



**WEST VIRGINIA HIGHER EDUCATION POLICY
COMMISSION
AND
WEST VIRGINIA COMMUNITY & TECHNICAL
COLLEGE SYSTEM**

PURCHASING PROCEDURES MANUAL

**April 20, 2018
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**WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION
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TABLE OF CONTENTS

	SECTION 1	GENERAL INFORMATION.....	
6	1.1	Introduction.....	
6	1.2	Purchasing Authority Under West Virginia Code.....	
6	1.3	Purpose	
6	1.4.	Purchasing Authority of the governing boards and the Delegation of said Authority.....	
7	1.4.1	Authority of the governing boards	
7	1.4.2	Delegation of Authority to the Vice Chancellor of Administration.....	
7	1.4.3	Delegation of Authority to the Presidents	
8	1.4.4	Delegation of Authority to a Chief Procurement Officer/Director of Procurement.....	
8	1.4.5	Delegation of Authority to a Buyer or other Designee.....	
8	1.5	General Provisions	
8	1.5.1	West Virginia Code.....	
8	1.5.2	Severability.....	
9	1.5.3	Supplementary General Principles of Law Applicable	
9	1.5.4	Obligation of Good Faith	
9	1.5.5	Singular-Plural and Gender Rule	
9	1.5.6	Public Access to Purchasing Files	
9	1.5.7	Deviations from the Purchasing Procedures Manual	
9	1.5.8	Incurring Costs of Bids or Proposals	9
	1.6	Procurement Advisory Council.....	10
	1.7	Dissemination of the Purchasing Procedures Manual	10
	1.8	Utilization of Small, Women and Women-Owned Businesses Resident in West Virginia .	10
	1.9	Ethics in Public Purchasing.....	11
	SECTION 2	PURCHASING ORGANIZATION AND OBJECTIVES	13
	2.1	Authority of the Chief Procurement Officer/Director of Procurement (CPO/DOP)	13
	2.2	Responsibilities, Duties and Remedies of the CPO/DOP.....	13
	2.3	Delegation of Authority by the CPO/DOP	15
	2.4	Responsibility for Institutional Compliance when Purchasing Authority is Delegated	16
	2.5	Revocation of Delegated Authority.....	16
	SECTION 3	SPECIFICATIONS AND REQUISITIONS	17
	3.1	Specification	17
	3.2	Types of Specifications.....	17
	3.3	Format of a Specification.....	18
	3.4	Standard Specifications	18
	3.5	Requisition.....	18
	SECTION 4	VENDOR INFORMATION.....	19

4.1	Vendor Access to Public Business	19
4.2	Vendor Registration.....	19
4.3	Resident Vendor Preference.....	19
4.4	Debarment.....	19
4.5	Vendors in Default with Unemployment Compensation or Workers' Compensation	20
4.6	Awards.....	20
4.7	Incurring Costs of Bids or Proposals.....	20
4.8	Protests.....	20
4.9	Suspension	20
SECTION 5 PURCHASE OR ACQUISITION OF MATERIALS, SUPPLIES, EQUIPMENT, SERVICES AND PRINTING		21
5.1	General Information	21
5.2	Purchases Not Exceeding \$50,000.....	21
5.3	Purchases Greater Than \$50,000.....	21
5.3.1	Competitive Sealed Bidding.....	21
5.3.2	Request for Bids.....	21
5.3.3	Bids	22
5.3.4	Federal Procurement Standards.....	22
5.3.5	Awards.....	23
5.3.6	Bidders Lists.....	24
5.3.7	Advertising for Purchases Greater than \$50,000.....	24
5.3.8	Bidding Time for Purchases Greater than \$50,000.....	24
5.3.9	Bid Submission.....	24
5.3.10	Prebid Conferences.....	24
5.3.11	Addendum to a Request for Bids.....	25
5.3.12	Pre-opening Modifications or Withdrawal of Bids.....	25
5.3.13	Late Bids, Late Withdrawals and Late Modifications.....	26
5.3.14	Receipt, Opening and Recording of Bids.....	26
5.3.15	Trade Secrets, Confidential or Proprietary Data.....	26
5.3.16	Mistakes in Bids.....	26
5.3.17	Bid Evaluation and Award.....	28
5.3.18	Low Tie Bids.....	28
5.3.19	Documentation of Award.....	28
5.1.20	Publicizing Awards.....	29
5.4	Request for Proposals (RFP).....	29
5.5	Content of the Request for Proposals	30
5.6	Proposal Preparation Time.....	30
5.7	Public Notice (Advertising and Posting)	30
5.8	Pre-proposal Conferences.....	30
5.9	Addendum to Request for Proposals	30
5.10	Pre-opening Modification or Withdrawal of Proposals.....	30
5.11	Late Proposals, Late Withdrawals and Late Modifications	30
5.12	Receipt and Registration of Proposals.....	31
5.13	Evaluation of Proposals	31
5.14	Proposal Discussions with Individual Offerors.....	31
5.15	Mistakes in Proposals	32
5.16	Award.....	33
5.17	Competitive Selection Procedures for Professional Services.....	33
5.18	Public Notice in Competitive Selection Procedures (Advertising and Posting).....	34
5.19	Request for Proposals or Request for Expressions of Interest	35

