



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

eFILED

12/11/2020 11:18 AM

Office of West Virginia
Secretary Of State

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE EXEMPT, INTERPRETIVE OR PROCEDURAL
RULE**

AGENCY: Protective Services

TITLE-SERIES: 99-06

RULE TYPE: Procedural Amendment to Existing Rule: No Repeal of existing rule: No

RULE NAME: Purchasing Policy

CITE STATUTORY AUTHORITY: 15-2D-3

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

January 11, 2021

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Stacy L Nowicki-Eldridge -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

99CSR6

TITLE 99
PROCEDURAL RULE
WEST VIRGINIA DIVISION OF PROTECTIVE SERVICES

SERIES 6
PURCHASING POLICY

§99-6-1. General.

1.1. Scope. -- This rule specifies guidelines for purchasing and paying for commodities and services necessary for the operation of the West Virginia Division of Protective Services. This rule is established to ensure that division purchasers comply with Purchasing Division Rules, and to promulgate procedures for purchases that are exempted from the purchasing provisions of West Virginia Code §5A-3-3. Specifically, the purchase of equipment as necessary to maintain security at the Capitol Complex and other state facilities.

1.2. Authority. -- W. Va. Code §15-2D-3.

1.3. Filing Date. -- December 11, 2020

1.4. Effective Date. -- January 11, 2021

§99-6-2. For the Purposes of This Rule.

2.1. "Asset or Assets" means the inventory of all real and personal property, and all equipment, supplies and commodities that are required to be reported under *West Virginia Code* §5A-3-35.

2.2. "Auditor" means the West Virginia State Auditor.

2.3. "Commodities" means supplies, material, equipment, contractual services, and any other articles or things used by or furnished to a department, agency or institution of State Government as defined in West Virginia Code §5A1-1.

2.4. "Department of Revenue" means State of West Virginia Department of Revenue.

2.5. "Director" means Director of the Division of Protective Services.

2.6. "Division" means Division of Protective Services.

2.7. "Employee" means both uniformed and non-uniformed employees of the West Virginia Division of Protective Services.

2.8. "Expendable Commodities" means commodities which, when used in the ordinary course of business, will become consumed or of no market value within the period of one year or less.

2.9. "Expression of Interest (EOI)" means a Best Value Procurement tool used for architectural and engineering services which is defined in W. Va. Code 5G-1, as "those professional services of an architectural or engineering nature as well as incidental services that members of those professions and those in their employ may logically or justifiably perform.

2.10. "Non-Reportable Assets" means non-reportable assets defined as either assets that are valued at less than \$1,000 or have a useful life of less than one year, or assets expendable in nature.

2.11. "Non-Uniformed Member" means a civilian employee of the West Virginia Division of Protective Services.

2.12. "Procurement Director" means the Administrative Services Manager of the Division.

2.13. "Procurement Section" means the West Virginia Division of Protective Services Procurement/Personnel Section.

2.14. "Purchaser" means any uniformed or non-uniformed member of the West Virginia Division of Protective Services who is assigned purchasing authority.

2.15. "Purchasing Division" means the West Virginia Purchasing Division.

2.16. "Reportable Assets" means any personal assets, excluding expendable commodities that has an original acquisition cost of \$1,000 or more and a useful life of one year or longer.

2.17. "Request for Proposal (RFP)" means an agency request for proposal.

2.18. "Request for Quotation (RFQ)" means an agency request for quotation.

2.19. "Travel Management Office (TMO)" means the State Travel Management Office within the Department of Administration.

2.20. "Uniformed Member" means any sworn member of the West Virginia Division of Protective Services.

2.21. "wvOASIS" means the State's accounting system managed by the Enterprise Resource Planning Board in conjunction with the West Virginia Department of Administration and the State Auditor's Office.

§99-6-3. Policy.

3.1. Each employee of the West Virginia Division of Protective Services, who has the authority or responsibility to purchase commodities and services, shall be advised of the Purchasing Division's Rules, in the West Virginia Code of State Rules Title 148, Series 1, contained on the West Virginia Secretary of State's website, the West Virginia Purchasing Card Policies and Procedures, contained on the West Virginia State Auditor's website, and the policies of the West Virginia Division of Protective Services.

3.2. These policies are provided to assist division purchasers with information, that will allow them to properly purchase commodities and services, and allow for the efficient operation of the division.

3.3. These policies outline proper purchasing procedures, and are provided to ensure compliance with the State Auditor's Purchasing Card Policies and Procedures, Purchasing Division Rules, and division policies.

3.4. This policy shall define for each employee the standards of purchasing required by the Director.

3.5. These policies and procedures governing the purchases of commodities and services of the West

Virginia Division of Protective Services shall be contained within the Division's Internal Operating Procedures Manual in an electronic format available to all employees of the division.

3.6. Electronic versions of the Purchasing Policy shall remain the exclusive property of the West Virginia Division of Protective Services. Printed manuals issued to uniformed or non-uniformed members of the division, shall be returned to the issuing authority upon the employee's retirement, resignation, or dismissal from the division. Likewise, access to the electronic version of the Purchasing Policy shall also be terminated.

3.7. Information contained within the electronic version of the Purchasing Policy is intended for the exclusive use of division members and shall not be reproduced or otherwise disseminated to any person without the express consent of the Director. All requests for a partial or complete copy of the Purchasing Policy shall be directed to the Director.

3.8. This policy is for internal use only and does not enlarge an employee's civil or criminal liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third party claims.

§99-6-4. Procedures.

4.1. Each purchaser of the West Virginia Division of Protective Services, who has the authority or responsibility to purchase commodities and services, shall follow the State Auditor's Purchasing Card Policies and Procedures, Purchasing Division Rules, and division policies for every purchase made.

4.2. It is the intent of the Director to follow all policies, procedures, and rules of the Purchasing Division, but it is imperative that the division maintain the security of the Capitol Complex and property owned, leased, or operated by the State of West Virginia.

4.3. The Director may authorize purchases outside these guidelines when purchases are deemed necessary and in the best interest of the division and the state.

4.4. The division will utilize the exemption promulgated in West Virginia Code §15-2D-3, to purchase equipment as necessary to maintain the security at the Capitol Complex and other state facilities.

4.5. This exemption will include purchases to replace, upgrade, service, and maintain equipment within the divisions security systems, and will also include personal equipment for division law enforcement officers and security personnel. At a minimum this will include weapons, ballistic vests, uniforms, and gear that are necessary to properly equip a uniformed law enforcement or security officer.

4.6. Maintaining and upgrading security equipment within the divisions security systems is imperative in maintaining security and continuing the operational efficiencies of the division. Inoperable equipment prohibits the division from ensuring the safety and security of the Capitol Complex and property owned, leased, or operated by the State of West Virginia.

4.7. Purchasers of the division who have the authority or responsibility to purchase commodities and services, shall not make any purchase(s), without contacting the Procurement Director or designee, except for purchases related to the operation of a division vehicle/utility vehicle.

4.7.a. When such a request is made the Procurement Director will determine if the request is appropriate.

4.7.b. If the request is deemed appropriate, the Procurement Director will instruct the employee how to proceed or will advise the employee that he/she will assume the responsibility of making the procurement.

4.7.c. This procedure will ensure that division policies are followed when division purchasers are procuring goods and services.

§99-6-5. Purchasing up to \$25,000.

5.1. The division has established the following Purchasing Division spending guidelines within the agency, each with bidding and documentation requirements as described below. These requirements will be followed when appropriate and applicable. *When appropriate and applicable Statewide Contracts are to be utilized for agency purchases.*

5.2. Purchases \$2,500 and Less: Competitive bids are not required but are encouraged when possible. Required documentation: Invoice or receipt and P-Card report, a copy of the contract front sheet showing item numbers and pricing page(s) if applicable.

5.2.a. Amounts spent with vendors are viewed comprehensively. The division will monitor expenditures with vendors to ensure that the total amount spent with a given vendor, within any 12-month period, does not exceed an applicable bid threshold without the proper level of documentation and bidding.

5.3. Purchases \$2,500.01 to \$10,000: A minimum of three verbal bids are required, when possible, and the lowest bid meeting specifications must be awarded the purchase order/contract unless there are extenuating circumstances. (see award process) All bids must be documented on WV-49 and present in the file. A “no bid” is not considered a bid. Required documentation: Invoice or receipt, WV-49 and P-Card report, a copy of the contract front sheet showing item numbers and pricing page(s) if applicable.

5.4. A wvOASIS procurement award document is required for purchases exceeding \$2,500. Awards are to be made only to vendors who are properly registered with the Purchasing Division. Signed fax bids or electronic bids are acceptable. Screenprints from Internet sites in which the commodity or service is for sale and may be procured can substitute for a verbal bid.

5.5. Purchases \$10,000.01 to \$25,000: A minimum of three signed written bids are required, when possible, and the lowest bid meeting specifications must be awarded the purchase order/contract unless there are extenuating circumstances. (see award process) Required documentation: Three signed written bids, WV-48 if services are involved, WV-96 if terms and conditions are involved, Purchasing Affidavit, Non-Conflict of Interest form and vendor verification in VCUST, a copy of the contract front sheet showing item numbers and pricing page(s) if applicable.

5.6. An Agency Request for Quotation (RFQ) should be used for documenting and making these requests. In all cases, an attempt to obtain at least three written bids for a product or service must be made. A “no bid” is not considered a bid. Signed faxed bids or electronic bids are acceptable. Screen prints from Internet sites are not acceptable as a valid bid.

5.7. The date and time of the bid opening shall be published on the Request for Quotation and the solicitation must be advertised in wvOASIS. A wvOASIS procurement award document is required.

5.8. State agencies are required to publicly advertise solicitations expected to exceed \$10,000 in the West Virginia Purchasing Bulletin, accessed within the Vendor Self-Service portal within wvOASIS.

Agencies must advertise delegated solicitations for a period of no less than 10 business days.

5.8.a. If exceptional circumstances exist which require a shorter advertisement period, the agency must receive prior approval from the Purchasing Division.

§99-6-6. Purchasing over \$25,000.00:

6.1. The Procurement Director will transact and work directly with the Purchasing Division for all purchases over \$25,000.00, Requests for Proposals (“RFP”) and Expressions of Interest (“EOI”). The Procurement Director will provide annual training to agency employees, involved in the purchase of commodities and services, in addition to required P-Card training. All agency employees conducting purchasing transactions will be required to meet all mandatory training requirements, either in person or provided online.

§99-6-7. Bid Process:

7.1. Requests for Quotations: a (RFQ) should be used to acquire all tangible property (i.e. equipment, supplies, etc.). The RFQ is required for all purchases between \$10,000.01 and \$25,000. Exceptions to this requirement may be granted by the Purchasing Division.

7.2. An RFQ consists of: A detailed description of, or specification for, the item(s) being purchased; delivery date, if required; bid price per unit of the item(s); any applicable maintenance; and quantities of all items.

7.2.a. Each item should be identified by a model number or some other specific identification. Prices cannot be altered after bids are opened. The RFQ must have an established date and time for the bid opening, after which bids will no longer be accepted. All bids should be annotated with the date and time of receipt.

