



**WEST VIRGINIA SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

**eFILED**

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Office of West Virginia  
Secretary Of State

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

AGENCY: Health And Human Resources TITLE-SERIES: 69-16  
RULE TYPE: Procedural Amendment to Existing Rule: Yes Repeal of existing rule: No  
RULE NAME: Purchasing Procedures  
CITE STATUTORY AUTHORITY: 5A-1-12

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

May 17, 2021

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

**Yes**

**April L Robertson -- 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.**

69CSR16

TITLE 69  
PROCEDURAL RULE  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

SERIES 16  
PURCHASING PROCEDURES

**§69-16-1. General.**

1.1. Scope. -- The policies and procedures set forth herein are promulgated as regulations governing the purchasing and contracting for exempt goods and services contracts as administered by the West Virginia Department of Health and Human Resources, in accordance with the statutory exemptions from the West Virginia Purchasing Division and approved by the West Virginia Legislature.

1.2. Authority. -- W. Va. Code §5A-1-12.

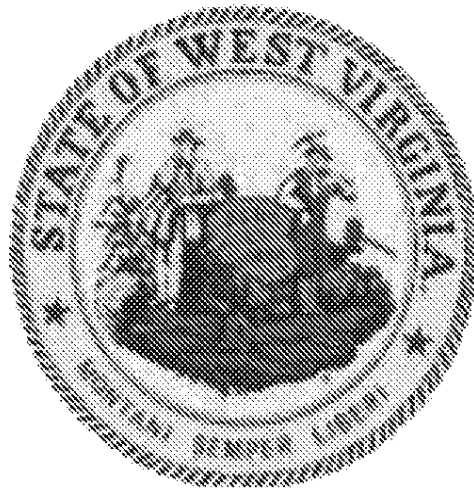
1.3. Filing Date. -- April 16, 2021.

1.4. Effective Date. -- May 17, 2021.

**§69-16-2. Incorporated by Reference.**

2.1. The Department of Health and Human Resources hereby adopts and incorporates by reference the purchasing procedures as outlined in the *DHHR Exempt Goods and Services Contracts Purchasing Methodology and Manual*, adopted March 2021, as follows:

**The State of West Virginia**  
**Department of Health and Human Resources**



**DHHR Exempt Goods and Services Contracts**  
**Purchasing Methodology and Manual**

March 2021

Department of Health & Human Resources  
One Davis Square, Suite 100  
Charleston, WV 25301

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## Introduction

The West Virginia Department of Health and Human Resources (DHHR) contracts with vendors for a wide array of goods and services to meet the requirements of the Department and any federal agency that may provide oversight of any of the Bureau's within the Agency.

The DHHR is subject to adhere to the policies of the Department of Administration; however, there are limited instances of purchasing exemptions. This manual is intended to provide guidance to spending units to acquire goods and services where an exemption applies.

The policies and procedures set forth herein are promulgated as regulations governing the purchasing and contracting for exempt goods and services contracts as administered by the West Virginia Department of Health and Human Resources, in accordance with the statutory exemptions from the West Virginia Purchasing Division approved by the State Legislature.

The provisions of this manual are exempt from Chapter 5A, Article 3, Division of Purchasing; however, the general legal requirements are incorporated by reference herein.

Any Spending Unit within the DHHR that is authorized through legislative exemption will work in conjunction with the DHHR Office of Purchasing to procure exempt goods and services contracts.

The policies and procedures presented in this manual apply to the Department's acquisition of exempt goods and services contracts only, and are to be used by Department personnel to guide the procurement process of such acquisitions. The Department is responsible for implementing the procurement methodologies described in this manual, and must manage these processes in accordance with the applicable Department, State, and Federal standards. The Bureau's specific role in the acquisition process includes review and approval of procurement requests, substantive development and review of solicitations, evaluation and award, and contract management. These activities are conducted by Bureau personnel at the discretion of the DHHR Secretary.

In addition, this manual is intended to be used as a reference by DHHR Office of Purchasing personnel, in support of the Department's purchasing activities. The DHHR Office of Purchasing's role in the Bureau's purchasing process is to provide procurement oversight, including the tools and support necessary to ensure fairness and integrity throughout the procurement lifecycle. The DHHR Office of Purchasing is responsible for providing procurement expertise, and guidance, including enforcement of best practices and Department, State and Federal guidelines. Specifically, the DHHR Office of Purchasing's role in the purchasing process includes, but is not limited to: standard procedures implementation and support; vendor management; solicitation advertisement; and protest support.

Updates and revisions to this manual will be made by the DHHR as processes are changed due to changes in Department, State, and/or Federal regulations. The DHHR will also update this manual as warranted to reflect changes in internal business processes. A record of all changes will be noted in this document, and communicated to Department staff and management as appropriate.

## DEFINITIONS

The following definitions apply and/or relate to the DHHR Exempt Goods and Services Contracts Purchasing Manual:

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**Agency** - For the purpose of this handbook, "agency" has the same meaning as "spending unit." This definition includes any department, bureau, division, office, board, commission, authority, agency, or institution of state government for which an appropriation is requested by the Governor, or to which an appropriation is made by the Legislature.

**Agency Delegated Open-End Contract** - A legal and binding instrument between the state agency and a vendor to exclusively provide a commodity which was competitively bid, evaluated, awarded and maintained by the state agency. This contract is for purchases under \$25,000 annually and for commodities and services that are frequently purchased.

**Agency Delegated Purchase Order** - A transaction which may be used by an agency to procure items within its delegated small purchase authority.

**Agency Open-End Contract** - A legal and binding instrument between the state agency and a vendor to exclusively provide a commodity which was competitively bid, evaluated, and awarded by the DHHR Office of Purchasing and maintained by the state agency. This contract may be for unlimited dollars and for commodities or services that are frequently purchased that are not on a statewide contract.

**Award Date** - The award date is the date the contract is finalized and submitted to the vendor.

**Best Value Procurement** - Purchasing methods used in awarding a contract based on evaluating and comparing all established quality criteria where cost is not the sole determining factor in the award. This includes Request for Proposals (RFP) and Expression of Interest (EOI).

**Bid** - Anything that a vendor submits in response to a solicitation that constitutes an offer to the State and includes, but is not limited to, documents submitted in response to request for quotation, proposals submitted in response to a request for proposal, or proposals submitted in response to an expression of interest.

**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 five percent (5%) of the total bid amount.

**Bid Opening** - A firmly established date and time for the public opening of responses to a solicitation.

**Buyer** - An employee of the DHHR Office of Purchasing whose primary assignment is purchasing commodities or services on behalf of the Department.

**Change Order** - A document which is used when it becomes necessary to amend, clarify, change or cancel purchasing documents issued by the DHHR Office of Purchasing.

**Commodity** - Supplies, materials, equipment, and any other articles or things used by or furnished to a department, agency or institution of state government.

**Competitive Bidding** - The process by which individuals or firms compete for an opportunity to supply specified commodities and services by submitting an offer in response to a solicitation.

**Contract** - An agreement between a state spending unit and a vendor relating to the procurement of commodities or services, or both.

**Delivery Order** - A written order to the contractor authorizing quantities of commodities and/or services to be delivered all in accordance with the terms, conditions, and prices stipulated in the original contract.

**Electronic Transmission** -- Any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval and reproduction of information by the recipient.

**Emergency** - A purchase made when unforeseen circumstances arise, including delays by contractors, delays in transportation and unanticipated volume of work. A report of any such purchase, together with a record of competitive bids upon which it was based, is to be submitted to the Purchasing Director. Emergency purchases are not used for hardship resulting from neglect, poor planning or lack of organization by the spending unit. Failure to plan does not make it an emergency situation.

**Encumbrance** - A process which ensures that funding is available for the payments relating to a specific purchase order or contract.

**Evaluation of Bids** - After the bid opening, the process of examining all offers in order to determine the bidder's responsibility, responsiveness to requirements, conformance to specifications and other characteristics important to the recommendation or selection for award.

**Expendable Commodities** - 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.

**Expression of Interest** - A Best Value Procurement tool used for architectural and engineering services which is defined in W. Va. Code §5G-1-2, 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."

**Fixed Assets** - Reportable property with an acquisition cost of \$1,000 or more and has a life of one (1) year or more.

**General Terms and Conditions** - Standard clauses and requirements developed by the DHHR Office of Purchasing and incorporated into solicitations and resulting contracts.

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

**Lease** - A written agreement between the owner of equipment (lessor) and a state agency (lessee) by which the owner agrees to give the agency permission to use the equipment for a predetermined fee (rental) for a period exceeding thirty (30) days. Title does not pass from the lessor to the lessee.

**Lease Purchase** - A written agreement in which the lease payments are applied, in whole or in part, as installment payments for equity or ownership upon completion of the agreement. Title transfers with the last installment payment to the lessee.

**Maintenance Bond** - A bond provided as a warranty of normally two (2) years, which is required on roofing projects.

**Mandatory Terms** - All terms and conditions in the written specification which are absolute and the compliance with cannot be waived. Failure to comply with mandatory terms shall require the vendor to be disqualified. Mandatory terms are indicated by the use of the terms *shall, will or must*.

**Non-Mandatory Terms** - All terms and conditions in the written specification which are not absolute. Non-mandatory terms are indicated by the use of the terms *may, should, preferred or could*, and are understood to be permissive and shall not be used to disqualify any vendor.

**Notice to Proceed** - A formal written communication most often used in construction contracts to establish the date for work to commence and determines the date for completion.

**Open-End Contract** - A generic term used for a contract that covers a period of time in which all terms, conditions and prices are specified with the exception of quantity.

**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.

**Piggybacking** - Utilizing any existing open-end contract of the federal government, agencies of other states, other public bodies or other state agencies to which the requesting agency was not an original party. Piggybacking requires prior approval by the Purchasing Director.

**Pre-bid Conference** - A meeting between vendors and agency personnel which offers an opportunity to emphasize and clarify critical aspects of a solicitation, eliminates misunderstanding and permits vendor input. Vendor attendance may be mandatory or voluntary as specified in the bid document.

**Printing** - Services including printing, binding, ruling, lithographing, engraving and other similar services.

**Procurement** - The buying, purchasing, renting, leasing or otherwise obtaining of commodities or services.

**Protest** - A formal, written complaint filed by a vendor regarding specifications or an award

**Public funds** - Funds of any character, including federal monies, belonging to or in the custody of any state spending unit.

**Purchase Order** - A document issued by the Department used to execute a purchase transaction with a vendor. It serves as notice to a vendor that an award has been made.

**Purchasing Affidavit** - A form required to be completed by all vendors prior to the award of a contract. No contract or renewal of any contract may be awarded by the state or any of its political subdivisions to any vendor or prospective vendor when the vendor is a debtor and the debt owed is an amount greater than \$1,000 in the aggregate.

**Purchasing Bulletin** – An electronic publication made available on the Vendor Self-Service portal (VSS) as part of the wvOASIS system used to advertise purchases expected to exceed \$25,000.

**Removable Property** - Any personal property not permanently affixed to or forming a part of real estate.

**Renewal** -When an existing contract is renewed for an additional time period in accordance with the terms and conditions of the original contract.

