

**WEST VIRGINIA LEGISLATURE**  
*Performance Evaluation and Research Division*

Building 1, Room W-314  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305-0610  
(304) 347-4890  
(304) 347-4939 FAX



John Sylvia  
Director

November 15, 2015

The Honorable Craig Blair  
Room 217W, Bldg. 1  
1900 Kanawha Blvd. E.  
Charleston, WV 25305

The Honorable Gary G. Howell  
Room 213E, Bldg. 1  
1900 Kanawha Blvd. E.  
Charleston, WV 25305

Dear Chairmen,

You requested that the Performance Evaluation and Research Division (PERD) evaluate the differences between the state Purchasing Division's procurement policies and the procurement policies for higher education consisting of the institutions under the jurisdictions of the Higher Education Policy Commission (HEPC) and the Council for Community and Technical College Education (CCTCE). You also requested that our review determine any inherent weaknesses and potential effects from the differences in procurement policies. The HEPC has established purchasing policies that are applicable to all public four-year institutions, and the CCTCE has imposed those same policies on the institutions under its jurisdiction.

PERD finds that several key components of HEPC's purchasing policy are not as strong as the Purchasing Division's policy. The overall effects of these weaknesses are that the HEPC policy could encourage competitive bidding more, the risk of non-compliance of competitive bidding may be higher than for state agencies, prices paid for goods and services may be higher, and there may be inefficiencies in contracting goods and services because the use of state-wide contracts is not required.

### HEPC Policy Has Similarities with Purchasing's Best Practices

The HEPC purchasing policy and Purchasing's best practices have the following in common:

- the code of ethics are in compliance with the West Virginia Governmental Ethics Act in addressing ethical considerations pertaining to the purchasing process and repercussions for staff violating state law;
- the use of small, West Virginia businesses, minority or women-owned businesses is encouraged;
- any purchase to a single vendor in excess of \$25,000 requires competitive bidding; and
- any emergency procurement in excess of \$25,000 requires approval by high level staff members.

### Higher Education Differs From Purchasing Best Practices in Several Areas

Table 1 describes the differences between HEPC purchasing policy and the Purchasing Division's best practices. Regarding purchases under \$25,000, state agencies under the Purchasing Division have delegated authority; however, they are encouraged to seek competition with specific guidelines for three monetary thresholds. For higher education institutions, W. Va. Code 18B-5-4(b)(5) states that competition is not required for purchases under \$25,000; however, the HEPC guidelines encourage competition for such purchases. The HEPC policy also does not specifically identify, restrict or define the act of splitting or "stringing" purchases to a single vendor that total more than \$25,000 in order to avoid the competitive bid requirement.<sup>1</sup> In addition, the HEPC policy does not indicate a time interval for which to determine if stringing occurred. Consequently, higher education institutions may divide purchases to the same vendors over a relatively short period of time that total more than \$25,000 and it would not be considered by the HEPC as a purchasing violation. The HEPC allows the use of statewide contracts, while it is required by the Purchasing Division. Moreover, the HEPC policy does not promote competitive procurement in cases of emergency and sole-source transactions as does the Purchasing Division. The price of a sole-source purchase is considered by the Purchasing Division, whereas the HEPC policy only requires signature approval.

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<sup>1</sup> It should be noted that during the 2015 legislative session, the Legislature increased the threshold to \$50,000 for higher education institutions. The threshold for state agencies under the Purchasing Division remains at \$25,000.

