

WEST VIRGINIA LEGISLATURE
Performance Evaluation and Research Division

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John Sylvia
Director

May 21, 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:

Pursuant to West Virginia Code §4-2-5, the Legislative Auditor requested that the Performance Evaluation and Research Division (PERD) update its January 2015 report on the Purchasing Division (Purchasing) concerning change-orders. Purchasing has amended its legislative rule as it pertains to change-orders in response to PERD's recommendation. This letter-report provides an evaluation of Purchasing's rule change concerning change-orders.

Findings from Previous Report

Table 1 provides figures for monetary changes caused by FY 2013 change-orders. Forty-four (44) percent of the contracts had no monetary change as a result of change-orders, 43 percent were increased by change-orders, and 13 percent were decreased by change-orders.

Table 1			
Monetary Changes Caused by FY 2013 Change-Orders			
	Number of Contracts	Per Cent of Total	Monetary Change
Change-Orders with no change in total contract amount.	33	44%	N/A
Change-Orders that increased total contract amount.	32	43%	\$2,862,438
Change-Orders that decreased total amount.	10	13%	-\$1,744,028

Source: PERD's analysis of the sample of change-orders provided by the Purchasing Division.

PERD found 31 change-orders, affecting 26 of the 75 contracts, with effective dates prior to the approval date (see Table 2). Of these 31 change-orders, 14 caused no monetary change to the original contract, while 17 had a positive monetary impact. The total increase in monetary changes caused by these change-orders with effective dates preceding approval was \$2,408,301. As Table 2 shows, the State has become obligated to pay for relatively large amounts long before they have been approved by Purchasing or the Attorney General.

Table 2				
Number of Change-Orders With Effective Dates Prior to Purchasing Approving the Change-Order				
Number of days change-order was effective before Purchasing approved it	1-15 Days	16-30 Days	31-60 Days	Over 60 Days
Number of change-orders	9	10	8	4
Total positive monetary change	\$588,320	\$126,576	\$1,684,029	\$9,376

Source: PERD's analysis of the sample of change-orders provided by the Purchasing Division.

Purchasing Has Amended Its Rule per PERD's Recommendation

PERD indicated in the January 2015 report that Purchasing should process and approve change-orders prior to their effective dates in accordance with the intent of West Virginia Code. In order to do so, Purchasing should discontinue the practice of allowing agencies to submit change-orders after their effective dates, particularly when they have monetary repercussions to the State. Shortly after PERD issued its report, Purchasing amended its Legislative Rule to address change-orders. The amended rule goes into effect on July 1, 2015. One section of the rule change stipulations:

6.8.f. Timing of Work. Spending units must not permit vendors to perform work that the spending unit anticipates will be added to a contract through a change order until such time as the change order has been formally approved by the Purchasing Division and the Attorney General's office, encumbered by the Purchasing Division, and mailed to the vendor.

Purchasing indicated that the amendment intends to prevent the submission of change-orders after the commencement of work initiated by the change-order. However, Purchasing states that it will continue the practice of receiving change-orders within 20 days after their effective dates provided they have no monetary impact. It should be noted that section 7.7.1 of Purchasing's procedures manual does not specify that the 20-day rule only applies to change-orders with no monetary impact. The Legislative Auditor stated in the report that Purchasing should amend its procedures manual to be consistent with a process that approves change-orders with monetary impacts prior to the effective dates of the change-orders. **Therefore, Purchasing should amend its procedures manual appropriately to reflect the amended rule.**

Purchasing Needs to Enforce Its Amended Rule to Avoid Long Delays in Contracted Work

PERD further examined the 75 sample files to determine which agencies had submitted the change-orders and found that the change-orders evaluated for the January 2015 report were submitted by 22 agencies. Table 3 provides detailed change-order information for these agencies. PERD has no data reflecting when the actual work initiated by change-orders began. Therefore, it can only be assumed that the effective date is when vendors began to supply services or commodities being purchased. Using the effective date to estimate the date vendors began work or began supplying commodities, nine agencies may have begun receiving goods or services initiated by change-orders prior to those change-orders being received by Purchasing for approval, although in one instance the change-order documents indicate that work did not begin until after the effective date. Additionally, two other change-orders were to extend the end-date of work already contracted for and did not procure additional services or commodities.

