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

W. MICHAEL SHEETS  
DIRECTOR

October 1, 2020

Chelsea Ruby, Commissioner  
West Virginia Division of Tourism  
1900 Kanawha Blvd, East  
Building 3, Suite 100  
Charleston, West Virginia 25305

Dear Commissioner Ruby:

This is to transmit the final copy of the Purchasing Review of the West Virginia Division of Tourism.

A preliminary copy of this report was submitted to your agency for comment. The Purchasing Division has reviewed the letter provided by Chelsea Ruby dated August 19, 2020 stating that it is her opinion that the purchase of the trailer "falls squarely within the Tourism Act's purchasing exemption" codified at W. Va. Code § 5B-2I-4(e). The Purchasing Division does not agree with the legal conclusion presented by Ms. Ruby and believes that the purchase of the trailer exceeds the Legislative intent in granting the exemption to contract with advertising and marketing firms. In matters of Legislative intent and statutory interpretation of another agency's code, however, the Purchasing Division has historically deferred to the express statutory interpretation of the agency, unless that interpretation is contradicted by the plain language of the statute. In this case, the plain language of the statute does not directly address the issue of utilizing the exemption to procure a depreciable asset like a trailer for use in a marketing campaign. In keeping with past practice, the Purchasing Division is willing to defer to the legal position taken in Ms. Ruby's letter, supported by verbal assertions from Ms. Ruby and counsel for Tourism in a meeting held on Friday September 18, 2020, that the opinion expressed therein was reviewed and supported by legal counsel.

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,



W. Michael Sheets, CPPO  
Director  
West Virginia Purchasing Division

Enclosure

cc: Georgina Davis, Director of Administration, West Virginia Division of Tourism  
Ed Gaunch, Cabinet Secretary, Department of Commerce

# WV PURCHASING DIVISION INSPECTION REPORT

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*COMMERCE*

*West Virginia Division of Tourism*

October 1 - September 30 2019

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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 an onsite inspection of the West Virginia Division of Tourism for the period of October 1, 2018 – September 30, 2019. Notice of the inspection was provided on January 3, 2020, and the inspection commenced on January 24, 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 Division of Tourism's procurement transactions for the period of October 1, 2018 – September 30, 2019 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 1,088 procurement transactions with a value of \$13,103,263.56. (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 60 for review which represents approximately 4% of the total. This inspection of 60 selected transactions yielded 8 findings associated with 8 of the selected transactions. This means that approximately 13% 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 0 occasion, the spending unit failed to obtain competitive bids as required by the applicable dollar level of spend. That number is comprised of 0 instance of failing to bid at the central level (also known as stringing), and 0 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. Although the agency received a score of 91.4% B on the inspection, there was a pattern of findings. 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 Division of Tourism 10/1/18 - 9/30/19

Transactions Reviewed	60
Non-Conformance Rate (See Summary Page)	13.0%
Conformance Rate	87.0%

Findings Summary				
Finding Category	Number of Findings	Finding Percentage	Points possible	Points Received
Stringing	0	0.00%	30	30
Statewide Contract	1	1.67%	15	12
Internal Resources	0	0.00%	15	15
Failure to Bid	0	0.00%	15	15
Vendor Registration	0	0.00%	5	5
Verification Searches	0	0.00%	5	5
Affidavit	0	0.00%	5	5
wvOasis Award Document	7	11.67%	3	1.8
Asset Tag/Number	0	0.00%	3	3
Certification of Non-Conflict of Interest	0	0.00%	3	3
Miscellaneous Issue	0	0.00%	1	1
<b>Total</b>	<b>8</b>		<b>100</b>	<b>95.8</b>

Overall Agency Score	
Non-Conformance & Findings Average	Overall Letter Grade
<b>91.4%</b>	<b>B</b>

Scale (See Weight Application*)
91.66 -- 100 = A
83.33 -- 91.65 = B
75 -- 83.32 = C
66.66 -- 74.99 = D
<66.65 = 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.



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## EXHIBIT A: DETAILED INSPECTION FINDINGS

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### 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: (1 Instance) Finding Rescinded

<u>Date</u>	<u>Description</u>	<u>Vendor</u>	<u>Amount</u>	<u>Invoice</u>
07/02/19	2019 Airstream trailer	Birdsall Voss & Associates	\$40,000.00	ADO,TOR20*24

**Additional Detail:** The agency entered into a contract with Birdsall Voss & Associates, AMA TOR1800000001, under their delegated authority utilizing their advertising exemption WV Code§5B-2I-4. This exemption is for the purpose of advertising, marketing and communication promoting the state of West Virginia. The agency utilized this advertising contract to purchase an asset that should have been procured through the Purchasing Division. This exemption then could have been used to procure advertising materials (logos, graphics, etc.) to be used in conjunction with the asset. Additionally, the Agency's wvOASIS processing method appears to be issuing an agency delivery order and then issuing a change order to that delivery order for each subsequent purchase. This methodology causes the total delivery order value to increase, but obscures the description of the prior purchases by overwriting it in wvOASIS. The agency should issue a separate delivery order for each purchase to be in conformance with wvOASIS system design and to ensure proper oversight.

