

Section 9 Applicability Opinion Request Form (WV-68), Instructions

In accordance with West Virginia Code §5A-3-10 and the West Virginia Code of State Rules §148-1-4, the Purchasing Division Director has determined that it is not possible to obtain certain commodities and services through the competitive bidding process. The Director has identified those items that cannot be competitively bid in the List of Commodities and Services Identified as Impossible to Bid (“Impossible to Bid List”) contained within Section 9 of the Purchasing Division Procedures Handbook.

The Section 9 Applicability Opinion Request Form (“Opinion Request Form”) is intended to provide an agency with the opportunity to formally inquire about the Purchasing Division’s opinion on whether a transaction is included in one of the enumerated categories of the Impossible to Bid List.

The Opinion Request Form should be used only when the applicability of a Section 9 item is questionable or unclear. Agencies remain authorized to utilize a Section 9 item without Purchasing Division approval when there is no question that the transaction qualifies.

The Opinion Request Form must be completed in full and submitted to the State Purchasing Director prior to the occurrence of the transaction. An opinion will not be provided for an incomplete form or for a transaction that has already occurred.

Every opinion provided by the Purchasing Division in response to Section 9 Applicability Opinion Request Form is:

1. Contingent upon the specific facts provided by the agency. Omitting relevant facts or including erroneous facts may negate the opinion provided by the Purchasing Division.
2. Limited in scope to the agency requesting the opinion and limited to the specific transaction referenced in the Section 9 Applicability Opinion Request Form.
3. Not a guarantee against differing interpretations by other governmental entities. Examples include, but are not limited to: the Legislative Auditor’s Office, the Commission on Special Investigations, the Circuit or Supreme Courts, prosecuting attorneys, etc.

Any opinion provided by the Purchasing Division in response to a Section 9 Applicability Opinion Request Form must be included in the official contract file.

Agency Requesting Opinion:

Details about current need:

Commodity/Service Under Consideration:

Name of Vendor Providing Commodity or Service:

Relevant Details About the Transaction:

Details about prior contracts for the commodity/service:

1. Has the agency procured this commodity or service previously?

Yes No

2. If Yes, what procurement method was utilized? Include contract/purchase order number.

RFQ (competitive) _____ Section 9 procurement _____
 Direct award _____ Emergency _____

3. Are you aware of any other agency that has obtained this commodity or service through a competitive bid or direct award?

Yes No

4. Section 9 item(s) agency believes may be applicable:

-
-
-

5. Reasons the agency feels the transaction may be included under Section 9:



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By signing below, I certify that: the information submitted on and with this form is accurate, no material omissions have been made, the transaction for which this opinion is being requested has not occurred, I am authorized to request this opinion, and I will ensure a copy of this opinion is recorded in the applicable contract file.

Agency Authorized Representative: _____

Printed Name of Authorized Representative: _____

Title of Authorized Representative: _____

Date: _____

Purchasing Division Use Only:

This opinion is contingent upon the specific facts provided by the agency; limited in scope to the agency requesting the opinion; limited to the specific transaction referenced in the Section 9 Applicability Opinion Form; not a guarantee against differing interpretations by other governmental entities like the Legislative Auditor's Office, the Commission on Special Investigations, the Circuit or Supreme Courts, prosecuting attorneys, etc. Omitting relevant facts or including erroneous facts may negate the opinion provided by the Purchasing Division herein.

Based on the information contained in this form and any attached documents provided by the Agency, and subject to the limitation contained in the preceding paragraph, I find that the transaction described in this form is:

- Included in Section(s) _____ of the List of Commodities and Services Identified as Impossible to Bid contained within Section 9 of the Purchasing Division Procedures Handbook.
- Not included in List of Commodities and Services Identified as Impossible to Bid contained within Section 9 of the Purchasing Division Procedures Handbook.

Signature: _____

Printed Name: _____

Title: _____

Date: _____