

WEST VIRGINIA
SECRETARY OF STATE

JOE MANCHIN III

ADMINISTRATIVE LAW DIVISION

Form #2

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2003 MAY 19 P 3:25

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: West Virginia Board of Education TITLE NUMBER: 126

RULE TYPE: Legislative; CITE AUTHORITY: W. Va. Constitution, Article XII, §2, W.Va. Code §§5-22-1, 5A-3-37, 5A-3-37a, 5G-1-1 et seq., 11-8-26, 12-3-10a, 12-3-10b, 18-2-5, 18-5-5, 18-5-7, 18-5-7a, 18-5-7b, 18-5-9a, 18-5-13, 18-9B-12, 18-8-26, 18-2B-2, 21-5A-1 et seq., 31-15A-15, 61-5A-6 and 61-10-15.

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 202

TITLE OF RULE BEING PROPOSED: Purchasing Procedures (8200)

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON June 19, 2003 AT 4:45 p.m.. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Joseph Panetta, Executive Director

Office of School Finance

West Virginia Department of Education

Capitol Building 6, Room 215

1900 Kanawha Boulevard, East

Charleston, West Virginia 25305-0330

THE ISSUES TO BE HEARD WILL BE LIMITED TO THIS PROPOSED RULE.



David Stewart
State Superintendent of Schools

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

EXECUTIVE SUMMARY
WEST VIRGINIA BOARD OF EDUCATION
Policy Number and Title: Policy 8200
Purchasing Procedures For Local Educational Agencies

PUBLIC COMMENT PERIOD ENDING: June 19, 2003

BACKGROUND:

The West Virginia Board of Education adopted a separate policy for purchasing by county boards of education in July 1978, however, when State Board Policy 8100 entitled *Handbook for School Finance in West Virginia* was written and adopted in 1990, the purchasing policy was incorporated into the Handbook for School Finance to serve as the single source of guidance, since in those days, the chief school business official also served as the purchasing director in most county boards.

Today, in many school systems, individuals other than the chief school business officials serve as purchasing directors, and with the adoption of the West Virginia Education Information System, personnel other than those in the business office are able to initiate and transmit purchase requisitions for approval online. In order to provide guidance to all of these individuals, it has become necessary to again develop a separate purchasing manual to provide specific guidance to all employees who are involved in the purchasing, safeguarding and disposing of supplies and capital assets.

PURPOSE:

Consequently, State Board Policy 8200 is a new, stand alone, policy developed to establish the procedures to be followed by county boards of education, regional education service agencies (RESAs), and multi-county vocational centers (MCVCs), collectively described as local educational agencies (LEAs) in the purchase of all commodities and services used in their operations, and the policy also incorporates the procedures developed by the Department of Administration for declared emergency situations.

The policy provides specific guidance to not only treasurers and chief school business officials, but to purchasing directors, superintendents, teachers and all other personnel who are involved in the requisition and purchase of commodities and services. The manual also includes sections on making purchases using a purchasing card and on the disposal of surplus equipment and other capital assets.

This *Purchasing Policies and Procedures Manual* was patterned after the West Virginia Purchasing Division *Policies and Procedures Handbook* and incorporates many of the same principles and requirements, with appropriate modifications made where necessary.

**PURCHASING POLICIES AND PROCEDURES MANUAL
FOR LOCAL EDUCATIONAL AGENCIES**

**TITLE 126
LEGISLATIVE RULE
BOARD OF EDUCATION**

**SERIES 202
Purchasing Procedures (8200)**

FILED

2003 MAY 19 P 3: 26

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§126-202-1. General.

1.1. Purpose. The purpose of this policy is to establish the minimum requirements and procedures to be followed by county boards of education, regional education service agencies (RESAs) and multi-county vocational centers (MCVCs) in the purchasing, receiving, safeguarding and disposal of goods and services obtained for use in their operations.

1.2. Authority. West Virginia Constitution, Article XII, §2 and W. Va. Code §§5-22-1, 5A-3-37, 5A-3-37a, 5G-1-1 et seq, 11-8-26, 12-3-10a, 12-3-10b, 18-2-5, 18-5-5, 18-5-7, 18-5-7a, 18-5-7b, 18-5-9a, 18-5-13, 18-9B-12, 18-8-26, 18-2B-2, 21-5A-1 et seq, 31-15A-15, 61-5A-6, and 61-10-15.

1.3. Filing Date.

1.4. Effective Date.

1.5. Repeal of Former Rule. This is a new rule. This rule does, however supersede Section E of Chapter 3 of 126CSR200, West Virginia Board of Education Policy 8100, Handbook For School Finance in West Virginia, which relates to purchasing.

§126-202-2. Applicability.

2.1. This policy applies to all county boards of education, RESAs, and MCVCs.

§126-202-3. Incorporation by Reference.

3.1. Copies – A copy of the Purchasing Policies and Procedures Manual is attached. Additional copies may be obtained in the Office of the Secretary of State and in the West Virginia Department of Education, Division of Administrative Services.

3.2. Summary of rules and regulations – County boards of education, have the authority and responsibility, subject to the provisions of statute and rules and regulations of the West Virginia Board of Education, to acquire needed commodities and services in order to provide a thorough and efficient system of education for all children in West Virginia.

PURCHASING POLICIES AND PROCEDURES MANUAL FOR LOCAL EDUCATIONAL AGENCIES

3.3. This rule establishes the minimum system of purchasing rules and regulations that are to be followed by the county boards of education, RESAs and MCVCS throughout the state. These agencies are encouraged to develop local policies, practices and procedures that supplement the provisions specified herein.

3.4. This rule has been developed as a manual to be used as a guide by county superintendents, purchasing directors, business officials, and other personnel involved in the acquisition and disposal of commodities and services in the performance of their duties.

§126-202-4. Administration.

4.1. Each local education agency (LEA) in the State of West Virginia, which includes all county boards of education, RESAs, and MCVCS is responsible for adhering to the requirements included in this policy for the purchasing, receiving, safeguarding, and disposal of commodities and services used in its operations. Each LEA is also responsible for adopting a local purchasing policy to address the specific procedures and practices particular to that agency's situation. These local policies must, at a minimum, adhere to the requirements included in this policy but may make the requirements more restrictive.

§126-202-5. Authority.

5.1. Authority. The governing body of each LEA is responsible for the purchasing, receiving, safeguarding, and disposal of all goods and services obtained for use by the LEA. This authority may be delegated to the superintendent, or director of a RESA or MCVCS, or to a designee. The official to whom these responsibilities have been delegated shall be the purchasing director of the LEA.

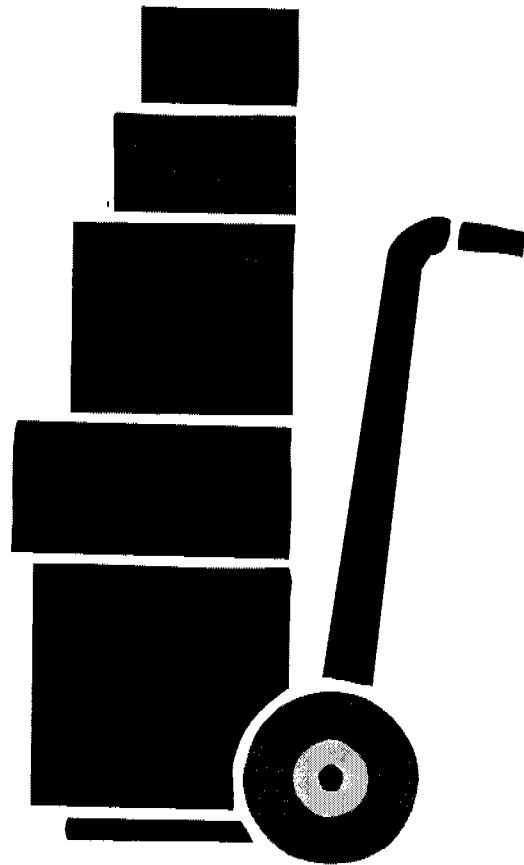
5.2. Requisitions. The LEA must develop written procedures to establish a system for the orderly submission, processing, and approval of purchase requisitions.

5.3. Approval. All purchase orders must be manually or electronically approved by the purchasing director or designee prior to their issuance. The responsibility of the chief financial officer is to ensure that funds are available for the purchase and that they have been properly budgeted.

§128-202-6. Severability.

6.1. If any part of this policy is declared unconstitutional or invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this policy, or the policy in its entirety.

PURCHASING POLICIES AND PROCEDURES MANUAL



**FOR LOCAL EDUCATION AGENCIES
IN THE STATE OF WEST VIRGINIA**

**Office of School Finance
West Virginia Department of Education**

**PURCHASING POLICIES
AND PROCEDURES MANUAL
FOR LOCAL EDUCATION AGENCIES**

**Office of School Finance
West Virginia Department of Education**

PURCHASING POLICIES AND PROCEDURES MANUAL FOR LOCAL EDUCATIONAL AGENCIES

FOREWORD

This policy and procedures manual prescribes the minimum requirements and procedures established by the State Board of Education that are to be followed by county boards of education, regional education service agencies, and multi-county vocational centers, collectively described as local educational agencies (LEAs), in the purchase of goods and services necessary for their operations.

The policy is a new, stand alone document on purchasing procedures for LEAs, therefore, it does not repeal any former rule. The policy does, however, supersede Section E of Chapter 3 of 126CSR200, West Virginia Board of Education Policy 8100, the *Handbook For School Finance in West Virginia*, which relates to purchasing. The policy provides guidance to not only treasurers and chief school business officials, but to purchasing directors, superintendents, teachers and all other personnel who are involved in the requisitioning and purchasing of commodities and services.

The manual also provides guidance on making purchases using purchasing cards and other credit cards. In addition, there is a section on the disposal of surplus equipment and other capital assets, which is an area that has created a number of questions in the past. I think most users will find the manual to be a very comprehensive and useful guide for all aspects of the acquisition and disposal process.

This *Purchasing Policies and Procedures Manual* was patterned after the West Virginia Purchasing Division *Policies and Procedures Handbook* and incorporate many of the same principles and requirements, with appropriate modifications made where necessary. The manual also includes the emergency purchasing procedures developed recently by the West Virginia Department of Administration.

The policy and manual was developed by the Office of School Finance in cooperation with members of the West Virginia Association of School Business Officials, county board of education purchasing directors, the Department of Education's Purchasing Director, and a number of other dedicated public school officials. Their dedication and hard work devoted to this project are very much appreciated and acknowledged.

Copies of the manual are available on the Department's website at <http://wvde.state.wv.us> under both the State Board Policies Section and under School Finance Data/Manuals. Printed copies can also be obtained from the Department of Education, Office of School Finance, Building 6, Room 215, 1900 Kanawha Boulevard East, Charleston, WV 25305 or by calling 304-558-6300.

David Stewart
State Superintendent of Schools

Policy 8200
May 5, 2003

**PURCHASING POLICIES AND PROCEDURES MANUAL
FOR LOCAL EDUCATIONAL AGENCIES**

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1. Introduction.

- 1.1. The overall objective of the purchasing function is to acquire the goods and services necessary to provide the essential services for which an organization is responsible.
- 1.2. All procurement transactions must be conducted in a manner that provides full and open competition, consistent with the ethical standards specified in state and federal statutes, this policy, and all local practices and procedures.
- 1.3. Procedures for the review of all proposed procurements must be established to ensure that only necessary items are purchased.
- 1.4. If written specifications are required, they must be written in such a manner as to maximize and encourage competition.
- 1.5. No board member, officer or employee shall participate in the selection, award, or administration of a contract or purchase order with a related party, or where a conflict of interest, real or apparent, exists.
- 1.6. No board member, officer, or employee shall solicit or accept gratuities, favors, or anything of monetary value from contractors, vendors, or parties to any awards, agreements, or contracts.
- 1.7. Awards will be made only to responsible contractors possessing the ability to perform successfully under the terms and conditions of the proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.
- 1.8. Although not required, LEAs may want to explore whether the goods and services being purchased are available from a statewide contract or a purchasing alliance, such as the Government Purchasing Alliance or the Southern Region Education Board, before going to the open market.
- 1.9. A flow chart has been developed to assist users of this policy in making the determination of which purchasing requirements apply in each specific situation. This flow chart is included in Appendix B to this manual.

2. Purchase Responsibilities.

- 2.1. According to W. Va. Code §11-8-26, a local fiscal body, which includes county boards of education, shall not expend money or incur obligations:
 - 2.1.1 In an unauthorized manner;
 - 2.1.2 For an unauthorized purpose;
 - 2.1.3 In excess of the amount allocated to the fund in the levy order;
 - 2.1.4 In excess of the funds available for current expenses.
- 2.2. According to W. Va. Code §18-9B-10, county boards of education shall:
 - 2.2.1. Authorize the expenditure of funds and incur obligations only in accordance with the budget and the expenditure schedule;
 - 2.2.2. Make transfers between items of appropriation only with the prior written approval of the State Board of Education.
- 2.3. The governing body of each LEA is responsible for the purchasing, receiving, safeguarding, and disposing of all goods and services obtained for use by the LEA. This authority may be delegated to the superintendent, or director of a RESA or MCVC, or to a designee.

PURCHASING POLICIES AND PROCEDURES MANUAL FOR LOCAL EDUCATIONAL AGENCIES

2.4. The official to whom these responsibilities have been delegated shall be the purchasing director of the LEA.

2.5. The Purchasing Director is responsible for:

2.5.1. Ensuring that all purchases and contracts for the LEA are made in accordance with the provisions of applicable state statutes, this policy and all local policies;

2.5.2. Ensuring that all purchases or contracts for the LEA are made in the name of the LEA;

2.5.3. Prescribing the manner in which commodities are purchased, delivered, stored, and distributed;

2.5.4. Reviewing the specifications and descriptions before soliciting bids to ensure that they do not favor a particular brand or vendor;

2.5.5. Accepting or rejecting any and all bids in whole or in part;

2.5.6. Waiving minor irregularities in bids or specifications;

2.5.7. Applying and enforcing standard specifications;

2.5.8. Transferring to or between schools or spending units, or selling surplus, obsolete, or unused commodities;

2.5.9. Prescribing the amount of deposit or bond to be submitted with any bid or contract;

2.5.10. Prescribing contract provisions for liquidated damages, remedies and/or other damage provisions in the event of vendor default;

2.5.11. Prescribing the manner of inspection for all deliveries of commodities, determining the physical tests to be conducted of samples submitted, and determining that all bids and samples are in compliance with specifications.

2.6. Chief School Business Official.

2.6.1. The chief school business official has the overall responsibility for ensuring that funds are available for the purchase and that they have been properly budgeted and encumbered.

3. Acquisition Planning.

3.1. The effective acquisition of needed commodities and services begins with proper planning. The first step is to determine the commodity or service needed, the quantity, the quality level, delivery location, and time frame.

3.2. When preparing for a purchase, prior to the actual bidding process, the following steps should be taken: define need; consider acquisition and delivery lead times; develop specifications; explore alternative sources; prepare the requisition; and identify possible vendors.

