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STATE OF WEST VIRGINIA
DEPARTMENT OF ADMINISTRATION
Purchasing Division
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ROBERT W. FERGUSON, JR.
CABINET SECRETARY

DAVID TINCHER
DIRECTOR

July 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

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for the same or similar 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 January 1, 2010 through June 30, 2010, 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 twelve (12) different spending units during their reviews as stipulated in this section of the Code. The spending units were the Department of Health and Human Resources (DHHR) - Pinecrest Hospital; DHHR - Mildred Mitchell-Bateman Hospital; DHHR, William R. Sharpe, Jr. Hospital; DHHR - Welch Community Hospital; DHHR - Bureau for Public Health, Division of Infant Child and Adolescent Health; Department of Commerce, Division of Natural Resources – Berkeley Springs State Park; Department of Commerce, Division of Natural Resources – Cacapon Resort Park; Division of Corrections, St. Mary's Correctional Center; Division of Corrections, Pruntytown Correctional Center; Division of Corrections, Parole Services; Division of Corrections, Reserve Account; and Department of Administration, General Services Division. A summary of the findings is attached.

Pursuant to this requirement, my next report will be submitted to you in January of 2011. 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 **(January 1, 2010 – July 1, 2010)**

Department of Health and Human Resources - Pinecrest Hospital:

- 1) During the fiscal year under review, spent a total of \$40,789.79 with Medline Industries. In their response to the inspection report, the hospital stated that:

The items purchased from this vendor are medical supplies needed to provide care for our residents. . . . a statewide contract has been put into place. . . we will make every effort to utilize the statewide contract for medical supply items needed.

- 2) Spent \$175,237.52 with Seneca Medical during the fiscal year under review. The hospital responded:

The items purchased from this vendor are medical supplies needed to provide care for our residents. . . . a statewide contract has been put into place. . . we will make every effort to utilize the statewide contract for medical supply items needed.

- 3) During the fiscal year under review, spent a total of \$25,221.28 with Summit Supply. The hospital responded:

The items purchased from this vendor are for supplies needed to make mechanical repairs at the facility. . . . should we determine we will exceed the established amounts set forth in the Purchasing Handbook related to purchases from a specific vendor, we will follow proper procedures and obtain bids as necessary.

Department of Health and Human Resources - Mildred Mitchell-Bateman Hospital:

- 1) The hospital, during the fiscal year under review, spent
 - a. \$27,655.50 with the Bob Barker Company,
 - b. \$54,040.95 with J&B Sales,
 - c. \$44,159.56 with LABSCO and Laboratory Supply (the same company),
 - d. \$30,580.78 with Medical Supply Co., Inc. and
 - e. \$52,561.75 with Cecil Walker Machinery.

Responding to all instances of stringing, the hospital wrote:

. . . I believe our Purchasing staff did not intentionally perform "stringing". . . they were unaware that they were exceeding the formal bid limit. . . . In order to prevent stringing from occurring again, we have instituted an Excel file worksheet where we will capture each requisition amount, by vendor, during the year.

Department of Health and Human Resources - William R. Sharpe, Jr. Hospital:

- 1) The hospital, during the fiscal year under review, spent a total of \$125,780.59 in 407 transactions with Best Care Pharmacy. The hospital responded:

We have begun working with DHHR Purchasing to establish a solution to this issue and will complete as quickly as possible.

- 2) During the fiscal year under review, the hospital spent \$45,751.63 with Continental Research. Responding to this finding, the hospital wrote:

Sharpe Hospital will be utilizing Statewide Contracts and Correctional Industries to provide much of our cleaning supplies thus reducing our purchases from Continental Research.

- 3) The hospital, during the fiscal year under review, spent \$27,315.00 with J&B Sales. They responded to this finding by stating:

. . .the hospital will be purchasing from Correctional Industries when possible. If it is determined that utilizing Correctional Industries will not be sufficient, the formal bid process will be utilized.

Department of Health and Human Resources - Welch Community Hospital:

- 1) The hospital, during the fiscal year under review, spent
 - a. \$27,576.24 with Medline Industries,
 - b. \$373,365.99 with Seneca Medical,
 - c. \$61,619.00 with Diskriter, Inc. and
 - d. \$127,994.05 with Fisher Scientific.