5.20	Receipt and Handling of Proposals and Expressions of Interest.....	36
5.21	Selection of the Best Qualified Offerors.....	36
5.22	Discussions and Interviews.....	37
5.23	Negotiation and Award of Contract.....	37
5.24	Notice of Award.....	38
5.25	Memorandum of Evaluation, Negotiation and Award.....	38
5.26	Cancellation of Solicitations; Rejection of Bids, Proposals or Expressions of Interest.....	38
5.27	Disposition of Quotations, Bids, Proposals or Expressions of Interest.....	40
5.28	Sole/Single Source Procurement.....	40
5.29	Emergency Procurement.....	41
5.30	Open End Contracts, Federal Contracts, Contracts Issued by Cooperative Buying Groups, Bulk Purchase Contracts and Contracts Issued Thru Reverse Bidding and Electronic Marketplaces.....	41
5.31	Motor Vehicle Purchase.....	41
5.32	Leases for Grounds, Buildings, Office Space or Other Space.....	42
5.33	Lease-Purchases of Capital Improvements and Equipment.....	43
5.34	Purchasing File.....	44
5.35	Vendor's Rights and Duties.....	44
SECTION 6	APPROVAL AS TO FORM BY THE ATTORNEY GENERAL, STANDARD FORMS, TERMS AND CONDITIONS, AND FILING WITH THE STATE AUDITOR.....	46
6.1	Signing Contracts in the Name of the Institution.....	46
6.2	Standardized Contract Forms.....	
6.3	Attorney General Approval of Contracts.....	46
6.4	State Auditor Filing Requirements.....	47
SECTION 7	COMPLAINTS, PROTESTS AND RECONSIDERATION.....	48
7.1	Complaints.....	48
7.2	Protests.....	48
7.3	Reconsideration.....	48
7.4	Filing Protests, Requests for Reconsideration and Decisions with the Vice Chancellor for Administration.....	49
SECTION 8	SUSPENSION AND RECONSIDERATION.....	50
8.1	Suspension.....	50
8.2	Reconsideration.....	51
8.3	Notification to the Vice Chancellor For Administration.....	51
SECTION 9	RECEIVING AND INVENTORY MANAGEMENT.....	52
9.1	Receiving.....	52
9.2	Receiving Report Required for Commodities Received.....	52
9.3	Inventory.....	53
SECTION 10	DISPOSITION OF SURPLUS EQUIPMENT, SUPPLIES AND MATERIALS.....	54
10.1	General Information.....	54
10.2	Methods of Disposal of Obsolete, Surplus and Unusable Materials, Supplies and Equipment.....	54
10.3	Reporting Requirements.....	57
10.4	Surplus Removal Contracts.....	57
10.5	Redeposit of Funds.....	57

SECTION 11 ESSENTIAL SERVICES.....	58
SECTION 12 PERFORMANCE AUDITS.....	60
12.1 Legislative Performance Audit.....	60
12.2 Purchasing Audits Performed by the Council/Commission.....	60
12.3 Internal Purchasing Audits Performed by the CPO/DOP.....	61
SECTION 13 GLOSSARY OF TERMS.....	62
13.1 Definitions.....	62
APPENDIX A	
AIA B101-2017 Supplementary Conditions Standard form of Agreement Between Owner and Architect.....	67
AIA A201-2017 Supplementary Conditions to Standard Form of Agreement Between Owner and Contractor.....	67
APPENDIX B	
Higher Education Real Property Lease-Purchase Agreement.....	68
Contract of Lease.....	77
APPENDIX C	
Requisition Form.....	83
Purchase Order.....	84
Receiving Report.....	86
Agreement Addendum WV-96.....	87
Purchasing Affidavit.....	87
Bond Forms.....	87
Vendor Registration Form.....	87
Designation of Buyer Form.....	88
Designation of Chief Procurement Officer Form.....	89
Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion – Lower Tier Covered Transactions	90

SECTION 1 GENERAL INFORMATION

1.1 Introduction

1.1.1 The public higher education institutions, like all agencies of State Government, need a wide variety of goods and services for efficient and effective operation. Purchasing practices and procedures established by state law, the West Virginia Council for Community and Technical College Education (the “Council”) and the West Virginia Higher Education Policy Commission (the “Commission”) are necessary to protect the interests of the taxpayers, vendors, the Council, the Commission, the governing boards, the institutions and their employees.

1.1.2 The Higher Education Purchasing Procedures Manual has been prepared as a guide to assist purchasing personnel at the institutions* in the proper methods of purchasing products and services from within state government, in the open market, and in managing and disposing of surplus, obsolete and unusable materials, supplies and equipment. Following them will help ensure that purchases, receiving, inventory management and disposal of surplus, obsolete and unusable materials, supplies and equipment are handled within the parameter of state law, and the rules, policies and procedures established by the Council and Commission.

