

**WEST VIRGINIA HIGHER EDUCATION
PURCHASING PROCEDURES MANUAL**

July 2004

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SECTION 1 GENERAL INFORMATION

1.1 Introduction

1.1.1 The public higher education institutions, like all agencies of State Government, need a wide variety of goods and services for efficient and effective operation. Purchasing practices and procedures established by state law, the West Virginia Council for Community and Technical College Education (the “Council”) and the West Virginia Higher Education Policy Commission (the “Commission”) are necessary to protect the interests of the taxpayers, vendors, the Council, the Commission, the Governing Boards, the institutions and their employees.

1.1.2 The Higher Education Purchasing Procedures Manual has been prepared as a guide to assist purchasing personnel at the institutions in the proper methods of purchasing products and services from within state government, in the open market, and in managing and disposing of surplus, obsolete and unusable materials, supplies and equipment. Following them will help ensure that purchases, receiving, inventory management and disposal of surplus, obsolete and unusable materials, supplies and equipment are handled within the parameter of state law, and the rules, policies and procedures established by the Council and Commission.

1.1.3 The Purchasing Procedures Manual is not to be construed as a complete or final determination of any purchasing matter and may be amended or changed at the discretion of the Commission’s Vice Chancellor for Administration to ensure compliance with state law, and the rules, policies and procedures of the Council and Commission. Institutions may also develop internal guidelines and procedures to assist that institution in managing purchasing, receiving, inventory management and disposal of surplus, obsolete and unusable materials, supplies and equipment, provided they are consistent with this Purchasing Procedures Manual, the rules of the Council and Commission, and state law.

1.2 Purchasing Authority under West Virginia Code

1.2.1 Authority to purchase and acquire materials, supplies, equipment, services and printing, entering into lease and lease-purchase agreements, and to dispose of surplus, obsolete and unusable materials, supplies and equipment is granted to the Council, Commission and Governing Boards in West Virginia Code §18B-5-4 through §18B-5-9 [[click here for access to Chapter 18B](#)]. As required by law, the Council and Commission have promulgated a procedural rule, [Series 30, Purchasing](#), and a legislative rule, [Series 43, Purchasing Efficiencies](#), to manage higher education purchasing.

1.3 Purpose

1.3.1 The purpose of the Purchasing Procedures Manual is to:

- a. Provide a fiscally sound purchasing process that serves the needs of the Council and Commission, the Governing Boards and their institution in a timely fashion;

- b. Ensure that all purchases and acquisitions are made within the limits of available appropriations and funds;
- c. Ensure that purchase and acquisition of materials, supplies, equipment, services and printing, lease and lease-purchases agreements, receiving, inventory management, and the disposal of surplus, obsolete and unusable materials, supplies and equipment are made in compliance with state law, and the rules and policies of the Council and Commission;
- d. Simplify, clarify, and provide uniform procedures for procurement, receiving, inventory management and for disposal of surplus, obsolete and unusable materials, supplies and equipment, and make as consistent as possible the various rules and regulations at each of the institutions;
- e. Permit the continued development of policies, procedures, and practices for procurement, receiving, inventory management, and disposal of surplus, obsolete and unusable materials, supplies and equipment;
- f. Provide for increased public confidence in the procedures followed in higher education procurement;
- g. Ensure the fair and equitable treatment of all persons who participate in the procurement of goods and services by the Council, the Commission, the Governing Boards and their institutions;
- h. Provide increased economy and efficiency in the Council's, Commission's and the Governing Boards' procurement activities and to maximize to the fullest extent practicable the purchasing value of public funds entrusted to the Council, Commission, the Governing Boards and their institutions;
- i. Foster effective and broad-based competition within the free enterprise system; and
- j. Provide safeguards for the maintenance of a procurement system of quality and integrity.

1.4. Purchasing Authority of the Council, the Commission and the Governing Boards and the Delegation of said Authority

1.4.1 Authority of the Governing Boards

1.4.1.1 [West Virginia Code §18B-5-4](#) mandates that the Council and Commission shall jointly adopt rules governing and controlling acquisition and purchase of materials, supplies, equipment, services, and printing, leases and lease purchases, and the disposal of surplus, obsolete and unusable materials, supplies and equipment.

1.4.2 Delegation of Authority to the Vice Chancellor for Administration

1.4.2.1 To implement its authority, Council and Commission have adopted a procedural rule, [Series 30, Purchasing](#), and a legislative rule, [Series 43, Purchasing Efficiencies](#).

Among other things, these rules grant the Vice Chancellor for Administration the authority and duty to administer and oversee the higher education purchasing system and to develop administrative manuals, guidelines, procedures, and forms, consistent with this rule, which shall be followed by the Council, the Commission, the Governing Boards and institutions for purchase and acquisition of materials, supplies, equipment, services, and printing; leases and lease-purchases receiving and inventory management; and disposal of surplus, obsolete and unusable materials, supplies and equipment. Such administrative manuals, guidelines, procedures and forms may be reviewed by, but do not require approval of, the Council and Commission or the Chancellors before being implemented by the Vice Chancellor for Administration.

1.4.2.2 The Vice Chancellor for Administration also has the authority and duty to provide administrative oversight for purchases and contracts for material, supplies, equipment, services, printing, leases and lease-purchases required by the Commission and Council Offices and West Virginia Network for Educational Telecomputing. The Vice Chancellor shall appoint a Chief Procurement Officer for these administrative units.

1.4.3 Delegation of Authority to the Presidents

1.4.3.1 The Governing Boards have delegated to the presidents or other administrative head of an institution, the authority and duty to administer and oversee the institution's purchasing, receiving, and inventory management activities, and to dispose of the institution's surplus, obsolete and unusable materials, supplies and equipment. A Governing Board may also revoke such delegated authority.

1.4.4 Delegation of Authority to a Chief Procurement Officer

1.4.4.1 Each president shall appoint a Chief Procurement Officer who shall assist the president in carrying out the duties, obligations and remedies imposed by the Governing Board having jurisdiction, consistent with the rules of the Council or Commission and state law. Such appointment shall be in writing and filed with the Vice Chancellor for Administration, the State Auditor and the Attorney General. Unless otherwise stated in writing by the president, the Chief Procurement Officer shall have full authority to act as the designee of the president for purchase and acquisition of all materials, supplies, equipment, services, and printing; leases and lease-purchases, receiving and inventory management; and for disposal of surplus, obsolete and unusable materials, supplies and equipment as may be required by the institution.

1.4.5 Delegation of Authority to a Buyer or other Designee

1.4.5.1 To assist the Chief Procurement Officer in performing his or her duties and obligations, the Chief Procurement Officer may appoint Buyers and delegate authority to them as designees, or may delegate such authority to any department within an institution. Such delegation of authority shall be in compliance with state law, the rules, policies and procedures of the Council and Commission, the Governing Board having jurisdiction, and this Purchasing Procedures Manual. Such delegation of authority by the Chief Procurement Officer, and any limits thereupon, shall be in writing and filed with the Vice Chancellor for Administration, the State Auditor and the Attorney General. Notwithstanding any provision to the contrary,

responsibility for ensuring institutional compliance with the West Virginia Code and the Council's, Commission's and Governing Board's policies and rules shall rest with and be the responsibility of the Chief Procurement Officer.

1.5 General Provisions

- 1.5.1 West Virginia Code: No provisions of this Purchasing Procedures Manual shall be deemed to supersede the West Virginia Code. Vendors shall familiarize themselves with applicable provisions of the West Virginia Code.
- 1.5.2 Severability: If any provision of the Purchasing Procedures Manual or any application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of these procedures which can be given effect without the invalid provisions or application, and to this end, the provisions of procedures are declared to be severable.
- 1.5.3 Supplementary General Principles of Law Applicable: Unless displaced by a particular provision of West Virginia Code, the principles of law and equity, including the Uniform Commercial Code of West Virginia, the law merchant, and law relative to capacity to contract, agency, fraud, misrepresentation, duress, coercion, mistake, or bankruptcy shall supplement the provisions of this Purchasing Procedures Manual.
- 1.5.4 Obligation of Good Faith: Every responsibility or duty within this Purchasing Procedures Manual imposes an obligation of good faith in its performance or enforcement. "Good faith" means honesty in fact in the conduct or transaction concerned and the observance of reasonable government standards of fair dealing.
- 1.5.5 Singular-Plural and Gender Rule: In the Purchasing Procedures Manual, unless the context requires otherwise, words in the singular number include the plural, and those in the plural include the singular; and words of a particular gender include any gender and the neuter.
- 1.5.6 Public Access to Purchasing Files: Purchasing files are public records to the extent provided in the West Virginia Code and they shall be available to the public for examination and inspection at the purchasing office of the procuring institution.
- 1.5.7 Deviations From the Purchasing Procedures Manual: The Vice Chancellor for Administration may approve a deviation from the guidelines set forth in the Purchasing Procedures Manual when it is clearly evident that a deviation is in the best interest of the institution provided such deviation does not conflict with the policies and rules of the Council, the Commission and the West Virginia Code. Any such deviation shall be requested by the Chief Procurement Officer in writing and the request shall: (a) clearly explain the deviation being requested and the circumstances that give rise to the request, (b) why the deviation is in the best interest of the institution; and (c) the consequences to the institution if the deviation is not granted. If the deviation is approved by the Vice Chancellor for Administration, such approval shall be made in writing prior to implementation by the institution.
- 1.5.8 Incurring Costs of Bids or Proposals: Neither the Council, the Commission nor the Governing Boards and the institutions shall be liable for any expense incurred by a

vendor or vendors in preparation and/or presentation of a bid or proposal.

1.6 Procurement Advisory Council

1.6.1 The Vice Chancellor for Administration may establish a Procurement Advisory Council. If created, this Council upon adequate notice shall meet for discussion of problems and make recommendations to improve the procurement process. When requested by the Vice Chancellor for Administration, the Procurement Advisory Council may conduct studies, research or analysis, and make reports and recommendation with respect to subjects or matters related to procurement, receiving, inventory management, and disposal of surplus property. The Procurement Advisory Council shall consist of qualified representatives from various institutions and such other persons as the Vice Chancellor for Administration may deem desirable.

1.6.2 The Vice Chancellor for Administration may also appoint advisory groups to assist with respect to specifications or procurement in specific areas, and with respect to other matters relating to procurement, receiving, inventory management, and disposal of surplus, obsolete and unusable materials, supplies and equipment.

1.7 Dissemination of the Purchasing Procedures Manual

1.7.1 The Purchasing Procedures Manual is available on the Commission's website at <http://www.hepc.wvnet.edu/resources/purchasing.html>.

1.7.2 A paper copy of the Purchasing Procedures Manual may be obtained upon request at the cost of reproduction, and shipping from the Council, the Commission or from the Purchasing Office at the institutions.

1.8 Utilization of Small, Minority and Women-Owned Businesses Resident in West Virginia

1.8.1 Chief Procurement Officers should encourage West Virginia's small, disadvantaged, minority and women-owned businesses to participate in purchasing opportunities at the state institutions of higher education. It is generally recognized that all business concerns, large or small, majority or minority-owned, should be afforded an equal opportunity to compete. Such businesses are dependent upon being given this opportunity to compete in the marketplace with their larger competitors. The following are recommended guidelines for support of small, disadvantaged, minority and women-owned businesses resident in West Virginia:

- a. Adhere to all applicable laws and regulations;
- b. Actively strive to attain reasonable and responsible institutional policies and goals regarding purchases from small businesses, and those owned by the disadvantaged, minorities and women;
- c. Participate in local and/or national organizations whose purpose is to stimulate growth of these entities;
- d. Seek new sources of supplies and services; and

- e. Encourage employees to support small, minority and women-owned businesses, and those owned by other disadvantaged groups.

1.9 Ethics in Public Purchasing

- 1.9.1 Purchasing and disposal of surplus, obsolete and unusable materials, supplies and equipment in the public sector is a public trust and the highest degree of professional and ethical standards should be maintained at all times. [Chapter 6B of the West Virginia Code](#), the West Virginia Governmental Ethics Act, is applicable to all purchasing, receiving, inventory management, and surplus property activities performed under the jurisdiction of the Council, the Commission and the Governing Boards.
- 1.9.2 Any person who is not authorized to approve a purchase or contract, or who does so in a manner that is in violation of state law, or the rules, policies and procedures of the Council and Commission and the Governing Board having jurisdiction, may be held personally liable for the cost of such purchase or contract as provided in state law. Purchases or contracts violating state law and/or the rules, policies and procedures of the Council and Commission and the Governing Board having jurisdiction shall be void and of no effect.
- 1.9.3 Except as may be authorized by the provisions [Chapter 6B of the West Virginia Code](#): (1) neither the Chief Procurement Officer nor any employee of the institution's Purchasing Office shall be financially interested, or have any beneficial personal interest, directly or indirectly, in the purchase of any commodities or printing, nor in any firm, partnership, corporation or association furnishing them; and (2) neither the Chief Procurement Officer nor any employee of the institution's Purchasing Office shall accept or receive directly or indirectly from any person, firm or corporation, known by the Chief Procurement Officer or employee, to be interested in any bid, contract or purchase order, by rebate, gift or otherwise, any money or other thing of value whatsoever, or any promise, obligation or contract for future award or compensation. The provisions of West Virginia Code §5A-3-28, 29, 30, 31 shall apply [[click here for access to Chapter 5A](#)].
- 1.9.4 Except as may be authorized by the provisions [Chapter 6B of the West Virginia Code](#): (1) neither the Council, the Commission, the Governing Board, nor any employee of the Council, the Commission or the Governing Board, shall be financially interested, or have any beneficial personal interest, directly or indirectly, in the purchase of any equipment, materials, supplies, services, or printing, nor in any firm, partnership, corporation or association furnishing them; and (2) neither the Council, the Commission, the Governing Board or any employee of said Council, Commission or Board shall accept or receive directly or indirectly, from any person, firm or corporation, known by the Council, the Commission or the Governing Board or such employee to be interested in any bid, contract or purchase, by rebate, gift or otherwise, any money or other thing of value whatsoever or any promise, obligation or contract for future reward or compensation.
- 1.9.5 Any vendor violating the West Virginia Code or the rules, policies and procedures of the Council and Commission or the Governing Board having jurisdiction may be suspended from the right to bid on or submit a proposal for institutional purchases for

a period of up to one year.

- 1.9.6 [The ethical practices of the National Institute of Governmental Purchasing](#) (NIGP) should guide the conduct of every person employed in an institution's purchasing.

SECTION 2
PURCHASING ORGANIZATION AND OBJECTIVES

2.1 Authority of the Chief Procurement Officer (CPO)

2.1.1 The Chief Procurement Officer shall, unless otherwise stated in writing, have full authority to act in matters of institutional purchasing, leases and lease-purchases, receiving, inventory management, and disposal of surplus, obsolete and unusable materials, supplies and equipment as the designee of the institution's president, or the Vice Chancellor for Administration as in the case of the Commission Office and West Virginia Network for Educational Telecomputing. The Chief Procurement Officer shall serve as the institution's primary procurement official.

2.2 Responsibilities, Duties and Remedies of the Chief Procurement Officer

2.2.1 As required by the rules, policies and procedures of the Council and Commission and the Governing Board having jurisdiction, the Chief Procurement Officer shall have the duty and responsibility to:

- a. Ensure compliance with state law, and the rules, policies, procedures of the Council and Commission, the Governing Board having jurisdiction, and the institution as they apply to purchasing, leases and lease-purchases, receiving, inventory management and the disposal of surplus, obsolete and unusable materials, supplies and equipment;
- b. Procure or supervise the procurement of all materials, supplies, equipment, services, printing, leases and lease purchases, repairs and alterations, and construction needed by the institution;
- c. Establish and maintain professional procurement procedures within the institution;
- d. Sell, trade, or otherwise dispose of surplus, obsolete and unusable materials, supplies and equipment belonging to the institution;
- e. Establish institutional guidelines and procedures for purchases not exceeding \$25,000. Such guidelines and procedures shall provide for obtaining adequate and reasonable records to properly account for funds and to facilitate auditing. These guidelines, and any updates, shall be approved by the president and filed with the Vice Chancellor for Administration;
- f. Establish and maintain institutional guidelines and procedures for receiving and distributing materials, supplies, equipment, services and printing, and for inventorying the institution's equipment that has a unit value at the time of purchase of \$5,000 or more and a useful life of at least one year. An institution may elect to inventory equipment and furnishings with a value of less than \$5,000 per unit. These guidelines and procedures shall be consistent with the administrative manuals, guidelines, procedures and forms developed by the Vice Chancellor for Administration. They shall be approved by the president and filed with the Vice Chancellor for

Administration;

- g. Review specifications and descriptions before soliciting bids or proposals to ensure the specifications and descriptions are competitive and fair and do not unfairly favor or discriminate against a particular brand or vendor;
- h. Advertise all purchases for which formal competitive bids or proposals are being solicited, and post or otherwise make available notice of such purchases in the institution's purchasing office;
- i. Maintain the institution's purchasing files;
- j. Accept or reject any and all bids in whole or in part;
- k. Waive minor irregularities in bids, bidding documents and/or specifications;
- l. Apply and enforce standard specifications;
- m. Prescribe the amount of deposit or bond to be submitted with any bid or contract;
- n. Prescribe contract provisions for liquidated damages, remedies and/or other damages provisions in the event of vendor default;
- o. Hear and render opinions on vendor complaints and protests;
- p. Prior to the issuance of a purchase order that exceeds \$25,000, ensure that the successful vendor is properly registered with the Purchasing Division of the Department of Administration in accordance with state law before a contract or purchase order is issued to that vendor;
- q. Perform chemical and physical tests on samples submitted with bids and samples of deliveries to determine compliance with specifications, if deemed necessary and prudent;
- r. Put special emphasis on identifying in-state small businesses and provide these vendors the opportunity to participate in the institution's purchases; and
- s. Exempt from competitive bidding purchases of materials, supplies, equipment, services and printing purchased from within state government, from West Virginia sheltered workshops, and from cooperative buying groups, consortia and federal government contracts when price, availability and quality are comparable to those in the open market.

2.2.2

As required by state law and the rules, policies and procedures of the Council, Commission and the Governing Board having jurisdiction, the Chief Procurement Officer shall have the following remedies:

- a. In the event that a vendor fails to honor any contractual term or condition, the Chief Procurement Officer may cancel the contract and reaward the contract to the next lowest responsible and responsive bidder;

- b. Vendors failing to honor contractual obligations may be held responsible for all differences in cost; and
- c. Declare a vendor or bid nonresponsible or nonresponsive and refuse to award a purchase order. All such instances shall be substantiated in writing giving the reason(s) thereof, and such documentation shall be considered a public document.