**Rental** - Temporary compensation or fee paid for the use of any equipment usually for a period of less than thirty (30) days.

**Request for Information (RFI)** - A document used to solicit information to assist in preparing specifications for a Request for Quotation (RFQ) or Request for Proposal (RFP). No award can be made from an RFI.

**Request for Quotation (RFQ)** - A document, containing the specifications or scope of work and all contractual terms and conditions, which is used to solicit written bids. Conformity to specifications and price are the only factors used in the evaluation process.

**Request for Proposals (RFP)** - A Best Value Procurement tool used to acquire professional and other services where the scope of work may not be well defined and cost is not the sole factor in determining the award. All criteria by which the bidders will be evaluated must be contained within the bid document.

**Requisition** - An electronic request in wvOASIS by an agency for the purchase of commodities and services.

**Services** - The furnishing of labor, time, expertise or effort, not involving the delivery of a specific end commodity or product other than one that may be incidental to the required performance.

**Sole Source Purchase** - A procurement method that allows for the direct purchase of commodities or services from a vendor when only one vendor can supply the needed commodity or service.

**Solicitation** - A written or oral attempt made by the state to obtain bids or proposals for the purpose of entering into a contract. Requests for Quotation (RFQ), Requests for Proposal (RFP), telephone calls or other documents may be used.

**Spending Unit** - A department, bureau, division, office, board, commission, authority, agency or institution of state government for which an appropriation is requested by the Governor, or to which an appropriation is made by the Legislature.

**Statewide Contract** – An open-end contract issued by the Purchasing Division and made available to all state agencies to purchase frequently used commodities and services.

**Tie Bid** - When two (2) or more bids of equal terms and amount or score are received in response to a solicitation.

**Unit Price** - The cost per unit of the commodity or service.

**Vendor** - Any person or entity that may, through contract or other means, supply the state or its subdivisions with commodities and services, and lessors of real property.

**Vendor Self-Service (VSS) Portal** – This feature incorporates the vendor registration function as well as the *West Virginia Purchasing Bulletin*, which includes commodities and services currently out for bid. The VSS portal also allows vendors to receive solicitation notifications by e-mail based on commodities and services noted at the time of registration; review awarded contracts; perform inquiries pertaining to awards; view payment status and update company contact information, including mail and e-mail addresses.

**Vendor Preference** - A numerical preference used during the evaluation of bids when comparing in-state and out-of-state bidders, pursuant to W. Va. Code §5A-3-37.

**wvOASIS** – An enterprise resource planning (ERP) system used by the state of West Virginia to process all financial transactions, including procurement.

## ***Part I – General Procurement Information***

### **Procurement Information**

Procurement of DHHR goods and services begins with determining the exact requirements for an acquisition. The Bureau must take into consideration the problem to be resolved and what alternatives or options are available to satisfy the need; thus, the DHHR will define the need in the scope of work in the procurement methodology and in the contract.

### **Acquisition and Delivery Lead Time**

Proper acquisition planning requires the consideration of all time constraints associated with the goods and services being procured. The time required to prepare, solicit, evaluate and make an award varies depending upon the dollar value, responsiveness of vendors offering the goods and/or services and the complexity of the requisition.

Bureau personnel should also consider “delivery” lead time, which is the time after the award that is required by vendors before the procured goods and services may commence. These times vary widely by industry and vendor. Consideration must be given to market conditions and possible vendor schedule constraints which will affect service delivery. Complex procurements may require more delivery lead time than standard services.

### **Prohibition on Backdating Documents**

All agreements, change orders, and other documents require an effective date, at which time the vendor may begin to supply the services as specified. Verbal approval for a vendor to proceed without a properly executed purchase order by agency personnel is prohibited and is considered an illegal act. The DHHR Office of Purchasing may not accept any agreements, change orders or other documents which set an effective date that precedes the date of arrival in the DHHR Office of Purchasing by more than 20 calendar days. Any exceptions must be reviewed and approved by the DHHR Secretary.

### **Specification Development**

An essential step in the procurement process is to develop a purchase description, also known as a specification. Specifications can either enhance or inhibit competition. In accordance with the DHHR’s commitment to purchasing best practices, all DHHR exempt goods and services contract specifications are written in a manner that meets the agency's needs and encourages competition. Specifications are developed by Subject Matter Experts (SMEs) familiar with the service being sought. SMEs may include Bureau personnel, employees of other State agencies, and/or other external resources. The following provides guidelines for the development of specifications, as well as a description of the specifications used by the Bureau. Written specifications are required for all DHHR exempt goods and services purchases in excess of \$25,000, and must be retained with the purchasing file for each purchase order.

### **Definition of a Specification**

A specification is an exact description of a good and/or service used to tell prospective vendors precisely what is required. The specification must be written in clear, concise, unambiguous, and precise language and include an explanation of the desired purchase, a statement of purpose or usage, the quality level, any special requirements, performance expectations, and timing requirements. The nature of a good and/or service will determine whether specifications will be long or short and what descriptive format should be used. At a minimum, a purchase description must contain both a description of the requirements and any required quality assurance provisions. Regardless of length or format, the specification will define minimum requirements.

Specifications should not be restrictive (locking in a specific vendor and limiting competition) or be vague (allowing a vendor to provide a lower than acceptable quality level product or service).

### **Criteria for a Good Specification**

A good specification sets forth actual, minimum requirements, as opposed to desires. It contains quality assurance provisions and provides a means of determining that the vendor has met requirements and also provides the outline of the contract line items. The well-written specification will be precise and clear. If requirements are clearly and concisely stated, buyers will succeed in satisfying the need. If there is any ambiguity or room for interpretation, vendors will make interpretations that may or may not be appropriate. If requirements are too restrictive competition may be limited. A good specification should:

- Be clearly understandable to both buyer and vendors
- Be based on need
- Emphasize performance rather than design
- Identify the essential characteristics of the purchase
- Not be written by a bidder
- Be written by subject matter experts
- Be more quantifiable and verifiable.

### **Types of Specifications**

A "Brand Name(s) or Equal" Specification is based upon one (1) or more manufacturer's commodity description(s), model number(s) and quality level. Spending units may not use brand or vendor names to restrict competition; however, if brand names are used to adequately describe a needed commodity or service, the brand or vendor name must be followed by the phrase "or equal" to promote and encourage competition.

A spending unit that uses a brand or vendor name to describe a needed commodity or service must also list in the specifications the mandatory components of that commodity or service that the reference to a brand or vendor name is intended to capture. A vendor's equality with the brand or vendor name will be evaluated on the basis of the mandatory components only.

Any spending unit request to disqualify a vendor on the grounds that the vendor has bid an unequal product must be accompanied by written justification listing the mandatory component that is unequal and explaining how the product bid is unequal.

For example: A brand name manufacturer's commodity numbers referenced in specifications must be easily identified in a current publication that is available to most vendors and must also include the required features upon which equivalency will be evaluated.

When using a brand name specification, the words "OR EQUAL" must be inserted to inform vendors that alternate bids will be considered. The general name of the items, e.g., air blowers, automobiles, etc., should be listed first; the manufacturer and model number of the item should follow immediately. Literature should be requested to accompany any alternate bid which can verify that the alternate bid complies with the specifications.

A Performance Specification is based upon the specific performance needs of the purchaser. The performance specification places less emphasis on how the product is made, and more emphasis on how the product performs.

A Design Specification concentrates on the dimensional and other physical requirements of an item being purchased. The design specification is used when the commodity has to be specially made to meet the purchaser's unique needs.

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

An agency may not draft specifications to match a vendor's description of its commodity or service to the exclusion of others or draft specifications that are so restrictive that only one desired vendor can meet the requirements without adequate justification for the restrictions. Reduced need for training, maintaining consistency in inventory, staff familiarity, and other similar objectives will not be sufficient to justify restrictions in specifications.

#### **Request for Information (RFI)**

A Request for Information (RFI) is a document used to solicit information to assist in preparing specifications for a Request for Quotation (RFQ) or Request for Proposal (RFP). An RFI should be used when appropriate expertise or information is lacking to develop adequate specifications for an RFQ or RFP. This process allows for the assistance of multiple vendors who have expertise and can provide information in the area of concern. An RFI is not a mandatory prerequisite to the issuance of an RFQ or an RFP. RFIs for services must be advertised on wvOASIS. Participation in the RFI process does not jeopardize the vendor's ability to compete in the bid process, as long as the vendor does not receive compensation or any form of favoritism. An RFI shall not be used to make an award of a purchase order or contract.

#### **Vendor Contact**

The Bureau may also gather information directly from vendors without jeopardizing the vendor's ability to compete in the bid process, as long as the vendor does not receive compensation or any form of favoritism. At the discretion of the DHHR Secretary or designee, the Bureau may contact

vendors for information or copies of specifications. This contact extends to vendor demonstrations performed at the Bureau.

#### **Consulting Services**

The Bureau may contract with consultants to assist in the development of specifications. Any individual, corporation, or firm paid to custom design or write specifications is not permitted to competitively bid to provide the product or service that was designed. This removes the possibility of the designer developing specifications that only the designer can meet or restrict another vendor from meeting. This also prevents the appearance of any impropriety, thereby protecting the integrity of the competitive bid process. Contracting for consulting services must follow the services contracting processes described in this document.

#### **Identifying Possible Vendors**

In order to achieve the goal of competitive bidding, a minimum of three (3) bids is preferred. All DHHR goods and services contract solicitations in excess of \$25,000 are posted via the wvOASIS Vendor Self-Service Portal.

#### **Procurement Methodologies**

The following section presents methodologies the DHHR may utilize for procuring service contracts.

##### **A. Availability through Internal State Resources**

Once the need is established, the DHHR may review all internal State resources to determine if an alternative source exists that may fulfill procurement needs.

##### **B. Availability through Agency or Other State Contracts**

If a service is not available through internal resources, the DHHR may determine if it is available via an existing contract. The following describes the processes for utilizing existing contracts as well as the guidelines and requirements that govern these methodologies.

#### **Agency Contracting Guidelines and Requirements**

The following guidelines and requirements apply to purchases made using existing exempted contracts, cooperative purchasing agreements, and purchasing consortiums. All required documentation must be submitted to the DHHR Office of Purchasing in writing sufficiently in advance of the proposed purchase:

- A written justification explaining how the use of the contract is financially advantageous and comparable to what has been competitively bid.
- A complete copy of the contract to be used.
- Evidence that the issuing agency and vendor will allow a West Virginia spending unit to use the contract.
- A completed copy of the purchase order for services purchased.
- A complete list of any and all applicable fees or terms and conditions.

Any contract posted to the Statewide Contract List maintained by the State Purchasing Division is available for use absent the documentation required above. Please note that certain purchasing forms may be required, including (but not limited to): the Agreement Addendum; the Purchasing Affidavit; and the Certificate of Non-Conflict.

In addition, the Department may participate in, sponsor, conduct, or administer a cooperative purchasing agreement or consortium for the purchase of services with agencies of the federal government, agencies of other states, other public bodies or other state agencies, if available and financially advantageous. The DHHR may approve administrative fees necessary to participate in cooperative purchasing agreements.

