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STATE OF WEST VIRGINIA
DEPARTMENT OF ADMINISTRATION
Purchasing Division
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CABINET SECRETARY

DAVID TINCHER
DIRECTOR

January 7, 2010

The Honorable Earl Ray Tomblin
President of the State Senate
Room 227M, Building 1
State Capitol Complex
Charleston, WV 25305

The Honorable Rick Thompson
Speaker of the House
Room 234M, Building 1
State Capitol Complex
Charleston, WV 25305

SUBJECT: Legislative Reporting Requirement §5A-3-10(b)

Dear Sirs:

In accordance with *West Virginia Code* §5A-3-10(b), as director of the West Virginia Purchasing Division, I am required to submit in January and July of each year to the Joint Committee on Government and Finance a report summarizing our division's findings of any spending unit which awarded multiple contracts for the same or similar commodity or service to an individual vendor over any 12 month period with a value exceeding \$25,000.

This section of the Code reads:

§5A-3-10. Competitive bids; publication of solicitations for sealed bids; purchase of products of nonprofit workshops; employee to assist in dealings with nonprofit workshops.

(b) The director shall solicit sealed bids for the purchase of commodities and printing which is estimated to exceed twenty-five thousand dollars. No spending unit shall issue a series of requisitions or divide or plan procurements to circumvent this twenty-five thousand dollar threshold or otherwise avoid the use of sealed bids. Any spending unit which awards multiple contracts for the same or similar

Senator Tomblin and Delegate Thompson

January 7, 2010

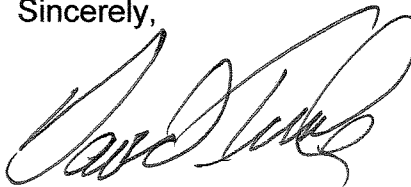
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commodity or service to an individual vendor over any twelve-month period, the total value of which exceeds twenty-five thousand dollars, shall file copies of all contracts awarded to the vendor within the twelve preceding months with the director immediately upon exceeding the twenty-five thousand dollar limit, along with a statement explaining how the multiple contract awards do not circumvent the twenty-five thousand dollar threshold. If the spending unit does not immediately report to the director, the director may suspend the purchasing authority of the spending unit until the spending unit complies with the reporting requirement of this subsection. The director may conduct a review of any spending unit to ensure compliance with this subsection. Following a review, the director shall complete a report summarizing his or her findings and forward the report to the spending unit. In addition, the director shall report to the Joint Committee on Government and Finance on the first day of January and July of each year the spending units which have reported under this subsection and the findings of the director.

For the period of July 1, 2009 through December 31, 2009, no spending units have reported to our division the award of any multiple contracts for "the same or similar commodity or service to an individual vendor over any 12-month period, the total value of which exceeds twenty-five thousand dollars." However, our division inspectors discovered findings relating to three (3) different spending units during their reviews as stipulated in this section of the Code. The spending units were Division of Corrections; the Department of Health and Human Resources – Bureau of Public Health, Office of Laboratory Services; and the Division of Natural Resources. A summary of the findings is attached.

Pursuant to this requirement, my next report will be submitted to you in July of 2010. Should you have any questions regarding this correspondence, please feel free to contact me at your convenience at (304) 558-2538 or via e-mail at **David.Tincher@wv.gov**.

Sincerely,



David Tincher, Director
West Virginia Purchasing Division

DT:dmh

cc: Aaron Allred, Legislative Auditor
Robert W. Ferguson, Jr., Cabinet Secretary of Administration

Attachment

SUMMARY OF STRINGING ACTIVITIES
(July 1, 2009 – December 31, 2009)

STRINGING ACTIVITY RESULTING FROM PURCHASING INSPECTIONS

Division of Corrections

- 1) The Mount Olive Correctional Complex, during the fiscal year under review, spent a total of \$36,381.10 with Bob Barker Company for various items (\$25,900.05 of this amount was for items of clothing). In their response to the inspection report, the Correctional Center stated that:

MOCC business office typically obtains bids and Bob Barker has consistently been the low bidder. . . .we were not aware of the \$25,000 aggregate. . . .MOCC business office is now tracking how much we spend with vendors on an aggregate basis.

- 2) Anthony Correctional Center, during the fiscal year under review, spent a total of \$25,303.85 with Staunton Fruit & Produce. The Correctional Center responded:

. . . we can only conclude that each week we get or receive three (3) written bids from local vendors that can deliver in our area and the lowest bid is awarded to that Vendor . We had never gone over \$25,000 in one fiscal year and had not thought about putting out bids on an open-end contract.

- 3) Beckley Correctional Center, during the fiscal year under review, spent a total of \$32,801.74 with Peerless Meat Distributing for food. Responding to the inspection report, the Correctional Center stated:

This issue has been corrected we no longer use this vendor [sic].

- 4) Huttonsville Correctional Center, during the fiscal year under review, spent a total of \$60,977.12 with Bob Barker Company for various items. No documents were found to show that the items had been bid, nor did the file contain justification for a non-competitive award. Responding to the inspection report, the Correctional Center wrote:

We in no way meant to circumvent the bidding process or to be non compliant with the Purchasing Rules and Procedures. We now have in place a report that we can run on a daily basis that will help us to oversee the spending amounts with all vendors. We have taken proper steps to correct this problem and will continue to be mindful of this issue with any other vendor that we utilize.

Department of Health and Human Resources - Bureau for Public Health, Office of Laboratory Services

- 1) The agency, during the fiscal year under review, spent a total of \$71,019.70 with Fisher Scientific for laboratory supplies. No documents were found to show that the items had been bid, nor did the file contain justification for a non-competitive award.
- 2) The agency, during the fiscal year under review, spent a total of \$52,406.27 with VWR International, Inc. for various items. No documents were found to show that the items had been bid, nor did the file contain justification for a non-competitive award.
- 3) The agency, during the fiscal year under review, bid and awarded two projects: 1) removal and installation of a sidewalk, bid in July 2007 and 2) removal and installation of a driveway, bid in August 2007. Each project was bid and awarded for less than the formal bid limit of \$25,000; however, the two projects are physically contiguous, used the same type of concrete and method of construction, were awarded within a short time period and totaled \$48,099.

The agency, responding to all reported findings of stringing, stated:

The Office will be more diligent in anticipating awards of multiple contracts for the same or similar commodity or service to an individual vendor over any twelve month period that exceed stated thresholds. We will investigate issuing more open-end contracts for these types of commodities or services.

Division of Natural Resources

- 1) Blackwater Falls State Park, during the fiscal year under review, spent a total of \$93,421.74 with Suburban Propane for propane. No documents were found to show that the services had been bid, nor did the file contain justification for a non-competitive award. The Park responded that:

. . . Agency was unaware that propane usage was not a utility purchase or we certainly would not have treated it as such and have no desire to continue doing so.

- 2) Pipestem Resort State Park, during the fiscal year under review, spent a total of \$26,774.53 with American Hotel Register for various hotel supplies. No documents were found to show that the items had been bid, nor did the file contain justification for a non-competitive award. Responding to the inspection report, the Park wrote:

American Hotel is a vendor that sells many different types of items for the resort industry. With the size of our facility there are a number of different things that will be ordered in a fiscal year time frame. I don't feel we have been stringing, as in many instances, we purchase a number of different items for different projects and departments at various times.

The linen purchases are currently being addressed by DNR with development of a contract that will provide us with "Resort" quality. This will be comparable to other lodging facilities. It should also help with not using this company so frequently.

STRINGING ACTIVITY RESULTING FROM AGENCY REPORTING TO PURCHASING

None