



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF PUBLIC COMMENT PERIOD

AGENCY: State Police

TITLE-SERIES: 81-18

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

RULE NAME: West Virginia State Police Purchasing Rule

CITE STATUTORY AUTHORITY: W. Va. Code §5A-3-1 and §5A-3-3.

COMMENTS LIMITED TO:

Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 11/03/2023 12:00 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: Brandolyn N Felton-Ernest

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Building 1, Room W-400

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PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

PROVIDE A BRIEF SUMMARY OF THE CONTENT OF THE RULE:

This rule establishes the procedures for purchase of commodities and services by the West Virginia State Police (WVSP) pursuant to the WVSPs purchasing exemption.

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN THE RULE AND A STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE:

The rule repeals and replaces the prior procedural rule which was effective on November 13, 2020. The changes in the rule makes this rule consistent with other divisions of the Department of Homeland Security that have purchasing exemptions. This rule provides clarification on processes and includes the Division of Administrative Services Purchasing Section. The new language in the rule includes definitions and necessary information on policy training, procedures, pricing, remedies, registration, advertising, bidding and award, non-emergency purchasing, purchasing methods, vendor compliance, how to deal with tie bids, multiple awards, necessary documents for all purchases, negotiations, pre-bid conferences, changes and cancellations and the impossible to bid list.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

0

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

0

C. ECONOMIC IMPACT OF THE RULE ON THE STATE OR ITS RESIDENTS:

0

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2023 Increase/Decrease (use "-")	2024 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost			
Personal Services			
Current Expenses			
Repairs and Alterations			
Assets			
Other			
2. Estimated Total Revenues			

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

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

Yes

Brandolyn N Felton-Ernest -- 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.

TITLE 81
PROCEDURAL RULE
WEST VIRGINIA STATE POLICE

SERIES 18
WEST VIRGINIA STATE POLICE PURCHASING RULE

§81-18-1. General.

1.1. Scope. -- This rule establishes the procedures for purchase of commodities and services by the West Virginia State Police (WVSP) pursuant to the WVSP's purchasing exemption.

1.2. Authority. -- W. Va. Code §5A-3-1 and §5A-3-3.

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Repeal and Replace. -- This rule repeals and replaces W. Va. Code R. §81-18-1, et seq., West Virginia State Police Purchasing Rule, effective November 13, 2020.

§81-18-2. For the Purposes of This Rule.

2.1. "Assistant Director – DAS Purchasing Section" means the Assistant Director of the Division of Administrative Services Purchasing Section, or his or her designee.

2.2. "Chief Hearing Examiner" means the Chief Hearing Examiner of the Department of Homeland Security's Office of Administrative Hearings, or his or her designee.

2.3. "Commodities" means goods and services, including supplies, materials, equipment, contractual services, and any other articles or things used by or furnished to a department, agency or institution of State Government.

2.4. "DAS - Purchasing Section" means the West Virginia Department of Homeland Security Division of Administrative Services Purchasing Section.

2.5. "Direct Award Purchase" means any contract or purchase entered into without a competitive process, based on a justification that only one known source exists or that only one single supplier can fulfill the requirements.

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

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

2.8. "Procurement Section" means the State Police Procurement Section.

2.9. "Purchaser" means any State Police employee with purchasing authority.

2.10. "Purchasing Division" means the West Virginia Purchasing Division under the West Virginia Department of Administration.

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

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

2.13. "State Police" means the West Virginia State Police.

2.14. "Superintendent" means the Superintendent of the State Police or his or her designee.

2.15. "Working Days" means Monday through Friday, but excludes Saturday, Sunday, State Holidays and days that government offices are closed due to declaration of an emergency.

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

§81-18-3. Policy Training.

3.1. Each State Police employee with authority to purchase commodities shall be advised of the West Virginia Purchasing Card Policies and Procedures contained on the West Virginia State Auditor's website.

3.2. The Assistant Director - DAS Purchasing Section will make annual training available to State Police employees who are involved in the purchase of commodities in addition to required Purchasing Card training. All State Police employees conducting purchasing transactions must meet all mandatory training requirements.

§81-18-4. Procedures.

4.1. If the vendor approves, the State Police may utilize any other State or Federal contracts to make purchases when in the best interest of the State Police and/or the State of West Virginia or as one of three required bids as applicable.

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

§81-18-5. Firm Fixed Pricing.

5.1. All contracts should be entered into for a firm, fixed price per unit of commodity unless the nature of the procurement prohibits doing so. In such cases, a detailed written justification must be included in the file.

§81-18-6. Remedies.

6.1. The Assistant Director – DAS Purchasing Section may require the State Police to attempt to resolve any issues that it may have with a vendor prior to pursuing any remedy contained herein. The State Police must document any resolution efforts and provide copies of those documents to the Assistant Director – DAS Purchasing Section.

6.2. Contract Cancellation.

6.2.1. Cancellation. The Superintendent may cancel a purchase or contract immediately under any one of the following conditions including, but not limited to:

6.2.1.a. The vendor agrees to the cancellation;

6.2.1.b. The vendor has obtained the contract by fraud, collusion, conspiracy;

6.2.1.c. The contract conflicts with any statutory or constitutional provision of the State of West Virginia;

6.2.1.d. The vendor fails to honor any contractual term or condition or to honor standard commercial practices;

6.2.1.e. The existence of an organizational conflict of interest is identified;

6.2.1.f. Funds are not appropriated or an appropriation is discontinued by the legislature for the acquisition;

6.2.1.g. Violation of any federal, state, or local law, regulation, or ordinance; or

6.2.1.h. The contract was awarded in error.

6.2.2. The Superintendent may cancel a purchase or contract for any reason or no reason, upon providing the vendor with 30 days' notice of the cancellation.

6.2.3. Opportunity to Cure. In the event that a vendor fails to honor any contractual term or condition, or violates any provision of federal, state, or local law, regulation, or ordinance, the Superintendent may request that the vendor remedy the contract breach or legal violation within a time frame the Superintendent determines to be appropriate. If the vendor fails to remedy the contract breach or legal violation or the Superintendent determines, at his or her sole discretion, that such a request is unlikely to yield a satisfactory result, then he or she may cancel immediately without providing the vendor an opportunity to perform a remedy.

6.2.4. Re-Award. The Assistant Director – DAS Purchasing Section may award the cancelled contract to the next lowest responsible bidder (or next highest scoring bidder if best value procurement) without a subsequent solicitation if the following conditions are met:

6.2.4.a. The next lowest responsible bidder (or next highest scoring bidder if best value

procurement) is able to perform at the price contained in its original bid submission, and

6.2.4.b. The contract is an open-end contract, a one-time purchase contract, or a contract for work which has not yet commenced.

6.2.4.c. Award to the next lowest responsible bidder (or next highest scoring bidder if best value procurement) will not be an option if the vendor's failure has in any way increased or significantly changed the scope of the original contract. The vendor failing to honor contractual and legal obligations is responsible for any increase in cost the state incurs as a result of the re-award.

6.3. Non-Responsible. If the Assistant Director – DAS Purchasing Section determines that a vendor may be non-responsible, he or she may request that the vendor provide evidence that the vendor either does or does not have the capability to fully perform the contract requirements, and the integrity and reliability necessary to assure good faith performance. If the Assistant Director – DAS Purchasing Section determines that the vendor is non-responsible, he or she shall reject the vendor's bid and shall not award the contract to the vendor. A determination of non-responsibility must be evaluated on a case-by-case basis and can only be made after the vendor in question has submitted a bid. A determination of non-responsibility will only extend to the contract for which the vendor has submitted a bid and does not operate as a bar against submitting future bids.

6.4. Damages.

6.4.1. A vendor who fails to perform as required under a contract shall be liable for actual damages and costs incurred by the State Police.

6.4.2. If any commodities delivered under a contract have been used or consumed by a spending unit and on testing the commodities are found not to comply with specifications, no payment may be approved by the State Police for the merchandise until the amount of actual damages incurred has been determined.

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

§81-18-7. Registration, Advertising, Bidding and Award.

7.1 Registration of Vendors:

7.1.1. Purchasing Division Registration. All vendors must register with the Purchasing Division prior to being awarded a contract, except that the following categories of vendors are exempt from this registration requirement.

7.1.1.a. Purchasing card vendors providing travel related services are not required to register with the Purchasing Division.

7.1.1.b. Purchasing card vendors receiving an aggregate total yearly payment less than \$25,000.00 from a spending unit are not required to register with the Purchasing Division.

7.1.1.c. Any company or corporation, or subsidiary of the company or corporation, listed on any nationally recognized stock exchange is not required to register with the Purchasing Division.

7.1.2. Vendors shall register by submitting the vendor registration and disclosure statement provided by the Purchasing Division.

7.1.3. Purchasing Division Fee Payment. All vendors shall pay to the Purchasing Division, an annual registration fee of \$125 prior to being awarded a contract, except that the following categories of vendors are exempt from this requirement.

7.1.3.a. Purchasing card vendors providing travel related services are not required to pay the registration fee.

7.1.3.b. Vendors paid only by the State purchasing card that receive aggregate total yearly payments of less than \$25,000.00 from a spending unit are not required to pay the registration fee.

7.1.3.c. Vendors receiving commodity orders of \$2,500 or less, from all spending units, regardless of payment method, are not required to pay the registration fee.

7.1.3.d. Vendors providing commodities under a direct award are not required to pay the registration fee for providing that commodity for which they have been designated a direct award vendor.

7.1.3.e. Any vendor can be exempted from paying the registration fee if the Assistant Director – DAS Purchasing Section determines that waiving the registration fee would be in the best interest of the State Police.

7.1.4. A vendor with multiple locations shall pay only one fee when operating under one Federal Employer Identification Number (FEIN).

7.1.5. Other Registrations, Licenses, etc. The vendor must be licensed and in good standing in accordance with all state and local laws and requirements by any state or local agency of West Virginia, including, but not limited to, the West Virginia Secretary of State's Office, the West Virginia Tax Department, West Virginia Insurance Commission, or other state agencies or political subdivisions prior to being awarded a contract. The vendor must provide all necessary releases to obtain information necessary to verify that the vendor is licensed and in good standing with the above entities.

7.1.6. Failure to Register. The State Police is prohibited from awarding any contract to any vendor not properly registered. If a vendor is eligible to be awarded or has been awarded a contract and it is determined that the vendor has failed to comply with the requirements of Section 7.1 of this rule, the vendor will be given a period of time that the Assistant Director – DAS Purchasing Section deems sufficient to cure the failure. If after that period vendor has not cured the failure, the Assistant Director – DAS Purchasing Section may disqualify the vendor's bid or cancel the contract.

7.2. Advertising. Solicitations that exceed \$25,000 must be advertised using advertising media such as WV Oasis Purchasing Bulletin, or any other media the Assistant Director – DAS Purchasing Section considers advisable.

7.3 Bidding.

7.3.1. The Procurement Section or DAS - Purchasing Section must receive bids from vendor prior to the date and time of the bid opening listed on the solicitation forms provided by the Procurement Section or DAS - Purchasing Section. The Procurement Section and/or DAS – Purchasing Section must reject bids received after the designated time and date. Each vendor is solely responsible for delivering its bid to the location designated in the solicitation documents.

7.3.2. An authorized representative of the vendor must sign all bids submitted to the State Police. A corporate or other business entity signature without an individual name is not an acceptable signature.

7.3.3. The Assistant Director – DAS Purchasing Section may allow bids by electronic transmission, to include by facsimile and email. Bids by electronic transmission must be received by the Procurement Section or DAS- Purchasing Section prior to the bid opening date and time. A bid will not be considered received until after transmission is completed. A vendor choosing to submit a bid or a written change to a bid by electronic transmission accepts full responsibility for transmission and receipt of the bid or written change to a bid. The State accepts no responsibility for the unsuccessful and/or incomplete transmission of bids or changes to bids by electronic transmission. Bids submitted via electronic transmission may not be sealed until received by the State Police. The State Police makes no guarantee of confidentiality when vendors utilize electronic transmission.

7.3.4. Copies of bids will be open for public inspection in the offices of the Procurement Section or at DAS - Purchasing Section at any time after the completion of the public bid opening. No original bid may be removed from the presence of a Procurement Section or DAS – Purchasing Section representative. The Superintendent may prescribe policies to include scanning, copying, or other methods of assuring public access. The purchasing files of the State Police are open for public inspection after the award for the solicited commodity has been made.

7.3.5. A bidder may make a change to a sealed bid before the bid opening. A bidder must submit changes in writing or by electronic transmission to the Procurement Section or DAS - Purchasing Section. To be effective, any change must be received by the Procurement Section or DAS – Purchasing Section prior to the date and time of the bid opening. Changes by electronic transmission must be made in the manner provided in Subsection 7.3.3 of this rule.

7.3.6. The Assistant Director – DAS Purchasing Section may reject a bid that a vendor declares to be erroneous after the bid opening, but otherwise appears to be responsive, if all of the following conditions exist: (1) An error was made; (2) The error materially affected the bid; (3) Rejection of the bid would not cause a hardship on the State Police other than losing an opportunity to receive commodities at a reduced cost; and (4) Enforcement of the part of the bid in error would be unconscionable. In order for the Assistant Director – DAS Purchasing Section to reject a bid under this subsection, the public file must contain documented evidence that all of the conditions set forth in this subdivision exist.

7.3.7. The Assistant Director – DAS Purchasing Section must reject a bid that is found to be non-responsive. A non-responsive bid is one that fails to conform to the solicitation in all material respects.

7.3.8. For the purpose of determining timely receipt of bids, the official time clock displayed in the offices of the Procurement Section or the DAS - Purchasing Section, as specified in the bid announcement, shall be used.

7.3.9. If there is a conflict between the extension (total) price and the unit price in the bid, the unit price prevails. The State Police reserves the right to recalculate a vendor's extension (total) pricing.

7.3.10. Vendor must disclose any instance where the vendor's bid fails to comply with the requirements of the solicitation, which includes but is not limited to, failure to comply with a mandatory requirement or commodities not meeting the required specifications. If changes are not stated, the Assistant Director – DAS Purchasing Section may assume that items offered meet the specifications.

7.3.11. Vendors are responsible for the accuracy of the information on and in the bid envelopes.

7.3.12. Vendors may contact the Procurement Section or DAS – Purchasing Section to obtain official bid forms.

7.3.13. All sales to the State of West Virginia are exempt from Consumer Sales Tax or Excise Tax by blanket state exemption and blanket federal exemption.

7.4. Awards.

7.4.1. Any award made by the Assistant Director – DAS Purchasing Section will be made in accordance with the law governing the type of procurement being awarded. The Assistant Director – DAS Purchasing Section may make multiple or split awards when it is in the best interest of the State Police.

7.4.2. The Assistant Director – DAS Purchasing Section may accept or reject, in whole or in part, any bid when the Assistant Director – DAS Purchasing Section feels it to be in the best interest of the State Police. If any bid is rejected, the Assistant Director – DAS Purchasing Section, or designee, shall place a written explanation in the purchase order file.

7.4.3. When tie bids are received, the Assistant Director – DAS Purchasing Section 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 Assistant Director – DAS Purchasing Section.

7.4.4. Requirements for bonds and deposits. The Assistant Director – DAS Purchasing Section shall determine the applicability and amount of bonds or deposit required of a vendor at any time, if, it is judged that security is necessary to safeguard the State Police from undue risk. The Assistant Director – DAS Purchasing Section may require the vendor to submit a certified check, certificate of deposit, performance bond, litigation bond or any other security acceptable to the Superintendent, payable to the State of West Virginia. Neither personal checks nor company checks are acceptable. Vendors can request that bonds or other security be returned after the purpose for which the bond was provided has been fulfilled. Upon confirmation from the spending unit or other relevant party that the bond or security in question has fully served its purpose, the Assistant Director – DAS Purchasing Section may return the bond or security.

7.4.4.a. Any bonds submitted via fax should be followed by an original bond received by the Procurement Section or DAS – Purchasing Section within two (2) business days.

7.5. Specifications.

7.5.1. Specifications must be written to fully encourage competition. No person may write specifications, or attempt to influence the drafter of specifications, to limit competition or favor or disfavor a vendor. If brand or vendor names are used to adequately describe a needed commodity, the brand or vendor name must be followed by the phrase "or equal" to promote and encourage competition unless a specific brand/model must be purchased by the State Police for compatibility reasons or uniformity.

7.5.1.a. Examples of limiting competition or favoring a brand or vendor include, but are not limited to:

7.5.1.a.1. Drafting specifications to match a vendor's description of its commodity to the exclusion of others.

7.5.1.a.2. Listing a brand name in specifications without noting that equivalent products will be considered.

7.5.1.a.3. Drafting specifications that are so restrictive that only one desired vendor can meet the requirements without adequate justification for the restrictions is prohibited unless a specific brand/model must be purchased by the State Police for compatibility reasons or uniformity.

7.5.1.b. Nothing contained in the subsection will be construed to prevent the State Police from drafting specifications with restrictions and mandatory requirements that are necessary to perform the objectives for which the commodity is purchased.

7.5.1.c. Reduced need for training, maintaining consistency in inventory, staff familiarity, and other similar objectives will not be sufficient to justify restrictions in specifications.