#### **C. Memorandum of Understanding**

The DHHR may engage in agreements with other state agencies through a Memorandum of Understanding (MoU). Although MoUs are not a purchase agreement, they are an important tool used by the Bureau to clarify working relationships with other state agencies. A Memorandum of Understanding (MoU) is a written agreement that clarifies relationships and responsibilities between two or more organizations, usually government agencies that share services, clients, and/or resources. The Department often provides goods and/or services to the same individuals served by other State agencies, and a MoU can facilitate a relationship between the Department and other agencies. The MoU serves to define the on-going consultation and communication between the two agencies, and documents the recognition of the working relationship. The Department enters into MoUs at the discretion of the Secretary or designee.

#### **D. Contracts with West Virginia University, West Virginia School of Osteopathic Medicine and Marshall University.**

In compliance with W. Va. Code §9-2-9a. Contracts between the Secretary and three higher education institutions. Any contract between the Secretary and West Virginia University, West Virginia School of Osteopathic Medicine or Marshall University for services are not subject to requirements for competitive bidding spelled out within this policy.

#### **E. Sole Source and Emergency Purchases**

Special circumstances may preclude the DHHR from engaging in the standard procurement processes. These special cases include sole source purchases and emergency purchases.

##### **Sole Source Procurement**

*In no instance will the sole source procurement process be used as an attempt to circumvent the normal bidding process.*

The DHHR is committed to the use of the competitive procurement process for the acquisition of DHHR goods and/or services contracts. In the instance that competition is not available, a direct purchase from a sole source may be necessary. The DHHR will exhaust all attempts to secure competition before pursuing a sole source purchase, verifying that the purchase meets one or more of the following criteria:

- The goods and/or services cannot be obtained through ordinary purchasing procedures;
- The goods and/or services is unique and not available from any other source; or
- The item is not available from a State spending unit or other institution with preference under the West Virginia Code, provided the price, availability and quality are comparable to those on the open market;
- Meets federal requirements for exemption as sole source.

Regardless of dollar amount, all direct purchase requests are documented, certifying that no other sources are available and that all attempts were made to secure competition.

All sole source purchases, regardless of dollar amount, require written justification from the initiating Bureau attesting to the validity of the request. For sole source purchases less than \$25,000 the Bureau must maintain written documentation certifying that no other sources are available, how the sole source procurement meets the federal guidelines for sole source purchases, and that all attempts to secure competition have been exhausted.

The requisition must also include the following vendor forms and documentation: an original signed vendor quotation, including a specific description, terms, and price (quotation may be on the vendor's letterhead); *Purchasing Affidavit*; and *Non-Conflict of Interest Certification*; and an *Agreement Addendum (if applicable)*.

The DHHR will advertise the potential sole source purchases in excess of \$25,000 via wvOASIS to ensure no other vendor may provide this commodity or service. The initiating Bureau must provide written documentation to DHHR Office of Purchasing certifying that no other sources are available and that the spending unit exhausted all attempts to secure competition. Should no vendor respond to the sole source advertisement, the agency's Purchase Requisition will be processed as a sole source purchase.

If a vendor(s) does respond, indicating they can provide the services advertised, the sole source *Purchase Requisition* will be canceled and the agency must competitively bid for services.

#### Emergency Purchases

*In no instance will the process be used as an attempt to circumvent the normal bidding process.*

Emergency purchases are acceptable only when unforeseen causes arise. An emergency purchase maybe made only if it is concluded in good faith and upon reasonable and sufficient grounds that some unforeseen or unexpected circumstance has suddenly created a situation requiring that services be immediately purchased by the Department.

Full documentation is maintained for all emergency purchases. A report of any such purchase, together with a record of competitive bids upon which it was based, is to be prepared. The purchase file shall include the completed Emergency Purchase Request and all vendor bids.

**Emergency Purchases \$25,000 or Less:** A minimum of three (3) bids, if possible, should be obtained. Original written bids and written agency justification shall be attached to the Bureau file. Agency Master Terms and conditions should also be included in requests for bids in emergency situations to the extent that the emergency permits. DHHR Office of Purchasing approval is not required for emergencies \$25,000 or less at the agency delegated level.

**Emergency Purchases over \$25,000:** When an emergency situation occurs during normal business hours, written approval of the DHHR Office of Purchasing Director or his/her designee must be obtained prior to making a purchase or execution of any work. A written explanation from the primary spending unit procurement officer must be provided immediately. If an emergency occurs after business hours, on a holiday or weekend, the primary state agency designated procurement officer may proceed with the emergency purchase and provide immediate written justification of the action to the DHHR Office of Purchasing Director on the first working day following the emergency.

A minimum of three (3) bids, if possible, should be obtained.

The awarded vendor must be properly registered with the Purchasing Division. Original written bids shall be attached to the *Purchase Requisition*, and submitted to the DHHR Office of Purchasing with a letter of justification or a copy of the Director's or designee's written approval along with the *Purchase Requisition*.

#### F. Bidding Thresholds

**Purchases \$5,000 and Less:** Competitive bids are not required, but are encouraged when possible.

**Purchases \$5,000.01 to \$25,000:** A minimum of three (3) verbal bids are required, when possible, and the lowest bid meeting specification must be awarded the purchase order/contract. All bids must be present in the file. Signed fax bids, electronic bids and screen prints from internet sites are acceptable. A "no bid" is not considered a bid.

Spending units will directly issue contracts under \$25,000. Each spending unit shall identify individuals who will have the authority to approve purchases for their unit. The spending unit should develop institutional guidelines and provide for obtaining adequate and reasonable records to properly account for funds and facilitate auditing. The spending unit will maintain all records associated with the following purchases:

1. Purchases under \$25,000.
2. Purchases awarded under the authority of the Office of Laboratory Services and deemed exempt from agency delegated processing regardless of value.

3. Purchases awarded under a Purchasing Handbook Section 9 Exemption regardless of value.

**Purchases in excess of \$25,000:** A minimum of three (3) written bids are required, *when possible*, and the lowest bid meeting specification or if using a RFP the highest scoring vendor must be awarded the purchase order/contract. All bids must be present in the file. Spending units will submit specifications to the DHHR Office of Purchasing for bidding via wvOASIS. The DHHR Office of Purchasing will maintain all records associated with Purchases over \$25,000 unless the purchase was awarded under one of the following exemptions.

1. Purchases awarded under the authority of the Office of Laboratory Services and deemed exempt from agency delegated processing regardless of value.
2. Purchases awarded under a Purchasing Handbook Section 9 Exemption regardless of value.

#### **G. Formal Acquisitions Over \$25,000– Requests for Quotation (RFQ), Requests for Proposals (RFP) and Expression of Interest (EOI)**

The DHHR uses three competitive procurement methods for Formal Acquisitions, depending on the dollar amount and nature of the acquisition: Request for Quotations (RFQ), Request for Proposals (RFP) and Expression of Interest (EOI).

Exempt goods and services contracts are designated Formal Acquisitions, precluding special circumstances (e.g., sole source, emergency purchase, Memorandum of Understanding, etc.) and conducted via competitive process. Upon completion of the acquisition planning process and verification of no alternative sources, the Bureau initiates the competitive procurement process.

Regardless of the type of formal acquisition (RFQ vs. RFP), the following describes the procurement cycle for these types of purchases. Unless otherwise noted that there are specific requirements for an RFQ or an RFP, the processes are the same for both types.

**Formal Acquisition and Procurement Process** The following provides guidelines and policies for the Formal Acquisition procurement process.

#### **Solicitation of Bids**

The DHHR is committed to the competitive procurement process. In order to ensure fairness and integrity in the process, Bureau personnel follow best practices and Department, State and Federal procurement policies and procedures. The following describes key activities and requirements surrounding solicitations, bids and proposals.

#### **Selection of Vendors**

In order to achieve the goal of competitive bidding, a minimum of three (3) bids is preferred. Bureau personnel are encouraged (but not required) to provide the DHHR Office of Purchasing with contact information for at least three (3) potential vendors who may be qualified to bid on the solicitation. After potential vendors are identified, solicitation announcements are sent to the vendors upon publication of the solicitation. All DHHR exempt goods and services contract solicitations are posted on wvOASIS. Vendors may request bid packages by telephone, electronic mail, fax or via the Internet. Competition is always encouraged on all requisitions.

### **Bid Submission**

The vendor is responsible for submitting a correct and accurate bid to the DHHR Office of Purchasing by the specified bid opening time and date. Fax bids are acceptable, but receipt of the bid must be completed prior to the bid opening time and date. Any bonds submitted via fax should be followed by an original bond, which must be received by the DHHR Office of Purchasing within two (2) business days upon request.

### **Bid Receipt**

Vendors should be instructed to submit quotations/proposals to the DHHR Office of Purchasing. The DHHR Office of Purchasing personnel will receive solicitations, stamp them with the official time/date, and submit them to the appropriate Bureau personnel after bid opening.

### **Establish Bid Opening**

Formal bid opening dates are established by the DHHR Office of Purchasing, 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 addendums or other unforeseen factors. 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 DHHR Office of Purchasing by the specified date and time of the bid opening.

### **Pre-Bid Conferences**

The DHHR may conduct "pre-bid conferences" on major acquisitions early in the solicitation cycle to provide an opportunity to emphasize and clarify critical aspects of the solicitation, eliminate misunderstandings and encourage vendor participation. These conferences are conducted by the DHHR with potential bidders when solicitations for complex, large dollar requirements are bid. The DHHR Office of Purchasing may participate in these pre-bid conferences. In all cases, it is very important for the Bureau Procurement Officer or designee who is trained and knowledgeable of the state procurement process to attend these conferences. Vendor attendance at conferences may be optional or mandatory. If mandatory attendance is required, only bids or proposals from those vendors represented at the conference will be accepted. Teleconference attendance is prohibited unless specified in the bid document. "Sign-in sheets" for mandatory pre-bid conferences must be utilized and must provide for capturing the following:

- name of company
- person attending (signature and printed name)
- address,
- telephone number and facsimile number
- email address

The header information on the sheets should include the requisition number and the date and time of the pre-bid conference. No one (1) individual may represent more than one (1) vendor. 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. The following should be presented at the pre-bid conference:

- Provide the “sign-in sheet” and remind all attendees to complete the “sign-in sheet” (Emphasize the importance of the “sign in sheet.”)
- Welcome attendees and introduce yourself
- Offer opening remarks
- Identify the project by RFQ or RFP number and generic scope of work
- Review important general information items
- Questions asked during or after the pre-bid conference must be submitted in writing for a formal response and placed in the addendum. Answers to questions are not official until such time as they are in writing to all parties in attendance at the pre-bid conference.
- Open the technical specifications for discussion by item with all attendees. Items that all parties agree need to be amended by addendum will be recorded by the agency to aid in preparing the addendum. All clarifying statements and questions shall be addressed on an addendum.
- Review items to be included in the addendum if at all possible. For items deferred, the information will be addressed in the addendum after management has had an opportunity to consider the issue.
- Bureau personnel should close with remarks and thank everyone for attending.

