Conflict of Interest Certification, and the Purchasing Master Terms and Conditions



Centralized Sole Source Determination (CSSD; formal-level direct award); must be published in wvOASIS for a minimum of 10 business days



Centralized Purchase Order (CPO or CCT)

DOCUMENTS REQUIRED BY AGENCY FOR A DIRECT AWARD

Direct Award: A purchasing method that provides a contract to a vendor without competitive bidding. The agency can certify that no other vendor would be likely to provide the needed commodity or service under the current circumstances. Public notice requirements still apply.

The information below is a checklist of agency responsibilities in processing a direct award. Please note that while this information is accurate in most cases, there may be occasion where additional information may be needed or required.

CHECKLIST FOR DIRECT AWARD

V	DESCRIPTION
	Direct Award for Consideration (WV-65) to be completed by Agency and submitted to Purchasing Division with signed and dated vendor letter/price quote*, written justification** and pre-approvals***, when applicable
	*Signed and Dated Vendor Letter / Price Quote (may be electronic and must include specific description, master terms and conditions, FOB shipping point, and price)
	**Written Agency Justification (describing market research to determine suggested vendor is only known source; or describing how item or service is of unique or special nature; and the request is not an attempt to circumvent the normal bid process)
	*** Pre-approvals , when applicable (such as Attorney General, Chief Technology Officer/IS&C, Capitol Building Commission, Surplus Property, Statewide Interoperability Executive Committee)
	If WV-65 is approved , provide the Purchasing Division with Direct Award Determination, including signed Purchasing Master Terms and Conditions and <i>Purchasing Affidavit</i> , signed and dated by vendor
	Advertisement in the West Virginia Purchasing Bulletin
	If no vendors respond to advertisement , Agency submits Electronic Requisition (CRQS/CRSM). If vendors do respond and Purchasing Division determines there is competition, the Agency must follow process for a Request for Quotation
	Verification of Vendor Properly Registered with the Purchasing Division (check for suspension or debarment), and ensure Taxpayer Identification Number (TIN) in wvOASIS matches the TIN on the bid
	Verification of Vendor in Good Standing within wvOASIS (with all laws and requirements of the state, including Insurance Commission, Federal and State Debarment and Workers Compensation)
	Verification of Vendor in Good Standing with Secretary of State (check the Secretary of State's database)
	Certification of Non-Conflict of Interest (signed by Agency Procurement Officer and other appropriate staff)
	Disclosure of Interested Parties , if applicable (signed by successful vendor; may be provided through bid process)
	WV-96 Agreement Addendum (or WV-96A for Software) signed by vendor and agency, if applicable

In cases where other vendors respond to the direct award posting and it is determined competition is available, the agency is required to develop specifications and pursue the competitive bid process.

Revised June 8, 2018



WV-65

West Virginia Purchasing Division

DIRECT AWARD POSTING: Agency Request and Public Notice Form

Public Notice Instructions

Statutory Authority: Pursuant to *West Virginia Code* §5A-3-10c, a state agency may request, and the Director of Purchasing may award, a contract directly to a vendor without competitive bidding if certain requirements are met. Those requirements include providing the Purchasing Division with justification to support the Direct Award, along with providing certain information to the vendor community for a period of no less than 10 business days.

Agency Request: The agency identified below has requested that the Purchasing Division make a Direct Award to the vendor identified below to provide the commodity or service identified below. The support for the Direct Award, and any additional documentation has been included in this form or as an attachment.

Vendor Interest: Any vendor interested and able to provide the commodity or service in question must make their interest known, prior to the deadline published in wvOASIS, by expressing such interest in writing to the Purchasing Division Buyer identified as the appropriate contact in wvOASIS. If interest is expressed and deemed to be valid by the Purchasing Division, this Direct Award will be converted to a competitive bid.

Direct Award Information

Agency / Department: _____

Procurement Officer: _____

Date of Request: _____

1. Provide description of commodity or service (Include a copy of any proposed contract documents):

If requesting software as a sole source, is this software as a service?