7.5.1.d. If the Procurement Section or DAS – Purchasing Section uses a brand or vendor name to describe a needed commodity, the Procurement Section or DAS – Purchasing Section must also list in the specifications the mandatory components of that commodity that the reference to a brand or vendor name is intended to capture.

7.5.1.d.1. A vendor's equality with the brand or vendor name will be evaluated on the mandatory components only. If a vendor bids a commodity that is equal to the brand or vendor name regarding all identified mandatory components, the Assistant Director – DAS Purchasing Section shall not disqualify the vendor's bid due to inequality of non-mandatory components.

7.5.1.d.2. Any request by Procurement Section or DAS – Purchasing Section staff 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.

7.5.2. The Assistant Director – DAS Purchasing Section has authority to develop standard specifications that will form the basis of State Police contracts used by the State Police.

7.6 Bid Evaluation.

7.6.1. Evaluators of bids must certify that no financial, personal, or other conflict of interest exists relating to any vendor or vendor representative that has submitted a bid. The Assistant Director - DAS Purchasing Section may develop a form that evaluators can sign for certification purposes under this subsection.

7.6.2. When a requisition is submitted to the Procurement Section or DAS – Purchasing Section for public advertisement, until an award is made, evaluators and State Police personnel are not permitted to communicate with vendors about the solicitation or any component thereof without prior approval from the Assistant Director – DAS Purchasing Section.

7.6.2.a. All communication regarding the solicitation must be directed to the Assistant Director – DAS Purchasing Section until an award has been made.

7.6.2.b. Nothing in this subsection, however, shall prevent the evaluators and State Police

personnel from communicating with a vendor about existing contracts or other matters unrelated to the solicitation in question.

7.7 Deliveries. Receivers for the State Police are responsible for: (1) inspecting commodities upon delivery to ensure that purchases meet contractual requirements, and (2) maintaining records of receipt.

7.8. Change Orders.

7.8.1. Review and Approval. The Assistant Director – DAS Purchasing Section has the authority and responsibility to review change orders just as he or she has authority and responsibility for review and approval of the original contract.

7.8.2. Change Order Submission. Any change order request submitted to the Procurement Section or DAS Purchasing Section must include the vendor's agreement in writing.

7.8.3. The Assistant Director – DAS Purchasing Section may ask for and the State Police must provide, any documentation or further explanation that the Assistant Director – DAS Purchasing Section deems necessary to aid in reviewing a change order request.

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

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

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

7.8.7. A Change Order is required for all contract renewals or extensions.

7.8.8. Rejection. If the Superintendent reviews the change order and determines that it has not been properly justified; fails to include necessary documentation; is or could be construed as an attempt to circumvent the bidding process; or is otherwise unfit to be approved; the Superintendent shall reject the change order.

7.8.9. Attorney General. Change orders must be approved by the Attorney General's office, as to form, just as the original contract must be approved as to form by that office.

7.8.10. Timing of Work.

7.8.10.a. The State Police must not permit vendors to perform work that the State Police anticipates will be added to a contract through a change order until such time as the change order has been:

7.8.10.a.1. Formally approved by the Procurement Section or DAS – Purchasing Section

and the Attorney General's office.

7.8.10.a.2. Encumbered by the Procurement Section or DAS – Purchasing Section.

7.8.10.a.3. Mailed to the vendor.

7.8.10.b. This subsection related to timing of work does not apply to government construction contracts executed pursuant to W.Va. Code §5-22-1 et seq.

§81-18-8. Non-Emergency Purchasing up to \$10,000.00.

8.1. For any purchase up to and including \$10,000.00, of a non-emergent nature, competitive bids are not required. Required documentation includes, but is not limited to, signed and completed purchase requisition, invoice or receipt, receiving report or packing slip, a copy of the contract front sheet showing item numbers and pricing page(s), if applicable.

§81-18-9. Non-Emergency Purchasing \$10,000.01 to \$50,000.00.

9.1. For non-emergency purchases between \$10,000.01 and \$30,000.00, a minimum of three verbal or written bids are required, when possible, and the lowest bid meeting specifications must be awarded the purchase order/contract unless there are extenuating circumstances. A price from an internet site may be considered a bid, as long as it includes all relevant costs, including shipping and any other fee associated with the product. All bids must be documented and present in the file. A “no bid” is not considered a bid. Required documentation includes, but is not limited to, signed and completed purchase requisition, invoice or receipt, receiving report or packing slip, a copy of the contract front sheet showing item numbers and pricing page(s), if applicable.

9.2. For non-emergency purchases between \$30,000.01 up to and including \$50,000.00, a minimum of three signed written bids are required, when possible, and the lowest bid meeting specifications should be awarded the purchase order/contract unless there are extenuating circumstances. Required documentation includes Agency terms and conditions, WV-96 (if vendor terms and conditions are involved), Purchasing Affidavit, Non-Conflict of Interest form, vendor verification in VCUST, and a copy of the contract front sheet showing item numbers and pricing page(s), if applicable.

§81-18-10. Purchasing over \$50,000.00.

10.1. For non-emergency purchases over \$50,000.00, the State Police will transact and work directly with the DAS - Purchasing Section. Purchases of this type will be accomplished using Requests for Quotation (“RFQ”), Requests for Proposals (“RFP”), Expressions of Interest (“EOI”) or Direct Award solicitations.

§81-18-11. Purchasing Methods.

11.1 Direct Award:

11.1.1. A direct award is a procurement method that provides a contract to a vendor without competitive bidding. Solicitation and competition are preferred, but direct awards may be made if all of the following circumstances exist:

11.1.1.a. Written justification documenting that the direct award is in the best interest of the State Police;

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

11.1.1.c. No other vendor expresses an interest in providing the commodity in question.

11.1.2. Direct Award of \$50,000.00 or less:

11.1.2.a. The process outlined below for a direct award at the delegated level.

11.1.2.b. \$0 to \$10,000.00: No documentation required but competition is always encouraged.

11.1.2.c. \$10,000.01 to \$50,000.00: Assistant Director - DAS Purchasing Section must approve or disapprove the transaction. (An email will meet this requirement.)

11.1.2.d. All documentation must be maintained in the purchasing file, including its justification to make the award and any documentation awarding the purchase shall also be maintained in the purchasing file.

11.1.3. Direct Award Exceeding \$50,000.00:

11.1.3.a. Direct Award purchases exceeding \$50,000.00 shall be in accordance with subsection 10.1 above.

11.2. Emergency Purchases:

11.2.1. Unless made pursuant to a separate procedural rule of the State Police or a separate section of West Virginia Code, emergency purchases can only be made upon reasonable and sufficient grounds that some unforeseen or unexpected circumstance has suddenly created a situation requiring that commodities be purchased. A record of competitive bids must be maintained in the file if applicable. Emergency purchases are not to be utilized for hardships resulting from neglect, poor planning, or lack of organization by the State Police.

11.2.2. An emergency purchase can only be made if the Superintendent or Assistant Director - DAS Purchasing Section, exercising sound judgment and discretion, concludes in good faith and upon reasonable and sufficient grounds that some unforeseen or unexpected circumstance has suddenly created a situation requiring the immediate purchase of commodities. A request for an emergency purchase must be made to the Procurement Section or the Assistant Director - DAS Purchasing Section, which at a minimum shall describe the situation and cause, necessitating the emergency purchase.

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

11.3 Request for Quotation:

11.3.1. Requests for Quotations (RFQ) should be used to acquire most tangible property (i.e. equipment, supplies, etc.) and most services. The RFQ is required for most State Police delegated purchases between \$30,000.01 and \$50,000.00. Exceptions to this requirement may be granted by the Assistant Director - DAS Purchasing Section. Such exceptions may include Direct Award purchases, emergency purchases and any other exceptions that the Assistant Director - DAS Purchasing Section deems in the best interest of the State.

11.3.2. Solicitation of Bids: To achieve the goal of competitive bidding, a minimum of three bids are required, when possible. For State Police delegated purchasing (procurements of \$50,000 or less), care must be taken to solicit vendors capable of providing the necessary commodities. If wvOasis is utilized to advertise solicitations, three bids are not necessary.

11.4. Requests for Proposals:

11.4.1. Requests for Proposals (RFPs) are a procurement method that can be utilized when the method of achieving an objective is not well known, making the development of mandatory requirements difficult. Using this method, the lowest price is not the sole determining factor. The RFP method is typically longer than other procurement methods and requires significant agency personnel time and resources to complete.

11.4.2. Limitations:

11.4.2.a. RFPs are generally limited to procurements with an estimated value of \$100,000 or more, but the Assistant Director – DAS Purchasing Section may elect to utilize the RFP method for smaller procurements.

11.4.3. Approval Request:

11.4.3.a. The State Police must have authorization from the Superintendent prior to requesting the DAS Purchasing Section to utilize the RFP procurement method. This request should include justification to show that the RFP is in the best interest of the State Police.

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

11.4.4. An RFP must contain provisions for a two-part evaluation, the first part being technical aspects of the proposal and the second part being cost to the State Police.

11.4.4.a. The two components must then be evaluated based upon the criteria contained in the RFP, scored, and combined to form a total score.

11.4.4.b. The highest scoring vendor will be awarded the contract. No proposal may be evaluated using any criteria other than the criteria specified in the RFP.

11.5. Trade-Ins:

11.5.1. The State Police has the ability to trade in used equipment to offset the purchase cost of new equipment. The trade-in process is not delegated to the Purchaser, so any trade-in will be processed through the Procurement Section or the DAS - Purchasing Section regardless of dollar amount.

11.6. Expressions of Interest:

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

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

§81-18-12. Vendor Compliance.

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

12.1.1. Purchasing Division Registration as set forth in Subection 7.1 of this rule.

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

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

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

award.

12.1.5. Secretary of State: Unless a waiver is obtained from the Secretary of State's office, every in-state vendor must have a certificate of authority and be in good standing with Secretary of State's office. Out of State Vendors only need to register with the Secretary of State under certain conditions. To search for a business or corporation with the Secretary of State's office, visit <http://apps.sos.wv.gov/business/corporations>. Any vendor that cannot be found or shows a status of "revoked" or "dissolved" is not eligible for award until the issue is resolved. Agencies must verify this compliance manually prior to award and include a copy of the relevant records on the contract purchasing file.

12.1.6. Other: In accordance with the W. Va. Code St. R. §148-1-6.1.5, the vendor must be licensed and in good standing with all state and local laws and complete a Purchasing Affidavit, and an Agreement Addendum (WV-96), as applicable.

§81-18-13. Tie Bids.

13.1. When purchasing commodities, occasionally two or more bids of equal terms and amount are received in response to a solicitation, thus, resulting in a *tie bid*. If multiple awards are not made, the tie bid(s) must be resolved. When tie bids are received, the Assistant Director - DAS Purchasing Section shall break the tie by allowing the tied vendors to make a best and final offer, flip of a coin, draw of the cards, or any other impartial method considered prudent by the Assistant Director - DAS Purchasing Section. The means selected to break the tie is determination made at the sole discretion of the Assistant Director - DAS Purchasing Section and is not subject to appeal or protest.

13.2. A non-interested party witness must be present when resolving the tie. Documentation of the method and results, with signatures of all witnesses, must also be included in the file. Vendors affected by the tie shall be notified and given an opportunity to attend the tie breaker.

§81-18-14. Multiple Awards.

14.1. The State Police may elect to award a contract to more than one vendor when the Assistant Director – DAS Purchasing Section determines such action would be in the best interest of the State Police. In arriving at a determination, the Assistant Director - DAS Purchasing Section shall consider the following factors, insofar as they are applicable:

14.1.1. The quality, availability, and reliability of the commodities and their adaptability to the particular use required;

14.1.2. The ability, capacity, and skill of the bidder;

14.1.3. The sufficiency of the bidder's financial resources;

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

14.1.5. The compatibility with existing equipment;

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

14.1.7. Any other relevant factors.

14.2. A written explanation shall be included in the public file in situations where a multiple award is deemed necessary. The Assistant Director – DAS Purchasing Section decision regarding multiple awards shall be final in all cases.

§81-18-15. Addenda.

15.1. During the bid process, it may be necessary to for the Procurement Section or DAS Purchasing Section to alter bidding documents. To facilitate a change to a solicitation after issuance for bid in wvOASIS, a formal written addendum is required.

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

15.3. The following should also be included where applicable:

15.3.1. Specification changes, additions, or noted deletions;

15.3.2. Pre-bid attendee list;

15.3.3. An attachment listing each technical question with a corresponding answer; and

15.3.4. Revised or added sketches, drawings, and/or charts.

15.4. The addendum will be provided by publication to all vendors in the same manner as the original solicitation.

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

15.6. The Procurement Section or DAS Purchasing Section may, at its discretion, extend the bid opening date if it deems it to be in the best interest of the State Police.

§81-18-16. Necessary documents for all purchases where a contract is involved.

16.1. Purchasing Affidavit.

16.2. Agency Terms and Conditions.

16.3. Agreement Addendum (WV-96) (required when vendors submit alternate terms and condition with their bid).

16.4. Drug Free Affidavit (for certain construction projects).

16.5. Certification of Non-Conflict Form.

16.7. Interested Party Disclosure Form: W. Va. Code §6D-1-2 requires that for contracts with an actual or estimated value of at least \$1,000,000.00, the vendor must submit to the Procurement Section or DAS Purchasing Section a disclosure of interested parties to the contract, prior to contract award. Additionally, the vendor must submit to the Procurement Section or DAS Purchasing Section a supplemental disclosure within 30 days of contract completion or termination.

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

§81-18-17. Negotiation When All Bids Exceed Available Funds.

17.1. If all bids meeting requirements exceed the budgeted amount, the State Police may negotiate a lower price within budget with the lowest bidder. If the negotiation does not lead to the budget amount being met, the DAS - Purchasing Section may negotiate a lower price with the next lowest bidder and continue negotiations with participating bidders after negotiation closes with the preceding bidder.

17.2. Discussion and Final Offers:

17.2.1. As provided in the bid solicitation, the Assistant Director - DAS Purchasing Section may conduct discussions to obtain best and final offers from bidders to assure full understanding of solicitation requirements. If the Assistant Director - DAS Purchasing Section determines that a best and final offer is necessary from one vendor, all vendors shall be afforded the opportunity to provide best and final offers. All best and final offers shall be treated like a formal bid, except that advertising is not required. All bidders shall provide their best and final offers to the Assistant Director – DAS Purchasing Section prior to the date and time specified.

17.2.2. Government construction contracts, supplies, and materials are exempt from this negotiation method.

§81-18-18. Pre-Bid Conferences.

18.1. Regardless of the procurement method used, the Procurement Section or DAS Purchasing Section shall consider conducting pre-bid conferences on high dollar, complex acquisitions early in the bid process

to provide an opportunity to explain and clarify critical aspects of the solicitation, eliminate misunderstandings, and encourage vendor participation.

18.2. The Assistant Director DAS - Purchasing Section, who is trained in and knowledgeable of the procurement process, should attend all pre-bid conferences.

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

18.4. "Sign-in sheets" for mandatory pre-bid conferences should contain the following: name of company, person attending (signature and printed name), address, telephone number, and facsimile number. If the pre-bid conference is held by teleconference, a report generated from the teleconference service that details attendance will be an acceptable sign in sheet.

18.5. The header information on the sheets should include the requisition number and the date and time of the pre-bid conference. The original sheet must be filed in the bid file maintained at either the Procurement Section or DAS Purchasing Section. No one individual may represent more than one vendor.

§81-18-19. Architectural and Engineering Projects.

19.1. Architectural and engineering services must be procured in accordance with West Virginia Code §5G-1-1 et seq. These procurements are unique in a number of respects, most notably that cost is not submitted in the vendor's response and that the normal delegated limits previously discussed do not apply. West Virginia Code §5G-1-1 et seq. creates a distinction between procurements on projects of \$250,000.00 or less and those that exceed \$250,000.00. In both cases, however, the final contract must be processed by the DAS - Purchasing Section.

§81-18-20. Changes and Cancellations.

20.1. All contracts must contain a term that the State may cancel a Contract immediately if the legislature does not provide adequate funding for the contract.

20.2. All contracts shall contain a term stating that the State Police may cancel a contract upon the issuance of a 30 day notice of cancellation, for any or no reason.

20.3. Administrative changes to contracts may be made after the fact with subsequent approval by the Assistant Director – DAS Purchasing Section. However, it is preferred that such changes be made in advance, whenever possible. Examples of administrative changes include:

20.3.1. Changing a vendor name;

20.3.2. Changing a vendor's address;

20.3.3. Correction of a clerical mistake made by the state;

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

20.3.5. Inclusion of the Notice to Proceed documentation, if applicable; and

20.3.6. Any other administrative change not included may be approved by the Assistant Director – DAS Purchasing Section on a case-by-case basis.

§81-18-21. Lease Purchases.

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

§81-18-22. Purchase of Goods from Correctional Industries.

22.1. All articles or products which are produced or manufactured by Correctional Industries must be purchased from Correctional Industries in accordance with W. Va. Code §25-7-5.

22.1.1. Correctional Industries may grant an exemption to this requirement as per W. Va. Code §25-7-6 when a correctional industries article or product does not meet the reasonable requirements of the State Police, or when the requisition cannot be fulfilled because of insufficient supply or other reason.