2.3 Delegation of Authority by the Chief Procurement Officer

2.3.1 Delegation to a Buyer in the Institution's Purchasing Department

2.3.1.1 Subject to state law and the rules, policies and procedures of the Council, Commission and the Governing Board having jurisdiction, the Chief Procurement Officer may appoint Buyers and delegate authority to them as designees. Such delegation of authority by the Chief Procurement Officer, and any limits thereupon, shall be in writing and filed with the Vice Chancellor for Administration, the State Auditor, and the Attorney General.

2.3.1.2 To be appointed as a Buyer, the person under consideration must, at a minimum, be either (a) a graduate of an accredited college or university; or (b) have at least four year's experience in purchasing for any unit of government or any business, commercial or industrial enterprise.

2.3.1.3 Any person making purchases and acquisitions pursuant to state law and the rules, policies and procedures of the Governing Board having jurisdiction shall execute a bond in the penalty of \$50,000, payable to the State of West Virginia, with a corporate bonding or surety company authorized to do business in this state as surety therein, in a form prescribed by the Attorney General and conditioned upon the faithful performance of all duties in accordance with West Virginia Code §18B-5-4 through §18B-5-9. In lieu of separate bonds for such Buyers, a blanket surety may be obtained. Any such bond shall be filed with the Secretary of State. The cost of such bond or bonds shall be paid from funds appropriated to the Commission and the Governing Boards. The Board of Risk and Insurance Management (BRIM) maintains blanket bonds for employees whose jobs require these bonds.

2.3.2 Delegation of Authority by the Chief Procurement Officer to Others outside the Institution's Purchasing Department

2.3.2.1 Subject to state law and the rules, policies and procedures of the Commission and the Governing Board having jurisdiction, the Chief Procurement Officer may delegate purchasing authority to other appropriately trained individuals at the institution not employed within the institution's Purchasing Department, or to other departments within the institution. Such delegation of authority by the Chief Procurement Officer, and any limits thereupon, shall be in writing and filed with the Vice Chancellor for Administration, the State Auditor, and the Attorney General.

2.3.2.2 Factors that should be considered by the Chief Procurement Officer in making the decision to delegate purchasing authority to individuals not employed within the institution's Purchasing Department, or to other departments within the institution,

include, but are not limited to:

- a. The resources currently available to the Chief Procurement Officer within the institution's Purchasing Department to adequately perform the purchasing functions that may be delegated;
- b. The procurement experience and expertise, and any specialized knowledge the potential delegee possesses that would be beneficial to the Purchasing Department in making purchases and acquisitions;
- c. The past experience of the potential delegee in exercising similar authority; and
- d. The degree of economy and efficiency to be achieved in meeting the institution's procurement needs if authority is delegated.

2.4 Responsibility for Institutional Compliance When Purchasing Authority is Delegated

- 2.4.1 Responsibility for ensuring institutional compliance with state law and the rules, policies and procedures of the Commission and the Governing Board shall rest with and be the obligation of the Chief Procurement Officer.

2.5 Revocation of Delegated Authority

- 2.5.1 The Chief Procurement Officer may revoke delegated authority to an individual or department at his or her discretion. When delegated authority is revoked, the Chief Procurement Officer shall, in writing, notify the Vice Chancellor for Administration, State Auditor and the Attorney General of the effective date of revocation.

SECTION 3 SPECIFICATIONS AND REQUISITIONS

3.1 Specification

3.1.1 The purpose of a specification is to serve as the basis for obtaining the commodities (products) and services suitable for the needs of the Council, Commission, the Governing Board and the institution in a cost effective manner.

3.1.2 Determining the exact requirements (specifications) for products and services to perform a given function is one of the most important tasks in the procurement process. A specification must describe the type of product or service, the quality level, special requirements in design, performance, delivery and usage. A specification must not be restrictive and "lock-in/lock-out" a specific product, thus, limit competition, or is so vague as to allow a vendor to provide a lower quality product or service. A good specification is:

- a. Reasonable, legible, and clearly understandable to both the seller and the purchaser;
- b. Concise but complete; and
- c. Identifiable wherever possible with some brand or specification already on the market.

3.2 Types of Specifications

3.2.1 There are at least three types of specifications used separately and/or in combination to communicate requirements for goods and services to the vendor. These include:

- a. A "brand name or equivalent" specification is based on one or more of a manufacturer's commodity or product description(s), model number(s) and quality level(s). The manufacturer's commodity or product number(s) must be easily identified and available in a current publication that is readily available to most vendors. Commodity or product descriptions must be sufficiently detailed and specify only the required features needed for the application.
- b. A "performance" specification is based on the specific performance needs of the purchaser. A performance specification is less structured as to how the product is made, and more structured as to how well it performs. Life cycle cost for operating and maintaining the product should be an element of the specification.
- c. A "design" specification concentrates on the dimensional, physical and functional requirements of the item being purchased. The design specification is used when the commodity has to be specially made to meet the purchaser's unique needs.

3.2.2 Combinations of the above may be used to communicate a clear specification to

vendors. A performance specification may refer to a nationally accepted testing procedure for a commodity; a design specification may indicate the physical size and dimension of the commodity; and a brand name or equivalent specification may be used to indicate a desired quality level.

3.3 Format of a Specification

3.3.1 A specification should be presented in a specific manner each time a purchasing requisition is written. This format should include:

- a. The item number;
- b. Quantity and unit of measure, such as "case," "each," "dozen," etc.; and
- c. Description and name of the commodity or product if using a brand name or equivalent specification, followed by the manufacturer and model number. After the brand name, the words "or equivalent" should be inserted to inform vendors that alternate bids will be considered. The description should contain the essential requirements that clarify the quality level or indicate the features that are important to the function of the item/service being purchased.

3.3.2 Generally, the following language should not be included in a requisition:

- a. "No substitutes;"
- b. "Only nationally known brands accepted;" and
- c. "No alternatives will be accepted without prior approval of the requisitioner."

3.4 Standard Specifications

3.4.1 Standard specifications are those developed by the institution's Purchasing Department. Standard specifications are also available from such organizations as the National Institute of Governmental Purchasing, the National Association of Purchasing Management and the National Association of Educational Buyers. The use of these standard specifications assures an acceptable quality that meets the needs of the institution.

3.5 Requisition

3.5.1 A requisition is a document that is usually required by the Chief Procurement Officer for the institution's Purchasing Department to initiate the purchasing process. It can result in the issuance of a Request for Quotations (RFQ), a Request for Bids (RFB), a Request for Proposals (RFP), a Request for Qualifications (RFQ), or a Request for Expressions of Interest or Information (REI), and ultimately in the issuance of a purchase order to a vendor. Along with other required information and signatures, a requisition shall contain a suitable specification as described above.

3.5.2 When a need develops to purchase goods or services, a requisition should be prepared and forwarded to the institution's Purchasing Department with the required approval of the originating department unless the Chief Procurement Officer

determines that a requisition is not required.

SECTION 4 VENDOR INFORMATION

4.1 Vendor Access to Public Business

- 4.1.1 No qualified bidder should be arbitrarily or capriciously excluded from doing business with the Council, Commission, the Governing Boards or their institutions. Broad vendor participation should be fostered and encouraged. West Virginia businesses are actively encouraged to participate in higher education purchasing opportunities.

4.2 Vendor Registration

- 4.2.1 The West Virginia Code requires that all vendors be registered with the West Virginia Department of Administration, Purchasing Division, prior to receiving a purchase order for competitive products and/or services exceeding \$25,000 from the Commission, the Governing Boards and their institutions. An annual vendor registration fee, payable to the West Virginia Department of Administration, is required from vendors who have received a purchase order for competitive products and/or services exceeding \$25,000 per order. Those exempt from paying the fee are vendors supplying sole source (noncompetitive) products/services, or vendors receiving a purchase order in the aggregate amount of \$25,000 or less per order.

4.3 Resident Vendor Preference

- 4.3.1 Preference for Resident Vendors: West Virginia vendors may claim an in-state resident vendor preference in accordance with [§5A-3-37](#) of the West Virginia Code on purchases of materials, supplies, equipment and printing that are competitively bid; however, this resident vendor preference is not applicable for services, including construction. Claims for the resident vendor preference must be made in writing by the vendor and must be submitted with the vendor's bid.
- 4.3.2 Reciprocal Preference for Resident Vendors: Except where provisions of §5A-3-37 may apply, the reciprocal preference provided in [§5A-3-37a](#) of the West Virginia Code shall apply to the purchase of commodities (materials, supplies, equipment, and services, including construction) and printing where appropriate.

4.4 Debarment

- 4.4.1 As provided in West Virginia Code §5A-3-33A through §5A-3-33F [[click here for access to Chapter 5A](#)], vendors that have been debarred are not eligible to bid on or receive contracts to supply goods and services to the state and its subdivisions for a specified period of time.
- 4.4.2 The Director of the State Purchasing Division has primary responsibility for administering the debarment process which includes: (a) obtaining a list of vendors declared ineligible under federal laws and regulations; (2) notification of all contracting officials for the state and its subdivisions regarding debarred vendors; (3) compiling and maintaining a current, consolidated list of all vendors that have been debarred, the period of debarment, and the reasons for debarment; (4) investigation

complaints from the officials of the state and its subdivisions responsible for contracting with vendors for goods and services; (5) initiating and conducting debarment procedures; and (6) proposing rules for legislative approval for operation of the debarment process.

4.4.3 The code sections in subparagraph 4.4.1 apply to higher education purchases. Before a contract or purchase order is issued the [debarment list](#) should be checked to make sure a vendor is not listed. If the vendor is listed, the vendor is not eligible for a contract or purchase order.

4.5 Vendors in Default with Unemployment Compensation or Workers' Compensation

4.5.1 [West Virginia Code §21A-2-6](#) and the Bureau of Employment Programs' Exempt Legislative Rule ([Title 96, Series 1](#)) prohibit granting, issuing, or renewing any contract, license, permit, certificate, or other authority to conduct trade, profession, or business to or with any employing unit whose account is in default with the Commissioner of the Bureau of Employment Programs with regard to the administration of Chapters 21A or 23 of the West Virginia Code.

4.5.2 Before a contract, purchase order or change order awarding, renewing or extending a contract is awarded or issued, the institution should check the Bureau of Employment Programs' database of vendors in default ([UC/WC Defaulted Accounts](#)).

4.6 Awards

4.6.1 After competitive bids are received for purchases greater than \$25,000, and after the bids have been evaluated, an award shall be made to the lowest responsible and responsive bidder. Neither personal preference nor "gold-plating" will be permitted. "Gold-plating" is the adding of additional features or functions by a bidder to a specified requirement for which no original request was made, and then expecting an award, at more dollars, claiming the product or service is better than the lowest responsible bidder who meets the specified requirement. If after a proper evaluation, an award is made to other than the lowest bidder; a justification must be written and retained for the purchasing file. The reasons given must be technically correct in terms of the bid specifications and not based on subjective or prejudicial reasons. The evaluator(s) must sign the justification.

4.7 Incurring Costs of Bids or Proposals

4.7.1 Neither the Council, Commission, nor the Governing Boards and their institutions shall be liable for any expense incurred by a vendor in preparation and/or presentation of a bid, proposal or quotation.

4.8 Protests

4.8.1 Vendors may file a written complaint or protest of a bid or planned award in accordance with [Section 7](#) of this Purchasing Procedures Manual.

4.9 Suspension

4.9.1 Vendors may be suspended from doing business with the Council, Commission, Governing Boards and their institutions for up to one year in accordance with [Section 8](#) of this Purchasing Procedures Manual. Vendor reconsideration or appeals are also discussed in that section.

4.10 Prompt Payment

4.10.1 Vendors can expect prompt payment of invoices in accordance with [§5A-3-54](#) of the West Virginia Code. See [Section 11](#) of this Purchasing Procedures Manual.

SECTION 5
PURCHASE OR ACQUISITION OF MATERIALS, SUPPLIES, EQUIPMENT, SERVICES
AND PRINTING

5.1 General Information

5.1.1 Purchasing in higher education is a public trust. The authority to purchase and acquire materials, supplies, equipment, services and printing is granted to the Council, Commission and the Governing Boards by state law. Also as required by law, the Council and Commission have jointly adopted rules governing and controlling acquisition and purchases. These joint rules governing and controlling purchasing are procedural rule, [Series 30, Purchasing](#) and legislative rule, [Series 43, Purchasing Efficiencies](#). This places an obligation on the institutions to exercise responsible and responsive management of purchasing activities and to be good stewards of the public funds entrusted to them. In addition, the Council and Commission desire that the institutions provide the maximum opportunity to West Virginia vendors to conduct business with higher education institutions.

5.1.2 Unless otherwise authorized by law, all purchases or acquisitions of materials, supplies, equipment, services and printing shall be awarded by competitive bidding, except as provided below:

- a. Purchases not exceeding \$25,000;
- b. Competitive sealed proposals;
- c. Competitive selection procedures for professional services;
- d. Sole source and single source procurement;
- e. Emergency procurement;
- f. Previously competed Federal, State and institutional contracts, and contracts issued by cooperative buying groups and consortia; and
- g. Essential services.

5.2 Purchases not exceeding \$25,000

5.2.1 The Chief Procurement Officer of each institution shall establish institutional guidelines and procedures for purchases not exceeding \$25,000 per order. These guidelines and procedures shall provide for obtaining adequate and reasonable records to properly account for funds and to facilitate auditing. These guidelines and procedures, and any modifications thereto, shall be approved by the president and filed with the Vice Chancellor for Administration.

5.2.2 While competition is encouraged, purchases in this category do not require competitive bids or quotations.

5.3 Purchases Greater than \$25,000

5.3.1 Competitive sealed bidding is the preferred method for purchase and acquisition of materials, supplies, equipment, services and printing greater than \$25,000.

5.3.2 Request for Bids

5.3.2.1 The Request for Bids is used to initiate a competitive sealed procurement by requesting bids from interested vendors/bidders. The Request for Bids shall include the following:

- a. Instructions and information to bidders concerning the bid submission requirements, including the time and date for receipt of bids, the address of the location to which bids are to be delivered, the maximum time the bid shall be held by the bidder for acceptance by the institution, and other special information if needed;
- b. A description or specification for the item(s) to be purchased, evaluation factors, shipping and performance requirements, and such inspection and acceptance requirements that are not detailed or included in the description or specification;
- c. The contract terms and conditions, including payment terms; delivery requirements; warranty requirements; and bonding or other security requirements, as applicable. The Request for Bids may incorporate documents by reference, provided the Request for Bids specifies where such documents can be obtained or reviewed.

5.3.3 Bids

5.3.3.1 Bids shall be submitted by the bidder prior to the date and time of the bid opening on the prescribed form provided to the bidder. Substitutions may be made for the prescribed form if the substituted terms, conditions and/or provisions, if any, are approved by the Chief Procurement Officer.

5.3.3.2 Bidders shall submit their bid to the location identified in the Request for Bids prior to the specified date and time of the bid opening. A bid received after the required date and time is late and shall not be opened. It shall be returned to the bidder unopened.

5.3.3.3 The bid shall be signed by an authorized agent of the bidder who has the authority to bind the bidder to the bid price, terms, conditions and the requirements of the specification. The bid submitted must have an original signature. A corporate signature without an individual name shall not be construed an acceptable signature.

5.3.3.4 Facsimile and electronically transmitted bids are not acceptable for bids over \$25,000.

5.3.3.5 A bidder may make written modifications to a sealed bid prior to the bid opening provided they are made by the bidder in such a manner that the bid price is not

revealed or known until the bid is opened. Modifications must be received by the Chief Procurement Officer prior to the date and time of the bid opening. Facsimile and electronically transmitted modifications are acceptable if the bid price is not revealed.

5.3.5 Awards

5.3.5.1 An award shall be made to the lowest responsible and responsive vendor. In determining the lowest responsible and responsive vendor, consideration will be given to such factors as quality (meeting specifications), price, time of delivery, cost of delivery, and other terms and conditions considered prudent. Unit prices shall prevail in all cases when there is a conflict between the unit price and the extended price. A vendor that has been debarred or is in default with Unemployment Compensation or Workers' Compensation is not eligible to receive a purchase order/contract. See [paragraph 4.4](#) for more information about debarment and [paragraph 4.5](#) about default with Unemployment Compensation or Workers' Compensation. Also, see [subparagraph 5.3.17, Bid Evaluation and Award](#).

5.3.5.2 In some cases multiple and/or split awards may be made when it is determined to be in the best interest of the institution.

5.3.5.3 Occasionally, purchase orders may be issued which impose no obligation on the Council, Commission, the Governing Boards or their institutions to take delivery of a product and/or service and as such, these purchase orders shall be issued as blanket purchase orders or price agreements.

5.3.5.4 In situations where vendors are competing to provide a service that will generate income for an institution, the award shall be made to the highest responsible and responsive bidder, taking into consideration the factors in [clause 5.3.5.1](#).

5.3.6 Bidders Lists

5.3.6.1 Bidders lists may be compiled to provide the institution with the names of businesses that may be interested in competing for various types of institutional contracts. Unless otherwise provided, inclusion or exclusion of the name of a business does not indicate whether the business is responsible with respect to a particular procurement or otherwise capable of successfully performing an institutional contract. The Chief Procurement Officer or designee may draw from a bidders list a sufficient number of prospective bidders to ensure competition; however, the Chief Procurement Officer or designee is not obligated to send a Request for Bids to every vendor listed.

5.3.6.2 Businesses that fail to respond to a Request for Bids on consecutive procurements of similar items may be removed from the applicable bidders list. Prospective bidders currently meeting the criteria for inclusion on the list may be reinstated on such lists at their request.

5.3.6.3 Institutions should develop an in-state bidders list to ensure that West Virginia suppliers are exposed to as many bidding opportunities as possible. Institutions are also encouraged to utilize the West Virginia bid networks to the greatest extent practical.