#### **Amending a Solicitation**

If it is necessary to amend a solicitation, prepare, post, and send an addendum to all potential bidders or offerors who received a copy of the solicitation or who attended a pre-bid or pre-proposal conference. The DHHR Office of Purchasing will be responsible for preparing these documents. Signed acknowledgment of addenda must be returned prior to the date and time of the opening or with the bid or proposal. Failure to return the addendum may be grounds for declaring the bid nonresponsive. When an addendum is issued that extends the time for the vendor to prepare a solicitation response, the opening date should be extended generally for a period of not less than ten (10) days after the issue date of the addendum.

#### **Canceling a Solicitation**

A Request for Quotations, a Request for Proposal, any other solicitation, or any and all bids or proposals, may be canceled or rejected at the discretion by the DHHR Office of Purchasing. When canceling a solicitation, written notification must be provided to all vendors who have been issued a solicitation and the notice must be publicly posted. The reason for cancellation shall be made a part of the contract file. The DHHR shall not cancel or reject a Request for Quotation, a Request for Proposal, any other solicitation, bid or proposal solely to avoid awarding a contract to a particular responsive and responsible bidder. Personnel responsible for opening bids or proposals must be notified of the cancellation to prevent responses from being inadvertently opened. Return sealed bids or proposals on canceled programs unopened if hard copy bids or proposals were received. If a program is canceled after the bids have been received and opened, original documents will remain a part of the procurement transaction file. Bidders should be notified in writing that the program has been canceled.

### **Liquidated Damages**

The Bureau may require a liquidated damages provision for some contracts. The term liquidated damages refers to a specified contract provision which entitles the DHHR to demand a set monetary amount determined to be a fair and equitable repayment for loss of service due to a vendor's failure to meet specific completion or due dates. The standard contractual version of this clause reads as follows:

*The Vendor agrees that liquidated damages shall be imposed at the rate of \$\_\_\_\_\_ (per day, per week, per unit, or some other agreed measure) for failure to provide (deliverables, meet miles stones identified to keep the project on target, or failure to meet specified deadlines) This clause shall in no way be considered exclusive and shall not limit the State or Bureau's right to pursue to any other additional remedy to which the State or Bureau may have legal cause for action including further damages against the Vendor.*

### **Bonuses**

Provisions in any requisition or contract that specifies a monetary reward for early completion of a project shall be strictly prohibited and illegal.

### **Evaluation and Award**

The evaluation and award procedures differ for the RFQ and RFP processes. When the Request for Quotation process is used, competitive bids are received, properly evaluated and an award is made to the lowest responsible bidder who meets specifications. If using the Request for Proposal process, certain stipulations must be met and an evaluation committee is formed to review all proposals. Evaluation and award policies and guidelines for the RFQ and the RFP processes are provided in the RFQ and RFP sections.

Once bids are solicited and received, all vendor responses are opened, evaluated, and an award is made in accordance with the following general guidelines: RFQ services contracts are awarded to the lowest cost bid meeting the required specifications; and RFP services contracts are awarded by the evaluation committee in accordance with the criteria set forth in the solicitation.

### **Vendor Requirements**

As part of any contract award regardless of value the vendor must be in compliance with the requirements below and must provide the appropriate supporting documentation with the response to the bid.

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

- 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 Department of Administration, 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;

- 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.
- 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: <http://www.state.wv.us/admin/purchase/Debar.html>. Agencies must verify this compliance prior to award;
- In accordance with the W. Va. Department of Administration's Purchasing Rule, 148 CSR 1, 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>.
- Purchasing Affidavit (required on all contracts exceeding \$5,000); and,
- Agreement Addendum (WV-96) (required when vendors submit alternate terms and condition with their bid)

**Single Response to a Solicitation** There are occasions when only one bid or proposal is received for a solicitation, even though multiple sources are solicited. When considered to have a significant budgetary impact and competitive sources are known to exist, the buyer should investigate to determine why other bidders or offerors did not respond and make a determination whether to award or to reject the bid or proposal and resolicit. If it is determined to make the award based on a single response, the Bureau must make a written determination that the price is fair and reasonable.

#### **Requests for Quotation (RFQ) Specifics**

A Request for Quotations (RFQ) is a competitive purchasing method the DHHR uses to solicit written bids for DHHR exempt goods and services contracts. The RFQ process is used for formal acquisitions where the service is very well defined.

The RFQ document should contain the purchase specification, as well as all contractual terms and conditions. Conformity to specification and price are the only factors used in the evaluation process. Therefore, the purchase specification must be explicitly described.

A Request for Proposal should include (but not be limited to) the following components:

- A detailed description of, or specification for, the goods and/or services being purchased
- Submission of a work plan that includes deliverables and expected dates for completion
- Quantities of goods and/or services units if applicable.

Each item/service units should be identified by a reference number or some other specific identification. Prices cannot be altered after bids are opened.

#### **Receipt of Bids -- RFQ**

Vendors should be instructed to submit quotations/proposals to the DHHR Office of Purchasing. The DHHR Office of Purchasing personnel receive quotations/proposals, stamp them with the official time/date, and submit them in full to the appropriate DHHR personnel.

#### **Evaluation of Bids**

Bids are received, opened and examined by the DHHR Office of Purchasing. The Bureau will ensure compliance with all specifications and determination of the lowest responsible bidder.

**W. Va. Code §5A-3-37. Reciprocal preference; preference for resident vendors for certain contracts.** While the purchases covered by this policy are exempt from Article 3, Chapter 5A of the W. Va. Code, DHHR has elected to comply with the provisions of this Section 37 related to vendor preference. Any vendor preference will be made following the provisions of this section.

*No person should contact any bidding vendor with regard to the solicitation at hand prior to the award of the contract.*

#### **Award Process**

After the evaluation of all bids by the appropriate Bureau personnel, the award is made to the lowest responsible bidder who meets the specifications. Generally defined, a responsible bidder is able to furnish the required needs of the organization as requested in the specifications.

The responsible Bureau must next award and send to DHHR Office of Purchasing in order to complete the award process. Awards are submitted in writing, using the Purchase Requisition form. An award is considered complete only if the contract has been signed, encumbered by the DHHR Office of Purchasing and mailed to the vendor.

Information regarding the contract award, such as the name of the potential vendor and the amount, may only be released **after** an official award is complete. The period between the time the DHHR releases the solicitation and the time that the award is made official is termed the "blackout period." Release of contract award information *prior* to a contract award (i.e., during the blackout period), may result in the release of incorrect, premature or erroneous information.

If an award is made to other than the lowest bidder, a detailed justification as to why the lowest bidder was not considered "responsible" 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.

All contracts should be entered into for a firm, fixed price per unit of service. In such cases where the nature of the procurement prohibits a firm, fixed price, the *Agreement Addendum* must be made a part of the contract.

An official record of all purchasing transactions must be kept on file at the DHHR Office of Purchasing. This file must also include a **Certificate of Non-Conflict of Interest**, Unemployment/Workers Compensation verification search, specifications used for the bidding process, any and all attempts to obtain competitive bids.

#### **Tie Bids**

Occasionally two (2) or more bids of equal terms and dollar amount are received in response to a solicitation, thus, resulting in a *tie bid*. If multiple awards are not made, then 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 final offer, flip of a coin, draw of the cards, or any other impartial method considered prudent by the Director.

#### **Errors in Bids**

If an error is discovered by the Bureau or the DHHR Office of Purchasing, 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 to the agency within five (5) working days from the bid opening date.

Erroneous bids may be rejected after the bid opening if all the following are met:

- (1) An error was made;
- (2) The error materially affected the bid;
- (3) Rejection of the bid would not cause a hardship on the Bureau, other than losing an opportunity to receive services at a reduced cost; and
- (4) Enforcement of the part of the bid in error would be unconscionable.

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.

#### **Multiple Awards**

The Bureau may elect to award a contract to more than one vendor when it is determined that such action would be in the best interest of the State of West Virginia. In arriving at a determination, the following factors will be applicable:

- (1) The quality, availability and reliability of the supplies, materials, equipment or services and their adaptability to the particular use required;

- (2) The ability, capacity and skill of the bidder;
- (3) The sufficiency of the bidder's financial resources;
- (4) The bidder's ability to provide maintenance, repair parts and service;
- (5) The compatibility with existing equipment;
- (6) The need for flexibility in evaluating new products on a large scale before becoming contractually committed for all use; and
- (7) Any other relevant factors.

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

**Request for Proposals (RFP) Process**

A Request for Proposal (RFP) is a competitive purchasing method used to acquire goods and/or services where the specifications or scope of work may not be well defined and/or cost is not the sole factor in determining the award. The RFP process is used to solicit proposals from potential bidders, and typically requires vendors to provide information regarding their ability, qualifications, resources, experience and proposed methods to provide the required services. An evaluation committee, including Subject Matter Experts, reviews and rates vendor proposals according to a standard rating system. Evaluation and award of an RFP contract may require a considerable amount of time and effort on the behalf of the Spending Unit.

All Requests for Proposals shall follow the standard format defined by the Department of Administration (DOA) if applicable to services being bid. However, the DHHR may modify at its discretion areas, such as points, or required documentation, depending on the importance to the Bureau. The present DOA format addresses required areas and enables the Bureau to modify the background and scope of work to meet its needs.

<b>Request for Proposal (RFP) Preparation – Required Information</b>	
<b>Evaluation Criteria</b>	All evaluation criteria must be clearly defined in the specifications section and based on a 100-point total score.
<b>Proposal Format and Content</b>	Proposals shall be requested and received in two (2) distinct parts: technical and cost. The cost portion shall be sealed in a separate envelope and will not be opened until scoring of the technical response is completed and certified to DHHR Office of Purchasing.
<b>Proposal Submission</b>	The bid must be received by the DHHR Office of Purchasing prior to the specified date and time of the bid opening. The failure to deliver or the non-receipt of the bid by the DHHR Office of Purchasing prior to the appointed date and hour, shall result in the rejection of the bid.

<b>Technical Bid Opening</b>	The DHHR Office of Purchasing will open only the technical proposals on the date and time specified in the Request for Proposal. The DHHR Office of Purchasing representative will read aloud the names of those who responded to the solicitation and confirm that the original package contained a separately sealed cost proposal.
<b>Technical Evaluation</b>	An evaluation committee will review the technical proposals, assign appropriate points and make a final written consensus decision.
<b>Cost Bid Opening</b>	Upon approval of the technical evaluation from the internal review committee, the DHHR Office of Purchasing shall schedule a time and date to publicly open and read aloud the cost proposals. The agency and the vendors shall be notified of this date.
<b>Cost Evaluation</b>	The evaluation committee will review the cost proposals, assign appropriate points and make a final decision, combining the technical and cost scores.
<b>Contract Approval and Award</b>	After the cost proposals have been opened, the evaluation committee performs its review and makes its decision for award based on the highest scoring vendor. The contract is signed, encumbered in the DHHR Office of Purchasing, and mailed to the appropriate parties.

**Damages** The following provisions regarding contract compliance and damages may be indicated in the RFP:

- a. Holdbacks
- b. Bid exclusion
- c. Liquidated damages
- d. Bid bond
- e. Litigation Bond
- f. Indemnification.

**RFP Solicitation of Bids, Evaluation, and Award Process**

The solicitation as outlined above applies whether it is an RFQ or RFP. The processes for procurements specific to RFPs are noted below.