22.2. Purchases of Correctional Industries' articles or products by the State Police shall be made on requisition.

§81-18-23. Purchases Made with Grant Funds.

23.1. If a grant or a portion of a grant awarded to the state does not require the procurement of commodities and the State Police uses all or a portion of the grant for the procurement of commodities that will not directly benefit the State Police, the procurement is exempt from the competitive bidding requirements.

23.2. In accordance with W. Va. Code §5A-3-11(i):

23.2.1. A grant awarded by the state is exempt from the competitive bidding requirements unless the grant is used to procure commodities that directly benefit the State Police.

23.2.2. If a grant awarded to the state requires the procurement of commodities that will directly benefit the State Police, the procurement is not exempt from the competitive bidding requirements.

23.2.3. If a grant awarded to the state requires the state to transfer some or all the grant to an individual, entity, or vendor as a subgrant to accomplish a particular purpose and no contract for commodities directly benefitting the State Police will result, the subgrant is not subject to the competitive bidding requirements.

§81-18-24. Information Technology Equipment, Services, and Software.

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

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

§81-18-25. Quality Assurance.

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

25.2. Proper Acquisition Planning:

25.2.1. The Purchaser's first step is to determine the commodity that is needed, the quantity, the quality level, delivery location, and time frame. The Purchaser must also conduct adequate market research to allow for preparation of specifications.

25.3. Develop and Submit Solicitation:

25.3.1. The Purchaser is responsible for assisting the Procurement Section or DAS Purchasing Section with preparing the specifications and other solicitation documents that are necessary for the appropriate procurement process.

25.4. Review Bids/Documents and Make Award Recommendation:

25.4.1. After bids are opened (or documents are obtained in the case of a direct award) the Purchaser is responsible for reviewing the bids/documents to assist the Procurement Section or DAS Purchasing Section in determining the appropriate vendor for contract award. The Procurement Section will

consult with the DAS - Purchasing Section before making an award recommendation.

25.5. Receiving:

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

25.6. Inventory:

25.6.1. Once payment has been made to the vendor and the shell document established, reportable property must be added to the wvOASIS Fixed Assets System.

25.7. Vendor Responsibilities:

25.7.1. Each vendor is solely responsible for delivering a bid to the Procurement Section or to DAS - Purchasing Section, whichever is specified in the bid announcement, by the specified date and time of the bid opening. The official time clock of the Procurement Section or the DAS - Purchasing Section for the purpose of receipt of bids, shall be the time clock as displayed in the offices of the State Police or the DAS - Purchasing Section, whichever is specified in the bid announcement. Vendor is solely responsible for the accuracy of the information on and in the sealed bid envelopes.

25.8. Compliance with Specifications:

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

25.9. Follow-Up with Suppliers:

25.9.1. To ensure delivery deadlines are met, the vendor should communicate and coordinate with its suppliers to fulfill delivery obligations.

25.10. Dispute Resolution:

25.10.1. The vendor is required to negotiate in good faith with the State Police should a dispute arise.

25.11. Damages:

25.11.1. The State Police may require a liquidated damages provision for some contracts. The term liquidated damages refers to a specified contract provision which entitles the State Police 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.

25.11.2. A vendor may be liable for any damages available under the law, regardless of specific damages sections in a bid document, or purchase order.

§81-18-26. Impossible to Bid List.

26.1. Competitive Bidding Not Required:

26.1.1. Purchaser may purchase the commodities on the list directly from the vendor and are not required to have contracts for the purchase of those items approved by the State Police unless otherwise noted or listed on the West Virginia Purchasing Division's Impossible to Bid List with the applicable item.

26.2. Documentation Requirements:

26.2.1. Even though competitive bidding and State Police approval are not required for most Impossible to Bid List procurements, the spending unit must continue to follow documentation requirements associated with the applicable spend threshold, unless otherwise noted below with each item.

26.2.1.a. For example, all vendors must complete vendor registration with the State Police, Secretary of State Registration, and the Purchasing Affidavit. Additionally, compliance checks such as vendor debarment, workers' compensation, etc., must be completed prior to completing the transaction.

26.3. Registration Fee Waiver:

26.3.1. The vendor registration fee of \$125 for all vendors providing commodities under this Impossible to Bid List is waived if it is in the best interest of the State Police.

26.3.1.a. This waiver only applies to transactions conducted under this Impossible to Bid List.

26.3.1.b. If the vendor in question also obtains contracts through competitive bidding, direct award, or some other method, fee payment will be required.

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

26.4.1. Advertising:

26.4.1.a. Any advertisement placed directly with newspapers, trade magazines, internet publications, social media or billboards;

26.4.1.b. Broadcast television and radio advertisements and creative services or marketing services to create such advertisements placed directly with the broadcaster or publisher; or

26.4.1.c. Participation fees for trade shows, conferences, or conventions.

26.4.2. Artwork and Historical Items:

26.4.2.a. This applies to the purchase of and service to artwork and historical items, i.e. restoring governors' portraits, refurbishing chandeliers, etc.

26.4.2.a.1. Purchasers attempting to procure commodities under this item must obtain written approval from the Procurement Section or the DAS - Purchasing Section prior to making any purchase.

26.4.3. Attorneys and Law Firms:

26.4.3.a. Hiring attorneys and law firms in an official attorney-client capacity.

26.4.3.b. Nothing in this item eliminates the approval or oversight residing within the Attorney General's office.

26.4.4. Aviation Fuel:

26.4.4.a. The purchase of aviation fuel but excludes bulk purchases for delivery to state dispensing stations.

26.4.5. Governmental Agencies (Only includes):

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

26.4.5.b. Regulatory fees legally imposed by government agencies.

26.4.5.b.1. Governmental entities are not required to register with the Secretary of State's Office, so the compliance check is not required.

26.4.5.b.2. If the governmental entity is a West Virginia state agency, then the Purchasing Affidavit is not required.

26.4.6. Entertainers:

26.4.6.a. This includes individuals and/or groups contracted at the request of the State Police to entertain or to assist in the production of entertainment.

26.4.7. Hospitality:

26.4.7.a. This includes expenses for food, beverages, facility rental, and entertainment relating to conducting State Police business.

26.4.8. Media License Fees:

26.4.8.a. This includes program license fees for radio or television.

26.4.9. Medical Fees:

26.4.9.a. Medical services (behavioral and physical) from individual doctors, dentists, clinics, hospitals, laboratory testing facilities, audiologists, county medical examiners, physical and occupational therapists, behavioral counseling and evaluations, etc. for individual patients, inmates, students and clients where the State Police is responsible for payment for this one-time service; or

26.4.9.b. Programs designed for low income / uninsured patient care on an individual basis provided that the program is open to all service providers.

26.4.9.c. Body transportation for corpses and indigent burial expenses and direct award medical and psychological consultants for the purpose of determining Federal Social Security Administration Disability by the Disability Determination Services of the WV Division of Rehabilitation Services.

26.4.9.d. Medical fees for the purposes of determining vocational rehabilitation needs of clients of the Division of Rehabilitation Services.

26.4.9.e. This does not include inmate health care management, hospital management, consulting services or agreements to provide services for groups of patients, inmates, students or clients, etc. for state agencies.

26.4.10. Postage:

26.4.10.a. Stamps and other non-competitive mailing services from the United States Postal Service, not to include services available from statewide contracts or postage machines from third parties.

26.4.10.a.1. The Purchasing Affidavit and Secretary of State registration are not required for transactions processed under this item.

26.4.11. Professional Association Dues:

26.4.11.a. Membership fees or association dues for professional associations that perform a licensing, certification or accreditation function for state employees or agencies (i.e., West Virginia State Bar, West Virginia Board of Accountancy, etc.).

26.4.12. Railroad Car Hire Fees:

26.4.12.a. National association fees required from all railroads to monitor the location and use of railroad cars for the owners.

26.4.13. Investigative Services; Subject Matter Experts, and Witnesses for Administrative Hearing and Legal Proceedings:

26.4.13.a. Obtaining investigative services and the services of a subject matter expert or witness that is intended to help prepare for, or will be utilized in, administrative or legal hearings/proceedings.

26.4.13.b. This does not include agency consulting services or services rendered by former employees retained by their agency or hired by another agency.

26.4.14. Subscriptions and publications:

26.4.14.a. This includes newspapers, textbooks, and publications (electronic and hard copy) purchased directly from the publisher.

26.4.15. Training Activities:

26.4.15.a. This includes lecturers, honorariums, copyrighted test and training materials, test monitors/examination proctors, and registration fees.

26.4.16. Utilities Regulated by the Public Service Commission:

26.4.16.a. This includes natural gas, water, sewage, electric, telephone, garbage, cable television service, connection fees, trash hauling, and dumpster rental (if there is only one PSC approved hauler is in the area).

26.4.16.b. This does not include propane gas, coal, and satellite television, all of which must be competitively bid.

26.4.17. Court Ordered Payments:

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

26.4.18. Emergency Services (Non-Construction and Non-Architectural/Engineering "A/E"):

26.4.18.a. This includes non-construction and non-A/E services that must be procured on an emergency basis when:

26.4.18.a.1. Formal bidding would cause the government to lose the ability to perform some critical function for itself or residents of the State of West Virginia; or

26.4.18.a.2. Formal bidding would delay a response to a declared state of emergency.

26.4.18.a.3. Any use of this item must be approved by the Superintendent in advance.

26.4.19. Vaccines:

26.4.19.a. This item includes vaccines purchased through contracts issued by the Centers for Disease Control (CDC).

26.4.20. Transcripts from Court Reporters Employed by Court, Judge, or Opposing Counsel:

26.4.20.a. This includes transcripts procured from court reporters who are employed by the court, judge, or opposing counsel.

26.4.20.b. These transactions are exempted from all documentation requirements listed above but spending units should comply with those requirements where possible.

26.4.21. Copies of Government Documents/Records Obtained from the Government:

26.4.21.a. This includes fees paid to the government entity required to obtain records of court and administrative proceedings as well as documents filed in those proceedings, and charges paid to a government entity for other official documents or records obtained from that government entity.

26.4.21.b. Examples of allowable transactions include but are not limited to; fees associated with obtaining documents from the federal court's PACER system, similar fees charged by county or local courts for records, fees required to obtain official copies of real estate records from the County Clerk's Office, and FOIA fees.

26.4.22. Commodities for a shared facility arrangement with the U.S. Government:

26.4.22.a. Effective July 1, 2018, commodities contracted by the U.S. Government and provided to the State Police when those commodities are:

26.4.22.a.1. Offered as part of a shared facility arrangement; or

26.4.22.a.2. Those commodities for the State Police cannot be easily separated from those for the U.S. Government.

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

26.4.23. Automobiles:

26.4.23.a. Effective July 1, 2022, this item includes cars, trucks and SUVs, unless readily available on a state contract, and one of the following conditions are met:

26.4.23.a.1. The automobile class is not available on the statewide contract or is on the statewide contract but cannot be utilized due to manufacturer inability or unwillingness to accept new

orders; or,

26.4.23.a.2. The purchase of the automobile from the statewide contract would result in receiving a current model year automobile in a future model year.

27.4.24. Laboratory Purchases:

27.4.24.a. This includes laboratory equipment, calibration of said equipment, laboratory supplies and services, and software related to the State Police Forensic Laboratory and Digital Forensic Laboratory.

27.4.25. Automotive Parts and Supplies:

27.4.25.a. This includes all automotive parts, supplies and services necessary to provide preventative and corrective maintenance and repairs to the State Police fleet vehicles.

§81-18-27. Protests.

27.1. All protests must be submitted in writing to the Superintendent and the Chief Hearing Examiner and contain all of the following information:

27.1.1. The name and address of the protestor;

27.1.2. The requisition, solicitation, purchase order or contract numbers;

27.1.3. A statement of the grounds of protest;

27.1.4. Supporting documentation, if necessary; and

27.1.5. The resolution or relief sought.

27.1.6. Failure to submit this information shall be grounds for rejection of the protest by the Chief Hearing Examiner or his or her designee.

27.2. The Superintendent, upon receipt of a protest, shall forward the protest, along with all documentation regarding the purchase or award, to the Chief Hearing Examiner or his or her designee.

27.3. Timeframe for Submission of Protest:

27.3.1. Protests based on bid specifications must be submitted no later than five working days prior to bid opening.

27.3.2. Protest of a purchase order or contract award must be submitted no later than five working days after the award.

27.3.3. The vendor is responsible for knowing the bid opening and award dates. Protests received

after these dates may be rejected at the option of the Chief Hearing Examiner or his or her designee.

27.3.4. Continuation or delay of a purchase order or contract award is at the discretion of the Superintendent.

27.3.5. Master Contract and Direct Award Protests:

27.3.6. Any vendor desiring to protest the specifications of a master contract, or the direct award process may do so prior to five working days before the master contract opening date and five business days before the direct ordering process opening date.

27.3.7. Any vendor desiring to protest the award of a master contract or direct order may do so within five working days of the master contract award and within five business days of the direct order award.

27.3.8. Responsibility for delivery of the protest to the Superintendent shall remain with the protesting vendor. The Procurement Section or DAS Purchasing Section's failure to deliver the protest to the Superintendent shall not be grounds for extending the time for receipt of protests.

27.4. Protest Review:

27.4.1. The Chief Hearing Examiner, or his or her designee, upon receipt of a protest, shall:

27.4.1.a. Set the protest for hearing within 10 business days of receipt of protest;

27.4.1.b. If not rejected as set forth in this section, review the matter of protest, and issue a written decision.

27.4.2. The Chief Hearing Examiner, or his or her designee, 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 the matter has been decided in a previous protest to the Procurement Section or DAS Purchasing Section.

§81-18-28. Restriction of Vendor by Lessor.

28.1. If the State Police is bound to use a specific vendor or contractor, or is limited to a contractor or vendor who shall be selected by a Lessor, in a lease entered into by the State Police, the State Police shall not be required to put the commodities out to bid, but shall instead utilize the vendor or contractor required by the Lessor.

**TITLE 81
PROCEDURAL RULE
WEST VIRGINIA STATE POLICE**

**SERIES 18
WEST VIRGINIA STATE POLICE PURCHASING RULE**

~~§81-18-1. General.~~

~~1.1. Scope. — This rule establishes the procedures for purchase of commodities and services by the West Virginia State Police (WVSP) pursuant to the WVSP's purchasing exemption.~~

~~1.2. Authority. — W. Va. Code § 5A-3-1 and 5A-3-3~~

~~1.3. Filing Date. — October 13, 2020~~

~~1.4. Effective Date. — November 13, 2020~~

~~§81-18-2. Policy.~~

~~2.1. Each employee of the West Virginia State Police shall be provided access to the Purchasing & Surplus Manual to ensure the continued efficient operation of the West Virginia State Police; to define the purchasing & surplus standards of conduct which are established to promote the integrity and honor of the agency; and to define for each employee the standards of purchasing & surplus required by the Superintendent.~~

~~2.2. Policies and procedures governing the purchasing & surplus operation of the West Virginia State Police shall be contained within the West Virginia State Police Purchasing & Surplus Manual in an electronic format available to all employees of the agency via the State Police Intranet / Virtual Office.~~

~~2.3. Electronic versions of the Purchasing & Surplus Manual shall remain the exclusive property of the West Virginia State Police. Printed manuals issued to sworn or civilian employees shall be returned to the issuing authority upon the employee's retirement, resignation, or dismissal from the organization. Likewise, access to the electronic version of the Purchasing & Surplus Manual shall also be terminated.~~

~~2.4. Information contained within the electronic version of the Purchasing & Surplus Manual is intended for the exclusive use of West Virginia State Police members and civilian employees and shall not be reproduced or otherwise disseminated to any person without the express consent of the Superintendent. All requests for a partial or complete copy of the Purchasing & Surplus Manual shall be directed to the Office of the Superintendent.~~

~~2.4.1. NOTE: This policy is for internal use only and does not enlarge an employee's civil or criminal liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third party claims.~~

~~2.5. Electronic versions of the Purchasing & Surplus Manual shall be readily available for inspection by the Superintendent or any member of the Executive Office or their designee.~~