☐ Yes ☐ No

2. Justification showing that the direct award is in the best interest of the state:

3. **Basis for Direct Award:** Please select one of the following and provide details and documentation sufficient to confirm the basis.

☐ **Competition is not available from any other source:** (If this item is selected answer the question below)

A. The agency attempted to identify other sources by:

☐ **No other source would be willing or able to replace the existing source without a detrimental effect on the spending unit** (Please describe the detrimental effect in detail):

4. **Other Information Required for Direct Award Posting:**

A. A time-period by which delivery must be made or performance must occur:

B. The price that will be paid for the commodity or service (include vendor quote):

C. Any limitations that a competing vendor would need to satisfy:

Agency Procurement Officer Signature

Date:

For Purchasing Division's Use Only

- ☐ Request to Advertise Direct Award Denied
☐ Request to Advertise Direct Award Approved

Purchasing Director / Designee Signature

Date:



West Virginia Purchasing Division

**DIRECT AWARD POSTING:
Justification and Public Notice Form
(Delegated Procurements \$2,500.01 to \$25,000)**

Public Notice Instructions

Statutory Authority: Pursuant to *West Virginia Code* § 5A-3-10c, a state agency may award a contract directly to a vendor without competitive bidding if certain requirements are met. Those requirements include documenting justification to support the Direct Award, along with providing certain information to the vendor community for a period of no less than 10 business days.

Agency: The agency identified below Intends to make a Direct Award to the vendor identified below to provide the commodity or service identified below. The support for the Direct Award, and any additional documentation has been included in this form or as an attachment.

Vendor Interest: Any vendor interested and able to provide the commodity or service in question must make their interest known, prior to the deadline published in wvOASIS, by expressing such interest in writing to the procurement officer identified as the appropriate contact in wvOASIS. If interest is expressed and deemed to be valid by the procurement officer, this Direct Award will be converted to a competitive bid.

Direct Award Information

Agency / Department: _____

Procurement Officer: _____

Date of Request: _____

1. Provide description of commodity or service (Include a copy of any proposed contract documents):

If requesting software as a sole source, is this software as a service?

☐ Yes ☐ No

2. Justification showing that the direct award is in the best interest of the state:

3. **Basis for Direct Award:** Please select one of the following and provide details and documentation sufficient to confirm the basis.

☐ **Competition is not available from any other source:** (If this item is selected answer the question below)

A. The agency attempted to identify other sources by:

☐ **No other source would be willing or able to replace the existing source without a detrimental effect on the spending unit** (Please describe the detrimental effect in detail):