7.3. Solicitation of Bids: To achieve the goal of competitive bidding, a minimum of three bids are required, when possible. For agency delegated purchasing (procurements of \$25,000 or less), care must be taken to solicit vendors capable of providing the necessary products or services.

7.4. Public Notice: Advertise delegated solicitations for a period of no less than 10 business days and in wvOASIS when feasible. If exceptional circumstances exist which require a shorter advertisement period, prior approval from the Director of Purchasing is required.

7.5. Evaluation of Bids: Bids are received, opened and examined by the agency to ensure compliance with all specifications and determination of the lowest responsible bidder.

7.6. Award Process: After the evaluation of all bids by the agency personnel, an award is made to the lowest responsible bidder who meets the specifications.

7.6.a Award to Other Than Low Bid: If an award is made to other than the lowest bidder, a detailed justification as to why the lowest bidder was not awarded the contract must be written and retained for public record and inspection. The justification must be signed by the evaluator(s) and retained as part of the bid file.

7.7. When Three Bids Not Possible: The following are instances where obtaining three competitive bids is not possible.

7.7.a Emergency – Agencies are permitted to declare a delegated emergency. The file should contain all documentation necessary to substantiate the declared emergency.

7.7.b. Solicitation Advertised in wvOASIS and Less Than Three Bids Received.

7.7.c. Direct Award

7.8. Emergency Purchases: Purchases may be necessary when unforeseen causes arise; however, emergency purchases are not used for hardship resulting from neglect, poor planning, or lack of organization.

7.8.a. An emergency purchase can only be made if approved by the Director, Deputy Director, Director of Procurement, exercising sound judgment and discretion, concludes in good faith and upon reasonable and sufficient grounds that some unforeseen or unexpected circumstance has suddenly created a situation requiring that commodities or services be immediately purchased. A record of competitive bids must be maintained in the file if applicable.

7.9. Emergency Purchases of \$25,000 or Less: A minimum of three verbal or signed bids, if possible, should be obtained. Original written bids and justification along with documentation of required approval (an email will meet this requirement) must be attached to the file.

7.10. Direct Award: A direct award is a procurement method that provides a contract to a vendor without competitive bidding when circumstances allow. Solicitation and competition is encouraged rather than process a direct award request however, a direct award may be made if the following circumstances occur:

7.10.a. Written justification documenting that the direct award is in the best interest of the division.

7.10.b. When there is no other source or that no other source would be willing or able to replace the existing source without a detrimental effect on the spending unit.

7.10.c. No other vendor expresses an interest in providing the commodity or service in question.

7.11. Direct Award of \$25,000 or less: The process outlined below for a direct award at the delegated level.

7.11.a. \$0 to \$2,500: No documentation required but competition is always encouraged.

7.11.b. \$2,500.01 to \$25,000: Director of Procurement must approve or disapprove the transaction..

7.11.c. All documentation must be maintained in the purchasing file, including its justification to make the award and any documentation awarding the contract.

7.12. Firm Fixed Pricing: All contracts should be entered into for a firm, fixed price per unit of goods or service. In such cases where the nature of the procurement prohibits a firm, fixed price, a detailed written justification must be included in the file.

7.13 Vendor Compliance: Prior to an award, a vendor must be in compliance with the following requirements and, if applicable, documentation verifying compliance shall be retained in the file:

7.13.a. Purchasing Division Registration: Vendors must be properly registered with a wvOASIS vendor/customer account, such as the Owner/Officer Information and Banking Information listed under the “Disclosures” tab, and payment of the annual fee (where required). It is also recommended that the Finance Division have a current W-9 on file for the vendor. This is indicated under the “Hold Payment” portion of the “Disbursement Options” tab of the wvOASIS vendor/customer account;

7.13.b. Workers’ Compensation/Unemployment: In accordance with West Virginia Code §21A-2-6, verification of current unemployment fee status and Workers’ Compensation coverage is required to ensure the vendor is not in default with Workers’ Compensation and Employment Compensation. wvOASIS automatically verifies compliance prior to award;

7.13.c. Federal Debarment: Verification that the vendor is not debarred by the federal government. wvOASIS automatically verifies this federal compliance prior to award.

7.13.d. State Debarment: Verification that the vendor is not debarred by the State of West Virginia. The Purchasing Division maintains a list of vendors debarred by the state of West Virginia, which may be accessed at www.state.wv.us/admin/purchase/debar.html. This must be verified for compliance prior to award.

7.13.e. Secretary of State: Unless a waiver is obtained from the Secretary of State’s office, every vendor must have a certificate of authority and be in good standing with Secretary of State’s office. To search for a business or corporation with the Secretary of State’s office, visit <http://apps.sos.wv.gov/business/corporations>. Any vendor that cannot be found or shows a status of “revoked” or “dissolved” is not eligible for award until the issue is resolved. Agencies must verify this compliance manually prior to award and include a copy of the relevant records on the contract file.

7.13.e.1. Other: In accordance with the West Virginia Code §148 C.S.R. 1-6.1.e, the vendor must be licensed and in good standing with any and all state and local laws and complete the following requirements.

7.13.e.2. *Purchasing Affidavit*, and,

7.13.e.3. *Agreement Addendum (WV-96)*

7.14. Tie Bids: When purchasing commodities and services of \$25,000 or less, occasionally two or more bids of equal terms and amount are received in response to a solicitation, thus, resulting in a *tie bid*. If multiple awards are not made, the tie bid(s) must be resolved. When tie bids are received, the Purchasing Director shall break the tie by allowing the tied vendors to make a best and final offer, flip of a coin, draw of the cards, or any other impartial method considered prudent by the Purchasing Director.

7.14.a. A witness must be present when resolving the tie and documentation of the method and results, with signatures of all witnesses, must also be included in the file. Vendors affected by the tie should be notified and given an opportunity to attend the tie breaker.

7.15. Errors in Bids: The West Virginia Code of State Rules provides assistance in cases of errors in bids for purchases over \$25,000.

7.15.a. If an error is discovered, the burden of proof and timely action for request of relief is the vendor’s responsibility. The request for relief must be made in writing by the vendor and should be received by the division within five business days from the bid opening date.

7.15.b. Erroneous bids may be rejected after the bid opening if all the following reasons are met:

7.15.b.1. An error was made.

7.15.b.2. The error materially affected the bid.

7.15.b.3. Rejection of the bid would not cause a hardship on the state agency involved other than losing an opportunity to receive commodities and services at a reduced cost.

7.15.b.4. Enforcement of the part of the bid in error would be unconscionable.

7.15.c. In order to reject a bid, the public file must contain documented evidence that all of the above conditions exist. The vendor must specifically identify the error(s) and provide documentation to substantiate the claim that the error(s) materially affected the bid and enforcement of the part of the bid in error would be unconscionable.

7.15.d. The unit price prevails if there is an error in the extension. The division may recalculate a vendor's extension (total) pricing based upon the unit price provided by the vendor if there is a clear mathematical error and recalculation is warranted. The vendor's original documentation is not to be modified. Any recalculation must be documented separately and retained in the agency file.

7.16. Electronic Submission of Bids: A vendor choosing to submit a bid or a written change to a bid by electronic submission accepts full responsibility for transmission and receipt of the bid or written change to a bid. The division accepts no responsibility for the unsuccessful and/or incomplete transmission of bids by electronic transmission.

7.17. Commodity and Service Receiving Procedures:

7.17.a. Materials must be opened and inspected within 24 hours of receipt. Receivers must verify the shipment against the specifications in the purchase order and retain a copy of the packing list or shipping documents, and place a copy in the purchasing file. For receipt of services, a receiving report similar in form to that required by the Auditor's office shall be completed, signed, and retained with the purchasing file. (An email documenting services received shall meet this requirement)

7.17.b. Receivers must verify quantities received. If quantities do not match the purchase order, the receiver must insist on a correction of the packing slip. After all corrections have been made, request that the driver sign all shipping documents before leaving. Do not accept any alternate or substitution without end user's approval of commodities and services awarded by the Purchaser.

7.18. Inspection: Purchaser or receiver shall perform an inspection on all delivered commodities and services. Nonconformity is to be reported to the Director of Procurement and the purchaser for remedial action.

7.19. Proper Receiving Techniques: Any person receiving commodities is responsible for performing all of the inspection steps described below.

7.19.a. Receipt of Commodities and Services: The receiver shall check the shipment to determine if commodities are in conformance with the purchase order or contract and verify the following:

7.19.a.1. *Commodities*: The make, model number, brand name and general description of the

item(s) received match the specifications on the purchase order.

7.19.a.2. The quantity received agrees with the purchase order quantity, packing list and bill of lading. An actual count is necessary to assure receipt of all items.

7.19.a.3. *Services*: Labor services must match the frequency (daily, weekly, monthly, etc.) and duration (number of hours, days, etc.) described in the purchase order or contract (janitorial, security, etc.).

7.19.a.4. Service contracts that require the vendor to provide consultant reports, audit reports, statistics or recommendations must be as specified in the purchase order or contract.

7.19.a.5. Service contracts that require the vendor to perform a particular service, such as elevator maintenance or carpet cleaning, must have all tasks completed as described in the purchase order or contract.

7.20. Freight Terminology and Loss/Damage: Freight or shipping terms should always be included in a contract. Purchase orders should have a specified point of origin and destination. Misunderstanding of the freight terms may cause problems in the receiving end of the purchase. In accordance with the National Institute of Governmental Purchasing's (NIGP) Public Procurement Dictionary of Terms (2008), the definitions for Free on Board (F.O.B.) Destination and Free on Board (F.O.B.) Origin are noted as follows:

7.20.a. Free on Board (F.O.B.) Destination: Where the seller or consignee delivers the materials to a specified delivery point. The cost of shipping and the risk of loss are borne by the seller or consignee. Title passes when delivery is received by the buyer at destination. Seller has total responsibility until shipment is delivered. This is the preferred method of shipment as it easily facilitates a comparison of price among multiple vendors.

7.20.b. Free on Board (F.O.B.) Origin: Title is transferred from seller to buyer at the origin of the shipment. Buyer owns the goods in transit and files any claims. Buyer has total responsibility. The payment of the freight charges is determined by contract terms. Any use of this delivery method requires that the price evaluations account for delivery costs to ensure an accurate price comparison.

7.21. Loss or Damage in Shipment: Filing of claims for loss or damage to merchandise in shipment is the responsibility of the party having title to merchandise during shipment. The title to the commodities is determined by the F.O.B. point on the purchase order.

7.21.a. F.O.B. Destination: Title remains with vendor until goods are received and accepted by the state agency. Damage occurring during shipment must be resolved by the seller.

7.21.b. If the damage is obvious note all losses or damages on receiving papers, sign and have driver sign. Write the word "Refused" on receiving papers. Do not accept merchandise with obvious damage from carrier under any circumstances.

7.21.c. If the damage or loss becomes evident when uncrating, stop uncrating and retain all merchandise and crating in exactly the same condition in which it was received. Notify the vendor immediately in writing and by telephone. Do not use any of the merchandise and do not destroy any packaging material.

