

Further Inquiry and Compliance Monitoring

Division of Culture and History

**Confusion Over Purchasing Requirements
Resulted in a Non-competitive Purchase of
Graphic Arts Services for the Division of
Culture and History**



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John Sylvia
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February 6, 2005

The Honorable Edwin J. Bowman
State Senate
129 West Circle Drive
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The Honorable J.D. Beane
House of Delegates
Building 1, Room E-213
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0470

Dear Chairs:

Pursuant to the West Virginia Sunset Law, we are transmitting a Further Inquiry and Compliance Monitoring of the Division of Culture and History, which will be presented to the Joint Committee on Government Operations on Sunday, February 6, 2005. The issue covered herein is "Confusion Over Purchasing Requirements Resulted in a Non-competitive Purchase of Graphic Arts Services for the Division of Culture and History."

We transmitted a draft copy of the report to the Division of Culture and History on January 21, 2005. We held an exit conference with the Division on January 24, 2005. We received the agency response on January 26, 2005.

Let me know if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "John Sylvia".

John Sylvia

JS/wsc

Joint Committee on Government and Finance

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Executive Summary

Issue 1: Confusion Over Purchasing Requirements Resulted in a Non-competitive Purchase of Graphic Arts Services for the Division of Culture and History.

The state Purchasing Division allows agencies to make purchases under \$10,000 without going through the Purchasing Division. Such purchases are to be competitive, and require the documentation of at least three bids.

On the day that bids were due, two of the vendors did not make a bid, but the Division of Culture and History counted these “no bids” and awarded the work to the only bidder.

When the Legislative Auditor reviewed similar purchases during FY 2004 and FY 2005, ten purchases were found that did not conform to state purchasing requirements.

About \$34,438 was awarded through the ten purchases that were not competitively bid.

The state Purchasing Division allows agencies to make purchases under \$10,000 without going through the Purchasing Division. Such purchases are to be competitive, and require the documentation of at least three bids. If vendors are contacted to make a bid, and subsequently decline to make any bid on the provision of goods or services, such “no bids” cannot be considered bids according to the state Purchasing Division Policies and Procedures Handbook.

In April, 2004, the Division of Culture and History sought the services of a graphic artist to revise the agency logo, and create some marketing publications and an informational diskette for grant recipients. Five vendors were contacted, and the three who expressed interest in bidding were sent details about the work in a Request for Proposal. On the day that bids were due, two of the vendors did not make a bid, but the Division of Culture and History counted these “no bids” and awarded the work to the only bidder. Subsequently, the state Purchasing Division halted action on this contract, citing the handbook requirements and the lack of competitiveness in the award process.

When the Legislative Auditor reviewed similar purchases during FY 2004 and FY 2005, ten purchases were found that did not conform to state purchasing requirements. Two purchases were made that did not have any bids or bid solicitations documented in the purchasing file, and two small engineering projects were awarded after only one bid was made, although several engineering firms had been contacted and declined to bid on either project. About \$34,438 was awarded through the ten purchases that were not competitively bid. Division of Culture and History personnel stated that they were not aware that “no bids” could not be counted in the award process.

The Legislative Auditor finds that retraining in the purchasing process and state Purchasing Division requirements, and centralization of the Division of Culture and History purchasing files would alleviate this situation.

Recommendations

1. *The Division of Culture and History should inform all staff with purchasing authority and approval authority that the state Purchasing Division Policies and Procedures Handbook is available on-line for reference.*
2. *The Division of Culture and History should send all staff with purchasing authority and approval authority to state Purchasing Division training.*
3. *The Division of Culture and History should centralize all purchasing files for easy access and review, and develop policies regarding purchasing files stored on computers.*

Review Objective, Scope and Methodology

This further inquiry of the Division of Culture and History is required and authorized by the West Virginia Sunset Law, Chapter 4, Article 10, Section 4a of the West Virginia Code, as amended. The Division of Culture and History is responsible for the preservation and advancement of the culture of the state by creating opportunities to present, preserve, collect, document and promote the state. The Legislative Auditor reviewed purchases under \$10,000 made by the Division of Culture and History following the discovery of a non-competitive purchase of graphic arts services in FY 2004.