4. **Other Information Required for Direct Award Posting:**

A. A time-period by which delivery must be made or performance must occur:

B. The price that will be paid for the commodity or service (include vendor quote):

C. Any limitations that a competing vendor would need to satisfy:

Agency Procurement Officer Signature

Date: _____

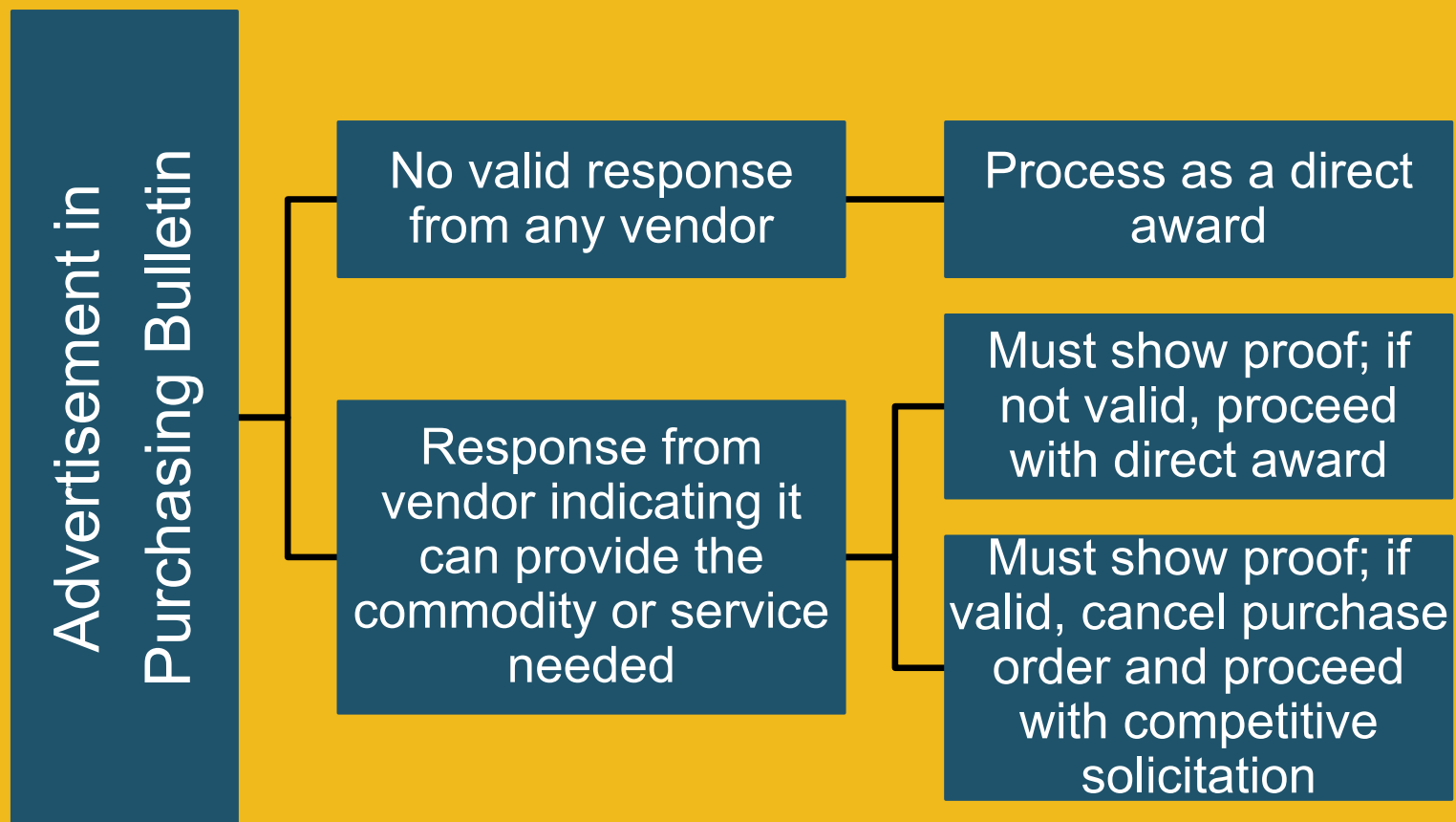
For Procurement Officer Use Only

- ☐ Request to Advertise Direct Award Denied
☐ Request to Advertise Direct Award Approved

Agency Procurement Officer

Date: _____

DIRECT AWARD PROCUREMENT ADVERTISEMENT



Things to Consider:

1. Conduct market research prior to submitting a Direct Award Posting request for formal purchases.
2. Have a process in place to determine whether a vendor is considered the only source for agency-delegated purchases, and if so, what is it?
3. If a vendor tells you they are the only vendor who can supply a needed commodity or service, what should you do? Trust but verify.
4. Remember to document your file for agency-delegated direct award procurements.



Questions about Direct Award Procurements?