7.21.d. F.O.B. Shipping Point: Title passes to the state agency immediately when goods are

given to a common carrier at the time of shipment. The state agency is responsible for any and all damages or losses while merchandise is in transit. If damages occur to merchandise in shipment, it is the state agency's responsibility to file a claim on behalf of the state.

7.21.e. If there is obvious loss or damage, note all losses or damages on receiving papers, sign and have driver sign. Retain all merchandise in the condition in which it was received and notify both the carrier and seller in writing and by telephone within five business days. The carrier will send a representative to investigate the claim.

7.21.f. If the damage or loss becomes evident when uncrating stop uncrating and retain all merchandise and crating in exactly the same condition in which it was received. Notify the vendor immediately in writing and by telephone. Do not use any of the merchandise and do not destroy any packaging material.

7.21.g. Notify the Director of Procurement when damaged goods are received and a resolve cannot be reached with the vendor.

7.22. Payment Process: Refer to Accounting Section of this manual.

7.23. State Purchasing Card: When possible, it is encouraged to use the State Purchasing Card. Use of the State Purchasing Card, however, is not justification to avoid utilizing statewide or agency contracts but is simply a method of payment.

7.23.a. State Auditor's Office Purchasing Card Program Procedures located at <https://www.wvsao.gov/PurchasingCard/Default#Forms>. Refer to Accounting Section of this manual.

7.24. Electronic Fund Transfer (EFT): Vendors and agencies not utilizing the Purchasing Card must utilize electronic funds transfer as a method of payment. The West Virginia Auditor's Office will only issue checks in rare circumstances. For more information, visit <http://www.wvsao.gov>.

7.25. Fixed Assets: After payment has been made to the vendor, assets valued over \$1,000.00 or computer equipment valued over \$500.00 or any assets deemed reportable by the Director of Procurement must be added to fixed assets in *wvOASIS*.

7.26. Changes: Occasionally, it becomes necessary to amend, clarify, change or cancel purchasing documents. A contract change order is required whenever the change affects the payment provision, time for completion of the work and/or the scope of the work.

7.26.a. Changes to the original purchase order must be sequentially numbered in the appropriate space. The explanation of change to an existing contract must be described with sufficient detail and clarity that any individual could review and generally understand the contract and change.

7.27. Contract Cancellation: A contract or purchase order may be canceled upon written notice to the vendor under any one of the following conditions including, but not limited to:

7.27.a. The vendor agrees to the cancellation

7.27.b. The vendor has obtained the contract by fraud, collusion, conspiracy or in conflict with any statutory or constitutional provision of the state of West Virginia

7.27.c. Failure to conform to contract requirements or standard commercial practice

7.27.d. The existence of an organizational conflict of interest is identified; or

7.27.e. Funds are not appropriated or an appropriation is discontinued by the legislature for the acquisition

7.27.f. Violation of any federal, state, or local law, regulation or ordinance

7.27.g. The contract was awarded in error

7.27.g.1. A contract or purchase order may be canceled for any reason, upon 30 days written notice to the vendor. The Director may cancel a contract if deemed in the best interest of the division.

7.27.g.2. In the event that a vendor fails to honor any contractual term or condition, or violates any provision of federal, state, or local law, regulation or ordinance, the vendor will be requested to remedy the contract breach or legal violation within a time frame determined to be appropriate by the Director of Procurement. If the vendor fails to remedy the contract breach or legal violation, the contract may be canceled immediately without providing the vendor an opportunity to perform a remedy.

7.28. Formal Acquisition Procedures: All requisitions for commodities and services over \$25,000 must be submitted using *wv*OASIS for formal competitive bidding.

7.29. Competitive Bidding: The division may utilize various mechanisms to solicit competition from responsible vendors. Two of the most often used solicitation techniques are Requests for Quotations (“RFQ”) and best value procurement. The RFQ method is the most commonly used and preferred method of competitive bidding. Best value procurement can be further broken down into Requests for Proposals (“RFP”) and Expressions of Interest (“EOI”).

7.30. Requests for Quotations: The Request for Quotation (RFQ) is used to acquire most commodities and services, including construction.

7.31. Award Criteria: An RFQ for commodities or services must be awarded to the lowest responsible bidder. Similarly, an RFQ for construction must be awarded to the lowest qualified responsible bidder.

7.31.a. In both cases, the award is completely objective, going to the lowest bid submission meeting the required specifications (also referred to as mandatory requirements). If a mandatory requirement is not met, then that bid is disqualified.

7.31.b. The vendor provides the pricing in its bid response submitted to the division. Prior to the bid opening, a bid that has already been submitted cannot be modified; submission of the vendor’s bid constitutes a binding offer. However, if a vendor wishes to make a change to its bid after submission, it may submit a subsequent bid to supersede the original bid.

7.32. Multiple Awards: The division may elect to award a contract to more than one vendor when the Director determines such action would be in the best interest of the division. In arriving at a determination, the Director of Purchasing will consider the following factors, insofar as they are applicable:

7.32.a. The quality, availability and reliability of the supplies, materials, equipment or services

and their adaptability to the particular use required;

7.32.b. The ability, capacity and skill of the bidder;

7.32.c. The sufficiency of the bidder's financial resources;

7.32.d. The bidder's ability to provide maintenance, repair parts and service;

7.32.e. The compatibility with existing equipment;

7.32.f. The need for flexibility in evaluating new products on a large scale before becoming contractually committed for all use; and

7.32.g. Any other relevant factors.

7.32.h. A written explanation will be included in the public file in situations where a multiple award is deemed necessary.

7.33. Selection of Vendors: Purchasers are encouraged to submit a list of suggested vendors to ensure they are properly notified any time a solicitation is advertised for commodities and/or services which they can supply. Additionally, solicitations should utilize the appropriate UNSPSC commodity codes to ensure that vendors registered for those commodity codes are also notified of published solicitations.

7.34. Public Notice: Procurement will make public notice of purchases expected to exceed \$25,000.00. This is usually accomplished by advertising the solicitation in *wvOASIS*. The standard advertisement period for noncomplex procurements is 10 business days. If exceptional circumstances exist which require a shorter or longer advertisement period, notify the Director of Procurement for approval.

7.35. Addenda: During the bid process, it may be necessary to alter bidding documents. To facilitate a change to a solicitation after issuance for bid in *wvOASIS*, a formal written addendum is required.

7.35.a. A formal addendum is necessary to: add, delete or change specifications or attachments; provide a copy of the pre-bid attendee list; answer technical questions, requests for clarification or requests for product substitutions (on construction projects); extend or alter bid schedule dates/times; or any other such change to the issued bidding documents.

7.35.b. The Purchasing Director must complete a requisition that includes a description of change, amended budget amount/maximum budget amount-if applicable, and signature of authorized agency representative, prior to issuing the addendum.

7.35.c. The following should also be included where applicable:

7.35.c.1. Specification changes, additions, or noted deletions;

7.35.c.2. Pre-bid attendee list;

7.35.c.3. An attachment listing each technical question with a corresponding answer;

7.35.c.4. Revised or added sketches, drawings and/or charts.

7.35.d. Upon issuing the addendum the Purchasing Director will distribute the same to all known

bidders (those attending the pre-bid meeting, receiving bid packages, suggested vendors, etc.). Additional bid time may be required to distribute addenda.

7.35.e. The Addenda should be provided to prospective bidders, 7 calendar days prior to the current scheduled bid opening date. For complex transactions, such as construction bids, Requests for Proposals or complex Requests for Quotation, it should be provided within 14 calendar days prior to the current scheduled bid opening to allow bidders ample time to prepare and submit bid responses.

7.35.f. The division may, at its discretion, extend the bid opening date if it deems to be in its best interest.

7.36. Bid Submission: The vendor is responsible for submitting a correct and accurate bid to the division by the specified bid opening time and date. Fax bids are acceptable, but receipt of bid must be completed prior to the bid opening time and date. The division will not accept bids, modification of bids or addendum acknowledgment forms by email transmission. Acceptable delivery methods include hand-delivery, delivery by courier or facsimile.

7.36.a. Any bonds submitted via fax should be followed by an original bond received by the division within two business days.

7.37. Bid Opening: Formal bid opening dates are established by the division based on the complexity of the purchase, and are open to the public. Vendors are not required to attend. Bid openings may be delayed due to the need for pre-bid conferences, issuance of addenda or other unforeseen factors.

7.37.a. At the bid opening, all bids are opened and read aloud. Bids shall not be considered if the vendor fails to submit the respective bid to the division by the specified date and time of the bid opening.

7.37.b. Bids that are not received by the date and time of the bid opening will be noted as "Bid Received Late," maintained with the official file with the other bids with the division established fee for Freedom of Information Act (FOIA) requests.

7.38. Evaluation and Award: When the Request for Quotation process is used, competitive bids are received, properly evaluated and an award is made to the lowest responsible bidder meeting specifications. Following the bid opening, the division will review all bids received to ensure compliance with all specifications and validates the vendor for award.

7.38.a. After a proper evaluation, if an award is made to other than the lowest responsible bidder, a thorough written justification signed by the evaluator(s) must be inserted into the file and retained for public record and inspection.

7.38.b. Prior to an award, a vendor must be in compliance with the following requirements:

7.38.b.1. Vendor registration process (must be registered and the fee paid, if applicable). The registration process includes having the proper disclosure of information in the wvOASIS vendor/customer account, such as the Owner/Officer Information and Banking Information listed under the "Disclosures" tab. It is also recommended that the Finance Division have a current W-9 on file for the vendor. This is indicated under the "Hold Payment" portion of the "Disbursement Options" tab of the wvOASIS vendor/customer account;

7.38.b.2. In accordance with the W. Va. Code § 21A-2-6, verification of current unemployment fee status and Workers' Compensation coverage is required to ensure the vendor is not in

default with Workers' Compensation and Employment Compensation. *wvOASIS* automatically verifies compliance prior to award.

7.38.b.3. Verification that the vendor is not debarred by the federal government. *wvOASIS* automatically verifies this federal compliance prior to award. Additionally, the Purchasing Division maintains a list of vendors declared as debarred by the state of West Virginia, which may be accessed at HYPERLINK "<http://www.state.wv.us/admin/purchase/debar.html>". Agencies must verify this compliance prior to award;

7.38.b.4. In accordance with the W. Va. § 148 C.S.R. 6.1.e, the vendor must be licensed and in good standing with any and all state and local law and requirements, including proper registration and good standing with the Secretary of State's office and the State Tax Department, regardless of payment method. To search for a business or corporation with the Secretary of State's office, visit <http://apps.sos.wv.gov/business/corporations>.

7.38.b.5. *Purchasing Affidavit*;

7.38.b.6. *Agreement Addendum* (WV-96) (required when vendors submit alternate terms and condition with their bid); and,

7.38.b.7. *Interested Party Disclosure Form*: W. Va. Code § 6D-1-2 requires that for contracts with an actual or estimated value of at least \$1,000,000, the vendor must submit to the Purchasing Division a disclosure of interested parties to the contract, prior to contract award. Additionally, the vendor must submit to the agency a supplemental disclosure within 30 days of contract completion or termination.

