



MARK D. SCOTT
CABINET SECRETARY

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

W. MICHAEL SHEETS
DIRECTOR

July 1, 2022

The Honorable Craig Blair
President of the State Senate
Room 229M, Building 1
State Capitol Complex
Charleston, WV 25305

The Honorable Roger Hanshaw
Speaker of the House
Room 228M, Building 1
State Capitol Complex
Charleston, WV 25305

SUBJECT: Legislative Reporting Requirement §5A-3-10(b)

Dear Sirs:

In accordance with **West Virginia Code** §5A-3-10(b), as Director of the West Virginia Purchasing Division, I am required to submit in January and July of each year to the Joint Committee on Government and Finance a report summarizing our division's findings of any spending unit which awarded multiple contracts for the same or similar commodity or service to an individual vendor over any 12-month period with a value exceeding \$25,000.

This section of the Code reads:

§5A-3-10. Competitive bids; publication of solicitations for sealed bids; purchase of products of nonprofit workshops; employee to assist in dealings with nonprofit workshops.

(b) The director shall solicit sealed bids for the purchase of commodities and printing which is estimated to exceed twenty-five thousand dollars. No spending unit shall issue a series of requisitions or divide or plan procurements to circumvent this twenty-five thousand dollar threshold or otherwise avoid the use of sealed bids. Any spending unit which awards multiple contracts for the same or similar commodity or service to an individual vendor over any twelve-month period, the total value of which exceeds twenty-five thousand dollars, shall file copies of all contracts awarded to the vendor within the twelve preceding months with the director immediately upon exceeding the twenty-five thousand dollar limit, along with a statement explaining how the multiple contract awards do not circumvent the twenty-five thousand dollar threshold. If the spending unit does not immediately report to the director, the director may suspend the purchasing authority of the spending unit until the spending unit complies with the reporting requirement of this subsection. The director may conduct a review of any spending unit to

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ensure compliance with this subsection. Following a review, the director shall complete a report summarizing his or her findings and forward the report to the spending unit. In addition, the director shall report to the Joint Committee on Government and Finance on the first day of January and July of each year the spending units which have reported under this subsection and the findings of the director.

For the period of January 1, 2022, through June 30, 2022, there were no spending units that reported to our division the award of multiple contracts for the same or similar commodity or service to an individual vendor over any 12-month period where the total value exceeded \$25,000. However, the Purchasing Division inspectors discovered 15 cases of stringing related to six spending units as part of their inspections during this period.

The spending units with a finding of stringing included the Dept. of Arts, Culture and History (three cases totaling \$98,003.99), the Dept. of Administration's General Services Division (two cases totaling \$103,643.54), the Dept. of Education's West Virginia Schools for the Deaf and Blind (two cases totaling \$94,582.48), the West Virginia Adjutant General and Armory Board (three cases totaling \$392,818.79), and the Dept. of Transportation's Highways' District 2 (three cases totaling \$90,752.74) and District 3 (two cases totaling \$70,070.12). A summary of these findings is attached.

Pursuant to this requirement, my next report will be submitted to you in January of 2023. Should you have any questions regarding this correspondence, please feel free to contact me at your convenience at (304) 558-0492 or via email at ***William.M.Sheets@wv.gov***.

Sincerely,



W. Michael Sheets, CPPO, Director
West Virginia Purchasing Division

WMS:ssk

West Virginia Purchasing Division SUMMARY OF STRINGING ACTIVITIES (JANUARY 1, 2022- JUNE 30, 2022)

Department of Arts, Culture & History:

1. During the fiscal year under review, the West Virginia Department of Arts, Culture and History spent a total of \$27,832.22 in 4 transactions for Software Licenses from Emergent LLC.

In the agency's response to the inspection report, the Department of Arts, Culture & History stated that:

The intent of setting up this contract with Emergent was to better keep track of our Adobe Photoshop licenses and create a situation with only one renewal date for all licenses. This, in part, was in response to our previous purchasing inspection with the goal of process improvement. Certainly not to circumvent regulations. This was our first year in this relationship and we are now rebidding this contract as a Central Procurement.

2. During the fiscal year under review, the West Virginia Department of Arts, Culture and History spent a total of \$44,289.60 in 5 transactions for Promotional Items from EPromos Promotional Products.

In the agency's response to the inspection report, the Department of Arts, Culture & History stated that:

These purchases with EPromos were promotional items purchased throughout the year for conferences, meetings, etc. We have discussed this with the purchasing entity and even though bids were obtained each time, from this point forward we will purchase all promotional items at the beginning of the appropriate fiscal year as a one-time Central procurement.

3. During the fiscal year under review, the West Virginia Department of Arts, Culture and History spent a total of \$25,882.17 in 10 transactions for HVAC Maintenance from HE Neumann Company.