**Table 1  
Higher Education Policy Differences With Purchasing Best Practices**

<b>Purchasing Component</b>	<b>Higher Education Policy</b>	<b>Purchasing Best Practice</b>
Purchases under \$25,000 to the same vendor.	No requirement of competitive bidding or specific guidelines but competitive bidding is encouraged.	Authority to make purchases under \$25,000 is delegated to agencies and sets forth the following standards: (1.) State agencies are encouraged to seek competition for purchases under \$2,500. (2.) Purchases from \$2,500 to \$5,000 require three verbal bids. (3.) Purchases from \$5,000 to \$25,000 require three written bids.
Restrictions against split purchasing or stringing to the same vendor.	No policy statements that restrict or define stringing or split purchasing, and no time interval is stated to determine if stringing occurred.	Defines stringing or split purchasing as multiple transactions to a single vendor totaling more than \$25,000 in a 12-month period. Policy states that stringing or split purchasing is prohibited.
State-wide contracts.	Using state-wide contracts is allowed.	Using state-wide contracts is required.
Emergency procurement totaling less than \$25,000.	A written determination for the basis of the emergency and the vendor selected is required.	State agencies are required to participate in competitive bidding.
Emergency procurements in excess of \$25,000.	A written determination for the basis of the emergency and the vendor selected is required.	State agencies are required to participate in competitive bidding.
Sole-source procurement less than \$25,000.	Chief Procurement Officer (CPO) is required to approve the purchase.	State agencies are required to obtain a written, vendor-signed quotation and an agency-written justification.
Sole-source procurement more than \$25,000	CPO is required to approve the purchase.	State agencies are required to provide Purchasing with a written request to sole-source purchase, basis for the procurement, and vendor quote. Purchasing advertises proposed purchases to ensure the best price is obtained.

*Sources: HEPC Purchasing Policy Manual, and the Purchasing Division's Handbook.*

In addition to the abovementioned policy differences, there are significant oversight issues that may lead to different purchasing outcomes. For example, the HEPC does not monitor or enforce competitive purchasing of higher education institutions. Moreover, the HEPC takes the stance that its purchasing manual is a “guide” instead of requirements for institutions to follow. On the other hand, state agencies under Purchasing are required to abide by the procurement laws. State agencies are required to interact with Purchasing for approval of goods and services. The interaction provides additional assurance that agencies implement and use best purchasing practices. The HEPC also does not audit or review transactions for compliance as does the Purchasing Division.

In addition, the Purchasing Division obtains statewide contracts for common and reoccurring purchases and requires state agencies to use them. Higher education institutions are allowed to use these contracts but it is not required. The Purchasing Division contracts for various goods and services on behalf of state agencies. This derives purchasing power and discounted pricing. Some higher education institutions take advantage of statewide contracts, but those that do not may be purchasing such products at a higher prices. Furthermore, there are likely some inefficiencies with respect to higher education staff time used for contracting for purchases that are available through statewide contracts. In audits conducted on higher education institutions, PERD has observed that purchasing staff often look for contracts of other institutions to piggyback on to save time in writing their own contracts. The HEPC does not centralize common, reoccurring contracts that any institution can participate in. The more experienced purchasing staff may become aware of contracts that the Purchasing Division has or other higher education institutions have. However, that may not be the case for lesser experienced staff. **The Legislature should consider requiring all higher education institutions to use statewide contracts issued by the state Purchasing Division, when cost effective, in order to have a centralized location for contracts of frequently purchased goods and services.**

## **Conclusion**

HEPC policy has a few similarities with best practices but differs in several significant areas. HEPC’s purchasing policy lacks specific language defining or prohibiting stringing purchases to avoid competitively bidding purchases over \$25,000. Competitive purchasing is also not encouraged for purchases under \$25,000. Additionally, HEPC does not have procedures in place to promote competition or price comparisons for emergency or sole-source procurements. The HEPC and the CCTCE do not have central authority over higher education purchasing by law, nor do they have statutory oversight of higher education purchasing practices. Therefore, the HEPC and the Council do not monitor purchasing practices, nor do they hold institutions accountable if non-compliance is encountered.

I hope this answers your questions concerning the differences in higher education purchasing and other state agencies under Purchasing’s authority and the evaluation of any exemptions. If there are any further questions that you have in this area we are always available to assist you.