7.38.c. The disclosures must occur on the form prescribed and approved by the West Virginia Ethics Commission. To access this form, visit the West Virginia State Purchasing Division's intranet at <http://www.state.wv.us/admin/purchase/forms.html>.

7.38.d. The Procurement Director may immediately award certain open-end contracts when it is believed to be in the best interest of the division.

7.39. *Negotiation When All Bids Exceed Available Funds*: If all bids meeting requirements exceed the budgeted amount, the division may negotiate a lower price within budget with the lowest bidder. If the negotiation does not lead to the budget amount being met, the division may negotiate a lower price with the next lowest bidder and continue negotiations with participating bidders after negotiation closes with the preceding bidder.

7.40. *Discussion and Final Offers*: As provided in the bid solicitation, the Director of Procurement may conduct discussions to obtain best and final offers from bidders to assure full understanding of solicitation requirements. If the Director of Procurement determines that a best and final offer is necessary from one vendor, all vendors shall be afforded the opportunity to provide best and final offers. All best and final offers shall be treated like a formal bid, except that advertising is not required. All bidders shall provide their best and final offers to the division prior to the date and time specified.

7.40.a. Government construction contracts and supplies and materials are exempt from this negotiation method.

7.41. *Requests for Proposals*: Requests for Proposals (RFPs) are a procurement method that can be utilized when the method of achieving an objective is not well known, making the development of

mandatory requirements difficult. Using this method, the lowest price is not the sole determining factor. The RFP method is typically longer than other procurement methods and requires significant agency personnel time and resources to complete.

7.42. Limitations: RFPs are limited to procurements with an estimated value of \$100,000, unless its determined by the division to utilize the RFP method for a smaller procurement.

7.43. Approval Request: The Procurement Director or his/her designee must request authorization from the Director, prior to utilizing the RFP procurement method. This request should include justification to show that the RFP is in the best interest of the division.

7.43.a. The justification should include a description of the service being sought, an explanation of why the RFQ procurement method is not appropriate, any prior solicitation that has been utilized to procure the service in the past, the expected cost of the project, and any other pertinent information that the Director deems appropriate.

7.44. Award Criteria: An RFP is awarded to the highest scoring responsive and responsible bidder. The award is based upon a subjective technical evaluation, where the Purchaser first determines that all mandatory requirements have been met. The purchaser or purchasers then assigns a subjective point value to the vendor's response to the non-mandatory specifications, followed by an objective point value based on the vendor's cost proposal and the cost score evaluation formula.

7.45. Mandatory Requirements: Caution should be utilized when writing specifications containing an excessive number of mandatory requirements. Mandatory requirements cannot be waived; therefore, a vendor's failure to meet any mandatory requirement will result in disqualification. Before including any mandatory requirement in an RFP, the division must decide whether it is willing to disqualify any one vendor, or all vendors, if the requirement is not met. If the division is not willing to disqualify a vendor, then the requirement should not be mandated.

7.46. Evaluation Criteria: All evaluation criteria must be clearly defined in the specifications section of the RFP and based on a 100-point total score. This score is comprised of a technical score of 70 points possible and a cost score of 30 points possible. Any deviation from this point allocation must be approved in writing by the Director.

7.47. Proposal Format and Content: Proposals from vendors must be requested and received in two distinct parts: technical and cost. All cost information must be contained in the cost proposal, which must be sealed and submitted in a separate envelope from the technical proposal. Vendors must not include cost information in the technical proposal, which ensures that the technical proposal can be evaluated purely on its own merit.

7.48. Proposal Submission: The vendor's entire proposal, both technical and cost, must be received by the division prior to the specified date and time of the bid opening. The failure to deliver or the non-receipt of the bid by the division, prior to the appointed date and hour, shall result in the rejection of the bid. The division will not accept bids, modification of bids, or addendum acknowledgment forms by email transmission. Acceptable delivery methods include hand-delivery, delivery by courier or facsimile.

7.49. Bid Openings: RFPs require a two-part bid opening. Technical proposals are opened first and fully evaluated prior to cost proposals being opened.

7.50. Technical Bid Opening: The division will open only the technical proposals on the date and time specified in the Request for Proposal. The Procurement Director or designee will read aloud the

names of those who responded to the solicitation and confirm that the original package contained a separately sealed cost proposal.

7.51. Cost Bid Opening: After the technical evaluation, discussed in more detail below, has been approved by an internal review committee within the division, a time and date is scheduled to publicly open and read aloud all cost proposals. The vendors will be notified of this cost bid opening.

7.52. Proposal Evaluations: As previously mentioned, the technical evaluation must be completed prior to the cost bid opening

7.53. Technical Evaluation: An evaluation committee, established by the Purchaser Director shall review the technical proposals, assign appropriate points and make a final written consensus recommendation to the Director.

7.53.a. The evaluation committee initially determines if the technical proposals meet the mandatory requirements contained in the RFP. Any proposal that fails to meet a mandatory requirement is disqualified.

7.53.b. The evaluation committee will then evaluate all technical proposals that meet the mandatory requirements to assign appropriate point scores to the non- mandatory components in the RFP. Those non-mandatory components generally include the approach and methodology to achieving the goals and objectives, approach and methodology to comply with mandatory requirements, qualifications and experience.

7.53.c. During this evaluation, all proposals begin with the maximum score. The evaluation committee then deducts points for any identified deficiencies in each proposal. Technical proposals may be compared against one another to determine the best in class solution.

7.53.d. Those proposals that exceed the mandatory requirements or the non-mandatory desirables should be assigned the maximum points in that category; with lesser solutions assigned an appropriately lower score. No partial points are permitted in the technical evaluation. All deductions issued for each proposal must include justification, with fairness and consistency.

7.53.e. Proposals must obtain a minimum acceptable score of 70% of the total technical points possible (i.e. 49 out of 70 points in most cases) to be considered for the award. Vendors not attaining the minimum acceptable score will be disqualified and removed from further consideration. The technical evaluation may include oral presentations conducted by the vendors.

7.53.f. Once the evaluation committee reaches a consensus recommendation, the Procurement Director will complete the committee's recommendation to using the Recommendation Memorandum (WV-113) template. The Procurement Director should include in the recommendation an analysis of the technical proposals with the scores and any justification(s) for point deductions, as well as scores for the cost proposals.

7.53.g. The consensus recommendation must be signed by all committee members and must not rely upon average points to reach a consensus. If approved by the division, a date and time for the cost bid opening will be set.

7.54. Oral Presentation: The RFP process allows the division to require each vendor to conduct an oral presentation for the purpose of explaining or clarifying the submitted proposal. Oral presentations are included in the technical evaluation and become part of the total technical score. The oral presentation is

not an opportunity to change or modify the submitted proposal. If the division elects to conduct oral presentations, it will be noted in the RFP.

7.54.a. The division may invite other individuals, in addition to the evaluators and advisors, to attend these presentations.

7.55. Cost Evaluation Approval and Award: Once the cost proposals have been opened, the divisions evaluation committee reviews the cost proposals and using the cost formula, assigns an appropriate cost score to each proposal that has not been disqualified. Once a cost score has been assigned, the evaluation committee combines the technical and cost scores to make a final consensus recommendation for contract award to the Director.

7.56. RFP Evaluation Committee: For RFP evaluations, the division requires a committee of at least three and recommends no more than five persons knowledgeable of the service to be acquired. The division may also invite individuals to serve as advisors who are subject matter experts, knowledgeable in the area of discussion. The advisors may assist the evaluation committee members (referred to as evaluators) in the evaluation process.

7.56.a. The Procurement Director or designee, who is skilled in purchasing techniques and procedures, must serve on the evaluation committee as a full voting member.

7.56.b. The Procurement Director or designee must serve as the chairperson or co-chairperson for the RFP evaluation committee. In this role, the Procurement Director or designee, is responsible for mediating all discussions related to the evaluation and assisting with time management, and must also prepare the consensus of the committee for award, as in accordance with 148 C.S.R. 1-3.2.

7.56.c. A non-state employee shall not serve as voting member of the evaluation committee.

7.56.d. The names and other relevant information for all evaluation committee members and advisors must be recorded by the Procurement Director prior to the release of the RFP. The record must include justification for any identified advisors and/or requests to have more than five evaluators on the evaluation committee

7.56.e. To ensure there is no conflict or influence on the committee members' decision process, the evaluation should take place with only the designated evaluators and advisors present.

7.56.e.1. *Certification of Non-Conflict of Interest:* To minimize the risk of conflict of interest, each member of the evaluation committee and any advisors are required sign a Certification of Non-Conflict of Interest.

7.56.e.2. By signing this certification, the evaluator(s), advisor(s) and Procurement Director or designee attest that: (1) his or her service on the evaluation committee is not in violation of W. Va. Code §6B-2-5, or any other relevant code section; (2) his or her service on the evaluation committee does not create a conflict of interest with any of the participating vendors; and (3) he or she has not had or will not have contact relating to the solicitation identified herein with any participating vendors between the time of the bid opening and the award recommendation without prior approval of the division. The Procurement Director should discuss the non-conflict of interest issue with potential committee members to ensure that individuals who may have a conflict are not chosen to participate as evaluation committee members.

7.57. Pre-Bid Conferences: Regardless of the procurement method used, the Procurement Director

should consider conducting pre-bid conferences on high dollar, complex acquisitions early in the bid process to provide an opportunity to explain and clarify critical aspects of the solicitation, eliminate misunderstandings and encourage vendor participation.

7.57.a. In all cases, it is very important for the Procurement Director or designee who is trained and knowledgeable of the procurement process to attend these conferences.

7.57.b. Vendor attendance at conferences may be optional or mandatory, as described in the bid document. If mandatory attendance is required, only bids or proposals from those vendors represented at the conference will be accepted. If participating vendors sign the official "sign-in sheet" while the meeting is in progress, then the vendors will be treated as if they were present for the entire conference and will be deemed to have the knowledge that they would have had if attending the entire conference. Teleconference attendance is prohibited unless specified in the bid document.

7.57.c. "Sign-in sheets" for mandatory pre-bid conferences should contain the following: name of company, person attending (signature and printed name), address, telephone number and facsimile number.

7.57.d. The header information on the sheets should include the requisition number and the date and time of the pre-bid conference. The original sheet must be filed with the division. No one individual may represent more than one vendor.

7.57.e. It is recommended that pre-bid conferences be scheduled on Tuesdays through Thursdays between 10 a.m. and 3 p.m. to encourage more participation. A sample agenda for a pre-bid conference is as follows:

7.58. Conference Opening (Procurement Committee)

7.58.a. Offers opening remarks (Welcome attendees and introduce yourself)

7.58.b. Identify the project by RFQ or RFP number and generic scope of work

7.58.c. Provide the "sign-in sheet"

7.58.d. Make available a few extra copies of the bid documents

7.58.e. Remind all attendees to complete the "sign-in sheet" (Emphasize the importance of the "sign in sheet")

7.58.f. Introduce the Purchaser representatives

7.58.g. Review important general information items:

7.58.g.1. Inquiries

7.58.g.2. Vendor Registration

7.58.g.3. Oral Statements

7.58.g.4. Bid proposal submission process

7.58.g.5. Schedule of events

7.58.g.6. Bonding Requirements (Bid, performance, etc.)