**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: (0 Instances)**

### **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: (1 Instance)**

<u>Date</u>	<u>Description</u>	<u>Vendor</u>	<u>Amount</u>	<u>Invoice</u>
05/16/19	Mac Books	B & H Photo	\$10,806.49	PRCC,19*9446

**Additional Detail:** Applicable items were not purchased from the Statewide Contract and no waiver from the Purchasing Division was present.

#### **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, and above \$2,500.01. For those transactions listed below, the spending unit has failed to obtain and document competitive bids as required.

**Transactions in Violation: (0 Instances)**

#### **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 5.2.3.

**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: (0 Instances)**

**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 5.2.3.

**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: (0 Instances).**

#### **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 \$5,000.01 (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 5.1.2

**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: (7 Instance)**

<u>Date</u>	<u>Description</u>	<u>Vendor</u>	<u>Amount</u>	<u>Invoice</u>
07/19/19	Subscription service	Airdna	\$3,600.00	PRCC,20*4697
03/07/19	Camera package	Amazon	\$3,280.49	PRCC,19*9370
08/22/19	Hotel room	JW Marriott	\$3,588.32	PRCC,20*0411
09/25/19	Entertainer	SQ Pianafiddle	\$2,716.00	PRCC,20*3198
01/31/19	Subscription	Strcom_us	\$3,400.00	PRCC,19*3499
05/06/19	Luggage tags	Tgraphics	\$3,087.50	PRCC,19*8325
03/22/19	Conference	US Travel	\$4,500.00	PRCC,19*2712

**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 \$2,500.01 (the threshold for obtaining verbal 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 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 3.7.1.5.2

**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: (0 Instances)**

**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 \$2,500.01 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 11: Miscellaneous**

**Authority: Various**

**Explanation:** Over the course of the inspection, various miscellaneous issues are often identified. Those items are included in this section.

**Transactions in Violation: (0 Instances)**

### **Purchasing Division Recommendation:**

1. 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.

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## EXHIBIT B: COMPARISON WITH PRIOR INSPECTIONS

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A previous inspection of the West Virginia Division of Tourism was conducted in May of 2017. The review consisted of 55 selected transactions from an approximate 1,027 total transactions from July 1, 2015 through June 30, 2016. This review resulted in 2 findings associated with 1 of the selected transactions. This indicated that 2% 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 2017 to the current 2020 inspection, below is a summary of the issues identified during the 2017 inspection, as compared to the findings from the current inspection.

<b>Summary of Problem Transactions</b>		
<b><i>Findings</i></b>	<b>2017</b>	<b>2019</b>
Stringing	0	0
Statewide Contract	0	1
Internal Resources	0	0
Failure to Bid at Delegated Level	0	0
Vendor Registration	0	0
Verification Searches	1	0
Affidavit	0	0
wvOasis Award Document/Purchase Order	0	7
Asset Tag/Number	0	0
Certification of Non-Conflict of Interest	1	0
Miscellaneous Issue	0	0
<b><i>Total</i></b>	<b>2</b>	<b>8</b>

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>

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## EXHIBIT C: AGENCY TRAINING REPORT

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**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 Division conference as shown below:

There were no attendees from the West Virginia Division of Tourism at the 2018 Purchasing Division Conference.

**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.

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**EXHIBIT D: AGENCY COMMENTS TO DRAFT REPORT**

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August 19, 2020

Mr. Gregory Clay  
State Purchasing Contracts Manager  
Department of Administration  
Purchasing Division  
1900 Kanawha Boulevard, East  
Charleston, WV 25305

Re: Purchasing Division report of 2018-2019 inspection of the Tourism Office

Dear Mr. Clay:

The West Virginia Tourism Act of 2017 (the "Act") was introduced at Governor Justice's request in the first legislative session of his administration. It passed by margins of 34-0 in the Senate and 96-4 in the House. At the heart of the Act is its purchasing exemption: It gives the Executive Director of the West Virginia Tourism Office ("Tourism") *sole discretion* to select marketing agencies, enterprises, and firms to assist Tourism in carrying out its powers and duties, as well as to negotiate contracts with those vendors. W. Va. Code § 5B-2I-4(e). The exemption represents a policy judgment by the Governor and the Legislature that effective tourism marketing requires creative flexibility, subjective judgment, and nonstandard procurements that are not well supported by the general purchasing process.

