



SUPREME COURT OF APPEALS OF WEST VIRGINIA

Procurement Policies and Procedures Finance Division

1. Scope.

The Supreme Court of Appeals of West Virginia (“the Court”) establishes this policy to prescribe the fiscal rules for procurement processes relied upon by the Court in conducting its business.

Accordingly, this document establishes a distinct set of policies, procedures, and guidelines for procurement processes for use by all employees of the Court, including, but not limited to, all Judicial Officers and their staff, Probation Officers, the Administrative Office, Board of Law Examiners, Office of Disciplinary Counsel, the Supreme Court of Appeals of West Virginia Clerk’s Office, the Office of Counsel, the West Virginia Law Library, and the Judicial Investigation Commission.

To the extent these rules fail to provide the adequate guidance in addressing or resolving a specific problem or question related to procurement processes, the Administrative Director and Chief Financial Officer (“CFO”) shall address the matter and, with approval of the Court, establish the fiscal rules to be followed in these special situations. Also, while the provisions of West Virginia Code § 5A-3-1, *et seq.*, and related guidance documents are not legally binding to the judicial branch, the Court may in its discretion use these as a resource for developing policy or adopting best practices consistent with sound governance.

Breaches of this policy may result in disciplinary or other corrective action. Questions regarding this policy should be addressed to the CFO.

2. Introduction.

- 2.1 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.
- 2.2 All procurement transactions must be conducted in a manner that allows competition, consistent with the ethical standards specified in state and federal statutes, this policy, and all local practices and procedures.
- 2.3 Procedures for the review of all proposed procurements must be established to ensure that only necessary items are purchased.
- 2.4 No 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.
- 2.5 No employee shall solicit or accept gratuities, favors, or anything of monetary value from contractors, vendors, or parties to any awards, agreements, or contracts. This

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prohibition does not apply to unsolicited gifts of nominal value, which is recognized by the West Virginia Ethics Commission to be a gift with a value less than \$25.

3. Procurement Procedures.

3.1 Definitions.

(a) ***Cooperative Contracting.*** This is accomplished either through joining an existing agreement of another public body or association, such as the federal government, or an agency or public body of another state, or by entering a joint solicitation with another public body for the obtainment of goods or services. *See, e.g.,* W. Va. Code § 5A-3-19.

(b) ***Internal Sources.*** Goods and services available through West Virginia State agencies. These include West Virginia Surplus Property, Correctional Industries, and Sheltered Workshops.

(c) ***Purchase Order.*** A document and first official offer issued by a buyer to a seller indicating types, quantities, and agreed prices for products or services. It is used to control the purchasing of products and services from external sources. The issuance of a purchase order does not itself form a contract.

(d) ***Request for Proposal.*** A solicitation document which contains specifications or the scope of work and essential terms and conditions that is used to solicit proposals. This purchasing method relies on evaluation of established quality criteria where conformity to specifications and cost are not the sole determining factor in the award.

(e) ***Request for Quote.*** A solicitation document containing objective criteria for specific goods or services needed. Cost is the primary factor in determining the award, though not the only factor.

3.2 Office Expenses and Equipment.

(a) *Routine Purchases.*

Each location should have a person designated to make routine purchases for their office. This person should also be the P-Card Holder for the location.

Routine office supplies include such items as copy paper, pens, file folders, cleaning supplies, etc.

Routine purchases do not require prior approval. However, the purchases should be made in compliance with established policies and procedures under the following:

1. West Virginia Auditor's Office Purchasing Card Policies and Procedures,
2. West Virginia State Code, and,
3. West Virginia Ethics Commission Rules.

(b) *Non-Routine Purchases.*

Non-routine purchases include (but are not limited to) items such as:

- Refrigerator
- Microwave
- Ice maker
- HEPA air cleaner
- Dehumidifier
- Office furniture (see item (d) below)
- Technology equipment and related peripherals (see item (e) below)
- Jury expenses – snacks, meals, etc.

(c) [Purchase Request Forms](#) should be completed for all non-routine purchases regardless of the payment method (direct payment or p-card). The Chief Circuit Judge should approve all Purchase Request Forms. Once completed and approved, the Purchase Request Form should be submitted to the Division of Finance Services in the Administrative Office for processing.

(d) All requests for office furniture/fixtures should be submitted to the Division of Facilities Services at the Administrative Office. This includes such items as office chairs, file cabinets, and furniture.

(e) All requests for technology equipment and related peripherals should be submitted to the Division of Technology Services at the Administrative Office. This includes such items as printers, keyboards, mice, monitors, and computers.