**Evaluation Committee**

The RFP process evaluates solicitations strictly through the use of an evaluation committee, relying on experts for technical assistance and input from the end users in the evaluation process.

The evaluation committee will be made up of no less than 3, and no more than 7, SMEs (Subject Matter Experts). The number and backgrounds of the SMEs will depend on the complexity and size

of the project. These SMEs will be drawn from the DHHR and other agencies, as appropriate. Names of potential Evaluation Committee members shall be approved by the responsible Bureau Commissioner or designee. Therefore, the purchasing lead must conduct and maintain control over the evaluation of bids and proposals.

An evaluation committee must:

- Be formalized
- Operate by established rules
- Be Structured
- Document activity and discussion.

The purchasing lead must exercise control and provide direction for the evaluation process. Otherwise a joint evaluation effort takes on a life of its own. Prior to the receipt of any bids or proposals, the committee members and any technical advisors must sign a Declaration of Non - Conflict of Interest form. This will ensure their understanding of the need for integrity and objectivity in the evaluation process.

At least one member besides the purchasing lead should have some procurement background. The purchasing lead should chair the committee. One member should be designated to record committee deliberations.

The purchasing lead should use any approach in obtaining the committee’s input that will ensure independent and objective decision-making and preserves a record of the deliberations. Scoring systems with prepared score sheets, independent narratives, joint discussions or any combination thereof, are several acceptable approaches.

The final decision to award is the responsibility of the evaluation committee.

**Award Methodologies**

Requests for Proposals must be evaluated on a weighted point methodology. All evaluation criteria must be clearly defined in the specifications section and based on a 100-point total score. The following is an example of criteria used in the weighted point method of scoring RFPs.

Experience	Score based on: (i) the Vendor’s past performance on any Bureau contracts; (ii) the results of reference check; and (iii) the Vendor’s experience in providing the services solicited by this Request for Proposals as set forth in the Vendor’s proposal.	XX
Capability	Score based on: (i) the qualifications of the Vendor’s proposed personnel assigned to provide the services solicited by this Request for Proposals; and (ii) the qualifications of the Vendor’s proposed products/services.	XX

<b>Compliance with Requirements</b>	Score based on: (i) the extent of the Vendor's compliance with all of the terms, conditions and other requirements of the Request for Proposals and resulting contract; (ii) the Vendor's understanding of the scope of work; and (iii) the quality and clarity of the written proposal.	XX
<b>Cost</b>	Score based on: the price of the services solicited by this Request for Proposals, including the Vendor's pricing scheme and their price in comparison to other Vendors.	XX
<b>Other</b>	Other criterion as appropriate.	XX
	<b>Maximum Total Points Awarded:</b>	<b>100</b>

**Office of Laboratory Services Documents**

W. Va. Code, §5A-3-1(b)(2)(d), created by the enrollment of House Bill 2632 (Appendix A) passed on March 11, 2015 during the 2015 Legislative Session, exempted the West Virginia Department of Health and Human Resources, Bureau for Public Health (BPH), Office of Laboratory Services (OLS) from West Virginia Department of Administration Purchasing guidelines. The Bureau has established internal procedures for OLS exempt purchases that include multiple review and approval levels.

Although the passage of House Bill 2632 exempted OLS from purchasing guidelines, the Office and Bureau leadership recognize the importance of being consistent with the spirit of the Legislation to ensure that critical goods and services including maintenance, repair and support contracts, equipment, and laboratory consumables are the focus of the exemption. Acquisitions for conducting normal day to day business activities including the purchase of office supplies, furniture, and other standard business operation goods and services in excess of \$25,000 adhere to West Virginia Department of Health and Human Resources policies, practices, and procedures in effect at the time.

There are three types of OLS purchases that are exempt from agency-delegated processing:

- Purchase that if not procured in a timely manner would result in a life safety hazard
- Purchase to prevent substantial economic loss or interruption/failure of a critical public health service
- Purchase that is sole source in nature either due to manufacturer requirements, federal reporting requirements, or one that can be provided by only one manufacturer to meet OLS needs

The following documents are required to request and process OLS exempt purchases:

- Bureau for Public Health (BPH), Office of Laboratory Services Purchasing Exemption Checklist.
- General Terms and Conditions: West Virginia Department of Health and Human Resources, Bureau for Public Health, Office of Laboratory Services Exempt Procurements Only.

### Architectural and Engineering – Expression of Interest (EOI)

**Projects Exceeding \$250,000:** In the procurement of architectural and engineering services, including those professional services of an architectural or engineering nature, for projects estimated to exceed \$250,000 (construction cost and architectural fees), an Expression of Interest shall be requested of interested firms by the DHHR Office of Purchasing. Special procedures in the selection of architectural and engineering services are required in accordance with Chapter 5G of the West Virginia Code. Agencies must use the standard EOI format for projects expected to exceed \$250,000.

The expression of interest shall include a statement of qualifications and performance data and may include anticipated concepts and proposed methods of approach to the project. The project must be announced by public notice.

An evaluation committee shall consist of three (3) to five (5) representatives of the agency.

The agency may 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. The agency will identify and justify the evaluation committee members and advisors to the DHHR Office of Purchasing prior to the release of the EOI.

The agency procurement officer or a member of the agency procurement staff, who is skilled in purchasing techniques and procedures, shall be present at evaluation committee meetings and serve on the evaluation committee as a full voting member unless the agency can provide written justification detailing the reason(s) why this requirement cannot be met. Such request must be approved by the DHHR Office of Purchasing. (The DHHR Office of Purchasing reserves the right to accept or reject agency appointed committee members and/or to appoint committee members directly to provide proper representation. A non-state employee shall not serve as voting member of the evaluation committee.) 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.

The committee shall:

- (a) Evaluate the statements of qualifications and performance data and other material submitted;
- (b) Develop a "short list" (minimum of three [3] firms) which, in their opinion, are best qualified to perform the desired service; and
- (c) 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.

The committee will rank no less than three (3) 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 state agency and the DHHR Office of Purchasing. The committee will forward its recommendation to the DHHR Office of Purchasing 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.

If the agency 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.

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

**Projects \$250,000 or Less:** In the procurement of architectural and engineering services for projects estimated to cost less than \$250,000 (which includes construction cost and architectural fee), competition shall be sought by the agency.

The agency shall conduct discussions with three (3) or more firms solicited on the basis of known or submitted qualifications for the assignment and the scope of services prior to the awarding of any contract. The Purchasing Master Terms and Conditions must be included with the negotiated contract that is submitted to the DHHR Office of Purchasing, so that all vendors are aware of the requirements of the potential contract.

Price may not be discussed prior to selecting the highest rated firm.

The agency and the initially selected firm shall further develop the scope of services and, at this time, discuss price. If negotiations fail to result in a satisfactory contract, the agency may commence negotiations with the next ranked firm in the same manner, continuing until a satisfactory contract is negotiated.

Once negotiations conclude with the selected vendor, the agency must send the negotiated contract to the DHHR Office of Purchasing to be properly executed.

If a judgment is made that special circumstances exist and that seeking competition is not practical, the agency may, with the prior approval of the Purchasing Director, select a firm on the basis of previous satisfactory performance and knowledge of the facilities and agency's needs.

Change order for projects estimated to cost less than \$250,000 (which includes construction and architectural fee) that exceeds \$250,000 may not be approved and may necessitate a rebid.

W. Va. Code § 5G-1-1, *et seq.* does not provide for a separate process for the procurement of architectural or engineering services estimated to cost \$25,000 or less. An EOI anticipated costing

\$25,000 less would be processed in accordance with the laws, rules, and procedures applicable to EO's under \$250,000.

#### Insurance

BRIM has developed an insurance guide that provides an overview of various insurance policies, coverage limits and other information. Agencies may access information about these topics and more at <https://brim.wv.gov>.

**Establishing Coverages and Limits:** The Agency and Purchasing Master Terms and Conditions allow agencies to select the most common types of insurance required of a vendor by checking the appropriate boxes and inserting coverage limits. In instances of uncertainty, the Board of Risk and Insurance Management (BRIM) assists agencies in determining what types of insurance are needed and what coverage levels should be required.

BRIM has stated that every contract should, at the very least, require the vendor to show evidence of Commercial General Liability and Workers' Compensation coverage, and in most cases, automobile coverage. Additionally, no agency is permitted to release a solicitation without mandated insurance coverages without BRIM's express approval. Adequate insurance coverage ensures that the vendor remains liable for any damages caused.

Any inquiries about proper insurance requirements in a solicitation should be directed to:

Robert A. Fisher  
Deputy Director and Claim Manager  
West Virginia Board of Risk & Insurance Management  
1124 Smith Street, Suite 4300  
Charleston, WV 25301  
Phone: (304) 766-2646, ext. 57609  
Fax: (304) 558-6004  
[Robert.A.Fisher@wv.gov](mailto:Robert.A.Fisher@wv.gov)

**Proof of Coverage:** Once the insurance requirements have been determined and included in the solicitation, the DHHR Office of Purchasing will request the vendor to provide documentation confirming that the required insurance coverage has been obtained. That documentation is usually the Accord form, which will show insurance coverage during a stated period.

As part of the contract administration/management function, the agency must ensure that the mandated insurance coverages are maintained over the life of the contract. This will require the agency to request a copy of a new insurance verification form prior to the expiration of the prior form. Subsequent insurance verification forms obtained by the agency should be kept in the contract file.

**Additional Insured:** Vendors will also be required to list the state as an additional insured on all mandated insurance policies processed by the DHHR Office of Purchasing unless the DHHR Purchasing Director waives this requirement. Agencies are strongly encouraged to require that

vendors list the state as an additional insured on delegated transactions as BRIM has identified this as a best practice for state contracting.

### **Securities/Bonds**

Instruments are occasionally demanded from the successful vendor by the DHHR Office of Purchasing prior to bid or award to ensure performance or to minimize financial risks to the state of West Virginia in the event of default.

The DHHR Purchasing Director 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.

The DHHR Purchasing 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 state 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.

Below are types of bonds used in the state purchasing process:

**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 request. Agencies are not permitted to require bid bonds unless there is a statutory requirement to do so.

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

**Maintenance Bond** - A bond provided as a warranty of normally two years, which is required on roofing projects.

**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.

### **Commodity and Service Receiving Procedures**

In accordance with the West Virginia State Auditor's receiving report requirements (W. Va. § 155 C.S.R. 1-4), materials must be opened and inspected within 24 hours of receipt, otherwise the state agency may be subject to difficulty in obtaining an adjustment. Agencies must verify the shipment against the specifications in the purchase order and retain a copy of the receiving report prepared for the Auditor's office with 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.

In cases where receiving reports are retained by another office of the spending unit and the volume of receiving reports would create a storage problem, spending units may include a memorandum to file in the purchasing file indicating the storage location of the receiving reports. The actual reports shall be produced on demand.

Agencies must verify quantities received. If quantities do not match the purchase order, the agency 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 the DHHR Office of Purchasing's approval of commodities and services awarded by the DHHR Office of Purchasing.

Several days before the promised delivery of a commodity, the agency should follow-up with the vendor to determine: if the promised delivery date will be met, the method of shipment to be used, the name of the carrier, the expected date and time of delivery, and the tracking number.