7.59. Specification Discussion (Procurement Committee) Procurement Director will open the technical specifications for discussion by item with all attendees. Items that all party's representatives, agree need to be amended by addendum will be recorded by the Procurement Director to aid in preparing the addendum.

7.59.a. All clarifying statements and questions shall to be addressed on an addendum. Questions are received and discussed.

7.60. Master Terms and Conditions Discussion (Procurement Committee) Procurement committee will discuss the part "General Terms & Conditions" and then proceed to discuss the format, evaluation, and, in the use of RFPs, the cost proposals and Minimum Acceptable Score (MAS) concept.

7.60.a. Questions are received and discussed.

7.61. Conclusion (Both Procurement Committee) Procurement committee will review items to be included in the addendum if at all possible. For items deferred, the information will be addressed in the addendum by determination made by the committee.

7.61.a. Securities/Bonds: Instruments are occasionally demanded from the successful vendor by the division prior to bid or award to ensure performance or to minimize financial risks to the division in the event of default.

7.62. Bonds: The division may require a bond or deposit as part of the bidding process. This requirement is most often used for construction contracts; however, it may be used for any commodity or service if determined to be in the best interest of the state.

7.62.a. The Procurement Director shall determine the applicability and amount of bonds or deposit required of a vendor at any time, if, in his or her opinion, the security is necessary to safeguard the division from undue risk. The bonds or deposit serve as a guarantee that if the contract is awarded to such bidder, that bidder will enter into a contract for the work specified in the bid.

7.62.b. Below are types of bonds used in the division Purchasing Process:

7.62.b.1. Bid Bond – A bond in which a third party agrees to be liable to pay a certain amount of money in the event a selected bidder fails to accept the contract as bid. This bond is usually required for five percent (5%) of the total bid amount. Faxed bids that contain bid bonds, or any other bond should be submitted with the bid and the vendor should provide the original bonds within two working days of the bid opening dates.

7.62.b.2. Labor and Materials Payment Bond – A bond submitted by the apparent successful vendor upon request of the division to ensure payment of labor and materials purchased or contracted for on behalf of the state in a construction project.

7.62.b.3. Maintenance Bond – A bond provided as a warranty typically in a two-year term, which is required on roofing projects.

7.62.b.4. Performance Bond – A bond in which a surety agrees to be liable to pay a certain

amount of money in the event a vendor fails to perform a contract as bid. This bond is usually for the full amount of the contract.

7.63. Liquidated Damages: A specified contract provision which entitles the division to demand a set monetary amount determined to be a fair and equitable repayment to the division for loss of service due to vendor's failure to meet specific completion or due dates.

7.64. Bonuses: Provisions in any requisition or contract that specifies a monetary reward for early completion of a project is prohibited and considered illegal.

7.65. Architectural and Engineering: Architectural and engineering services must be procured in accordance with West Virginia Code § 5G-1-1 et seq. These procurements are unique in a number of respects, most notably that cost is not submitted in the vendor's response and that the normal delegated limits previously discussed do not apply. West Virginia Code 5G creates a distinction between procurements on projects of \$250,000 or less and those that exceed \$250,000. In both cases, however, the final contract must be processed by the division.

§99-6-8. Projects Exceeding \$250,000:

8.1. Pursuant to West Virginia Code § 5G-1-1, agencies must utilize the Expression of Interest (EOI) procurement method to solicit architectural and engineering services for projects estimated to exceed \$250,000. For purposes of determining the \$250,000 threshold, the project cost is calculated by combining the construction cost and associated architectural and engineering fees.

8.2. All EOIs exceeding \$250,000 must be submitted using the EOI Standard Format for processing as a central procurement. The EOI will then be advertised within *wvOASIS* and as a Class II legal ad as required by West Virginia Code.

8.3. Evaluation Committee: For the EOI evaluation committee, a committee of at least three members is required, and not more than five persons, that are knowledgeable of the service to be acquired, is recommended. The Procurement Director may also invite individuals to serve as advisors who are subject matter experts, knowledgeable in the area of discussion. The advisors may assist the evaluation committee members (referred to as evaluators) in the evaluation process.

8.4. The Procurement Director, who is skilled in purchasing techniques and procedures, must serve on the evaluation committee as a full voting member.

8.5. A non-state employee shall not serve as voting member of the evaluation committee.

8.6. The names and other relevant information for all evaluation committee members and advisors must be recorded prior to the release of the EOI. The submission must include justification for any identified advisors.

8.7. To ensure there is no conflict or influence on the committee members' decision process, the evaluation should take place with only the designated evaluators and advisors present.

8.7.a. Evaluation: Following the bid opening of EOI responses, the evaluation committee shall:

8.7.a.1. Evaluate the statements of qualifications and performance data and other material submitted;

8.7.a.2. Develop a “short list” (minimum of three firms) which, in their opinion, are best qualified to perform the desired service; and

8.7.a.3. Interview each firm on the “short list” and discuss anticipated concepts and proposed methods of approach to the assignment, including clarification of qualifications and performance data, the scope of services offered and needed time to complete project.

8.7.b. The committee will rank no less than three firms deemed to be the most highly qualified on the basis of the matters discussed during the interview, in order of preference, and present such list to the Director. The committee will forward its recommendation to the Director along with a written justification as to the selection of the firm. The justification must provide a score sheet with complete explanation of all points deducted to clearly indicate how the firms were ranked. The committee will then commence negotiations as to scope of service and price with the highest qualified firm.

8.7.c. If the division fails to negotiate a satisfactory contract with the highest qualified firm at a fee determined to be fair and reasonable, negotiations as to scope of services and price with the firm of second choice will commence. Failing that, negotiations as to scope of service and price will be undertaken with the third most qualified firm. In no situation, after negotiations have been terminated with a firm, will negotiations be reopened.

8.7.d. If the division fails to negotiate a satisfactory contract with any of the selected firms, in order of their competence and qualifications, they will rebid.

8.7.e. Non-Conflict Requirement for Expressions of Interest: To ensure that there is no conflict of interest in evaluating Expression of Interest (EOI) responses, each member of the evaluation committee and any advisors are required by the division to sign a *Certification of Non-Conflict of Interest*.

8.7.f. By signing this certification, the evaluators, advisors and Procurement Director or designee attest that:

8.7.f.1. his or her service on the evaluation committee is not in violation of West Virginia Code § 5A-3-31, § 6B-2-5, or any other relevant code section;

8.7.f.2. his or her service on the evaluation committee does not create a conflict of interest with any of the participating vendors; and

8.7.f.3. he or she has not had or will not have contact relating to the solicitation identified herein with any participating vendors between the time of the bid opening and the award recommendation without prior approval of the division.

8.7.g. The Procurement Director should discuss the non-conflict of interest issue with potential committee members to ensure that individuals who may have a conflict are not chosen to participate as evaluation committee members.

8.7.h. Emergency: If a decision is made that special circumstances exist, and that seeking competition is not practical, the Procurement Director may, with prior approval of the Director, select a firm on the basis of previous satisfactory performance and knowledge of the facilities and needs.

§99-6-9. Emergency Purchases:

9.1. Purchases may be necessary when unforeseen causes arise, however, emergency purchases are

not to be utilized for hardships resulting from neglect, poor planning or lack of organization by the spending unit.

9.1.a. An emergency purchase can only be made if the Director, Deputy Director, or Procurement Director, exercising sound judgment and discretion, concludes in good faith and upon reasonable and sufficient grounds that some unforeseen or unexpected circumstance has suddenly created a situation requiring that commodities or services be immediately purchased. A request for an emergency purchase must be made to the Procurement Director, which at a minimum shall describe the situation and cause, necessitating the emergency purchase.

9.2. Declared State of Emergencies by Governor: In accordance with West Virginia Code §15-5-6, the governor has the authority to suspend certain laws, rules and/or regulations regarding the acquisition of commodities and services by public organizations in the event the governor declares an emergency. When emergency needs relate directly to the declared state of emergency, these procedures are available and outlined on the Purchasing Division's website at <http://www.state.wv.us/admin/purchase/EmergencyProcs2.html>.

§99-6-10. Contract Commencement:

10.1. With the exception of certain approved emergency contracts, the encumbrance date is the earliest date that a vendor may commence work on any contract. No authority may be given to the vendor or any other entity to commence work unless an encumbered contract has been processed by the division and received by the vendor.

10.1.a. In regard to construction projects, when an architectural or engineering (A/E) firm is employed, construction does not commence until such time as the division gives the contractor a Notice to Proceed.

10.2. Contract management provides for assurance that the state receives service or commodities meeting requirements before payment is made. ***Construction contracts are excluded by law. This function is the sole responsibility of the Purchaser.***

10.2.a. Except for government construction contracts, the division shall prescribe contract management procedures for contracts for commodities and services in the amount of \$1 million or less. These procedures may include, but are not limited to:

10.2.a.1. establishing payment benchmarks to assure the division receives value prior to remitting payment;

10.2.a.2. conducting regular meetings between the division and vendor to assess contract performance;

10.2.a.3. training necessary division personnel to manage contracts.

10.2.b. For contracts for commodities and services in an amount exceeding \$1 million, the following contract management procedures apply:

10.3. Post Award Conferences: The Director or his/her designee is responsible for administering the contract and shall hold a post award conference with the contractor to ensure a clear and mutual understanding of all contract terms and conditions and the respective responsibilities of all parties. The agenda for the conference shall include, at a minimum, the introduction of all participants and

identification of the division and contractor key personnel and discussion of the following items:

10.3.a. The scope of the contract, including specifications of what the division is buying;

10.3.b. The contract terms and conditions, particularly any special contract provisions;

10.3.c. The technical and reporting requirements of the contract;

10.3.d. The contract administration procedures, including contract monitoring and progress measurement;

10.3.e. The rights and obligations of both parties and the contractor performance evaluation procedures;

10.3.f. An explanation that the contractor will be evaluated on its performance both during and at the conclusion of the contract and that such information may be considered in the selection of future contracts;

10.3.g. Potential contract problem areas and possible solutions;

10.3.h. Invoicing requirements and payment procedures, with particular attention to whether payment will be made according to milestones achieved by the contractor; and

10.3.i. An explanation of the limits of authority of the personnel of both the division and the contractor.

10.4. Monitoring: The Procurement Director shall develop a comprehensive and objective monitoring checklist which:

10.4.a. Measures outcomes;

10.4.b. Monitors compliance with contract requirements; and

10.4.c. Assesses contractor performance.

10.4.d. The division will conduct yearly audits on P-Card transactions and purchasing operations to be outlined in Appendix A.