(f) Clothing Purchases for employees that are used in the course of employment but suitable for everyday use as well (such as a suit used as a uniform for work but appropriate for wear outside of work, as opposed to a judicial robe which is required as a condition of employment and not suitable for everyday wear) are considered a taxable fringe benefit that must be paid through payroll as a reimbursement rather than as a direct or P-card purchase.

(g) All other requests should be submitted to the Division of Finance Services at the Administrative Office in Charleston.

4. Exclusions.

The following goods/services are not to be paid from state funds (via employee reimbursement or p-card purchase):

- Dry cleaning,
- Snacks/candy/soft drinks for employee consumption (other than for scheduled meetings) and,
- Coffee supplies for employee consumption such as coffee, creamer, k-cups (other than for scheduled meetings).
- Meals, unless approved in advance by the Administrative Director or their designee.

5. Contracts for Acquisitions.

Divisions within the Administrative Office, or other offices of the Court such as the Clerk's Office, Office of Counsel, Office of Disciplinary Counsel, or Judicial Investigation Commission, may seek contracts or other purchase agreements for goods or services needed to maintain or further Court business.

5.1 Determination of Need.

(a) The division/department must determine the product or service required, including quality level, quantity, delivery requirements, and estimated cost.

(b) If a purchase is within the scope of Section 3.2 above, the division/department must complete the Purchase Request Form and obtain the required signatures of approval for the purchase.

(c) Spending authority within the Court is as follows, including for signatures for the Purchase Request Form:

- 1) Purchases up to \$14,999 – Administrative Office Division Director¹
- 2) Purchases up to \$24,999 – Deputy Administrative Director
- 3) Purchases up to \$39,999 – Administrative Director
- 4) Purchases up to \$49,999 – Chief Justice
- 5) Purchases above \$50,000 require approval by the entire Court.

5.2 Availability through Internal Sources.

Correctional Industries (business cards and stationery) and Sheltered Workshops (bottled water) should be utilized as the first vendor whenever such commodities and services are available and meet quality and price standards.

5.3 Availability through Statewide or Agency Contracts.

¹ A Division Director may delegate, in writing, up to \$5,000 in purchasing authority to a Deputy Division Director or manager with the approval of the Administrative Director.

If the product or service is not available from internal sources, the division/department should determine if that product or service is available from a statewide or agency contract. If available and where practicable and fiscally responsible, the division/department may consider purchasing the product or service in accordance with purchasing guidelines as indicated within the statewide or agency contract. (Examples: Office Max/Office Depot for office supplies, Pitney Bowes for mail processing equipment). In the event the product or service is available through a statewide or agency contract, but does not meet quality standards, the division/department may find another source.

5.4 Availability through a Cooperative Purchasing Agreement.

Cooperative contracting may be pursued to obtain favorable pricing for goods or services, subject to approval from the Administrative Director. This may be accomplished by working with another public body to jointly solicit vendors, or by joining an already existing cooperative purchase agreement of another public body of a different jurisdiction.

Before joining a cooperative purchase agreement, the division/department shall determine whether the contract used is valid, properly awarded, and financially advantageous to the Court.

5.5 Direct Award.

The division/department is encouraged to solicit competition where possible, though may make a direct award in certain circumstances. Written documentation of the justification as to how the direct award would be in the best interest of the Court and/or the reason competitive bidding should not be pursued is required in all circumstances.

5.5.1 Competitive bidding not required for these categories of contracts.

Competitive bidding is not required for obtaining professional services such as investigators, expert witnesses, attorneys or law firms; court-ordered services; transcripts; memoranda of understanding between state or county governmental agencies; goods or services obtained through Sections 5.3 or 5.4; hospitality expenses including food and facility rental related to Court-hosted events; print or online services obtained for the purpose of legal research through the West Virginia Law Library (*see* Section 6); or training activities.

5.5.2 Sole Source.

Sole source procurement occurs when goods or services are procured from a single vendor without a competitive bidding process, based on a justified and documented rationale. The division/department pursuing the sole source vendor must engage in due diligence to ensure sole source is appropriate and adhere to ethical standards required by this Policy. The sole source procurement will also be subject to approval by the necessary signatory authority for the value of the contract, based

upon the conditions and factors below.

a) *Conditions for use.*

Sole source procurement may be used only when one or more of the following conditions apply:

- 1) The good or service is available from only one known source.
- 2) The vendor possesses unique qualifications, expertise, or proprietary technology essential to the project.
- 3) Compatibility with existing equipment, software, or systems is essential and can only be ensured through the selected vendor.
- 4) The vendor is the original manufacturer or service provider, and resale or third-party alternatives would compromise performance or warranty.
- 5) Urgent need or exigent circumstances exist where delay would cause harm to the Court, not to include a failure to reasonably plan in advance for this procurement.
- 6) Confidentiality and information sensitivity may necessitate limiting the access to a specific, trusted vendor.