Sincerely,

*John Sylvia*

John Sylvia

Enclosures

Bruce L. Berry, M.D.  
*Chair*



Paul L. Hill, Ph.D.  
*Chancellor*

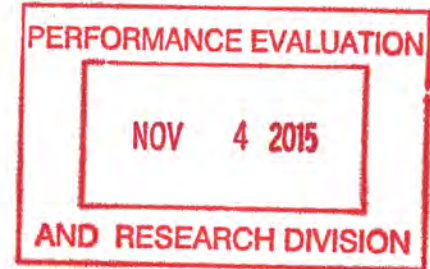
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*Access. Success. Impact.*

West Virginia Higher Education Policy Commission

1018 Kanawha Boulevard, East, Suite 700  
Charleston, West Virginia 25301  
www.hepc.wvnet.edu

November 3, 2015



Mr. John Sylvia  
West Virginia Legislature  
Performance Evaluation and Research Division  
Building 1, Room W-314  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305-0610

Dear Mr. Sylvia:

Thank you for the opportunity to review the draft copy of the October 28, 2015, letter-report regarding the procurement practices of the West Virginia Higher Education Policy Commission (Commission). We appreciated the exit conference and your time on November 2, 2015, which allowed us to gain a greater understanding of the purpose of the review of higher education procurement practices. The Commission is committed to being good stewards of the State's resources.

Existing Code provides public colleges and universities the flexibility they need to address procurement circumstances unique to higher education. In addition, the Legislature provided institutional governing boards the fiduciary authority to establish their own procurement policies while very limited oversight of these policies was granted to the Commission. Through the promulgation of two policies, Series 30, Procedural Rule, Purchasing, and Series 43, Legislative Rule, Purchasing Efficiencies, as well as a procedural manual, West Virginia Higher Education Purchasing Procedures Manual, the Commission has established standards and guidelines to assist institutions with procurement. The Commission also encourages institutions to develop internal procedures to guide purchasing and procurement

Unlike typical state agencies, most institutional revenue is generated from the users of higher education services - students - who can procure the same services from other colleges and universities. Consequently, institutions must be responsive to student needs. For example, a malfunctioning HVAC chiller that is not repaired in time for new student orientation would not only be an annoyance, but could create a significant loss of revenue. An athletic team might require unique accommodation or transportation services when traveling to an opponent's location. Colleges and universities must have the flexibility to make emergency purchases to ensure critical services are not interrupted. Public institutions of higher education must have the ability to quickly meet the expectations of the students, faculty, and staff that depend upon them.

Unnecessary costs must be avoided to maintain tuition and fees at a competitive level. Organizations that follow procurement best practices recognize that the cost to apply internal controls should not exceed anticipated savings from their implementation. A rule to require bidding at lower dollar levels and to monitor its compliance may not result in savings at a material level.

CHANCELLOR'S OFFICE  
(304) 558-0699 phone • (304) 558-1011 fax

November 4, 2015

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Colleges and universities often use state contracts to obtain goods and services at a low price; however, opportunities may exist to obtain better deals off contract. For example, a university may need a vehicle for its custodial staff. It could purchase a new van on a state contract, but this may not be the best alternative. The purchase of a brand new vehicle to be used primarily within the campus for the transportation of cleaning equipment and supplies may not be the best decision. The procurement of a used minivan for one-third of the cost from an auctioneer may be a much better alternative. We agree that state contracts should be used when it is cost effective to do so.

It is possible that the creation of a centralized procurement operation for higher education would expand the size of government without a resulting increase in savings or revenues. Although they can ensure almost absolute compliance, centralized authority structures tend to reduce productivity and employee initiative at lower levels. To ensure the continued flow of their revenues, institutions must have the flexibility to operate strategically. At the same time, the Commission realizes state leaders must have sufficient controls in place to ensure taxpayers' interests are met. The Commission understands and appreciates the need for adequate controls over procurement.

I, along with staff, plan to attend the interim meeting of the Joint Committee on Government Organization scheduled to be held on November 15, 2015 to be available to answer any questions of the Committee members.

Sincerely,

A handwritten signature in blue ink, appearing to read "Paul L. Hill". The signature is fluid and cursive, with a large initial "P" and "H".

Paul L. Hill  
Chancellor