~~§81-19-3. Definitions:~~

- ~~3.1. "Accounting Office" means West Virginia State Police Accounting Office.~~
- ~~3.2. "Asset or Assets" means the inventory of all real and personal property, and all equipment, supplies and commodities that are required to be reported under West Virginia Code §5A-3-35.~~
- ~~3.3. "Chief of Staff Services" means any uniform member appointed by special order by the Superintendent to manage West Virginia State Police Staff Services.~~
- ~~3.4. "Commodities" means supplies, material, equipment, contractual services, and any other articles or things used by or furnished to a department, agency or institution of State Government as defined in West Virginia Code §5A-1-1.~~
- ~~3.5. "Company" term used prior to July 1, 1998 for "Troop" Headquarters.~~
- ~~3.6. "Department of Revenue" means State of West Virginia Department of Revenue.~~
- ~~3.7. "Deputy Chief of Staff Services" means any uniform member appointed by special order by the Superintendent to assist the Chief of Staff Services in managing West Virginia State Police Staff Services.~~
- ~~3.8. "Director of Procurement" means any uniformed or non-uniformed member of the West Virginia State Police appointed by the Superintendent by special order to oversee Procurement operations.~~
- ~~3.9. "Employee/Personnel" means refers to both uniformed and non-uniformed members of the West Virginia State Police.~~
- ~~3.10. "Expendable Commodities" means commodities which, when used in the ordinary course of business, will become consumed or of no market value within the period of one year or less.~~
- ~~3.11. "Expression of Interest (EOI)" means a Best Value Procurement tool used for architectural and engineering services which is defined in W. Va. Code 5G-1, as "those professional services of an architectural or engineering nature as well as incidental services that members of those professions and those in their employ may logically or justifiably perform."~~
- ~~3.12. "Laboratory Director" means any uniformed or non-uniformed member of the West Virginia State Police appointed by the Superintendent by special order to oversee Laboratory operations.~~
- ~~3.13. "Non Reportable Assets" means non reportable assets are defined as either assets that are valued at less than \$1,000 or have a useful life of less than one year, or assets expendable in nature.~~
- ~~3.14. "Non Uniformed Member" refers only to civilian employees of the West Virginia State Police.~~
- ~~3.15. "Procurement Section" refers to West Virginia State Police Procurement Section. i.e. Director or Purchasing, Procurement Specialist, Procurement Associate.~~
- ~~3.16. "Purchaser" means any uniformed or non-uniformed member of the West Virginia State Police who is assigned purchasing authority, i.e....Director, Uniformed members of the West Virginia~~

~~State Police Senior Staff, Director of Procurement, Deputy Director of Procurement, Director of Purchasing, Procurement Specialist, Procurement Associate, Troop Logistics Officers, Troop Clerks, Troop Mechanics, Troop Maintenance, Supervisor of Procurement and Building Maintenance Supervisor.~~

~~3.17. "Purchasing Section" refers to the West Virginia State Police Procurement Section.~~

~~3.18. "Reportable Assets" means any personal assets, excluding expendable commodities that has an original acquisition cost of \$1,000 or more and a useful life of one year or longer.~~

~~3.19. "Request for Proposal (RFP)" refers to the agency request for proposal.~~

~~3.20. "Request for Quotation (RFQ)" refers to the agency request for quotation.~~

~~3.21. "Section" refers to the West Virginia State Police Headquarters Sections such as Planning and Research, Aviation, Procurement, Communications, Forensic Lab, Human Resources, Traffic Records, Criminal History, Information Technology and any other section assigned to headquarters.~~

~~3.22. "Superintendent" refers to the Colonel of the West Virginia State Police or their designee.~~

~~3.23. "Sole Source Purchases" means any contract or purchase entered into without a competitive process, based on a justification that only one known source exists or that only one single supplier can fulfill the requirements.~~

~~3.24. "Troop" refers to West Virginia State Police designated area within the State of WV under the command of a uniformed member holding the appointed rank of Captain.~~

~~3.25. "Travel Management Office (TMO)" refers to State Travel Management Office within the Department of Administration.~~

~~3.26 "Uniformed Member" refers only to uniformed members of the West Virginia State Police.~~

~~3.27. "Unit/Organizational Unit" means any district, detachment, section, bureau, or other organizational entity within the West Virginia State Police.~~

~~3.28. "wvOASIS" means the State's accounting system managed by the Enterprise Resource Planning Board in conjunction with the West Virginia Department of Administration and the State Auditor's Office.~~

~~3.29. "WVSP" means the West Virginia State Police.~~

~~§81-18-4. Procedures.~~

~~4.1. Authorization: The Superintendent may authorize purchases outside these guidelines when purchases are deemed necessary and in the best interest of the agency and the state.~~

~~4.2. Documentation: Contracts, requisitions, purchase orders or other purchasing documentation shall be retained for a period of 7 years consisting of current year and six previous years. All required purchase documentation must be included in each respective master purchasing file, maintained at the originating purchasing location, or uploaded to wvOASIS as described below in descriptions of Purchases for Troop level and Procurement. All originals of Troop level contracts will be retained for a~~

~~minimum of 7 years with a copy uploaded to the WVSP server. All Troop level~~

~~4.3. Laboratory Purchases: Due to accreditation requirements certain laboratory equipment requirements and calibration requirements make utilizing certain similar products or services unacceptable. Laboratory purchases that fall into this category will be documented with sole source documentation or requirement for accreditation letter or memo and approved by the Laboratory Director and Director of Procurement. (An email will meet the approval documentation requirement)~~

~~4.4. Local Contracts: Troop level contracts for automotive parts shall be limited to a yearly cumulative total of \$50,000.00 per Troop and per vendor due to the volume and unpredictability of fleet maintenance.~~

~~4.5. Outside Contracts: Purchasers may utilize State, Federal and Governmental contracts to make purchases when in the best interest of the West Virginia State Police and also as one of their three required bids as applicable.~~

~~4.6. Penalty for violating procedures: An investigation may be opened by West Virginia State Police Professional Standards Unit if any uniformed or non-uniformed member intentionally violates the procedures outlined in this manual. The results of the investigation shall be forwarded to the Superintendent for review and disciplinary action.~~

~~4.7. Sole Source Purchases: Sole Source Contracts or Purchases must be approved by the Director of Procurement or designee before the award is made. A written justification must accompany the request explaining why the sole source should be awarded instead of following the bidding process. The Director of Procurement or designee will be the final decision for the award. Sole Source contracts will be effective for one year and reviewed before renewal by the Director of Procurement or designee.~~

~~§81-19-5. Troop Level Purchasing up to \$25,000.00~~

~~5.1. The WVSP has established the following spending thresholds within the agency, each with bidding and documentation requirements described below.~~

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

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

~~5.4. Purchases \$10,000.01 to \$25,000: A minimum of three signed written bids are required, when possible, and the lowest bid meeting specifications must be awarded the purchase order/contract unless there are extenuating circumstances. (see award process).~~

~~5.5. Required documentation: Three signed written bids, WV 48 if services are involved, WV 96 if~~

terms and conditions are involved, Purchasing Affidavit, Non Conflict of Interest form and vendor verification in VCUST, a copy of the contract front sheet showing item numbers and pricing page(s) if applicable. Paperwork must be submitted to Procurement within three days for processing along with funding information from Accounting if not purchased by a purchasing card. Purchasing card purchases are retained at the originating purchasing location in the purchasing file. All other documents submitted to Procurement are retained in the purchasing file under the care custody and control of the Purchasing Director or their designee.

5.5.1. NOTE: The Request for Quotation (RFQ) should be used to acquire all tangible property (i.e. equipment, supplies, etc.). The RFQ should be used when circumstance allow for all purchases between \$10,000.01 and \$25,000. Exceptions to this requirement may be granted by the Purchasing Director. In all cases, an attempt to obtain at least three written bids for a product or service must be made. A "no bid" is not considered a bid. Signed faxed bids or electronic bids are acceptable. Screen prints from Internet sites are not acceptable as a valid bid.

5.6. Procurement level staff should seek a minimum of 8 hours of continued education in their specific expertise field above and beyond that of the 8 hours of Troop level purchasing annual training.

~~§81-18-6. Procurement Level Purchasing.~~

6.1. The WVSP has established the following spending thresholds within the agency, each with bidding and documentation requirements described below.

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

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

6.4. Purchases \$10,000.01 to \$25,000: A minimum of three signed written bids are required, when possible, and the lowest bid meeting specifications must be awarded the purchase order/contract unless there are extenuating circumstances. (see award process).

6.5. Required documentation: Three signed written bids, WV 48 if services are involved, WV 96 if terms and conditions are involved, Purchasing Affidavit, Non Conflict of Interest form and vendor verification in VCUST, a copy of the contract front sheet showing item numbers and pricing page(s) if applicable. Purchasing card purchases are retained at the originating purchasing location in the purchasing file. All other documents submitted to Procurement are retained in the purchasing file under the care custody and control of Purchasing Director or their designee.

6.6. Procurement will focus on assisting and guiding Troop level purchases when requested along with all purchases over \$25,000.00, Requests for Proposals ("RFP") and Expressions of Interest ("EOI"). Training will be provided by Procurement personnel to agency employees yearly in addition to required P Card training. All agency employees conducting purchasing transactions will be required to attend 8

hours of purchasing training yearly. Training will be in person or provided online.

~~6.6.1. NOTE: The Request for Quotation (RFQ) should be used to acquire all tangible property (i.e. equipment, supplies, etc.). The RFQ should be used when circumstance allow for all purchases between \$10,000.01 and \$25,000. Exceptions to this requirement may be granted by the Purchasing Director. In all cases, an attempt to obtain at least three written bids for a product or service must be made. A "no bid" is not considered a bid. Signed faxed bids or electronic bids are acceptable. Screen prints from Internet sites are not acceptable as a valid bid.~~

~~§81-18-7. Bid Process.~~

~~7.1. Requests for Quotations:~~

~~7.1.1. (RFQ) should be used to acquire all tangible property (i.e. equipment, supplies, etc.). The RFQ is required for all purchases between \$10,000.01 and \$25,000. Exceptions to this requirement may be granted by the Director of Procurement.~~

~~7.2. An RFQ consists of:~~

~~7.2.1. A detailed description of, or specification for, the item(s) being purchased; delivery date, if required; bid price per unit of the item(s); any applicable maintenance; and quantities of all items.~~

~~7.2.2. Each item should be identified by a model number or some other specific identification. Prices cannot be altered after bids are opened. The RFQ must have an established date and time for the bid opening, after which bids will no longer be accepted. All bids should be annotated with the date and time of receipt.~~

~~7.2.3. Solicitation of Bids: To achieve the goal of competitive bidding, a minimum of three bids are required, when possible. For WVSP purchasing (procurements of \$25,000 or less), care must be taken to solicit vendors capable of providing the necessary products or services.~~

~~7.2.4. Public Notice: Advertise delegated solicitations for a period of no less than 5 business days unless prior approval for less time is approved by the Director of Procurement in wvOASIS when feasible. If exceptional circumstances exist which require a shorter advertisement period, prior approval from the Director of Procurement.~~

~~7.2.5. Evaluation of Bids: Bids are received, opened and examined by the agency to ensure compliance with all specifications and determination of the lowest responsible bidder.~~

~~7.2.6. Award Process: After the evaluation of all bids by the agency personnel, an award is made to the lowest responsible bidder who meets the specifications.~~

~~7.2.7. Award to Other Than Low Bid: If an award is made to other than the lowest bidder, a detailed justification as to why the lowest bidder was not awarded the contract must be written and retained for public record and inspection. The justification must be signed by the evaluator(s) and retained as part of the bid purchasing file at the originating purchasing locations.~~

~~7.3. When Three Bids Not Possible:~~

~~7.3.1. The following are instances where obtaining three competitive bids is not possible.~~

~~7.3.1.a. Emergency—Agencies are permitted to declare a delegated emergency. The purchasing file should contain all documentation necessary to substantiate the declared emergency at the originating purchasing locations.~~

~~7.3.1.b. Solicitation Advertised in wvOASIS and Less Than Three Bids Received.~~

~~7.3.1.c. Direct Award.~~

~~7.4. Emergency Purchases:~~

~~7.4.1. An emergency can declared by the Superintendent, Chief of Staff Services, Deputy Chief of Staff Services or the Director of Procurement~~

~~7.4.2. Purchases may be necessary when unforeseen causes arise; however, emergency purchases are not used for hardship resulting from neglect, poor planning, or lack of organization.~~

~~7.4.3. An emergency purchase can only be made if approved by the Superintendent, Chief of Staff Services, Deputy Chief of Staff Services or the Director of Procurement, exercising sound judgment and discretion, concludes in good faith and upon reasonable and sufficient grounds that some unforeseen or unexpected circumstance has suddenly created a situation requiring that commodities or services be immediately purchased. A record of competitive bids must be maintained in the purchasing file and maintained at the originating location, if applicable.~~

~~7.4.4. Emergency Purchases of \$25,000 or Less:~~

~~7.4.4.a. A minimum of three verbal or signed bids, if possible, should be obtained. Original written bids and justification along with documentation of required approval (an email will meet this requirement) must be attached to the Purchasing file and maintained at the originating purchasing locations~~

~~7.5. Direct Award:~~

~~7.5.1. A direct award is a procurement method that provides a contract to a vendor without competitive bidding when extenuating circumstances are justified in written form. Solicitation and competition is encouraged rather than process a direct award request however, a direct award may be made if the following circumstances occur:~~

~~7.5.2. Written justification documenting that the direct award is in the best interest of WVSP;~~

~~7.5.3. When there is no other source or that no other source would be willing or able to replace the existing source without a detrimental effect on the spending unit;~~

~~7.5.4. No other vendor expresses an interest in providing the commodity or service in question.~~

~~7.5.5. Direct Award of \$25,000 or less:~~

~~7.5.5.a. The process outlined below for a direct award at the delegated level.~~

~~7.5.5.a.1. \$0 to \$2,500: a memo or email attached to the purchase file will suffice as justification for the purchase.~~

~~7.5.5.a.2. \$2,500.01 to \$25,000: Director of Procurement must approve or disapprove the transaction. (an email will meet this requirement)~~

~~7.5.5.a.3. All documentation must be maintained in the purchasing file, including its justification to make the award and any documentation awarding the purchase and maintained at the originating purchasing location.~~

~~7.6. Firm Fixed Pricing:~~

~~7.6.1. All contracts should be entered into for a firm, fixed price per unit of goods or service. In such cases where the nature of the procurement prohibits a firm, fixed price, a detailed written justification must be included in the purchasing file.~~

~~7.7. Vendor Compliance:~~

~~7.7.1. Prior to an award, a vendor must be in compliance with the following requirements and, if applicable, documentation verifying compliance shall be retained in the purchasing file:~~

~~7.7.2. Purchasing Division Registration: Vendors must be properly registered with in the wvOASIS vendor/customer account, such as the Owner/Officer Information and Banking Information listed under the "Disclosures" tab, and payment of the annual fee (where required). It is also recommended that the West Virginia Department of Administration Finance Division have a current W-9 on purchasing file for the vendor. This is indicated under the "Hold Payment" portion of the "Disbursement Options" tab of the wvOASIS vendor/customer account;~~

~~7.7.3. Workers' Compensation/Unemployment: In accordance with the W. Va. Code § 21A-2-6, verification of current unemployment fee status and Workers' Compensation coverage is required to ensure the vendor is not in default with Workers' Compensation and Employment Compensation. wvOASIS automatically verifies compliance prior to award;~~

~~7.7.4. Federal Debarment: Verification that the vendor is not debarred by the federal government. wvOASIS automatically verifies this federal compliance prior to award.~~

~~7.7.5. State Debarment: Verification that the vendor is not debarred by the State of West Virginia. The Purchasing Division maintains a list of vendors debarred by the state of West Virginia, which may be accessed at www.state.wv.us/admin/purchase/debar.html. Must verify this compliance prior to award;~~

~~7.7.6. Secretary of State: Unless a waiver is obtained from the Secretary of State's office, every vendor must have a certificate of authority and be in good standing with Secretary of State's office. To search for a business or corporation with the Secretary of State's office, visit <http://apps.sos.wv.gov/business/corporations>. Any vendor cannot be found or shows a status of "revoked" or "dissolved" is not eligible for award until the issue is resolved. Agencies must verify this compliance manually prior to award and include a copy of the relevant records on the contract~~

~~purchasing file.~~

~~7.7.7. Other: In accordance with the W. Va. § 148 C.S.R. 1-6.1.e, the vendor must be licensed and in good standing with any and all state and local law and complete the following requirements.~~

~~7.7.8. Purchasing Affidavit; and,~~

~~7.7.9. Agreement Addendum (WV 96).~~

~~7.8. Tie Bids.~~

~~7.8.1. When purchasing commodities and services of \$25,000 or less, occasionally two or more bids of equal terms and amount are received in response to a solicitation, thus, resulting in a tie bid. If multiple awards are not made, the tie bid(s) must be resolved. When tie bids are received, the Purchasing Director shall break the tie by allowing the tied vendors to make a best and final offer, flip of a coin, draw of the cards, or any other impartial method considered prudent by the Director of Procurement.~~

~~7.8.2. A witness must be present when resolving the tie and documentation of the method and results, with signatures of all witnesses, must also be included in the purchasing file. Vendors affected by the tie should be notified and given an opportunity to attend the tie breaker.~~

~~7.9. Errors in Bids:~~

~~7.9.1. The West Virginia Code of State Rules guides the WVSP in cases of errors in bids for purchases over \$25,000.~~

~~7.9.2. If an error is discovered, the burden of proof and timely action for request of relief is the vendor's responsibility. The request for relief must be made in writing by the vendor and should be received by the agency within five business days from the bid opening date.~~

~~7.9.3. Erroneous bids may be rejected after the bid opening if all the following reasons are met:~~

~~7.9.3.a. An error was made;~~

~~7.9.3.b. The error materially affected the bid;~~

~~7.9.3.c. Rejection of the bid would not cause a hardship on the state agency involved other than losing an opportunity to receive commodities and services at a reduced cost; and~~

~~7.9.3.d. Enforcement of the part of the bid in error would be unconscionable.~~

~~7.9.4. In order to reject a bid, the purchasing file must contain documented evidence that all of the above conditions exist. The vendor must specifically identify the error(s) and provide documentation to substantiate the claim that the error(s) materially affected the bid and enforcement of the part of the bid in error would be unconscionable.~~

~~7.9.5. The unit price prevails if there is an error in the extension. The WVSP may recalculate a vendor's extension (total) pricing based upon the unit price provided by the vendor if there is a clear~~

mathematical error and recalculation is warranted. The vendor's original documentation is not to be modified. Any recalculation must be documented separately and retained in the purchasing file.