3.2.1. Define Need – Determining the exact requirements for a commodity to perform a specific function is one of the most important tasks in the procurement process. The individual submitting the requisition must take into consideration the problem to be resolved and what alternatives or options are available to satisfy the need.

3.2.2. Acquisition and Delivery Lead Time:

a. Acquisition Lead Time – Acquisition lead time is required for all purchases. The average time required to prepare, solicit, evaluate, and make an award varies depending upon the dollar

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value, responsiveness of vendors, and the complexity of the requisition. Individuals submitting purchase requisitions should always consider the fund obligation period when planning acquisition lead time.

- b. Delivery Lead Time – Order or ship time is the time after the award that is required by the vendor to fill and deliver the order. These times vary widely by industry or commodity. Consideration must be given to market conditions which will affect delivery.

3.2.3. Specifications:

- a. Specifications can either enhance or inhibit competition. To ensure that commodities and services are obtained at the most economical, competition must be sought, whenever possible. This can be accomplished by describing products and services in a manner that meets the LEA's needs and encourages competition.
- b. A specification is a concise statement explaining the type of product or service, the quality level, special requirements in design, performance, delivery and usage. Specifications must not be restrictive (locking in a specific vendor and limiting competition), or be vague (allowing a vendor to provide a lower than acceptable quality level product or service).
- c. A good specification is the following: Clearly understandable to both the buyer and the seller, complete, concise, identifiable wherever possible with some brand or specification already on the market, verifiable, and reasonable.
- d. Types of Specifications - There are three types of specifications used separately and/or in combination to communicate requirements for goods and services to the vendor:
 - 1. "Brand Name(s) or Equal" Specification – This is based upon one or more manufacturer's commodity description(s), model number(s) and quality level. The manufacturer's commodity numbers must be easily identified in a current publication that is available to most vendors. Commodity descriptions must be sufficiently detailed, and specify only the required features needed for the application.
 - 2. Performance Specification - This is based upon the specific performance needs of the LEA. The performance specification is less structured as to how the product is made, and more structured as to how well it performs. Total ownership cost for operating and maintaining the product may be an element of the specification.
 - 3. Design Specification - This concentrates on the dimensional and other physical requirements of an item being purchased. The design specification is used when the commodity has to be specially made to meet the LEA's unique needs.

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

- e. The State Purchasing Division has promulgated standard specifications based on scientific and technical data for appropriate commodities, which establish the quality to which such commodities to be purchased and services to be contracted for by the state must conform. These standard specifications, which are prepared and adopted by the Purchasing Division for various products and services, may be available for use by LEAs, which will eliminate the need to redeveloping specifications for commodities and services where specifications have already been developed.

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- f. Questions from LEA personnel relating to purchasing issues should be directed to the LEA's purchasing director. If the LEA's purchasing director desires assistance, help may be obtained by contacting the appropriate state buyer in the Acquisition and Contract Administration Section of the Purchasing Division for assistance in preparing specifications.
 - g. A Request for Information (RFI) is a formal method for requesting written information from vendors for the purpose of developing a Request for Quotation (RFQ) or a Request for Proposal (RFP). The issuance of an RFI is not a mandatory prerequisite to the issuance of an RFQ or an RFP but may be used when it is felt that appropriate expertise or information is lacking to develop adequate specifications for an RFQ or RFP. This process allows for the assistance of multiple vendors who have expertise and can provide information in the area of concern.
- 3.2.4. Alternative Sources -- In the planning process, it is important to review all internal or State sources before going to the open market. Such sources include:
- a. Surplus Property - Since its creation in 1949, the State Agency for Surplus Property has assisted thousands of organizations by offering good, usable property at a substantially reduced price to public agencies and non-profit groups. The State Agency for Surplus Property also administers a federal property program. Property is screened at federal government facilities to provide eligible organizations with a greater quantity and variety of items. The program serves all eligible organizations and acts as a clearinghouse by offering new and used equipment at reduced costs for acquisition. With the federal program, agencies may express their property needs and be placed on a "want list." Federal property screeners will then look for suitable property that may fulfill the organization's needs.
 - b. Commodities and Services Provided by Sheltered Workshops -- Certain commodities and services may be available from sheltered workshops that meet the LEA's quality and price standards and whose prices are comparable to open-market sources.
 - c. Piggybacking on a State Open-Ended Contract - Certain commodities and services may be available from a State open-ended contract which an LEA may piggyback, if the contract allows for piggybacking.
- 3.2.5. Preparing the Requisition -- This involves the process of preparing a requisition for authorization to purchase commodities or services and submitting the requisition to the appropriate officials for approval. LEAs must develop local procedures for the submission and approval of purchase requisitions.
- a. There are six basic types of purchases that can be made, which include:
 - 1. One-time/Single Purchase -- The purchase of commodities or services on a one-time basis each year; repetitive requisitions for the same commodities or services are not needed.
 - 2. Open-Ended Contracts -- A special type of contract that is used to obtain commodities or services on a repetitive basis throughout the year. Normally all terms, conditions, and prices are prescribed, with the exception of quantity. An LEA may establish the requirement that prior approval be obtained before commodities or services are requisitioned through the form of a release.
 - 3. Agreements -- Contracts used to obtain specific professional, technical, or other specialized services that are not available at the LEA.

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4. **Emergency Purchases** – Purchases that become necessary when unforeseen causes arise. Emergency purchases are not to be used for hardship situations resulting from neglect, poor planning, or lack of organization.
 5. **Leases and Lease Purchases** – Lease and lease purchase agreements are methods by which an LEA may obtain equipment or other commodities and make payments over a period of time. The State Constitution and W. Va. Code §11-8-26 prohibit a local fiscal body from expending funds or incurring obligations from future levies.
 6. **Direct Purchases (Sole Source)** – In a direct purchase situation, competition is not available; the commodity or service is available from only one source.
- b. **Life of Contract** - Contracts normally cover a 12-month period or cite a specific time for completion for the project or service. A solicitation for a contract that includes an option on the part of the LEA to extend or renew the contract for an additional period may be advantageous and may be considered. If price adjustments are permitted during the contract period, the conditions under which they are authorized must be specified in the original solicitation and resulting contract. All contracts should be reviewed during the contract period to determine if the need still exists for the commodities or services, if prices are fair and reasonable based on the current market conditions, and if performance is satisfactory.
 - c. **Renewals:** The standard terms and conditions used to indicate a specified date on which the contract becomes effective, and extends for a period of one year or until such "reasonable time" thereafter as is necessary to obtain a new contract or renew the original contract. The "reasonable time" period shall not exceed twelve months. Unless specific provisions are stipulated in the contract document, the terms, conditions and pricing established are firm for the life of the contract.

Contracts that contain renewal provisions may be renewed upon the mutual written consent of the LEA and vendor prior to the expiration date. A letter of justification should be maintained on file, stating pertinent reasons for the recommendation to renew an existing contract. These factors include, but are not limited to, vendor performance, market conditions and other analytical measures that indicate that renewing the contract is in the best interest of the LEA. Renewals shall be in accordance with the terms and conditions of the original contract and are limited to two successive one year periods.

- d. **Contract Cancellation** - The LEA reserves the right to cancel any contract or purchase order upon written notice to the vendor if the commodities and services supplied are of an inferior quality or do not conform with the specifications of the bid or award.
- e. **Pre-Bid Conferences** - When appropriate, an LEA may conduct a "pre-bid conference" on major acquisitions early in the solicitation cycle to provide an opportunity to emphasize and clarify critical aspects of the solicitation, eliminate misunderstandings and encourage vendor participation. These conferences are conducted with potential bidders when solicitations for complex, large dollar requirements are specified. Attendance at conferences or on-site visits may be optional or mandatory. If mandatory attendance is required, only bids or proposals from those firms represented at the conference or on-site visits shall be accepted.

Sign-in sheets for mandatory pre-bid conferences must contain the following: name of company, person attending (signature and printed name), address, and telephone number. The header information on the sign-in sheet should identify the pre-bid conference and include the date and time of the conference. No one individual may represent more than one firm.

- f. **Response Time** - When establishing an opening date and time, buyers and/or LEA personnel should allow for holiday mail disruptions as well as adequate time to encourage as many vendors as possible to respond.

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- g. Evaluation Period - After bids are opened, a review and evaluation of the bids received is required. The time required for this function varies depending upon the complexity of the solicitation and the number of bids or proposals received.

- 3.4.5. Identify Possible Vendors – In order to achieve the goal of competitive bidding, a minimum of three bids is required, whenever possible.

Locating vendors selling a particular product or service can be performed in a number of ways, including:

- a. Reference sources, such as the telephone book's yellow pages and other business listings;
- b. Supplier's catalogs, which not only offer local distributors but provides descriptive information on their products and current technology of the market;
- c. Maintenance of a vendor list;
- d. Meeting with business representatives;
- e. Governmental purchasing alliances, and,
- f. Utilizing the internet.

- 3.4.6 If a vendor list is maintained, care should be taken to ensure that all vendors expressing interest in conducting business with the LEA are included.

4. Requisitions and Purchase Orders.

- 4.1. LEAs are required to maintain a requisition and purchase order system on the West Virginia Education Information System (WVEIS) whereas an approved, pre-numbered purchase order is issued to the successful vendor prior to an order for a commodity or service is placed. This includes purchases made using a purchasing card.
- 4.2. Purchase orders are not required for refunds, reimbursement of travel expenses, the distribution of faculty senate funds to the individual schools in a county, utilities, executed contracts, agreements, and leases and lease purchase agreements, however, funds must be encumbered for utilities, executed contracts, agreements, and leases and lease purchase agreements.
- 4.3. A copy of each approved purchase order must be retained for file. The file copy may be retained either on paper, or electronically if the original approval signatures are available for subsequent review.
- 4.4. No purchase order may be issued from a fund or account in excess of the funds currently available in that fund or account. Purchases may not be made which will obligate the funds of a subsequent year. In other words, purchase orders may not be issued prior to the end of a fiscal year for delivery and payment after July 1, in excess of the amount available in the current year's budget.

5. Purchase of Commodities.

- 5.1. Commodities are to be purchased in accordance with the procedures specified in this section.

PURCHASING POLICIES AND PROCEDURES MANUAL FOR LOCAL EDUCATIONAL AGENCIES

- 5.2. Commodities may be purchased from a membership retail outlet, such as Sam's Club, whenever it is determined to be in the best interest of the LEA by the purchasing director. The membership fee is another cost associated with the purchase and needs to be taken into consideration in making the determination.
- 5.3. The competitive method used is determined by the threshold limits discussed in Section 5.8. These limits are based on the best estimate of the purchasing director at the time the bid prices are solicited.
- 5.4. The bid method selected will be considered to be the appropriate method unless the lowest bid received exceeds the maximum dollar threshold of the bidding method selected by ten percent. If the lowest bid exceeds the threshold by more than ten percent, the bid must be re-bid using bid requirements with a higher dollar threshold level.
- 5.5. Purchases cannot be separated into a series of separate requisitions or purchase orders, called stringing, for the purpose of circumventing the applicable threshold limits of these competitive bidding procedures.
- 5.6. In order to ensure that only necessary purchases are made, all purchases must have the prior approval of an employee who has supervisory authority over the individual initiating the purchase request. Purchases by employees who have the authority to approve purchase requisitions must have the approval of the county superintendent, or director of a RESA or MCVC.
- 5.7. The procedures for submission of the bid are discussed in Section 16 of this manual. The procedures for the awarding of the bid are discussed in Section 18 of this manual.

5.8. Competitive Bid Threshold Limits:

5.8.1. Purchases of commodities costing less than \$1,000:

- a. Competitive bids are encouraged but not required.
- b. The purchase of commodities or services costing less than \$1,000 must have the prior approval of an employee who has supervisory authority over the individual initiating the purchase request.
- c. An approved purchase order is required before the merchandise or services are ordered.

5.8.2. Purchases of commodities costing more than \$1,000 but less than \$5,000:

- a. Competitive bids are required.
- b. A minimum of three (3) verbal quotes must be obtained, whenever possible.
- c. Bids may be solicited by telephone, internet, mail, or by visiting the vendor.
- d. Documentation must be maintained of all quotes obtained, recording the name of the vendor, name of the vendor's representative, name of the LEA's representative seeking the quote, date, commodity, and price.
- e. Refer to the Records Retention Manual issued by the Office of School Finance for the period of time that the documentation is to be retained.
- f. A sample form for recording these quotes is included in Appendix C.
- g. An approved purchase order is required before the merchandise or service is ordered.

5.8.3. Purchases of commodities costing more than \$5,000 but less than \$10,000:

- a. Competitive bids are required.

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- b. A minimum of three (3) written bids must be obtained, whenever possible.
- c. Bids may be solicited by telephone, internet, or mail, but a written bid must be submitted by the vendor.
- d. A "No bid" is not to be considered a received bid, so sufficient requests should be solicited to assure that at least three actual bids are received.
- e. All contracts for the purchase of commodities or services, with the exception of consumable supplies, that involve the expenditure of more than \$5,000 but less than \$25,000 must have the prior approval of the county superintendent or director for a RESA or MCVC.
- f. All bids received must be retained for public review and inspection during normal business hours. Refer to the Records Retention Manual issued by the Office of School Finance for the period of time that the bids are to be retained.
- g. An approved purchase order is required before the merchandise or service is ordered.

5.8.4. Purchases of commodities costing more than \$10,000 but less than \$25,000:

- a. Competitive bids are required and bids shall be solicited from at least three known suppliers whenever possible, providing them adequate time to submit proposals.
- b. If a vendor list is maintained, this requirement may be met by submitting the bid request to all vendors on the list.
- c. If a vendor list is not maintained, the request for bids must be advertised at least once, using advertising media such as newspapers, the internet, trade journals, purchasing bulletins, other media considered advisable, or mass mailings.
- d. The invitation for bids, must include all specifications and pertinent attachments, and shall define the items or services in order for the bidder to properly respond.
- e. The purchasing director may waive the requirement to advertise when a vendor is considered to be the sole source for the item being purchased, when it is determined to be in the best interest of the LEA, or when professional, technical, or specialized services are being acquired under an agreement. All waivers must be well documented and those based on a best interest determination must be approved by the county superintendent, or director of a RESA or MCVC.
- f. Any and all bids may be rejected if there is a sound documented reason.
- g. All contracts for the purchase of commodities or services, with the exception of consumable supplies, that involve the expenditure of more than \$5,000 but less than \$25,000 must have the prior approval of the county superintendent or director for a RESA or MCVC.
- h. The request for bids must be retained for public review and inspection during normal business hours. After the bid is awarded, all criteria and evaluations used in making the selection, as well as all bids received from vendors, must be retained for public review. Refer to the Records Retention Manual issued by the Office of School Finance for the period of time that the bids are to be retained.
- i. An approved purchase order is required before the merchandise or service is ordered.

