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# Construction Purchases



Presented by:

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# Process/Law Changes to Help You

- **Bid Bonds (2023)**

Beginning July 1, 2023, the Purchasing Division may accept an electronically submitted bid bond for the purposes of bid review, evaluation, and acceptance if that same bid bond would be considered valid if presented in its original form.

- **Modifies the Disclosure of Interested Parties Form (2018):**

Increases the limit for the Disclosure of Interested Parties from \$100,000 to \$1 million. Additionally, this form will no longer apply to publicly traded companies.

- **Allow Open-Ended Construction and Maintenance (2018):**

Allows open-ended maintenance and repair construction contracts up to \$500,000 (applies to entire term of the contract, including renewals).



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# Process/Law Changes to Help You

- **Adds an Emergency Section to West Virginia Code §5G-1-3 (2018):**

Allows for the emergency purchase of design and engineering work, even when the cost of the project is expected to exceed \$250,000, to quickly stop problems from becoming more dangerous and more costly to repair.

- **Simplify RFP (2018):**

Revising the Request for Proposal and Expression of Interest Standard Formats to provide clarification and more ease of use.



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# Objectives

- In this session, we will...
  - Discuss the types of projects that are construction
  - Walk through the process of a construction purchase, from the advertisement of the solicitation to the evaluation and award of a purchase order
  - Discuss the documents, forms, and other requirements necessary as part of a construction purchase



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# Construction Purchases

- Construction contracts are governed and administered by the following sections of *West Virginia Code* and the Code of State Rules:
  - *West Virginia Code §5G*
    - *Procurement of Architect-Engineering Services*
  - *West Virginia Code §5A-3*
    - *Department of Administration Purchasing Division*
  - *West Virginia Code §5-22*
    - *Government Construction Contracts*
  - *West Virginia Code of State Rules 148CSR1*



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# Construction Purchases

## Construction – W. Va. Code § 5-22-1

- Definition of Construction Project
- (5) “Construction project” means a specifically identified scope of work involving the act, trade, or process of building, erecting, constructing, adding, repairing, remodeling, rehabilitating, reconstructing, altering, converting, improving, expanding, or demolishing of a building, structure, facility, road, or highway . . . .



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# Construction Purchases

## Construction – W. Va. Code § 5-22-1

- Open End Maintenance/Repair Added
- “Repair and maintenance of existing public improvements that are recurring or ongoing in nature and that are not fully identified or known at any one time shall be considered a construction project and procured according to this article on an open-ended basis, so long as the work to be performed under the contract falls into a generally accepted single class, or type, and bidders are notified of the open-ended nature of the work in the solicitation: **Provided, That no open-ended repair or maintenance contract may exceed \$500,000, during the life of the Contract.**”



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# Construction Purchases

## Construction – W. Va. Code § 5-22-1

- Changes to Additions/Alternates
  - No more than five (5)
  - Cannot accept out of order
  - Expiration after ninety (90) days
- “Any solicitation of bids shall include no more than five (5) alternates. Alternates, if accepted, shall be accepted in the order in which they are listed on the bid form. Any unaccepted alternate contained within a bid shall expire ninety (90) days after the date of the opening of bids for review.” W. Va. Code § 5-22-1(f).





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# Construction Purchases

## Types of projects that may be considered construction include:

- Installation of carpet
- Internet cabling project
- Hanging draperies
- HVAC replacement
- Painting (lines in parking lots/interior and exterior painting)
- Installation of a dishwasher
- Installation of video surveillance
- Installation of security card readers

## Who determines if a purchase should be considered construction?

- Agency's discretion
- Purchasing Division may request that the Agency obtain a ruling from the Division of Labor, Contractor's Licensing Board before solicitation is advertised



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# Construction Purchases

- Following the award of the Expression of Interest (EOI), the agency will begin the purchasing process for construction
- Items to be submitted with Req for Review:
  - Any drawings submitted by the vendor from the EOI-awarded contract
  - Specifications/Project Manual as prepared by the engineering firm
    - Vendors can procure the project manual and drawings from the engineering firm
    - In the event that the project manual was created by the agency, it may then be included with the solicitation as Exhibit B Project Plans of the Construction Template without AIAs (Rev Date: 6/8/2018)
  - Cannot contain brand names without “or Equal”
    - If submitting brand names and using “or Equal,” must define what components make it an “or Equal”
  - Cannot have anything within it that conflicts with the Purchasing Master Terms and Conditions
  - Should submit to Purchasing for review before Architect/Engineering Firm prints and distribute to Plan Houses



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# Construction Purchases

- Determine if pre-bid meeting is necessary (include date, time and location)
- Drug-Free Workplace Affidavit (not required until \$100,000), insurance, and bonds required
- Agency has to set insurance requirements. These need to be reasonable to protect both the agency and the state. Consult BRIM with any insurance questions.
- When a commodity line is noted as a service in wvOASIS, vendors can receive progression payments as phases of the construction project are completed
  - Change order is required to initiate the Notice to Proceed (establishes contract dates)
  - Terms and conditions indicate the number of calendar days the vendor must complete the contract