~~7.10. Electronic Submission of Bids:~~

~~7.10.1. A vendor choosing to submit a bid or a written change to a bid by electronic submission, i.e., email, wvOasis or facsimile, accepts full responsibility for transmission and receipt of the bid or written change to a bid. The WVSP accepts no responsibility for the unsuccessful and/or incomplete transmission of bids by electronic transmission.~~

~~7.11. Commodity and Service Receiving Procedures:~~

~~7.11.1. Materials must be opened and inspected within 24 hours of receipt. Receivers must verify the shipment against the specifications in the purchase order and retain a copy of the packing list or shipping documents and place a copy in the purchasing file. For receipt of services, a receiving report similar in form to that required by the Auditor's office shall be completed, signed and retained with the purchasing file. (An email documenting services received shall meet this requirement)~~

~~7.11.2. Receivers must verify quantities received. If quantities do not match the purchase order, the receiver must insist on a correction of the packing slip. After all corrections have been made, request that the driver sign all shipping documents before leaving. Do not accept any alternate or substitution without end user's approval of commodities and services awarded by the Purchaser.~~

~~7.12. Inspection:~~

~~7.12.1. Purchaser or receiver shall perform an inspection on all delivered commodities and services. Nonconformity is to be reported to the Director of Procurement and the purchaser for remedial action.~~

~~7.13. Proper Receiving Techniques:~~

~~7.13.1. Any person receiving commodities is responsible for performing all of the inspection steps described below.~~

~~7.13.2. Receipt of Commodities and Services~~

~~7.13.3. The receiver shall check the shipment to determine if commodities are in conformance with the purchase order or contract and verify the following:~~

~~7.14. Commodities: The make, model number, brand name and general description of the item(s) received match the specifications on the purchase order.~~

~~7.14.1. The quantity received agrees with the purchase order quantity, packing list and bill of lading. An actual count is necessary to assure receipt of all items.~~

~~7.15. Services: Labor services must match the frequency (daily, weekly, monthly, etc.) and duration (number of hours, days, etc.) described in the purchase order or contract (janitorial, security, etc.).~~

~~7.15.1. Service contracts that require the vendor to provide consultant reports, audit reports,~~

~~statistics or recommendations must be as specified in the purchase order or contract.~~

~~7.15.2. Service contracts that require the vendor to perform a particular service, such as elevator maintenance or carpet cleaning, must have all tasks completed as described in the purchase order or contract.~~

~~7.16. Freight Terminology and Loss/Damage:~~

~~7.16.1. Freight or shipping terms should always be included in a contract. Purchase orders should have a specified point of origin and destination. Misunderstanding of the freight terms may cause problems in the receiving end of the purchase. In accordance with the National Institute of Governmental Purchasing's (NIGP) Public Procurement Dictionary of Terms (2008), the definitions for Free on Board (F.O.B.) Destination and Free on Board (F.O.B.) Origin are noted as follows:~~

~~7.16.2. Free on Board (F.O.B.) Destination: Where the seller or consignee delivers the materials to a specified delivery point. The cost of shipping and the risk of loss are borne by the seller or consignee. Title passes when delivery is received by the buyer at destination. Seller has total responsibility until shipment is delivered. This is the preferred method of shipment as it easily facilitates a comparison of price among multiple vendors.~~

~~7.16.3. Free on Board (F.O.B.) Origin: Title is transferred from seller to buyer at the origin of the shipment. Buyer owns the goods in transit and files any claims. Buyer has total responsibility. The payment of the freight charges is determined by contract terms. Any use of this delivery method requires that the price evaluations account for delivery costs to ensure an accurate price comparison.~~

~~7.17. Loss or Damage in Shipment:~~

~~7.17.1. Filing of claims for loss or damage to merchandise in shipment is the responsibility of the party having title to merchandise during shipment. The title to the commodities is determined by the F.O.B. point on the purchase order.~~

~~7.17.2. F.O.B. Destination: Title remains with vendor until goods are received and accepted by the state agency. Damage occurring during shipment must be resolved by the seller.~~

~~7.17.3. If the damage is obvious note all losses or damages on receiving papers, sign and have driver sign. Write the word "Refused" on receiving papers. Do not accept merchandise with obvious damage from carrier under any circumstances.~~

~~7.17.4. If the damage or loss becomes evident when uncrating, stop uncrating and retain all merchandise and crating in exactly the same condition in which it was received. Notify the vendor immediately in writing and by telephone. Do not use any of the merchandise and do not destroy any packaging material.~~

~~7.17.5. F.O.B. Shipping Point: Title passes to the state agency immediately when goods are given to a common carrier at the time of shipment. The state agency is responsible for any and all damages or losses while merchandise is in transit. If damages occur to merchandise in shipment, it is the state agency's responsibility to file a claim on behalf of the state.~~

~~7.17.6. If there is obvious loss or damage, note all losses or damages on receiving papers, sign~~

~~and have driver sign. Retain all merchandise in the condition in which it was received and notify both the carrier and seller in writing and by telephone within five business days. The carrier will send a representative to investigate the claim.~~

~~7.17.7. If the damage or loss becomes evident when uncrating stop uncrating and retain all merchandise and crating in exactly the same condition in which it was received. Notify the vendor immediately in writing and by telephone. Do not use any of the merchandise and do not destroy any packaging material.~~

~~7.17.8. Notify the Director of Procurement when damaged goods are received and a resolve cannot be reached with the vendor.~~

~~7.18. Payment Processes:~~

~~7.18.1. State Purchasing Card:~~

~~7.18.1.a. When possible, it is encouraged to use the State Purchasing Card. Use of the State Purchasing Card, however, is not justification to avoid utilizing statewide or agency contracts but is simply a method of payment.~~

~~7.18.1.b. State Auditor's Office Purchasing Card Program Procedures located at <https://www.wvsao.gov/PurchasingCard/Default#Forms>~~

~~7.18.2. Electronic Fund Transfer (EFT):~~

~~7.18.2.a. Vendors and agencies not utilizing the Purchasing Card must utilize electronic funds transfer as a method of payment. The West Virginia Auditor's Office will only issue checks in rare circumstances. For more information, visit <http://www.wvsao.gov>.~~

~~7.19. WVSP Assets:~~

~~7.19.1. After payment has been made to the vendor, assets valued over \$1,000.00 or computer equipment valued over \$500.00 or any assets deemed reportable by the Director of Procurement must be added to fixed assets in wvOASIS.~~

~~7.19.2. All WVSP assets valued over \$1,000.00 are entered into wvOasis by an Inventory Specialist from the Procurement Section who was not involved in the purchasing process.~~

~~7.20. Changes:~~

~~7.20.1. Occasionally, it becomes necessary to amend, clarify, change or cancel purchasing documents. A contract change order is required whenever the change affects the payment provision, time for completion of the work and/or the scope of the work.~~

~~7.20.2. Changes to the original purchase order must be sequentially numbered in the appropriate space. The explanation of change to an existing contract must be described with sufficient detail and clarity that any individual could review and generally understand the contract and change.~~

~~7.21. Contract Cancellation:~~

~~7.21.1. A contract or purchase order may be canceled upon written notice to the vendor under any one of the following conditions including, but not limited to:~~

~~7.21.1.a. The vendor agrees to the cancellation;~~

~~7.21.1.b. The vendor has obtained the contract by fraud, collusion, conspiracy or in conflict with any statutory or constitutional provision of the state of West Virginia;~~

~~7.21.1.c. Failure to conform to contract requirements or standard commercial practices;~~

~~7.21.1.d. The existence of an organizational conflict of interest is identified; or~~

~~7.21.1.e. Funds are not appropriated or an appropriation is discontinued by the legislature for the acquisition.~~

~~7.21.1.f. Violation of any federal, state, or local law, regulation or ordinance.~~

~~7.21.1.g. The contract was awarded in error.~~

~~7.21.2. A contract or purchase order may be canceled for any reason, upon 30 days written notice to the vendor. The Director of Procurement may cancel a contract with the approval of the Superintendent, Chief of Staff Services, Deputy Chief of Staff Services or their designee if deemed in the best interest of the WVSP to do so.~~

~~7.21.3. In the event that a vendor fails to honor any contractual term or condition, or violate any provision of federal, state, or local law, regulation or ordinance, the vendor will be requested to remedy the contract breach or legal violation within a time frame determined to be appropriate by the Director of Procurement. If the vendor fails to remedy the contract breach or legal violation, the contract may be canceled immediately without providing the vendor an opportunity to perform a remedy.~~

~~7.22. Formal Acquisition Procedures:~~

~~7.22.1. All requisitions for commodities and services over \$25,000 must be submitted using wvOASIS for formal competitive bidding.~~

~~7.23. Competitive Bidding:~~

~~7.23.1. WVSP may utilize various mechanisms to solicit competition from responsible vendors. Two of the most often used solicitation techniques are Requests for Quotations ("RFQ") and best value procurement. The RFQ method is the most commonly used and preferred method of competitive bidding. Best value procurement can be further broken down into Requests for Proposals ("RFP") and Expressions of Interest ("EOI").~~

~~7.24. Requests for Quotations:~~

~~7.24.1. The Request for Quotation (RFQ) is used to acquire most commodities and services,~~

~~including construction.~~

~~7.25. Award Criteria:~~

~~7.25.1. An RFQ for commodities or services must be awarded to the lowest responsible bidder. Similarly, an RFQ for construction must be awarded to the lowest qualified responsible bidder.~~

~~7.25.2. In both cases, the award is completely objective, going to the lowest bid submission meeting the required specifications (also referred to as mandatory requirements). If a mandatory requirement is not met, then that bid is disqualified.~~

~~7.25.3. The vendor provides the pricing in its bid response submitted to the WVSP Purchasing Division. Prior to the bid opening, a bid that has already been submitted cannot be modified; submission of the vendor's bid constitutes a binding offer. However, if a vendor wishes to make a change to its bid after submission, it may submit a subsequent bid to supersede the original bid.~~

~~7.26. Multiple Awards:~~

~~7.26.1. The Director of Procurement may elect to award a contract to more than one vendor when the Director determines such action would be in the best interest of WVSP. In arriving at a determination, the Purchasing Director will consider the following factors, insofar as they are applicable:~~

~~7.26.1.a. The quality, availability and reliability of the supplies, materials, equipment or services and their adaptability to the particular use required;~~

~~7.26.1.b. The ability, capacity and skill of the bidder;~~

~~7.26.1.c. The sufficiency of the bidder's financial resources;~~

~~7.26.1.e. The compatibility with existing equipment;~~

~~7.26.1.f. The need for flexibility in evaluating new products on a large scale before becoming contractually committed for all use; and~~

~~7.26.1.g. Any other relevant factors.~~

~~7.26.2. A written explanation will be included in the purchasing file in situations where a multiple award is deemed necessary.~~

~~7.27. Selection of Vendors:~~

~~7.27.1. Purchasers are encouraged to submit a list of suggested vendors to ensure they are properly notified any time a solicitation is advertised for commodities and/or services which they can supply. Additionally, solicitations should utilize the appropriate UNSPSC commodity codes to ensure that vendors registered for those commodity codes are also notified of published solicitations.~~

~~7.28. Public Notice:~~

~~7.28.1. Procurement will make public notice of purchases expected to exceed \$25,000.00. This is usually accomplished by advertising the solicitation in wvOASIS. The standard advertisement period for noncomplex procurements is 10 business days. If exceptional circumstances exist which require a shorter or longer advertisement period, notify the Director of Procurement for approval.~~

~~7.29. Addenda:~~

~~7.29.1. During the bid process, it may be necessary to alter bidding documents. To facilitate a change to a solicitation after issuance for bid in wvOASIS, a formal written addendum is required.~~

~~7.29.2. A formal addendum is necessary to: add, delete or change specifications or attachments; provide a copy of the pre bid attendee list; answer technical questions, requests for clarification or requests for product substitutions (on construction projects); extend or alter bid schedule dates/times; or any other such change to the issued bidding documents.~~

~~7.29.3. Purchaser must submit a requisition (including description of change, amended budget amount/maximum budget amount if applicable, and signature of authorized agency representative) to the WVSP Procurement Section to issue the addendum.~~

~~7.29.4. The following should also be included where applicable:~~

~~7.29.4.a. Specification changes, additions, or noted deletions;~~

~~7.29.4.b. Pre bid attendee list;~~

~~7.29.4.c. An attachment listing each technical question with a corresponding answer;~~

~~7.29.4.d. Revised or added sketches, drawings and/or charts.~~

~~7.29.5. Upon receipt, review and approval, Procurement will issue the addendum and distribute to all known bidders (those attending the pre bid meeting, receiving bid packages, suggested vendors, etc.). Additional bid time may be required to distribute addenda.~~

~~7.29.6. Addenda should be received by Procurement from the Purchaser within seven calendar days prior to the current scheduled bid opening date. For complex transactions, such as construction bids, Requests for Proposals or complex Requests for Quotation, Procurement should receive from the Purchaser the addenda within 14 calendar days prior to the current scheduled bid opening to allow bidders ample time to prepare and submit bid responses.~~

~~7.29.7. Procurement may, at its discretion, extend the bid opening date if it deems to be in the best interest of the WVSP.~~

~~7.30. Bid Submission:~~

~~7.30.1. The vendor is responsible for submitting a correct and accurate bid to WVSP Procurement by the specified bid opening time and date. Fax bids are acceptable, but receipt of bid must be completed prior to the bid opening time and date. Procurement will not accept bids, modification of bids or addendum acknowledgment forms by email transmission. Acceptable delivery~~

methods include hand delivery, delivery by courier or facsimile.

~~7.30.2. Any bonds submitted via fax should be followed by an original bond received by the WVSP Procurement within two business days.~~

~~7.31. Bid Opening:~~

~~7.31.1. Formal bid opening dates are established by WVSP Procurement, based on the complexity of the purchase, and are open to the public. Vendors are not required to attend. Bid openings may be delayed due to the need for pre-bid conferences, issuance of addenda or other unforeseen factors.~~

~~7.31.2. 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 WVSP Procurement by the specified date and time of the bid opening.~~

~~7.31.3. Bids that are not received by the date and time of the bid opening will be noted as "Bid Received Late," maintained with the official purchasing file with the other bids with WVSP Procurement's established fee for Freedom of Information Act (FOIA) requests.~~

~~7.32. Evaluation and Award:~~

~~7.32.1. When the Request for Quotation process is used, competitive bids are received, properly evaluated and an award is made to the lowest responsible bidder meeting specifications. Following the bid opening, WVSP Procurement reviews all bids received to ensure compliance with all specifications and validates the vendor for award.~~

~~7.32.2. After a proper evaluation, if an award is made to other than the lowest responsible bidder, a thorough written justification signed by the evaluator(s) must be inserted into the purchasing file and retained for public record and inspection at the original purchasing location.~~

~~7.32.3. Prior to an award, a vendor must be in compliance with the following requirements:~~

~~7.32.3.a. 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;~~

~~7.32.3.b. In accordance with the W. Va. Code § 21A-2-6, verification of current unemployment fee status and Workers' Compensation coverage is required to ensure the vendor is not in default with Workers' Compensation and Employment Compensation. wvOASIS automatically verifies compliance prior to award.~~

~~7.32.3.c. 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;

~~7.32.3.d. In accordance with the W. Va. § 148 C.S.R. 6.1.e, the vendor must be licensed and in good standing with any and all state and local law and requirements, including proper registration and good standing with the Secretary of State's office and the State Tax Department, regardless of payment method. To search for a business or corporation with the Secretary of State's office, visit: <http://apps.sos.wv.gov/business/corporations>.~~

~~7.32.4. Purchasing Affidavit;~~

~~7.32.4.a. Agreement Addendum (WV 96) (required when vendors submit alternate terms and condition with their bid); and,~~

~~7.32.4.b. Interested Party Disclosure Form: W. Va. Code § 6D-1-2 requires that for contracts with an actual or estimated value of at least \$1,000,000, the vendor must submit to the Purchasing Division a disclosure of interested parties to the contract, prior to contract award. Additionally, the vendor must submit to the agency a supplemental disclosure within 30 days of contract completion or termination.~~

~~7.32.4.c. The disclosures must occur on the form prescribed and approved by the West Virginia Ethics Commission. To access this form, visit the West Virginia State Purchasing Division's intranet at <http://www.state.wv.us/admin/purchase/forms.html>.~~

~~7.32.5. WVSP Procurement may immediately award certain open end contracts without the necessity of the Purchasers review when WVSP Procurement believes this action is in the best interest of the WVSP. However, when an award has not been immediately made by WVSP Procurement, Purchasers may be involved in the evaluation process by reviewing bids, making recommendations and providing justification.~~