5.8.5. Purchases of commodities costing more than \$25,000:

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- a. The solicitation for bids must specify that the bids are to be received in the form of sealed bids.
- b. The request for bids must be publicly advertised using such media as legal advertisements in local newspapers, the internet, trade journals, purchasing bulletins, mass mailings or other media considered advisable, and adequate time must be provided to allow interested bidders sufficient time to submit their responses prior to the date set for the opening of bids.
- c. The invitation for bids, must include all specifications and pertinent attachments and must define the items or services in order for the bidder to properly respond.
- d. All bids will be publicly opened at the time and place specified in the invitation for bids.
- e. The purchasing director may waive the requirement to advertise when a vendor is considered to be the sole source for the item, when it is determined to be in the best interest of the LEA, or when professional, technical, or specialized services are being acquired under an agreement. All waivers must be well documented and those based on a best interest determination must be approved by the governing body.
- f. Any and all bids may be rejected if there is a sound documented reason.
- g. All contracts or purchases of commodities or services, with the exception of consumable supplies, that involve the expenditure of more than \$25,000 must have the prior approval of the LEA's governing board. The approval can be granted either as a consent agenda item or by a motion of the board.
- h. The request for bids must be retained for public review and inspection during normal business hours. After the bid is awarded, all criteria and evaluations used in making the selection, as well as all bids received from vendors, must be retained for public review. Refer to the Records Retention Manual issued by the Office of School Finance for the period of time that the bids are to be retained.
- i. An approved purchase order is required before the merchandise or service is ordered.

6. Open Ended Contracts, Price Agreements, and Blanket Purchase Orders.

- 6.1. The LEA may use open-ended contracts, price agreements, or blanket purchase orders to obtain commodities or services of a repetitive nature rather than issue a purchase order for each individual purchase.
- 6.2. The purchasing director may solicit requirements for similar commodities and services to determine the best methods for acquisition.
- 6.3. Open-ended contracts or price agreements may be used only in situations where the commodity and price are known through a competitive bid process, but the quantity needed is not, such as food products used by child nutrition program.
- 6.4. Blanket purchase orders may be used in situations where there is normally a large volume of small dollar purchases of a repetitive nature and it is difficult to determine in advance exactly which products are needed, such as in facility or vehicle maintenance activities. Whenever practical, blanket purchase orders should be issued, with consideration of the bidding requirements, on a periodic basis throughout the year, such as on a monthly or quarterly basis, to maintain budgetary controls.

7. Non-Competitive Procurement.

- 7.1. The LEA may purchase equipment and other commodities or services directly from a vendor without competitive bidding, with the approval of the purchasing director, if any of the following conditions exist:

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- 7.1.1. The item cannot be obtained through ordinary purchasing procedures, such as in situations where no bidders respond to a request for bids;
 - 7.1.2. The item is unique, or is not available from any other source (sole source). This can include copyrighted materials, conference facilities, lecturers, and workshop presenters;
 - 7.1.3. The item is technology related (computer equipment, software and services, telecommunications, or medical equipment).
 - 7.1.4. The item is available from the State or another LEA, provided the price, availability, and quality are comparable to those in the open market;
 - 7.1.5. The item is available from a statewide contract and "piggybacking" by local governmental entities is permitted in the contract;
 - 7.1.6. The item is available from a sheltered workshop;
 - 7.1.7. The item is available from an internet website maintained by a legitimate government purchasing cooperative, such as the one maintained by Government Purchasing Alliance or the Southern Region Education Board, where competitive bids have already been obtained;
 - 7.1.8. The item is a used vehicle or piece of equipment and its purchase is determined by the purchasing director to be in the best interest of the LEA.
- 7.2 Documentation of the justification for not following the competitive procurement procedures must be maintained.

8. Purchase of Services.

- 8.1. Since the variety of services can vary significantly among service providers, services may be procured without basing the selection of the vendor solely on price. The cost can be negotiated without the use of competitive bids, however, RFPs are encouraged whenever possible.
- 8.2. If the price is not the sole determining factor in making the selection, the LEA must establish the procedures and criteria for evaluating the proposals received.
- 8.3. Documentation of the criteria and selection process must be retained for review. See the Records Retention Schedule published by the Office of School Finance for the period of time that the records must be retained.
- 8.4. All contracts for the purchase of commodities or services, with the exception of consumable supplies, that involve the expenditure of more than \$5,000 but less than \$25,000 must have the prior approval of the county superintendent or director for a RESA or MCVC.
- 8.5. All contracts or purchases of commodities or services, with the exception of consumable supplies, that involve the expenditure of more than \$25,000 must have the prior approval of the LEA's governing board. The approval can be granted either as a consent agenda item or by a motion of the board.

9. Agreements.

- 9.1. An agreement is a procurement device used for obtaining professional, technical, or other specialized services where the scope of the services is known but the price is not the sole factor in determining the award. The services can include such activities as legal counsel; accounting services; presenters for continuing professional development activities; technology installation, repair and maintenance; and conference meeting facilities.

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- 9.2. The agreement must be in writing and the total cost must be stated either as a "sum certain," or at a fixed rate, if the number of hours of service being acquired is not known, such as for legal services.
- 9.3. The agreement amount must also include the total being paid for any anticipated travel expenses incurred by the service provider. LEAs do not have the statutory authority to reimburse non-employees specifically for travel expenses, and the payment of travel expenses for an independent contractor has federal and state income tax implications. Also, room or travel accommodations are not to be paid directly by the LEA.
- 9.4. If using an agreement provided by the vendor, care must be exercised to ensure that the agreement does not contain contractual requirements that are violative of state statutes, such as any clause that requires a prepayment, the imposition of a penalty or termination charge should the LEA cancel the agreement, or the requirement that the LEA indemnify or hold harmless the vendor. A sample of an agreement addendum is included in Appendix C that can be attached to any agreement to modify common requirements that are not acceptable.
- 9.5. The procedures for submission of the bid are discussed in Section 16 of this manual. The procedures for the awarding of the bid are discussed in Section 18 of this manual.

10. Request for Proposals and Expressions of Interest.

- 10.1. A request for proposal is a procurement device used to acquire professional and other services where the specific scope of the work may not be comparable and the cost is not the sole factor in determining the award.
- 10.2. Expressions of interest are used for the procurement of architectural and engineering services.
- 10.3. The use of the RFP (or EOI in the case of architectural or engineering services) is optional. The purchase director may select the vendor for services without the RFP process. Documentation must be retained to support the selection if RFPs are not used.
- 10.4. All criteria by which the bidders will be evaluated must be contained within the bid document.
- 10.5. Documentation of the criteria and selections process must be retained for review. See the Records Retention Schedule published by the Office of School Finance for the period of time that the records must be retained.

11. Construction Projects.

- 11.1. According to W. Va. Code §5-22-1 et seq., the state and its subdivisions, including LEAs must, except as provided in the code, solicit competitive bids for every construction project exceeding \$25,000 in total cost. Following the solicitation of such bids, the contract shall be awarded to the lowest qualified responsible bidder, who shall furnish a sufficient performance and payment bond. An LEA may reject any or all bids and solicit new bids on the project.
- 11.2. According to W. Va. Code §21-5A-1 et seq., any public authority, including LEAs, before advertising for bids for the construction of a public improvement, must ascertain from the state commissioner of labor the prevailing wages to be paid by the successful bidder to the laborers, workmen or mechanics in the various branches or classes of the construction to be performed, and such schedule of wages must be made a part of the specifications.
- 11.3. According to W. Va. Code §31-15A-15, the state and its subdivisions shall, except as provided in subsection (c) of this section, solicit competitive bids and require the payment of prevailing wage rates as required by W. Va. Code §21-5A-1 et seq. This does not apply to work performed on construction or repair projects not exceeding a total cost of \$50,000 by regular full-time employees of the State or its subdivisions; students enrolled in vocational education schools when such use is a part of the students' training program; emergency repairs to building components and systems, use of volunteers where the total cost of the

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construction or repair project does not exceed \$50,000, or to privately owned projects constructed on lands not owned by the state or a subdivision.

- 11.4. The procedures for submission of the bid are discussed in Section 16 of this manual. The procedures for the awarding of the bid are discussed in Section 18 of this manual.

12. Architectural and Engineering Services.

- 12.1. According to W. Va. Code §5G-1-1 et seq., the state and its sub-divisions, including LEAs, must procure architectural or engineering services on the basis of demonstrated competence and qualifications for the type of professional services required.

12.1.1. For projects estimated to cost less than \$250,000, competition must be sought. The LEA must conduct discussions with three (3) or more professional firms solicited on the basis of known or submitted qualifications for the assignment prior to the awarding of any contract. If it is determined that seeking competition is not practical, the LEA may, with the prior approval of the state director of purchasing select a firm on the basis of previous satisfactory performance, and knowledge of the agency's facilities and needs.

12.1.2. For projects estimated to cost \$250,000 or more, architectural and engineering firms are to be encouraged to submit an expression of interest, which shall include a statement of qualifications and performance data, and may include anticipated concepts and proposed methods or approach to the project. All jobs must be announced by public notice published as a Class II legal advertisement in compliance with W. Va. Code §59-1-1, et seq.

12.1.3. A committee of three (3) to five (5) representatives of the LEA shall evaluate these statements and select three firms, which, in the committee's opinion, are best qualified to perform the desired service, provided that, on projects funded wholly or in part by the West Virginia School Building Authority, two (2) of the three (3) firms selected must have had offices within the state for at least one year prior to submitting the expression on interest.

12.1.4. The committee shall then rank, in order of preference, no less than three (3) of the firms selected, and shall commence negotiations with the firms in the order of preference the scope of services and price for the work to be performed.

- 12.2. The procedures for submission of the bid are discussed in Section 16 of this manual. The procedures for the awarding of the bid are discussed in Section 18 of this manual.

13. Leases and Lease Purchase Agreements.

- 13.1. Lease and lease purchase of equipment are methods by which an LEA may obtain equipment and make payments for the use of the equipment over a period of time.

13.2. In a lease purchase agreement, the LEA reserves the right to exercise an option, normally at the time of the last installment payment, to have the lease payments apply, in whole or in part, as installment payments towards ownership of the equipment.

13.3. Leases and lease purchase agreements may be negotiated with the vendor providing the original product being acquired, or with another vendor that provides only the financing arrangement. In the later case, the lease arrangement becomes a service agreement rather than a commodity purchase.

13.4. Competitive bids are encouraged but not required for leases and lease purchase agreements.

13.5. In lease purchase agreements, the agreement must be for the acquisition of the commodity being acquired; the collateral for the agreement cannot be property that is already owned by the LEA.

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- 13.6. Title cannot transfer from the lessor to the lessee until the option to purchase the commodity is exercised, normally at the time the last installment payment is made.
- 13.7. The State Constitution and W. Va. Code §11-8-26 prohibit a local fiscal body from expending funds or incurring obligations from future levies.
 - 13.7.1. A lease purchase agreement extending beyond the fiscal year must contain a non-binding cancellation clause where the contract can be terminated at the end of each fiscal year, at the LEA's discretion, without creating a present indebtedness for the aggregate of the installment payments.
 - 13.7.2. Any language in a lease purchase agreement that might require an LEA to give notice to the lessor or be liable for future payments before terminating the agreement at the end of a fiscal year is void.

14. Purchases of Textbooks, Instructional Materials and Learning Technologies.

- 14.1. All textbooks are to be purchased in accordance with procedures prescribed in W. Va. Code §18-2A-1 et seq. No textbook, instructional materials, or learning technologies may be purchased for use in the public school in the State of West Virginia as the primary source of delivery of the instructional goals and objectives for state required courses unless the materials have been approved and listed on the state multiple list by the West Virginia Board of Education (hereinafter State Board), except for the provisions included in W. Va. Code §18-2A-8. Magazines, newspapers and other periodicals may be purchased for classroom use to supplement those items on the state multiple list.
- 14.2. When the selection and approval of the items on the multiple list have been made, the State Board is required to: (1) furnish contracts for the selected items to the appropriate vendors within 30 days of the adoption of the multiple list; (2) prepare a list of the adopted items, publish the list; (3) and provide a copy of the list to each county superintendent and vendor who submitted a bid by January 15th of the year of the county adoption of the materials.
- 14.3. Any vendor awarded a contract to furnish items on the multiple list is required to furnish the items for the period of adoption, to any county board of education, any dealer appointed by the board, or any State Board approved depository at the lowest wholesale price contained in the bids or contracts made to any other county school system, dealer, or depository in any other state, like conditions prevailing.
- 14.4. According to W. Va. Code §18-2A-4, vendors are required to automatically reduce prices when prices are reduced anywhere in the United States, so that no item is sold at any time in the State at a higher wholesale price than received for the item elsewhere in the country.
- 14.5. All items sold in West Virginia must be identical to the official samples filed with the State Board as regards to quality standards, specifications, subject matter, and other particulars which may affect the value of the items. The State Board, may however, approve revised editions of the adopted materials during the period of the contract, which will authorize a vender to furnish the revised materials.

15. Compliance With Federal Procurement Requirements.

- 15.1. Whenever procuring commodities and services with federal grant proceeds, all LEAs must use the procurement procedures specified in this policy and all locally adopted procedures.
- 15.2. Any requisition utilizing federal funding which includes special requirements in addition to or different than normal purchasing requirements must be identified when the requisition is submitted to the purchasing director.
- 15.3. Procedures for the procurement of commodities and services with funds from the U. S. Department of Education are included in that agency's regulations entitled, United States Education Department General Administrative Regulations (EDGAR), sections 74.41 through 74.48.

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- 15.4. Procedures for the procurement of commodities and services with funds from other federal agencies can be found in that agency's administrative regulations.

16. Submission of Bids.

- 16.1. All bids are to be submitted at the vendors' expense.
- 16.2. According to W. Va. Code §5A-3-10a, all bids submitted by a vendor shall include a No Debt Affidavit certifying that the bidder and all related parties do not owe any debts to the State, or if any debts are owed, the provisions of W. Va. Code §5A-3-10a(c) apply.
- 16.3. Bidders must submit their bids and/or proposals prior to the date and time of the bid opening in the format prescribed by the LEA. Substitutions for the prescribed format are acceptable only if the substituted terms, conditions, and/or provisions have been approved in advance by the purchasing director.
- 16.4. Bidders shall submit their bids and/or proposals to the purchasing director. The director shall reject all bids not received by the specified date and time.
- 16.5. An authorized representative of the bidder shall sign all bids before submission. A corporate signature without an individual name is not an acceptable signature.
- 16.6. An LEA may accept the submission of bids by facsimile transmission. The completed facsimile transmission must be received by the LEA prior to the specified date and time for submission of the bid. A vendor choosing to submit a bid or a written change to a bid by facsimile transmission accepts full responsibility for the transmission and receipt of the bid or change. The LEA accepts no responsibility for the unsuccessful and/or incomplete transmission of bids by facsimile machine. An original document and a copy of a bid that is initially sent by facsimile transmission shall be sent to the purchasing director within two (2) working days after the bid opening date and must be identical to the bid submitted by facsimile transmission.
- 16.7. Copies of bids may be open for public inspection in the office of the purchasing director immediately after bid opening. All files related to the evaluation and awarding of the bids are open for public inspection after the award has been made.
- 16.8. A bidder may make a written change of a sealed bid before the bid opening. A bidder shall submit written changes to the purchasing director prior to the date and time of the bid opening. A bidder may submit changes by facsimile transmission.
- 16.9. The LEA may reject an erroneous bid after the bid opening 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 LEA, 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 LEA to reject a bid, documented evidence shall be maintained that all of the conditions set forth in this subdivision exist.
- 16.10. If there is a conflict between the extension price and the unit price, or other minor errors exist that are not sufficient to cause the bid to be rejected, the unit price prevails.
- 16.11. A bidder may make a price adjustment on any purchase order if specific provisions for price adjustments have been incorporated in the RFQ and purchase order. A bidder shall make a request for price adjustment in accordance with the specific terms and conditions of the individual purchase order. In the event no provision for price adjustment has been made, discretion to grant a price adjustment rests with the LEA.

