



EARL RAY TOMBLIN  
GOVERNOR

STATE OF WEST VIRGINIA  
**DEPARTMENT OF ADMINISTRATION**  
**Purchasing Division**  
2019 WASHINGTON STREET, EAST  
P.O. BOX 50130  
CHARLESTON, WEST VIRGINIA 25305-0130

JASON PIZATELLA  
ACTING CABINET SECRETARY

DAVID TINCHER  
DIRECTOR

January 1, 2015

The Honorable Jeffrey Kessler  
President of the State Senate  
Room 227M, Building 1  
State Capitol Complex  
Charleston, WV 25305

The Honorable Tim Miley  
Speaker of the House  
Room 228M, 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 Kessler and Delegate Miley**

**January 1, 2015**

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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, 2014 through January 1, 2015, the Purchasing Division inspectors discovered findings relating to seven different spending units during their reviews as stipulated in this section of the Code regarding the award of multiple contracts for “the same or similar commodity or service to an individual vendor over any 12-month period,” where the total value of which exceeds twenty-five thousand dollars. The spending units were: West Virginia Schools for the Deaf and Blind, Division of Motor Vehicles, Board of Professional Engineers, Board of Examiners for Registered Professional Nurses, Mildred Mitchell Bateman Hospital, Adjutant General/Armory Board, and Welch Community Hospital. A summary of these findings is attached.

Pursuant to this requirement, my next report will be submitted to you in July of 2015. 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, CPPO, Director  
West Virginia Purchasing Division

DT:dhb

cc: Aaron Allred, Legislative Auditor  
Jason Pizatella, Acting Cabinet Secretary of Administration

West Virginia Purchasing Division  
**SUMMARY OF STRINGING ACTIVITIES**  
(July 1, 2014 – January 1, 2015)

**West Virginia Schools for the Deaf and Blind:**

- 1) During the fiscal year under review, West Virginia Schools for the Deaf and Blind spent a total of \$25,330.00 for Apple iPads with Apple Inc.. In their response to the inspection report, the agency stated that:

*“We do wish to address Issue 12, one finding of what could be construed as stringing with regard to APPLE IPAD purchases. While we understand where we fell short on documentation and procedure, we were not intentionally creating a circumstance of stringing, nor feel we acted in any manner other than to make every attempt to process these 2 purchases correctly.*

*There is a great deal of explanation and happenings that surround this occurrence. Initially the purchase was attempted through a misunderstanding with Apple where they advised us that they were the sole source for Education to purchase I-Pads. Through discussions with the WV Auditor’s Office, we were informed differently. At that time, we contacted WV Purchasing to advise us on how to correctly purchase I-Pads and were instructed to utilize the statewide contract (SWC). Unfortunately, a purchase though the SWC would have resulted in having monthly wireless service which were not needed, nor available in our region of the state.*

*At that time, we were contacted by WVNET regarding a contract they had in place. State Purchasing subsequently advised us that this contract did not exist. Further inquiry and discussion took place to regarding contracts with WVNET or Education to the point that the purchase was ultimately made under the belief that the correct paperwork was in place.*

*We do not believe this circumstance will arise again, however, in the event it does, we understand what went wrong and how to correct that when presented with this scenario again. Please be assured that The West Virginia Schools for the Deaf and the Blind makes every effort and acts in good faith to be in compliance with statute, rules and procedures.” [sic]*

**Division of Motor Vehicles:**

- 1) During the fiscal year under review, the Division of Motor Vehicles spent a total of \$29,000.00 for “Sole Source Advertising” with IMG College. In their response to the inspection report, the agency stated that:

*“We will comply with the recommendation to monitor ongoing purchases to avoid crossing delegated purchasing limits. According to our interpretation of purchasing rules, stringing appears to refer to an intentional act. We assure you that there was no intent to bypass purchasing rules, and with the implementation of OASIS, there appears to be no future circumstances in which this should occur.” [sic]*

- 2) During the fiscal year under review, the Division of Motor Vehicles spent a total of \$30,362.40 for Ink stamp and supplies with J.P. Cooke. In their response to the inspection report, the agency stated that:

*“We will comply with the recommendation to monitor purchases to avoid crossing delegated purchasing limits. According to our interpretation of purchasing rules, stringing appears to refer to an intentional act. We assure you that there was no intent to bypass purchasing rules, and with the implementation of OASIS, there appears to be no future circumstances in which this should occur.” [sic]*