~~7.32.6. If the Purchaser is involved in the evaluation process, a recommendation for award must be received in WVSP Procurement within five business days of the bid opening date, with the exception of Request for Proposals (RFP) and Expressions of Interest (EOI). RFP and/or EOI recommendations for award must be received within 10 business days. Failure to comply with these established deadlines may result in Purchasers requisition being cancelled unless extenuating circumstances exist. It is the responsibility of the Purchaser to provide justification for keeping a requisition open after these time frames.~~

~~7.33. Negotiation When All Bids Exceed Available Funds:~~

~~7.33.1. Purchasers shall submit a valid maximum budgeted amount for each requisition or Request for Proposal to WVSP Procurement, which cannot be changed after the bid opening. WVSP Procurement will not disclose this information to the bidders at any time.~~

~~7.33.2. If all bids meeting requirements exceed this budgeted amount, WVSP Procurement may negotiate a lower price within budget with the lowest bidder. If the negotiation does not lead to the budget amount being met, the Director of Procurement may negotiate a lower price with the next lowest bidder and continue negotiations with participating bidders after negotiation closes with the preceding bidder. It is vital that all incoming requisitions state the maximum budgeted amount for the transaction~~

~~7.33.3. If the Purchaser does not provide its budgeted amount for the requisition prior to the bid opening, WVSP Procurement is unable to negotiate. The ability to negotiate as described in this section has not been delegated to Purchasers for procurements under \$25,000.~~

~~7.34. Discussion and Final Offers:~~

~~7.34.1. As provided in the bid solicitation, the Director of Procurement may conduct discussions to obtain best and final offers from bidders to assure full understanding of solicitation requirements. If the Director of Procurement determines that a best and final offer is necessary from one vendor, all vendors shall be afforded the opportunity to provide best and final offers. All best and final offers shall be treated like a formal bid, except that advertising is not required. All bidders shall provide their best and final offers to WVSP Procurement prior to the date and time specified.~~

~~7.34.2. Government construction contracts and supplies and materials are exempt from this negotiation method.~~

~~7.34.3. The ability to conduct discussion and final offers has not been delegated to Purchasers for procurements under \$25,000.~~

~~7.35. Requests for Proposals:~~

~~7.35.1. Requests for Proposals (RFPs) are a procurement method that can be utilized when the method of achieving an objective is not well known, making the development of mandatory requirements difficult. Using this method, the lowest price is not the sole determining factor. Purchasers should be aware that the time required to process an RFP is longer than other procurement methods and requires significant agency personnel time and resources to complete.~~

~~7.35.2. WVSP Procurement offers a Standard Format to assist Purchasers in developing RFPs. All Requests for Proposals must follow the standard format.~~

~~7.36. Limitations:~~

~~7.36.1. RFPs are limited to procurements with an estimated value of \$100,000 or more, unless the Director of Procurement provides express written approval to utilize the RFP method for a smaller procurement.~~

~~7.37. Approval Request:~~

~~7.37.1. Director of Procurement or his/her designee must approve the use of all RFPs prior to release. Purchasers should request this approval in the form of a letter to the Director of Procurement. The letter should be sent prior to the development of the RFP and must include justification to show that the RFP is in the best interest of WVSP.~~

~~7.37.2. The justification should include a description of the service being sought, an explanation of why the RFQ procurement method is not appropriate, any prior solicitation that has been utilized to procure the service in the past, the expected cost of the project, and any other pertinent information that the Director deems appropriate.~~

7.38. Award Criteria:

~~7.38.1. An RFP is awarded to the highest scoring responsive and responsible bidder. The award is based upon a subjective technical evaluation, where the Purchaser first determines that all mandatory requirements have been met. The purchaser or purchasers then assigns a subjective point value to the vendor's response to the non-mandatory specifications, followed by an objective point value based on the vendor's cost proposal and the cost score evaluation formula.~~

7.39. Mandatory Requirements:

~~7.39.1. Purchasers are cautioned in writing specifications containing an excessive number of mandatory requirements. Doing so would indicate that the Purchaser could develop specifications for the RFQ procurement method. Mandatory requirements cannot be waived; therefore, a vendor's failure to meet any mandatory requirement will result in disqualification. Before including any mandatory requirement in an RFP, the Purchaser must decide whether it is willing to disqualify any one vendor, or all vendors, if the requirement is not met. If the Purchaser is not willing to disqualify a vendor, then the requirement should not be mandated.~~

7.40. Evaluation Criteria:

~~7.40.1. All evaluation criteria must be clearly defined in the specifications section of the RFP and based on a 100 point total score. This score is comprised of a technical score of 70 points possible and a cost score of 30 points possible. Any deviation from this point allocation must be approved in writing by the Director of Procurement.~~

7.41. Proposal Format and Content:

~~7.41.1. Proposals from vendors must be requested and received in two distinct parts: technical and cost. All cost information must be contained in the cost proposal, which must be sealed and submitted in a separate envelope from the technical proposal. Vendors must not include cost information in the technical proposal, which ensures that the technical proposal can be evaluated purely on its own merit.~~

7.42. Proposal Submission:

~~7.42.1. The vendor's entire proposal, both technical and cost, must be received by WVSP Procurement prior to the specified date and time of the bid opening. The failure to deliver or the non-receipt of the bid by WVSP Procurement, prior to the appointed date and hour, shall result in the rejection of the bid. WVSP Procurement will not accept bids, modification of bids, or addendum acknowledgment forms by email transmission. Acceptable delivery methods include hand-delivery, delivery by courier or facsimile.~~

7.43. Bid Openings:

~~7.43.1. RFPs require a two-part bid opening. Technical proposals are opened first and fully evaluated prior to cost proposals being opened.~~

7.44. Technical Bid Opening:

~~7.44.1. WVSP Procurement will open only the technical proposals on the date and time specified in the Request for Proposal. WVSP Procurement 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.~~

~~7.45. Cost Bid Opening:~~

~~7.45.1. After the technical evaluation, discussed in more detail below, has been approved by an internal review committee within WVSP Procurement, a time and date is scheduled to publicly open and read aloud all cost proposals. The Purchaser and vendors will be notified of this cost bid opening.~~

~~7.46. Proposal Evaluations:~~

~~7.46.1. As previously mentioned, the technical evaluation must be completed prior to the cost bid opening~~

~~7.47. Technical Evaluation:~~

~~7.47.1. An evaluation committee, established by the Purchaser, shall review the technical proposals, assign appropriate points and make a final written consensus recommendation to WVSP Procurement within 10 days.~~

~~7.47.2. The evaluation committee initially determines if the technical proposals meet the mandatory requirements contained in the RFP. Any proposal that fails to meet a mandatory requirement is disqualified.~~

~~7.47.3. The evaluation committee will then evaluate all technical proposals that met the mandatory requirements to assign appropriate point scores to the non-mandatory components in the RFP. These non-mandatory components generally include the approach and methodology to achieving the goals and objectives, approach and methodology to comply with mandatory requirements, qualifications and experience.~~

~~7.47.4. During this evaluation, all proposals begin with the maximum score. The evaluation committee then deducts points for any identified deficiencies in each proposal. Technical proposals may be compared against one another to determine the best in class solution.~~

~~7.47.5. These proposals that exceed the mandatory requirements or the non-mandatory desirables should be assigned the maximum points in that category; with lesser solutions assigned an appropriately lower score. No partial points are permitted in the technical evaluation. All deductions issued for each proposal must include justification, with fairness and consistency.~~

~~7.47.6. Proposals must obtain a minimum acceptable score of 70% of the total technical points possible (i.e. 49 out of 70 points in most cases) to be considered for the award. Vendors not attaining the minimum acceptable score will be disqualified and removed from further consideration. The technical evaluation may include oral presentations conducted by the vendors.~~

~~7.47.7. Once the evaluation committee reaches a consensus recommendation, the Purchaser will submit the committee's recommendation to WVSP Procurement using the Recommendation~~

~~Memorandum (WV 113) template. The Purchaser should include in the recommendation an analysis of the technical proposals with the scores and any justification(s) for point deductions, as well as scores for the cost proposals.~~

~~7.47.8. The consensus recommendation must be signed by all committee members and must not rely upon average points to reach a consensus. If approved by WVSP Procurement, a date and time for the cost bid opening will be set.~~

~~7.48. Oral Presentation:~~

~~7.48.1. The RFP process allows the Purchaser to require each vendor to conduct an oral presentation for the purpose of explaining or clarifying the submitted proposal. Oral presentations are included in the technical evaluation and become part of the total technical score. The oral presentation is not an opportunity to change or modify the submitted proposal. If the Purchaser elects to conduct oral presentations, it will be noted in the RFP.~~

~~7.48.2. The Purchaser may invite other individuals, in addition to the evaluators and advisors, to attend these presentations.~~

~~7.49. Cost Evaluation Approval and Award:~~

~~7.49.1. Once the cost proposals have been opened, the Purchasers evaluation committee reviews the cost proposals and using the cost formula, assigns an appropriate cost score to each proposal that has not been disqualified. Once a cost score has been assigned, the evaluation committee combines the technical and cost scores to make a final consensus recommendation for contract award to WVSP Procurement.~~

~~7.50. RFP Evaluation Committee:~~

~~7.50.1. For RFP evaluations, WVSP Procurement requires a committee of at least three and recommends no more than five persons knowledgeable of the service to be acquired. The Purchaser may also invite individuals to serve as advisors who are subject matter experts, knowledgeable in the area of discussion. The purchaser shall not serve as a voting member of any committee but may serve on the committee in an advisory capacity only.~~

~~7.50.2. The advisors may assist the evaluation committee members (referred to as evaluators) in the evaluation process.~~

~~7.50.3. The Director of Procurement or designee, who is skilled in purchasing techniques and procedures, must serve on the evaluation committee as a full voting member.~~

~~7.50.4. The Director of Procurement or designee must serve as the chairperson or co-chairperson for the RFP evaluation committee. In this role, Director of Procurement or designee is responsible for mediating all discussions related to the evaluation and assisting with time management. The Purchaser or designee must also prepare the consensus of the committee and submit the recommendation for award to Director of Procurement as the person designated in accordance with 148 C.S.R. 1 3.2.~~

~~7.50.5. A non state employee shall not serve as voting member of the evaluation committee.~~

~~7.50.6. The names and other relevant information for all evaluation committee members and advisors must be submitted to WVSP Procurement for approval prior to the release of the RFP. The submission must include justification for any identified advisors and/or requests to have more than five evaluators on the evaluation committee.~~

~~7.50.7. To ensure there is no conflict or influence on the committee members' decision process, the evaluation should take place with only the designated evaluators and advisors present.~~

~~7.50.8. Certification of Non Conflict of Interest: To minimize the risk of conflict of interest, each member of the evaluation committee and any advisors are required sign a Certification of Non Conflict of Interest.~~

~~7.50.9. By signing this certification, the evaluator(s), advisor(s) and Director of Procurement or designee attest that: (1) his or her service on the evaluation committee is not in violation of W. Va. Code §6B-2-5, or any other relevant code section; (2) his or her service on the evaluation committee does not create a conflict of interest with any of the participating vendors; and (3) he or she has not had or will not have contact relating to the solicitation identified herein with any participating vendors between the time of the bid opening and the award recommendation without prior approval of WVSP Procurement. Purchasers should discuss the non conflict of interest issue with potential committee members to ensure that individuals who may have a conflict are not chosen to participate as evaluation committee members.~~

~~7.51. Pre Bid Conferences:~~

~~7.51.1. Regardless of the procurement method used, WVSP Procurement recommends Purchasers consider conducting pre bid conferences on high dollar, complex acquisitions early in the bid process to provide an opportunity to explain and clarify critical aspects of the solicitation, eliminate misunderstandings and encourage vendor participation.~~

~~7.51.2. In all cases, it is very important for WVSP Procurement or designee who is trained and knowledgeable of the procurement process to attend these conferences.~~

~~7.51.3. Vendor attendance at conferences may be optional or mandatory, as described in the bid document. If mandatory attendance is required, only bids or proposals from those vendors represented at the conference will be accepted. If participating vendors sign the official "sign in sheet" while the meeting is in progress, then the vendors will be treated as if they were present for the entire conference and will be deemed to have the knowledge that they would have had if attending the entire conference. Teleconference attendance is prohibited unless specified in the bid document.~~

~~7.51.4. "Sign in sheets" for mandatory pre bid conferences should contain the following: name of company, person attending (signature and printed name), address, telephone number and facsimile number.~~

~~7.51.5. The header information on the sheets should include the requisition number and the date and time of the pre bid conference. The original sheet must be filed at WVSP Procurement with bid file. No one individual may represent more than one vendor.~~

~~7.51.6. It is recommended that pre bid conferences be scheduled on Tuesdays through~~

~~Thursdays between 10 a.m. and 3 p.m. to encourage more participation. A sample agenda for a pre-bid conference is as follows:~~

~~7.52. Conference Opening (Purchasing Representative).~~

~~7.52.1. Offers opening remarks (Welcome attendees and introduce yourself).~~

~~7.52.2. Identify the project by RFQ or RFP number and generic scope of work.~~

~~7.52.3. Provide the "sign in sheet".~~

~~7.52.4. Make available a few extra copies of the bid documents.~~

~~7.52.5. Remind all attendees to complete the "sign in sheet" (Emphasize the importance of the "sign in sheet").~~

~~7.52.6. Introduce the Purchaser representatives.~~

~~7.52.7. Review important general information items:~~

~~7.52.7.a. Inquiries~~

~~7.52.7.b. Vendor Registration~~

~~7.52.7.c. Oral Statements~~

~~7.52.7.d. Bid proposal submission process~~

~~7.52.7.e. Schedule of events~~

~~7.52.7.f. Bonding Requirements (Bid, performance, etc.)~~

~~7.53. Specification Discussion (Procurement and Purchaser Representatives).~~

~~7.53.1. Purchaser will open the technical specifications for discussion by item with all attendees. Items that all party's representatives, agree need to be amended by addendum will be recorded by the Purchaser to aid in preparing the addendum.~~

~~7.53.2. All clarifying statements and questions shall to be addressed on an addendum.~~

~~7.53.3. Questions are received and discussed.~~

~~7.54. Master Terms and Conditions Discussion (Procurement Representatives).~~

~~7.54.1. Procurement representatives will discuss the part "General Terms & Conditions" and then proceed to discuss the format, evaluation, and, in the use of RFPs, the cost proposals and Minimum Acceptable Score (MAS) concept.~~

~~7.54.2. Questions are received and discussed.~~

~~7.55. Conclusion (Both Purchaser and WVSP Procurement Representative):~~

~~7.55.1. WVSP Procurement representatives will 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.~~

~~7.55.2. Purchaser should close with remarks and thank everyone for attending.~~

~~7.56. Securities/Bonds:~~

~~7.56.1. Instruments are occasionally demanded from the successful vendor by WVSP Procurement prior to bid or award to ensure performance or to minimize financial risks to WVSP in the event of default.~~

~~7.57. Bonds:~~

~~7.57.1. Director of Procurement may require a bond or deposit as part of the bidding process. This requirement is most often used for construction contracts; however, it may be used for any commodity or service if determined to be in the best interest of the state.~~

~~7.57.2. The Director of Procurement 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 WVSP from undue risk. The bonds or deposit serve as a guarantee that if the contract is awarded to such bidder, that bidder will enter into a contract for the work specified in the bid.~~

~~7.57.3. Below are types of bonds used in the WVSP purchasing process:~~

~~7.57.3.a. Bid Bond — A bond in which a third party agrees to be liable to pay a certain amount of money in the event a selected bidder fails to accept the contract as bid. This bond is usually required for five percent (5%) of the total bid amount. Faxed bids that contain bid bonds, or any other bond should be submitted with the bid and the vendor should provide the original bonds within two working days of the bid opening dates.~~

~~7.57.3.b. Labor and Materials Payment Bond — A bond submitted by the apparent successful vendor upon request of the WVSP to ensure payment of labor and materials purchased or contracted for on behalf of the state in a construction project.~~

~~7.57.3.c. Maintenance Bond — A bond provided as a warranty typically in a two year term, which is required on roofing projects.~~

~~7.57.3.d. Performance Bond — A bond in which a surety agrees to be liable to pay a certain amount of money in the event a vendor fails to perform a contract as bid. This bond is usually for the full amount of the contract.~~

~~7.58. Liquidated Damages:~~

~~7.58.1. A specified contract provision which entitles the WVSP to demand a set monetary amount determined to be a fair and equitable repayment to the WVSP for loss of service due to~~

~~vendor's failure to meet specific completion or due dates.~~

~~7.59. Bonuses:~~

~~7.59.1. Provisions in any requisition or contract that specifies a monetary reward for early completion of a project is prohibited and considered illegal.~~

~~7.60. Architectural and Engineering:~~

~~7.60.1. Architectural and engineering services must be procured in accordance with W. Va. Code § 5G-1-1 et seq. These procurements are unique in a number of respects, most notably that cost is not submitted in the vendor's response and that the normal delegated limits previously discussed do not apply. W. Va. Code 5G creates a distinction between procurements on projects of \$250,000 or less and those that exceed \$250,000. In both cases, however, the final contract must be processed by WVSP Procurement.~~