Objective

The review of agency delegated purchases under \$10,000 was made to determine why the graphic arts award had been made without following state Purchasing Division requirements for competitive bids, and whether there was a pattern of other such awards.

Scope

All purchases up to \$10,000 for the Division of Culture and History in FY 2004 and FY 2005 were reviewed by the Legislative Auditor.

Methodology

The Legislative Auditor examined all purchase files for FY 2004 and FY 2005 provided by the Division of Culture and History, and interviewed purchasing personnel at the division and personnel involved with a specific purchase when questions about the purchase arose as a result of the file review. Financial reports that detailed the agency's purchasing activity over the past two years were reviewed with agency personnel. The state Purchasing Division Policies and Procedures Handbook was also reviewed, in addition to vendor payment reports from the State Auditor's Office. Every aspect of this evaluation complied with **Generally Accepted Government Auditing Standards (GAGAS)**.

Issue 1

Confusion Over Purchasing Requirements Resulted in a Non-competitive Purchase of Graphic Arts Services for the Division of Culture and History.

Issue Summary

After one bid and two “no bids” were received, a graphic artist was retained by the division. This purchase, at \$9,825, was under \$10,000 and did not have to be processed through the state Purchasing Division. Upon review by the director of the Purchasing Division, the contract was halted before completion due to the lack of competitive bids for this project.

In April, 2004, the Division of Culture and History sought the services of a graphic artist to create marketing publications, an informational disk for grant recipients, and a new logo design for the division. After one bid and two “no bids” were received, a graphic artist was retained by the division. This purchase, at \$9,825, was under \$10,000 and did not have to be processed through the state Purchasing Division. Upon review by the director of the Purchasing Division, the contract was halted before completion due to the lack of competitive bids for this project. During a further review by the Legislative Auditor, Culture and History purchasing personnel stated that they were unaware that “no bids” could not be counted in the bidding process. Several purchases under \$10,000 were made in FY 2004 and FY 2005 that counted both bids and “no bids” in the competitive selection process. In addition, there were two purchases that did not have competitive bids correctly documented in the file. One of these was due to a mistaken understanding that a statewide contract existed, and the other was the result of poor planning, when vendors contacted did not have time to create the product and declined to bid. Finally, two small engineering projects were awarded on the basis of one bid each, after multiple firms were contacted and declined to bid on the projects because of the size of the projects.

The Legislative Auditor finds that retraining would be appropriate for all staff members who engage in the purchasing process for the division and its associated five locations. In addition, centralization of the purchasing files would allow the purchasing officer to review all files and determine that all required forms are present in the files and that proper procedures have been followed in each agency delegated transaction.

According to the state Purchasing Division, “Competitive bidding is the foundation of public purchasing in the state of West Virginia.”

Purchasing Requirements

According to the state Purchasing Division, “Competitive bidding is the foundation of public purchasing in the state of West Virginia.” State agencies are allowed to make purchases of \$10,000 or less, without going through the Purchasing Division and these purchases are processed at the agency

... the Purchasing Division Policies and Procedures Handbook states: "A "no bid" is not considered a bid."

level. Such purchases are called "Agency Delegated Acquisitions" and agencies are encouraged to use West Virginia vendors. For purchases of \$1,000 or less, bids are not **required** however the Purchasing Division Policies and Procedures Handbook notes that "*competition is always encouraged.*" For purchases between \$1000 and \$5,000, three verbal bids are required, and should be documented on a Verbal Bid Quotation Summary form. Purchases between \$5,000 and \$10,000 require three written bids, and these bids should be on the Request for Quotation form. Finally, the Purchasing Division Policies and Procedures Handbook states: "A "no bid" is not considered a bid."