Table 3 also shows that the Department of Environmental Protection had the largest number of change-orders received by Purchasing after the effective dates, with 10 of its 17 change-orders in the sample. The total increase for those 10 contracts was over \$222,000. Although the Department of Health and Human Resources had only two change-orders that were received by Purchasing after the effective dates, the total monetary increase for these 2 contracts was the largest of the 22 agencies, with an increase of over \$1.8 million. The majority of the \$1.8 million comes from a change-order invoiced to Behavioral Health Services that caused an increase of \$1.5 million to renew a sole-source contract for an electronic health record system. The original contract was for the initial installation of the software. The change-order was to extend the contract to enhance the program and continue support, service, and licensure. The change-order was 83% of the original contract, which nearly doubled the original contract from \$1.8 million to \$3.4 million. This change-order was received by Purchasing 25 days before it became effective, but was not approved by Purchasing until 31 days after the effective date and was approved by the Attorney General's office 35 days after the effective date. At least a portion of the delay in approving the change-order was due to DHHR not providing all the

documentation needed to process the requested contract renewal. Although the change-order was initially received by Purchasing on June 6, 2013, justification for continuing to utilize the sole-source vendor was not forwarded until August 1.

Agency	Number of Contracts With Change-Orders	Number of Change-Orders	Total Monetary Change Initiated by Change-Orders	Number of Change-Orders With Effective Dates Preceding Receipt by Purchasing
Alcohol Beverage Control Administration	1	1	\$0	0
Division of Agriculture	2	2	-\$18,980	0
Division of Corrections	1	3	\$97,164	1 ¹
Department of Environmental Protection	17	17	\$222,593	10
Department of Health and Human Resources	8	10	\$1,842,147	2
Division of Natural Resources	3	3	\$10,500	1
Department of Administration	23	25	\$521,402	3
Department of Education	1	1	\$13,474	0
Educational Broadcasting Authority	1	1	\$0	0
State Armory Board	1	1	-\$645,000	0
Department of Highways	2	2	-\$1,049,900	1
Insurance Commission	2	3	\$117,653	0
Lottery Commission	1	1	\$2,570	0
National Coal Heritage Area Authority	1	3	\$0	2 ²

Table 3
Sample Change-Order Information by Agency

Agency	Number of Contracts With Change-Orders	Number of Change-Orders	Total Monetary Change Initiated by Change-Orders	Number of Change-Orders With Effective Dates Preceding Receipt by Purchasing
Public Service Commission	1	1	-\$3,565	0
Division of Public Transit	4	4	-\$1,212	0
Racing Commission	1	1	\$0	1
Division of Rehabilitation Services	1	2	\$7,917	2
State Rail Authority	1	1	\$0	0
State Treasurer	1	1	\$2,791	0
Statewide Contract	1	1	\$0	0
Workforce WV	1	1	\$0	0
Total	75	85	\$1,138,535	23

Source: PERD's analysis of the sample of change-orders provided by the Purchasing Division.

¹Based on information in the change-order documents, it is likely that the work started sometime after the effective date.

²These change-orders were to extend the completion date of the work. No additional services were added.

PERD was asked to evaluate what delays vendors might experience in being able to begin work while waiting for Purchasing to approve change-orders. PERD reexamined the 31 change-orders that had effective dates prior to the approval date. Table 4 shows the average time differences between the effective dates of change-orders with positive monetary change and when the change-orders were received and approved by Purchasing and the Attorney General. On average Purchasing received change-orders 25 days after the effective dates. Once Purchasing received the change-orders, another 22 days were taken on average to approve change-orders, and an average of 7 more days were needed for the Attorney General's approval. This suggests that agencies will need to be timelier in submitting change-orders to Purchasing in order to avoid long delays in work beginning that is initiated by change-orders. This will require greater enforcement on the part of Purchasing. In addition, Purchasing will need to enhance its processes to reduce the amount of time needed to approve change-orders once they have been received.