## **Board of Professional Engineers:**

- 1) During the fiscal year under review, the Board of Professional Engineers spent a total of \$26,290.20 for newsletters with Dunbar Printing & Graphics. In their response to the inspection report, the agency stated that:

*“The definition of “stringing” in the West Virginia Purchasing Division Procedures Handbook states that it involves issuing a series of requisitions to “circumvent competitive bidding or to defeat the State purchasing card transaction or delegated purchasing limit.” The two requisitions in question were not issued separately for any of these three reasons. These requisitions were for two different projects with different purposes that have traditionally and routinely been handled as two separate projects at two different time periods during the course of every year. Both projects were competitively bid with the intention of obtaining the lowest possible bid for each project so it should be clear that there was no intent to “circumvent competitive bidding.” The first RFQ for printing of the annual newsletter included an individualized status report for each registrant and was issued in February. Recipients of the newsletter mailing were requested to update information on the status report as needed so that staff had the updated information prior to development of specifications for the second RFQ for printing of items needed for a renewal mailing in May. At the time the first RFQ was issued in February, specifications for the second RFQ issued in May were not available, specifically content and design of the renewal mailer pieces, format of the renewal pieces, number and size of the pages or the total number of copies needed. Estimated costs for both projects were not available at the time the two RFQ’s were issued but, based on the total cost for both projects in previous years, there was an expectation for the total to be below \$25,000. Upon award of the second RFQ, it became apparent that the total printing expense for the two projects combined would exceed \$25,000 by approximately \$1,000 and that the lowest bidder for both projects was the same vendor. It is clearly stated in West Virginia Code 5A-3-10 that a report and explanation regarding these unforeseen circumstances should have been submitted promptly to the Director of Purchasing. Staff involved in the procurement process were not aware of this requirement in the West Virginia Code at the time and, as a result, a report of this unanticipated circumstance was not made to the Director of Purchasing. Staff have been advised of this oversight, are appreciative of the opportunity to learn of this oversight as a result of this review process and will take appropriate steps to comply with the Code if such an unforeseen circumstance should arise in the future.” [sic]*

## **Board of Examiners for Registered Professional Nurses:**

- 1) During the fiscal year under review, the Board of Registered Nurses spent a total of \$123,541.00 for WV Restore Service with Linda L. Smith & Associates. In their response to the inspection report, the agency stated that:

*“Based upon WV Code §30-7E which states that: “The West Virginia Board of Examiners for Register Professional Nurses has the sole discretion to designate nurse health programs for licensees of the board...”the Board did not competitively bid a contract for its Nurse Monitoring and Recovery Program. Discussions were held with a representative from the Purchasing Department which further supported the Boards understanding of “sole discretion”. The agency recognizes that this has now been determined by the Purchasing Division to not be the case and will remedy the matter as recommended.” [sic]*

## **Mildred Mitchell Bateman Hospital:**

- 1) During the fiscal year under review, Mildred Mitchell Bateman Hospital spent a total of \$35,042.96 for hygiene items with Bob Barker Company. In their response to the inspection report, the agency stated that:

*“MMBH made efforts to secure goods and services from existing statewide contract, but encountered difficulty in finding the correct, preferred, requested items and as such, sought other vendors to provide the goods. In the future if the need arises, a waiver will be sought and received prior to acquisition from any other vendor.”[sic]*

- 2) During the fiscal year under review, Mildred Mitchell Bateman Hospital spent a total of \$41,433.23 for “food products not on statewide contract” with Economy Foods. In their response to the inspection report, the agency stated that:

*“We are working to resolve this issue. We are not purchasing items from Economy foods unless it is an item that cannot be elsewhere. We are utilizing statewide contracts for our food purchases; however, the Canteen may still order some items for resale from Economy Foods.” [sic]*

- 3) During the fiscal year under review, Mildred Mitchell Bateman Hospital spent a total of \$41,871.49 for meat products with Gordon Food Service Inc. In their response to the inspection report, the agency stated that:

*“We are working on solutions to resolve this issue. We have weekly dietary meetings to find solutions and we are using statewide contracts as much as possible, with the exception of what the Canteen may purchase for resale.”[sic]*

- 4) During the fiscal year under review, Mildred Mitchell Bateman Hospital spent a total of \$46,163.93 for patient clothing with J&B Sales. In their response to the inspection report, the agency stated that:

*“This issue has been resolved. We no longer purchase patient clothing through J&B Sales. We now purchase through Sheltered Workshops. Per purchasing handbook 4.6.1.3 as promulgated by WV Code §5a-3a10.” [sic]*