- 5.3.7 Advertising for Purchases Greater than \$25,000
- 5.3.7.1 A Request for Bids shall be mailed, furnished or otherwise made available to a sufficient number of bidders (at least three whenever possible) for the purpose of securing competition.
- 5.3.7.2 The Chief Procurement Officer shall advertise for bids on all purchases exceeding \$25,000 at least once in a newspaper of general circulation in the county or region where the purchase will be made. The advertisement shall appear at least 14 calendar days prior to the date bids are due. Institutions are encouraged to post the advertisement with national bid networks and West Virginia bid networks when practical.
- 5.3.7.3 The Chief Procurement Officer shall, in addition to advertising, post or make available notices of competitive acquisitions and purchases over \$25,000 in the institution's purchasing office no less than 14 calendar days prior to the date bids are due. The Chief Procurement Officer shall ensure that the notice is available to the public during business hours.
- 5.3.8 Bidding Time for Purchases Greater than \$25,000
- 5.3.8.1 Bidding time for purchases greater than \$25,000 is the period of time between the date of advertising and posting in the institution's Purchasing Office and the date and time set for receipt of bids. The Chief Procurement Officer shall set a reasonable bidding time for each purchase to afford bidders the opportunity to become aware of the Request for Bids and to prepare and deliver their bid to the institution. The minimum bidding time permitted is 14 calendar days.
- 5.3.9 Bid Submission
- 5.3.9.1 Bids shall be submitted on the Request for Bids, or in some case, the form of proposal provided with it, in accordance with the instructions to bidders. The bidder, or his or her authorized agent, shall sign the bid and provide any other necessary and required information or attachments. The bid shall be submitted in a sealed opaque envelope clearly marked with the information requested in the Request for Bids, such as the Request for Bids number and the opening date and time, to clearly mark and distinguish it as a bid.
- 5.3.10 Prebid Conferences
- 5.3.10.1 Prebid conferences may be held at the discretion of the Chief Procurement Officer to explain the Request for Bids which includes the procurement requirements, specifications, terms and conditions, and other relevant information concerning the bid or project. The prebid conference shall be announced to all prospective bidders known to the Chief Procurement Officer to have received a Request for Bids. The conference should be held long enough after the Request for Bids has been issued to allow bidders to become familiar with the specifications, terms and conditions, but sufficiently before the bid opening to allow bidders enough time to consider the conference information and results in preparing their bid.
- 5.3.10.2 If the prebid conference is advertised as mandatory, only those vendors who attend

the conference are eligible to bid. A list of the attendees shall be made for the purchasing file. Addenda and supplemental information issued after the mandatory prebid conference should be distributed only to those vendors who are eligible to bid. Mandatory prebid conferences should be held when bidders need to be made aware of unique circumstances, conditions, and situations that cannot adequately be explained in the Request for Quotations, Request for Bids, Request for Proposals or Request for Expressions of Interest.

5.3.10.3 Nothing stated at the prebid conference shall change the Request for Bids unless a change is made by written amendment called an "Addendum." A summary report of the conference may be provided to all those prospective bidders known to the Chief Procurement Officer to have received a Request for Bids. If a conference summary report is made, it shall be placed in the purchasing file and become a matter of public record.

5.3.11 Addendum to a Request for Bids

5.3.11.1 An Addendum to a Request for Bids, if needed, shall be issued by the Chief Procurement Officer and it shall be identified as such. It shall reference the part(s) of the Request for Bids amended or clarified and it shall be issued to all prospective bidders known by the Chief Procurement Officer to have received a Request for Bids.

5.3.11.2 An Addendum shall be issued by the Chief Procurement Officer in time to allow prospective bidders to consider it in preparing their bids. If the date and time set for receipt of bids will not allow sufficient time for such preparation, then the bid opening date and time shall be extended by the Addendum to afford bidders sufficient time. The bidder shall acknowledge receipt of each Addendum in accordance with instructions in the bid documents.

5.3.11.3 An Addendum should be used for the following purposes:

- a. Make changes in the Request for Bids such as changes in quantity, specifications, delivery schedule, opening time and date, terms and conditions, etc.;
- b. Correct defects or ambiguities; or
- c. Furnish to other bidders information given to one bidder if such information will assist the other bidders in submitting bids or if the lack of such information would prejudice the other bidders.

5.3.12 Preopening Modifications or Withdrawal of Bids

5.3.12.1 Bids over \$25,000 may be modified or withdrawn by a bidder by written notice delivered in a sealed opaque envelope. Said notice must be clearly marked as a bid modification or withdrawal on the envelope, it must reference the bid being modified or withdrawn on the envelope, and it must be received at the location designated for receipt of bids in the Request for Bids prior to the date and time set for bid opening. A bid may be modified or withdrawn by facsimile or electronic notice provided it is received at the location designated for receipt of bids prior to the date and time for receipt of bids. If a bid is modified, the modification shall be made in such a manner

so as not to reveal the bid result until the bid is opened.

5.3.12.2 If a bid is withdrawn in accordance with this Section, the bid security, if any, shall be returned to the bidder.

5.3.12.3 All documents relating to the modification or withdrawal of a bid shall be made a part of the purchasing file.

5.3.13 Late Bids, Late Withdrawals, and Late Modifications

5.3.13.1 Any bid, withdrawal or modification received after the date and time set for receipt of bids is late. No late bid, late modification, or late withdrawal will be considered. The clock in the institution's Purchasing Office shall be considered the official timepiece used to determine whether the bid, withdrawal, or modification was late.

5.3.14 Receipt, Opening, and Recording of Bids

5.3.14.1 Upon its receipt, each bid and modification shall be time and date stamped but not opened and shall be stored in a secure place until the date and time set for bid opening.

5.3.14.2 Bids, modifications and withdrawals shall be opened publicly, in the presence of one or more witnesses who are employees of the institution at the time, date and location designated in the Request for Bids. The name of each bidder, the bid price, and such other information as is deemed appropriate by the Chief Procurement Officer, shall be read aloud or recorded at the time of bid opening; that is, the bids shall be tabulated or a bid abstract made. The names and signatures of the institutional witnesses present at the bid opening shall also be recorded on the bid tabulation or abstract. Following the opening the bids shall be available for public inspection. Bidders may request a copy of a bid or bids and the institution shall have a reasonable amount of time to make the requested copies. The Chief Procurement Officer may also establish a reasonable charge for copying and handling costs.

5.3.15 Trade Secrets, Confidential or Proprietary Data

5.3.15.1 A bidder by designating certain information or data submitted with a bid as confidential, proprietary, or a trade secret may as a result establish an exception to the public inspection policy for the information or data so designated. Such designation shall be in accordance with [Chapter 29B of the West Virginia Code](#) and shall be made in writing by the bidder at the time the bid is submitted. A bidder may not claim this designation after bids have been opened. Information or data so designated shall be readily separable from the bid in order to facilitate public inspection of the non-confidential portion of the bid. Prices, brands, model, or catalog numbers of the items offered, deliveries, and terms of payment shall be available for public inspection following the bid opening regardless of any designation to the contrary.

5.3.15.2 If an interested party wishes to inspect information or data designated by a bidder as confidential, proprietary or a trade secret, such request shall be made in writing. The Chief Procurement Officer shall examine the information or data to determine the validity of any request for nondisclosure. The Chief Procurement Officer shall

inform the parties involved of his or her decision about disclosure in writing. If any of the parties object to the Chief Procurement Officer's decision, a protest must be filed in writing within five calendar days after receiving the decision; otherwise, the Chief Procurement Officer's decision shall be final. Following award of the contract or purchase order, the bids shall be open to public inspection, subject to any continuing prohibition on the disclosure of confidential, proprietary or trade secret information or data.

5.3.16 Mistakes in Bids

5.3.16.1 Mistakes Discovered Before the Bid Opening : A bidder may correct mistakes discovered before the time and date set for bid opening by withdrawing or correcting the bid as provided in "Preopening Modification or Withdrawal of Bids," [subparagraph 5.3.12](#).

5.3.16.2 Mistakes Discovered After the Bid Opening but Before Award: Correction or withdrawal of a bid because of an inadvertent, nonjudgmental mistake in the bid requires careful consideration to protect the integrity of the competitive bidding process, and to assure fairness. If the mistake is attributable to an error in judgment, the bid may not be corrected. A bid correction or withdrawal because of a nonjudgmental mistake is permissible but only to the extent that it is not contrary to the interest of the institution or the fair treatment of other bidders. When the Chief Procurement Officer knows or has reason to conclude that a mistake has been or may have been made, he or she should request the bidder to confirm the bid. Situations in which confirmation should be requested include obvious, apparent errors on the face of the bid or a bid unreasonably lower (or higher in the situation described in [clause 5.3.5.4](#)) than the other bids submitted. Unit price shall be the governing factor if an error is made in extending the unit price. If the bidder alleges a mistake, the bid may be corrected or withdrawn if the conditions set forth below are met:

- a. Minor Informalities or Irregularities: Minor informalities or irregularities, or significant mistakes that can be waived or corrected without prejudice to other bidders, which are evident after examining the bid, are considered matters of form rather than substance; that is, the effect on price, quantity, quality, or terms and conditions is negligible. The Chief Procurement Officer may waive such informalities or irregularities or allow the bidder to correct such mistakes, depending on which is in the best interest of the institution. An example is the failure of a bidder to sign the bid, but only if the unsigned bid is accompanied by other material indicating the bidder's intent to be bound. Another example is the lack of specifications on alternate bids. Additional specifications may be requested to make an accurate determination.
- b. Mistakes Where Intended Correct Bid Is Evident: If the mistake and the intended correct bid are clearly evident on the face of the bid document, the bid shall be corrected to the intended correct bid and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid document are typographical errors, errors in extending unit prices, transposition errors, and arithmetical errors.
- c. Mistakes Where Intended Correct Bid Is Not Evident: A bidder may be

permitted to withdraw a low bid if: (1) a mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or (2) the bidder submits proof of evidentiary value which clearly and convincingly demonstrates the mistake.

5.3.16.3 The Chief Procurement Officer may reject an erroneous bid after the bid opening, upon request of the bidder, if all of the following conditions exist:

- a. An error was made that materially affected the bid or proposal;
- b. Rejection of the bid or proposal would not cause a hardship on the institution other than losing an opportunity to receive materials, supplies, equipment, services and/or printing at a reduced cost; and
- c. Enforcement of the part of the bid or proposal in error would be unconscionable.

5.3.16.4 Mistakes Discovered After Award: Mistakes shall not be corrected after award of the contract except where the Chief Procurement Officer makes a written determination that it would be unconscionable not to allow the mistake to be corrected.

5.3.16.5 Chief Procurement Officer's Determination: When a bid is corrected or withdrawn, or correction or withdrawal is denied, the Chief Procurement Officer shall prepare a written determination showing that the relief was granted or denied in accordance with this Purchasing Procedures Manual.

5.3.17 Bid Evaluation and Award

5.3.17.1 The contract is to be awarded to the lowest responsible and responsive bidder. No bid shall be evaluated for any requirements or criteria that are not disclosed in the Request for Bids.

5.3.17.2 A bid may be rejected if: (a) the product quoted does not meet compatibility requirements; (b) where in certain circumstances a partial bid is not acceptable; (c) when timely delivery requirements are significant to the purchase; and/or (d) when the bidder fails to comply with the stated terms and conditions.

5.3.17.3 Following determination of product acceptability, if any is required; bids will be evaluated to determine the lowest responsible and responsive bidder. Consideration shall be given to such factors as quality (meeting specifications), price, time of delivery, cost of delivery and other terms and conditions considered prudent, as set forth in the Request for Bids. In some cases, multiple or split awards may be made if determined by the Chief Procurement Officer to be in the best interest of the institution.

5.3.17.4 Nothing in this section shall preclude an award to a bidder submitting a higher quality product or item than that designated in the Request for Bids if such bidder submitted the lowest bid.

5.3.17.5 Vendors that have been debarred or are in default with Unemployment Compensation or Workers' Compensation are not eligible to bid on or receive contracts to supply

goods and services to the state and its subdivisions for a specified period of time. See [paragraph 4.4](#) in this Manual for more information on debarment and [paragraph 4.5](#) about default with Unemployment Compensation or Workers' Compensation. Before a contract or purchase order is issued the debarment list and the Bureau of Employment programs' default database should be checked to make sure a vendor is not listed. If the vendor is listed, the vendor is not eligible for a contract or purchase order.

5.3.17.6 Negotiation with a bidder or bidders is not permitted; however, clarifications that do not alter a bid are permitted.

5.3.18 Low Tie Bids

5.3.18.1 Low tie bids are low responsive bids from responsible bidders that are identical in price and which meet all the requirements and criteria set forth in the Request for Bids.

5.3.18.2 At the discretion of the Chief Procurement Officer, award may be made in any permissible manner that will discourage tie bids. When tie bids occur, the tie will be broken and an award made by allowing the tie bidders to make a "best and final offer," by a flip of a coin, or any other impartial method deemed prudent by the Chief Procurement Officer.

5.3.19 Documentation of Award

5.3.19.1 Following an award, if it is not apparent on the face of the bid, a record showing the basis for determining the successful bid shall be made a part of the purchasing file, and the successful bid shall be marked as the successful bid.

5.3.20 Publicizing Awards

5.3.20.1 Written notice via letter, memorandum, electronic transmission or a purchase order shall be sent to the successful bidder. Notice of the award shall be posted or otherwise made available in the institution's purchasing office for competitive transactions greater than \$25,000.

5.4 Request for Proposals (RFP)

5.4.1 Competitive sealed bidding is the preferred method of procurement; however, if the use of competitive sealed bidding is either not practicable or not advantageous to the institution, a contract may be entered into by a Request for Proposals.

5.4.2 The words "practicable" and "advantageous" are to be given ordinary dictionary meanings. The term "practicable" denotes what may be accomplished or put into practical application. "Advantageous" connotes a judgmental assessment of what is in the institution's best interest. A Request for Proposals may be practicable, that is, reasonably possible, but not necessarily advantageous, that is, in the institution's best interest.

5.4.3 The key element in determining advantageousness will be the need for flexibility. The Request for Proposals method allows for the following:

- a. It permits discussions with competing offeror and changes in their proposals, including price; and
- b. It allows comparative judgmental evaluations to be made when selecting among acceptable proposals for award of the contract.

5.4.4 Competitive sealed bidding normally requires award to a low bidder who agrees in its bid to perform without condition or reservation in accordance with the purchase description, delivery or performance schedule, and all other terms and conditions of the Request for Bids. Factors to be considered in determining whether competitive sealed bidding is not practicable include:

- a. Whether the contract needs to be other than a fixed-type;
- b. Whether oral or written discussions may need to be conducted with offerors concerning technical and price aspects of their proposals;
- c. Whether offerors may need to be afforded the opportunity to revise their proposals, including price;
- d. Whether the award may need to be based upon a comparative evaluation, as stated in the Request for Proposals, or differing price, quality, and contractual factors in order to determine the most advantageous offering. Quality factors include technical and performance capability and the content of the technical proposal; and
- e. Whether the primary consideration in determining award may not be the price.

5.4.5 An important difference between Requests for Proposals and competitive sealed bidding is the finality of initial offers. Under a Request for Proposals, alterations in the nature of the proposal and/or in prices may be made after proposals are opened.

5.4.6 The Request for Proposals method of purchasing is used to obtain goods and services when sufficient knowledge or expertise does not exist to adequately specify the details of the desired result. The desired result is written into the Request for Proposals. The vendor responds to the Request for Proposals with a proposal identifying the intended approach to meet the desired result along with a proposed price or fee. Terms and conditions of the contract shall be included in the Request for Proposals, along with pre-established award criteria based on value or points. Whenever desirable, interviews may be conducted with interested parties for clarification and/or determination of qualifications and experience prior to an award. Requests for Proposals go beyond price alone. They also look at the vendor's ability and resources to furnish the desired service to get the desired result. Quality of service and performance are important considerations. Requests for Proposals are primarily used for large dollar projects requiring a high level of expertise on the part of the vendor.

5.5 Content of the Request for Proposals

5.5.1 A Request for Proposals shall be prepared in accordance with [subparagraph 5.3.2](#), Request for Bids, and may also include:

- a. A statement that discussions may be held with offerors who submit proposals that are under further or final consideration for award, but that proposals may be accepted without such discussions; and
- b. A statement of when and how price should be submitted.

5.6 Proposal Preparation Time

5.6.1 Proposal preparation time shall be set to provide vendors a reasonable time to prepare their proposals. Thirty calendar days is recommended but the Chief Procurement Officer shall provide not less than 14 calendar days.

5.7 Public Notice (Advertising and Posting)

5.7.1 Public notice shall be given by distributing the Request for Proposals in the same manner provided for distributing a Request for Bids in [subparagraph 5.3.7](#), Advertising for Bids \$25,000 and above.

5.8 Preproposal Conferences

5.8.1 Preproposal conferences may be conducted in accordance with [subparagraph 5.3.10](#), Prebid Conferences. Any such conference should be held prior to submission of initial proposals.

5.9 Addendum to Request for Proposals

5.9.1 An addendum to a Request for Proposals may be made in accordance with [subparagraph 5.3.11](#), Addendum to an Invitation to Bid, prior to the date and time for submission of proposals.

5.10 Preopening Modification or Withdrawal of Proposals

5.10.1 Proposals may be modified or withdrawn prior to the established date and time for the proposal opening in accordance with [subparagraph 5.3.12](#), Preopening Modification or Withdrawal of Bids.

5.11 Late Proposals, Late Withdrawals and Late Modifications

5.11.1 Any proposal, withdrawal, or modification received after the established date and time due at the place designated for receipt of proposals is late.

5.12 Receipt and Registration of Proposals

5.12.1 Packages containing proposals and modifications shall be date and time stamped upon receipt and held in a secure place until the established date and time due. Proposals shall be opened in the presence of one or more witnesses who are employees of the institution. After the date established for receipt of proposals, a register of all proposals shall be prepared which shall include the name and address

of each offeror, the number of modifications received, if any, and a description sufficient to identify the goods or services offered. Proposals and modifications shall be shown only to institutional personnel having a legitimate interest in them prior to award of a contract.

5.13 Evaluation of Proposals

5.13.1 The Request for Proposals shall state all of the evaluation factors, their relative importance, and how the fee or price will be evaluated in relation to the other evaluative criteria.

5.13.2 The evaluation of proposals shall be based on the evaluation factors set forth in the Request for Proposals. Numerical rating systems may be used but are not required. Factors or evaluative criteria not stated in the Request for Proposals shall not be considered in evaluating the proposals.

5.13.3 For the purpose of conducting discussions with individual offerors, proposals shall be initially classified as acceptable, potentially acceptable, or unacceptable.