***As per West Virginia State Code §18B-5-4, West Virginia University, Marshall University and the West Virginia School of Osteopathic Medicine are exempt from these procedures.**

1.1.3 The Higher Education Purchasing Procedures Manual is not to be construed as a complete or final determination of any purchasing matter and may be amended or changed at the discretion of the Vice Chancellor for Administration to ensure compliance with state law, and the rules, policies and procedures of the Council and Commission. Institutions may also develop internal guidelines and procedures to assist in managing purchasing, receiving, inventory management and disposal of surplus, obsolete and unusable materials, supplies and equipment, provided they are consistent with this manual, the rules of the Council and Commission, and state law.

1.2 Purchasing Authority under West Virginia Code

1.2.1 Authority to purchase and acquire materials, supplies, equipment, services and printing, entering into lease and lease-purchase agreements, and to dispose of surplus, obsolete and unusable materials, supplies and equipment is granted to the Council, Commission and governing boards in West Virginia Code §18B-5-4 through §18B-5-9 and §18B-19-1et.seq [[click here for access to Chapter 18B](#)]. As required by law, the Council and Commission have promulgated a procedural rule, [Series 30, Purchasing](#), and a legislative rule, [Series 43, Purchasing Efficiencies](#), to manage higher education purchasing.

1.3 Purpose

1.3.1 The purpose of the Higher Education Purchasing Procedures Manual is to:

- a. Provide a fiscally sound purchasing process that serves the needs of the Council and Commission, the governing boards and their institution in a timely fashion;

- b. Ensure that all purchases and acquisitions are made within the limits of available appropriations and funds;
- c. Ensure that purchase and acquisition of materials, supplies, equipment, services and printing, lease and lease-purchases agreements, receiving, inventory management, and the disposal of surplus, obsolete and unusable materials, supplies and equipment are made in compliance with state law, and the rules and policies of the Council and Commission;
- d. Simplify, clarify, and provide uniform procedures for procurement, receiving, inventory management and for disposal of surplus, obsolete and unusable materials, supplies and equipment, and make as consistent as possible the various rules and regulations at each of the institutions;
- e. Permit the continued development of policies, procedures, and practices for procurement, receiving, inventory management, and disposal of surplus, obsolete and unusable materials, supplies and equipment;
- f. Provide for increased public confidence in the procedures followed in higher education procurement;
- g. Ensure the fair and equitable treatment of all persons who participate in the procurement of goods and services by the Council, the Commission, the governing boards and their institutions;
- h. Provide increased economy and efficiency in the Council's, Commission's and the governing boards' procurement activities and to maximize to the fullest extent practicable the purchasing value of public funds entrusted to the Council, Commission, the governing boards and their institutions;
- i. Foster effective and broad-based competition within the free enterprise system; and
- j. Provide safeguards for the maintenance of a procurement system of quality and integrity.

1.4. Purchasing Authority of the Council, the Commission and the Governing Boards and the Delegation of said Authority

1.4.1 Authority of the Governing Boards

1.4.1.1 [West Virginia State Code §18B-5-4](#) mandates that the Council and Commission shall jointly adopt rules governing and controlling acquisition and purchase of materials, supplies, equipment, services, and printing, leases and lease purchases, and the disposal of surplus, obsolete and unusable materials, supplies and equipment.

1.4.2 Delegation of Authority to the Vice Chancellor for Administration

1.4.2.1 To implement its authority, the Council and Commission have adopted a procedural rule, [Series 30, Purchasing](#), and a legislative rule, [Series 43, Purchasing Efficiencies](#). Among other things, these rules grant the Vice Chancellor for Administration the authority and duty to administer and oversee the higher education purchasing system and to develop administrative manuals, guidelines, procedures, and forms, consistent with the rule, which shall be followed

by the Council, the Commission, the Governing Boards and institutions for purchase and acquisition of materials, supplies, equipment, services, and printing; leases and lease-purchases receiving and inventory management; and disposal of surplus, obsolete and unusable materials, supplies and equipment. Such administrative manuals, guidelines, procedures and forms may be reviewed by, but do not require approval of, the Council and Commission or the Chancellors before being implemented by the Vice Chancellor for Administration.

1.4.2.2 The Vice Chancellor for Administration also has the authority and duty to provide administrative oversight for purchases and contracts for material, supplies, equipment, services, printing, leases and lease-purchases required by the Commission and Council offices and West Virginia Network for Educational Telecomputing. The Vice Chancellor shall appoint a Chief Procurement Officer/Director of Procurement (CPO/DOP) for these administrative units.

1.4.3 Delegation of Authority to the Presidents

1.4.3.1 The governing boards have delegated to the presidents or other administrative head of an institution, the authority and duty to administer and oversee the institution's purchasing, receiving, and inventory management activities, and to dispose of the institution's surplus, obsolete and unusable materials, supplies and equipment. A governing board may also revoke such delegated authority.