- 5) During the fiscal year under review, Mildred Mitchell Bateman Hospital spent a total of \$41,871.49 for patient clothing with LABSCO. In their response to the inspection report, the agency stated that:

*“This has been resolved. We are now ordering these items through Gulf South – a statewide contract.” [sic]*

### **Adjutant General/Armory Board:**

- 1) During the fiscal year under review, the Adjutant General/Armory Board spent a total of \$37,326.83 for equipment service with Alpha Mechanical Service. In their response to the inspection report, the agency stated that:

*“We will either establish an open-end contract for these services or obtain certification for current employees in this area of expertise.” [sic]*

- 2) During the fiscal year under review, the Adjutant General/Armory Board spent a total of \$30,869.74 for air filter replacement service with Charleston Filter Service. In their response to the inspection report, the agency stated that:

*“We are in the process of researching our agency needs and will either develop specifications for an agency service contract or assign current employees to provide these services.” [sic]*

- 3) During the fiscal year under review, the Adjutant General/Armory Board spent a total of \$32,889.93 for HVAC service with CIMCO. In their response to the inspection report, the agency stated that:

*“As stated above, we will either establish an open-end contract or obtain certification for current employees in this area of expertise.” [sic]*

- 4) During the fiscal year under review, the Adjutant General/Armory Board spent a total of \$29,594.15 for fire equipment repairs & inspections with J.T. Martin Fire & Safety. In their response to the inspection report, the agency stated that:

*“We are currently researching our agency needs and developing specifications for an agency service contract to provide these services and inspections.” [sic]*

- 5) During the fiscal year under review, the Adjutant General/Armory Board spent a total of \$37,326.83 for equipment rental with Walker Express – Nitro and Walker Machinery – Belle. In their response to the inspection report, the agency stated that:

*“The extenuating circumstances resulting in this finding are related to a construction project located at the Coonskin Complex in Charleston, WV, and are detailed in the attached memo.” [sic] (see Attachment A)*

- 6) During the fiscal year under review, the Adjutant General/Armory Board spent a total of \$28,854.35 for encapsulating suits, extrication suits and proximity gear with Tom Smith Fire Equipment (\$5,597.00) and Witmer Public Safety (\$23,257.35). In their response to the inspection report, the agency stated that:

*“We are in the process of researching our agency needs and will either develop specifications for an agency commodity contract.” [sic]*

### **Welch Community Hospital:**

- 1) During the fiscal year under review, Welch Community Hospital spent a total of \$30,696.16 for bottle gases with Airgas USA LLC. In their response to the inspection report, the agency stated that:

*“Accounts Payable processes these invoices for payment and this was not brought to our attention, as to the amount that had been paid. In an effort to circumvent situations of this type, Accounts Payable personnel will be in-serviced to purchasing processes and regulations.” [sic]*

# Attachment A



OFFICE OF THE ADJUTANT GENERAL  
**DIVISION OF ENGINEERING AND FACILITIES**  
1707 COONSKIN DRIVE  
CHARLESTON, WEST VIRGINIA 25311-1099

JAMES A. HOYER  
Major General, WVARNG  
The Adjutant General

MELVIN P. HODGES  
CPT, EN, WVARNG  
Facility Branch Chief

July 17, 2014

To: Chuck Bowman

SUBJECT: Audit Inspection - ISSUE # 82 

Chuck, this letter is to inform you that on April 4, 2012 we were tasked to get rental equipment for the construction of an access road that leads to the (CDC) Child Development Center on the hill behind the Annex Building. Bids were solicited and Walker express and Walker Machinery the same Company came in as the low bid. A Purchase Order was issued on May 5, 2012 for two week rental period. The Equipment was rented for the WV National Guard 601<sup>st</sup> Engineers was coming in to do the construction of the said road for their two week annual training troop labor.

When they started work not knowing that they would be running two shifts, in which overcharges were added to the rental. Rental of the Equipment is for eight hours a day anything over eight hours is considered over charges. Once they left the project was not complete, so I was told by General Burch and Col Shafer to leave equipment in place because they were going to have the 821<sup>st</sup> Engineers come in and finish it up. The equipment sat idle for a couple weeks in which rental fees added up more. The 821<sup>st</sup> worked on project for two weeks and the project was almost complete except for dressing up the area. When they left we had a couple of the guys finish dressing up the area so grass could be sowed. The project was completed late August and equipment returned to rental Company and final bills were paid by September 7, 2012.

If you have any questions feel free to contact me (304) 561-6453.

Sincerely  
Timothy D. Hersman

  
Technical Analyst