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

We too are overly concerned with the patterns of stringing. Many of these purchases involve Medical Supplies. I am told at this time a State Wide contract for Medical Supplies is in the bidding stage. . . .Once the Medical Supplies vendor is in place this will become the primary vendor. . . .The attached Plan of Correction reveals some of the needed actions were in place prior receiving [sic] the purchasing review.

The hospital included a detailed plan of correction with their response.

Department of Health and Human Resources - Bureau for Public Health, Division of Infant Child and Adolescent Health:

- 1) During the fiscal year under review, the Division spent a total of \$27,360.00 in 67 transactions with Affordable Dentures. In response to the inspection report, the Division stated:

The Bureau accepts these findings. The Bureau Finance staff are in discussions and meeting regularly with DHHR Purchasing and Finance personnel to review the historical criteria that was established for certain programs within the Office of Maternal Child and Family Health and to determine a reasonable outcome that will satisfy the Department of Administration' purchasing regulations as well as maintain the current level of medical services being provided to clients covered under these programs.

Department of Commerce, Division of Natural Resources – Berkeley Springs State Park:

- 1) Berkeley Springs State Park, during the fiscal year under review, spent a total of \$28,461.35 with Blue Flame 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:

We have. . .always considered it [propane] to be a utility. Exceeding the agency delegated limits was an oversight on our part and will be monitored more closely in the future. Competitive bids can be prepared for future purchases.

Department of Commerce, Division of Natural Resources – Cacapon Resort State Park:

- 1) Cacapon Resort State Park, during the fiscal year under review, spent a total of \$41,884.85 with Blue Flame for propane. 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:

Our Charleston office is reviewing this conundrum and hopefully will assist in resolving this issue.

Division of Corrections - St. Mary's Correctional Center:

- 1) During the fiscal year under review, St. Mary's Correctional Center spent a total of \$32,733.84 with Robecht Produce Company for produce. The correctional center responded:

Stringing, there was no attempt, desire, or intent to exceed the purchasing limit imposed by the WV Purchasing Division or legislated law. It arose out of economic inflation times and a fluctuating commodities market.

Division of Corrections - Pruntytown Correctional Center:

- 1) The correctional center, during the fiscal year under review, spent a total of \$40,408.58 in 77 transactions with Black Diamond Produce and Fruit. The correctional center responded:

. . .we are currently monitoring the produce purchases and are taking the necessary steps to be in compliance with purchasing guidelines. We have begun the necessary paperwork for an open-end contract for produce to send to purchasing for approval.

Division of Corrections - Parole Services:

- 1) During the fiscal year under review, Parole Services spent a total of \$49,240.00 with five vendors for the provision of counseling services across the State. In response to the inspection report, Parole Services stated:

. . .we are taking the necessary steps to correct all the findings that were made. . . .It was never our intent to circumvent the bidding process.

Division of Corrections - Reserve Account:

- 1) During the fiscal year under review, funds were expended from the reserve account in the amount of \$87,180.00 with nine vendors for the provision of counseling services across the State.
- 2) During the fiscal year under review, funds were expended from the reserve account in the amount of \$194,586.23 with Flat Iron Drug Store for prescriptions filled by the Stevens Correctional Center and McDowell County Jail.

Responding to the inspection report, the Division stated:

. . .we are taking the necessary steps to correct all the findings that were made. . . .In response to the possible stringing violation, we concede the appearance that it possibly could be, but disagree that it is stringing in this case, and respectfully request that it not be considered stringing. We are working on addressing the issue by putting in place an agency wide contract that would rectify the noted deficiencies.

Department of Administration - General Services Division:

- 1) The General Services Division, during the period under review, spent a total of \$81,231.42 in 96 transactions with United Talent for temporary employees. No documents were found to show that the services had been bid, nor did the file contain justification for a non-competitive award.
- 2) During the calendar year, the Division spent a total of \$42,870.03 with Cecil I. Walker and Walker Machinery.

Responding to the inspection report, the Division wrote:

None of the . . . transactions were issued as "a series of requisitions or purchase orders to circumvent competitive bidding or to defeat the State Purchasing Card

transaction or delegated purchasing limit. . .;” nor were these purchases intended to “divide or plan procurements to circumvent this twenty-five thousand dollar threshold or otherwise avoid the use of sealed bids.” With the tools currently at our disposal, we will monitor aggregate spend with vendors and submit to the director of Purchasing any transactions which will result in an aggregate expenditures in excess of our delegated spending authority, along with our documentation explaining how the purchases do not circumvent that threshold.