**Inspection:** The DHHR Purchasing Director reserves the right to inspect the commodities delivered or services rendered to assure conformance with contractual requirements. The agency shall perform this inspection on all delivered commodities and services. Nonconformity is to be reported to the DHHR Purchasing Director and the chief officer of the spending unit purchasing such commodities for remedial action.

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

#### Receipt of Commodities and Services

The state agency shall check the shipment to determine if commodities are in conformance with the purchase order or contract and verify the following:

- **Commodities:** The make, model number, brand name and general description of the item(s) received match the specifications on the purchase order.

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.

- **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.).

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.

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.

### **Fixed Assets**

After payment has been made to the vendor, reportable property must be added to the Fixed Assets module of wvOASIS.

### **Purchase Order Encumbrance**

Encumbrance of purchase orders ensures that the agency has the appropriate funds to make the specific purchase. The encumbrance date is the earliest date that a vendor may commence on any contract. The DHHR Office of Purchasing in conjunction with DHHR Finance encumbers all purchase orders executed by the responsible Bureau.

### **Protest Procedures**

Any participating vendor who has submitted a litigation bond or litigation waiver has the right to protest contract awards. Protests must be submitted to the DHHR Purchasing Director no longer than five (5) working days after the award. All protests must be submitted in writing, and contain the following information:

- the name and address of the protestor
- the requisition, purchase order or contract numbers
- a statement of the grounds of protest
- supporting documentation (if necessary)
- the resolution or relief sought.

Failure to submit this information shall be grounds for rejection of the protest by the DHHR Secretary or designee.

The Secretary or designee will review all protests, conduct a hearing at the Secretary's discretion and promptly issue a written decision. A copy of the decision shall be mailed or otherwise furnished to the aggrieved party and will state the reason(s) for the action taken. Any delay of the procurement will be up to, and at the discretion of, the DHHR Secretary. The decision by the Secretary shall be final and conclusive.

The Secretary may refuse to review any protests when the matter involved is the subject of litigation before a court of competent jurisdiction; if the merits have previously been decided by a court of competent jurisdiction; or if it has been decided in a previous protest. The provisions of this subsection do not apply where the court requests, expects, or otherwise expresses interest in the decision of the state.

### **Contract Management**

The DHHR conducts contract management for all DHHR goods and services contracts, regardless of the procurement method used. The purpose of contract management is to ensure that both parties to the agreement, the contractor and the DHHR, honor the terms and conditions of the contractual agreement. Contract management begins after the award of the contract, and includes all actions taken by the Bureau relative to that contract, including (but not limited to): progress monitoring

and accountability; performance reporting; renewal; changes; amendments; close out; and, if necessary, cancellation.

The purpose of contract management is to ensure that the goods and services described are delivered in compliance with the terms of the contract. Contract management begins after contract award, when all components of the final contract have been formalized. The contract specification, description of scope of work, general terms and conditions, special terms and conditions, and all other requirements contained in the final contract guide the contract management process. All contracts are managed by a Bureau contract manager.

### **Responsibilities of the Contract Manager**

A contract manager (also referred to as the "contract administrator") is assigned to each contract, and is responsible for managing contracts from the beginning to the end of the contract cycle. The contract manager serves as the primary contact point for communications between the DHHR and the contractor. Responsibilities include:

- Establishing payment benchmarks to assure the DHHR receives value prior to remitting payment.
- Conducting regular meetings between the DHHR and the Vendor to assess contract performance.
- Involving the Office of Technology Project Manager as appropriate.
- Understanding the contract, including the specific contract obligations and performance indicators by which performance will be monitored.
- Assessing the risks related to the project before contracting for goods and/or services to determine the extent of monitoring appropriate to the contract.
- Ensuring the contractor has a clear understanding of how the contract will be managed and monitored.
- Providing the contractor with guidance and technical assistance, as needed, to promote effective contract performance.
- Monitoring the contractor's activities through a variety of means to ensure quality service delivery.
- Ensure funding is used only for authorized purposes.
- Resolving issues or problems that arise during the contract.
- Identifying and reducing fiscal or program risks, thus protecting public funds.
- Reviewing invoices and verifying that delivery of services is rendered.
- Notifying the Bureau management if serious problems arise.
- Complying with Federal and State rules and regulations pertaining to contract management.
- Collaborating with other State agencies using the same contractor to ensure there is no overlap in services being provided or invoiced for.
- Documenting the contract completely to validate that effective contract management has occurred.

### Performance Monitoring

The purpose of contract performance monitoring is to ensure all work is completed within the requirements of the contract. The DHHR defines the tools to measure and assess contract performance and compliance, and the process for collecting information. At a minimum, performance monitoring activities must:

- Be comprehensive and objective.
- Measure outcomes.
- Monitor compliance with contract requirements.
- Assess contractor performance on a regular basis.

The contract manager applies a number of performance monitoring tools, depending on the requirements and nature of the specific contract. Performance monitoring may include any combination of the following:

- ✓ **Initial meeting.** Contract monitoring is initiated by a "start-up" or initial meeting either on a formal or informal basis, between the contract manager and other Bureau staff and contractor representatives. The formal version of this initial meeting is referred to as the Post Award Conference, and is described in greater detail below.
- ✓ **Project meetings.** Once a contract begins via the initial meeting, the contract manager often monitors performance through regular project meetings. These meetings can be especially critical at the onset of a project, when consistent and frequent communication is necessary. Checkpoints are often set up on weekly basis at the start of the project and, after the first weeks, perhaps on a monthly basis, depending upon contract duration and complexity.
- ✓ **Contract Status Reports.** Status reports may be bi-weekly, monthly or quarterly, depending on the nature of the contract, to be decided during contract negotiations between the vendor and the Bureau and finalized in the terms of the contract. Reports should compare the Project Plan, which identifies milestones and the approximate value of all those milestones, according to the contract, with the value of the milestones actually completed and the actual funds expended to complete those milestones. If the contract is on schedule, milestones or cost, comments and explanations are at the discretion of the vendor. If the contract is ahead of or behind schedule, over or under cost, the vendor will complete, as part of the report, a variance analysis section which explains the reasons for and value of the schedule or cost slip, plus or minus, and the steps that will be taken to regain "on schedule" and/or "on cost" status. Status reports should be discussed between the vendor and the Bureau.
- ✓ **Monitoring according to risk.** Contractors deemed high risk often require more monitoring than those deemed low risk. The contract manager monitors contractors proportional to the level of risk.
- ✓ **Requirements Traceability Matrix.** Specifications for complex projects are often defined using a long list of individual requirements. A Requirements Traceability Matrix (RTM)

- allows the contract manager to monitor the contractor's progress at a discreet level, which can be especially critical in a technical project. The contractor maintains the RTM, and provides it to the DHHR during regular reporting.
- ✓ **Invoice review.** Contract payment is the process by which the contractor submits invoices for reimbursement of services and receives payment. The contract manager carefully reviews the contractor's request for payment to verify the accuracy of all charges. The contract manager must verify receipt of services in accordance with the contract prior to authorizing payment of invoices.
  - ✓ **Appropriate level of oversight.** Where monitoring results demonstrate consistent satisfactory performance, the frequency and extent of monitoring may be adjusted accordingly. This can save the state money, reduce oversight burdens on the contractor, and recognize the contractor's good performance.
  - ✓ **Tracking log.** Documentation of pertinent project activities, including contractor communication, is maintained by the contract manager. A tracking log is especially critical in issue escalation and resolution, where a history of activity and communications is necessary.
  - ✓ **Inspection.** The contract manager may perform an inspection of services provided, work products, and/or any other result of contractor work to verify that they conform to the contractual requirements. Inspection is not possible for all projects.
  - ✓ **Program monitoring.** Program monitoring deals specifically with compliance of contract program requirements. If outcomes or goals are identified in contracts, they should be monitored as part of the process.

By assuming a dynamic role in contract administration, the contract manager is more likely to discover and resolve problems in the early stages of the contract and avoid "crisis management" later. If there is a lack of quality or performance at any milestone point, this must be communicated to the contractor without delay and the appropriate changes or corrections made.

### **Fiscal Monitoring**

Fiscal monitoring includes a review of the contractor's invoices and supporting documentation. Before authorizing payment, Bureau contract managers ensure the contractor has adequately demonstrated the satisfactory delivery of services as agreed to in the contract. Contract managers verify the accuracy of the contractor's invoices and documentation, whether billings are consistent with contract requirements, and whether total payments are within the limits set by the contract.

The method of contractor compensation selected may have an impact on the level and type of monitoring activities required to ensure that the DHHR received the goods and services contracted for, and, where specified, the funds are used as intended. Contracts with a cost reimbursement method of compensation, contracts that deliver multiple similar services or contracts that use multiple funding sources (particularly those supported with Federal funds) may require a higher

level of monitoring than contracts using other methods of compensation. It is also necessary to monitor the costs that are reimbursed by the DHHR. A higher level of monitoring may involve more testing, such as additional review of contractor reports and documentation, status meetings, or a combination of these methods.

Appropriate fiscal monitoring procedures are determined on an as-needed basis, specific to each contract. Decisions regarding the scope and methods take into account requirements established by the funding source, assessment of potential risk, and other relevant factors.

#### **Post Award Conference**

The Bureau contract manager holds 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 includes, at a minimum, the introduction of all participants and identification of Bureau and contractor key personnel, and discussion of the following items:

- The scope of the contract, including specifications of what the agency is buying.
- The contract terms and conditions, particularly any special contract provisions.
- The technical and reporting requirements of the contract.
- The contract administration procedures, including contract monitoring and progress measurement.
- The rights and obligations of both parties and the contractor performance evaluation procedures.
- 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.
- Potential contract problem areas and possible solutions.
- Invoicing requirements and payment procedures, with particular attention to whether payment will be made according to milestones achieved by the contractor.
- An explanation of the limits of authority of the personnel of both the agency and the contractor.

#### **Contract Renewals**

The following describes policies and guidelines regarding the contract renewal process for DHHR exempt goods and services contracts.

#### **Life of Contract**

Contracts should be issued for no more than a twelve (12) month period or cite a specific time for completion for the project or service. A solicitation for a contract that includes an option on the part of the state to extend or renew the contract for an additional period may be advantageous and may be considered. In instances where there may be larger upfront costs or for extremely complex programs or projects where an initial contract term to be in excess of 12 months is needed, the

agency may approve the contract for a longer term with justification. If price adjustments are permitted during the contract period, the conditions under which they are authorized must be specified in the original solicitation and resulting contract. All contracts should be reviewed during the contract period to determine if the need still exists for the services, if prices are fair and reasonable based on the current market conditions, and if performance is satisfactory.

### **Renewals**

The standard terms and conditions used by the DHHR indicate a specified date, on which the contract becomes effective, and extend for a period of one (1) year or until such "reasonable time" thereafter as is necessary to obtain a new contract or renew the original contract.

Unless specific provisions are stipulated in the contract document, the terms, conditions and pricing established are firm for the life of the contract.

Contracts that contain renewal provisions may be renewed upon the mutual written consent of the DHHR and vendor.