"No Bids"

Sometimes vendors indicate that they may be interested in bidding on the specified goods or services, but after reading the specifications for the product, decide not to make a bid. The agency may not know that the vendor has made this decision until the deadline for bids.

A "no bid" is when a vendor, who has been contacted by an agency and given the specifications for goods or services, declines to make a bid for the service or commodity. Sometimes vendors indicate that they may be interested in bidding on the specified goods or services, but after reading the specifications for the product, decide not to make a bid. The agency may not know that the vendor has made this decision until the deadline for bids, at which time the vendor states that it is not making a bid. This can be difficult for an agency when there are time constraints in order to obtain the goods or services for the agency.

Graphic Artist Award

In April, 2004, the Division of Culture and History sent a Request for Proposal to three vendors for a graphic artist to do design work. Two other vendors were contacted, but expressed no interest in the project. The scope of work included attendance at an all day planning session for marketing publications; design of a new agency logo; and the creation of three brochures and an interactive disk for grant recipients.

The agency stated it was not aware of the state Purchasing Division requirement in the Purchasing Division Policies and Procedures Manual that a "no bid" is not considered a bid.

On the day that the proposals were due, only one proposal was received. The other two vendors stated that they declined to bid. The graphic artist who bid on the project was awarded the job. This local designer had performed work for four other state agencies in the past three years, had recommendations from one of those agencies and the private sector, and an acceptable design proposal. The division awarded the contract to the single bidder, and considered that in contacting five design firms, and sending Requests for Proposal to three of the firms, that it had attempted to obtain the graphic arts services competitively. The agency stated it was not aware of the state Purchasing Division requirement in the Purchasing Division Policies and Procedures Manual that a "no bid" is not considered a bid. The procurement

officer for the Division of Culture and History stated in an e-mail:

“My understanding about the “no bids” was to find three bids, and if three cannot be obtained try for four or even five and document what you received and go with the low bid, if it meets specs and if any of these were a “no bid” it could serve as a bid. ...I have called purchasing on this matter of not being able to get bids for items/services and the reply has been [to] document, and since it was under \$10,000 then it was up to the agency.”

In November, 2004, the director of the state Purchasing Division reviewed the graphic artist award and stated in an e-mail communication to the Division of Culture and History procurement officer:

“After cursory review of the documentation surrounding this transaction, it appears that Culture and History did not acquire three written bids as required pursuant to the Purchasing Division Policies and Procedures Handbook Section 6....We believe that competition is available for these items and should have been obtained pursuant to procedures. You are hereby directed to cease and desist any further action on this contract until further notice.”

The director of the Purchasing Division stated to the Division of Culture and History that: “We believe that competition is available for these items and should have been obtained pursuant to procedures.”

The Division of Culture and History subsequently halted further action on the contract.

Legislative Auditor Reviews Agency Purchases Under \$10,000

The Legislative Auditor subsequently reviewed 125 purchases under \$10,000 made by the Division of Culture and History in FY 2004 and FY 2005.

The Legislative Auditor subsequently reviewed 125 purchases under \$10,000 made by the Division of Culture and History in FY 2004 and FY 2005. **Ten purchases were found that included “no bids” in the competitive bidding process, and some of these purchases did not have adequate documentation that any bids had been solicited.** One purchase of a door plaque was made that did not have bids or “no bids” documented on the required form in the purchasing file, and one furniture purchase, according to agency personnel, was mistakenly thought to be on a state contract and did not have bids in the purchasing file. Two engineering contracts were found in which attempts had been made to obtain bids, but the projects were so small that only one bid was made for each project. The six other files showed that an

effort had been made to obtain competitive bids, but “no bids” and incomplete bids were counted as one of the three bids. In total, the amount expended that was not competitively bid under state purchasing requirements during FY 2004 and FY 2005 to date is about \$34,438. The two purchases without competitive bids were:

- **Sears Monument Company** for a \$2,673 door plaque. This September, 2004 purchase was made without competitive bids. A “post-it” note in the file indicates that three additional companies were telephoned. Two companies answered the telephone and declined to bid because the length of time was too short in which to complete the required task. Poor planning may have contributed to the lack of competitive bids in this purchase. Nevertheless, competitive bids are required for all purchases over \$1,000.
- **Custom Office Furniture, Inc.** for a \$7,577 furniture purchase. This June, 2004 purchase was for Kimball Panel Furniture. Agency personnel stated that confusion developed because there is a statewide contract for Kimball furniture, but this type of furniture is not on the statewide contract. There were no competitive bids for this furniture because it was believed by agency personnel to be on statewide contract.

Forty-one staff members have the authority to purchase goods and services up to \$10,000. They are able to complete agreements, purchase from statewide contracts or bid out various items.

In addition, two engineering contracts for small-scale engineering projects were awarded on the basis of one bid only, after multiple engineering firms were contacted but declined to bid on the projects. They were:

- **Advanced Engineering Associates, Inc.** for a \$2,500 report on how to repair the reflecting pool at the Veteran’s Memorial. Three firms were contacted in April, 2003 but only one firm responded with a fee proposal.
- **McKinley and Associates, Inc.** for a \$6,850 engineering study in February, 2003 on determining the loading capacity of the floors for the Grave Creek Mound Historic Site. Four firms were contacted, but only McKinley, already doing re-roofing work under a competitively bid contract, bid for this small engineering project.

Further Contributing Factors

The Division of Culture and History has 104 permanent or permanent/part-time employees, and is responsible for five satellite locations in addition to the Cultural Center in Charleston. Forty-one staff members have the authority to purchase goods and services up to \$10,000. They are able to complete

agreements, purchase from statewide contracts or bid out various items. After the purchase paperwork has been completed, if the purchase is over \$1,000, the purchase must be approved by either the Division of Culture and History commissioner, the deputy commissioner or the division's director of administration. Purchases are made for these locations:

- Jenkins Plantation Museum, near Huntington
- Grave Creek Mound Historic Site, Moundsville
- Camp Washington-Carver, Clifftop
- Independence Hall, Wheeling
- Museum in the Park, Chief Logan State Park, Logan

The Division of Culture and History presently has 31 Visa purchase cards. These are issued primarily to the staff members with broader purchasing authority. However, some staff members with broader purchasing authority do not have purchase cards, while an additional six staff members without broader purchasing authority have been issued purchase cards for small transactions.

Although a large number of staff members have broader purchasing authority for the Division of Culture and History, some staff members have not received training through the state Purchasing Division. In addition, purchasing files are not centralized.

Although a large number of staff members have broader purchasing authority for the Division of Culture and History, some staff members have not received training through the state Purchasing Division. In addition, purchasing files are not centralized. In some cases, staff members are keeping duplicate files and retaining important purchasing forms in their own files so that not all documentation goes into the official file. Also, some files are being kept on computer, but no documentation of which files are on computer is available to the purchasing officer. This situation limits the Division of Culture and History's procurement officer's ability to oversee the files, and determine that each staff member has taken all of the necessary steps, and documented all of the purchasing actions on the appropriate purchasing forms.

Conclusion

The Division of Culture and History awarded a contract to a graphic artist after soliciting bids from five agencies, and only receiving one bid. Upon review by the state Purchasing Division, this was seen to be a non-competitive award, and action on the contract was halted. The Legislative Auditor reviewed 125 other purchases under \$10,000 during the past and present fiscal years, and found that ten purchases appeared to have been awarded without the required three competitive bids. In all but one case, according to agency personnel and written notes in the purchasing files, bids had been solicited but vendors declined to bid for a variety of reasons. Interviews with staff members suggest that a lack of training, and understanding about "no bids" being

considered as part of the competitive bid process contributed to this problem. In addition, some types of purchases are very hard to develop. Poor planning without allowing adequate time to develop three competitive bids also contributed to one non-competitive purchase. The Legislative Auditor concludes that all staff with purchasing authority should review the state Purchasing Division Policies and Procedures Handbook on-line, and receive training through the state Purchasing Division. In addition, all purchasing files should be centralized.