5.14 Proposal Discussions with Individual Offerors

5.14.1 The term "offerors" includes only those vendors submitting proposals that are acceptable or potentially acceptable. The term shall not include vendors who submitted unacceptable proposals.

5.14.2 Discussions or interviews may be held to promote understanding of the institution's requirements and the offerors' proposals, and to facilitate arriving at a contract that will be most advantageous to the institution taking into consideration price and the other evaluation factors set forth in the Request for Proposals.

5.14.3 Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussions, interviews and revisions of proposals. The Chief Procurement Officer should establish procedures and schedules for conducting discussions and interviews. If during discussions and interviews, there is a need for a substantial clarification or a change in the Request for Proposals, it may be amended to incorporate such clarification or change. Auction techniques (revealing one offeror's proposal to another) and disclosure of any information derived from competing proposals are prohibited. Any substantial oral clarification of a proposal shall be reduced to writing by the offeror.

5.14.4 Best and Final Offers: The Chief Procurement Officer shall establish a common date and time for the submission of best and final offers if necessary. Best and final offers shall be submitted only once; provided, however, the Chief Procurement Officer may make a written determination that it is in the institution's best interest to conduct additional discussions or change the institution's requirements and require another submission of best and final offers. Otherwise, no discussion of or changes in the best and final offers shall be allowed prior to award. Offerors shall also be informed that if they do not submit a notice of withdrawal or another best and final offer, their immediate previous offer will be construed as their best and final offer.

5.15 Mistakes in Proposals

5.15.1 Mistakes Discovered Before An Award: When the Chief Procurement Officer knows or has reason to conclude before an award that a mistake has been made in a proposal, he or she should request the offeror to confirm the proposal. If the offeror alleges a mistake, the proposal may be corrected or withdrawn during any discussions or interviews that are held, or if the conditions set forth below are met. The following presents four situations in which mistakes in proposals are discovered after receipt of proposals but before award:

- a. Once discussions are commenced with any offeror or after best and final offers are requested, any offeror may freely correct any mistake by modifying or withdrawing the proposal until the date and time set for receipt for best and final offers.
- b. Minor informalities, unless otherwise corrected by an offeror as provided herein, shall be treated as they are under competitive sealed bidding in [subparagraph 5.3.16](#), Mistakes in Bids, [clause 5.3.16.3](#).
- c. If discussions are not held or if the best and final offers upon which the award will be made have been received, mistakes may be corrected and the intended correct offer considered only if:
 1. the mistake and the intended correct offer are clearly evident on the face of the proposal, in this event the proposal may not be withdrawn; or
 2. the mistake is not clearly evident on the face of the proposal, but the offeror submits proof of evidentiary value which clearly and convincingly demonstrates both the existence of a mistake and the intended correct offer, and such correction would not be contrary to the fair and equal treatment of the other offerors.
- d. If discussions or interviews are not held, or if the best and final offers upon which award will be made have been received, the offeror may be permitted to withdraw the proposal if:
 1. the mistake is clearly evident on the face of the proposal and the intended correct offer is not;
 2. the offeror submits proof of evidentiary value which clearly and convincingly demonstrates the intended correct offer; or
 3. the offeror submits proof of evidentiary value which clearly and convincingly demonstrates the intended correct offer, but to allow correction would be contrary to the fair and equal treatment of the other offerors.

5.15.2 Mistakes Discovered After Award: Mistakes discovered after an award shall not be corrected after the contract is issued except when the Chief Procurement Officer finds it would be unconscionable not to allow the mistake to be corrected.

- 5.15.3 Documentation of Determination: When a proposal is corrected or withdrawn, or correction or withdrawal is denied, a written determination shall be prepared showing that relief was granted or denied. The Chief Procurement Officer shall prepare the determination, except when the decision was made under the [clause 5.3.16.3](#), Minor Informalities or Irregularities. In this situation, the Buyer handling the procurement may prepare the determination.

5.16 Award

- 5.16.1 The Chief Procurement Officer or designee shall make a written determination showing the basis on which the award was found to be most advantageous to the institution based on the factors and evaluative criteria set forth in the Request for Proposals.
- 5.16.2 Vendors that have been debarred or are in default with Unemployment Compensation or Workers' Compensation are not eligible to bid on or receive contracts to supply goods and services to the state and its subdivisions for a specified period of time. See [paragraph 4.4](#) in this Manual for more information on debarment and [paragraph 4.5](#) about default with Unemployment Compensation or Workers' Compensation. Before a contract or purchase order is issued the debarment list and Bureau of Employment Programs' database should be checked to make sure a vendor is not listed. If the vendor is listed, the vendor is not eligible for a contract or purchase order.

5.17 Competitive Selection Procedures for Professional Services

- 5.17.1 These procedures apply to procurement of the services of accountants, land surveyors, clergy, physicians, lawyers, or others as applicable. Except as authorized under Sole/Single Source Procurement or Emergency Procurement, formal competitive selection procedures shall be used for procurement of professional services in excess of \$25,000. For the services of architects and engineers, please refer to subparagraph 5.17.3.
- 5.17.2 The competitive selection procedure for professional services is similar to the process used for competitive sealed proposals (Request for Proposals); however, greater weight is given to the ability to perform the service as reflected by technical training, education and experience, and in some cases artistic and aesthetic values and capabilities. In these cases, price may be a secondary consideration.
- 5.17.3 See [subparagraph 5.16.2](#) about the prohibition on awarding contracts to vendors that have been debarred or are in default with Unemployment Compensation or Workers' Compensation
- 5.17.4 Hiring Architects and Engineers: The process for hiring architects and engineers is set forth in [Chapter 5G of the West Virginia Code](#). The Legislature has decided that it is the policy of the state, and its political subdivisions, to procure architectural or engineering services or both on the basis of demonstrated competence and qualification for the type of professional services required. The contract for architectural and engineering services shall be AIA Document B141, Agreement Between Owner and Architect, with the standard Supplementary Conditions for this agreement that have been approved by the Attorney General [\[click here for forms and](#)

[instructions for A&E Services](#)].

5.17.4.1 Procurement of Architectural and Engineering Services for Projects Estimated to Cost \$250,000 and Greater

- a. Firms engaged in the lawful practice of the profession shall be encouraged to submit expressions of interest. See [paragraph 5.19](#) for what to include in a Request for Expressions of Interest.
- b. All such jobs (projects) shall be announced by a Class II legal advertisement with requires publishing in a qualified newspaper once a week for two successive weeks. "Once a week for two successive weeks" means two publications of a legal advertisement in a qualified newspaper occurring within a period of fourteen consecutive days with at least an interval of six full days within the period between the date of the first publication and the date of the second publication. For additional information refer to [West Virginia Code §59-3](#). In addition, a notice should be provided to the West Virginia Chapter of the American Institute of Architects ([AIA West Virginia](#)).
- c. A committee of three to five representatives of the institution initiating the request shall evaluate the statements of qualifications and performance data and other materials submitted by interested firms and select at least three firms that, in their opinion, are best qualified to perform the desired service.
- d. Interviews with each firm selected shall be conducted and the committee shall conduct discussions regarding anticipated concepts and proposed methods of approach to the assignment.
- e. The committee shall then rank, in order of preference, no less than three professional firms deemed to be the most highly qualified to provide the services required, and shall commence scope of service and price negotiations with the highest qualified professional firm for architectural or engineering services.
- f. Should the institution be unable to negotiate a satisfactory contract with the professional firm considered to be the most qualified, at a fee determined to be fair and reasonable, price negotiations with the firm of second choice shall commence. Failing accord with the second most qualified professional firm, the committee shall undertake price negotiations with the third most qualified professional firm.
- g. Should all negotiations fail, the institution may start the Request for Expressions of Interest process over.

5.17.4.2 Procurement of Architectural and Engineering Services for Projects Estimated to Cost Less than \$250,000

- a. In the procurement of architectural and engineering services for projects estimated to cost less than \$250,000, the institution shall seek competition. The institution shall conduct discussions with three or more professional

firms solicited on the basis of known or submitted qualifications for the assignment prior to the awarding of any contract.

- b. If a judgment is made by the Chief Procurement Officer that special circumstances exist and that seeking competition is not practical, the institution may select a firm on the basis of previous satisfactory performance and knowledge of the institution's facilities and needs. After selection, the institution and firm shall develop the scope of services required and negotiate a fee and a contract.

5.18 Public Notice in Competitive Selection Procedures (Advertising and Posting)

- 5.18.1 Notice of the need for professional services shall be made by the Chief Procurement Officer in the form of a Request for Proposals or Request for Expressions of Interest. Adequate public notice shall be given as provided in [paragraph 5.7](#), and such notice shall also consist of distributing the Request for Proposals or Request for Expressions of Interest to persons who are or may be interested in performing the services required by the proposed contract. In the case of architectural and engineering services, notice shall be as described in [subparagraph 5.17.3](#).

5.19 Request for Proposals or Request for Expressions of Interest

- 5.19.1 The Request for Proposals or Request for Expressions of Interest shall be in the form specified by the Chief Procurement Officer and shall contain at least the following information:
 - a. The type of services required;
 - b. A description of the work involved or scope of the project;
 - c. An estimate of when and for how long the services will be required;
 - d. The type of contract to be used;
 - e. A date by which proposals or expressions of interest for the performance of the services shall be submitted;
 - f. A statement that the proposals or expressions of interest shall be in writing;
 - g. A statement that offerors may designate those portions that contains trade secrets or other proprietary data that may remain confidential;
 - h. A request for total cost and price if the institution deems it necessary for budgeting considerations, except for architectural and engineering services. As stipulated in the State Code, fee information is not to be requested for architectural and engineering services in the Request of Expressions of Interest;
 - i. A statement of the minimum information that the proposal or expression of interest should contain, includes the following:

1. the name of the offeror, the location of the offeror's principal place of business and, if different, the place of performance of the proposed contract;
 2. the age of the offeror's business and average number of employees over a previous period of time, if deemed relevant by the Chief Procurement Officer, and specified in the Request for Proposals or Request for Expressions of Interest;
 3. the abilities, qualifications, and experience of all persons who would be assigned to provide the required services;
 4. a listing of other contracts under which services similar in scope, size, or discipline to the required services were performed or undertaken within a previous period of time, as specified in the Request for Proposals or Request for Expressions of Interest; and
 5. a plan, giving as much detail as practical, explaining how the services will be performed; and
- j. The factors and evaluative criteria to be used in the evaluation and selection process and their relative importance.

5.19.2 Proposals shall be evaluated only on the basis of evaluation factors and criteria stated in the Request for Proposals or Request for Expressions of Interest. The following factors and criteria may be appropriate to use in conducting the evaluation. The relative importance of these and other factors and criteria will vary according to the type of service needed. The following are suggested as minimum factors or criteria:

- a. The plan for performing the required service;
- b. Ability to timely perform the services as reflected by technical training and education, general experience, specific experience in providing the required services, and the qualifications and abilities of personnel proposed to be assigned to perform the services;
- c. The personnel, equipment, and facilities to perform the services currently available or demonstrated to be made available at the time of contracting; and
- d. A record of past performance in successfully providing or performing similar work and services.

5.19.3 Preproposal conferences, as appropriate, may be conducted. Such a conference may be held anytime prior to the date established for submission of proposals or expressions of interest.

5.20 Receipt and Handling of Proposals and Expressions of Interest

5.20.1 Receiving, Opening and Registration: Proposals, expressions of interest and modifications shall be date and time stamped upon receipt and held in a secure place

until the established date and time due. Proposals or expressions of interest shall not be disclosed to unauthorized persons prior to an award, but shall be opened in the presence of one or more witnesses who are employees of the institution. A register of proposals or expressions of interest shall be prepared which shall include the name and address of each offeror, the number of modifications received, if any, and a description sufficient to identify the services offered.

- 5.20.2 Requests for Nondisclosure of Data: If an offeror has requested in writing, at the time the proposal or expression of interest is submitted, nondisclosure of trade secrets and other proprietary or confidential data, as provided in [Chapter 29B of the West Virginia Code](#), the Chief Procurement Officer or designee shall examine the request to determine its validity prior to entering into negotiations. If the parties do not agree as to the disclosure of data in the contract, the Chief Procurement Officer conducting the procurement, or a designee, shall inform the offeror in writing what portion of the proposal shall be disclosed and that, unless the offeror withdraws the proposal or protests in writing, the proposal will be so disclosed.

5.21 Selection of the Best Qualified Offerors

- 5.21.1 After evaluating the proposals or expressions of interest based on the stated evaluative factors or criteria and after validating qualifications, the Chief Procurement Officer or designee shall select in the order of their respective qualification rankings no fewer than three acceptable offers, or a lesser number if less than three acceptable proposals were received, that are deemed to be the best qualified to provide the required services. If discussions or interviews are to be held, the Chief Procurement Officer or designee shall schedule a date, time and place and notify the selected offerors; otherwise, the Chief Procurement Officer or designee shall begin fee and contract negotiations, if any are required, with the highest ranked offeror.

5.22 Discussions and Interviews

- 5.22.1 The Chief Procurement Officer, or designee, managing the procurement shall evaluate all proposals submitted and may hold discussions or interviews with any offeror. The purpose of such discussions shall be to:
- a. Determine in greater detail each offeror's qualifications; and/or
 - b. Explore with the offeror the scope and nature of the required services, the offeror's proposed method of performance, and the relative utility of alternative methods of approach.
- 5.22.2 During or following the interviews, the offerors are to be ranked by the evaluation committee from the highest to the least qualified. A record of each evaluator's rankings is to be kept for the purchasing file.
- 5.22.3 The Chief Procurement Officer or designee shall not disclose information derived from proposals submitted by other offerors during discussions and interviews, and other employees of the institution on the evaluation committee shall not disclose information contained in any proposal until after an award has been made. After the award, all proposals or expressions of interest shall be open to public inspection,

except for trade secrets, proprietary and confidential data and information.

5.22.4 Proposals may be modified or withdrawn at any time prior to the conclusion of discussions.

5.23 Negotiation and Award of Contract

5.23.1 The Chief Procurement Officer or designee managing the procurement shall award a contract to the best qualified offeror as determined during the selection process for the required services at a mutually acceptable fee.

5.23.2 If fee and contract negotiations are necessary, the Chief Procurement Officer or designee shall begin such negotiations with the best qualified offeror. Elements of negotiation may include but are not limited to:

- a. Making certain that the offeror and the institution have a clear understanding of the scope of work, specifically, the essential requirements involved in providing the required services;
- b. Arriving at a mutually acceptable agreement, and establishing a fee and reimbursable expenses; and
- c. Determining that the offeror will make available the necessary personnel and facilities to perform the services within the required time.

5.23.3 If negotiations with the best qualified offeror cannot be satisfactorily concluded, the Chief Procurement Officer or designee shall so state in writing giving the reasons therefore and shall place this document in the purchasing file. The Chief Procurement Officer or designee shall advise such offeror of the termination of negotiations which shall be confirmed by written notice.

5.23.4 Upon failure to negotiate a contract with the best qualified offeror, the Chief Procurement Officer or designee may enter into negotiations with the next most qualified offeror. If compensation, contract requirements, and contract documents can be agreed upon, then the contract shall be awarded to that offeror. If negotiations again fail, negotiations shall be terminated and commenced with the next most qualified offeror.

5.23.5 If, after failing to negotiate an agreement with the best qualified offeror, the Chief Procurement Officer may cancel the procurement at any time and begin the process again if he or she determines it is in the best interest of the institution to do so.

5.23.6 See [subparagraph 5.16.2](#) about the prohibition on awarding contracts to vendors that have been debarred or are in default with Unemployment Compensation or Workers' Compensation.

5.24 Notice of Award

5.24.1 Written notice of an award shall be public information and made a part of the purchasing file.

5.25 Memorandum of Evaluation, Negotiation and Award

5.25.1 At the conclusion of negotiations, if any, resulting in a contract award, the Chief Procurement Officer or designee managing the procurement shall prepare a memorandum setting forth the basis of the award. This memorandum shall include but not necessarily be limited to:

- a. How the evaluation factors stated in the request for proposal or request for expressions of interest were applied to determine the best qualified offeror; and
- b. The principal elements of the negotiation, if any, including significant considerations relating to price and other terms of the contract.

5.26 Cancellation of Solicitations; Rejection of Bids, Proposals or Expressions of Interest

5.26.1 These guidelines are intended to provide information to the Chief Procurement Officer concerning cancellation of any solicitations whether issued under competitive sealed bidding, Requests for Proposals or Requests for Expressions of Interest, small purchases, or any other procurement method; and rejection of bids, proposals, or expressions of interest in whole or in part.

5.26.2 Solicitations should only be issued when there is a valid procurement need unless the solicitation states that it is for information purposes only.

5.26.3 Preparing and distributing a solicitation requires the expenditure of time and funds. Businesses likewise incur expenses in examining and responding to solicitations. Although issuance of a solicitation does not compel award of a contract, a solicitation should be canceled only when there are cogent and compelling reasons to believe that the cancellation of the solicitation is in the institution's best interest.

5.26.4 Cancellation of a Solicitation

5.26.4.1 Each solicitation issued by the institution shall state that the solicitation may be canceled.

5.26.4.2 **Cancellation Prior to Opening:** A solicitation may be canceled in whole or in part when the Chief Procurement Officer determines in writing that such action is in the institution's best interest for reasons including but not limited to:

- a. The institution no longer requires the materials, supplies, equipment, services, printing, repairs and alterations or construction;
- b. The institution no longer can reasonably expect to fund the procurement; or
- c. Proposed amendments to the solicitation would be of such magnitude that a new solicitation is desirable.

5.26.4.3 **Cancellation after the Opening:** Prior to award, all bids, proposals or expressions of interest may be rejected in whole or in part when the Chief Procurement Officer

determines in writing that such action is in the institution's best interest for reasons including but not limited to:

- a. The materials, supplies, equipment, services, printing, repairs and alterations, or construction being procured are no longer required;
- b. Ambiguous or otherwise inadequate specifications were part of the solicitation;
- c. The solicitation did not provide for consideration of all factors of significance to the institution;
- d. Prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;
- e. All otherwise acceptable bids, proposals or expressions of interest received are at clearly unreasonable prices; or
- f. There is reason to believe that the bids, proposals or expressions of interest may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith.

5.26.5 Rejection of Individual Bids or Proposals

5.26.5.1 Each solicitation issued by the institution shall provide that any quotation, bid, proposal or expression of interest may be rejected in whole or in part when it is in the best interest of the institution as provided in this Purchasing Procedures Manual.