Cooperative (Piggyback) contracts

- ▶ An existing open-end contract for commodities and services of the federal government, agencies of other states, other public bodies or other West Virginia state agencies, to which the requesting agency was not an original party
- ▶ The ability to piggyback a contract has not been delegated to agencies for procurements of \$25,000 or less

Cooperative (Piggyback) contracts

- Agency must submit to the Purchasing Division the Cooperative Purchase Request, Justification and Approval (WV-40) form prior to utilizing any cooperative contract

WV-40 Revised 4/1/2019

COOPERATIVE PURCHASING REQUEST, JUSTIFICATION AND APPROVAL

In accordance with *West Virginia Code* §5A-3-19, and *Code of State Rules* 148-1-7.8.a, the Director of the West Virginia Department of Administration, Purchasing Division, may permit a spending unit to engage in cooperative purchasing if the legally mandated parameters are met. Please complete the form below to request that the Purchasing Director review the spending unit's request to engage in cooperative purchasing.

Requesting Agency: _____ Cooperative Contract Name/Number: _____
Agency Contact: _____ Contract Purpose: _____
Estimated Contract Spend: _____

Contract Source (Identify the source of the cooperative contract by checking the appropriate box):

- | | |
|---|---|
| <input type="checkbox"/> Public Cooperative Entity (Ex: NASPO)
List cooperative entity: _____ | <input type="checkbox"/> West Virginia state entity
(Ex: General Services Division)
List state entity: _____ |
| <input type="checkbox"/> Federal Government (Ex: GSA contract) | <input type="checkbox"/> Other Public Body
(Ex: City of Charleston)
List public body: _____ |
| <input type="checkbox"/> State entity other than West Virginia
(Ex: Pennsylvania)
List state entity: _____ | |

Intended Use of Contract (check the box below that applies):

- ☐ Single (One-Time) Purchase
☐ Join As A Party or Add Spending Unit to Existing Contract (Open End Contract)
☐ Lead or Participate In Solicitation for Cooperative Procurement

Verification Requirements

Proper Award and Availability: Provide documentation verifying that the proposed contract is valid, available for use, and properly awarded.

Financial Advantage to State: Provide documentation verifying that the contract is financially advantageous to the state and is comparable to what can be obtained through competitive bidding.

Existing State Contracts Comparison: In the space provided below, please identify any existing contracts the agency is required to utilize that provide the same or similar service as the proposed contract identified above. If no known contracts fulfill the same or similar purpose, list NONE on line 1 below.

1. _____

Agency Representative:	Purchasing Division Representative
Submitted by: _____	Approved by: _____
Signature: _____	Signature: _____
Date: _____	Date: _____

Cooperative (Piggyback) contracts

- ▶ Master terms and conditions state that contract may be utilized by other agencies, spending units, and political subdivisions of West Virginia
- ▶ Any vendor who does not wish to extend the prices, terms, and conditions of its bid and subsequent contract to these governmental entities must clearly indicate such refusal in its bid

CERTIFICATION AND SIGNATURE: By signing below, or submitting documentation through wvOASIS, I certify that: I have reviewed this Solicitation in its entirety; that I understand the requirements, terms and conditions, and other information contained herein; that this bid, offer or proposal constitutes an offer to the State that cannot be unilaterally withdrawn; that the product or service proposed meets the mandatory requirements contained in the Solicitation for that product or service, unless otherwise stated herein; that the Vendor accepts the terms and conditions contained in the Solicitation, unless otherwise stated herein; that I am submitting this bid, offer or proposal for review and consideration; that I am authorized by the vendor to execute and submit this bid, offer, or proposal, or any documents related thereto on vendor's behalf; that I am authorized to bind the vendor in a contractual relationship; and that to the best of my knowledge, the vendor has properly registered with any State agency that may require registration.

By signing below, I further certify that I understand this Contract is subject to the provisions of West Virginia Code § 5A-3-62, which automatically voids certain contract clauses that violate State law.

Questions about cooperative (Piggyback) contracts?