Renewals are in accordance with the terms and conditions of the original contract and are usually limited to three (3) successive one (1) year periods or multiple renewal periods of less than one year, provided that the multiple renewal periods do not exceed 36 months, but may be extended in instances where there may be larger upfront costs or for extremely complex programs or projects.

### **Continuity of Services and Contract Extensions**

In order to promote continuity of care and services, the DHHR cannot discontinue services abruptly in many situations; therefore, under certain circumstances, DHHR may extend the contract for goods and services if all of the following criteria are met:

- A new procurement must be in process
- The procurement process is progressing
- The contract must relate to federal/state compliance; or without the contract, federal/state funding could be jeopardized; or a lapse in the contract services could be detrimental to the citizens of the state

Reasonable timeframes to procure a new vendor must be considered when extending present contracts. However, extensions may not exceed 12 months unless there are extenuating circumstances necessitating the extension and all the above criteria are met. All information related to the extension and extenuating circumstances must be maintained in the vendor file. A letter of justification must also be included, stating pertinent reasons for its recommendation to extend the existing contract. These factors include, but are not limited to, vendor performance, market conditions and other analytical measures which indicate that extending the contract is in the best interest of the state. The original contract shall only be extended in accordance with all terms,

conditions, reimbursement methodologies and specifications contained in the original contract and all authorized change orders.

### **Contract Changes**

Occasionally, it is necessary to amend, clarify, and/or otherwise change contracts. Unless otherwise specified in the contract terms and conditions, changes are handled through the change order process defined here.

The *Purchase Order* form is used to change an existing contract's specifications, terms, prices, quantities, etc. The form must be designated "Change Order" as the type of purchase, and 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.

Any change request of a purchase order in excess of ten percent (10%) of the original contract amount (aggregate) is strongly discouraged. The DHHR Secretary or his or her designee may grant a change in any amount in the event of unforeseen circumstances and such change is in the best interest of the State of West Virginia.

All changes must be approved by the DHHR Office of Purchasing as to form, prior to commencement of any work. In addition, prior authorization is required in order for the contract changes to be legal and binding. To effect the change, written concurrence from the vendor is required.

### **Oversight of Sub-Contractors**

It is the DHHR's policy that sub-contractors are managed by the vendor engaged in the original contract with the DHHR. Unless otherwise specified, standard Bureau contract terms and conditions specify the following:

*"The Vendor is solely responsible for all work performed under the contract and shall assume prime contractor responsibility for all services offered and products to be delivered under the terms of this contract. The DHHR will consider the Vendor to be the sole point of contact with regard to all contractual matters. The Vendor may, with the prior written consent of the DHHR, enter into written subcontracts for performance of work under this contract; however, the Vendor is totally responsible for payment of all subcontractors."*

### **Communication**

Every communication with a contractor is an opportunity to monitor activity. Adequate documentation is essential for effective contract monitoring. Contract files should include copies of letters, meeting notes, and documentation of phone conversations as evidence that conscientious monitoring has occurred during the period of the contract.

Some Bureau goods and services contracts contain pre-established communication requirements, stipulated as conditions of the contract. Bureau personnel manage these activities as specified and appropriate.

### **Quality Assurance**

The burden of quality assurance is a responsibility shared between the DHHR and the vendor. The DHHR is responsible for meeting the following quality assurance requirements:

- Establish quality expectations through specifications that are clear, comprehensive, and written in a manner that ensures competition.
- Work to reduce cost and maintain quality through the competitive bid process.
- Evaluate bids in a consistent manner in order to ensure a fair and objective process, resulting in the maximum benefit for the tax dollars spent.
- Monitoring vendor performance and compliance with specifications on a regular basis, and negotiate in good faith with the vendor should a dispute arise.

The vendor is responsible for meeting the following quality assurance requirements:

- Providing accurate information in a timely manner as instructed in solicitation documentation.
- Meet or exceed the quality level established by the contracted specifications.
- Negotiate in good faith with Bureau personnel should a dispute arise.

### **Contract Close-Out and/or Turnover**

Contract close-out is initiated by an order to terminate the contract, typically due to contract expiration or notice to end the contract from either the vendor or the Bureau. Contract close-out is the final administrative activity performed when a contract is completed or terminated. It is the task of reviewing and addressing all aspects of the contract to ensure completion of all requirements before the parties to the contract part ways. On a completed contract, it is generally the last time the Bureau and vendor will meet face to face. Prior to the meeting, all aspects of contract documentation, deliverables, financing, invoicing, hold-backs, funding, training, warranties, etc., are reviewed by both parties to ensure completeness and accuracy. At the meeting, all open items pertaining to the contract are discussed and resolved. All final acceptances and signatures are completed and the files closed. If the close-out results from a termination, the added complication of partially completed requirements, costs associated with both them and the not yet delivered requirements and liabilities of the respective parties need to be addressed. As much as is possible, all open items will be resolved and all efforts stopped. Depending on the nature of the termination, this may not be the last time the parties meet.

The Close-Out Services Phase occurs toward the end of the Operations Phase and includes activities designed to assist the State in the transfer of services to a successor Vendor or a State operated environment. This service is initiated by written notice from the Bureau to the Vendor.

#### ***State responsibilities include:***

- Review and approve a close-out plan to facilitate transfer to the successor;
- Review and approve a statement of staffing and resources which would be required to take-over operations;

- Request close-out services be initiated by the Vendor;
- Make State staff or designee staff available to be trained in operations;
- Coordinate the transfer of software and files;
- Coordinate the termination or assumption of any leases, if applicable;
- Review and approve a close-out results report that documents completion of each step of the close-out plan;
- Obtain post close-out support from the Vendor, if required.

***Vendor Responsibilities include:***

- Develop a close-out plan that identifies the Vendor's approach, tasks, staffing, and schedule for turnover of operations;
- Identify production program, and documentation update procedures during turnover;
- Develop a requirement statement that identifies the resources necessary to take-over operations. The statement of resources must be based on the Vendor's operations, resources identified in the solicitation, or agreed upon by the Bureau. The statement must include:
  - o The number and type of personnel required for operations;
  - o All facilities, equipment, and software necessary for operations;
  - o Provide turnover service, and copies of all components of the operations including:
- Develop a turnover results report which documents the completion and results of each task in the turnover plan;
- Provide post-turnover services, including the correction of any system deficiencies or malfunctions which existed in the system prior to turnover. This service will include providing one (1) individual for a period of ninety (90) days on-site following contract termination unless agreed to by the Bureau that another timeframe shall exist. The individual must be approved by the Bureau.

***Vendor Deliverables include:***

- A close-out plan;
- A requirements statement;
- Software, files, and documentation;
- Turnover results report;

***Progress Milestones include:***

- State approval of the Close-Out Plan;
- State approval of the requirements statement; and,
- Completion of turnover training.

**Contract Cancellation**

Termination terms and conditions are specified in the original contract, and are often dependent on the nature of the contract.

The Secretary or designee reserves the right to cancel any contract upon written notice to the vendor under any one of (but not limited to) the following conditions:

- The vendor agrees to the cancellation.
- 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.
- The vendor has failed to conform to contract requirements or standard commercial practices.
- The existence of an organizational conflict of interest is identified.
- Funds are not appropriated or an appropriation is discontinued by the legislature or funding agency for the acquisition.

Notwithstanding other provisions of this subsection, the DHHR may cancel a contract for any reason upon 30 days' notice to the vendor.

## ***Part II – General Procurement Principles***

Part II describes general principles, information, and standards of conduct required in the procurement process.

### **Accessibility**

It is the policy of the DHHR and the State of West Virginia to meet and carry out compliance with the nondiscrimination requirements of the Americans with Disabilities Act (ADA). The DHHR makes every effort to ensure that participation in the competitive procurement process is available to all persons, including persons with disabilities. The DHHR strictly adheres to the West Virginia Technology Standards regarding accessibility, including the policy to make "Web sites accessible to people with disabilities."

Persons with a disability needing a reasonable modification to participate in the procurement process for any DHHR goods and services contract, and/or persons having questions regarding reasonable modifications for the procurement process should contact the Bureau.

### **Data Processing Equipment or Software**

The Chief Technology Officer (CTO), in conjunction with the WV Office of Technology of the Department of Administration, evaluates and approves all data processing procurements for state agencies. All technical acquisitions for DHHR must be routed to the DHHR Office of Management Information Services (MIS). The MIS will then solicit the appropriate approval from the CTO.

### **Federal Funding Requirements**

Any possible contract utilizing federal funding which includes special requirements in addition to or different than normal purchasing requirements are identified as such when submitted for the Secretary's or designee's approval.

Federal grant or contract funds that require conditions in conflict with the DHHR Policy and/or West Virginia law are reviewed and approved only at the discretion of the Secretary or designee.

If the funds are accepted, the conflict is documented in a separate memorandum and maintained in the contract file. Such determination shall state the specific provision(s) of the state law in conflict with the conditions of the grant or contract.

#### **HIPAA Compliance**

DHHR contracts require that Vendors agree to become a business associate of the Department, and therefore the Vendor must have policies and procedures in place consistent with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) standards for privacy and security of protected health information (45 CFR Parts 160 and 164) and any other applicable State or Federal law related to the privacy or security of information. The West Virginia Government HIPAA Business Associate Addendum (BAA), approved by the Attorney General, is a required component of contracts.

#### **Liquidated Damages**

The term liquidated damages refers to a specified contract provision which entitles the DHHR to demand a set monetary amount determined to be a fair and equitable repayment for loss of service due to a vendor's failure to meet specific completion or due dates. The standard contractual version of this clause reads as follows:

*The Vendor agrees that liquidated damages shall be imposed at the rate of \$\_\_\_\_\_ (per day, per week, per unit, or some other agreed measure) for failure to provide (deliverables, meet miles stones identified to keep the project on target, or failure to meet specified deadlines) This clause shall in no way be considered exclusive and shall not limit the State or Bureau's right to pursue to any other additional remedy to which the State or Bureau may have legal cause for action including further damages against the Vendor.*

Vendors are required to agree to a liquidated liability clause at the discretion of the Secretary or designee.

#### **Multiple Awards**

When the terms and conditions of multiple awards are so provided in the Request for Bids or Request for Proposal, awards may be made to more than one bidder or Vendor. Otherwise, the Secretary or designee may elect to award a contract to more than one vendor when such action would be in the best interest of the State of West Virginia and the DHHR.

#### **Nondiscrimination**

In the solicitation, awarding or administration of contracts, the DHHR adheres to all state and federal nondiscrimination mandates. The DHHR does not discriminate because of the race, religion, color, sex, age, disability, or national origin of the bidder, Vendor, or contractor.

#### **Freedom of Information/Disclosure**

All records related to the procurement of contracts are subject to West Virginia's Freedom of Information Act (FOIA), DHHR Policy 2510, and may be disclosed upon request in conformance with the Department's FOIA Policy. The only exemptions to disclosure of information are listed in *W. Va. Code §298-1-4*. The Vendor must clearly identify which data are considered proprietary. If the DHHR receives a FOIA request for data, labeled by the Vendor as proprietary, the DHHR will notify the Vendor (in writing) of the request to allow the Vendor to obtain the appropriate court

order to prevent the release of the information. Otherwise, the DHHR will be compelled by state law to release such information.