17. Resident Vendor Preference.

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- 17.1. According to W. Va. Code §5A-3-37, preference for resident vendors of the State of West Virginia or preference for vendors employing state residents may be granted in the purchase of commodities or printing.
- 17.2. There is no statutory authority that permits LEAs to grant local residential preference to vendors of a county or a local community within a county.
- 17.3. LEAs may establish by local board policy procedures for granting preference to resident vendors of the State in the awarding of a bid for the purchase of commodities and printing made upon competitive bids, with the exception of purchases made with federal funds where the federal program regulations prohibit the granting of such vendor preference. Care should be taken in establishing such procedures, however, because it can result in a higher purchase price for the LEA. Vendor preference cannot exceed five (5) percent of the lowest bid submitted by a qualified bidder.
- 17.4. A qualifying resident vendor may include but not be limited to one who maintains the following business activities or has paid the indicated taxes within the State:
 - 17.4.1. Is authorized to transact business within the State by appropriate authorities;
 - 17.4.2. Maintains an office in the State;
 - 17.4.3. Has actually paid real or personal property taxes on real estate or equipment used in the regular course of business related to the commodities or services offered;
 - 17.4.2. Has paid business taxes to the State and to municipalities; and
 - 17.4.5. When selling tangible personal property, has available for delivery a stock of materials of the type being offered and of a reasonable quantity.

18. Awarding.

18.1. Commodities.

- 18.1.1. The award for the purchase of commodities shall be made to the lowest responsible bidder.
- 18.1.2. In making such award, the purchasing director shall consider such factors as quality (meeting specifications), price, time of delivery, cost of delivery, and other terms and conditions considered prudent.
- 18.1.3. In situations of discrepancies in bid documents, unit prices shall prevail in all cases.
- 18.1.4. In some cases the purchasing director shall make multiple and/or split awards when it is in the best interest of the LEA to do so.
- 18.1.5. According to West Virginia Code, 5A-3-10a, no contract may be awarded to any vendor who is a debtor to the State of West Virginia in an aggregate amount of \$5,000 or more.

18.2. Agreements.

- 18.2.1. The award of agreements that are used for obtaining professional, technical, or other specialized services may be negotiated and need not be competitively bid, since the variety of the services can vary significantly among providers.
- 18.2.2. Locally developed criteria may be established for evaluating and negotiating such agreements. Competitive bids may be solicited, but the award need not be awarded to the to the lowest bidder.

18.3. Accounting and Auditing Services Contracts.

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- 18.3.1. Contracts for the annual audit of the LEA are to be awarded in accordance with the instructions issued by the State Auditor's Office.
- 18.3.2. Contracts for accounting services may be issued by the LEA using the procedures specified above for agreements.

18.4. Construction Contracts.

- 18.4.1. According to W. Va. Code §5-22-1 et seq., the award of every construction contract that exceeds \$25,000 in total cost must be awarded to the lowest qualified responsible bidder, who shall furnish a sufficient performance and payment bond.
- 18.4.2. An LEA may establish by local procedures the criteria for determining whether a bidder is considered a qualified responsible bidder. The determination is to be made during the evaluation process and not at the time the bids are opened.
- 18.4.3. An LEA may reject any or all bids and solicit new bids on the project.

18.5. Architectural or Engineering Services.

- 18.5.1. According to W. Va. Code §5G-1-1 et seq., the state and its sub-divisions, including LEAs, must procure architectural or engineering services on the basis of demonstrated competence and qualifications for the type of professional services required, as discussed in Section 12 of this manual.
- 18.5.2. The LEA may accept or reject, in whole or in part, any bid when it is determined to be in the best interest of the LEA. If any bid is rejected, the purchasing director shall place a written explanation in the purchase order file.

18.6. Tied Bids.

- 18.6.1. When tie bids are received, the award can be made by allowing the tied vendors to make a "last and final offer," by flip of a coin, draw of the cards, or any other impartial method considered prudent by the purchasing director.

19. Requirement for Bonds and Deposits.

- 19.1. The purchasing director shall determine the applicability and amount of bonds and/or deposit required of a vendor at any time, if, it is judged that security is necessary to safeguard the LEA from undue risk.
- 19.2. The types of bonds that may be required include bid bonds, performance, surety, litigation, or maintenance bonds.
- 19.3. The purchasing director may require the vendor to submit a certified check, certificate of deposit, bond, or any other security acceptable to the purchasing director, payable to the LEA. Personal checks and/or company checks are not acceptable.
- 19.4. The provisions for these requirements should be incorporated into the request for quotation and purchase order. When any contract is satisfactorily completed on which a surety bond or other deposit has been previously submitted, the individual originating the purchase shall certify the satisfactory completion or acceptance of the commodities or services being purchased in writing to the purchasing director.
- 19.5. Upon receipt of the notification, the purchasing director shall return the check or deposit to the vendor.

20. Vendors' Rights and Duties.

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- 20.1. Each vendor is solely responsible for the delivery of the bid proposal in writing to the place and location specified by the LEA in the bid requisition. The bid must be received by an authorized employee of the LEA prior to the specified date and time specified in the bid opening.
- 20.2. The official time clock for the purpose of receipt of bids, shall be displayed in the office of the purchasing director.
- 20.3. Vendors are responsible for the accuracy of the information in the bid.
- 20.4. A vendor who fails to return all required forms and materials with their bid may be suspended from the bidding list.
- 20.5. If there is a conflict between the extension price and the unit price, the unit price prevails.
- 20.6. Each vendor must honor any contractual term or condition included in the bid document.
- 20.7. Each vendor must indicate a definite shipping date on all bids after receipt of the purchase order. If not indicated on the vendor's response, the LEA may require delivery within ten (10) days after receipt of the order.
- 20.8. Any changes made by the vendor in the specifications listed in the bid request shall be clearly stated by the vendor. If changes are not stated, the LEA shall assume that items offered meet the specifications.
- 20.9. If a vendor is suspended and requests a hearing, one will be scheduled with the county superintendent, RESA director or MCVV director, or his/her designee. The vendor shall be notified, in writing, of the date, time and place of the hearing.

21. Remedies and Suspensions.

21.1. Remedies.

21.1.1. In the event that a vendor fails to honor any contractual term or condition, the LEA may:

- a. Cancel the contract and re-award the purchase order to the next lowest bidder. The vendor failing to honor contractual obligations is responsible for all differences in cost;
- b. Declare a vendor non-responsible or non-responsive and refuse to award a purchase order. All such instances shall be substantiated in writing. The documentation shall be considered a public document and shall be available for inspection at all reasonable times; or
- c. Suspend, for a period not to exceed one (1) year, the right of a vendor to bid on purchases when there is reason to believe the vendor has violated any of the provisions, terms, or conditions of a contract, this rule, and/or State law. A suspended vendor may appeal the decision of the Purchasing Director to the LEA's board.

21.2. Suspensions.

21.2.1. The following are adequate grounds for suspension:

- a. A vendor has exhibited a pattern of poor performance in fulfilling his or her contractual obligations to the LEA. Poor performance includes, but is not limited to, a vendor providing or furnishing commodities, materials, or services late, or at a quantity or quality level below that which is specified in the contract.
- b. A vendor has breached any contract entered into pursuant to the provisions of W.Va. Code §5A-3-1 et seq. or this rule; or

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- c. A vendor has been convicted of a federal, state, or local crime punishable as a felony, directly related to the performance of a contract entered into pursuant to this rule.

22. Protests.

22.1. Submission of a Protest.

- 22.1.1. Protests based on bid specifications must be submitted no later than five (5) working days prior to bid opening. Protest of purchase order/contract awards must be submitted no later than five working days after the award. 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 purchasing director.
- 22.1.2. All protests shall be submitted in writing to the purchasing director and contain the following information:
 - a. The name and address of the protestor;
 - b. The requisition, purchase order/contract numbers;
 - c. A statement of the grounds of protest;
 - d. Supporting documentation (if necessary); and
 - e. The resolution or relief sought.
- 22.1.3. Failure to submit this information shall be grounds for rejection of the protest by the purchasing director.

22.2. Review of Protest.

- 22.2.1. The purchasing director or his/her designee shall review the matter of protest and issue a written decision. A hearing may be conducted at the option of the purchasing director or assigned designee. Continuation or delay of purchase order/contract award is at the discretion of the purchasing director.
- 22.2.2. The purchasing director may refuse to review any protests when the matter involved is the subject of litigation before a court of competent jurisdiction; if the merits have previously been decided by a court of competent jurisdiction; or if it has been decided in a previous protest by the purchasing director. The provisions of this subsection do not apply where the court requests, expects, or otherwise expresses interest in the decision of the LEA.

23. Receipt of Deliveries.

23.1. Deliveries to a warehouse.

- 23.1.1. When deliveries are made to a central warehouse, or directly to a school or other cost center, personnel receiving the commodities are responsible for the inspecting of goods, ensuring that purchases meet contractual requirements, signing for the commodities, and forwarding the receipting documents to the business office for payment of the invoice.
- 23.1.2. LEAs must develop local procedures for receiving merchandise shipped from vendors to a central warehouse for subsequent delivery to a school or other cost center. These procedures must include the steps to be followed in the following circumstances:

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- a. When the complete order is received and the warehouse personnel are able to verify that all items ordered are received;
- b. When the complete order is received but the warehouse personnel are not able to verify that all items ordered are received, such as when the computer hardware is ordered with specified pre-loaded software;
- c. When all items are not shipped and backorders will not be accepted;
- d. When all items are not shipped and backorders will be accepted.

23.2. Deliveries shipped directly to a school or other cost center.

- 23.2.1. LEAs must also develop local procedures for receiving merchandise shipped from vendors directly to a school or other cost center. These procedures must include the steps to be followed in the same circumstances discussed in the preceding paragraph.

23.3. Deliveries received that are not of acceptable quantity or quality.

- 23.3.1. Any problems with quality, quantity, performance, and lack of conformity to specifications, should be reported to the purchasing director immediately. Poor quality items that do not meet specifications should not be accepted and approved for payment. This applies also to term contract items. It is always best to resolve problems before final payment has been made, whenever possible. Retain all shipping documents and packing containers.

24. Online Procurement.

- 24.1. Online procurement is the process of comparing prices, requisitioning, purchasing, and paying for commodities and services using the Internet.
- 24.2. Online procurement products include: bid process acquisition system for purchases requiring a quote or competitive bid process; direct purchase system for purchases not requiring a quote or bid; purchasing card payment process, if desired; and purchasing card reporting system.
- 24.3. If online procurement is used, all purchasing policies must be followed, including the issuance of purchase orders prior to the time the commodities or services are ordered. The purchase order must be issued to the vendor from whom the commodities or services are being purchased, and not to the online procurement provider.

25. Payment for Commodities or Services.

- 25.1. According to W. Va. Code §12-3-18, it is unlawful for a board of education to pay any claim for services rendered or materials furnished unless an itemized account of the claim is filed by the claimant.
- 25.2. The account shall be itemized in detail, and shall show, among other things, the following:
 - 25.2.1. If the claim is for services, the claim shall show the kind of services, the dates when the services were performed, and the name of the person performing the services.
 - 25.2.2. If the claim is for materials or supplies furnished, the claim shall show in detail the kind of material or supplies, the quantity, dates of delivery, and to whom delivered.
- 25.3. Consequently, LEAs cannot make payments from a summarized statement, but must make all payments for materials furnished and services rendered from an itemized invoice.
- 25.4. In addition, payments cannot be made in advance of the materials being furnished or the services rendered.

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- 25.5. According to W. Va. Code §11-10-11(d), all state, county, district, and municipal officers and agents making contracts on behalf of the state or any political subdivision thereof must withhold payment in the final settlement of any contract, until the receipt of a certificate from the tax commissioner to the effect that all taxes against the contractor have been paid or provided for.
- 25.6. In addition, if the contract is subject to county or municipal business and occupation taxes, the payment must also be withheld until receipt of a release from the applicable county or municipality to the effect that all county or municipal business and occupation taxes levied or accrued against the contractor have been paid.

26. Purchasing Cards.

26.1. General.

- 26.1.1. Pursuant to the authority of W. Va. Code §12-3-10a, LEAs may establish by board policy a purchasing card program for the purpose of authorizing the use of a purchasing card as an alternative payment method when making small purchases of commodities and services, other than travel.
- 26.1.2. A purchasing card is a credit card that can be used as an alternative method of payment for small dollar transactions.
- 26.1.3. All purchasing policies must be followed, regardless of the method of payment, including the issuance of purchase orders.

26.2. Limits.

- 26.2.1. The purchasing card may be used to make payments for goods and designated services that do not exceed the single transaction limit of \$2,500.
- 26.2.2. An LEA may establish a single transaction limit that is less than this amount.
- 26.2.3. The LEA may also want to establish a maximum monthly transaction limit, a maximum number of daily transactions and a maximum number of monthly transactions for each individual cardholder.

26.3. Authorized Card Holders.

- 26.3.1. Purchasing cards may be issued only to the LEA's regular full-time employees. Cards cannot be issued to temporary or part-time employees, contract employees, volunteers, or students.
- 26.3.2. Each purchasing card must be issued in the name of an individual cardholder. Only the employee whose name appears on the front of the card is an authorized user of the card. Cards cannot be issued generically in the name of the LEA or school.

26.4. Responsibilities.

- 26.4.1. The Chief School Business Official is responsible for administering the purchasing card program for the LEA. The responsibilities may be delegated to a purchasing card coordinator.
- 26.4.2. If the board has authorized a purchasing card program in the individual schools, the school principal shall serve as the purchasing card coordinator for his/her school and is responsible for administering the purchasing card program at that school.
- 26.4.3. Responsibilities of the coordinators include, but are not limited to, the following:
 - a. Monitor and oversee the purchasing card program to ensure that key controls are in place to prevent misuse.