1.4.4 Delegation of Authority to a Chief Procurement Officer/Director of Procurement (CPO/DOP)

1.4.4.1 Each president shall appoint a CPO/DOP who shall assist the president in carrying out the duties, obligations and remedies imposed by the governing board having jurisdiction, consistent with the rules of the Council or Commission and state law. Such appointment shall be in writing and filed with the Vice Chancellor for Administration, the State Auditor and the Attorney General. Unless otherwise stated in writing by the president, the CPO/DOP shall have full authority to act as the designee of the president for purchase and acquisition of all materials, supplies, equipment, services, and printing; leases and lease-purchases, receiving and inventory management; and for disposal of surplus, obsolete and unusable materials, supplies and equipment as may be required by the institution.

1.4.5 Delegation of Authority to a Buyer or other Designee

1.4.5.1 To assist the CPO/DOP in performing his or her duties and obligations, the CPO/DOP may appoint Buyers and delegate authority to them as designees or may delegate such authority to any department within an institution. Such delegation of authority shall be in compliance with state law, the rules, policies and procedures of the Council and Commission, the governing board having jurisdiction, and this Purchasing Procedures Manual. Such delegation of authority by the CPO/DOP, and any limits thereupon, shall be in writing and filed with the Vice Chancellor for Administration, the State Auditor and the Attorney General. Notwithstanding any provision to the contrary, responsibility for ensuring institutional compliance with the West Virginia Code and the Council's, Commission's and governing board's policies and rules shall rest with and be the responsibility of the CPO/DOP.

1.5 General Provisions

1.5.1 West Virginia Code: No provisions of this Purchasing Procedures Manual shall be deemed to supersede the West Virginia Code. Vendors shall familiarize themselves with applicable

provisions of the West Virginia Code.

- 1.5.2 Severability: If any provision of the Purchasing Procedures Manual or any application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of these procedures which can be given effect without the invalid provisions or application, and to this end, the provisions of procedures are declared to be severable.
- 1.5.3 Supplementary General Principles of Law Applicable: Unless displaced by a particular provision of West Virginia Code, the principles of law and equity, including the Uniform Commercial Code of West Virginia, the law merchant, and law relative to capacity to contract, agency, fraud, misrepresentation, duress, coercion, mistake, or bankruptcy shall supplement the provisions of this Purchasing Procedures Manual.
- 1.5.4 Obligation of Good Faith: Every responsibility or duty within this Purchasing Procedures Manual imposes an obligation of good faith in its performance or enforcement. "Good faith" means honesty in fact in the conduct or transaction concerned and the observance of reasonable government standards of fair dealing.
- 1.5.5 Singular-Plural and Gender Rule: In the Purchasing Procedures Manual, unless the context requires otherwise, words in the singular number include the plural, and those in the plural include the singular; and words of a particular gender include any gender and the neuter.
- 1.5.6 Public Access to Purchasing Files: Purchasing files are public records to the extent provided in the West Virginia Code and they shall be available to the public for examination and inspection at the purchasing office of the procuring institution.
- 1.5.7 Deviations From the Purchasing Procedures Manual: The Vice Chancellor for Administration may approve a deviation from the guidelines set forth in the Purchasing Procedures Manual when it is clearly evident that a deviation is in the best interest of the institution provided such deviation does not conflict with the policies and rules of the Council, the Commission and the West Virginia Code. Any such deviation shall be requested by the CPO/DOP in writing and the request shall: (a) clearly explain the deviation being requested and the circumstances that give rise to the request, (b) why the deviation is in the best interest of the institution; and (c) the consequences to the institution if the deviation is not granted. If the deviation is approved by the Vice Chancellor for Administration, such approval shall be made in writing prior to implementation by the institution.
- 1.5.8 Incurring Costs of Bids or Proposals: Neither the Council, the Commission nor the Governing Boards and the institutions shall be liable for any expense incurred by a vendor or vendors in preparation and/or presentation of a bid or proposal.

1.6 Procurement Advisory Council

- 1.6.1 The Vice Chancellor for Administration may establish a Procurement Advisory Council. If created, this Council upon adequate notice shall meet for discussion of problems and make recommendations to improve the procurement process. When requested by the Vice Chancellor for Administration, the Procurement Advisory Council may conduct studies, research or analysis, and make reports and recommendation with respect to subjects or matters related to procurement, receiving, inventory management, and disposal of surplus property.

The Procurement Advisory Council shall consist of qualified representatives from various institutions and such other persons as the Vice Chancellor for Administration may deem desirable.

- 1.6.2 The Vice Chancellor for Administration may also appoint advisory groups to assist with respect to specifications or procurement in specific areas, and with respect to other matters relating to procurement, receiving, inventory management, and disposal of surplus, obsolete and unusable materials, supplies and equipment.

1.7 Dissemination of the Purchasing Procedures Manual

- 1.7.1 The Purchasing Procedures Manual is available on the Commission's website at <http://www.wvhepc.edu/resources/purchasing-and-finance/> and the Council's website at <http://wvctcs.org/>.