All bids, proposals or offers submitted by vendors shall become public information and are available for inspection during normal business hours. All public information may be released with or without a Freedom of Information request.

The submission of any information to the DHHR by a vendor puts the risk of disclosure on the vendor. Upon the written request of a vendor, the DHHR will make a reasonable effort not to disclose information that is within the guidelines of §29B-1-4. DHHR does not guarantee non-disclosure of any information to the public.

Copies of records are available upon written request from the vendor. Charges will be determined in accordance with DHHR Policy 2510.

#### **Publicly Posted Notices**

All solicitations in excess of \$25,000, addenda and award actions for Bureau goods and services contracts will be publicly posted on the Vendor Self-Service portal (VSS) as part of the wvOASIS system.

#### **Record Retention**

Vendors must comply with all acceptable Federal and State of West Virginia rules, regulations, and requirements governing the maintenance of documentation. Records must be retained for five (5) years, during which the Vendor must make all records available to the DHHR at the Vendor's location during normal business hours upon written request by the DHHR within 10 days after receipt of request.

#### **Standard Purchasing Forms**

In order to ensure consistency in the procurement and management of DHHR exempt goods and services contracts, the DHHR has developed standard contracting documentation, or utilizes existing state purchasing forms, templates and samples. Unless authorized by the DHHR Secretary or designee, use of these forms is required and modifications are strictly prohibited.

#### **Technology Acquisitions Guidelines**

Most technical acquisitions, regardless of dollar value, must be reported to and approved by the Chief Technology Officer (CTO). The DHHR adheres to the following state legislation for all service contract procurements:

**§5A-6-6.** Notice of request for proposals by state spending units exempted from submitting purchases to the State Purchasing Division.

*(a) Any state spending unit that is not required to submit a request for proposal to the State Purchasing Division prior to purchasing goods or services shall notify the Chief Technology Officer, in writing, of any proposed purchase of goods or services related to its information or telecommunication systems. The notice shall contain a detailed*

*description of the goods and services to be purchased. The state spending unit shall provide the notice to the Chief Technology Officer a minimum of ten days prior to the time it requests bids on the provision of the goods or services. (b) If the Chief Technology Officer evaluates the suitability of the information and telecommunication equipment and related services under the provisions of subdivision (3), subsection (a), section four of this article and determines that the goods or services to be purchased are not suitable, he or she shall, within ten days of receiving the notice from the state spending unit, notify the state spending unit, in writing, of any recommendations he or she has regarding the proposed purchase of the goods or services. If the state spending unit receives a written notice from the Chief Technology Officer within the time period required by this section, the state spending unit shall not put the goods or services out for bid less than fifteen days following receipt of the notice from the Chief Technology Officer*

In addition, state agencies may procure computer application software and other non-infrastructure software, as well as IT consulting services, with an estimated value of less than \$10,000 without CTO approval, but must provide copies of agency purchase orders to the CTO. All purchases of computer hardware, software and consulting services in excess of \$10,000 must have prior approval of the CTO, as described above.

All technical acquisitions for DHHR must be routed to the DHHR Office of Management Information Services (MIS). The MIS will then solicit the appropriate approval from the CTO.

#### **Vehicles**

Approval by the Fleet Management Office is required to purchase vehicles, unless statutorily exempt. Any request under the authority of the Fleet Management Office to increase an agency's fleet size must be approved by the Executive Director of the Fleet Management Office.

#### **Banking Goods and Services**

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.

#### **Radios and Microwave Equipment**

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 of 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 List must be submitted with the *Requisition* to the DHHR Office of Purchasing.

### **Exempt Purchases**

In accordance with W. Va. Code §5A-3-10 and the W. Va. Department of Administration's Purchasing Rule, 148 CSR 1, the State Purchasing Director has determined that it is not possible to obtain certain commodities and services through the competitive bidding process. The Director has identified those items that cannot be competitively bid in Impossible to Bid List of Commodities and Services (hereinafter "Exempt List") contained in Section 9 of the West Virginia Purchasing Division Handbook. While DHHR procurements covered by this policy are not subject to W. Va. Code §5A-3-10 and 148 CSR 1, DHHR recognizes this Exempt List as a State best practice.

DHHR Office of Purchasing approval is not required for these Exempt List procurements, unless specifically noted. Vendor registration and all other requirements for the dollar amount of the purchase are mandatory for contracts for these commodities and services.

Except as outlined in the preceding paragraph, spending units purchasing from vendors under the Exempt List must continue to observe the standard purchasing procedure associated with a normal (non-Exempt List) purchase of the same dollar amount. For example, the use of a purchase order is required on all purchases over \$5,000.

### **Terms & Conditions**

Terms and conditions shall be included in contracts to express the intent of the State of West Virginia and the DHHR. General terms and conditions shall be a part of every written solicitation issued through the DHHR. The use of additional special terms and conditions not contained in this manual shall be at the discretion of the Secretary or designee. Any request by a vendor to modify the standard terms and condition must reviewed and approved by Bureau legal staff.

### **Verbal Agreements**

Verbal agreements with contractors are strictly prohibited. The DHHR shall not enter into any verbal agreements with contractors. The DHHR shall not rely on trust, verbal understandings, or traditions.

### **Vendor Registration and Disclosure Statement Forms**

In order to conduct business with DHHR, vendors must adhere to specific requirements. The DHHR will enforce these requirements, and the responsibility for compliance shall be on the burden of the vendor.

Vendors doing business with the state of West Virginia must be registered by having a *Vendor Registration and Disclosure Statement*. The W. Va. Department of Administration's Purchasing Rule, 148 CSR 1, states that, except for purchasing card vendors providing travel-related services or receiving an aggregate total yearly payment less than \$25,000 from a spending unit, all vendors are required to register with the Purchasing Division. It is the agency's responsibility to make sure vendors are properly registered with the Purchasing Division prior to issuing a purchase order either verbally or in writing. Agencies must retain proof of verification of registration with each Purchase Order file.

**WV-1:** This form is to be completed by vendors who wish to participate in the competitive bid process and receive purchase orders exceeding an aggregate amount of \$1,000. The WV-1 form requires payment of the \$125 annual fee. The vendor's check and the WV-1 form are to be mailed directly to the Purchasing Division. Upon payment of this fee, the vendor will receive access to the *West Virginia Purchasing Bulletin*, which contains upcoming bid opportunities and downloadable bid documents.

#### **Vendor Fee**

According to 148CSR1, except for purchasing card vendors providing travel-related services or receiving an aggregate totally early payment less than \$25,000 from a spending unit, vendors receiving orders for goods or services exceeding \$1,000, regardless of payment method, shall pay an annual fee of \$125 to the Purchasing Division.

Companies, corporations or persons having multiple outlets for their commodities or services and are all operating under the same FEIN (Federal Employer Identification Number) must pay one \$125 annual fee.

#### **Vendors' Rights & Duties**

Each vendor is solely responsible for delivering a bid to the DHHR Office of Purchasing prior to the specified date and time of the bid opening. The official time clock of the Bureau, for the purpose of receipt of bids, will be that of the DHHR Office of Purchasing. Vendors are responsible for the accuracy of the information on and in the bid envelopes.

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

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

**Dispute Resolution:** The vendor is required to negotiate in good faith with agency personnel should a dispute arise.

#### **Noncompliance**

In the event that a vendor fails to honor any contractual term or condition, the Secretary or designee may:

- a) Cancel the contract and re-award the purchase order to the next lowest bidder. The vendor failing to honor contractual obligations is responsible for all differences in costs;
- b) Declare a vendor non-responsible or non-responsive 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
- c) Suspend, for a period not to exceed one (1) year, the right of a vendor to bid on state 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 of the DHHR Secretary.

The following are adequate grounds for DHHR procurement exclusions:

- i. A vendor has exhibited a pattern of poor performance in fulfilling his or her contractual obligations to the state. Poor performance includes, but is not limited to, a vendor providing or furnishing services late, or at a quantity or quality level below that which is specified in the contract.
- ii. The vendor has breached previous contracts, the subject of which is related to §9-2-9b;  
or
- iii. The vendor has been convicted of any federal, state or local crime punishable as a felony, directly related to the performance of a contract; or
- iv. The vendor has been excluded from the Federal contract list.

A vendor who fails to perform as required under a contract shall be liable for actual damages and costs incurred by the state. If any good and/or service delivered under a contract does not comply with specifications, no payment may be approved by the Commissioner for the good and/or service until actual damages incurred have been determined.

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

#### **Vendor Performance**

Vendor performance and product quality are crucial to the purchasing process. When these factors do not meet contract expectations, the Bureau contacts the vendor directly to seek issue resolution. It is the Bureau's expectation that most situations can be resolved in an expeditious and courteous manner.

#### **Standards of Conduct**

This section contains a description of the standards of conduct, including ethics and legislation, guiding the procurement of DHHR exempt goods and services contracts. In order to maintain fairness, standardize the process, and promote competition, the DHHR is committed to and adheres to all policies and procedures presented herein.

#### **Why Compete?**

Competition is a powerful tool for garnering the highest value from vendor's at the most reasonable price. Competition is generally required for the purchase of services for more than \$5,000, but in keeping with the state policy favoring competition, use of limited competition is generally appropriate for purchases of less than \$5,000. The benefits of competitive procurement include:

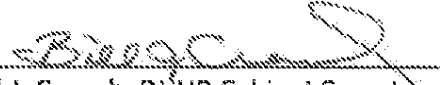
- **Increased Participation** -- A competitive process provides a greater number of firms access to DHHR business.
- **Lower Prices** -- Full and open competition reduces costs since prospective vendors submit their best offers to obtain state business.

- Lower Prices – Full and open competition reduces costs since prospective vendors submit their best offers to obtain state business.
- Higher Quality – Firms who develop bids in a competitive environment pull together the strongest management and technical teams available.
- Simplified Review & Award – Conducting a standardized competitive process will allow DHHR to evaluate bids using the same methodology for the review and award of all bids.

#### **Mandatory and Minimal Standards**

Transactions relating to the expenditure of public funds require the highest degree of public trust. All DHHR employees having official responsibility for procurement transactions shall conduct business with vendors in a manner above reproach in every respect. The DHHR will abide by the policies and procedures presented in this manual. In addition, the DHHR shall adhere to the following standards, as they apply to the procurement of DHHR goods and services contracts.

- ✓ **Code of Ethics.** The DHHR abides by the National Institute of Governmental Purchasing, Inc. (NIGP) Code of Ethics. DHHR purchasing personnel shall be cognizant of these standards, and shall adhere to them in the procurement of DHHR goods and services contracts.
- ✓ **DHHR Standards.** The Bureau shall adhere to all current and future agency and Department of Health and Human Resources (DHHR) policies, rules, regulations and all other standards in the procurement of exempt goods and services contracts.
- ✓ **State Standards.** The Bureau shall adhere to all current and future State standards, including the *West Virginia Code*, in the procurement of DHHR exempt goods and services contracts.
- ✓ **Federal Standards.** The Bureau shall adhere to all current and future Federal standards in the procurement of DHHR exempt goods and services contracts, as required by the contracting Federal agency.

  
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Bill J. Crouch, DHHR Cabinet Secretary

  
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Policy effective May 17, 2021.