~~§81-18-8. Projects Exceeding \$250,000:~~

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

~~8.2. All EOIs exceeding \$250,000 must be submitted to WVSP Procurement using the EOI Standard Format for processing as a central procurement.~~

~~8.3. The EOI will then be advertised within wvOASIS and as a Class II legal ad as required by West Virginia Code.~~

~~8.3.1. Evaluation Committee: For the EOI evaluation committee, WVSP Procurement requires a committee of at least three and recommends no more than five persons knowledgeable of the service to be acquired. The Purchaser may also invite individuals to serve as advisors who are subject matter experts, knowledgeable in the area of discussion. The advisors may assist the evaluation committee members (referred to as evaluators) in the evaluation process.~~

~~8.3.1.a. The Director of Procurement or designee, who is skilled in purchasing techniques and procedures, must serve on the evaluation committee as a full voting member.~~

~~8.3.1.b. A non-state employee shall not serve as voting member of the evaluation committee.~~

~~8.3.1.c. The names and other relevant information for all evaluation committee members and advisors must be submitted to WVSP Procurement for approval prior to the release of the EOI. The submission must include justification for any identified advisors.~~

~~8.3.1.d. To ensure there is no conflict or influence on the committee members' decision process, the evaluation should take place with only the designated evaluators and advisors present.~~

~~8.3.2. Evaluation: Following the bid opening of EOI responses, the evaluation committee shall:~~

~~8.3.2.a. Evaluate the statements of qualifications and performance data and other material submitted;~~

~~8.3.2.b. Develop a "short list" (minimum of three firms) which, in their opinion, are best qualified to perform the desired service; and~~

~~8.3.2.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.~~

~~8.3.2.d. The committee will rank no less than three firms deemed to be the most highly qualified on the basis of the matters discussed during the interview, in order of preference, and present such list to WVSP Procurement. The committee will forward its recommendation to WVSP Procurement along with a written justification as to the selection of the firm.~~

~~8.3.2.e. The justification must provide a score sheet with complete explanation of all points deducted to clearly indicate how the firms were ranked. The committee will then commence negotiations as to scope of service and price with the highest qualified firm.~~

~~8.3.2.f. If WVSP Procurement fails to negotiate a satisfactory contract with the highest qualified firm at a fee determined to be fair and reasonable, negotiations as to scope of services and price with the firm of second choice will commence. Failing that, negotiations as to scope of service and price will be undertaken with the third most qualified firm. In no situation, after negotiations have been terminated with a firm, will negotiations be reopened.~~

~~8.3.2.g. If WVSP Procurement fails to negotiate a satisfactory contract with any of the selected firms, in order of their competence and qualifications, they will rebid.~~

~~8.3.3. Non Conflict Requirement for Expressions of Interest: To ensure that there is no conflict of interest in evaluating Expression of Interest (EOI) responses, each member of the evaluation committee and any advisors are required by WVSP Procurement to sign a Certification of Non Conflict of Interest.~~

~~8.3.3.a. By signing this certification, the evaluators, advisors and Director of Procurement or designee attest that:~~

~~8.3.3.a.1. his or her service on the evaluation committee is not in violation of W. Va. Code § 5A-3-31, § 6B-2-5, or any other relevant code section;~~

~~8.3.3.a.2. his or her service on the evaluation committee does not create a conflict of interest with any of the participating vendors; and~~

~~8.3.3.a.3. he or she has not had or will not have contact relating to the solicitation identified herein with any participating vendors between the time of the bid opening and the award recommendation without prior approval of WVSP Procurement.~~

~~8.3.3.b. WVSP Procurement should discuss the non conflict of interest issue with potential committee members to ensure that individuals who may have a conflict are not chosen to participate as~~

evaluation committee members.

~~8.3.4. Emergency: If a decision is made that special circumstances exist, and that seeking competition is not practical, the Purchaser may, with prior approval of Director of Procurement, select a firm on the basis of previous satisfactory performance and knowledge of the facilities and WVSP's needs.~~

~~§81-18-9. Emergency Purchases.~~

~~9.1. Purchases may be necessary when unforeseen causes arise, however, emergency purchases are not to be utilized for hardships resulting from neglect, poor planning or lack of organization by the spending unit.~~

~~9.2. An emergency purchase can only be made if the Chief of Staff Services, Deputy Chief of Staff Services or Director of Procurement, exercising sound judgment and discretion, concludes in good faith and upon reasonable and sufficient grounds that some unforeseen or unexpected circumstance has suddenly created a situation requiring that commodities or services be immediately purchased. A request for an emergency purchase must be made in writing to Director of Procurement, providing the scope of the purchase to alleviate the emergency situation.~~

~~9.3. A report of any such purchase, together with a record of competitive bids upon which it was based, is to be submitted to WVSP Procurement to be maintained with the original bid file and maintained for 7 years either paper or electronic. If more than 30 days have passed from the time the Purchaser receives approval of the Director of Procurement for the emergency purchase and the date of submission of the documents for award, Purchaser must include signed justification with its documentation indicating the reason for the lapse in time.~~

~~9.3.1. Declared State of Emergencies by Governor: In accordance with W. Va. Code §15-5-6, the governor has the authority to suspend certain laws, rules and/or regulations regarding the acquisition of commodities and services by public organizations in the event the governor declares an emergency. When emergency needs relate directly to the declared state of emergency, these procedures are available and outlined on the Purchasing Division's website at <http://www.state.wv.us/admin/purchase/EmergencyProcs2.html>.~~

~~§81-18-10. Bid Process:~~

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

~~10.2. In regard to construction projects, when an architectural or engineering (A/E) firm is employed, construction does not commence until such time as WVSP Procurement gives the contractor a Notice to Proceed.~~

~~10.2.1. Contract Management:~~

~~10.2.1.a. Contract management provides for assurance that the state receives service or commodities meeting requirements before payment is made. Construction contracts are excluded by~~

law. This function is the sole responsibility of the Purchaser.

~~10.2.1.b. Except for government construction contracts, the Director of Procurement shall prescribe contract management procedures for contracts for commodities and services in the amount of \$1 million or less. These procedures may include, but are not limited to:~~

~~10.2.1.c. establishing payment benchmarks to assure the WVSP receives value prior to remitting payment;~~

~~10.2.1.d. conducting regular meetings between WVSP and vendor to assess contract performance;~~

~~10.2.1.e. training WVSP personnel to manage contracts.~~

~~10.2.2. For contracts for commodities and services in an amount exceeding \$1 million, the following contract management procedures apply:~~

~~10.3. Post Award Conferences.~~

~~10.3.1. The WVSP Director of Procurement or their designee are responsible for administering the contract and shall hold a post award conference with the contractor to ensure a clear and mutual understanding of all contract terms and conditions and the respective responsibilities of all parties. The agenda for the conference shall include, at a minimum, the introduction of all participants and identification of agency and contractor key personnel and discussion of the following items:~~

~~10.3.1.a. The scope of the contract, including specifications of what WVSP is buying;~~

~~10.3.1.b. The contract terms and conditions, particularly any special contract provisions;~~

~~10.3.1.c. The technical and reporting requirements of the contract;~~

~~10.3.1.d. The contract administration procedures, including contract monitoring and progress measurement;~~

~~10.3.1.e. The rights and obligations of both parties and the contractor performance evaluation procedures;~~

~~10.3.1.f. An explanation that the contractor will be evaluated on its performance both during and at the conclusion of the contract and that such information may be considered in the selection of future contracts;~~

~~10.3.1.g. Potential contract problem areas and possible solutions;~~

~~10.3.1.h. Invoicing requirements and payment procedures, with particular attention to whether payment will be made according to milestones achieved by the contractor; and~~

~~10.3.1.i. An explanation of the limits of authority of the personnel of both the WVSP and the contractor.~~

~~10.4. Monitoring:~~

~~10.4.1. The WVSP contract administrator shall develop a comprehensive and objective monitoring checklist which:~~

~~10.4.1.a. Measures outcomes;~~

~~10.4.1.b. Monitors compliance with contract requirements; and~~

~~10.4.1.c. Assesses contractor performance.~~

~~10.4.2. The WVSP will conduct yearly audits on P Card transactions and purchasing operations to be outlined in Appendix A.~~

~~10.4.3. It should be noted any and all purchases have the potential for yearly sampling.~~

~~10.5. Reports~~

~~10.5.1. The WVSP contract administrator shall make the following reports to the Director of Procurement, on a schedule established by the Director of Procurement, but not less frequently than once a year:~~

~~10.5.1.a. Status Reports – Status reports describe the progress of the work; track the organizational structure of the statement of work in terms of phases, segments, deliverables and products; and describe what work is complete and what work is pending and contrast that status against the contract schedule. If there are any unresolved issues that WVSP is contractually obligated to resolve, those issues should be included in the status report and a resolution should be requested. Weekly or Biweekly reports agreed upon by the WVSP contract administrator and vendor.~~

~~10.5.1.b. Activity Reports – Activity reports describe all activity on the project, regardless of whether substantial progress has been made toward completion of the project. If payment is based on the number of completed transactions, these activities must be specifically set out in the report. Monthly or as needed by the WVSP contract administrator.~~

~~10.6. Inspection:~~

~~10.6.1. Director of Procurement reserves the right to inspect whether commodities delivered, or services provided conform to contractual requirements.~~

~~10.7. Encumbrances:~~

~~10.7.1. WVSP Procurement encumbers all purchase orders executed by WVSP over \$25,000. Encumbrance is the process which ensures that funding is available for the payments relating to the specific purchase order or contract.~~

~~10.7.2. Requisitions submitted to WVSP Procurement are to include proper encumbrance information for purchase orders to be encumbered by WVSP Procurement. The appropriate account(s) from which funds to pay for a contract will be documented prior to a contract being awarded, unless the contemplated contract is a type that cannot be encumbered. Open end contracts~~

~~do not need to be encumbered.~~

~~10.7.3. Prior to issuing a contract, WVSP Procurement shall verify with WVSP Accounting the amount of funds encumbered is appropriate and that the account being encumbered matches what the Purchaser has requested. A contract or contracts must be encumbered prior to issuance in the following amounts:~~

~~10.7.3.a. One-time Purchases in Current Fiscal Year: A contract for one-time purchase to be completed in the current fiscal year must encumber the full contract amount.~~

~~10.7.3.b. Contract Spanning Multiple Years: A contract that will span multiple fiscal years must be encumbered for or in the amount of funds that will be spent under the contract in the current fiscal year;~~

~~10.7.3.c. Contract to Begin in a Future Year: A contract that will be awarded prior to the end of a current fiscal year but will become effective after that same fiscal year has ended is not required to encumber funds prior to issuance of the contract.~~

~~10.7.3.d. Open-end and Statewide Contracts: An open-end or statewide contract issued by the Purchasing Division is not required to have funds encumbered prior to the issuance of the contract.~~

~~10.8. Changes and Cancellations:~~

~~10.8.1. Occasionally, it becomes necessary to amend, clarify, change or cancel purchasing documents.~~

~~10.8.2. A contract change order is required whenever the change affects the payment provision, time for completion of the work and/or the scope of the work.~~

~~10.8.3. Changes to the original purchase order must be sequentially numbered in the appropriate space. The explanation of change to an existing contract must be described with sufficient detail and clarity that any individual could review and generally understand the contract and change.~~

~~10.8.4. Any change to existing contracts that adds work or changes contract cost, and were not included in the original contract, must be approved by WVSP Procurement.~~

~~10.8.5. WVSP Contract Administrators must not permit vendors to perform work that the spending unit anticipates will be added to a contract through a change order until such time as the change order has been formally approved by WVSP Procurement.~~

~~10.8.6. Administrative changes to contracts may be made after the fact with subsequent approval by WVSP Procurement. However, it is preferred that such changes be made in advance, whenever possible. Examples of administrative changes include:~~

~~10.8.6.a. Changing a vendor name;~~

~~10.8.6.b. Changing a vendor's address;~~

~~10.8.6.c. Correction of a clerical mistake made by the state;~~

~~10.8.6.d. Adding a renewal/extension year that was originally contemplated in the contract, provided that no new commodities/services or increases in price are included;~~

~~10.8.6.e. Contract closeout where the quantity required was originally unknown or estimated, unit prices were included in the original contract, unit prices are not modified as part of the change order, and the quantity required was less than originally anticipated;~~

~~10.8.6.f. Inclusion of the Notice to Proceed documentation; and~~

~~10.8.6.g. Any other administrative change not included may be approved by the Director of Procurement on a case by case basis.~~

~~10.8.7. Any change request of a purchase order in excess of ten percent (10%) of the original contract amount (aggregate) is strongly discouraged. Director of Procurement, at his discretion, may grant a change in any amount if unforeseen circumstances have occurred and such change is in the best interest of WVSP.~~

~~**§81-18-11. Lease Purchases:**~~

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

~~11.2. All WVSP land leases are maintained via the WV Real Estate Division.~~

~~11.3. All WVSP vehicle leases are solely through the DOA FLEET Management Division. All documentation pertaining to these leases will be maintained by DOA FLEET Management Division.~~

~~**§81-18-12. Cooperative Contracts:**~~

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

~~**§81-18-13. Printing and Printing Equipment:**~~

~~13.1. All printing and binding services should be run through WVSP Procurement to ensure there are no duplications of effort. Outside sources may be utilized if there is no internal method to perform the requested service.~~

~~**§81-18-14. Vehicles:**~~

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

~~§81-18-15. Used Property:~~

~~15.1. Used property may be purchased through the normal competitive bid process or through the direct award procurement method with prior approval from Director of Procurement.~~

~~§81-18-16. Bank Goods and Services:~~

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

~~§81-18-17. Radios and Microwave Equipment:~~

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

~~17.2. SWIC approval or verification that the equipment is on the Approved Compatibility Equipment is required.~~

~~17.3. For a list of approved radios for use on the Statewide Interoperable Radio Network, visit <http://www.sirn.wv.gov/information/downloads/Pages/default.aspx>.~~

~~17.4. All contractual documents for two-way radio, microwave or satellite equipment and related services, including, but not limited to, land or tower leases, memorandums of understanding/agreement, training contracts, agreements or services, and purchasing or service contracts related to two-way radio, microwave or satellite equipment and related services for WVSP, and all local entities of the state of West Virginia which utilize state or federal funds distributed by the state of West Virginia, must be reviewed and approved by the SWIC to ensure compatibility with the SIRN, to promote the best possible value in purchasing, and to ensure all agencies participating in the SIRN and needing equipment and related services are covered by contractual documents.~~

~~17.5. Questions may be directed to the Statewide Interoperability Coordinator at (304) 766-5899.~~

~~§81-18-18. Information Technology Equipment, Services and Software.~~

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

~~18.2. Please reference West Virginia Office of Technology CTO Policy # CTO 19-001 for guidance, which can be found at [https://technology.wv.gov/security/Pages/policies issued by the cto.aspx](https://technology.wv.gov/security/Pages/policies%20issued%20by%20the%20cto.aspx).~~

~~**§81-18-19. Trade-In:**~~

~~19.1. WVSP has the ability to trade in used equipment to offset the purchase cost of new equipment. The trade in process is not delegated to the purchasers, so any trade in will be processed through WVSP Procurement regardless of dollar amount.~~

~~**§81-18-20. Standardization:**~~

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

~~20.2. Standardization is limited to commodities that:~~

~~20.2.1. represent a core function of the WVSP mission;~~

~~20.2.2. would yield a savings of time and money if standardized; and~~

~~20.2.3. either require testing or evaluation to determine accuracy or consistency or require interoperability in a larger system or network.~~

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

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

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

~~20.5.1. The Purchaser must identify the commodity to be standardized and request approval from Director of Procurement to establish a standard. The Purchaser shall provide to the director written certification and supporting evidence verifying that the standardization is in the best interest of the WVSP.~~

~~**§81-18-21. Quality Assurance:**~~

~~21.1. Quality assurance is a partnership involving WVSP purchasers, the vendor and WVSP Procurement.~~

~~21.2. WVSP establishes the quality level by the specifications, and WVSP Procurement seeks to reduce cost and maintain quality through the competitive bid process. WVSP Procurement performs an evaluation of the offers by bidders to obtain maximum benefit for the tax dollars spent. The vendor's responsibility is to provide the quality level established by the specifications and accepted by the~~

agency.