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- b. Determine the employees who are eligible to obtain a card.
- c. Ensure the proper completion of applications and cardholder agreements.
- d. Reconcile master statements.
- e. Ensure the prompt payment of the master statement.
- f. Ensure that all cardholders follow all purchasing policies.
- g. Maintain copies of all cardholder agreement forms.
- h. Disseminate updated purchasing card information to cardholders.
- i. Activate purchasing cards.
- j. Ensure that cards are canceled and destroyed upon a cardholder's termination or separation of employment.
- k. Determine the following: credit limit, single transaction limit, number of daily transactions, and number of monthly transactions.
- l. Be responsible for all charges appearing on the master statement.

26.4.4. Each designated employee must complete and sign a purchasing card application provided by the LEA (See Appendix C) in which the employee acknowledges the responsibilities associated with becoming a cardholder.

26.5. Prohibitions and Restrictions.

- 26.5.1. Cardholders are prohibited from delegating a purchase card to another individual. Card delegation is the practice of allowing an individual other than the cardholder whose name appears on the front of the card to have access to the card or card number to initiate or complete a purchase transaction.
- 26.5.2. Purchasing cards must be surrendered immediately upon termination or separation of employment. Upon surrender, the card is to be canceled and the card destroyed.
- 26.5.3. The purchasing card must be kept secure at all times. All cardholders must sign the back of their purchasing card upon receipt. Each individual cardholder is responsible for every charge that appears on his/her card. Purchasing cards should only be used on secured internet sites. A secured site has a closed lock at the bottom of the screen.
- 26.5.4. A purchasing card shall not be used to obtain cash advances or cash credits. Purchasing cards may not be used to pay a vendor requiring the payment of a surcharge.

26.6. Utilities.

- 26.6.1. An LEA may obtain a separate purchasing card with transaction and credit limits exceeding those for individual cards to make payments for utilities.
- 26.6.2. In obtaining a utility card, all transactions other than the payment of utilities must be blocked.
- 26.6.3. A utility company may not charge a surcharge for the convenience of paying with the utilities purchasing card.

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26.7. Receipts.

- 26.7.1. An itemized receipt must be obtained for each transaction charged on a purchasing card. The receipt must contain the following specific information and meet certain conditions:
- a. Receipts must be itemized and include a description of the items purchased, unit price, quantity, and total cost for each item. Use of generic terms such as "miscellaneous" or "various merchandise" is not acceptable.
 - b. Receipts must show no balance due or be marked "paid."
 - c. Receipts must be totaled.
 - d. Receipts must show that the payment was by credit card.
 - e. All receipts should be kept in chronological order by date of purchase.

26.8. Reconciliations and Reviews.

- 26.8.1. Each cardholder is responsible for reconciling his/her statement every month. The purchasing card coordinator is responsible for reconciling the master statement.
- 26.8.2. Individual and master statements must be examined carefully for billing errors, debits due to erroneous billings, or credits to correct a previously disputed item.
- 26.8.3. Upon completion of reconciliation, the cardholder must forward his/her documentation to the coordinator for review.
- 26.8.4. The coordinator is responsible for reconciling the master statement. This includes reviewing all transactions to ensure that they are legitimate and for official business, and that all required documentation is present.
- 26.8.5. For post-audit purposes, all documentation relating to the purchasing card program must be retained for two (2) years from the end of the fiscal year in which the transaction was completed.
- 26.8.6. Schools must provide copies of the master statement, receipts, and other documentation to the business office for review on a quarterly basis.
- 26.8.7. A report of purchasing card expenditures must be provided to the board at regularly scheduled meetings.

26.9. Unauthorized Use.

- 26.9.1. Employees using the purchasing card to knowingly pay for items intended for personal use are subject to disciplinary action up to and including termination and prosecution by the LEA, and subject to civil action by the credit card company for personal liability.
- 26.9.2. Employees failing to properly follow purchasing policies, procedures, and state law associated with the purchasing card program are also subject to disciplinary action up to and including revocation or limitation of purchasing card privileges, a period of probation, or mandatory purchasing card training.

27. Credit Cards.

27.1. General.

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- 27.1.1. In addition to the purchasing cards discussed in the preceding section, LEAs may establish by board policy a program for the use of other types of credit cards.
- 27.1.2. These include corporate credit cards issued to individuals for the payment of travel related expenses and bank or vendor issued credit cards in the name of the LEA for small purchases of commodities.
- 27.1.3. Bank or vendor issued credit cards are used in the same manner as a purchase card to pay for purchases made by the LEA. The cards can be issued in the name of the LEA or to individual employees.
- 27.1.4. If a credit card is issued in the name of the LEA, the LEA must establish by board policy the procedures to be followed for the control and safeguarding of the card to preclude the use of the card by unauthorized personnel or for unauthorized purposes.
- 27.1.5. An LEA may also establish by board policy a credit card program for the individual schools in the county to pay for travel expenses incurred by students on authorized school trips.
- 27.1.6. All purchasing policies must be followed, regardless of the method of payment, including the issuance of purchase orders.

27.2. Corporate Credit Cards.

- 27.2.1. An LEA may obtain a corporate credit card for use by employees who travel frequently to charge pay travel related expenses. The cards are issued in the name of LEA and the individual cardholder.
- 27.2.2. The card is to be used only for authorized travel related expenses.
- 27.2.3. A monthly statement is issued to each individual employee, who is responsible for the payment.
- 27.2.4. The employees are required to follow all travel authorization and reimbursement requirements and must submit travel expense reimbursement requests to be reimbursed by the LEA for all authorized travel expenses.

27.3. Bank or Vendor Issued Credit Cards.

- 27.3.1. Bank or vendor issued credit cards are used in the same manner as a purchase card to pay for purchases made by the LEA. The most significant difference is that these credit cards, unlike purchasing cards, are issued in the name of the LEA, not an individual employee. The LEA must implement internal controls over these credit cards to assign responsibility for purchases made to particular individuals. A log whereby employees sign-out the card could be utilized. A sample form can be found in Appendix C.
- 27.3.2. A bank credit card is issued by a bank and can be used at countless vendor locations. Examples of a bank credit card include Visa and Mastercard.
- 27.3.3. A vendor credit card is similar to a bank issued credit card, but the card is issued by a particular vendor, and may be used only for purchases from that particular vendor or related vendors. These include cards issued by gasoline companies and general merchandise outlets.
- 27.3.4. The card is to be used only for the purchase and payment of small dollar transactions.
- 27.3.5. The LEA must establish by board policy the procedures to be followed for the control and safeguarding of the card to preclude the use of the card by unauthorized personnel or for unauthorized purposes.

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- 27.3.6. Procedures must also be established to reconcile the charges on the card to ensure that only authorized charges are made.
- 27.3.7. An LEA may also allow, by board policy, bank and/or vendor credit cards for the individual schools in the county.
- 27.3.8. A monthly statement is issued to the LEA, who is responsible for the payment.

28. Emergency Procurement.

28.1. Declared Emergencies.

- 28.1.1. The Governor of the State of West Virginia has the inherent constitutional authority to declare an emergency situation. In the event the Governor declares such an emergency, the Governor has the authority to suspend certain laws, rules and/or regulations relating to the acquisition of commodities and service by public organizations pursuant to W.Va. Code § 15-5-6(g).
- 28.1.2. It is of the highest importance that state government responds quickly and effectively to safeguard the public safety and welfare during states of emergency. Yet, even under those circumstances, the acquisitions of commodities and services must be effectuated in a fair and accountable manner.
- 28.1.3. Accordingly, should the Governor suspend said laws, rules and/or regulations, the following procedures shall apply:
 - a. The employees or representatives of the LEA covered by this policy shall exercise sound judgment and discretion when acquiring commodities and services related to the emergency.
 - b. The employees or representatives of the LEAs shall operate with highest ideals of honor and integrity and strive to avoid the appearance of perceived impropriety.
 - c. No person shall corruptly combine, collude, or conspire with one or more persons to lessen competition, cause a higher price to be paid or cause one vendor to be unjustifiably preferred over one or more other prospective vendors.
 - d. No person shall solicit or receive anything of value, directly or indirectly, now or in the future, from any vendor or person supplying commodities or services in relation to the emergency.
 - e. The LEA shall be responsible for developing specifications for commodities and services that do not favor a particular brand or vendor.
 - f. Any contract and/or purchase order in excess of \$100,000 shall be reviewed, approved and signed by the county superintendent, or director of a regional education service agency or multi-county vocational center, whichever the case may be.
 - g. The acquisition of commodities and services not on contract that is estimated to cost in excess of \$1,000 but less than \$5,000 shall at all times be based on three competitive bids. Bids may be verbal but shall be summarized and documented and include the date of contact, vendor, dollar amount, commodity or service description, quantity, number of bids obtained and whether the award was made to the low bidder.
 - h. The acquisition of commodities and services not on contract that is estimated to cost in excess of \$5,000 shall be based on three written bids which shall be documented and include the date of contact, vendor, dollar amount, commodity or service description, quantity, number of bids obtained and whether the award was made to the low bidder.

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- i. If, in the opinion of the LEA, using sound judgment and discretion, time does not permit written bids to be received, verbal bids shall be obtained and documented, with written bids received within five working days of the request.
- j. If, in the opinion of the LEA, using sound judgment and discretion, time does not permit verbal bids to be received, the public organization must secure written approval from the chief executive officer of the state agency to secure necessary services and supplies without bids for only that period of time absolutely necessary to abate the emergency.
- k. All purchase order and/or contract awards shall be made to the lowest, responsible bidder meeting specifications.
- l. Should the award not be made to the lowest priced bidder, a written justification shall be placed on file with the bids that documents the reason the low price was rejected. This justification must be signed by the county superintendent, or director of a regional education service agency or multi-county vocational center, whichever the case may be.
- m. The LEA shall document each expenditure and include specifications, bids, no-bids, award justifications and any other relevant data.
- n. The documentation for each expenditure shall be complete and shall be kept in an orderly manner that will enable any interested party to understand the specifics of the expenditure.
- o. A complete written record of all expenditures relating to the emergency shall be submitted to the Governor within 30 days of the expiration of the declaration of the emergency.
- p. The written record shall include a summary sheet that details all acquisitions for the emergency and lists date of purchase, vendor, dollar amount, commodity or service description, quantity, number of bids obtained and whether the award was made to the low bidder.
- q. The Governor reserves the right to remove the spending authority at any time during the emergency and appoint a person or organization to manage the emergency expenditures and/or transfer that authority to another organization.
- r. All emergency expenditures are subject to complete review and/or thorough audit as requested by the Governor.
- s. The Governor has reserved the right to amend, alter, or cancel the preceding procedures as necessary through written amendments, alterations or cancellations with justification and documentation of specific situations and reasons.

28.2. Local Emergencies.

- 28.2.1. Each LEA must establish by local board policy the procedures to be followed in the case of an emergency at the local level that has not been declared an emergency by the Governor.
- 28.2.2. The chief executive officer, purchasing director or appointed designee shall issue prior written approval for purchases in emergency situations. These situations can arise from acts of nature, conditions that are detrimental to the health, safety, or welfare of employees or students, or other unforeseen events that threaten the termination of essential services. These can include unforeseen delays by contractors or delays in the transportation of indispensable goods and materials. Emergency purchases are not to be used for hardships created by neglect, poor planning, or lack of organization.
- 28.2.3. Competitive bids must be obtained whenever possible. If, in the opinion of the LEA, using sound judgment and discretion, time does not permit verbal bids to be received, the LEA must secure

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written approval from the chief executive officer of the agency to secure necessary services and supplies without bids for only that period of time absolutely necessary to abate the emergency.

29. Purchases by Schools.

- 29.1. All purchases by the schools are to be made in accordance with the procedures specified in State Board Policy 1224.1 and the incorporated manual entitled *Accounting Procedures Manual for the Public Schools in the State of West Virginia* and all locally established purchasing procedures.
- 29.2. Public schools are not legal entities and school personnel do not have the statutory authority to enter into bidding contracts or obligate board funds. All contracts must be approved and signed by the county board or the county superintendent, if approval authority has been delegated to the superintendent. Except for the funds discussed in the succeeding paragraph, individual schools have the authority to expend only the "quasi-public" funds received by the school from curricular or noncurricular activities.
- 29.3. LEAs are not permitted to distribute public funds to individual schools for expenditure. Funds may be allocated to each school, but the actual procurement transactions are to be handled through the LEA's central business office. Exceptions to this general rule are: (a) the distribution of funds appropriated for faculty senates through the Public School Support Program (PSSP) and supplemental allocations by the LEA to provide the basic allocation for teachers not funded through the PSSP; (b) the occasional or infrequent reimbursement of an expense unintentionally paid by a school, or; (c) the disbursement of funds to a school for the repetitive purchase of a specific item, such as postage, where it is impractical to handle the transaction in any other manner. Supplemental allocations by the LEA to the appropriated amount provided to each teacher through the PSSP is not to be distributed to the schools for expenditure. The latter two exceptions are for small dollar amounts and are not to be extended to the routine distribution of funds to all schools in the county on a formula or predetermined basis for the schools to determine how the funds are expended.
- 29.4. All state or federal grant funds received directly by an individual school are to be remitted immediately to the board office. The funds are to be allotted to the school for expenditure for the purposes identified in the grant award, but the procurement transactions are to be handled through the LEA's central business office.
- 29.5. Schools making purchases using "quasi-public" funds or student activity funds should explore whether the goods and services are available from a contract negotiated by the LEA or a cooperative contract with a RESA or other LEAs before going to the open market.

30. Inventory Control Function.

- 30.1. Inventory Control Function.
 - 30.1.1. An adequate inventory control system of all capital assets, equipment and disposal supplies and commodities purchased must be maintained to safeguard the assets on hand and to ensure that those that are placed into service or consumed have been used for an authorized purpose. The maintenance of inventory records is an integral part of this system, providing an accounting of all assets purchased and consumed. A perpetual inventory system provides a continuous report of the quantity and description of the items on hand at any given time.
- 30.2. Inventory of Capital Assets.
 - 30.2.1. The inventory of capital assets must be maintained on the West Virginia Education Information System, as specified in the procedures manual issued by the Office of School Finance entitled Fixed Asset Inventory System for the County Boards in the State of West Virginia.
- 30.3. Inventory of Supplies and Other Expendable Property.
 - 30.3.1. A perpetual inventory system is to be maintained of all supply items that have a material dollar value, such as the supply inventory in a central warehouse or the vehicle replacement parts at the

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maintenance garage. The supply inventory should include for each item or group of items the following information: Name of item, quantity purchased, date of purchase, cost, reorder point, amount dispensed, and date dispensed.