10.5. Reports: The Procurement Director shall make the following reports to the Director on a schedule established by the Director, but not less frequently than once a year:

10.5.a. Status Reports: describe the progress of the work; track the organizational structure of the statement of work in terms of phases, segments, deliverables and products; and describe what work is complete and what work is pending and contrast that status against the contract schedule. If there are any unresolved issues that the division is contractually obligated to resolve, those issues should be included in the status report and a resolution should be requested. Weekly or Biweekly reports agreed upon by the Procurement Director and vendor.

10.5.b. Activity Reports: describe all activity on the project, regardless of whether substantial progress has been made toward completion of the project. If payment is based on the number of completed transactions, these activities must be specifically set out in the report. Monthly or as needed by

the Procurement Director.

10.6. Inspection: Procurement Director reserves the right to inspect whether commodities delivered, or services provided conform to contractual requirements.

10.7. Encumbrances: The Procurement Director encumbers all purchase orders executed by the division over \$25,000. Encumbrance is the process which ensures that funding is available for the payments relating to the specific purchase order or contract.

10.8. Requisitions are to include proper encumbrance information for purchase orders to be encumbered. The appropriate account(s) from which funds to pay for a contract will be documented prior to a contract being awarded, unless the contemplated contract is a type that cannot be encumbered. Open-end contracts do not need to be encumbered.

10.9. Prior to issuing a contract, the Procurement Director shall verify that the amount of funds encumbered is appropriate and that the account being encumbered matches what the Purchaser has requested. A contract or contracts must be encumbered prior to issuance in the following amounts:

10.9.a. One-time Purchases in Current Fiscal Year: A contract for onetime purchase to be completed in the current fiscal year must encumber the full contract amount.

10.9.b. Contract Spanning Multiple Years: A contract that will span multiple fiscal years must be encumbered for or in the amount of funds that will be spent under the contract in the current fiscal year;

10.9.c. Contract to Begin in a Future Year: A contract that will be awarded prior to the end of a current fiscal year but will become effective after that same fiscal year has ended is not required to encumber funds prior to issuance of the contract.

10.9.d. Open-end and Statewide Contracts: An open-end or statewide contract issued by the Purchasing Division is not required to have funds encumbered prior to the issuance of the contract.

10.10. Changes and Cancellations: Occasionally, it becomes necessary to amend, clarify, change or cancel purchasing documents.

10.10.a. A contract change order is required whenever the change affects the payment provision, time for completion of the work and/or the scope of the work.

10.10.b. Changes to the original purchase order must be sequentially numbered in the appropriate space. The explanation of change to an existing contract must be described with sufficient detail and clarity that any individual could review and generally understand the contract and change.

10.10.c. Any change to existing contracts that adds work or changes contract cost, and were not included in the original contract, must be approved by the division.

10.10.d. Vendors shall not be permitted to perform work that the spending unit anticipates will be added to a contract through a change order until such time as the change order has been formally approved by the division.

10.10.e. Administrative changes to contracts may be made after the fact with subsequent approval by the division. However, it is preferred that such changes be made in advance, whenever possible. Examples of administrative changes include:

10.10.e.1. Changing a vendor name;

10.10.e.2. Changing a vendor's address;

10.10.e.3. Correction of a clerical mistake made by the state;

10.10.e.4. Adding a renewal/extension year that was originally contemplated in the contract, provided that no new commodities/services or increases in price are included;

10.10.e.5. Contract closeout where the quantity required was originally unknown or estimated, unit prices were included in the original contract, unit prices are not modified as part of the change order, and the quantity required was less than originally anticipated;

10.10.e.6. Inclusion of the Notice to Proceed documentation; and

10.10.e.7. Any other administrative change not included may be approved by the Procurement Director on a case-by-case basis.

10.10.f. Any change request of a purchase order in excess of ten percent (10%) of the original contract amount (aggregate) is strongly discouraged. The Director at his discretion, may grant a change in any amount if unforeseen circumstances have occurred and when such change is in the best interest of the division.

§99-6-11. Lease Purchases:

11.1. A lease purchase contract is a contract that includes periodic lease payments, and in some cases a final lump sum payment, with ownership of the equipment being vested in the agency immediately or at the lease term expiration. The minimum purchase cost to consider a lease-purchase as an option is \$500,000.00 unless the Director grants an exception to this minimum amount. A letter of justification must be prepared, signed by the Purchaser and submitted to the division prior to any attempt to enter into a Lease Purchase.

§99-6-12. Cooperative Contracts:

12.1. Is a term utilized to describe the use of and/or adoption of an existing contract of another public entity or entering into a joint solicitation with other public entities.

§99-6-13. Printing and Printing Equipment:

13.1. All printing and binding services should be run through the Procurement Director to ensure best methods are utilized. Outside sources may be utilized if there is no internal method to perform the requested service.

§99-6-14. Vehicles:

14.1. All vehicle purchases, donations or seizures regardless of dollar amount, must be processed through the Procurement Director.

§99-6-15. Used Property:

15.1. May be purchased through the normal competitive bid process or through the direct award procurement method with prior approval from the Procurement Director.

§99-6-16. Banking Goods and Services:

16.1. The Office of the State Treasurer must approve the acquisition of any kind of banking goods or services, which includes accepting payments and receiving funds via electronic commerce. Agencies must submit a request to the Office of the State Treasurer before issuing any Request for Proposal (RFP) or Request for Quotation (RFQ) or entering into any contract with another entity for banking goods or services, in accordance with W. Va. Code §§ 12-1-7 and 12-3A-6. Refer to Accounting section of this manual.

§99-6-17. Radios and Microwave Equipment:

17.1. In accordance with Governor's Executive Order 2-11, any purchase by a state spending unit or state agency, including purchases on behalf of state agencies, of two-way radio, microwave or satellite equipment and related services or purchases that utilize state or federal funds distributed to local entities by the State of West Virginia which are not listed on the Statewide Interoperability Executive Committee's State Interoperable Radio Network (SIRN) Approved Compatibility Equipment List, shall obtain the prior written approval from the Statewide Interoperability Coordinator (SWIC) for any proposed purchase of goods and services. SWIC approval or verification that the equipment is on the Approved Compatibility Equipment is required.

17.1.a. For a list of approved radios for use on the Statewide Interoperable Radio Network, visit <http://www.sirn.wv.gov/information/downloads/Pages/default.aspx>.

17.1.b. All contractual documents for two-way radio, microwave or satellite equipment and related services, including, but not limited to, land or tower leases, memorandums of understanding/agreement, training contracts, agreements or services, and purchasing or service contracts related to two-way radio, microwave or satellite equipment and related services for the division, and all local entities of the state of West Virginia which utilize state or federal funds distributed by the state of West Virginia, must be reviewed and approved by the SWIC to ensure compatibility with the SIRN, to promote the best possible value in purchasing, and to ensure all agencies participating in the SIRN and needing equipment and related services are covered by contractual documents.

§99-6-18. Information Technology Equipment, Services and Software:

18.1. W. Va. Code § 5A-6-1, et seq., provides that the Chief Technology Officer (CTO) may evaluate and make recommendations on the design and suitability of Information Technology (IT) equipment and related services, and may review and make recommendations on the purchase, lease or acquisition of information equipment and contracts for related services, including temporary IT staffing by all state spending units.

18.1.a. Please reference West Virginia Office of Technology CTO Policy # CTO-19-001 for guidance, which can be found at <https://technology.wv.gov/security/Pages/policies-issued-by-the-cto.aspx>.

§99-6-19. Trade-In:

19.1. The division has the ability to trade in used equipment to offset the purchase cost of new equipment. The trade-in process is not delegated to the purchasers, so any trade-in will be processed

through the division regardless of dollar amount.

§99-6-20. Standardization:

20.1. Purchasers are permitted to standardize upon certain commodities by utilizing the process described below. Standardization shall allow the agency to specify a brand of product for competitive bidding or other appropriate procurement method without the need to consider other brands.

20.2. Standardization is limited to commodities that:

20.2.a. represent a core function of the division mission;

20.2.b. would yield a savings of time and money if standardized; and

20.2.c. either require testing or evaluation to determine accuracy or consistency or require interoperability in a larger system or network.

20.3. Savings of time and money must be shown without considering the traditional procurement process or the standardization process.

20.4. Standardization Duration: Any standardization established under this section must be valid for no more than five years. Upon expiration, the spending unit establishing the standardization may either take no action, which would allow the standardization to expire, or undertake the process outlined in this section to establish a new standard.

20.5. Standardization Process: A Purchaser desiring to establish a standard must use the following process:

20.5.a. The Purchaser must identify the commodity to be standardized and request that the Procurement Director establish a standard. The Purchaser shall provide to the Purchasing Director written certification and supporting evidence verifying that the standardization is in the best interest of the division.

§99-6-21. Quality Assurance: Is a partnership involving division purchasers, the vendor and the division.

21.1. The division establishes the quality level by the specifications, and the Procurement Director seeks to reduce cost and maintain quality through the competitive bid process. The Procurement Director will perform an evaluation of the offers by bidders to obtain maximum benefit for the tax dollars spent. The vendor's responsibility is to provide the quality level established by the specifications and accepted by the division.

21.2. Proper Acquisition Planning: The first step is to determine the commodity that is needed, the quantity, the quality level, delivery location and time frame. The division must also conduct adequate market research to allow for preparation of specifications.

21.3. Develop and Submit Solicitation: The Procurement Director is responsible for preparing the specifications and other solicitation documents that are necessary for the appropriate procurement process. If the procurement is expected to be more than \$25,000.00, the Procurement Director will submit those documents to the Purchasing Division.

21.4. Review Bids/Documents and Make Award Recommendation: After bids are opened (or documents are obtained in the case of a direct award) the Procurement Director is responsible for reviewing the bids/documents to determine the appropriate vendor for contract award. If the procurement is more than \$25,000.00, the Procurement Director will consult the Purchasing Division before making an award recommendation to the Director.

21.5. Receiving: Receivers must verify the shipment of commodities with the specifications in the purchase order while reporting of any discrepancies, obvious damages or shortages based upon the purchase order specifications.

21.6. Inventory: Once payment has been made to the vendor and the shell document established, reportable property must be added to the WV OASIS Fixed Assets System.

21.7. Vendor Responsibilities: Each vendor is solely responsible for delivering a bid to the division prior to the specified date and time of the bid opening. The official time clock of the division for the purpose of receipt of bids, shall be displayed in the offices of the division. Vendors are responsible for the accuracy of the information on and in the bid envelopes.

21.8. Compliance with Specifications: Successful vendors are required to meet or exceed the quality level accepted and specified on the final purchase order in addition to meeting delivery requirements.

21.9. Follow-Up with Suppliers: To ensure delivery deadlines are met, the vendor should communicate and coordinate with its suppliers to fulfill delivery obligations.

21.10. Dispute Resolution: The vendor is required to negotiate in good faith with the division should a dispute arise.

21.11. Remedies: In the event that a vendor fails to honor any contractual term or condition, the division may:

21.11.a. Cancel the contract and re-award the purchase order to the next lowest bidder (or next highest bidder if best value procurement). The vendor failing to honor contractual obligations is responsible for any increase in cost the state incurs as a result of the re- award;

21.11.b. Declare a vendor non-responsible and refuse to award a purchase order. All such instances shall be substantiated in writing. The documentation shall be considered a public document and shall be available for inspection at all reasonable times; or

21.11.c. Suspend, for a period not to exceed one year, the right of a vendor to bid on division purchases when there is reason to believe the vendor has violated any of the provisions, terms, or conditions of a contract, this rule or state law. A suspended vendor may appeal the decision to the Director.