5.26.5.2 Reasons for Rejection: Reasons for rejecting a quotation, bid, proposal or expression of interest include but are not limited to:

- a. The business that submitted the quotation, bid, proposal or expression of interest is identified as not being a responsible firm;
- b. The quotation, bid, proposal or expression of interest is not responsive, that is, it does not conform in all material respects to the Request for Quotations, the Request for Bids, the Request for Proposals or the Request for Expressions of Interest;
- c. The materials, supplies, equipment, service, printing, repair and alteration, or construction offered is unacceptable by reason of its failure to meet the requirements of the specifications, or permissible alternates, or other acceptable criteria set forth; and
- d. The quoted or proposed price or fee is clearly unreasonable.

5.26.6 Notice of Cancellation or Rejection to Vendors

5.26.6.1 When a solicitation is canceled, notice of cancellation shall be sent to all businesses solicited or known by the Chief Procurement Officer or designee to have received a Request for Quotations, a Request for Bids, a Request for Proposals or a Request for

Expressions of Interest. The notice of cancellation shall:

- a. Identify the solicitation;
- b. Briefly explain the reason for cancellation; and
- c. When appropriate, explain that an opportunity will be given to compete on any resolicitation or any future procurement of similar materials, supplies, equipment, services, printing, repairs and alterations or construction.

5.26.7 Documentation of Cancellation or Rejection

5.26.7.1 The reason(s) for cancellation or rejection shall be made a part of the procurement file and shall be available for public inspection.

5.27 Disposition of Quotations, Bids, Proposals or Expressions of Interest

5.27.1 When quotations, bids, proposals or expressions of interest are rejected, or a solicitation is canceled after quotations, bids, proposals or expressions of interest are received; those which have been opened shall be retained in the procurement file. If they are unopened, they shall be returned to the bidders or offerors upon request, or otherwise retained in the procurement file.

5.28 Sole/Single Source Procurement

5.28.1 Sole source and single source procurement are not permissible unless the materials, supplies, equipment, services and printing needed are available from only one supplier. A requirement for a particular proprietary item does not justify sole or single source procurement if there is more than one potential bidder or offeror for that item. Single source procurement is permitted only when the goods and services are of such a unique nature that they cannot be acquired from any other source. The following are examples of circumstances that could necessitate sole/single source procurement:

- a. Where the compatibility of equipment, accessories, or replacement parts is the paramount consideration;
- b. The item cannot be obtained through ordinary purchasing procedures and methods;
- c. The item is available from a state spending unit or other institution with preference under the West Virginia Code; and
- d. Where specific and unique items are called for on a grant or contract.

5.28.2 The determination as to whether procurement shall be made as a sole/single source shall be made by the Chief Procurement Officer. Such determination and the basis therefore shall be in writing. The Chief Procurement Officer may specify the application of such determination and the duration of its effectiveness. In cases of reasonable doubt, competition should be solicited. Any request that procurement be restricted to one potential supplier shall be accompanied by an explanation as to why

no other will be suitable or acceptable to meet the need.

5.29 Emergency Procurement

5.29.1 Emergency Purchases Using a Purchase Order: Emergency purchases may be made when there exists a threat to public health, welfare, or safety such as may arise by reason of floods, epidemics, riots, equipment failures, loss of essential function of the institution, or to meet bona fide emergencies arising from unforeseen causes, including delays by contractors, delays in transportation, and unanticipated volume of work, provided that such emergency procurement shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the purchase file and shall be open to public inspection. Emergency procurement shall be limited to those materials, supplies, equipment, services, printing, repairs and alterations, or construction items necessary to meet the emergency.

5.29.2 Emergency purchases exceeding \$25,000 that requires a purchase order must receive the prior approval of the Chief Procurement Officer or designee.

5.29.3 Emergency purchases shall not be used for hardship resulting from neglect, poor planning or lack of organization by the spending unit.

5.29.4 Emergency Purchases Using the State Purchase Card: As provided in [West Virginia Code §18B-5-9](#), the Commission and each institution shall maintain one purchase card for use only in and for situations declared to be an emergency by the president and approved by the Chancellor. Such emergencies shall include but not be limited to (1) partial or total destruction of a campus facility; (2) loss of a critical component of utility infrastructure; (3) heating; (4) ventilation or air conditioning failure in an essential academic building; (5) loss of campus road, parking lot or campus entrance; or (6) local, regional, or national emergency situation that has a direct impact on the campus. Use of the purchase card for emergency purchases shall be governed by state law and the rules and procedures issued by the State Auditor.

5.30 Open End Contracts, Federal Contracts, Contracts Issued by Cooperative Buying Groups and Consortia, Bulk Purchase Contracts and Contracts Issued through Reverse Bidding and Electronic Marketplaces

5.30.1 The Commission, the Governing Boards and their institutions may enter into open-end contracts, bulk purchase contracts and contracts issued through reverse bidding and electronic marketplaces for materials, supplies, equipment, services and/or printing to supply their respective needs in the form of statewide contracts, blanket orders or price agreements. Once issued, purchases and acquisition may be made from these contracts without securing any other quotations, bids, proposals, or expressions of interest.

5.30.2 The Commission, the Governing Boards and their institutions may, without securing quotations, bids, proposals or expressions of interest, make purchases from the federal government and from federal government contracts, and contracts issued by cooperative buying groups and consortia, if the materials, supplies, equipment, services, and printing to be purchased are available from the federal government and

from federal government contracts, and if this is the most financially advantageous manner of making such purchases.

5.31 Motor Vehicle Purchases

5.31.1 Purchase and leasing of motor vehicles shall be consistent with state law, the rules, policies and procedures of the Council, Commission and the Governing Board having jurisdiction. The Vice Chancellor for Administration may issue additional policies and procedures if deemed appropriate to manage the purchase and lease of vehicles.

5.32 Leases for Grounds, Buildings, Office Space or Other Space

5.32.1 As provided in [West Virginia Code §18B-5-4\(r\)](#), the Council, Commission and the Governing Boards have the authority, in the name of the state, to lease, or offer to lease, as lessee, any grounds, buildings, office or other space, the rental of which is required by the Council, Commission or the Governing Board for the institutions under their jurisdiction. The lease agreement used should be the agreement preapproved by the Attorney General, without modification to the terms and conditions [\[click here for instructions and lease agreement form\]](#). If the preapproved lease agreement is not used, or there are modifications to the terms and conditions of the preapproved agreement, the agreement must be approved “as to form” by the Attorney General.

5.32.2 The chief executive officer of the Council, Commission or an institution shall certify the following before entering into a lease agreement:

- a. That the grounds, buildings, office space or other space requested is necessarily required for the proper function of the commission or institution;
- b. That the Council, Commission or institution will be responsible for all rent and other necessary payments in connection with the contract or lease; and
- c. That satisfactory grounds, buildings, office space or other space is not available on grounds and in buildings now owned or leased by the Council, Commission or the institution.

5.32.3 The Council, Commission and the Governing Boards are authorized to enter into long-term agreements for buildings, land and space for periods longer than one fiscal year, but not to exceed forty years. Any purchases of real estate, any lease-purchase agreement and any construction of new buildings or other acquisition of buildings, office space or grounds resulting shall be presented by the Council or Commission to the Joint Committee on Government and Finance for prior review. Any such lease shall contain, in substance, all the following provisions:

- a. That the Council, Commission or the Governing Board, as lessee, have the right to cancel the lease without further obligation on the part of the lessee upon giving thirty days' written notice to the lessor at least thirty days prior to the last day of the succeeding month;
- b. That the lease shall be considered canceled without further obligation on the part of the lessee if the Legislature or the federal government fails to

appropriate sufficient funds or otherwise acts to impair the lease or cause it to be canceled; and

- c. That the lease shall be considered renewed for each ensuing fiscal year during the term of the lease unless the Commission or the Governing Board before the end of the then-current fiscal year cancels it.

5.32.4 The Council, Commission or an institution which has leased any grounds, buildings, office space or other space may not order or make permanent changes of any type, unless the Council, Commission or the Governing Board, as appropriate, has first determined that the change is necessary for the proper, efficient and economically sound operation of the institution. A "permanent change" means any addition, alteration, improvement, remodeling, repair or other change involving the expenditure of state funds for the installation of any tangible thing which cannot be economically removed from the grounds, buildings, office space or other space when vacated by the institution.

5.32.5 The chief executive officer of the Council, Commission or the institution may sign leases and other instruments for grounds, buildings, office or other space, once approved by the Commission or Governing Board. Any lease or instrument exceeding \$100,000 annually shall be approved "as to form" by the Attorney General. A lease or other instrument for grounds, buildings, office or other space that contains a term, including any options, of more than six months for its fulfillment shall be filed with the State Auditor.

5.32.6 Leases of \$1,000,000 and above require prior approval of the Council or Commission as provided in the Commission's procedural rule on [Capital Project Management, Title 133, Series 12](#). Lease agreements less than \$1,000,000 shall be approved according to the procedures of the Governing Board. The Council and Commission also may promulgate additional rules necessary to carry out the provisions of this section.

5.33 Lease-Purchases of Capital Improvements and Equipment

5.33.1 As provided in [West Virginia Code §18B-5-4\(q\)](#), the Council, Commission and Governing Boards may enter into lease-purchase agreements for capital improvements and equipment. As provided in the Commission's procedural rule for [Capital Project Management, Title 133, Series 12](#), the Council or Commission, in addition to the Governing Board, must grant prior approval for lease-purchase agreements of \$1,000,000 and above. Lease-purchase agreements shall be presented by the Council or Commission to the Joint Committee on Government and Finance for prior review. Lease-purchase agreements less than \$1,000,000 shall be approved according to the procedures of the Governing Board and do not require Council or Commission approval.

5.33.2 The lease-purchase agreement shall be the agreement preapproved by the Attorney General, without modification to the terms and conditions [\[click here for instructions and lease agreement form\]](#). If the terms and conditions of the preapproved agreement are modified or if a different agreement is used, then "approval as to form" is required by the Attorney General. In addition, a lease-purchase agreement, which exceeds \$100,000 in total, shall be approved by the Attorney General. Any

agreement exceeding \$25,000 and takes more than six month to fulfill shall be filed with the State Auditor.

- 5.33.3 A lease-purchase arrangement shall constitute a special obligation of the State of West Virginia. The obligation under a lease-purchase arrangement so entered may be from any funds legally available to the Council, Commission or institution and must be cancelable at the option of the Council, Commission, Governing Board or institution at the end of any fiscal year. The obligation, any assignment or securitization thereof, shall never constitute an indebtedness of the State of West Virginia or any department, agency or political subdivision thereof, within the meaning of any constitutional provision or statutory limitation, and may not be a charge against the general credit or taxing powers of the state or any political subdivision thereof; and such facts shall be plainly stated in any lease-purchase agreement. Further, the lease-purchase agreement shall prohibit assignment or securitization without consent of the lessee and the approval of the Attorney General. Proposals for any arrangement must be requested in accordance with the requirements of state law and any rules or guidelines of the Council or Commission. The interest component of any lease-purchase obligation shall be exempt from all taxation of the State of West Virginia, except inheritance, estate and transfer taxes. It is the intent of the Legislature that if the requirements set forth in the Internal Revenue Code of 1986, as amended, and any regulations promulgated pursuant thereto are met, the interest component of any lease-purchase obligation also shall be exempt from the gross income of the recipient for purposes of federal income taxation and may be designated by the Council, Commission, Governing Board or the president of the institution as a bank-qualified obligation.

5.34 Purchasing File

- 5.34.1 The Chief Procurement Officer shall maintain a purchasing file for each procurement or acquisition that shall contain all relevant information pertaining to such purchase or acquisition, including but not limited to:
- a. The Request for Quotations, Request for Proposals or Request for Expressions of Interest used to solicit the procurement, any Addenda thereto, and any prebid or preproposal conference summary reports;
 - b. The quotations, bids, proposals or expressions of interest received in response to a solicitation; however, an unopened quotation, bid, proposal or expression of interest and documents or portions of documents in the procurement file stamped or marked “propriety” in accordance with the [West Virginia Code, Chapter 29B](#), shall not be considered a public document or record;
 - c. A bid summary or register of proposals or expressions of interest, and identification and certification of the successful quotation, bid, proposal or expression of interest;
 - d. Why any quotation, bid, proposal or expression of interest is rejected in whole or in part;
 - e. Why a solicitation was canceled;

- f. Justification for award to other than the lowest vendor; and
- g. Vendor protests or complaints.

5.34.2 Except as provided above, the purchasing file shall be a public record open to inspection during normal business hours.

5.34.3 No records in the purchasing file shall be destroyed without the written consent of the Legislative Auditor; however, those files in which the original documentation has been held for at least one year and in which the original documents have been reproduced and archived on microfilm or other equivalent method of duplication, may be destroyed without the written consent of the Legislative Auditor. All files, no matter the storage method, shall be open for inspection by the Legislative Auditor upon request.

5.35 Vendor's Rights and Duties

5.35.1 Each vendor shall be solely responsible for delivery of his or her quotation, bid, proposal, expression of interest, modification or cancellation to the designated location for receipt of quotations, bids, proposals or expressions of interest bids or proposals prior to the specified date and time of the bid or proposal opening; otherwise, it shall be considered late and returned unopened to the vendor.

5.35.2 If there is a conflict between the extension price and the unit price, the unit price shall prevail.

5.35.3 Any changes made by the vendor in the specifications listed in the Request for Quotations, Request for Bids, Request for Proposals or Request for Expressions of Interest must be clearly identified. If the changes are not clearly identified, it will be assumed that items and services offered meet the specifications in all respects.

5.35.4 Vendors are solely responsible for the accuracy of the information in their quotation, bid, proposal and expression of interest and on the envelope used to submit said quotation, bid, proposal or expression of interest.

5.35.5 All sales to the Council, Commission, the Governing Boards and their institutions are exempt from consumer sales tax or excise tax by blanket state exemption and blanket federal exemption.

5.35.6 It is the vendor's exclusive duty and obligation to file protests and requests for reconsideration of suspension, in accordance with the requirements of Section 7 and Section 8 of this Purchasing Procedures Manual; otherwise, they shall be waived.

SECTION 6
**APPROVAL AS TO FORM BY THE ATTORNEY GENERAL, STANDARD FORMS,
TERMS AND CONDITIONS, AND FILING WITH THE STATE AUDITOR**

6.1 Signing Contracts in the Name of the Institution

6.1.1 Contracts entered into pursuant to West Virginia Code §18B-5-4 through §18B-5-7 [[click here for access to Chapter 18B](#)], shall be signed in the name of the institution by the institution's Chief Procurement Officer or by another person in the employ of the institution who is lawfully authorized to sign contracts and has signature authority for the institution.

6.2 Contracts That Do Not Need Attorney General Approval

6.2.1 As provided in [West Virginia Code §18B-5-5](#) a contract or a change order for that contract, including associated documents such as performance and labor/material payment bonds and insurance certificates, which uses terms and conditions or standardized forms previously approved by the Attorney General and does not make substantive changes in the terms and conditions does not require approval by the Attorney General. According to the West Virginia Code, the Attorney General shall make a list of those changes that he or she deems to be substantive and the list, and any changes thereto, shall be published in the State Register.

6.2.2 The following documents have been previously approved by the Attorney General for use by Higher Education Institutions [[click here for Attorney General's memo dated 4/3/2003](#)]:

- a. Standard purchasing forms contained in the Higher Education Purchasing Procedures Manual [[click here for access to these forms](#)];
- b. The WV-96 Agreement Addendum for use with vendor terms and conditions [[click here for access to this form](#)];
- c. AIA Documents A107, A201, A701 and B141 (1997 Editions) with preapproved Supplementary General Conditions for the State of West Virginia (used for construction contracts and architectural/engineering contracts) [[click here for access to these documents](#)];
- d. Purchasing Division performance bond, labor and material payment bond and roofing maintenance bond forms with acknowledgments raised seal on Power of Attorney (used for construction contracts) [[click here for access to these documents](#)];
- e. Certificates of Insurance on Accord[®] or similar form naming the institution as holder and agreeing to give 30 days' notice on cancellation or non-renewal (a binder or declaration page is not sufficient) (primarily used for construction projects) [[click here for access to these documents](#)];
- f. Higher Education Policy Commission Lease Agreement and Lease Purchase Agreement forms [[click here for access to these documents](#)]; and

- g. Department of Administration Leasing Division standard lease terms and conditions [[click here for access to these documents](#)].

6.3 Contracts That Need Attorney General Approval

6.3.1 Pursuant to [West Virginia Code §18B-5-4](#), the following Higher Education documents require the Attorney General's approval “as to form” and sufficiency of execution [[click here for Attorney General memo dated 4/3/2003](#)]:

- a. Contracts for legal services, regardless of the dollar amount;
- b. Contracts or change orders to contracts which make substantive changes to terms and conditions or standardized forms previously approved by the Attorney General. For this purpose, a “substantive” change in one which conflicts with the provisions of the WV-96 Agreement Addendum;
- c. Lease-purchase agreements for capital improvements, including equipment, which total more than \$100,000 over the life of the agreement; and
- d. Leases or other instruments for grounds, buildings, office or other space which exceed \$100,000 annually in rental payments.

6.3.3 A contract that exceeds \$25,000 shall be filed with the State Auditor.

6.3.4 Upon request of the State Auditor, the Chief Procurement Officer shall make all contracts, available to the State Auditor for inspection, including those that do not exceed \$25,000.

6.4 Standardized Forms and Standard Terms and Conditions Previously Approved by the Attorney General

6.4.1 Standard terms and conditions and standardized forms that have been approved by the Attorney General are in Appendix B. These forms, terms and conditions shall not be modified or altered by the institutions and shall be used for all institutional purchases and acquisitions. Any modifications that may be needed shall be made by the Vice Chancellor for Administration after consulting with and receiving the approval of the Attorney General.

SECTION 7
COMPLAINTS, PROTESTS AND RECONSIDERATION

7.1 Complaints

7.1.1 Complaints to the Chief Procurement Officer, a Buyer or other designee about the procurement activities or actions of an institution may be made at any time, either verbally or in writing. If the complaint is made in writing, it should identify the number of the Request for Quotations, Bids, Proposals, Expressions of Interest or purchase order, the reason for the complaint, and the action the complainant is seeking from the institution.