31. Disposal of Surplus Real and Personal Property.

31.1. Disposal of Real Property:

- 31.1.1. According to the provisions of W. Va. Code §18-5-7 and related case law, at any time a county board determines that any building or land is no longer needed for school purposes, the real property must be sold at public auction, unless it is sold to:
 - a. The state or political subdivisions, including county commissions or agencies thereof, for an adequate consideration;
 - b. The United States of America, or any instrumentality, agency or political subdivision thereof, provided that the property is included in any federal flood control project;
 - c. A private, nonprofit, tax-exempt organization having been granted tax-exempt status by IRS Code 501(c) 3 through (8) inclusive, (19) or (23) for nominal consideration, provided that the property is for charitable, economic development or other community use, and provided further that the title to the property reverts to the board if the organization dissolves or ceases to use the property for the intended purpose within the first five years of such conveyance.
- 31.1.2. In rural communities, if the original sale to the board was not a voluntary arms length transaction at fair market value at the time of sale, the grantor of the land, his heirs or assigns, shall have the right to purchase the land and the mineral rights at the same price for which it was originally sold.

31.2. Disposal of Personal Property:

- 31.2.1. At any time a LEA determines that any personal property, including equipment, portable building, or motor vehicle, including school bus, school furniture, computers, or other personal property is no longer needed for school purposes, the purchasing director, in cooperation with the Chief School Business Official may declare the property surplus and dispose of the property in the most economical method for the benefit of the LEA.
- 31.2.2. The property may be disposed of in several ways: discarded or junked if it is determined not to have any salvageable value, traded in towards the purchase of a replacement item, sold at public auction, by competitive bid to the highest bidder, by fixed price, or contributed to:
 - a. The state or political subdivisions, including county commissions or agencies thereof;
 - c. A private, nonprofit, tax-exempt organization having been granted tax-exempt status by IRS Code 501(c) 3 through (8) inclusive, (19) or (23) for nominal consideration, provided that the property is for charitable, economic development or other community use.
- 31.2.3. LEA employees and members of their immediate family are not eligible to buy or receive surplus property belonging to the LEA unless the surplus property is offered to the general public for sale.
- 31.2.4. The sale of the surplus property must be conducted by the purchasing director or designee.
- 31.2.5. The determination that property is no longer needed for school purposes and the sale of the property cannot be made at the school or cost center level.

31.3. Disposal of Equipment Purchased From a Federal Grant:

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- 31.3.1. When equipment purchased with federal funds is no longer needed for the original project or program, the recipient must use the equipment in connection with its other federally-sponsored activities, in the following order of priority: (1) activities sponsored by the awarding agency which funded the original project; and then (2) activities sponsored by other federal awarding agencies.
- 31.3.2. When equipment purchased with federal funds is no longer needed by the recipient, disposal procedures are contained in the United States Department of Education General Administrative Regulations (EDGAR) §74.34.

32. Code of Ethics.

- 32.1. In order to maintain public confidence in the honesty and integrity of the procurement process, all officers and employees of the LEA involved with the procurement of commodities and services must conduct themselves in a manner that is above reproach.
- 32.2. All LEA employees must comply with the requirements of West Virginia Government Ethics Act (W. Va. Code §§6B-1-1 and 6B-2-1 et seq., W. Va. Code §§61-5A-6 and 61-10-15, and all decisions of the Ethics Commission.
- 32.3. The Code of Ethics of the National Institute of Governmental Purchasing, Inc. is included in Appendix D, which is an excellent code for all personnel involved in the procurement of commodities and services for LEAs to adhere to.

33. Non-Discrimination Provisions.

- 33.1. The LEA will not discriminate in its procurement policies, practices or procedures based on race, color, religion, creed, or sexual orientation.

34. Violations.

- 34.1. According to W. Va. Code §11-8-26 and subsequent sections of the article, any person who authorizes or approves a purchase or contract in violation of the W. Va. Code, this rule or any policy or procedure adopted by the LEA may be held personally liable for the cost of the purchase or contract. Purchases and contracts violating the Code and/or this rule are void and of no effect.
- 34.2. Any person receiving anything of value from a known interested party in awarding a purchase order is subject to the provisions of W. Va. Code §5A-3-28, 29, 30 and 31, 61-5A-6 and 61-10-15, and all rulings of the West Virginia Ethics Commission, unless determined otherwise by a court or the West Virginia Ethics Commission.
- 34.3. Pursuant to W. Va. Code §18-2A-9, any member of the State Board, county board of education, county superintendent, or any other person who shall, either directly or indirectly, receive, solicit, or accept, or who shall give or offer to give, any gift, present or thing of value to influence the vote for the adoption of any book, instructional material, or learning technology, shall be guilty of a felony, and upon conviction, be punished by confinement in the penitentiary for not less than one year nor more than three years.
- 34.4. Misuse of a purchasing card authorized by W. Va. Code §12-3-10a is a felony and upon conviction thereof is subject, pursuant to W. Va. Code §12-3-10b, to confinement in the penitentiary for not less than one (1) nor more than five (5) years, or to a fine of not more than five thousand dollars (\$5,000), or both a fine and imprisonment.
- 34.5. The purchasing director may suspend from bidding on LEA purchases up to one year, any vendor violating the W. Va. Code, this rule, or any policy or procedure adopted by the board. Appeal of the suspension may be made to the county board of education.
- 34.6. According to W. Va. Code §61-10-15(a), it is unlawful for any member of a county commission, overseer of the poor, district school officer, secretary of a board of education, supervisor or superintendent, principal or

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teacher of public schools, or any member of any other county or district board, or for any county or district office to be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract or service, or in furnishing any supplies in the contract for, or the awarding or letting of a contract if, as a member, officer, secretary, supervisor, superintendent, principal, or teacher, he or she may have any voice, influence or control.

- 34.7. W. Va. Code §61-10-15(b) states that, any person or officer named who violates subsection (a) of this section is guilty of a misdemeanor, and, upon conviction thereof shall be fined not less than fifty nor more than five hundred dollars and may, in the discretion of the court, be imprisoned for a period not to exceed one year.
- 34.8. W. Va. Code §61-10-15(c) states that any person convicted of violating the provisions of subsection (a) of this section shall also be removed from his or her office and the certificate or certificates of any teacher, principal, supervisor and superintendent who violates any provision of this section shall, upon conviction, be immediately revoked.
- 34.9. W. Va. Code §61-10-15(d) states that any person, firm or corporation that offers or gives, any compensation or thing of value or forebears to perform any act to any of the officers or persons named in subsection (a) of this section or to or for any other person with the intent to secure the influence, support, or vote of such officer or person for any contract, service, award or other matter as to which any county or school district becomes or may become the paymaster, is guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than five hundred, nor more than twenty-five dollars, and in the court's discretion, the person or any member of the firm, or if it be a corporation, any agent or officer offering or giving any compensation, may in addition to a fine, be confined in the county or regional jail for a period not to exceed one year.
- 34.10. W. Va. Code §61-10-15(e) through (h) contain certain exceptions where the provisions of subsection (a) of this section do not apply.

**PURCHASING POLICIES AND PROCEDURES MANUAL
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APPENDIX A

PURCHASING POLICIES AND PROCEDURES MANUAL FOR LOCAL EDUCATIONAL AGENCIES

DEFINITIONS

Agreement – An arrangement between parties regarding a method of action.

Architectural and Engineering Services – Includes 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.

Bid – A competitive offer made by a seller.

Bidding – The process of soliciting the price and other considerations for goods and services from qualified vendors. The solicitation of prices from more than one vendor constitutes competitive bidding. Bids may be solicited in an informal manner by telephone, facsimile, Internet or mail, or through a formal sealed bid process.

Bid Bond – An insurance agreement 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. The bond is usually five (5) percent of the total bid amount.

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

Blanket Purchase Order - A written or electronic document issued by the LEA to a vendor authorizing or executing a purchase transaction in situations where there is normally a large volume of small dollar purchases of a repetitive nature and it is difficult to determine in advance exactly which products are needed.

Capital Asset – Land, land improvements, easements, buildings, building improvements, vehicles, machinery, equipment, and all other tangible or intangible assets that exceed the capitalization threshold established by the local education agency (LEA) and have a useful life extending beyond one year.

Commodity – Supplies, materials, equipment, contractual services and any other articles or things used by or furnished to a governmental agency.

Competitive bids - The process of soliciting the price and other considerations for goods and services from more than one qualified vendor.

Confirming Purchase Order – A purchase order issued to a vendor immediately after an order has been placed either electronically or by telephone by an authorized individual to encumber the funds and provide written confirmation of the order. Confirming purchase orders are not to be issued after the invoice has been received.

Consumable Supply – A commodity which, when used in the ordinary course of business, will become consumed or of no market value. Also referred to as an expendable commodity.

Contract – A written, legally binding agreement between two (2) or more parties in which is specified the terms and conditions to which the parties have agreed.

Construction – Construction means the building, alteration, renovation, or upgrading of facilities, buildings and structures including the acquisition and necessary site preparation of land, as well as the acquisition, installation, or substantial upgrade of existing equipment, machinery, furnishings, utilities, or other similar items.

Cooperating Agreement – An agreement between two or more LEAs in which the participants have agreed to issue a combined solicitation for bids for the purpose of obtaining larger volume discounts or reducing administrative expenses.

Declared Emergency – An unexpected situation or sudden occurrence of a serious and urgent nature that has been declared an emergency by the Governor of the State of West Virginia.

Emergency – An unexpected situation or sudden occurrence of a serious and urgent nature that demands immediate action. These situations can arise from acts of nature, conditions that are detrimental to the health, safety, or welfare of students, or other unforeseen events that threaten the termination of essential services, including delays in the

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transportation of indispensable goods and materials. Situations created by improper planning or negligence are not to be considered an emergency.

Evaluation of Bids – The process of examining all offers received in order to ascertain whether they meet all bid requirements and to determine which offer to recommend or select for award.

Expression of Interest (EOI) – A written or electronic response from a vendor expressing interest in submitting a proposal to a request or solicitation issued by an LEA.

Freight Terminology – Terms used to specify the point of origin and destination, stating the responsible party for bearing freight charges and when title passes.

Free on Board (FOB) Destination – Title remains with the vendor until the commodities are delivered to the point of destination specified in the purchase order and accepted by the buyer. The seller is responsible for any losses or damages resulting from shipment and files any claims against the carrier. The freight costs may be paid by the seller (Freight Prepaid), may be paid by the seller in advance but invoiced back to the buyer (Freight Collect and Allowed), or may be paid by the buyer (Freight Collect).

Free on Board (FOB) Shipping Point or Origin – Title passes to the buyer immediately at the time the commodities are picked up by a common carrier for shipment. The buyer is responsible for any losses or damages resulting from shipment and files any claims made against the carrier. The freight costs may be paid by the seller (Freight Prepaid), may be paid by the seller in advance but invoiced back to the buyer (Freight Prepaid and Add), or may be paid by the buyer (Freight Collect).

General Terms and Conditions – Standard clauses and requirements incorporated into all solicitations and resulting contracts which are derived from laws, or administrative procedures.

Grant – Money distributed to a recipient, including state agencies and political subdivisions, in which no direct commodity or service is received by the granting agency.

Individual Statement – A monthly statement of transactions for each purchase card issued to employees of the LEA listing all activity charged on the card.

Instructional materials – According to W.Va. Code §18-2A-1, instructional materials means and includes systems of instructional materials, or combinations of books and supplementary materials that convey information to the pupil.

Justification – A written explanation or an award which must be retained as a public record available for inspection when the award is not awarded to the lowest bidder.

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

Local Education Agency (LEA) - This includes county boards of education, regional education service agencies and multi-county vocational centers.

Learning Technologies – According to W.Va. Code §18-2A-1, instructional materials in an electronic or magnetic format used for the formal study of a particular subject, and include applications using computer software, computer assisted instruction, interactive videodisc, other computer courseware, and magnetic media.

Lease – A written agreement between the owner of the equipment (lessor) and the LEA (lessee) by which the owner agrees to authorize the LEA to use the equipment for a predetermined fee for a period exceeding 30 days. Title does not pass from the owner to the lessee.

Lease Purchase – A written agreement in which the lessee exercises an option to have the lease payments apply, in whole or in part, as installment payments for equity or ownership upon completion of the agreement. Title transfers to the lessee with the last installment payment.

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Life Cost Cycle – A best value purchasing tool that allows for the evaluation of the total or projected cost of an item over its life cycle, in addition to the initial purchase price, including operational costs, salvageable value and other factors.

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

Litigation Bond – A valid bond submitted by the vendor with the bid that may be used by the LEA to recover damages due to frivolous and groundless lawsuits filed by the vendor.

Maintenance Bond – A valid bond provided by the vendor as a warranty of normally two years, which is frequently used on roofing projects.

Mandatory Terms – All terms and conditions in the written specifications that are absolute and preceded by shall, must, or will.

Master Statement – A monthly statement of transactions for all purchase cards issued to employees of the LEA listing the activity charged on all cards.

Negotiation – A bargaining process between two or more parties, each with its own viewpoints and objectives, that are seeking to reach a mutually satisfactory agreement on, or settlement of, a matter of common concern.

No Debt Affidavit – A form required by W.Va. Code §§ 5A-3-10a to be completed by all vendors prior to the award of a contract. The statute states that no contract or renewal of any contract may be awarded to any vendor who is a debtor to the State of West Virginia in an aggregate amount of \$5,000 or more.

Non-mandatory Terms – All terms and conditions in the written specifications that are understood to be permissive and are preceded by may, should, or could.

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

Open-ended Contract – A generic term used for an instrument that is competitively bid and awarded in which all terms, conditions, and prices are predetermined with the exception of quantity.

Performance Bond – A bond, usually for the full amount of the contract, in which a valid surety agrees to pay a certain sum in the event a vendor fails to perform a contract as bid.

Personal Property – Property of any kind except real property. It may be tangible, having physical existence, or intangible, having no physical existence, such as copyrights, patents or securities.

Piggybacking – The process of utilizing another agency's existing open-ended contract to which the requesting LEA was not an original party to make purchases.

Pre-bid Conference – A meeting between the LEA and all interested vendors that offers the opportunity to emphasize and clarify critical aspects of a solicitation, eliminate misunderstandings, and allow for vendor input. Vendor attendance may be mandatory or voluntary as specified in the bid document.

Prevailing Wages – Hourly labor and fringe benefits rates established annually by the West Virginia Division of Labor which is required by W.Va. Code §§ 21-5A-2 to be paid to all workers employed by or on behalf of any public authority engaged in the construction of public improvements. This includes the construction, reconstruction, improvement, enlargement, painting, decorating, or repair of any public improvement let to contract.

Protest – A formal, written complaint filed by a vendor regarding specifications or the award of a contract submitted with the intent of receiving a remedial result.

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Purchase Card – A credit card issued in the name of an employee of the LEA to be used as an alternative method of payment for authorized purchases of the LEA that do not exceed the amount specified elsewhere in this policy.

Public Improvement - All buildings, roads, highways, bridges, streets, alleys, sewers, ditches, sewage disposal plants, waterworks, airports, and all other structures upon which construction may be let to contract by the State or any political subdivision, including an LEA.

Purchasing Card – A credit card used for the purchase of commodities.

Purchase Order – A written or electronic document issued by the LEA to a vendor authorizing or executing a purchase transaction.

