



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

MARY JANE PICKENS
ACTING CABINET SECRETARY

DAVID TINCHER
DIRECTOR

July 1, 2016

The Honorable William P. Cole
President of the State Senate
Room 229M, Building 1
State Capitol Complex
Charleston, WV 25305

The Honorable Tim Armstead
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

President Cole and Speaker Armstead

July 1, 2016

Page Two

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, 2016 through June 30, 2016, there were no spending units that reported to our division 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. However, the Purchasing Division inspectors discovered findings relating to four (4) different spending units during their reviews as stipulated in this section of the Code. The spending units were the Department of Military Affairs and Public Safety, Mount Olive Correctional Center; Department of Military Affairs and Public Safety, Salem Correctional Center; Department of Education and the Arts, Library Commission; and Department of Transportation, Division of Highways, District 3. A summary of these findings is attached.

Pursuant to this requirement, my next report will be submitted to you in January of 2017. 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:dhb

West Virginia Purchasing Division

SUMMARY OF STRINGING ACTIVITIES

(January 1, 2016 - June 30, 2016)

Department of Military Affairs and Public Safety, Mount Olive Correctional Center:

- 1) During the fiscal year under review, Mount Olive Correctional Center spent a total of \$28,259.41 for toilet systems with I-CON Systems, Inc. In their response to the Inspection report, the agency stated that:

MOCC disagrees with the finding of possible stringing. I-CON Systems, Inc. provided documentation (attached) stating that no other company made a similar, equal, or competing product and that there was no other item or product available for purchase that would serve the same function or meet the same specification needed. Widespread flooding and destruction of state property by inmates was occurring within the maximum-security segregation unit. These inmates are the most violent, high-risk, and disruptive inmates in the state. Quick purchase of these toilet systems was necessary to prevent continued flooding and other damage and to ensure facility security and safety.

In the Purchasing Division's response to the agency comments, the Purchasing Division referenced *West Virginia Code §5A-3-10(b)* and the *West Virginia Purchasing Division Procedures Handbook*:

Reference Section 3.7.1.4.2 of the Purchasing Procedure Handbook: Sole Source Procurements More than \$25,000: Whenever an item is unique and possesses specific characteristics that the agency views as being available from only one source, the primary state agency designated procurement officer is to submit to the Purchasing Division a formal request in writing, **in accordance with West Virginia Code §5A-3- 10c.**

Reference Section 3.7.1.3 Emergency Purchases, of the Purchasing Procedure Handbook: In accordance with **West Virginia Code §5A-3- 15**, purchases may be necessary when unforeseen causes arise; however, emergency purchases are not used for hardship resulting from neglect, poor planning, or lack of organization by the spending unit. An emergency purchase is a purchase which can be made only if and after the Purchasing Director, exercising sound judgment and discretion, concludes in good faith and upon reasonable and sufficient grounds that some unforeseen or unexpected circumstance has suddenly created a situation requiring that commodities or services be immediately purchased by a state spending unit and the Purchasing Director in writing authorizes such a purchase. A report of any such purchase, together with a record of competitive bids upon which it was based, is to be submitted to the Purchasing Director

Department of Military Affairs and Public Safety, Salem Correctional Center:

- 1) During the fiscal year under review, Salem Correctional Center spent a total of \$25,094.99 for Kitchen Equipment with Douglas Equipment. In their response to the Inspection report, the agency stated that:

We have received the Purchasing Review that was conducted at the Salem Correctional Center on the 14th and 15th of April 2016. We have reviewed the audit and the recommendations. We are now taking the necessary steps to correct the findings and ensure that we are following all purchasing division laws, rules and regulations.

Regarding the finding of stringing, we are currently closely monitoring purchases, bidding [sic] processes and acquiring the proper paperwork to avoid crossing delegated purchasing limits.

Department of Education and the Arts, Library Commission:

- 1) During the fiscal year under review, the Library Commission spent a total of \$36,237.24 in 55 transactions for Large Print Books with Primary Source Microfilm.
- 2) During the fiscal year under review, the Library Commission spent a total of \$38,827.31 in 52 transactions for E-Books/Audio Books with Recorded Books. In their response to the inspection report, the agency stated that:

Nothing has changed in the way the Library Commission purchases materials for the collection. These practices reflect the method libraries across the country use to acquire materials in a cost effective manner. It is obvious that the current Purchasing Division Procedures Handbook does not accommodate the purchase of library materials.

For this reason, I am requesting that the Library Commission be granted a waiver of the findings regarding practices that "could be construed as stringing". I look forward to your response.

In the Purchasing Division's response to the agency comments, the Purchasing Division referenced the *West Virginia Code §5A-3-10* and *West Virginia Purchasing Division Procedures Handbook*:

Reference Purchasing Handbook 3.7.1.2

Open-End Contracts: The Purchasing Division issues both statewide contracts and agency open-end contracts. The Purchasing Division, at its discretion or upon request of any state agency, may establish a contract for specific commodities and services required. These open-end contracts are convenient for recurrent purchases. For agency open-end contracts, the state agency determines its specific needs and submits a **Requisition** to the Purchasing Division for competitive bid. Open-end contracts are processed as master agreements in wvOASIS.