~~21.3. Proper Acquisition Planning: The Purchaser's first step is to determine the commodity that is needed, the quantity, the quality level, delivery location and time frame. The Purchaser must also conduct adequate market research to allow for preparation of specifications.~~

~~21.4. Develop and Submit Solicitation: Each Purchaser is responsible for preparing the specifications and other solicitation documents that are necessary for the appropriate procurement process. If the procurement is expected to be more than \$25,000.00, the Purchaser will submit those documents to WVSP Procurement for processing.~~

~~21.5. Review Bids/Documents and Make Award Recommendation: After bids are opened (or documents are obtained in the case of a direct award) the Purchaser is responsible for reviewing the bids/documents to determine the appropriate vendor for contract award. If the procurement is more than \$25,000.00, WVSP Procurement shall make an award recommendation.~~

~~21.6. Receiving: Receivers must verify the shipment of commodities with the specifications in the purchase order while reporting of any discrepancies, obvious damages or shortages based upon the purchase order specifications.~~

~~21.7. Inventory: Once payment has been made to the vendor and the shell document established, reportable property must be added to the wvOASIS Fixed Assets System.~~

~~21.8. Vendor Responsibilities: Each vendor is solely responsible for delivering a bid to WVSP Procurement prior to the specified date and time of the bid opening. The official time clock of WVSP Procurement, for the purpose of receipt of bids, shall be displayed in the offices of WVSP Procurement. Vendors are responsible for the accuracy of the information on and in the bid envelopes.~~

~~21.9. Compliance with Specifications: Successful vendors are required to meet or exceed the quality level accepted and specified on the final purchase order in addition to meeting delivery requirements.~~

~~21.10. Follow Up with Suppliers: To ensure delivery deadlines are met, the vendor should communicate and coordinate with its suppliers to fulfill delivery obligations.~~

~~21.11. Dispute Resolution: The vendor is required to negotiate in good faith with WVSP Procurement should a dispute arise.~~

~~21.12. Remedies: In the event that a vendor fails to honor any contractual term or condition, the Director of Procurement may:~~

~~21.12.1. Cancel the contract and re-award the purchase order to the next lowest bidder (or next highest bidder if best value procurement). The vendor failing to honor contractual obligations is responsible for any increase in cost the state incurs as a result of the re-award;~~

~~21.12.2. Declare a vendor non-responsible and refuse to award a purchase order. All such instances shall be substantiated in writing. The documentation shall be considered a public document and shall be available for inspection at all reasonable times; or~~

~~21.12.3. Suspend, for a period not to exceed one year, the right of a vendor to bid on WVSP 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 Director to the Chief of Staff Services.~~

~~21.12.4. Debar a vendor on the basis of one or more of the grounds for debarment contained in W. Va. Code §§ 5A-3-33b through 33f or if the vendor has been declared ineligible to participate in procurement related activities under federal laws and regulation. For a current list of debarred vendors declared by WV State Purchasing Division, please see www.state.wv.us/admin/purchase/debar.html.~~

~~21.13. Damages: A vendor who fails to perform as required under a contract shall be liable for actual damages and costs incurred by WVSP.~~

~~21.13.1. If any merchandise delivered under a contract has been used or consumed by WVSP and on testing is found not to comply with specifications, no payment may be approved by the Director of Procurement for the merchandise until the amount of actual damages incurred has been determined.~~

~~21.13.2. The Director of Procurement shall seek to collect damages by following the procedures established by the Office of the Attorney General for the collection of delinquent obligations.~~

~~§81-18-22. Impossible to Bid List:~~

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

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

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

~~22.4. This waiver only applies to transactions conducted under Impossible to bid list of the manual. If the vendor in question also obtains contracts through competitive bidding, direct award, or some other method, fee payment will be required.~~

~~22.4.1. The following items comprise the Impossible to Bid List of commodities and services that may be purchased directly by Purchasers without advertisement or bid.~~

~~22.4.1.a. Advertising: This item includes any advertisement placed directly with newspapers, trade magazines, internet publications, social media or billboards. This item includes~~

~~broadcast television and radio advertisements and creative services or marketing services to create such advertisements placed directly with the broadcaster or publisher. Additionally, this item includes participation fees for trade shows, conferences or conventions.~~

~~22.4.1.b. Artwork and Historical Items: This item includes the purchase of and service to artwork and historical items, i.e. restoring governors' portraits, refurbishing chandeliers, etc. Purchasers attempting to procure commodities and services under this item must obtain written approval from WVSP Procurement prior to making any purchase.~~

~~22.4.1.c. Attorneys and Law Firms: This item includes hiring attorneys and law firms in an official attorney client capacity. Nothing in this item eliminates the approval or oversight residing within the Attorney General's office.~~

~~22.4.1.d. Aviation Fuel: This item includes the purchase of aviation fuel but excludes bulk purchases for delivery to state dispensing stations.~~

~~22.4.1.e. Governmental Agencies: This item only includes:~~

~~22.4.1.f. contracts between governmental agencies and spending units when a state or federal law requires the commodity or service be obtained from the governmental agency (any contract or purchase order issued must cite the law and maintain a copy within the purchasing file); and~~

~~22.4.1.f.1. regulatory fees legally imposed by government agencies. Governmental entities are not required to register with the Secretary of State's Office so that compliance check is not required. Additionally, if the governmental entity is a West Virginia state agency then the Purchasing Affidavit is not required.~~

~~22.4.1.g. Court Ordered Placements: This item includes when placing children at various educational and/or behavioral centers when ordered by West Virginia courts or the West Virginia Department of Health and Human Resources.~~

~~22.4.1.h. Entertainers: This item includes individuals and/or groups contracted at the request of WVSP to entertain or to assist in the production of entertainment.~~

~~22.4.1.i. Hospitality: This item includes expenses for food, beverages, facility rental and entertainment relating to conducting WVSP business.~~

~~22.4.1.j. Media License Fees: This item includes program license fees for radio or television.~~

~~22.4.1.k. Medical Fees: Included in this item are fees for medical services (behavioral and physical) from individual doctors, dentists, clinics, hospitals, laboratory testing facilities, audiologists, county medical examiners, physical and occupational therapists, behavioral counseling and evaluations, etc. for individual patients, inmates, students and clients where the WVSP is responsible for payment for this one time service. This item also includes programs designed for low income / uninsured patient care on an individual basis provided that the program is open to all service providers.~~

~~22.4.1.k.1. Also, included in this item is body transportation for corpses and indigent burial expenses and direct award medical and psychological consultants for the purpose of determining~~

~~Federal Social Security Administration Disability by the Disability Determination Services of the WV Division of Rehabilitation Services. Also included are medical fees for the purposes of determining vocational rehabilitation needs of clients of the Division of Rehabilitation Services.~~

~~22.4.1.k.2. This item does not include inmate health care management, hospital management, consulting services or agreements to provide services for groups of patients, inmates, students or clients, etc. for state agencies.~~

~~22.4.1.l. Postage: This item includes stamps and other non competitive mailing services from the United States Postal Service, but this does not include services available from statewide contracts. The Purchasing Affidavit and Secretary of State registration are not required for transactions processed under this item.~~

~~22.4.1.m. Professional Association Dues: This item includes membership fees or association dues for professional associations that perform a licensing, certification or accreditation function for state employees or agencies (i.e., West Virginia State Bar, West Virginia Board of Accountancy, etc.).~~

~~22.4.1.n. Railroad Car Hire Fees: This item includes national association fees required from all railroads to monitor the location and use of railroad cars for the owners.~~

~~22.4.1.o. Resale Items: This item includes items that are acquired specifically for resale by the WVSP to the general public that should be selected on the basis of quality and delivery constraints due to customer demand.~~

~~22.4.1.p. Investigative Services, Subject Matter Experts and Witnesses for Administrative Hearing and Legal Proceedings: This item includes obtaining investigative services and the services of a subject matter expert or witness that is intended to help prepare for, or will be utilized in, administrative or legal hearings/proceedings. This item does not include agency consulting services or former employees retained by their agency or hired by another agency.~~

~~22.4.1.q. Subscriptions and publications: This item includes newspapers, textbooks and publications — electronic and hard copy — purchased directly from the publisher.~~

~~22.4.1.r. Training Activities: This item includes lecturers, honorariums, copyrighted test and training materials, test monitors/examination proctors, and registration fees, where competition is not available.~~

~~22.4.1.s. Utilities Regulated by the Public Service Commission: This item includes natural gas, water, sewage, electric, telephone, garbage, cable television service, connection fees, trash hauling and dumpster rental [if only one PSC approved hauler is in the area].~~

~~22.4.1.s.1. This item does not include propane gas, coal and satellite television, all of which must be competitively bid.~~

~~22.4.1.t. Court Ordered Payments: This item includes court order payment. A copy of the court order must be maintained in the agency criminal investigative file, unless sealed and restricted by the respective judge. If the order is sealed and restricted, an explanation must be maintained in the agency criminal investigative file referencing the court order. Court ordered payments are exempt from~~

all documentation requirements listed above but spending units should comply with those requirements where possible.

~~22.4.1.u. Emergency Services (Non Construction and Non Architectural/Engineering "A/E"):~~ This item includes non construction and non A/E services that must be procured on an emergency basis when:

~~22.4.1.u.1. formal bidding would cause the government to lose the ability to perform some critical function for itself or citizens of the State of West Virginia or;~~

~~22.4.1.u.2. formal bidding would delay a response to a declared state of emergency. Any use of this item must be approved by the Director of Procurement in advance.~~

~~22.4.1.v. Vaccines: This item includes vaccines purchased through contracts issued by the Centers for Disease Control (CDC).~~

~~22.4.1.w. Transcripts from Court Reporters Employed by Court, Judge or Opposing Counsel: This item includes transcripts procured from court reporters who are employed by the court, judge or opposing counsel. These transactions are exempted from all documentation requirements listed above but spending units should comply with those requirements where possible.~~

~~22.4.1.x. Copies of Government Documents/Records Obtained from the Government: This item includes fees paid to the government entity required to obtain records of court and administrative proceedings as well as documents filed in those proceedings, and charges paid to a government entity for other official documents or records obtained from that government entity. Examples of allowable transactions include but are not limited to; fees associated with obtaining documents from the federal court's PACER system, similar fees charged by county or local courts for records, fees required to obtain official copies of real estate records from the County Clerk's Office, and FOIA fees.~~

~~22.4.1.y. Commodities or services for a shared facility arrangement with the U.S. Government: Effective July 1, 2018, commodities or services contracted by the U.S. Government and provided to WVSP when those commodities or services are:~~

~~22.4.1.y.1. offered as part of a shared facility arrangement, or~~

~~22.4.1.y.2. those commodities or services for the WVSP cannot be easily separated from those for the U.S. Government.~~

~~22.4.1.y.3. The Purchasing Affidavit and Secretary of State registration are not required for transactions processed under this item.~~

~~§81-19-23. Surplus:~~

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

~~23.2. Responsibility: Director of Procurement is responsible for all assets under WVSP jurisdiction,~~

regardless of its state (removable or fixed), origin, or acquisition cost. Assets are maintained from date of purchase to date of retirement, this includes keeping equipment secure, entering assets into the Fixed Asset System, conducting physical inventories, submitting annual certification, retiring assets properly, etc.

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

~~23.3.1. Any asset entered into the Fixed Asset Module will be treated as Reportable Assets for procedural purchases whether or not the property meets the definition of Reportable Assets.~~

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

~~23.4.1. Firearms regardless of the cost. Please make sure all serial numbers are entered correctly.~~

~~23.4.2. All computers (including laptops and central processing units [CPU]) with an acquisition cost of \$500 or more.~~

~~23.4.3. The acquisition cost of assets shall be determined as the actual cost of that asset as evident by invoices or purchase orders. The agency can also determine acquisition cost by a reasonable method of estimation provided that no invoice or purchase order records exist. The agency thoroughly documents the estimation method used, and the documentation related to the estimate is maintained in the appropriate purchasing file for audit purposes.~~

~~23.4.4. Assets should be inventoried on a 'per item' basis. Individual items making one working component are to be inventoried as one asset. However, should the asset be purchased for the purpose of enhancing or upgrading the item, the cost of the upgrade can be entered into the Module as betterment.~~

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

~~23.5.1. The purchaser must complete the exchange by returning the Reportable Asset in question to the vendor or manufacturer and receiving the replacement.~~

~~23.5.2. Then the purchaser must submit a Fixed Asset Modification to Procurement for approval.~~

~~23.5.2.a. Modification data must, at a minimum, be a request to change the serial number associated with the old Reportable Asset to the serial number of the new replacement Asset. The purchaser's Fixed Asset Modification submission shall also include verification and back-up documentation proving that the original Reportable Asset was returned and replaced by another asset.~~

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

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

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

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

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

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

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

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

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

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

~~§81-19-24. Surplus Property Disposition.~~

~~24.1. WVSP Procurement must approve all methods of disposition related to commodities or~~

~~expendable commodities regardless of the acquisition cost. All uniform and non-uniform members desiring to dispose of commodities or expendable commodities must follow the disposition procedures as outlined in this manual.~~

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

~~24.2.1. Sell On site~~

~~24.2.2. Trade in~~

~~24.2.3. Sell for Scrap~~

~~24.2.4. Recycle/Dispose as Waste~~

~~24.2.5. Lost Asset~~

~~24.2.6. Stolen Asset~~

~~24.2.7. Destroyed Asset~~

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

~~24.4. There can be only one method of disposition listed on each cover sheet/form (WV 103).~~

~~24.5. Any requested disposition method must be approved by Procurement personnel, that are authorized to make such approvals, prior to the employee taking any further action related to disposition of the commodity or expendable commodity. Consequently, the commodities or expendable commodities must remain in the employee's possession until the requested disposition method has been properly approved. (an email will satisfy this requirement).~~

~~24.6. It is important that the item indicated on the WV 103 Surplus Property Retirement Form or Fixed Asset Disposition (FD) coincide exactly with the actual commodity or expendable commodity being disposed of through approved method.~~

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

~~§81-18-25. Methods of Disposition:~~

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

~~25.1.1. To transfer an asset from WVSP to another agency (different department codes), contact WVSP Procurement to have a Fixed Asset Interfund Transfer (FAIT) completed in wvOASIS.~~

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

~~25.2.1. Any employee desiring to utilize the trade in process must develop specifications to accompany the Request for Quotation (RFQ) requesting that bids include a price for the new item only and prices that reflect the value the bidder proposes to attribute to the trade in.~~

~~25.2.2. The employee must receive written approval from the Director of Procurement or designee to pursue the trade in option; the approval must be included with the Requisition when submitting to WVSP Procurement.~~

~~25.2.3. Documentation verifying receipt of the credit for the trade in will be uploaded to the retirement FD in wvOASIS.~~

~~25.2.4. If the original cost of the items to be traded in is less than \$1,000 and is not listed in wvOASIS, the asset must be added to wvOASIS for trade in purposes.~~

~~25.2.5. Only one for one trade ins will be considered and items may be traded only for the same type of item. Trade ins shall not be authorized for items purchased from statewide contracts or sole source vendors, unless it is in the best interest of the WVSP and approved by Director of Procurement.~~

~~25.2.6. It is important to note that the value of the new items for fixed asset purposes is the full value of the new items, including money paid for the asset and the value attributed to the trade in. The wvOASIS system automatically includes the money paid for the asset in the fixed asset system, but it does not automatically account for trade in value. The WVSP Procurement must create a Fixed Asset Increase document and use that document to add the trade in value to the new asset.~~

~~25.2.7. A trade in allowance does not allow an employee to alter or circumvent the purchasing process.~~

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

~~25.3.1. The sale can be completed using an existing statewide contract for recycling;~~

~~25.3.2. The sale can be completed by obtaining three verbal bids and awarding the purchase of the scrap to the highest bidder.~~

~~25.3.3. WVSP may prescribe an alternative method for conducting the sale of the scrap material that may include, but is not limited to, sealed bids and internet auctions.~~

~~25.3.3.a. The Director of Procurement may select a recycler based upon location and services provided. Vendor(s) receiving scrap or waste for recycle are prohibited from rehabilitation of~~

~~said assets.~~

~~25.3.3.b. After the scrap dealer picks up the commodities or expendable commodities or the agency has them delivered to the scrap dealer's facility, the employee will forward the dealers weight ticket receipt for those items listed on the WV 103 Surplus Property Retirement Form or a Fixed Asset Disposition Document (FD) for final completion by employee or WVSP Procurement. Checks for scrap are to be made payable to WVSP. A copy of the retirement form(s) should be delivered to Procurement with the check to ensure that the retirement forms are finalized.~~

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

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

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

~~25.6.1. When a WVSP's commodity or expendable commodity has been stolen, the theft shall be reported. The CI report along with a letter from the employee detailing the theft shall be attached to the retirement cover sheet and submitted to WVSP Procurement. If approved, Fixed Asset Disposition Document will have the status of final in wvOASIS.~~

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

~~25.7.1. Note: Lost, stolen, or destroyed disposition codes are not to be used to remove equipment from WVSP's assets when retirement procedures were not followed to properly dispose of obsolete equipment.~~

Appendix A

26.1. Monitoring Procedures:

~~26.1.1. The Procurement Section will conduct yearly P Card and Procurement processes~~

reviews to ensure procedures within this manual are being followed. A representative from Procurement along with a representative from Accounting will conduct the reviews. A sampling from all purchases will be taken to ensure proper compliance with this manual. A report will be submitted to the Chief of Staff Services for review annually.

Forms

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

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

WV 96 — ~~<http://www.state.wv.us/admin/purchase/vre/wv96.pdf>~~

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

Non Conflict of Interest — ~~<http://intranet.state.wv.us/admin/purchase/noneonflict.pdf>~~

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

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

RFQ — ~~<http://intranet.state.wv.us/admin/purchase/OneTimePurchaseRFQ.docx>~~

Statewide Contract Listing — ~~<http://www.state.wv.us/admin/purchase/swe/>~~

WVSP 197 Purchasing Card Order/Receiving Report — Located on Virtual Office