Purchasing Director – The individual employed by a county board of education, regional education service agency, or multi-county vocational center who is assigned the responsibility of directing, supervising or performing the duties of purchasing all required commodities and services at the most advantageous benefit to the local educational agency.

Quasi-public funds – Funds collected or received by any principal, teacher, student, parent, person, or organization or body directly connected with the school for the benefit of the school system as a result of curricular or noncurricular activities.

Real Property – Land, including land improvements, structures, and additions thereto, but excludes movable machinery and equipment.

Requisition – A written or electronic request submitted by a sub-unit of the LEA to the LEA's purchasing director requesting that a certain purchase be authorized. Upon approval, purchase requisitions are converted into purchase orders.

Related Party - Means a party, whether an individual, corporation, partnership, association, limited liability company or any other form of business association or other entity whatsoever related to any vendor by blood, marriage, ownership or contract through which the party has a relationship of ownership, or other interest with the vendor, so that the party will actually or by effect receive or control a portion of the benefit, profit or other consideration from performance of a vendor contract with the party receiving an amount that meets or exceeds five percent of the total contract amount.

Release – A written order by the LEA to the contractor authorizing quantities of commodities and/or services to be delivered in accordance with the terms, conditions, and prices stipulated in the original contract.

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

Renewal – The extension of an existing contract for an additional period of time in accordance with the terms and conditions of the original contract.

Rental – Fee paid for the temporary use of facilities or equipment, usually for a period of less than 30 days.

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

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

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

Resident Vendor Preference (RVP) – An additional score assigned to a local vendor during the evaluation process to provide preferential treatment.

PURCHASING POLICIES AND PROCEDURES MANUAL FOR LOCAL EDUCATIONAL AGENCIES

Services – Work performed by a vendor that consists primarily of intangible personal services rather than the furnishing of tangible commodities.

Sheltered Workshop – An establishment where manufacture or handiwork is carried on, which is operated either by a public agency, a cooperative, or a nonprofit private corporation or association, in which no part of the net earning inures, or may lawfully inure, to the benefit of any private shareholder or individual. It is operated for the primary purpose of providing remunerative employment to blind or severely disabled persons who cannot be absorbed into the competitive labor market and which shall be approved, as evidenced by a certificate of approval, by the West Virginia Division of Rehabilitation Services.

Sole Source – The only source for a specific commodity or service.

Solicitation – A written, electronic, or oral request submitted by the LEA to obtain bids or proposals for the purchase of commodities or services. The request can be in writing or orally.

Specifications – A detailed description of the commodity or service for which a bid is being requested.

Statewide Contract – A contract between the State of West Virginia and a qualified vendor used for the purchase of frequently used commodities or services. LEAs may purchase from statewide contracts.

State Multiple List – List of textbooks, instructional materials, and learning technologies that have been approved by the State Board of Education for use in the public schools in the State as the primary source of delivery of the instructional goals and objectives for state required courses.

Stringing – The illegal practice of issuing a series of requisitions or purchase orders for the purpose of circumventing the competitive bidding procedures.

Terms of Sale – Stipulations made within the contract regarding the transaction.

Textbook – According to W.Va. Code §18-2A-1, textbook is a book used as a standard work for the formal study of a particular subject. The term "textbook" includes books, instructional materials and learning technologies.

Transaction Limit – The maximum amount that can be charged in a single transaction using an authorized purchase card.

Unit Price – The cost per unit of the commodity or service being purchased.

Utility Card – A purchase card issued for the sole purpose of paying utility bills, which include cable, electric, garbage collection, heating oil, natural gas, sewage, telephone, water, and similar services.

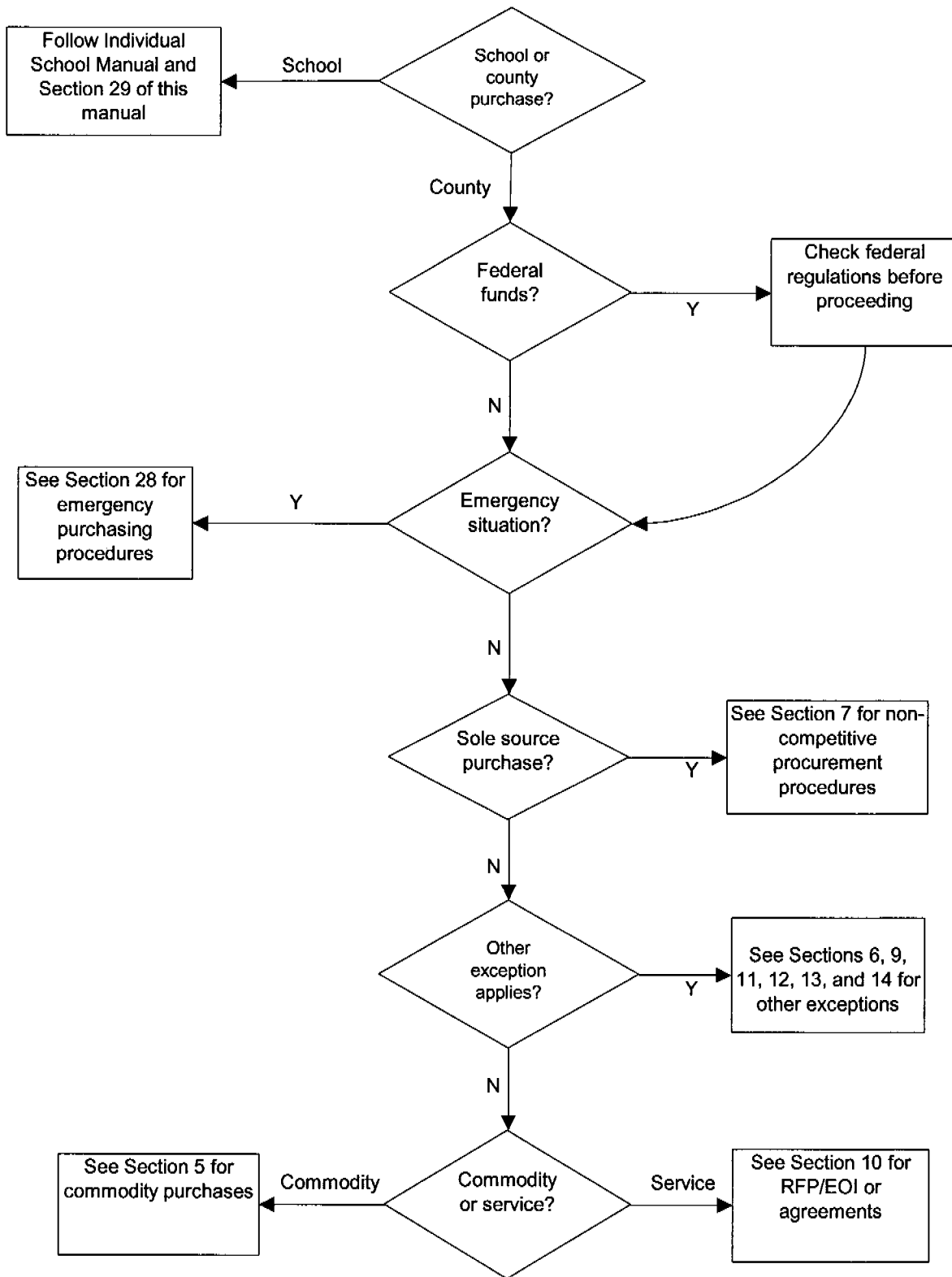
Vendor – An individual, partnership or business authorized to conduct business in the State of West Virginia that is able to furnish the desired commodity or service.

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APPENDIX B

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FLOW CHART FOR PURCHASING DECISIONS



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APPENDIX C

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Agreement Addendum (WV-96)

Instructions

When a LEA enters into any contract/agreement with vendor terms and conditions, a **FORM WV-96, Agreement Addendum**, may be completed and filed with the contract/ agreement. This form only requires signatures.

This is a universal "Agreement Addendum" form which may be signed and retained as a part of the final contract/agreement any time a vendor requires the LEA to sign the vendor's contract/agreement or the vendor submits alternate language with its bid or contract. LEAs are urged to execute the **WV-96** on all agreements and leases where equipment with maintenance is included.

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AGREEMENT ADDENDUM

In the event of conflict between this addendum and the agreement, this addendum shall control:

1. **ARBITRATION** -Any references to arbitration contained in the agreement are hereby deleted. Disputes arising out of the agreement shall be presented to the West Virginia Court of Claims.
2. **HOLD HARMLESS** -Any clause requiring the Agency to indemnify or hold harmless any party is hereby deleted in its entirety.
3. **GOVERNING LAW** -The agreement shall be governed by the laws of the State of West Virginia. This provision replaces any references to any other State's governing law.
4. **TAXES** -Provisions in the agreement requiring the Agency to pay taxes are deleted. As a State entity, the Agency is exempt from Federal, State, and local taxes and will not pay taxes for any Vendor including individuals, nor will the Agency file any tax returns or reports on behalf of Vendor or any other party.
5. **PAYMENT** -Any references to prepayment are deleted. Payment will be in
6. **INTEREST** -Should the agreement include a provision for interest on late payments, the Agency agrees to pay the maximum legal rate under West Virginia law. All other references to interest or late charges are deleted.
7. **RECOUPMENT** -Any language in the agreement waiving the Agency's right to set-off, counterclaim, recoupment, or other defense is hereby deleted.
8. **FISCAL YEAR FUNDING** -Service performed under the agreement may be continued in succeeding fiscal years for the term of the agreement, contingent upon funds being appropriated by the Legislature or otherwise being available for this service. In the event funds are not appropriated or otherwise available for this service, the agreement shall terminate without penalty on June 30. After that date, the agreement becomes of no effect and is null and void. However, the Agency agrees to use its best efforts to have the amounts contemplated under the agreement included in its budget. Non-appropriation or non-funding shall not be considered an event of default.
9. **STATUTE OF LIMITATION** -Any clauses limiting the time in which the Agency may bring suit against the Vendor, lessor, individual, or any other party are deleted.
10. **SIMILAR SERVICES** -Any provisions limiting the Agency's right to obtain similar services or equipment in the event of default or non-funding during the term of the agreement are hereby deleted.
11. **ATTORNEY FEES** -The Agency recognizes an obligation to pay attorney's fees or costs only when assessed by a court of competent jurisdiction. Any other provision is invalid and considered null and void.
12. **ASSIGNMENT** -Notwithstanding any clause to the contrary, the Agency reserves the right to assign the agreement to another State of West Virginia agency, board or commission upon thirty (30) days written notice to the Vendor and Vendor shall obtain the written consent of Agency prior to assigning the agreement.
13. **LIMITATION OF LIABILITY** -The Agency, as a State entity, cannot agree to assume the potential liability of a Vendor. Accordingly, any provision limiting the Vendor's liability for direct damages or limiting the Vendor's liability under a warranty to a certain dollar amount or to the amount of the agreement is hereby deleted. In addition, any limitation is null and void to the extent that it precludes any action for injury to persons or for damages to personal property.
14. **RIGHT TO TERMINATE** -Agency shall have the right to terminate the agreement upon thirty (30) days written notice to Vendor.
15. **TERMINATION CHARGES** -Any provision requiring the Agency to pay a fixed amount or liquidated damages upon termination of the agreement is hereby deleted. The Agency may only agree to reimburse a Vendor for actual costs incurred or losses sustained during the current fiscal year due to wrongful termination by the Agency prior to the end of any current agreement term.
16. **RENEWAL** -Any reference to automatic renewal is hereby deleted. The agreement may be renewed only upon mutual written agreement of the parties.
17. **INSURANCE** -Any provision requiring the Agency to insure equipment or property of any kind and name the Vendor as beneficiary or as an additional insured is hereby deleted.
18. **RIGHT TO NOTICE** -Any provision for repossession of equipment without notice is hereby deleted. However, the Agency does recognize a right of repossession with notice.
19. **ACCELERATION** -Any reference to acceleration of payments in the event of default or non-funding is hereby deleted.
20. **AMENDMENTS** -All amendments, modifications, alterations or changes to the agreement shall be in writing and signed by both parties. No amendment, modification, alteration or change may be made to this addendum without the express written approval of the Purchasing Division and the Attorney General.

ACCEPTED BY:

VENDOR:

Local Education Agency: _____ Company Name: _____

Signed: _____ Signed: _____

Title: _____ Title: _____

Date: _____ Date: _____

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Bid Quotation (WVDE-49)

Instructions

FORM WVDE-49, Bid Quotation may be used in conjunction with verbal bid requirements under small purchases (\$1,001 -\$5,000). This form is recommended for use to fulfill these requirements. The following are instructions for using FORM WVDE-49:

Date -The LEA should insert the date the verbal quotations were accepted.

Purpose -The LEA should insert the reason why the item(s) are being purchased, e.g., stock, immediate repairs, etc.

Quotes Received By -The signature of the individual within the LEA receiving the verbal bids should be written.

Vendor -The vendors who are contacted concerning purchase of the item, should be written in the appropriate space.

Agent -The vendor's agent who gives the quotes to the LEA should be written.

Reason for Award -The reason why the item was awarded to a particular vendor, e.g., sole source, timely delivery, ability to meet demand, etc. should be given.

Purchase Authorized By -The signature of the individual within the LEA who has given approval for the purchase should be written in the appropriate space.

Purchase Authorized By -The signature of the individual within the LEA who has given approval for the purchase should be written in the appropriate space.

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Request for Quotations (WVDE-43)

Instructions

The **FORM WVDE-43, Request for Quotations** may be used by all LEAs when obtaining written quotations. These quotations must be retained by the LEA on purchases \$5,001 to \$10,000.

Return to - Enter the mailing address in space marked "A" to which the quotation is to be returned.

Vendor - Enter name and address of three (3) separate vendors in the three (3) spaces marked "B".

By - Enter the time of the bid opening such as, 3:00 p.m. in space "C" and the date of the bid opening, e.g. November 1, 2002 in space "C-1".

Requisition Number - Enter number assigned by the LEA to this purchase.

Date - Enter the date that the Request for Quotation is typed and mailed.

Account Number - Enter account number from which the funds are to expended.

To Be Delivered To - Enter the address to which the material is to be delivered. If a specific room or part of a building is the delivery point, so specify.

Summary of Quotation - **This space is to be used by the LEA to keep notes and a summary of quotations AFTER bids have been returned. Do not type in this space when preparing the Request for Quotation.**

Delivery Requirements - Enter the date that you will need the delivery of the commodity on the Request for Quotation. Be realistic. A short lead time may increase your cost, if it necessitates special handling by the vendors. Allow a reasonable time for delivery. Be specific. Delivery requirements such as, ASAP or immediately, are vague and tend to be meaningless. Give a specific date or a number of days after receipt of order (ARO) for delivery.

Item Number, Quantity and Description - The description must contain the desired specifications. If a brand name is used as the specification, the words "or equal" must be entered after the brand name and model number. The unit price and amount column are not to be completed.