The Purchasing Division's ("Purchasing") draft report of its 2020 inspection of Tourism mistakenly asserts that Tourism engaged in stringing in connection with an Airstream trailer, on the erroneous premise that the trailer was required to be obtained through Purchasing. But the trailer in question was not a stock vehicle purchased from a lot. Just the opposite: It was a used trailer that a marketing vendor searched for and identified as uniquely suitable for a specific Tourism marketing campaign, then customized extensively to fit that campaign. It came to Tourism as part of larger purchase made to present the campaign. It thus falls squarely within the Tourism Act's purchasing exemption.

If Purchasing seeks to narrow that exemption's scope, counsel to the Governor will need to be consulted on the interpretation of the Act. The Act is a significant and valuable legislative accomplishment, and if Purchasing seeks to restrict it, that decision must be subjected to consideration at the appropriate level of the administration.

In addition to the allegation of stringing, this letter also responds to the draft inspection report's assertions regarding Tourism's use of change orders, the 2019 Purchasing conference, training on stringing, the purchase of MacBooks, and missing wvOASIS award documents.





## **The Country Roads Camper marketing project**

After the Act became law, Tourism, pursuant to the process set forth in the Act, entered into a contract with Birdsall Voss & Associates (“BVK”) to provide a comprehensive set of services necessary to devise and execute Tourism marketing campaigns. The contract expressly includes assistance with projects relating to branding and creative services, and it provides for BVK to subcontract with other vendors to furnish branding and creative work necessary for Tourism marketing projects.

Early in his administration, Governor Justice directed Tourism to carry out a campaign to enhance West Virginia’s image as a destination for outdoor adventure. Over the past three years, Tourism has worked with BVK on a number of promotional strategies to accomplish that goal. One of these is the Country Roads Camper, an Airstream travel trailer customized to serve as a mobile welcome center and exhibit for West Virginia tourism. BVK initiated the Country Roads Camper concept, and Tourism worked directly with the Governor’s Office to finalize it. *See Exhibit A.*

The Camper is a camping trailer whose interior structure has been removed to permit visitors to come inside, enjoy West Virginia-themed games and activities, and interact with touch-screen systems that provide information about West Virginia tourism. One of its walls has been modified so that it can open along most of its length and convert the trailer into an exhibit booth. Outside the Camper, visitors can make campfire s’mores with West Virginia-made chocolate and scale a rock-climbing wall inspired by Seneca Rocks. The Camper’s exterior is branded with West Virginia Tourism visuals, making it a rolling billboard for the state. It is, in essence, an exhibit booth on wheels. *See Exhibit B.*

To realize this vision, BVK subcontracted, pursuant to its contractual authority, with a third-party vendor that specializes in custom experiential marketing trailers—mobile exhibits customized to be displayed at events and provide visitors with a brand-themed experience. That vendor located a used Airstream trailer that had the specific appearance required for Tourism’s campaign. The trailer also had minimal preexisting internal structure, which made it suitable to be customized into the open exhibit space required for the Camper. After locating the particular trailer needed for the campaign, BVK’s subcontractor acquired it and converted both its interior and exterior to meet Tourism’s specifications. Pursuant to its contract with BVK, Tourism reimbursed BVK for its expenses in executing the project as a whole, which included the subcontractor’s services and its purchase of the trailer that served as the project’s physical starting point.

The Country Roads Camper has been a tremendous success, drawing recognition at major events including the World Scout Jamboree at the Bechtel Summit (attended by 40,000 Scouts from around the world), the West Virginia State Fair (attended by 160,000 visitors), and the 40<sup>th</sup> annual Bridge Day (attended by 80,000 to 100,000 visitors). It also has appeared at many smaller events, and its unique offerings and positive presentation of the state have prompted numerous legislators to specially request it for events in their districts. Before the COVID-19 crisis, the Camper was scheduled to serve as the centerpiece of Tourism’s presenting sponsorship at Outside magazine’s Outdoor Experience trade show in Chicago, one of the country’s largest outdoor tourism events.



When the COVID-19 crisis subsides and public events resume, the Camper will again be a key piece of the state's tourism marketing.

**Purchasing has asserted a stringing violation based on a misunderstanding of the Country Roads Camper project.**

Purchasing's draft report of its 2020 inspection of Tourism purchasing contends that the purchase of the Airstream trailer that became the Country Roads Camper constituted "stringing." That claim appears to reflect a misunderstanding of the Country Roads Camper project. The draft report asserts that Tourism was required to purchase an Airstream through Purchasing and then separately purchase "logos" and "graphics" to be used with it. That contention represents a basic misconception of what the project entailed. Tourism did not simply purchase a stock Airstream trailer new from a dealer and affix some signs to it, as the draft report appears to assume. Rather, it purchased an entire marketing project, one that required a search for an Airstream with a specific look and configuration that would fit the state's broader outdoor branding and make possible the modifications that were needed for its use as an exhibit space. The planned modifications were so extensive and technical in nature that only the subcontractor charged with making them could identify a specific trailer that met its criteria. The process of identifying the correct trailer also required the exercise of subjective aesthetic judgment, as do all decisions regarding the appearance of Tourism marketing material. It would have been impossible for Tourism to carry out the project simply by buying a trailer through Purchasing and putting a logo on it, as the draft report suggests.