7.1.2 A complaint shall not be considered a protest, but an informal expression of dissatisfaction by the complainant about the procurement activities or actions of an institution. Complaints shall not be considered sufficient reason to delay or postpone evaluation and award of a contract or purchase order. Complainants should seek resolution of their complaint with the Chief Procurement Officer, Buyer, or other designee.

7.2 Protests

7.2.1 Protests based on specifications or improprieties in any type of solicitation that are apparent, or should have been apparent prior to the bid or proposal opening date, must be filed no later than five calendar days prior to the bid or proposal opening or closing date. A protest of the award must be filed no later than five calendar days following award of the contract as posted or otherwise made available in the institution's Purchasing Office for competitive transactions above \$25,000. Information regarding awards may be obtained from the institution's Purchasing Office, and a vendor contemplating a protest has a duty to obtain this information in a timely manner, so that the protest can be made within the stated time limit.

7.2.2 Protests filed prior to an award shall be resolved in accordance with the Purchasing Rule of the Commission and this Purchasing Procedures Manual before an award is made. When a protest has been filed after an award, the Chief Procurement Officer may, after consulting with the Chief Financial Officer and/or president, or in the case of the Commission Office and West Virginia Network for Educational Telecomputing, with the Vice Chancellor for Administration, allow the successful vendor to proceed with fulfilling the contract or order without delay if he or she determines that it is necessary to protect substantial interests of the institution.

7.2.3 A protest must be filed in writing with the Chief Procurement Officer and contain the name and address of the protestor, the number of the Request for Quotations, Bids, Proposals, Expressions of Interest or purchase order, a statement of the grounds for protest and supporting documentation, the relief sought, and if a hearing on the merits of the protest is requested.

7.2.4 The Chief Procurement Officer will review the protest and issue a decision in writing. In the event the protestor requests a hearing on the merits of the protest, the Chief Procurement Officer shall set a time and place for the hearing. The hearing shall be conducted in an informal manner; technical rules of evidence shall not apply. It shall be recorded and an official record shall be prepared. Following the hearing,

the Chief Procurement Officer shall issue a written decision.

7.3 Reconsideration

7.3.1 Reconsideration of a decision on a protest by the Chief Procurement Officer may be requested by an aggrieved party to the institution's Chief Financial Officer. A request for reconsideration shall be made in writing within five calendar days after receiving the Chief Procurement Officer's written decision. It shall contain the name and address of the aggrieved party, the number of the Request for Quotations, Bids, Proposals, Expressions of Interest or purchase order, a statement of the grounds for reconsideration with supporting documentation, a copy of the Chief Procurement Officer's written decision, the relief sought, and if a hearing on the merits is requested.

7.3.2 The Chief Financial Officer shall review the request for reconsideration and issue a decision in writing. In the event the aggrieved party requests a hearing on the merits, the Chief Financial Officer shall set a time and place for the hearing. The hearing shall be conducted in an informal manner; technical rules of evidence shall not apply. It shall be recorded and an official record shall be prepared. Following the hearing, the Chief Financial Officer shall issue a decision in writing to the aggrieved party and his or her decision shall be final.

7.3.3 The institution may refuse to decide any protest or reconsideration when the matter involved is the subject of litigation before a court of competent jurisdiction, or has been decided on the merits by such court. The foregoing shall not apply when the court requests, expects or otherwise expresses interest in the decision of the institution.

7.4 Filing Protests, Requests for Reconsideration and Decisions with the Vice Chancellor for Administration

7.4.1 Within 15 calendar days after receiving a protest or request for reconsideration, the Chief Procurement Officer or the Chief Financial Officer shall forward a copy of the protest or request for reconsideration to the Vice Chancellor for Administration, along with all supporting documentation provided by the protestor.

7.4.2 A decision on a protest by the Chief Procurement Officer and on reconsideration by the Chief Financial Officer shall be forwarded to the Vice Chancellor for Administration at the time such decision is mailed, transmitted or delivered to the protestor.

SECTION 8
SUSPENSION AND RECONSIDERATION

8.1 Suspension

8.1.1 The Chief Procurement Officer shall have the power and authority to suspend, for a period not exceeding one year, the right and privilege of a vendor to bid on purchases of the institution.

8.1.2 The following shall be considered adequate grounds for suspension of a vendor: (a) a vendor has exhibited a pattern of poor performance in fulfilling its contractual obligation(s) including, but not limited to, providing or furnishing commodities, materials or services late, or at a quantity or quality level below that which is specified in the contract, or repeated instances of poor performance; or (b) the vendor has breached any contract entered into pursuant to the provisions of West Virginia Code §18B-5-4 through §18B-5-7 [[click here for access to Chapter 18B](#)] or [Series 30](#) and [Series 43](#) of the Council's and Commission's rules, or the vendor has been convicted of any federal or state law punishable as a felony if such conviction is directly related to the performance of a contract entered into pursuant to West Virginia Code §18B-5-4 through §18B-5-7 or this rule. Any such suspension must be imposed within one year of the date of the act, omission, or conviction the suspension is based upon, or within one year of the Chief Procurement Officer's discovery of such act, omission, or conviction.

8.1.3 When the Chief Procurement Officer determines that sufficient reason or cause exists to warrant suspension of a vendor, the Chief Procurement Officer shall:

- a. Notify the vendor by letter posted by certified mail, or such other means to verify receipt, of such reason or cause; and
- b. Give the vendor sufficient time, but no less than ten calendar days after receipt of the Chief Procurement Officer's letter, to respond in writing, or the vendor may make a written request for a hearing before the Chief Procurement Officer.

8.1.4 If the vendor responds in writing but does not request a hearing, the Chief Procurement Officer shall consider the vendor's response and what bearing, if any, it may have on his or her decision to suspend the vendor. The Chief Procurement Officer may request additional information from the vendor prior to making a decision. If the Chief Procurement Officer decides that the suspension should be made, notice of such suspension and the reason(s) therefore shall be sent to the vendor by letter posted by registered mail.

8.1.5 If the vendor responds in writing and requests a hearing, the Chief Procurement Officer shall schedule one within a reasonable amount of time and notify the vendor by letter, posted by registered mail, of the date, time, and place.

8.1.6 If the vendor or his or her representative does not appear at the hearing, the Chief Procurement Officer may suspend the vendor without further recourse and shall notify the vendor of such suspension and the reason(s) therefore by letter posted by

certified mail or such other means to verify receipt.

- 8.1.7 The Chief Procurement Officer shall act as hearing examiner at any hearing held. An opportunity shall be afforded to all parties to present evidence and arguments with respect to the matters and issues involved. The affected vendor shall have the right to be represented by a representative of his or her choice. The hearing shall be conducted in an informal manner; technical rules of evidence shall not apply. The vendor and Chief Procurement Officer or their respective representatives shall have the right to examine and cross-examine witnesses who testify, and shall have the right to submit rebuttal evidence.
- 8.1.8 All of the testimony, evidence and exhibits presented and any rulings on their admissibility shall be recorded and an official record shall be prepared.
- 8.1.9 Decisions rendered by the Chief Procurement Officer shall be in writing or stated in the record and shall be accompanied by findings of fact and conclusions of law. A copy of the decision and accompanying findings and conclusions shall be provided to each party and his or her representative of record, if any, in person, by certified mail or such other means so as to confirm receipt.

8.2 Reconsideration

- 8.2.1 Reconsideration of a decision on suspension by the Chief Procurement Officer may be requested by an aggrieved party to the institution's Chief Financial Officer. A request for reconsideration shall be made in writing within five calendar days after receiving the Chief Procurement Officer's decision and it shall contain the name and address of the aggrieved party, a statement of the grounds for reconsideration with supporting documentation, the relief sought, and if a hearing on the merits is requested.
- 8.2.2 The Chief Financial Officer will review the request for reconsideration and issue a decision in writing. In the event the aggrieved party requests a hearing on the merits, the Chief Financial Officer shall set a time and place for the conference. The hearing shall be conducted in an informal manner; technical rules of evidence shall not apply. It shall be recorded and an official record shall be prepared. Following the hearing, the Chief Financial Officer shall issue a decision in writing to the aggrieved party and his or her decision shall be final.
- 8.2.3 The institution may refuse to decide any reconsideration where the matter involved is the subject of litigation before a court of competent jurisdiction, or has been decided on the merits by such court. The foregoing shall not apply where the court requests, expects or otherwise expresses interest in the decision of the institution.

8.3 Notification to the Vice Chancellor for Administration

- 8.3.1 An institution that suspends the right and privilege of a vendor to bid on purchases of the institution shall forward a copy of the suspension notice to the Chief Procurement Officer of the Commission Office, who shall maintain a record of such suspensions and shall notify all institutions under the jurisdiction of the Governing Boards as well as the Director of the State Division of Purchasing of such suspension.

8.3.2

If the Chief Procurement Officer of the Commission Office determines that the actions of the vendor leading to the suspension by an institution are of a serious enough nature to justify imposition of a system-wide suspension, he or she shall forward the suspension and his or her recommendation to the Vice Chancellor for Administration for review. If the Vice Chancellor for Administration determines that the actions of the suspended vendor justifies a system-wide suspension, he or she shall notify the vendor and the institutions within the same system as the institution that suspended the vendor that the vendor's suspension shall apply to all institutions within that system for the period of the original suspension.

SECTION 9
RECEIVING AND INVENTORY MANAGEMENT

9.1 Receiving

- 9.1.1 The Chief Procurement Officer shall establish institutional guidelines and procedures for receiving and distributing materials, supplies, equipment, services and printing to departments and offices within the institution. These guidelines and procedures shall be consistent with state law and the rules, policies and procedures of the Council, Commission and the Governing Board having jurisdiction over the institution. They shall be approved by the president and filed with the Vice Chancellor for Administration.
- 9.1.2 Receiving and inspection of materials, supplies, equipment, services and printing is very important, but often an overlooked aspect of procurement. Without adequate receiving procedures, the effort expended in writing specifications, bidding, and buying is meaningless. Only with effective receiving and inspection can the institution be assured of obtaining the products and services ordered. In order to achieve the traditional "three-way match" (a match between the purchase order, the receiving ticket and the invoice), the receiving procedures developed by the Chief Procurement Officer will be an integral part of the purchasing process.
- 9.1.3 The purpose of inspection in the receiving process is to examine commodities and delivery records to make certain that vendors furnish the commodities ordered and to insure that the requirements as set forth in the purchase order are actually met; to protect the institution from receiving merchandise, supplies, equipment, services, and printing that are below the specified quality level; and to prevent unfairness to the other bidders. Institutions should develop internal and departmental procedures to assist the Chief Procurement Officer in the inspection process.

9.2 Receiving Report Required for Commodities Received

- 9.2.1 [West Virginia Code §12-3-10f](#) requires that a receiving report be submitted to the State Auditor verifying the receipt of commodities by a state spending unit. The receiving report shall be an internally generated document, either written or prepared using electronic media that identifies commodities received. Commodities as defined in this section include, but are not limited to, the following: materials, equipment, supplies, printing and automated data processing hardware and software. The State Auditor has developed a form and format for the [receiving report](#). Also, consult the State Auditor's legislative rule, [Title 155, Series 1, Standards for Requisitions for Payment Issued by State Officers on the Auditor](#) for instructions on how to record receipt for purchases.
- 9.2.2 The state officer or employee acting as head of each spending unit is responsible for the completion and timely submission of the receiving reports, which shall be prepared at the original point of receipt of the commodities at the spending unit by employees designated by the head of the spending unit to receive the commodities and prepare the receiving reports. The receiving reports shall include, but not be limited to, the following information: vendor name, description and quantity of commodities received, date commodities are received, whether commodities are

acceptable for payment, and a signed acknowledgment of receipt by the employees receiving the commodities. The receiving reports required by this section shall be prepared within twenty-four hours of the receipt of the commodities.

- 9.2.3 The head of a spending unit may not issue a requisition on the State Auditor in payment of a claim for commodities received by the spending unit unless the receiving report accompanies the claim for payment. The spending unit is liable for a debt improperly incurred or for a payment improperly made if the receiving report was not filed with the state auditor as set forth in this section.

9.3 Inventory

- 9.3.1 The purpose of inventory and inventory management is to track and account for the monies spent for equipment and furnishings so as to protect the assets of the institution.

- 9.3.2 The Chief Procurement Officer shall develop inventory procedures and an inventory management system for the institution that conforms to generally accepted accounting standards and practices, state law, the rules, policies and procedures of the Commission and the Governing Board have jurisdiction over the institution, and to meet the requirements of the institution's annual financial audit. The president shall approve the institution's inventory procedures and inventory system, and a copy of the procedures and a description of the inventory management system shall be filed with the Vice Chancellor for Administration.

- 9.3.3 At a minimum, the inventory procedures and inventory management system developed by the Chief Procurement Officer shall:

- a. Account for all equipment and furnishings with a value at the time of purchase of \$5,000 or more per unit. An institution may elect to inventory equipment and furnishings with a value of less than \$5,000 per unit;
- b. Establish a procedure to number and tag all equipment and furnishings required to be inventoried;
- c. Identify the date of acquisition, model number and serial number, if applicable;
- d. Provide a short physical description;
- e. Identify the cost of acquisition, including shipping and installation costs;
- f. Record the location of equipment or furnishings; i.e., the department, or the building and room number;
- g. Provide the purchase order number and account number(s) used to pay for the purchase; and
- h. When retired, indicate the retirement date, method of retirement and disposal price, if applicable.

- 9.3.4 The Chief Procurement Officer shall perform or provide for an institution-wide audit and inventory of the institution's assets on a schedule consistent with generally accepted accounting standards and as prescribed by law or regulation, when applicable.
- 9.3.5 The institution's inventory report shall be kept on file in the institution's Purchasing Office and made available to appropriate parties upon request.

SECTION 10
DISPOSITION OF SURPLUS EQUIPMENT, SUPPLIES AND MATERIALS

10.1 General Information

10.1.1 The Council, Commission, the Governing Boards and their institutions have the authority to dispose of obsolete, surplus and unusable materials, supplies and equipment, either by transfer to other governmental agencies or institutions, by exchange or trade, or by sale as junk or otherwise.

10.1.2 The Chief Procurement Officer or designee shall identify and inventory the institution's obsolete, surplus and unusable materials, supplies and equipment and shall store these materials, supplies and equipment until such time as they may be disposed of in a manner consistent with state law and the rules, regulations and procedures of the Council, Commission and the Governing Board having jurisdiction over the institution.

10.1.3 Under no circumstances shall any obsolete, surplus and unusable materials, supplies and equipment be sold, transferred or conveyed to any private person, firm or corporation other than at public auction or by sealed bid or as otherwise provided in [West Virginia Code §18B-5-7](#).

10.1.4 The funds an institution receives from the sale of obsolete, surplus and unusable materials, supplies and equipment shall be deposited in the institutional account originally used to purchase said materials, supplies and equipment if such account is readily ascertainable, minus any administrative costs associated with the disposal. If such account is not readily ascertainable or no longer exists, the net proceeds shall be deposited in an appropriate account as determined by the Chief Financial Officer.

10.2 Methods of Disposal of Obsolete, Surplus and Unusable Materials, Supplies and Equipment

10.2.1 Institutions may dispose of obsolete, surplus and unusable materials, supplies and equipment in one or more of the following manners:

- a. Trade in on replacement materials, supplies and equipment if the trade in value is advantageous to the institution as determined by the Chief Procurement Officer or designee;
- b. Sale to the general public by sealed bid or at public auction;
- c. Transfer to municipal, county, state and federal agencies and institutions;
- d. Joining with Marshall University or West Virginia University at their surplus auction or sale; and
- e. Utilizing the Surplus Property Division of the Department of Administration.

10.2.2 The chosen method should be one that has the best prospect of yielding the greatest return to the institution after the cost of the sale has been deducted from the revenue

derived. Transfers to other governmental agencies and institutions should cover those aspects that will enhance the institution's public awareness in the local community and in the interest of providing a needed service to the community.

10.2.3 Trade In

10.2.3.1 The institution may take advantage of a trade in on replacement materials, supplies and equipment if the trade in value is advantageous to the institution as determined by the Chief Procurement Officer or designee.

10.2.4 Sealed Bids or Public Auction

10.2.4.1 Sales by sealed bid or at public auction may be conducted by any institution. Institutions shall, in accordance with state law and the rules, policies and procedures of the Council, Commission and the Governing Board having jurisdiction, develop their own procedures for conducting sales by sealed bid or at public auction; provided that (a) at least ten days prior to the disposition an advertisement of such sale shall be published as a Class II legal advertisement, as provided in [West Virginia Code §59-3](#) (which means two publications of a legal advertisement in a qualified newspaper occurring within a period of fourteen consecutive days with at least an interval of six full days within the period between the date of the first publication and the date of the second publication), in the county in which the equipment, supplies and materials are located; (b) the procedures are documented and available to all who are interested in participating prior to the date for receipt of bids or the date of the auction; and (c) that the institution has the right to reject all bids and that all sales are final.

10.2.4.2 Original documentation of the sealed bid process or auction shall be kept by the institution for a period of one year. After that date, the documentation may be reproduced and archived on microfilm or other equivalent method of duplication for review or auditing purposes.

10.2.5 Transfer to Municipal, County, State and Federal Agencies and Institutions

10.2.5.1 Transfers of obsolete, surplus and unusable materials, supplies and equipment may be made to municipal, county, state and federal agencies and institutions. The Chief Procurement Officer shall keep a record of such transfers containing the following information on each item:

- a. Inventory tag number, if applicable;
- b. Description;
- c. Model number, if applicable;
- d. Serial number, if applicable;
- e. Present value of the materials, supplies and equipment; and
- f. The name and address of the agency or institution receiving the materials, supplies and equipment.

10.2.5.2 These records shall be kept as a public record open to public inspection for a period of two years. These items shall be removed from the institution's inventory.

10.2.6 Joining with Marshall University or West Virginia University at their Surplus Auction or Sale

10.2.6.1 When an institution determines that it is in its best interest, it may join with either Marshall University in Huntington or West Virginia University in Morgantown to dispose of obsolete, surplus and unusable materials, supplies and equipment. Any institution desiring to participate in Marshall University's or West Virginia University's sale or auction shall:

- a. Provide at least 90 days advance notification prior to the date of the upcoming public auction or sale to the university involved;
- b. Deliver and unload the obsolete, surplus and unusable materials, supplies and equipment to the university involved;
- c. Make arrangements with the university involved to obtain the services of a qualified auctioneer, if the sale is by public auction, and provide a physical description of the items being offered for sale for advertising purposes;
- d. Reimburse the university involved for all expenses related to selling the institution's obsolete, surplus and unusable materials, supplies and equipment at the university's auction or sale;
- e. Affix the institution's identification on all items to be sold so as to assure fair allocation of the auction sale proceeds;
- f. Send a representative to the public auction or sale to act on the institution's behalf. Institutions shall have the right to refuse any bid; and
- g. Remove as scrap or otherwise any surplus items not sold during the public auction or sale.