1.8 Utilization of Small, Women-Owned and Minority-Owned Businesses Resident in West Virginia (SWAM)

- 1.8.1 CPO/DOPs should encourage West Virginia's small, women-owned and minority businesses (SWAM) to participate in purchasing opportunities at the state institutions of higher education. It is generally recognized that SWAM businesses should be afforded an equal opportunity to compete. Such businesses are dependent upon being given this opportunity to compete in the marketplace with their larger competitors.

SWAM related terms defined:

- a. A Minority-owned Business is defined as a business that is at least 51% owned by one or more minority individuals or in the case of a corporation, partnership, limited liability company or other, by one or more minority individuals and both the management and daily business operations are controlled by one or more minority individual(s).
- b. A "minority individual" means an individual who is a citizen of the United States or a non-citizen who is in full compliance with United States immigration law and who satisfies one or more of the following definitions:
 1. African American means a person having origins in any of the original peoples of Africa and who is regarded as such by the community of which this person claims to be a part.
 2. Asian American means a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands including, but not limited to, Japan, China, Vietnam, Samoa, Laos Cambodia, Taiwan, Northern Mariana, the Philippines, a US territory of the Pacific, India, Pakistan, Bangladesh or Sri Lanka and who is regarded as such by the community of which this person claims to be a part.
 3. Hispanic American means a person having origins in any of the Spanish-speaking peoples of Mexico, South or Central America or the Caribbean Islands or other Spanish or Portuguese cultures and who is regarded as such by the community of which this person claims to be a part.
 4. Native American means a person having origins in any of the original peoples of North America and who is regarded as such by the community of which this person claims to be a part or who is recognized by a tribal organization.
- c. Small Business means a business independently owned or operated by one or more persons who are citizens of the United States or non-citizens who are in full compliance with United States immigration law which, together with affiliates, has 250 or fewer

employees, or average annual gross receipts of \$10 million or less averaged over the previous three years.

- d. Women-owned Business means a business concern that is at least 51% owned by one or more women who are citizens of the United States or non-citizens who are in full compliance with United States immigration law. In the case of a corporation, partnership, limited liability company or other entity, at least 51% of the equity ownership interest is owned by one or more women who are citizens of the United States or non-citizens who are in full compliance with United States immigration law and both the management and daily business operations are controlled by one or more women who are citizens of the United States or non-citizens who are in full compliance with the United States immigration law.

The following are recommended guidelines for support of SWAM businesses resident in West Virginia:

- a. Actively strive to attain reasonable and responsible institutional policies and goals regarding purchases from SWAM businesses;
- b. Participate in local and/or national organizations whose purpose is to stimulate growth of these entities;
- c. Seek new sources of supplies and services; and
- d. Encourage employees to support SWAM businesses.

1.9 Ethics in Public Purchasing

1.9.1 Purchasing and disposal of surplus, obsolete and unusable materials, supplies and equipment in the public sector is a public trust and the highest degree of professional and ethical standards should be maintained at all times. West Virginia State Code §6B, the West Virginia Governmental Ethics Act, is applicable to all purchasing, receiving, inventory management, and surplus property activities performed under the jurisdiction of the Council, the Commission and the Governing Boards.

1.9.2 Any person who is not authorized to approve a purchase or contract, or who does so in a manner that is in violation of state law, or the rules, policies and procedures of the Council and Commission and the governing board having jurisdiction, may be held personally liable for the cost of such purchase or contract as provided in state law. Purchases or contracts violating state law and/or the rules, policies and procedures of the Council and Commission and the governing board having jurisdiction shall be void and of no effect.

1.9.3 Except as may be authorized by the provisions of West Virginia State Code §6B: (1) neither the CPO/DOP nor any employee of the institution's Purchasing Office shall be financially interested, or have any beneficial personal interest, directly or indirectly, in the purchase of any commodities or printing, nor in any firm, partnership, corporation or association furnishing them; and (2) neither the CPO/DOP nor any employee of the institution's Purchasing Office shall accept or receive directly or indirectly from any person, firm or corporation, known by the CPO/DOP or employee, to be interested in any bid, contract or purchase order, by rebate, gift or otherwise, any money or other thing of value whatsoever, or any promise, obligation or contract for future award or compensation. The provisions of West Virginia Code §5A-3-29, 30, 31 shall apply [[click here for access to Chapter 5A](#)].

- 1.9.4 Except as may be authorized by the provisions of [Chapter 6B of the West Virginia Code](#): (1) neither the Council, the Commission, the governing board, nor any employee of the Council, the Commission or the governing board, shall be financially interested, or have any beneficial personal interest, directly or indirectly, in the purchase of any equipment, materials, supplies, services, or printing, nor in any firm, partnership, corporation or association furnishing them; and (2) neither the Council, the Commission, the governing board or any employee of said Council, Commission or governing board shall accept or receive directly or indirectly, from any person, firm or corporation, known by the Council, the Commission or the governing board or such employee to be interested in any bid, contract or purchase, by rebate, gift or otherwise, any money or other thing of value whatsoever or any promise, obligation or contract for future reward or compensation.
- 1.9.5 Any vendor violating the West Virginia Code or the rules, policies and procedures of the Council and Commission or the governing board having jurisdiction may be suspended from the right to bid on or submit a proposal for institutional purchases for a period of up to one year.
- 1.9.6 [The ethical practices of the National Institute of Governmental Purchasing](#) (NIGP) should guide the conduct of every person employed in an institution's purchasing.