Put differently, the Country Roads Camper project is a prime example of why the Legislature enacted the Act's purchasing exemption: The project required creative flexibility, subjective judgment, and nonstandard procurements, all of which made it ill-suited to the general purchasing process. Notably, the agency delivery order ("ADO") under which Tourism paid BVK was for the entire project, including BVK's services and its subcontracted expenses, not just for the trailer; there was never a Tourism ADO for the purchase of a trailer.

In that regard, the draft report is mistaken. It asserts that Tourism issued ADO TOR20\*01 for \$40,000 for the purchase of a 2019 Airstream trailer. In fact, however, Tourism paid for the entire Country Roads Camper project with ADO TOR20\*24. That ADO corresponded to two BVK invoices, one of which—169765 B—included components of the creative work on the trailer, among them the cost of the trailer itself. ADO TOR20\*01, the ADO cited in the report, in fact was for unrelated projects completed by another vendor, Digital Relativity.

**If Purchasing's position depends on its statutory interpretation of the Act, counsel to the Governor will need to be consulted before the draft report goes forward.**

I trust that this detailed information regarding the project will correct the misunderstanding that led to the draft report's stringing allegation. If, however, Purchasing intends to assert that the Act's purchasing exemption categorically excludes the purchase of tangible marketing devices such as the Country Roads Camper, further discussion will be required at higher levels of the



administration. Such a position would represent a serious and unsupported narrowing of the Act. Nothing in the Act's text excludes tangible, physical marketing devices or materials from the exemption. On the contrary, the Act's exemption language is deliberately broad, granting Tourism's Executive Director sole discretion to retain firms to assist Tourism in carrying out its duties and to craft contracts that specify what functions those firms will perform. If a contract with a duly selected firm permits the purchase of tangible items for use in marketing campaigns, then such purchases fall within the exemption.

If Purchasing wishes to assert a more restrictive statutory interpretation than the Act's text and purpose support, that decision should be made by the appropriate administration officials.

**Tourism did not use a change order to obscure the information in its original ADO.**

The draft Purchasing report further concludes that Tourism used change orders to modify its original ADO for the campaign of which the Country Roads Camper is a component. That allegation also is inaccurate. The wvOASIS information for ADO TOR20\*24, the purchase that included the Camper, includes a revision report that demonstrates that the ADO was never modified after it was created. A hard copy of the wvOASIS information is attached as Exhibit C.

**Tourism personnel completed their required purchasing training, and Purchasing's Procedures Handbook does not require them to attend the annual Purchasing conference.**

The draft inspection report also criticizes Tourism because its procurement officer did not attend Purchasing's 2019 conference. Purchasing's own Procedures Handbook, however, does not require attendance at that conference. Rather, the handbook, citing W. Va. Code State R. 148-1, requires only that each agency's procurement officer obtain 10 hours a year of purchasing training. Tourism's procurement officer met the requirement in both FY2018 and FY2019. *See* Exhibit D. Although neither the manual nor the Code of State Rules requires attendance at Purchasing's annual conference, in light of the draft report's criticism, Tourism's procurement officer will be directed to attend future conferences.

**Although Tourism did not engage in stringing, its procurement officer nonetheless has completed Purchasing's training on stringing.**

Although Tourism, as this letter explains, did not engage in stringing, Tourism's purchasing officer nonetheless now has completed Purchasing's stringing training in order to avoid further concerns. *See* Exhibit E.

**Tourism's purchase of MacBooks was part of a special pilot program overseen by the Office of Technology.**

As the draft inspection report notes, Tourism has purchased a number of MacBooks. Much of Tourism's work involves visual design, an area in which MacBooks are substantially more capable than PCs. Tourism did not act on its own in making these purchases. Rather, they were made with



the express approval of the Office of Technology (“OT”) as part of a pilot program that OT initiated and oversees. *See* Exhibit F.

**Tourism has implemented new procedures to ensure wvOASIS award documents are entered for all transactions.**

The draft inspection report observes that Tourism omitted the required wvOASIS award documents for several transactions. After receiving the draft report, Tourism implemented an internal checklist to ensure this step is not overlooked.

I look forward to meeting with you soon to discuss the draft report and this response. In the meantime, please let me know if there are further questions.

Sincerely,

A handwritten signature in blue ink that reads "Chelsea A. Ruby". The signature is fluid and cursive.

Chelsea A. Ruby  
Commissioner

cc: C. Edward Gaunch, Commerce Secretary