10.2.7 Utilizing the Surplus Property Division of the Department of Administration

10.2.7.1 Institutions may also dispose of obsolete, surplus and unusable materials, supplies and equipment through the Surplus Property Division of the Department of Administration; in such case, all of the rules and regulations of the Department of Administration shall be followed.

10.3 Reporting Requirements

10.3.1 All inventories of surplus equipment, supplies and materials sold shall be kept as a public record open to public inspection for a period of two (2) years.

10.3.2 As provided in [West Virginia Code §18B-5-7\(b\)](#), The Commission or Governing Board, as appropriate, shall report semiannually to the Legislative Auditor all sales of commodities made during the preceding six months. The report shall provide an itemized listing of each commodity sold and include the inventory tag number, a

description of the commodity, the name of the buyer and the price paid by the buyer. The dates for these reports are February 1 for the period of July 1 through December 31 and August 1 for the period of January 1 through June 30. The form and format of this report shall be as required by the Vice Chancellor for Administration and/or the Legislative Auditor [[click here for the reporting form](#)].

10.4 Surplus Removal Contracts

10.4.1 Any contracts for removal of obsolete, surplus and unusable materials, supplies and equipment shall be issued by the Chief Procurement Officer in accordance with state law and the policies, procedures and guidelines of the Council, Commission and the Governing Board having jurisdiction over the institution.

10.5 Redeposit of Funds

10.5.1 All monies derived from the sale of obsolete, surplus and unusable materials, supplies and equipment must be redeposited as follows, provided the account originally used for the purchase is readily ascertainable, minus any administrative costs associated with such sale. If such account is not readily ascertainable or no longer exists, the net proceeds shall be deposited in an appropriate account as determined by the Chief Financial Officer.

- a. Purchases made from general revenue funds must be deposited according to FIMS requirements for refunds into the general revenue fund; and
- b. Purchases made from special revenue funds must be redeposited into the same fund from which the expenditure originally occurred.

SECTION 11 PROMPT PAYMENT

11.1 Payment Function

11.1.1 Each institution shall maintain an accounts payable function that shall be responsible for paying vendor invoices.

11.1.2 Other responsibilities of the accounts payable function shall include explaining the Prompt Payment Act to vendors when needed, completing credit applications and tax exemption forms for vendors, answering vendor payment inquiries, processing intra and inter-institutional payments and funds transfers, making essential services payments, obtaining invoices from vendors and working with vendors to resolve discrepancies between purchase orders and invoices, canceling remaining balances on orders, rolling over open purchase orders as directed, and providing periodic financial reports to institutional departments and state agencies.

11.2 Paying Invoices

11.2.1 Any properly registered and qualified vendor who supplies services or commodities to the institution is entitled to prompt payment upon presentation to the institution of a legitimate uncontested invoice. The institution's accounts payable function shall establish institutional procedures to ensure that vendors are paid promptly.

11.2.2 An institution receiving a legitimate uncontested invoice shall process the invoice within ten working days from its receipt, according to the [Prompt Payment Act of 1990 \(W. Va. Code §5A-3-54\)](#). This means that invoices shall be processed at the institution and forwarded to the State Auditor within ten days of receipt of the vendor's legitimate and uncontested invoice. An invoice shall be deemed to have been received on the date it is marked received by the institution, or three days after the date of the postmark made by the United States Postal Service as evidenced on the envelope in which the invoice was mailed, whichever is earlier. If the invoice is received prior to delivery and acceptance of the goods and services, the invoice shall be deemed to be received on the date the goods are delivered and accepted or the services fully performed and accepted.

11.2.3 The accounts payable function should make every possible effort to use the vendor's invoice and not return it for minor changes or corrections. The accounts payable function shall also maintain ongoing initiatives to explain the terms of the Prompt Payment Act to vendors.

11.2.4 In order to receive timely payment, vendors have the obligation and responsibility to present invoices that are timely and accurate to the accounts payable office or other office identified in the purchase order. Refer to the State Auditor's legislative rule, [Title 155, Series 1, Standards for Requisitions for Payment Issued by State Officers on the Auditor](#). An original invoice is needed. A facsimile or electronically transmitted invoice may be accepted. The invoice should also contain identical information as shown on the purchase order or contract, such as:

- a. Vendor's name and address;

- b. Federal Employer's Identification Number (FEIN);
- c. Purchase order number;
- d. The invoice should be mailed to the proper address at the institution;
- e. Item description and number;
- f. Quantity, unit of measure and/or unit price, and extension of each item;
- g. Invoice total;
- h. Dates of order and shipment;
- i. Back orders, if any;
- j. Cancellations, if any;
- k. Credit memo, if the credit is not part of the invoice;
- l. Invoices for services rendered must include the dates of service and be prepared according to the payment terms in the contract or purchase order; and
- m. Receiving report (for commodities).

11.2.5 Except for essential services, payment of vendor invoices should be accomplished by the traditional "three-way match" (a match between the purchase order, the receiving ticket or electronic receiver, and the invoice). That is, a purchase order should be issued, receipt of the goods shall be reported by the receiver or the department, and an invoice shall be submitted to the accounts payable function.

11.2.6 When materials, supplies, equipment and printing are delivered to a receiving department or location, receipt of the goods shall be reported to the accounts payable function. In all other instances, the accounts payable function shall obtain a written or electronic certification of receipt from the receiver in the department receiving the goods or services. With this certification of receipt, the accounts payable function, in accordance with the Prompt Payment Act, shall prepare and process a payment voucher within ten working days of receipt of the vendor's uncontested invoice. See the requirement in [paragraph 9.2](#) for a receiving report.

11.3 Interest on Late Payment

11.3.1 [The Prompt Payment Act of 1990, West Virginia Code §5A-3-54](#), entitles a vendor to interest on legitimate and uncontested invoices that have not been paid from the 61st day after the invoice was received until the date when the check was mailed to the vendor. The Act considers an invoice uncontested when it accurately covers the goods and services received. If the invoice is received prior to delivery and acceptance of the goods and services, the invoice shall be deemed to be received on the date the goods are delivered and accepted or the services fully performed and

accepted. In order to receive payment for interest if entitled, a vendor must make a request in writing and provide proof that the vendor received a check for payment of the invoice after the 60 day time limit. The State Auditor's Office will calculate the interest and pay any amounts by charging the appropriate account of the institution.

11.3.2 The following provides information to the institution in administering the Prompt Payment Act of 1990:

- a. The accounts payable function should indicate the date of receipt of the goods or services in a prominent place on the face of the original invoice. The original receiving document, whatever its form, should be kept in the institution's files for future reference.
- b. All invoices should be date stamped upon receipt. The accounts payable function should keep the envelope, or a photocopy, in which the invoice was mailed in the institution's files for future reference. To establish the reasonable time allowed for mail delivery, state law allows three days after the postmark date as evidence of the date received. If an envelope is not available or does not have a dated postmark, the accounts payable function may keep other documentation in its files as evidence of the date of receipt of invoice.
- c. If an institution contests an invoice for any reason which ultimately delays payment, the accounts payable function shall immediately return the invoice to the vendor with a written explanation of why the invoice is being returned. Invoices shall be contested within 30 days of receipt of the invoice. A copy of the written explanation shall be kept in the institution's files for future reference. Upon receipt of a corrected invoice, the accounts payable function should process the invoice as indicated in clauses "a" and "b" above.
- d. The accounts payable function should process a legitimate uncontested invoice for payment within ten working days from receipt.
- e. If a vendor believes he or she is entitled to interest, he/she must request this interest, *in writing*, from either the institution or the State Auditor's Office. This request should be accompanied by a copy of the purchase order, the invoice, the check, and the envelope in which the check was mailed with the postmark date.
- f. If an institution receives a written request from a vendor for payment of interest, it shall be the accounts payable function's responsibility to forward the request to the State Auditor and either confirm the vendor's request or show cause why the institution should *not* pay interest. This action shall be taken within ten working days of receipt of the request. If there is disagreement between the institution and the vendor, the State Auditor shall be the final arbitrator of the dispute.
- g. Acceptable documentation to establish the invoice date on a legitimate uncontested invoice shall be the latest of:
 1. the date on which the invoice is marked "*received*" by the institution;

2. the postmark date from the envelope in which the vendor's invoice was mailed plus three days;
 3. the invoice date supplied by the vendor on the invoice;
 4. the date of receipt of goods/services as shown on an original receiving document; or
 5. the mutually agreed upon date that a contested invoice is resolved as evidenced in writing.
- h. Acceptable documentation to establish the date the check was mailed to the vendor shall be:
1. the postmark date, if one is shown, on the envelope in which the check was mailed;
 2. the date certified by the institution as the date the check was mailed; or
 3. three days after the check date.

11.4 Essential Services

11.4.1 A special class of goods and services known as essential services shall be paid by the accounts payable function without a purchase order. This category includes noncompetitive, routine, and repetitive purchases. The Chief Procurement Officer may require departments to request payment of these goods and services on a locally developed form such as a Department Purchase Order (DPO). In this case, authorization to make payment shall be made by the appropriate department head or higher authority. Processing or issuance of DPO's by the Purchasing Department shall not be required for payment of invoices for these goods and services.

11.4.2 Essential services include but are not necessarily limited to the following:

- a. License fees of all types;
- b. Utilities of all types, including cable TV and connections and disconnections;
- c. Federal, state, county, and municipal fees and assessments;
- d. Postage;
- e. Association dues;
- f. Accreditation fees;
- g. Books and related items, including those for libraries and bookstores;
- h. Hospitality expenses;

- i. Employee travel, subsistence, and other reimbursement;
- j. Athletic and academic team travel and related expenses.
- k. Shipping, handling, and freight charges;
- l. Advertising;
- m. Subscriptions, periodicals, and publications;
- n. Software, and software license and maintenance agreements that do not contain terms and conditions which conflict with the WV-96 form or have been brought into compliance with use of the WV-96 form;
- o. Motor vehicle and aircraft fuel;
- p. Resale merchandise, sundries, food, and related items used by auxiliary services;
- q. Cash advances;
- r. Maintenance contracts that do not contain terms and conditions which conflict with the WV-96 form or have been brought into compliance with use of the WV-96 form;
- s. Temporary space rentals that do not contain terms and conditions which conflict with the WV-96 form or have been brought into compliance with use of the WV-96 form;
- t. Refunds;
- u. Credit card fees and charges and bank fees;
- v. Inter-library loan charges;
- w. Inter/intra-institutional charges and fund transfers;
- x. Student awards, scholarships, stipends, loans, and grants of all types;
- y. Registration and tuition fees;
- z. Insurance premiums;
- aa. Medical and doctor's fees, prescriptions, drugs, medical sundries, fees for human subjects, medical studies, tests, x-rays, CAT scans, MRIs, and emergency medical procedures and tests of all types; and
- ab. Contracts for artists, entertainers and speakers with terms and conditions which do not conflict with the WV-96 form, and adjudicators and others who are charging travel expenses only for their services.

11.4.3 In all instances, sufficient information shall be kept by the accounts payable function on payment of essential services to meet the "*report card*" requirements of the State Code.

SECTION 12
WEST VIRGINIA BUSINESS REPORT CARD

12.1 Report Card on West Virginia Businesses

12.1.1 Each institution shall prepare an annual report, in the format prescribed by the Vice Chancellor for Administration, which shall include but not be limited to, information regarding the number of out-of-state entities with which the institution contracted, the number of in-state firms with which the institution contracted, the dollar amount of each contract, the equipment, commodity or service for which the contract was let, and the institution's recommendations, if any, on the manner in which purchasing procedures can be improved. This report shall be submitted to the Vice Chancellor for Administration by the 1st day of October for the preceding fiscal year.

12.1.2 The Vice Chancellor for Administration shall compile the reports submitted by each institution into the Commission's annual report card which is to be submitted to the Finance Committees of the House of Delegates and the Senate by the 15th day of January of each year.

12.2 Format and Data for Report Card

12.2.1 Standard reports have been developed which meet the requirements established by the Legislature for institutions to report their purchasing transactions with in-state and out-of-state vendors. It is the responsibility of each institution to ensure that the data it inputs into the institution's financial information system is complete and can be used to generate these reports, and that the data it reports to the Vice Chancellor for Administration for the West Virginia Business Report Card is complete, current, reliable and accurate.

12.2.2 The data reported will consist of the following:

- a. The object code numbers and descriptions from the State object codes published in the Expenditure Schedule Instructions issued by the Department of Administration for: *(1) Current Expenses* (excluding non-vendor expenditures such as travel reimbursement to employees, payments to state government agencies, and reimbursement to employees for educational training), *(2) Repairs and Alterations*, *(3) Assets*, and some of the object code descriptions for *(4) Other Extraordinary Disbursements* -- which shall be identified yearly by the Commission Office;
- b. Purchase order number, if applicable;
- c. Vendor name; and
- d. Total amount expended during the reporting period for each purchase order and/or vendor. The total amount will be listed in one of three columns: in-state, out-of-state, or out-of-state with a West Virginia branch.

12.2.3 The institutions shall report the total expenditures for each vendor in the reporting period for the object code descriptions identified by the Commission Office, even

those for which purchase orders were not issued.

12.3 Recommendations for Improving Purchasing Procedures

- 12.3.1 Institutions are encouraged to provide the Vice Chancellor for Administration with recommendations on the manner in which purchasing procedures and processes can be improved. These will be reviewed and considered for inclusion in the Commission's report to the Finance Committees of the House of Delegates and the Senate.

SECTION 13 PERFORMANCE AUDITS

13.1 Legislative Performance Audit

13.1.1 [West Virginia Code §18B-5-4\(n\)](#) calls for the Joint Committee on Government and Finance to conduct an independent performance audit of all purchasing functions and duties performed at any institution of higher education each fiscal year. The Council, Commission and the Governing Boards shall be responsible for paying the cost of the audits from funds appropriated to them.

13.1.2 Each institution shall have available all records and supporting documentation for items that were purchased during a given fiscal year. Information in the purchasing file for each vendor shall include, but not necessarily be limited to the following:

- a. Vendor's name and complete address;
- b. Telephone number, if the quotation was obtained via telephone;
- c. Complete item description;
- d. Bid for each item and the extended price;
- e. Name of person contacted and providing the bid; and
- f. Name of person at the institution receiving the bid/price via telephone.

13.1.3 The Purchasing Department at each institution may be called upon to provide the following information for the audit:

- a. Total dollars spent on equipment, services, repairs and alterations, and other items;
- b. Total number of vendors contracted with and identified as being either in-state, out-of-state, or out-of-state with an in-state branch;
- c. Total dollar amount of items purchased in-state, out-of-state, or out-of-state with an in-state branch;
- d. Number of items put out for competitive bid; and
- e. Vendor name, address, price quote and reason for award or rejection of bid(s) on each Request for Quotations, Request for Bids, Request for Proposals or Request for Expressions of Interest.

13.1.4 All purchasing documents shall be available for inspection by the performance auditor. No records in the purchasing file shall be destroyed without the written consent of the Legislative Auditor. Those files in which the original documentation has been held for at least one year and in which the original documents have been reproduced and archived on microfilm or other equivalent method of duplication may

be destroyed without the consent of the Legislative Auditor.

13.2 Purchasing Audits Performed by the Commission

13.2.1 The Vice Chancellor for Administration may provide for a periodic audit of institutions for compliance with the rules, policies and procedures of the Commission, upon request of the Commission.

13.2.2 As provided in [West Virginia Code §18B-5-9\(k\)\(1\)](#), the Commission also has an obligation to conduct a performance audit of the policies, procedures and results of the procurement of goods and services by the state institutions of higher education. The Commission must also make a report to the Legislative Oversight Committee on Educational Accountability (LOCEA) on the results of the performance audits, together with any recommendations for additional actions that might be taken to improve the efficiency, effectiveness and economy of the administrative operations of the institutions and the Commission.

13.2.3 The institutions shall have available the documents and files called for in subparagraphs 13.1.2 and 13.1.3.

13.3 Internal Purchasing Audits Performed by the Chief Procurement Officer

13.3.1 The Chief Procurement Officer may, at his or her discretion, or in the absence of a Legislative Performance Audit for any fiscal year, provide for an independent audit of the institution's purchasing function, and for any delegations of purchasing authority. The Chief Procurement Officer may also carry out the audit at the request of the Vice Chancellor for Administration, the institution's president, or its Chief Financial Officer. It is recommended that each institution conduct an internal audit of its purchasing function at least once every two years to ensure compliance with state law and the rules, policies and procedures of the Governing Board having jurisdiction over the institution.

13.3.2 Any internal audit conducted by the institution should be documented in an internal report, detailing any irregularities and any recommendations for improving the institution's purchasing procedures. This report is to be made available to the performance auditor. The Chief Procurement Officer shall be responsible for the method of conducting the internal audit.

Appendix A Glossary

DEFINITIONS

The words defined in the Higher Education Purchasing Procedures manual shall have the meanings set forth below whenever they appear unless:

- a. the context in which they are used clearly requires a different meaning; or
- b. a different definition is prescribed for a particular section or provision.

Addendum: An official written modification to specifications or other documents in a request for quotations or request for proposal issued by the purchasing office of an institution prior to receiving quotations or proposals.

Assets: Property of all kinds that has an appreciable and calculable period of usefulness of more than one year and is intended to be held and used, such as land, buildings, machinery, furniture, roads, bridges and other equipment.

Authorized Signature: The signature of an individual empowered by a superior authority to enter into a contractual agreement that binds an institution and a vendor to the stated terms, conditions and obligations of performance.

Bid: An offer to perform a contract for services, work and labor, or the supplying of materials or goods at a specified price in accordance with specifications in a request for bids.

Bidder: One who makes a bid.

Buyer: An individual designated by a chief procurement officer to perform designated purchasing and acquisition functions as authorized by the chief procurement officer.

Bid Bond: A type of indemnity bond that must be submitted at the time of the bid and which protects the institution in the event that the bidder refuses to enter into a contract after the award to him or withdraws his bid before the award.

Bid Sample: A sample furnished by a bidder to show the characteristics of the item offered in a bid.