Reference Purchasing Handbook 6.2.17., When the Request for Quotation process is used, competitive bids are received, properly evaluated and an award is made to the **lowest responsible bidder** meeting specifications, in accordance with the **West Virginia Code §5A-3-11**.

Department of Transportation, Division of Highways, District 3:

- 1) During the fiscal year under review, Division of Highways, District 3 spent a total of \$28,695.60 in 22 transactions for propane with Amerigas. In their response to the inspection report, the agency stated that:

These purchases were comprised of all organizations for D-3 for propane. We do not believe it was the intent of any employee to circumvent the purchasing procedure by making purchases which might be construed as stringing.

- 2) During the fiscal year under review, Division of Highways, District 3 spent a total of \$26,558.00 in 3 transactions for maintenance of ground with WCI, Inc. In their response to the inspection report, the agency stated that:

Competitive bidding was done on an SPB in the amount of \$22,448.00. Competitive bidding is completed when it is estimated that the job will be over \$2500. The remaining balance of the construed stringing consisted of two (2) purchases; both of which were under \$2500 each. Bidding was not completed for either of these jobs due to their final costs. With the different jobs that can occur on any given day, it is difficult to track what has been spent to a particular vendor. We do not believe it was the intent of any employee to circumvent the purchasing procedure by making purchases which might be construed as stringing. The District Three Division of Highways will strive to comply with all purchases which might be construed as stringing.

- 3) During the fiscal year under review, Division of Highways, District 3 spent a total of \$33,248.98 in 57 transactions for Hydraulic pumps and repairs from J & S Hydraulics.

- 4) During the fiscal year under review, Division of Highways, District 3 spent a total of \$38,625.24 in 33 transactions for hydraulic part and repairs from Mountaineer Hydraulics. In their response to the inspection report, the agency stated that:

J & S Hydraulics is one of three hydraulic b vendors used by District Three. Mountaineer, J & S and Imperial Hydraulics all perform repairs for equipment in the district. In speaking with the supervisor of the District Three Equipment Division, he has advised that Mountaineer and J & S are good to work with the department on repairing equipment over a weekend or in a very timely manner so it can ready for use on following week. We do not believe it was the intent of any employee to circumvent the purchasing procedure by making purchases which might be construed as string. A District 3 contract is needed for hydraulic repairs.

- 5) During the fiscal year under review, Division of Highways, District 3 purchased auto parts with the 14 vendors listed below. Total expenditures with these fourteen vendors indicate that a series of requisitions or purchase orders were issued for the same or similar commodity or service for the amount of \$185,494.11. These expenditures include the following vendors:

- a. \$ 4,281.07 with Advanced Auto
- b. \$12,433.56 with AutoZone
- c. \$10,680.26 with Astorg Ford
- d. \$ 25,411.19 with Carquest
- e. \$ 2,644.21 with Clendenin Parts
- f. \$ 7,497.24 with Daves Auto Parts
- g. \$ 5,148.38 with Dodge Astorg Motor
- h. \$ 3,461.34 with Herrington Auto Parts
- i. \$ 4,706.15 with J & S Auto Parts
- j. \$20,173.29 with Jenkins Auto Parts

- k. \$30,853.85 with Napa Auto Parts
- l. \$14,228.82 with O'Reilly Auto Parts
- m. \$ 6,853.38 with Parkersburg Auto Supply
- n. \$37,121.37 with Willard C. Starcher Auto Parts

In the agency's response to the inspection report, the District stated that:

District Three is comprised of seven counties in West Virginia. Many of these counties are rural locations without a large city in the county. Due to the size and rural location of these counties, the number of auto part vendors is often limited. The agency's mission requires and operating equipment fleet which is available daily to respond to the many issues the agency handles. It is not cost-efficient for our employees to travel long distances to purchase parts and would result in increased non-productive time for employees and equipment. The stockpiling of parts in quantity has been discouraged by the Division's management. There may still be some instances where we need to explore contracts with other suppliers to fulfill all of our parts acquisition needs due to the large volume and variety of equipment owned by the Division. We do not believe it was the intent of any employee to circumvent the purchasing procedure by making purchases which might be construed as stringing. The District Three Division of Highways will strive to comply with all Purchasing Division rules and regulations as well as WV Code and Legislative Rule.

In the Purchasing Division's response to the agency comments, the Purchasing Division referenced the *West Virginia Purchasing Division Procedures Handbook*, **West Virginia Code §5A-3-10(b)**

Section 3.7.1.2. Open-End Contracts: The Purchasing Division issues both statewide contracts and agency open-end contracts. The Purchasing Division, at its discretion or upon request of any state agency, may establish a contract for specific commodities and services required. These open-end contracts are convenient for recurrent purchases. For agency open-end contracts, the state agency determines its specific needs and submits a Requisition to the Purchasing Division for competitive bid. Open-end contracts are processed as master agreements in wvOASIS.

Reference Purchasing Handbook 6.2.17., When the Request for Quotation process is used, competitive bids are received, properly evaluated and an award is made to the **lowest responsible bidder** meeting specifications, in accordance with the **West Virginia Code §5A-3-11**