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# Construction Purchases

- The solicitation is advertised in the West Virginia Purchasing Bulletin
  - Solicitation includes:
    - Agency specifications containing language informing vendors of funding sources and whether the Davis Bacon Act applies (this has to be identified at solicitation advertisement)
    - Bid bonding documents
    - *Drug Free Workplace Conformance Affidavit (WV-73)*
    - *Drug Free Workplace Report Coversheet (WV-72)*
    - *Disclosure of Interested Parties to Contracts*
    - Master Terms and Conditions
    - Instructions to vendors submitting bids
    - Exhibit A Pricing Page (for vendors who do not use wvOASIS)
    - Directions to the pre-bid location, if applicable



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# Construction Purchases

## Pre-bid meeting

- Purpose
  - Explain and clarify critical aspects of the solicitation
  - Eliminate misunderstandings
  - Encourage vendor participation/questions
  - View jobsite, if applicable
- Conducted by the state agency
  - Participation by the Purchasing Division is not required, but agency procurement officer or a designee should attend
  - Engineering firm should have representative in attendance to describe scope of work, if applicable
- Pre-Bid meetings are optional to the agency, but attendance is mandatory
- Only bids or proposals from those vendors in attendance will be accepted



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# Construction Purchases

## Pre-bid meeting

- Vendors must sign the official sign-in sheet
  - Make sure contact information is clear and legible, and request vendors provide a business card upon conclusion of the meeting
- If a vendor signs the sign-in sheet after the pre-bid meeting has started, he or she will be deemed to have the knowledge that he or she would have had if he or she had attended the entire meeting
- Pre-bid meetings should be scheduled on a Tuesday through Thursday between 10 a.m. and 3 p.m. ET to encourage more participation



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# Construction Purchases

## Pre-bid meeting

- Agency should bring a copy of the specifications (either on paper or CD) to the pre-bid meeting
- All items discussed need to be amended by an addendum
  - Vendors must submit their questions in writing via fax or email to the Purchasing Division buyer
  - Responses will be posted as an addendum to the solicitation, Agency should submit any addenda as soon as possible to keep current scheduled bid opening
    - Allows bidders ample time to prepare and submit bid responses



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# Construction Purchases

- Following the close date for the solicitation
  - Agency will review all bids for the mandatory requirements
  - Recommendation to award to the lowest vendor meeting all mandatory specifications submitted to the Purchasing Division along with the applicable Certification of Non-Conflict of Interest
    - Recommendation for Award template





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# Construction Purchases

- If in agreement, the Purchasing Division will contact the recommended vendor to request the following:
  - Bonding - (i.e. performance, labor and materials, maintenance in roofing construction)
  - Licenses
  - Insurance required in the Terms and Conditions (driven by WV Supplementary conditions AIA A201-2017 documents, Article 11)
- If an architect/engineer designed the project, the agency, architect, and vendor must complete and sign the AIA documents, including supplemental conditions, and submit them to the Purchasing Division buyer prior to contract award



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# Construction Purchases

## Bonds

- **Bid Bond** is 5% of Total Bid Amount and is an insurance agreement by which a surety accepts liability and guarantees that the vendor will not withdrawal their bid.
- **Performance Bond** is for 100% of the Contract award amount. It is an insurance agreement by which a surety accepts liability and guarantees that the awarded vendor will complete the awarded contract as awarded and agreed. Must be on Purchasing documents as provided to the vendor.



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# Construction Purchases

## Bonds

- **Labor and Material Bond** is for 100% of the Contract award amount. It is an insurance agreement by which a surety accepts liability and guarantees that the awarded vendor will pay subcontractors for labor and materials expended on the awarded project should the awarded vendor not pay them. Must be on Purchasing documents as provided to the vendor.
- **Maintenance Bond** is an insurance agreement by which a surety accepts liability and guarantees that the vendor will make repairs to a roof should problems develop over the next two (2) years. Must be on Purchasing documents as provided to the vendor. The vendor determines the amount, subject to approval by the agency.



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# Construction Purchases

- If reporting required in the terms and conditions, agency may reach out to vendor at any time to request those reports
- Change orders are required for any type of modification to the contract (i.e. notice to proceed, renewal, extension, and increase or decrease in contract amount)
- If change order will result in an increase in the contract amount, a Bond Rider (with completed Acknowledgment Page attached), and up-to-date Liability Insurance Certificate and Contractors Licenses may be necessary
- May require additional AIA change order documents
- Agency will need to submit a change order to document the official close and completion date of the construction project
  - Following completion and at the end of any warranty period, the agency should submit a memorandum to Purchasing to allow the release of any bonds back to the vendor



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# Construction Purchases

## Errors that will be reason for bid disqualification:

- Failure of Vendor to sign in and attend **mandatory** Pre-Bid meeting
- Failure to supply valid Bid Bond or other Surety approved by the State of West Virginia
- Failure to meet any mandatory requirement of the CRFQ
- Failure to submit Bid response prior to Bid opening date and time
- Federal debarment
- State of West Virginia debarment or suspension



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# Any Questions?

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