Impossible to Bid purchases

- ▶ List of Commodities and Services Identified as Impossible to Bid
 - ▶ List is reviewed and approved each year by Purchasing Director
 - ▶ Not possible to obtain certain commodities and services through the competitive bidding process
- ▶ Purchasing Division approval not required for these procurements, unless specifically noted
- ▶ Vendor registration and all other requirements for the dollar amount of the purchase still apply
- ▶ Extended description in wvOASIS on the Header document must include the Section 9 exemption number (i.e. #11 – Postage)

Impossible to Bid purchases

- ▶ Spending units purchasing from vendors under the Exempt List must continue to observe the standard purchasing procedure associated with a normal (non-exempt) purchase of the same dollar amount
 - ▶ Examples:
 - ▶ Purchase order is required on all purchases over \$2,500
 - ▶ Spending units must continue to submit contracts to the Attorney General's office for approval as to form

Exempt purchases

- ▶ Section 9 Exemption Opinion Request Form
 - ▶ Allows an agency to formally inquire about whether or not a transaction is included in one of the enumerated categories of the Section 9 Exempt List
 - ▶ Should only be used when the applicability of a Section 9 exemption is questionable or unclear
 - ▶ Agencies remain authorized to utilize a Section 9 exemption without Purchasing Division approval when there is no question that the transaction qualifies

West Virginia Purchasing Division
SECTION 9 EXEMPTION OPINION REQUEST FORM
(Agency Use Only)

Agency Requesting Opinion: _____

Commodity or Service Under Consideration: _____

Name of Vendor Providing Commodity or Service: _____

Provide Relevant Details about the Transaction: _____

Details about Prior Contracts for the Commodity or Service:

1. Has the Agency previously conducted a competitive bid or sole source for the commodity or service in question and if so, what was the result? If not, how has the commodity or service been obtained previously?

2. Is the Agency aware of any other agency that has competitively bid or completed a sole source for the commodity or service?

Section 9 Exemption(s) Agency Believes may be Applicable:

1.
2.
3.

Section 9 New Exemption Request Form (WV-67)

- ▶ Section 9 New Exemption Request Form
- ▶ All forms must be received by June 1st to be considered for the following fiscal year

WV-67
Rev. 02/09/18



West Virginia Purchasing Division
SECTION 9 NEW EXEMPTION REQUEST FORM

This is the official form used by the Purchasing Division to consider possible additions to the Non-Competitive/Exempt List of Commodities and Services that are currently approved and posted as Section 9 of the **Purchasing Division Procedures Handbook**. All requests for consideration must be submitted to the Purchasing Division no later than June 1st to be considered during the review for the following fiscal year.

Exemption:

Does your agency utilize this exemption? ☐ Yes ☐ No

How often within one year does your agency use this exemption?

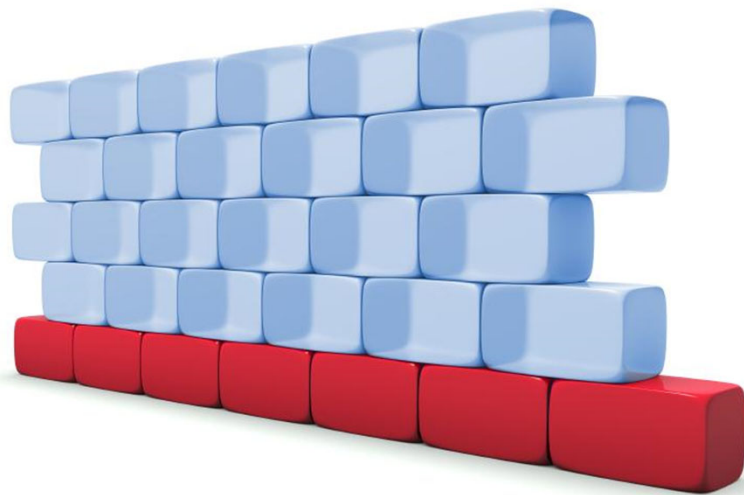
Provide detailed justification for utilizing this exemption:

Questions about exempt purchases?



references

- ▶ West Virginia Code § 5A-3-1
- ▶ Code of State Rules 148CSR1
- ▶ *Purchasing Division Procedures Handbook*



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