In the agency's response to the inspection report, the Department of Arts, Culture & History stated that:

*This expenditure represented a quarterly fee for our HVAC Maintenance contract at Grave Creek Mound Archeological Complex in Moundsville, WV (AMA DCH21*008). Included in this contract are as needed maintenance fees. On page 2 of the draft report, the scope is defined as fiscal year 2021. This expenditure, dated 6/10/2021, fell at the end of the fiscal year examined by your office, but in the middle of our contract which runs on a calendar year. The time period examined covers the last six months of a previous contract year and the first six months of the next. The amount spent on the 2021 calendar year of this contract was \$17,779.42 and we are now in the 2022 calendar year.*

Department of Administration, West Virginia General Services Division:

1. During the fiscal year under review, the General Services Division spent a total of \$37,341.93 for Boiler Maintenance/Inspections in 14 transactions from Casto Technical Services.

In the agency's response to the inspection report, the General Services Division stated that:

The Agency had viewed the procurement of Boiler Maintenance as a building specific issue, as each building contains its own boiler system, with little consistency on the make/model installed. The Agency solicited competitive bids, based upon this belief, for each respective building. While the existing contracts still have an additional renewal year available, the Agency will be soliciting Centralized bids during the upcoming "off-season" for all non-centralized contracts.

2. During the fiscal year under review, the General Services Division spent a total of \$66,301.61 for Lawn Care in 87 transactions from selected vendors.

In the agency's response to the inspection report, the General Services Division stated that:

The Agency viewed the requirements of Lawncare Services to be unique to each building/site.

The Agency had sought competitive bids for these services at the Agency-delegated level, for buildings in which we were certain of the ability to maintain contracts under the delegated spend threshold. Due to the diverse geography of our buildings, and the availability of potential vendors, the Agency-delegated approach had been our normal approach. We are currently working on soliciting centralized bids for contracts that will be expiring in the coming months, and will be seeking centralized bids for other contracts later this year for other contracts.

Department of Education, West Virginia Schools for the Deaf and Blind:

1. During the fiscal year under review, West Virginia Schools for the Deaf and Blind spent a total of \$43,590.00 in 3 transactions for Medical Equipment from E3 Diagnostics, Inc.

In the agency's response to the inspection report, the West Virginia Schools for the Deaf and Blind stated that:

*E3 Diagnostics is one of the vendors the West Virginia School of the Deaf and Blind (WVSDb) has utilized to provide services for our deaf and hard of hearing students. This includes specialized equipment and hearing aid repair. In the instances under review during the July 1, 2019 - June 30, 2020 timeframe, audiology equipment was ordered to better serve our students. Three ARFQs were issued, ARFQ DBS20*02, ARFQ DBS20*03 and ARFQ DBS20*04, and only one company responded. WVSDb should have canceled the ARFQs and went through central purchasing to avoid stringing. Training has been provided to the current staff and correct procedures will be followed moving forward.*

2. During the fiscal year under review, West Virginia Schools for the Deaf and Blind spent a total of \$50,992.48 in 11 transactions for Food Products from US Foods after the Statewide Contract expired.

In the agency's response to the inspection report, the West Virginia Schools for the Deaf and Blind stated that:

At the beginning of the 2019-2020 school year, US Foods was a vendor on the State contract list to order food for students. That contract expired September 30, 2019. When US Foods was no longer a vendor, it was discovered that the vendors who were on the State list did not have all the food items that are required for, some of our medically fragile students and students with special dietary needs, and WVSDB continued to order from US Foods while searching for other vendors who could provide them with the items required to meet the needs of our students. Currently, WVSDB is making every effort to utilize the State contracts for the items available under those contracts and will bid at the central level for items that will exceed the threshold.

West Virginia Adjutant General and Armory Board:

1. During the fiscal year under review, West Virginia Adjutant General and Armory Board spent a total of \$136,355.07 in 203 transactions for Fire alarm system inspection and maintenance from Appalachian Signals and IN J.T. Martin Fire.
2. During the fiscal year under review, West Virginia Adjutant General and Armory Board spent a total of \$26,270.47 for HVAC parts from 5 selected vendors.

In the agency's response to the inspection report, the West Virginia Adjutant General and Armory Board stated that:

The WVNG owns and operates dozens of facilities statewide. In addition, the WVNG has a presence in several federally owned buildings for which we are responsible for certain maintenance and repair services. Some of these facilities are over sixty-years old. Some have complex mechanical and alarm systems mandated by the Department of Defense in accordance with the function and purpose of that facility. Department of Defense approved service companies utilizing manufacturer specific components must service some systems. In addition, manufacturer territorial restrictions frequently prevent a company's ability to service all our locations in WV. For these instances, forecasting future needs for commodities and services with regard to malfunctions and repairs is impractical in application for our organization. The number of facilities we occupy, their widespread locations, their varying ages and installed systems, and the \$25,000.00 cap on agency delegated spending continue to create procurement challenges for the WVNG. We, along with the United States Property and Fiscal Office (USPFO), continue to explore innovative purchasing options to rectify these situations.

3. During the fiscal year under review, West Virginia Adjutant General and Armory Board spent a total of \$230,193.25 for Food Products from 3 selected Vendors after the Statewide Contract expired.