Board: See Governing Board.

Business: Any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.

Chancellor for Community and Technical College Education: The chief executive officer of the Council employed pursuant to West Virginia Code §18B-2B-3.

Chancellor for Higher Education: The chief executive officer of the Commission employed pursuant to West Virginia Code §18B-1B-5.

Change Order: Any written alteration in a specification, delivery point, rate of delivery, period of

performance, price, quantity, quality, terms and conditions or other provisions of any contract or purchase order accomplished by mutual consent of parties to the contract or purchase order.

Chief Procurement Officer: The individual designated by a president of a state institution of higher education to manage, oversee, and direct the purchasing, acquisition, receiving, and inventory management of materials, supplies, equipment, services and printing, and disposal of obsolete, surplus and unusable materials, supplies and equipment of that institution. For the Commission Office and West Virginia Network for Educational Telecomputing, the chief procurement officer, in each case, is the person designated by the Vice Chancellor for Administration.

Commission: See West Virginia Higher Education Policy Commission.

Commission Office: The office that houses the Vice Chancellor for Administration and such professional, administrative, clerical and other employees as may be necessary to assist the Vice Chancellor for Administration perform his or her functions, tasks and duties..

Commodity: Those things that are useful or serviceable, particularly articles or merchandise movable in trade. Materials, supplies, equipment, services, printing, repairs and alterations, and construction, and any article or thing used by or furnished to an institution.

Complainant: One who lodges a complaint.

Complaint: An informal expression of dissatisfaction by a complainant to the chief procurement officer or designee, or to a senior officer of an institution, about the procurement activities of an institution.

Contract: An agreement between two or more persons that creates an obligation to do or not to do a particular thing. An agreement to procure, provide or dispose of goods and services in accordance with mutually acceptable terms and conditions for a specified price.

Contract Modification: See Change Order.

Contractor: One who has a contract with the Commission, Council, a Governing Board or one of its institutions.

Council: See West Virginia Council for Community and Technical College Education.

Data: Recorded information, regardless of form or characteristic.

Descriptive Literature: Information available in the ordinary course of business which shows the characteristics, construction, or operation of an item and which enables the institution to consider whether the item meets its needs.

Designee: A duly-authorized representative of a person holding a superior position.

Employee: An individual drawing a salary from an institution.

Equal: Implies identity but duality, and the use of one thing as a measure of another.

Equipment: Physical assets of a permanent or long-term nature used in the operation of an institution and not intended for sale. Assets that have a life of at least one (1) year and an initial cost in excess

of \$1,000.

Equivalent: Alike; uniform, but not necessarily identical; on the same plane or level with respect to efficiency, worth, value, amount, force, measure, volume, effect, power, or rights.

Expression of Interest: A formal, written statement or document submitted in response to a request for expressions of interest declaring one's desire to provide commodities, usually professional services, to the institution. Frequently an expression of interest does not contain a price proposal; but instead, it is a submission of credentials, experience, and/or a response to written criteria that will be used to judge responses for selection of a successful respondent.

Governing Board(s): The institutional boards of governors created pursuant to West Virginia Code §18B-2A-1.

Higher Education Institution: An institution as defined by Sections 401(f), (g) and (h) of the federal Higher Education Facilities Act of 1963, as amended. See Institution.

Interested Party: An actual or prospective bidder, offeror, or contractor that may be aggrieved by the solicitation or award of a contract, or by the protest.

Institution(s): Any public West Virginia university, college, and community and technical college, individually or collectively, created pursuant to West Virginia Code §18B-1-2. For the purposes of this rule, the Commission Office and West Virginia Network for Educational Telecomputing shall also be considered institutions.

Invitation to Bid: Notice or advertisement of an intent by an institution to purchase or dispose of materials, supplies, equipment, services, printing or any other thing of value. Also, see request for quotations, request for bids, request for proposals, and request for expressions of interest.

Labor and Material Payment Bond: A type of indemnity bond given by an obligor, usually on a public construction project, that guarantees payment of labor and material costs, or guarantees reimbursement to an obligee for any loss suffered due to the conduct of the obligor or a third party.

Maintenance Bond: A type of indemnity bond given by an obligor to an obligee, usually on a public construction project, that guarantees the upkeep or preservation of condition of property, including ordinary repairs necessary and proper from time to time for that purpose.

May: Denotes the permissive.

Open End: A contract for a specified period of time, at an agreed upon price, for an unspecified quantity of product or service.

Performance Bond: Surety bond that guarantees that contractor will fully perform contract and guarantees against breach of contract. Proceeds of bond are to be used to complete contract or compensate for loss in the event of nonperformance.

Person: Any individual, business, corporation, union, committee, club, or other organization, or group of individuals.

President: The chief executive officer of a higher education institution.

Procurement: Buying, purchasing, renting, leasing, or otherwise acquiring materials, supplies, equipment, services, printing, repairs and alterations, or construction. It also includes all functions that pertain to the obtaining of said commodities, including description of requirements, selection, and solicitation of sources, and administration.

Procurement Officer/Agent: See Buyer. The term also includes an authorized representative acting within the limits of authority.

Proposal: An offer; something proffered. An offer, by one person to another, based on stated terms and conditions with reference to some work or undertaking, or for the transfer of property, the acceptance whereof will make a contract between them.

Protest: A formal and written declaration made by an actual or prospective bidder interested in or concerned about a procurement whereby he expresses his dissent or disapproval, or affirms the act against his will. The object of such dissent is to save some right that would be lost to him.

Protestor: Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or the award of a contract and who files a protest.

Purchasing Department/Office: The administrative unit of an institution that is responsible for managing the institution's purchase and acquisition of materials, supplies, equipment, services and printing, receiving, inventory management, and disposal of surplus, obsolete and unusable materials, supplies and equipment.

Quotation: An offer to perform a contract for services, work and labor, or the supplying of materials or goods at a specified price in accordance with specifications in a request for quotations, usually for commodities which cost \$25,000 or less.

Request for Bids: A document issued for the purpose of soliciting a bid, usually for commodities that cost in excess of \$25,000.

Request for Expressions of Interest: A document issued for the purpose of soliciting an expression of interest.

Request for Proposals (RFP): A document issued for the purpose of soliciting a proposal.

Request for Quotations (RFQ): A document used for the purpose of soliciting a quotation or bid.

Requisition: A document prepared by a person or department within an institution that is used to officially request goods or services. It usually contains a specification for the article or service requested.

Resident Vendor or Bidder: A vendor or bidder who meets the requirements of the West Virginia Code for being considered an in-state individual or business.

Responsible Bidder or Vendor: A person who has the capability in all respects to perform contract requirements, and the integrity and reliability that will assure good faith performance.

Responsive Bidder or Vendor: A person who has submitted a bid that conforms in all material respects to the requirements and minimum specifications of the invitation to bid.

Services: The furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports, which are merely incidental to the required performance. This term shall not include employment agreements or collective bargaining agreements.

Shall: Denotes the imperative.

Signature: The name of a person written with his or her own hand; the act of signing one's name. The act of putting one's name at the end of an instrument to attest to its validity.

Specification: A clear and accurate description of the physical, functional, or performance characteristics or nature of the material, supplies, services, equipment, or printing to be purchased. A specification may also include requirements for inspection, testing and preparing the commodity for delivery. The purpose of a specification is to serve as a basis for obtaining a commodity adequate and suitable in a cost-effective manner, taking into account the cost of ownership and operation as well as initial acquisition cost.

Supplies: Materials or items that will be consumed during the normal course of business within one (1) year, or have a useful life of one (1) year or less, and have an initial cost of \$1,000 or less.

State Code: Denotes the West Virginia State Code; the law of the State of West Virginia.

Unauthorized Signature: One made without actual, implied or apparent authority and includes a forgery.

Vendor: A supplier who provides, in exchange for consideration, materials, supplies, equipment, services, printing, repairs, alterations, and construction.

Vendor Preference: The preference given on competitive bids to a West Virginia resident vendor over a low bid from a nonresident vendor in accordance with the Code of West Virginia.

West Virginia Council for Community and Technical College Education (or Council): The council created pursuant to West Virginia Code §18B-2B-1.

West Virginia Higher Education Policy Commission (or Commission): The commission created pursuant to West Virginia Code §18B-1B-1.

Will: Denotes the imperative.

Appendix B

Attorney General Instructions and Standardized Forms Approved By the Attorney General

Instructions on Use of Standardized Forms

The following standardized forms have been approved by the Attorney General in accordance with West Virginia Code §18B-5-4(h). If these standardized forms are used, approval as to form is not required by the Attorney General, as long as no changes or modifications are made. These forms have been printed in smaller type so that they can be copied on the reverse side of the appropriate form, or otherwise provided to prospective bidders in the RFQ, RFP or RFI phase or to the successful vendor when the Purchase Order is issued.

Institutions may make minor adjustments in the format of the forms for ease of use and may print their own logo, name, address, telephone numbers, website and Email address in an appropriate place on the forms; however, substantive changes or modifications that may be needed will be made by the Vice Chancellor for Administration.

Also included in this Appendix is the WV-96 Agreement Addendum, the Problem Summary Form and a memorandum from the Attorney General's Office dated January 1, 1996, which provides instructions and advice on the appropriate use of the WV-96 Agreement Addendum and the Problem Summary Form. The Attorney General will make any changes or modifications that may be needed in these forms.

Attorney
General's
Instructions and
Forms

1. [AG's Memorandum of April 2, 2010](#): Documents Needing Attorney General's Approval.
2. [AG's Memorandum of November 21, 2003](#): Instructions on use of the WV-96 Agreement Addendum and Problem Summary Form.
 - a. [WV-96 Agreement Addendum Form](#)
 - b. [AG's Problem Summary Form](#)
3. [AG's Higher Education Contract Check List \(November 21, 2003\)](#)
4. [AG's Software Licensing Issues \(November 21, 2003\)](#)

Purchasing
Administration
Forms

1. [Designation of Chief Procurement Officer Form](#): This form is to be used by the presidents, the Chancellor, and other administrative head of an institution to designate a Chief Procurement Officer. The form is to be signed in triplicate and an original filed with the Vice Chancellor for Administration, Attorney General and State Auditor.
2. [Designation of Buyer Form](#): This form is to be used by the Chief Procurement Officer to designate Buyers for an institution. The form is to be signed in triplicate and an original filed with the Vice Chancellor for Administration, Attorney General and State Auditor.
3. [WV Consumers Sales and Service Tax and Use Tax Exemption Certificate \(WV/CTS-280\)](#): Purchases exempt from WV Consumers Sales and Service Tax and Use Tax include those purchases by governmental agencies and institutions of (1) the United States; (2) this State (including

its local governments); and (3) any other State (and its local governments) which provides this same exemption to this State. Such purchases by government employees are not exempt unless they are on government business and are billed to and paid for directly by the government. Private persons doing business with government may not claim this exemption. WV Code § 11-15-9(a)(3).

4. **State Purchasing Division Vendor Registration and Disclosure Statement:** Before a vendor is eligible to sell goods and/or services greater than \$25,000 to a higher education institution, West Virginia Code §5A-3-12 requires the vendor to have on file with the State Purchasing Division a completed Vendor Registration & Disclosure Statement and pay a Vendor Registration Fee. The standard form for registering vendors is the [Vendor Registration and Disclosure Statement \(WV-1\)](#). Form [WV-1A](#) may be used for Vendors supplying sole source goods and/or services.
5. [National Institute of Governmental Purchasing's \(NIGP\) Code of Ethics](#) : The ethical practices of the National Institute of Governmental Purchasing (NIGP) should guide the conduct of every person employed in an institution's purchasing function.

Requisition This is an optional institutional form that may be used at the discretion of the Chief Procurement Officer to request the purchase of materials, supplies, equipment, printing and services and is not included in this Manual.

Request for Quotations Request for Quotations: A Request for Quotations (RFQ) form or other form or format, as approved by the Chief Procurement Officer, may be used when soliciting written quotations, proposals and expressions of interest for purchases of \$25,000 and less. When this form is used for written quotations: (1) the Terms and Conditions are to be printed on the reverse side or otherwise provided; (2) the Instructions for Quotations and the summary of the Prompt Payment Act are to be distributed to prospective bidders; and (3) the West Virginia Resident Vendor Preference Certificate is to also be distributed for purchase of material, supplies, equipment and printing. This form is optional and as such, is not included in this Manual.

Request for Bids A Request for Bids (RFB) form may be used at the discretion of the Chief Procurement Officer when soliciting bids, proposals and expressions of interest for all purchases greater than \$25,000. The Terms and Conditions are to be printed on the reverse side of the form or otherwise provided. The Instructions to Bidders and the summary of the Prompt Payment Act are to be distributed with the Request for Bids. The West Virginia Resident Vendor Preference Certificate is to also be distributed with the Request for Bids for purchase of material, supplies, equipment and printing. This form is optional and as such, is not included in this

Manual.

Standard
Purchasing Forms
Approved by the
Attorney General

1. **Instructions to Bidders for Purchases Greater than \$25,000**: The Instructions to Bidders have been approved by the Attorney General for use with the optional forms for Request for Bids, Request for Proposals and Request for Expressions of Interest. They shall be used without modification and distributed to bidders when requesting bids, proposals and expressions of interest greater than \$25,000, even when the optional forms are not used.
3. **Prompt Payment Act of 1990 (W. Va. Code §5A-3-54) Form**: The Prompt Payment Act form shall be distributed to prospective bidders when bids, proposals and expressions of interest are requested for purchases of materials, supplies, equipment, services and printing. It shall be used without modification.
4. **West Virginia Resident Vendor Preference Certificate**: The West Virginia Resident Vendor Preference Form shall be distributed to prospective bidders when bids are requested for purchases of materials, supplies, equipment, and printing. It shall be used without modification. It is not used for purchases of construction and services.
5. **Sample Purchase Order Form**: This form, or an alternate form generated by an institution's financial system which reasonably approximates the format and content, may be used for accepting quotations, bids, proposals or other tenders from vendors for goods and services and to authorize the vendor to provide the specified goods and/or services. This form may also be used to modify or cancel a Purchase Order (Change Order), change an account, change an encumbrance, change a fiscal year, change a vendor's name and address, change contract or purchase order number, and change the contract beginning and completion dates, etc. The Terms and Conditions are to be printed on the reverse side of the form or otherwise provided.

6. [Standard Terms and Conditions for Purchase Orders, Request for Quotations, Request for Bids, Request for Proposals, and Request for Expressions of Interest](#): The Standard Terms and Conditions have been approved by the Attorney General for use on the form for a Purchase Order, and when soliciting bids, proposals and expressions of interest. They shall be printed on the back of these forms or otherwise furnished, and they shall be used without modification. The print size of the Terms and Conditions has been reduced so that they can be printed on the back of the forms.
7. [HEPC 100](#): The HEPC 100 Form may be used to make modifications to Purchase Orders such as a change of account, change of encumbrance, change of fiscal year, change of vendor name and/or address, contract or purchase order number change, and a change in the date of completion. Changes that are made using this form cannot increase or decrease the Purchase Order price or modify the standard Terms and Conditions. The standard Terms and Conditions are to be printed on the reverse side of the form.
8. [Agreement Form HEPC 48](#): This is a standard form that may be used to set forth a simple agreement between an institution and a vendor for services. Agreements of a more complicated nature may require an agreement written specifically for the services to be provided.
9. [WV-96 Agreement Addendum Form](#) : This form is to be distributed when soliciting proposal for services and should be attached to the purchase order if the vendor has terms and conditions included in the signed agreement.

10. [No Debt Affidavit](#): The No Debt Affidavit may be used when bidding or renewing contracts.

[Forms and Instructions for Architectural and Engineering Services](#)

Architectural and engineering services are to be procured as provided in [subparagraph 5.17.3](#) of this Manual and [Chapter 5G](#) of the West Virginia Code. A series of instructions, forms, terms and conditions have been prepared and when required, approved by the Attorney General, for use by institutions is procuring architectural and engineering services.

[Forms and Instructions for Construction Services](#)

There are numerous laws and regulations, both federal and state, which have a direct bearing on construction contracts, in addition to purchasing laws and regulations. In order to make sure construction contracts are in conformance with these laws and regulations, there are a series of forms, terms and conditions for construction services that have been preapproved by the Attorney General. These forms, terms and conditions are to be used by the institutions; however, using the proper documents for a particular

contract depends on several factors such as the size and complexity of a project, and the type of construction involved, i.e., a building reproofing project versus construction of a parking lot and street repaving, or construction of a major new building and a major renovation of an existing building. Due to the complexity of construction contracts, a set of guidelines has been prepared to assist the institutions in identifying the proper contract forms to use. The construction contract forms approved by the Attorney General and the links to these forms are listed below. These documents are generally used for projects designed by an architect/engineer.

[Lease,
Lease-Purchase
Agreements and
Instructions](#)

Standard lease and lease-purchase agreements for buildings, grounds, office space and equipment have been approved by the Attorney General. These agreements are to be used without modification unless prior approval of the modification(s) is received from the Attorney General.

[Reporting Form
for Sale of Surplus
Property](#)

As provided in [West Virginia Code §18B-5-7\(b\)](#), the Commission or Governing Board, as appropriate, shall report semiannually to the Legislative Auditor all sales of commodities made during the preceding six months. See [subparagraph 10.3.2](#) of this Manual

Appendix C Bid Networks

A major goal of the Commission in the purchasing area is to encourage the institutions to do more business with in-state vendors. One of the ways this can be accomplished is to make these vendors aware of bidding opportunities by using the services of the bid networks that have been set up by the Regional Contracting Assistance Center, Inc. (RCAC) and Procurement Technical Assistance Center (PTAC). The following pages contain information about RCAC and PTAC, and how the institutions may take advantage of their services to notify West Virginia vendors of upcoming purchases. The services are free and easy to use, and RCAC's and PTAC's client list is comprised entirely of West Virginia businesses. The addresses of RCAC and PTAC are as follows:

RCAC
1116 Smith Street
Charleston, WV 25301
Phone: (304) 344-2546
Fax: (304) 344-2574
Email: rcac@rcacwv.com
Website: www.rcacwv.com
Contact: Kendra Marker

Procurement Technical Assistance Center
#2 Rosmar Circle, Suite B
PO Box 5528
Parkersburg, WV 26104
Phone: (304) 428-6889
Fax: (304) 428-6891
Email: ptac@mountain.net
Website: www.wvptac.org
Contact: Belinda Sheridan