b) *Factors to consider before approval.*

The division/department must document efforts to research and consider the following factors:

- 1) Legal and regulatory compliance with applicable state and federal laws, or grant requirements.
- 2) Market research has confirmed that no other vendors can fulfill the requirements, keeping records of sources contacted, responses received, and a rationale for exclusion of any vendors.
- 3) The reasonableness and fairness of the price quoted by the sole source vendor.
- 4) The impact on operations if an alternative vendor is used.
- 5) Whether using another vendor would compromise system integration or service continuity.
- 6) That the vendor is uniquely qualified, licenses, certified, or has a past positive performance for the Court.

c) *Circumstances that are not sole source.*

Sole source procurement is not permitted where multiple vendors exist and have not been adequately considered or researched. Personal preference, historical use without analysis, or vendor convenience for the division/department will also not be sufficient to justify sole source procurement.

5.5.3 Emergency Purchases.

Emergency purchases are purchases urgently needed where delay would cause harm or disruption to the Court and its processes. All unbudgeted, unplanned, or emergency purchases over \$2,500 must be approved by the CFO, who shall advise the division/department whether remaining appropriated funds are reasonably sufficient to cover the expense. For those unplanned purchases that should have been anticipated may be delayed until the following fiscal year.

5.5.4 Renewals.

A contract of any term may be approved by the Administrative Director for a renewal of up to two consecutive years if the terms and conditions of the agreement are substantially like a previously approved contract. An annual price increase of less than five percent (5%) may be considered substantially similar. The third subsequent renewal shall be reconsidered based on the above spending threshold and may be subject to bid requirements if potentially changing vendors would not be a detriment to the Court as described in Section 5.5.2.

5.5.5 Other circumstances.

If the division/department determines that special circumstances exist which render competitive bidding impossible, impractical, or otherwise not warranted, the division/department must document the justifications and may seek approval from the appropriate spending authority in Section 5.1(c) to proceed with a direct award.

5.6 Purchase Procedures Best Practices.

- (a) *Purchases less than \$5,000* do not require competitive bids, but they are encouraged when possible.
- (b) *Purchases from \$5,000 to \$20,000* require a minimum of three verbal bids unless the items are on a statewide, agency, or internal source contract. Verbal bids should be documented with all vendors being provided identical specifications for the good(s) or service(s) desired. The lowest bid meeting specifications should be awarded the purchase order/contract.
- (c) *Purchases exceeding \$20,000* require a minimum of three written bids unless the items are on a statewide, agency, or internal source contract. Written bids should be documented with all vendors being provided identical specifications for the good(s) or service(s) desired. The lowest bid meeting specifications should be awarded the purchase order/contract.
- (d) A division/department is not required to obtain three bids if fewer than three bidders respond, though the division/department may rebid at their discretion.

(e) A division/department may consider a submission by a vendor or source to be a “no bid” if the vendor or source does not comply with the specifications of the solicitation document or other criteria required by the division/department as determined by the division/department.

5.7 Solicitation Documents.

(a) *Requests for Proposal or Quote.*

A division/department may select between a Request for Proposal or a Request for Quote for soliciting written bids, depending on the nature of the goods or services sought. Requests for Quote should be used as the standard solicitation where the goods or services sought can be reduced to objective, mandatory specifications, while a Request for Proposal allows the bidder to propose solutions to achieve the division/department’s desired end result.

(b) *Bid compliance.*

In both types of solicitations, the bidder will be required to meet the specifications and requirements of the solicitation document. While technical modifications, clarifications, or corrections of the submission by the bidder may be permitted at the discretion of the division/department, failure to meet the solicitation’s specifications and requirements may be considered a “no bid.” The bidder must also agree to comply with all applicable West Virginia and federal law, and must be registered and be in good standing with the State of West Virginia.

5.8 Supporting Documentation.

Supporting Documentation for purchases must be maintained and available for inspection upon request. Supporting documentation includes, but is not limited to, the Purchase Request Form, Vendor Invoice, and receiving documents (packing slip).

5.9 Receiving Documents.

Receiving documents (packing slip) should be forwarded to the Division of Finance. If no receiving documents are available, send an email to the Administrative Office Procurement Coordinator stating that goods or services have been received.

The details of this policy and all Court policies are subject to modification by the Court at any time as situations, standards, and legal requirements may change.