SECTION 2
PURCHASING ORGANIZATION AND OBJECTIVES

2.1 Authority of the Chief Procurement Officer/Director of Procurement (CPO/DOP)

2.1.1 The CPO/DOP shall, unless otherwise stated in writing, have full authority to act in matters of institutional purchasing, leases and lease-purchases, receiving, inventory management, and disposal of surplus, obsolete and unusable materials, supplies and equipment as the designee of the institution's president, or the Vice Chancellor for Administration as in the case of the Council and Commission Offices and West Virginia Network for Educational Telecomputing. The CPO/DOP shall serve as the institution's primary procurement official.

2.2 Responsibilities, Duties and Remedies of the CPO/DOP

2.2.1 As required by the rules, policies and procedures of the Council and Commission and the governing board having jurisdiction, the CPO/DOP shall have the duty and responsibility to:

- a. Ensure compliance with state law, and the rules, policies, procedures of the Council and Commission, the governing board having jurisdiction, and the institution as they apply to purchasing, leases and lease-purchases, receiving, inventory management and the disposal of surplus, obsolete and unusable materials, supplies and equipment;
- b. Procure or supervise the procurement of all materials, supplies, equipment, services, printing, leases and lease purchases, repairs and alterations, and construction needed by the institution;
- c. Establish and maintain professional procurement procedures within the institution;
- d. Sell, trade, or otherwise dispose of surplus, obsolete and unusable materials, supplies and equipment belonging to the institution;
- e. Establish institutional guidelines and procedures for purchases not exceeding \$50,000. Such guidelines and procedures shall provide for obtaining adequate and reasonable records to properly account for funds and to facilitate auditing. These guidelines, and any updates, shall be approved by the president and filed with the Vice Chancellor for Administration;
- f. Establish and maintain institutional guidelines and procedures for receiving and distributing materials, supplies, equipment, services and printing, and for inventorying the institution's equipment that has a unit value at the time of purchase of \$5,000 or more and a useful life of at least one year. An institution may elect to inventory equipment and furnishings with a value of less than \$5,000 per unit. These guidelines and procedures shall be consistent with the administrative manuals, guidelines, procedures and forms developed by the Vice Chancellor for Administration. They shall be approved by the president and filed with the Vice Chancellor for Administration;
- g. Review specifications and descriptions before soliciting bids or proposals to ensure the specifications and descriptions are competitive and fair and do not unfairly favor or discriminate against a particular brand or vendor;

- h. Advertise all purchases for which formal competitive bids or proposals are being solicited, and post or otherwise make available notice of such purchases in the institution's purchasing office;
- i. Maintain the institution's purchasing files;
- j. Accept or reject any and all bids in whole or in part;
- k. Waive minor irregularities in bids, bidding documents and/or specifications;
- l. Apply and enforce standard specifications;
- m. Prescribe the amount of deposit or bond to be submitted with any bid or contract;
- n. Prescribe contract provisions for liquidated damages, remedies and/or other damages provisions in the event of vendor default;
- o. Hear and render opinions on vendor complaints and protests;
- p. Prior to the issuance of a purchase order that exceeds \$25,000, ensure that the successful vendor is properly registered with the Purchasing Division of the Department of Administration in accordance with state law before a contract or purchase order is issued to that vendor;
- q. Perform chemical and physical tests on samples submitted with bids and samples of deliveries to determine compliance with specifications, if deemed necessary and prudent;
- r. Put special emphasis on identifying in-state small businesses and provide these vendors the opportunity to participate in the institution's purchases; and
- s. Exempt from competitive bidding purchases of materials, supplies, equipment, services and printing purchased from within state government, from West Virginia sheltered workshops, and from cooperative buying groups, consortia and federal government contracts when price, availability and quality are comparable to those in the open market.

2.2.2 As required by state law and the rules, policies and procedures of the Council, Commission and the governing board having jurisdiction, the CPO/DOP shall have the following remedies:

- a. In the event that a vendor fails to honor any contractual term or condition, the CPO/DOP may cancel the contract and re-award the contract to the next lowest responsible and responsive bidder;
- b. Vendors failing to honor contractual obligations may be held responsible for all differences in cost; and
- c. Declare a vendor or bid non-responsible or nonresponsive and refuse to award a purchase order. All such instances shall be substantiated in writing giving the reason(s) thereof, and such documentation shall be considered a public document.

2.3 Delegation of Authority by the CPO/DOP

2.3.1 Delegation to a Buyer in the Institution's Purchasing Department

2.3.1.1 Subject to state law and the rules, policies and procedures of the Council, Commission and the governing board having jurisdiction, the CPO/DOP may appoint Buyers and delegate authority to them as designees. Such delegation of authority by the CPO/DOP, and any limits thereupon, shall be in writing and filed with the Vice Chancellor for Administration, the State Auditor, and the Attorney General.