Recommendations

1. *The Division of Culture and History should inform all staff with purchasing authority and approval authority that the state Purchasing Division Policies and Procedures Handbook is available on-line for reference.*
2. *The Division of Culture and History should send all staff with purchasing authority and approval authority to state Purchasing Division training.*
3. *The Division of Culture and History should centralize all purchasing files for easy access and review, and develop policies regarding purchasing files stored on computers.*

Appendix A: Transmittal Letter

WEST VIRGINIA LEGISLATURE *Performance Evaluation and Research Division*

Building 1, Room W-314
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0610
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John Sylvia
Director

January 21, 2005

Troy Body, Acting Commissioner
Division of Culture and History
1900 Kanawha Boulevard East
Charleston, West Virginia 25305-0300

Dear Acting Commissioner Body:

This is to transmit a draft copy of a Further Inquiry of the Division of Culture and History. This report is scheduled to be presented during the February 6-8, 2005 interim meeting of the Joint Committee on Government Operations. We will inform you of the exact time and location once the information becomes available. It is expected that a representative from your agency be present at the meeting to orally respond to the report and answer any questions the committee may have.

We would like to schedule an exit conference on Monday, January 24, 2005 to discuss any concerns you may have with the report. We will need your written response by noon on Thursday, January 27, 2005, in order for it to be included in the final report. If your agency intends to distribute additional material to committee members at the meeting, please contact the House Government Organization staff at 340-3192 by Thursday, February 3, 2005 to make arrangements.

Thank you for your cooperation.

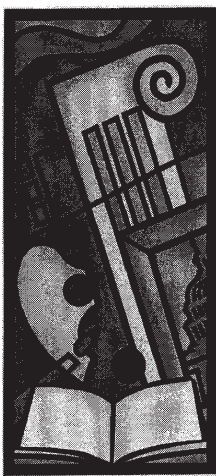
Sincerely,

Handwritten signature of John Sylvia in cursive script.
John Sylvia

c: Kay Goodwin, Cabinet Secretary
Department of Education and the Arts

Joint Committee on Government and Finance

Appendix B: Agency Response



WEST VIRGINIA
DIVISION OF
CULTURE & HISTORY

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Agency Response

Recommendation #1

The Division of Culture and History should inform all staff with purchasing authority and approval authority that the state Purchasing Division Policies and Procedures Handbook is available on-line for reference.

Agency Response: An email, informing staff that the Purchasing Division's Policies and Procedures Handbook, located at www.state.wv.us/admin/purchase, was sent on Thursday, January 27, 2005.

Recommendation #2

The Division of Culture and History should send all staff with purchasing authority and approval authority to state Purchasing Division training.

Agency Response: The Division is attempting to set up a special training session with the state Purchasing Division. If this additional training is not possible, the Division of Culture and History will ensure all its Purchasing unit employees attend the Purchasing Division's annual conference/training. The Division will follow up with an internal training for all agency-authorized purchasing and approval authorities. The Division's Purchasing unit also is updating the agency's internal purchasing guidelines and will see that all appropriate staff members receive a copy.

Recommendation #3

The Division of Culture and History should centralize all purchasing files for easy access and review, and develop policies regarding purchasing files stored on computers.

Agency Response: As a result of these audit findings, the Division has formed a Purchasing unit to centralize all procurement files and processes. Additionally, the Division is reducing the number of authorized state purchasing card users from 31 to 15. New procurement policies and guidelines are being developed and will be implemented before the end of February 2005.

1/26/05