Table 4 Average Number of Days Effective Date Preceded Purchasing Process Dates for Change-Orders With Positive Monetary Changes		
Average Number of Days Effective Date Preceded Receipt by Purchasing Division	Average Number of Days Effective Date Preceded Approval by Purchasing	Average Number of Days Effective Dates Preceded Approval by Attorney General
25	47	54
<i>Source: PERD's analysis of the sample of change-orders provided by the Purchasing Division.</i>		

Conclusion

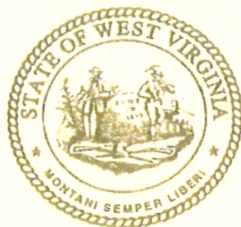
The analysis of sample change-order documents in the January 2015 Agency Review of Purchasing showed that some change-orders were taking effect prior to the completion of the purchasing approval process and, in most cases, prior to even being received by Purchasing for approval. An additional review of these documents showed that 22 agencies were responsible for the 85 change-orders in the sample. Nine of these agencies submitted change-orders for approval after the change-orders' effective dates. Some of these change-orders were for significant amounts. Purchasing's amended rule for change-orders should address the issues raised by PERD. However, in order to avoid long delays in vendors being able to begin work that is initiated in change-orders, Purchasing will need to communicate the rule change to state agencies and enforce the new process diligently. Purchasing should also amend its procedures manual to reflect the changes in rule.

Recommendations

1. *The Purchasing Division will need to communicate the rule change concerning change-orders and enforce it to prevent agencies from submitting change-orders after the effective dates.*
2. *In order to avoid long delays in starting work initiated by change-orders, the Purchasing Division should improve the timeliness in approving change-orders.*
3. *The Purchasing Division should amend its procedures manual appropriately to reflect the amended rule.*

Sincerely,

John Sylvia



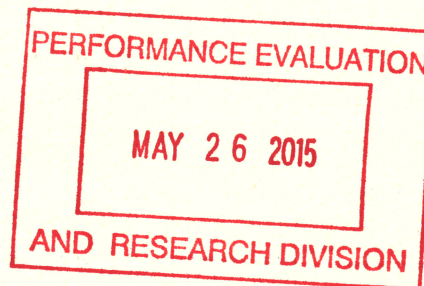
STATE OF WEST VIRGINIA
DEPARTMENT OF ADMINISTRATION

EARL RAY TOMBLIN
GOVERNOR

JASON PIZATELLA
ACTING CABINET SECRETARY

May 26, 2015

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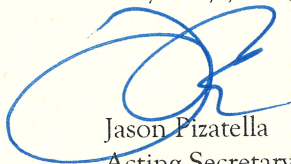
Dear Mr. Sylvia,

Thank you for the chance to respond to your later dated May 21, 2015 wherein you enclosed the Performance Evaluation and Research Division ("PERD") update to its January 2015 report on the Purchasing Division ("Purchasing"). I am pleased that the Legislature adopted the amendments to Purchasing's legislative rules in accordance with the PERD recommendations on change orders. Purchasing has revised its procedures handbook to reflect the amended rule and will be communicating this change to all state agency procurement officers. Effective July 1, 2015, Purchasing will not approve change orders after the work contemplated by the change order has already commenced when there is an increased cost to the State. We will work with state agencies, Attorney General Morrissey's office, and the contractor community to ensure compliance with the amended rule.

Moreover, Purchasing is continuously looking for ways to improve its business processes while at the same time adhering to the provisions of W.Va. Code §5A-3-1 et seq. We will do everything possible to avoid unnecessary delays in the approval process as they relate to change orders. Purchasing has recently hired and trained several new buyers that will be incorporated into the approval workflow. We also plan to hire 2-3 additional staff in this area, contingent on funding availability.

As always, I appreciate the opportunity to work with your professional staff on these and other matters facing the Department of Administration. If you need anything further, please do not hesitate to call me.

Very truly yours,



Jason Pizatella
Acting Secretary

JP:cjn

cc: David Tincher, Director, Purchasing Division
J. Robert Leslie, Esq., Senior Deputy Attorney General