2.3.1.2 To be appointed as a Buyer, the person under consideration must, at a minimum, be either (a) a graduate of an accredited college or university; or (b) have at least four years' experience in purchasing for any unit of government or any business, commercial or industrial enterprise.

2.3.1.3 Any person making purchases and acquisitions pursuant to state law and the rules, policies and procedures of the governing board having jurisdiction shall execute a bond in the penalty of \$50,000, payable to the State of West Virginia, with a corporate bonding or surety company authorized to do business in this state as surety therein, in a form prescribed by the Attorney General and conditioned upon the faithful performance of all duties in accordance with West Virginia Code §18B-5-4 through §18B-5-9. In lieu of separate bonds for such Buyers, a blanket surety may be obtained. Any such bond shall be filed with the Secretary of State. The cost of such bond or bonds shall be paid from funds appropriated to the Council, Commission and the governing boards. The Board of Risk and Insurance Management (BRIM) maintains blanket bonds for employees whose jobs require these bonds.

2.3.2 Delegation of Authority by the CPO/DOP to Others outside the Institution's Purchasing Department

2.3.2.1 Subject to state law and the rules, policies and procedures of the Council, Commission and the governing board having jurisdiction, the CPO/DOP may delegate purchasing authority to other appropriately trained individuals at the institution not employed within the institution's Purchasing Department, or to other departments within the institution. Such delegation of authority by the CPO/DOP, and any limits thereupon, shall be in writing and filed with the Vice Chancellor for Administration, the State Auditor, and the Attorney General.

2.3.2.2 Factors that should be considered by the CPO/DOP in making the decision to delegate purchasing authority to individuals not employed within the institution's Purchasing Department, or to other departments within the institution, include, but are not limited to:

- a. The resources currently available to the CPO/DOP within the institution's Purchasing Department to adequately perform the purchasing functions that may be delegated;
- b. The procurement experience and expertise, and any specialized knowledge the potential delegee possesses that would be beneficial to the Purchasing Department in making purchases and acquisitions;
- c. The past experience of the potential delegee in exercising similar authority; and
- e. The degree of economy and efficiency to be achieved in meeting the institution's procurement needs if authority is delegated.

2.4 Responsibility for Institutional Compliance When Purchasing Authority is Delegated

2.4.1 Responsibility for ensuring institutional compliance with state law and the rules, policies and procedures of the Council/Commission and the governing board shall rest with and be the obligation of the CPO/DOP.

2.5 Revocation of Delegated Authority

2.5.1 The CPO/DOP may revoke delegated authority to an individual or department at his or her discretion. When delegated authority is revoked, the CPO/DOP shall, in writing, notify the Vice Chancellor for Administration, State Auditor and the Attorney General of the effective date of revocation.

SECTION 3 SPECIFICATIONS AND REQUISITIONS

3.1 Specification

3.1.1 The purpose of a specification is to serve as the basis for obtaining the commodities (products) and services suitable for the needs of the Council, Commission, the governing board and the institution in a cost effective manner.

3.1.2 Determining the exact requirements (specifications) for products and services to perform a given function is one of the most important tasks in the procurement process. A specification must describe the type of product or service, the quality level, special requirements in design, performance, delivery and usage. A specification must not be restrictive and "lock-in/lock-out" a specific product, thus, limit competition, or is so vague as to allow a vendor to provide a lower quality product or service. A good specification is:

- a. Reasonable, legible, and clearly understandable to both the seller and the purchaser;
- b. Concise but complete; and
- c. Identifiable wherever possible with some brand or specification already on the market.

3.2 Types of Specifications

3.2.1 There are at least three types of specifications used separately and/or in combination to communicate requirements for goods and services to the vendor. These include:

- a. A "brand name or equivalent" specification is based on one or more of a manufacturer's commodity or product description(s), model number(s) and quality level(s). The manufacturer's commodity or product number(s) must be easily identified and available in a current publication that is readily available to most vendors. Commodity or product descriptions must be sufficiently detailed and specify only the required features needed for the application.
- b. A "performance" specification is based on the specific performance needs of the purchaser. A performance specification is less structured as to how the product is made, and more structured as to how well it performs. Life cycle cost for operating and maintaining the product should be an element of the specification.
- c. A "design" specification concentrates on the dimensional, physical and functional requirements of the item being purchased. The design specification is used when the commodity has to be specially made to meet the purchaser's unique needs.

3.2.2 Combinations of the above may be used to communicate a clear specification to vendors. A performance specification may refer to a nationally accepted testing procedure for a commodity; a design specification may indicate the physical size and dimension of the commodity; and a brand name or equivalent specification may be used to indicate a desired quality level.

3.3 Format of a Specification

3.3.1 A specification should be presented in a specific manner each time a purchasing requisition is written. This format should include:

- a. The item number;
- b. Quantity and unit of measure, such as "case," "each," "dozen," etc.; and
- c. Description and name of the commodity or product if using a brand name or equivalent specification, followed by the manufacturer and model number. After the brand name, the words "or equivalent" should be inserted to inform vendors that alternate bids will be considered. The description should contain the essential requirements that clarify the quality level or indicate the features that are important to the function of the item/service being purchased.