In the agency's response to the inspection report, the West Virginia Adjutant General and Armory Board stated that:

In the instance of exceeding the spending threshold for fresh food purchases at our Mountaineer ChalleNGe Academies, we will utilize the re-established Purchasing Division's mandatory statewide contracts for food (FOOD21A & Amp; FOOD21B), when needed.

Department of Transportation, Division of Highways, District 2:

1. During the fiscal year under review, Division of Highways, District 2 spent a total of \$29,817.00 in 27 transactions for wrecker services with Cogan's Wrecker Service.

In the agency's response to the inspection report, the Division of Highways, District 2 stated that:

Regarding the instance of wrecker service (Cogan's Wrecker Service) the majority of tow bills were during SRIC operations. These were emergency situations that required the first available tow truck, Public Service Commission mandates these calls to be dispatched to vendors on a rotating basis and are placed by 911 Call Centers. We have no control over the rotation in most instances.

In the Purchasing Division's response to the agency comments, the Purchasing Division referenced the ***West Virginia Purchasing Procedures Handbook***:

No agency is permitted to issue a series of requisitions to circumvent the Delegated wvOASIS Solicitation threshold (normally \$25,000 but up to \$100,000 if delegated limits are increased) or the Verbal Bid or No Bid thresholds. Violation of the Delegated wvOASIS Solicitation threshold is commonly referred to as "stringing" and must be reported to the Legislature.

Reference West Virginia Purchasing Procedures Handbook 5.2.2

Since the Public Service Commission regulates the rates that each company may charge and the County Commission and 911 Call Service control call rotation for wreckers, the agency is working toward requesting this service be added to the Section 9 Impossible to Bid List. Instructions to follow are listed below and attached:

SECTION 9: LIST OF COMMODITIES AND SERVICES IDENTIFIED AS IMPOSSIBLE TO BID

Impossible to Bid List Creation: The Director of the Purchasing Division has the authority to exempt transactions from competitive bidding requirements provided that the director determines such exemptions to be in the best interest of the state. The Director is also authorized to recognize that certain commodities and services are impossible to obtain through competitive bidding and make a list of those commodities and services. See W. Va. Code § 5A-3-3(12) and the W. Va. CSR § 148-1-4.1. In accordance with that authority, the Director has identified those items that cannot be competitively bid in this List of Commodities and Services Identified as Impossible to Bid.

A spending unit may request that commodities or services be added to the Impossible to Bid List by completing and submitting a WV-67 form entitled "Section 9 Impossible to Bid List Addition Request Form." Pursuant to W. Va. CSR § 148-1-4.1, 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. That information must be included on the WV-67 form. Requests for additions to the list will be considered yearly prior to the new fiscal year on July 1.

2. During the fiscal year under review, Division of Highways, District 2 spent a total of \$32,136.82 in 6 transactions for waste oil tank pumping with Heritage Crystal Clean.

In the agency's response to the inspection report, the Division of Highways, District 2 stated that:

Heritage Crystal Clean picks up used oil and removes the sludge from the wash bays. The Highway Storekeeper will work with Procurement to obtain a contract for this service

3. During the fiscal year under review, Division of Highways, District 2 spent a total of \$28,798.92 in 13 transactions for truck parts with Baker Truck Equipment.

In the agency's response to the inspection report, the Division of Highways, District 2 stated that:

Baker Truck sell a variety of truck parts. Unfortunately, when contract vendors cannot supply the needed part in a timely manner the county storekeepers are ordering the part from Baker (who delivers the part quickly). We will instruct the storekeepers that they must stop this practice unless it is a case of emergency.

In the Purchasing Division's response to the agency comments, the Purchasing Division referenced the ***West Virginia Purchasing Procedures Handbook***:

No agency is permitted to issue a series of requisitions to circumvent the Delegated wvOASIS Solicitation threshold (normally \$25,000 but up to \$100,000 if delegated limits are increased) or the Verbal Bid or No Bid thresholds. Violation of the Delegated wvOASIS Solicitation threshold is commonly referred to as "stringing" and must be reported to the Legislature.

Reference West Virginia Purchasing Procedures Handbook 5.2.2

Department of Transportation, Division of Highways, District 3:

1. During the fiscal year under review, West Virginia Department of Transportation, Division of Highways, District 3 spent a total of \$37,958.55 in 7 transactions for truck parts with Black Spring Alignment for Equipment Parts.

In the agency's response to the inspection report, the Division of Highways, District 3 stated that:

We have obtained quotes from Blacks Spring, WV Spring and Radiator, and Wheeling Spring for chair, spring and bushing replacement and repair and Blacks Spring is always thousands less due to they have a furnace and manufacture their own springs as to where the others buy their parts from blacks and other manufacturers.

2. During the fiscal year under review, Division of Highways, District 3 spent a total of \$32,111.57 in 15 transactions for equipment repair with Schotts Repair Service.

In the agency's response to the inspection report, the Division of Highways, District 3 stated that:

We have sent trucks for differential repair as well as end-loaders that Walker could not fix to them. They are the only local business that can fix these issues in a timely cost-effective manner. We have also been in the process of trying to spec out the service for a contract to prevent this from happening again.