21.11.d. (4) Debar a vendor on the basis of one or more of the grounds for debarment contained in W. Va. Code §§ 5A-3-33b through 33f or if the vendor has been declared ineligible to participate in procurement-related activities under federal laws and regulation. For a current list of debarred vendors declared by WV State Purchasing Division, please see www.state.wv.us/admin/purchase/debar.html.

21.12. Damages: A vendor who fails to perform as required under a contract shall be liable for actual damages and costs incurred by the division.

21.12.a. If any merchandise delivered under a contract has been used or consumed by the division and on testing is found not to comply with specifications, no payment may be approved by the Procurement Director for the merchandise until the amount of actual damages incurred has been determined.

21.12.b. The Procurement Director shall seek to collect damages by following the procedures established by the Office of the Attorney General for the collection of delinquent obligations.

§99-6-22. Impossible to Bid List:

22.1. Competitive Bidding Not Required: Purchaser may purchase the commodities and services on the list directly from the vendor and are not required to have contracts for the purchase of those items approved by the division unless otherwise noted below with the applicable item.

22.2. Documentation Requirements: Even though competitive bidding and division approval are not required for most Impossible to Bid List procurements, the spending unit must continue to follow documentation requirements associated with the applicable spend threshold, unless otherwise noted below with each item. For example, all vendors must complete vendor registration with the division, Secretary of State Registration, and the Purchasing Affidavit. Additionally, compliance checks such as vendor debarment, workers' compensation, etc., must be completed prior to completing the transaction.

22.3. Registration Fee Waiver: The vendor registration fee of \$125 for all vendors providing commodities or services under Impossible to bid list of this manual is waived if it is in the best interest of the division.

22.3.a. This waiver only applies to transactions conducted under Impossible to bid list of the manual. If the vendor in question also obtains contracts through competitive bidding, direct award, or some other method, fee payment will be required.

22.4. The following items comprise the Impossible to Bid List of commodities and services that may be purchased directly by Purchasers without advertisement or bid.

22.4.a. Advertising: This item includes any advertisement placed directly with newspapers, trade magazines, internet publications, social media or billboards. This item includes broadcast television and radio advertisements and creative services or marketing services to create such advertisements placed directly with the broadcaster or publisher. Additionally, this item includes participation fees for trade shows, conferences or conventions.

22.4.b. Artwork and Historical Items: This item includes the purchase of and service to artwork and historical items, i.e. restoring governors' portraits, refurbishing chandeliers, etc. Purchasers attempting to procure commodities and services under this item must obtain written approval from WVSP Procurement prior to making any purchase.

22.4.c. Attorneys and Law Firms: This item includes hiring attorneys and law firms in an official attorney-client capacity. Nothing in this item eliminates the approval or oversight residing within the Attorney General's office.

22.4.d. Aviation Fuel: This item includes the purchase of aviation fuel but excludes bulk purchases for delivery to state dispensing stations.

22.4.e. Governmental Agencies: This item only includes:

22.4.e.1. contracts between governmental agencies and spending units when a state or federal law requires the commodity or service be obtained from the governmental agency (any contract or purchase order issued must cite the law and maintain a copy on file); and

22.4.e.2. regulatory fees legally imposed by government agencies. Governmental entities are not required to register with the Secretary of State's Office so that compliance check is not required. Additionally, if the governmental entity is a West Virginia state agency then the Purchasing Affidavit is not required.

22.4.f. Court Ordered Placements: This item includes when placing children at various educational and/or behavioral centers when ordered by West Virginia courts or the West Virginia Department of Health and Human Resources.

22.4.g. Entertainers: This item includes individuals and/or groups contracted at the request of the Davison to entertain or to assist in the production of entertainment.

22.4.h. Hospitality: This item includes expenses for food, beverages, facility rental and entertainment relating to conducting division business.

22.4.i. Media License Fees: This item includes program license fees for radio or television.

22.4.j. Medical Fees: Included in this item are fees for medical services (behavioral and physical) from individual doctors, dentists, clinics, hospitals, laboratory testing facilities, audiologists, county medical examiners, physical and occupational therapists, behavioral counseling and evaluations, etc. for individual patients, inmates, students and clients where the division is responsible for payment for this one-time service. This item also includes programs designed for low income / uninsured patient care on an individual basis provided that the program is open to all service providers.

22.4.k. Also, included in this item is body transportation for corpses and indigent burial expenses and direct award medical and psychological consultants for the purpose of determining Federal Social Security Administration Disability by the Disability Determination Services of the WV Division of Rehabilitation Services. Also included are medical fees for the purposes of determining vocational rehabilitation needs of clients of the Division of Rehabilitation Services. This item does not include inmate health care management, hospital management, consulting services or agreements to provide services for groups of patients, inmates, students or clients, etc. for state agencies.

22.4.l. Postage: This item includes stamps and other non-competitive mailing services from the United States Postal Service, but this does not include services available from statewide contracts. The Purchasing Affidavit and Secretary of State registration are not required for transactions processed under this item.

22.4.m. Professional Association Dues: This item includes membership fees or association dues for professional associations that perform a licensing, certification or accreditation function for state employees or agencies (i.e., West Virginia State Bar, West Virginia Board of Accountancy, etc.).

22.4.n. Railroad Car Hire Fees: This item includes national association fees required from all railroads to monitor the location and use of railroad cars for the owners.

22.4.o. Resale Items: This item includes items that are acquired specifically for resale by the

division to the general public that should be selected on the basis of quality and delivery constraints due to customer demand.

22.4.p. Investigative Services; Subject Matter Experts and Witnesses for Administrative Hearing and Legal Proceedings: This item includes obtaining investigative services and the services of a subject matter expert or witness that is intended to help prepare for, or will be utilized in, administrative or legal hearings/proceedings. This item does not include agency consulting services or former employees retained by their agency or hired by another agency.

22.4.q. Subscriptions and publications: This item includes newspapers, textbooks and publications – electronic and hard copy – purchased directly from the publisher.

22.4.r. Training Activities: This item includes lecturers, honorariums, copyrighted test and training materials, test monitors/examination proctors, and registration fees, where competition is not available.

22.4.s. Utilities Regulated by the Public Service Commission: This item includes natural gas, water, sewage, electric, telephone, garbage, cable television service, connection fees, trash hauling and dumpster rental [if only one PSC approved hauler is in the area]. This item does not include propane gas, coal and satellite television, all of which must be competitively bid.

22.4.t. Court Ordered Payments: This item includes court order payment. A copy of the court order must be maintained in the agency file, unless sealed and restricted by the respective judge. If the order is sealed and restricted, an explanation must be maintained in the agency file referencing the court order. Court ordered payments are exempt from all documentation requirements listed above but spending units should comply with those requirements where possible.

22.4.u. Emergency Services (Non-Construction and Non-Architectural/Engineering “A/E”): This item includes non-construction and non-A/E services that must be procured on an emergency basis when: (1) formal bidding would cause the government to lose the ability to perform some critical function for itself or citizens of the State of West Virginia or; (2) formal bidding would delay a response to a declared state of emergency. Any use of this item must be approved by the Director in advance.

22.4.v. Vaccines: This item includes vaccines purchased through contracts issued by the Centers for Disease Control (CDC).

22.4.w. Transcripts from Court Reporters Employed by Court, Judge or Opposing Counsel: This item includes transcripts procured from court reporters who are employed by the court, judge or opposing counsel. These transactions are exempted from all documentation requirements listed above but spending units should comply with those requirements where possible.

22.4.x. Copies of Government Documents/Records Obtained from the Government: This item includes fees paid to the government entity required to obtain records of court and administrative proceedings as well as documents filed in those proceedings, and charges paid to a government entity for other official documents or records obtained from that government entity. Examples of allowable transactions include but are not limited to; fees associated with obtaining documents from the federal court’s PACER system, similar fees charged by county or local courts for records, fees required to obtain official copies of real estate records from the County Clerk’s Office, and FOIA fees.

22.4.y. Commodities or services for a shared facility arrangement with the U.S. Government: Effective July 1, 2018, commodities or services contracted by the U.S. Government and provided to the division when those commodities or services are:

22.4.y.1. offered as part of a shared facility arrangement, or

22.4.y.2. those commodities or services for the division cannot be easily separated from those for the U.S. Government.

22.5. The Purchasing Affidavit and Secretary of State registration are not required for transactions processed under this item.

§99-6-23 Surplus:

23.1. Coordinator: Procurement Director or designee shall be responsible for maintaining the agency's assets and to notify and train employees within the division on the procedures regarding the care and proper disposition of all division-owned assets.

23.2. Responsibility: Procurement Director is responsible for all assets under division jurisdiction, regardless of its state (removable or fixed), origin, or acquisition cost. Assets are maintained from date of purchase to date of retirement, this includes keeping equipment secure, entering assets into the Fixed Asset System, conducting physical inventories, submitting annual certification, retiring assets properly, etc.

23.3. Reportable Assets: Any personal assets, excluding expendable commodities as defined in the Non-Reportable Assets section, that has an original acquisition cost of \$1,000 or more and a useful life of one year or longer must be entered into the Fixed Asset Module and will be referred to herein as "Reportable Assets". The division may enter assets that do not meet the definition of Reportable Assets into the Fixed Asset Module, but are not required to do so.

23.3.a. Any asset entered into the Fixed Asset Module will be treated as Reportable Assets for procedural purchases whether or not the property meets the definition of Reportable Assets.

23.4. Exceptions: The division must enter the following commodities into the Fixed Asset Module and will be considered Reportable Assets even if not within the definition of Reportable Assets above:

23.4.a. Firearms regardless of the cost. Please ensure all serial numbers are entered correctly.

23.4.b. All computers (including laptops and central processing units [CPU]) with an acquisition cost of \$500 or more.

23.4.c. The acquisition cost of assets shall be determined as the actual cost of that asset as evident by invoices or purchase orders. The agency can also determine acquisition cost by a reasonable method of estimation provided that no invoice or purchase order records exist. The agency will thoroughly document the estimation method used, and the documentation related to the estimate will be maintained in the appropriate file for audit purposes.

23.4.d. Assets should be inventoried on a 'per item' basis. Individual items making one working component are to be inventoried as one asset. However, should the asset be purchased for the purpose of enhancing or upgrading the item, the cost of the upgrade can be entered into the Module as betterment.

23.5. Assets Replaced Under an Exchange Warranty: A purchaser that desires to have a Reportable Asset replaced under an exchange warranty program with the vendor or manufacturer must perform the following actions to ensure proper reporting of the exchange.

23.5.a. The purchaser must complete the exchange by returning the Reportable Asset in question to the vendor or manufacturer and receiving the replacement.