Distribution - Separate the form, sending one (1) copy to the vendor indicated on each copy. The vendor is to fill in all necessary information and return to the LEA. The vendors must be instructed to return quotations even if there are "no bids. " A "no return" will not be considered a bid. The vendor must also sign the quotation in order for the bid to be accepted.

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GENERAL TERMS & CONDITIONS (REQUEST FOR QUOTATION) RFQ AND (REQUEST FOR PROPOSAL) RFP

1. Awards will be made in the best interest of the LEA.
2. The LEA may accept or reject in part, or in whole, any bid.
3. All quotations are governed by the *West Virginia Code* and Policy 8200.
4. All services performed or goods delivered under LEA Purchase Orders/Contracts are to be continued for the term of the Purchase Order/Contracts, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise available for these services or goods, this Purchase Order/Contract becomes void and of no effect after June 30.
5. Payment may only be made after the delivery and acceptance of goods or services.
6. Interest may be paid for late payment in accordance with the *West Virginia Code*.
7. Vendor preference will be granted only upon written request at the time of bid in accordance with the *West Virginia Code* and LEA purchasing policy.
8. The LEA is exempt from Federal and State taxes and will not pay or reimburse such taxes.
9. The Purchasing Director may cancel any Purchase Order/Contract upon 30 days written notice to the seller.
10. The laws of the State of West Virginia and Policy 8200 shall govern all rights and duties under the Contract, including without limitation the validity of this Purchase Order/Contract.
11. Any reference to automatic renewal is hereby deleted. The Contract may be renewed only upon mutual written agreement of the parties.
12. **BANKRUPTCY:** In the event the vendor/contractor files for bankruptcy protection, this contract is automatically null and void, and is terminated without further order.

INSTRUCTIONS TO BIDDERS

1. Vendor is requested to use the quotation forms provided by the LEA.
2. **SPECIFICATIONS:** Items offered must be in compliance with the specifications. Any deviation from the specifications must be clearly indicated by the bidder. Alternates offered by the bidder as "equal to" the specifications must be clearly defined. A bidder offering an alternate should attach complete specifications and literature to the bid. The Purchasing Director may waive minor deviations to specifications.
3. Complete all sections of the quotation form.
4. Unit prices shall prevail in case of discrepancy.
5. All quotations are considered F.O.B. destination unless alternate shipping terms are clearly identified in the quotation.
6. The vendor must clearly instruct on the bid document if the vendor wishes to have the payment sent to a different "remit to" address other than the address on the face of this document.

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CERTIFICATION OF NON-CONFLICT OF INTEREST

According to W. Va. Code §61-10-15, It shall be unlawful for any member of a county commission, overseer of the poor, district school officer, secretary of a board of education, supervisor or superintendent, principal or teacher of public schools, or any member of any other county or district board, or for any county or district office to be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract or service, or in furnishing any supplies in the contract for, or the awarding or letting of, which as such member, officer, secretary, supervisor, superintendent, principal, or teacher, he/she may have any voice, influence or control."

The individual(s) listed below have been charged to evaluate or serve as members or advisors of an evaluation committee for the solicitation as specified [_____] and are certifying that they have no conflict of interest with any of the participating vendors. This requirement is applicable to all transaction types.

Name	Title	Signature	Date

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No Debt Affidavit

Instructions

The **No Debt Affidavit** is administered in accordance with the *West Virginia Code, §5A-3-10A*.

According to the statute, no contract or renewal of any contract may be awarded under this article to any vendor or prospective vendor when the vendor or prospective vendor or a related party to the vendor or prospective vendor is a debtor as defined in this section and the debt owed is an amount greater than \$5,000 in the aggregate.

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PO or RFP No. _____

AFFIDAVIT

West Virginia Code §5A-3-10a states:

No contract or renewal of any contract may be awarded under this article to any vendor or prospective vendor when the vendor or prospective vendor or a related party to the vendor or prospective vendor is a debtor as defined in this section and the debt owed is an amount greater than five thousand dollars in the aggregate.

Definitions:

"Debt" means any assessment, penalty, fine, tax or other amount of money owed to the state because of a judgment, fine, permit violation, license assessment, penalty or other assessment presently due and required to be paid to the state or any of its political subdivisions, including any interest or additional penalties accrued thereon;

"Debtor" means any individual, corporation, partnership, association, limited liability company or any other form or business association owing a debt to the state or any of its political subdivisions;

"Related party" means a party, whether an individual, corporation, partnership, association, limited liability company or any other form or business association or other entity whatsoever related to any vendor by blood, marriage, ownership or contract through which the party has a relationship of ownership or other interest with the vendor, so that the party will actually or by effect receive or control a portion of the benefit, profit or other consideration from performance of a vendor contract with the party receiving an amount that meets or exceeds five percent of the total contract amount.

Exception:

The prohibition does not apply where a vendor has contested any tax administered pursuant to chapter eleven of the West Virginia Code, worker's compensation premium, permit fee or environmental fee or assessment, and the matter has not become final, or where the vendor has entered into a payment plan or agreement and the vendor is not in default of any of the provisions of such plan or agreement.

Under penalty of law for false swearing (West Virginia Code §61-5-3), it is hereby certified that the bidder and all related parties do not owe any debts or, if a debt is owed, that the provisions of the exception clause (above) apply.

Vendor's Name: _____

Authorized Signature: _____ Date: _____

Agreement (WVDE-48)

PURCHASING POLICIES AND PROCEDURES MANUAL FOR LOCAL EDUCATIONAL AGENCIES

Instructions

The **FORM WV-48, Agreement** is designed to provide agencies a method whereby they may enter into a short-term agreement without the necessity of drawing up complicated legal forms. By utilizing the form, whose content and format have previously been approved, the agency will aid in the prompt processing of the contract.

Purchase Order Number - Enter the purchase order number assigned by the LEA.

WVEIS Account # - Enter the WVEIS accounting information.

WVEIS Vendor # - Enter the WVEIS vendor number.

Description of Work -These three (3) lines are reserved for a description of the work or service to be performed.

Date of Service(s) -In this space, the dates the service is to be performed should be entered. If the service is to extend over a long period of time, enter the beginning date and the final date of service. Be sure that the agreement does NOT commit appropriated funds in a future fiscal year.

Rate of Pay - Enter the rate of pay as the total per month, quarter, year or per hour.

LEA Employee Status - If the agreement is for consulting services with an individual, the appropriate box in this section must be checked to indicate whether or not the individual performing the service is or is not a full time employee of the LEA.

Total Amount - Enter the total amount of the fee for the services, exclusive of travel and out-of-pocket expenses.

Vendor's Signature - The signature of the consultant or officer of the company performing the service must be indicated.

Approved - The purchasing director must approve the purchase in this space.

LEA Signature - The designee of the LEA for which the vendor works must sign this space and indicate his title below his signature.

**PURCHASING POLICIES AND PROCEDURES MANUAL
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WVDE-48

AGREEMENT

Purchase Order # _____ WVEIS Vendor # _____

WVEIS Account # _____

I, _____, agree to perform the
(Name and address)

following services for _____ at _____
(Agency) (Location)

(Detailed description of services to be performed)

Date(s) of Service: from _____ to _____

The rate of pay shall be _____ per _____

not to exceed \$ _____ for the entire term of the contract.

NOTE: Any anticipated travel must be incorporated into the vendor's fee. No travel will be reimbursed by the LEA and is the sole responsibility of the vendor. The following certification must be completed and signed if the vendor is a full-time employee of the LEA.

Please check the appropriate box below:

- I am not currently a full-time employee of the LEA
- I am currently a full-time employee of the LEA (complete certification below).

It is hereby certified that the services to be performed under this agreement will not interfere or detract from the full-time duties of the employee and the amount of annual compensation received by _____ (above named vendor) from the State of West Virginia for full-time employment during fiscal year will be \$ _____.

The vendor is employed as a _____
(Position)

certified by _____
(Supervisor's Signature)

APPROVED BY:

LEA _____

Vendor _____

(Authorized Signature of LEA)

(Vendor's Signature)

(Title)

(FEIN or Social Security)

(Date)

(Date)

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Agreement Questionnaire (WVDE-50)

Instructions

The **Agreement Questionnaire (WVDE-50)** must be attached to an **Agreement (WVDE-48)** when procuring technical, professional, or other services. This questionnaire is also used when procuring business services for personnel.

The purpose of the questionnaire is to document the scope of the project and to project the results expected to be attained by forming this agreement.

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WVDE-50

Agreement Questionnaire

Requisition / Purchase Order # _____

WVEIS Vendor # _____

1. Briefly describe the project scope of work to be completed or the problem to be solved by executing this agreement purchase order with (firm) _____ .

2. What results do you expect to achieve issuing this agreement?

3. What would be the effects on you, the LEA, if this agreement were not implemented?

4. What specialized or professional skill will be provided that is not available within your own or your RESA?

5. Is this agreement related to any other project being undertaken within your agency? If so, briefly describe.

6. Describe the methodology and evaluation criteria utilized to select this vendor.

7. What other vendors were considered for this work? Explain why this particular vendor was selected over those considered.

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**_____ COUNTY BOARD OF EDUCATION PURCHASING CARD PROGRAM
PARTICIPATING EMPLOYEE'S ACKNOWLEDGEMENT OF RESPONSIBILITIES**

By participating in the aforementioned county board of education's purchasing card program as a cardholder, you assume responsibilities pertaining to the operation and administration of the board's purchasing card program. These responsibilities include but are not limited to the following:

1. The board's purchasing card is to be used for business expenditures only.
2. The purchasing card will be issued in the name of the employee. By accepting the card, the employee assumes responsibility for the card and will be responsible for all charges made with the card. The card is not transferable and may not be used by anyone other than the cardholder.
3. The purchasing card must be maintained with the highest level of security. If the card is lost or stolen, or if the cardholder suspects the card or account number to have been compromised, the cardholder agrees to immediately notify the county board treasurer.
4. All charges will be billed and paid directly by the county board of education. On a monthly basis, the cardholder will receive a statement listing all activity associated with the card. This activity will include purchases made during the reporting period. While the cardholder will not be responsible for making payments, the cardholder will be responsible for the verification and reconciliation of all account activity.
5. The cardholder's account may be subject to periodic internal control reviews and audits designed to protect the interests of the board of education. By accepting the card, the cardholder agrees to comply with these reviews and audits. The cardholder may be asked to produce the card to validate its existence and produce statements and receipts to verify appropriate use.
6. Parameters and procedures related the board's purchasing card may be updated or changed at any time. The board will promptly notify all cardholders of these changes. The cardholder agrees to and will be responsible for the execution of any program changes.
7. The cardholder agrees to surrender and cease use of his/her card upon termination of employment whether for retirement, voluntary separation, resignation, or dismissal. In addition, the cardholder must surrender and cease use of the card in the event of transfer or relocation. The cardholder may also be asked to surrender the card at any time deemed necessary by the board's management.
8. Misuse or fraudulent use of the card may result in disciplinary actions and may be grounds for dismissal.

By signing below, I acknowledge that I have read and agree to the terms and conditions of this document. I certify that as a participating cardholder of the _____ County Board of Education's purchasing card program, I understand and assume the responsibilities listed above.

Employee Signature	Job Title	Date
Superintendent's Signature		Date

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APPENDIX D

**PURCHASING POLICIES AND PROCEDURES MANUAL
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**CODE OF ETHICS OF THE NATIONAL INSTITUTE
OF GOVERNMENTAL PURCHASING, INC.**

The Institute believes, and it is a condition of membership, that the following ethical principles should govern the conduct of every person employed by any public sector procurement or materials management organization.

1. Seeks or accepts a position as head or employee only when fully in accord with the professional principles applicable thereto, and when confident of possessing the qualifications to serve under those principles to the advantage of the employing organization.
2. Believes in the dignity and worth of services rendered by the organization and the social responsibilities assumed as a trusted public servant.
3. Is governed by the highest ideals of honor and integrity in all public and personal relationships, in order to merit the respect and inspire the confidence of the organization and the public being served.
4. Believes that personal aggrandizement or personal profit obtained through misuse of public or personal relationships is dishonest and not tolerable.
5. Identifies and eliminates participation of any individual in operational situations where a conflict of interest may be involved.
6. Believes that members of the Institute and its staff should at no time or under any circumstances, accept directly or indirectly, gifts, gratuities or other things of value from suppliers.
7. Keeps the governmental organization informed, through appropriate channels, of problems and progress of applicable operations, but personally remains in the background by emphasizing the importance of the facts.
8. Resists encroachment on control of personnel in order to preserve integrity as a professional manager. Handles all personnel matters on a merit basis. Political, religious, racial, gender and age considerations carry no weight in personnel administration in the agency being directed or served.
9. Seeks or dispenses no personal favors. Handles each administrative problem objectively and empathetically on the basis of principles and justice without discrimination.
10. Subscribes to and supports the professional aims and objectives of the National Institute of Governmental Purchasing, Inc.



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**Policy 8200: Purchasing Policy and Procedures
Comment Response Form**

Please use this form when commenting on proposed Policy 8200. You may attach additional sheets if necessary.

Individual/Organization: _____ Title: _____

Street Address: _____

County/State/Zip: _____

Comments/Suggestions

'126-202-1. General:

'126-202-2. Applicability:

'126-202-3. Incorporation by Reference:

'126-202-4. Administration:

'126-203-5. Authority:

'126-203-6. Severability:

Manual:

1. Introduction:
2. Purchasing Responsibilities:
3. Acquisition Planning:
4. Requisitions and Purchase Orders:

**PURCHASING POLICIES AND PROCEDURES MANUAL
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5. Purchase of Commodities:

6. Open Ended Contracts, Price Agreements and Blanket Purchase Orders:

7. Non-Competitive Procedures:

8. Purchase of Services:

9. Agreements:

10. Requests for Proposals and Expressions of Interest:

11. Construction Projects:

12. Architectural and Engineering Services;

13. Leases and Leas Purchase Agreements:

14. Purchase of Textbooks, Instructional Materials and learning Technologies:

15. Compliance with Federal Procurement Requirements:

16. Submission of Bids:

**PURCHASING POLICIES AND PROCEDURES MANUAL
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17. Resident Vendor Preference:

18. Awarding:

19. Requirement for Bonds and Deposits:

20. Vendors' Rights and Duties:

21. Remedies and Suspensions:

22. Protests:

23. Receipt of Deliveries:

24. Online Procurement:

25. Payments for Commodities:

26. Purchasing Cards:

27. Credit Cards:

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28. Emergency Procurement:

29. Purchases by Schools:

30. Inventory Control Function:

31. Disposal of Surplus Real and Personal Property:

32. Code of Ethics:

33. Non-Discrimination Provisions:

34. Violations:

35. Appendixes:

a. Appendix A – Definitions:

b. Appendix B – Flow Chart:

c. Appendix C – Forms:

d. Appendix D – Code of Ethics

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Return comments by June 19, 2003 to:

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West Virginia Department of Education
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Charleston, WV 25305-9969
E-mail: jpanetta@access.k12.wv.us
FAX: (304) 558-8867