23.5.b. Then the purchaser must submit a Fixed Asset Modification to the Procurement Director for approval.

23.5.c. Modification data must, at a minimum, be a request to change the serial number associated with the old Reportable Asset to the serial number of the new replacement Asset. The purchaser's Fixed Asset Modification submission shall also include verification and back-up documentation proving that the original Reportable Asset was returned and replaced by another asset.

23.6. Group Purchases/Unit Cost: Group purchases of assets shall not be recorded in aggregate. Individual assets shall be recorded in the Fixed Asset Module only if an individual asset has a unit acquisition cost of \$1,000 or more and has a useful life of one year or more. Each unit shall bear a separate numbered inventory tag and be entered into the Fixed Asset Module as individual assets.

23.7. Donations: Donated assets acquired as a gift from an individual or organization are to be tagged and included in the Fixed Assets Module if the donation or gift is valued at \$1,000 or more and has a useful life of one year or longer. Donated assets are valued at fair market value on the date the gift is given.

23.8. Non-Reportable Assets: Non-Reportable Assets are defined as either assets that are valued at less than \$1,000 or have a useful life of less than one year, or assets expendable in nature. Non-Reportable Assets are not required to be entered into the Fixed Assets Module. Examples of Non-Reportable Assets include calculators, small lawn mowers, etc. Examples of Non-Reportable Assets that are expendable in nature include gravel, paper products, groceries, grass seed, etc.

23.9. Computer Software/Modular Furniture: Computer software is an intangible asset and considered Non-Reportable. Modular furniture when purchased as separate pieces normally does not cost more than \$1,000 per piece. It is recommended that modular furniture not be placed into the Fixed Asset Module.

23.10. Identification Tags: All Reportable Assets must have a numbered identification tag affixed to the asset. Tags are to be placed on all Reportable Assets in such a manner that it can be easily seen and read. (DPS #'s)

23.11. Added Property: When a purchaser acquires Reportable Assets the Procurement Director should enter the assets into the Fixed Asset Module and provide the purchaser a DPS number to label the assets as soon as the vendor's invoice has been paid.

23.12. Corrections: The division may make corrections to data entered erroneously into the Fixed Asset Module by completing a Fixed Asset Modification.

23.13. Property/Equipment Transfer: The transfer of assets between the division and other state agencies requires approval by the Director or his/her designee unless mandated by executive order or legislative action.

23.14. Cannibalization of Equipment: Cannibalization of equipment is authorized when in the best interest of the division and is a cost effective solution in maintaining or repairing division owned assets. Authorization may be granted by a supervisor exercising authority over said asset. Any questions regarding cannibalization should be forwarded to the Procurement Director. Cannibalization, as used herein, refers to taking parts from one or more assets to maintain or repair another asset.

23.15. Physical Inventory: The division shall take a physical inventory once every three years, and shall have completed such physical inventory by June 30th of the relevant year. The physical inventory shall include Reportable Assets under the division's jurisdiction.

§99-6-24. Surplus Property Disposition

24.1. The Procurement Director must approve all methods of disposition related to commodities or expendable commodities regardless of the acquisition cost. All uniform and non-uniform members desiring to dispose of commodities or expendable commodities must follow the disposition procedures as outlined in this manual.

24.2. The disposal process shall begin when the employee makes the decision to dispose of or retire a commodity or expendable commodity. Based upon various factors, including the condition of and the potential to reuse the item, the employee shall recommend to the Procurement Director one of the following disposition methods;

- 24.2.a. Sell On-site
- 24.2.b. Trade-in
- 24.2.c. Sell for Scrap
- 24.2.d. Recycle/Dispose as Waste
- 24.2.e. Lost Asset
- 24.2.f. Stolen Asset
- 24.2.g. Destroyed Asset

24.3. Employee's disposing of commodities or expendable commodities that qualify as Reportable Assets are required to advise the Procurement Director of the retirement date, and will retire the commodities or expendable commodities electronically using the Fixed Asset Module. The retirement process via the Fixed Asset System will automatically generate a Fixed Asset Disposition Document (FD).

24.3.a. There can be only one method of disposition listed on each cover sheet/form (WV-103).

24.3.b. Any requested disposition method must be approved by the Procurement Director, prior to an employee taking any further action related to disposition of the commodity or expendable commodity. Consequently, the commodities or expendable commodities must remain in the employee's possession until the requested disposition method has been properly approved. (an email will satisfy this requirement)

24.3.c. It is important that the item indicated on the WV-103 Surplus Property Retirement Form

or Fixed Asset Disposition (FD) coincide exactly with the actual commodity or expendable commodity being disposed of through the approved method.

24.3.c.1. <http://www.state.wv.us/admin/purchase/surplus/forms/WV103.pdf>

§99-6-25. Methods of Disposition:

25.1. Sell On-Site: Commodities or expendable commodities no longer needed by the division may be disposed of without removing them from the division's location. Commodities or expendable commodities disposed of by this method may be sold to an eligible organization, sold through a public sealed bid process, or sold through an internet auction. This is the preferred method of disposal when an item is exceedingly difficult or costly to transport or requires special handling.

25.1.a. To transfer an asset from the division to another agency (different department codes) the Procurement Director will complete a Fixed Asset Interfund Transfer (FAIT) in *wvOASIS*.

25.2. Trade-In: The trade-in process is not delegated to employees. In any situation where a trade-in is anticipated, the procurement must be bid as a central procurement transaction by the Procurement Director. The trade-in process consists of the following steps.

25.2.a. Upon determination by the division to utilize the trade-in process, the Procurement Director must develop specifications to accompany the *Request for Quotation* (RFQ) requesting that bids include a price for the new item only and prices that reflect the value the bidder proposes to attribute to the trade-in.

25.2.b. The Procurement Director must receive approval from the Director or designee to pursue the trade-in option; an approval notation will be maintained.

25.2.c. Documentation verifying receipt of the credit for the trade-in will be uploaded to the retirement FD in *wvOASIS*.

25.2.d. If the original cost of the items to be traded in is less than \$1,000 and is not listed in *wvOASIS*, the asset must be added to *wvOASIS* for trade-in purposes.

25.2.e. Only one-for-one trade-ins will be considered and items may be traded only for the same type of item. Trade-ins shall not be authorized for items purchased from statewide contracts or sole source vendors, unless it is in the best interest of the division and approved by Director.

25.2.f. It is important to note that the value of the new items for fixed asset purposes is the full value of the new items, including money paid for the asset and the value attributed to the trade in. The *wvOASIS* system automatically includes the money paid for the asset in the fixed asset system, but it does not automatically account for trade-in value. The division must create a Fixed Asset Increase document and use that document to add the trade-in value to the new asset.

25.2.g. A trade-in allowance does not allow the division to alter or circumvent the purchasing process.

25.3. Sell for Scrap: Commodities or expendable commodities which have a scrap value may be sold as scrap if authorized in advance by the Director or designee. The sale shall be conducted in one of the following ways:

25.3.a. The sale can be completed using an existing statewide contract for recycling;

25.3.b. The sale can be completed by obtaining three verbal bids and awarding the purchase of the scrap to the highest bidder.

25.3.c. The division may prescribe an alternative method for conducting the sale of the scrap material that may include, but is not limited to, sealed bids and internet auctions.

25.3.d. The Procurement Director may select a recycler based upon location and services provided. Vendor(s) receiving scrap or waste for recycle are prohibited from rehabilitation of said assets.

25.3.e. After the scrap dealer picks up the commodities or expendable commodities or the division has them delivered to the scrap dealer's facility, the employee will forward the dealers weight ticket receipt for those items listed on the WV-103 Surplus Property Retirement Form or a Fixed Asset Disposition Document (FD) for final completion by the Procurement Director. Checks for scrap are to be made payable to the division. A copy of the retirement form(s) should be delivered to the Procurement Director with the check to ensure that the retirement forms are finalized.

25.4. Dispose as Waste: Certain commodities or expendable commodities which have no value and cannot be reused may be disposed of by transporting them to a landfill. Transporting and/or costs associated with this method of disposal shall be borne by the division. The WV-103 Surplus Property Retirement Form or Fixed Asset Disposition Document (FD) requesting this method of disposal will be generated and submitted to the Procurement Director in advance for approval.

25.5 Lost Asset: When commodities or expendable commodities that also qualify as Reportable Assets have been lost, the Procurement Director is required to retire the asset in the Fixed Asset Module with the disposition code of "lost." Prior to reporting the commodities or expendable commodities as lost, the Procurement Director must take appropriate steps to locate the commodities or expendable commodities. Those efforts should include conducting a physical inventory as well as interviewing the employees responsible for the commodities or expendable commodities. The Procurement Director shall document the findings and submit the documentation along with a detailed letter explaining the loss with the retirement cover sheet to the Director. Upon approval by the Director, the Fixed Asset Disposition Document will have the status of final in *wv*OASIS.

25.6 Stolen Asset: Every effort should be taken to secure all division owned property. Division personnel should secure property when not in an office environment, i.e. vehicles containing division owned equipment should be locked when left unattended.

25.6.a. When a division commodity or expendable commodity has been stolen, the theft shall be reported. The CI report along with a letter from the employee detailing the theft shall be attached to the retirement cover sheet and submitted to the Procurement Director. If approved, Fixed Asset Disposition Document will have the status of final in *wv*OASIS.

25.7. Destroyed Asset: When any commodity or expendable commodity that also qualifies as a Reportable Asset has been destroyed, the employee shall forward a written explanation of how the commodity or expendable commodity was destroyed to the Director. For insured vehicles, documentation from the insurance company is required. Once the Procurement Director has reviewed and approved the transaction, Fixed Asset Disposition Document will have the status of final in *wv*OASIS.

25.7.a. Note: Lost, stolen, or destroyed disposition codes are not to be used to remove equipment from division assets when retirement procedures were not followed to properly dispose of obsolete

equipment

§99-6-26. Appendix A

26.1. Monitoring Procedures: The division will conduct yearly P-Card and Procurement process reviews to ensure procedures within this policy are being followed. A representative from Procurement along with a representative from Accounting will conduct the reviews. A sampling from all purchases will be taken to ensure proper compliance with this manual. A report will be submitted to the Chief of Staff Services for review.

§99-6-27. Forms:

WV-48 <http://intranet.state.wv.us/admin/purchase/wv-48.pdf>

WV-49 <http://intranet.state.wv.us/admin/purchase/wv-49.pdf>

WV-96 <http://www.state.wv.us/admin/purchase/vrc/wv96.pdf>

WV-103 <http://www.state.wv.us/admin/purchase/surplus/forms/WV103.pdf>

Non-Conflict of Interest <http://intranet.state.wv.us/admin/purchase/nonconflict.pdf>

Purchasing Affidavit <http://www.state.wv.us/admin/purchase/vrc/pAffidavit.pdf>

RFP <http://www.state.wv.us/admin/purchase/handbook/2018/RFP.doc>

RFQ <http://intranet.state.wv.us/admin/purchase/OneTimePurchaseRFQ.doc> Statewide

Contract Listing <http://www.state.wv.us/admin/purchase/swc/>