3.3.2 Generally, the following language should not be included in a requisition:

- a. "No substitutes;"
- b. "Only nationally known brands accepted;" and
- c. "No alternatives will be accepted without prior approval of the requisitioner."

3.4 Standard Specifications

3.4.1 Standard specifications are those developed by the institution's Purchasing Department. Standard specifications are also available from such organizations as the National Institute of Governmental Purchasing, the National Association of Purchasing Management and the National Association of Educational Buyers. The use of these standard specifications assures an acceptable quality that meets the needs of the institution.

3.5 Requisition

3.5.1 A requisition is a document that is usually required by the CPO/DOP for the institution's Purchasing Department to initiate the purchasing process. It can result in the issuance of a Request for Quotations (RFQ), a Request for Bids (RFB), a Request for Proposals (RFP), a Request for Qualifications (RFQa), or a Request for Expressions of Interest or Information (REOI), and ultimately in the issuance of a purchase order to a vendor. Along with other required information and signatures, a requisition shall contain a suitable specification as described above.

3.5.2 When a need develops to purchase goods or services, a requisition should be prepared and forwarded to the institution's Purchasing Department with the required approval of the originating department unless the CPO/DOP determines that a requisition is not required.

SECTION 4 VENDOR INFORMATION

4.1 Vendor Access to Public Business

- 4.1.1 No qualified bidder should be arbitrarily or capriciously excluded from doing business with the Council, Commission, the governing boards or their institutions. Broad vendor participation should be fostered and encouraged. West Virginia businesses are actively encouraged to participate in higher education purchasing opportunities.

4.2 Vendor Registration

- 4.2.1 West Virginia Code requires all vendors be registered with the West Virginia Department of Administration, Purchasing Division, prior to receiving a purchase order for competitive products and/or services exceeding \$25,000 from the Council, Commission, the governing boards and their institutions. An annual vendor registration fee, payable to the West Virginia Department of Administration, is required from vendors who have received a purchase order for competitive products and/or services exceeding \$25,000 per order. Those exempt from paying the fee are vendors supplying sole source (noncompetitive) products/services, or vendors receiving a purchase order in the aggregate amount of \$25,000 or less per order.

4.3 Resident Vendor Preference

- 4.3.1 Preference for Resident Vendors: West Virginia vendors may claim an in-state resident vendor preference in accordance with [§5A-3-37](#) of the West Virginia Code on purchases of materials, supplies, equipment and printing that are competitively bid; however, this resident vendor preference is not applicable for services, including construction. Claims for the resident vendor preference must be made in writing by the vendor and must be submitted with the vendor's bid. Nonresident vendors who are certified small, women or minority owned shall be provided the same preference if requested.

4.4 Debarment

- 4.4.1 As provided in West Virginia Code §5A-3-33a through §5A-3-33f [[click here for access to WV State Code §5A](#)], vendors that have been debarred are not eligible to bid on or receive contracts to supply goods and services to the state and its subdivisions for a specified period of time.
- 4.4.2 The Director of the State Purchasing Division has primary responsibility for administering the debarment process which includes: (a) obtaining a list of vendors declared ineligible under federal laws and regulations; (2) notification of all contracting officials for the state and its subdivisions regarding debarred vendors; (3) compiling and maintaining a current, consolidated list of all vendors that have been debarred, the period of debarment, and the reasons for debarment; (4) investigation complaints from the officials of the state and its subdivisions responsible for contracting with vendors for goods and services; (5) initiating and conducting debarment procedures; and (6) proposing rules for legislative approval for operation of the debarment process.
- 4.4.3 The code sections in subparagraph 4.4.1 apply to higher education purchases. Before a contract or purchase order is issued, the [debarment list](#) should be checked to make sure a vendor is not listed. If the vendor is listed, the vendor is not eligible for a contract or purchase order.

4.4.4 Federal Debarment/Suspension: For purchases over \$25,000, Vendor status shall be verified on www.sam.gov before the purchase/award is made. Screen prints of the search results shall be printed and kept in the purchasing file for audit verification. If the vendor does not appear on SAM.gov, they must sign the Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion – Lower Tier Covered Transactions found in Appendix C or provide an explanation as to why the vendor cannot provide the certification. If the vendor is listed in SAM.gov as being debarred or fails to furnish the certification or explanation, the vendor is not eligible for a contract or purchase order.

4.5 Vendors in Default with Unemployment Compensation or Workers' Compensation

4.5.1 [West Virginia State Code §21A-2-6](#) and the Bureau of Employment Programs' Exempt Legislative Rule ([Title 96, Series 1](#)) prohibit granting, issuing, or renewing any contract, license, permit, certificate, or other authority to conduct trade, profession, or business to or with any employing unit whose account is in default with the Commissioner of the Bureau of Employment Programs with regard to the administration of Chapters 21A or 23 of the West Virginia Code.

4.5.2 Before a contract, purchase order or change order awarding, renewing or extending a contract is awarded or issued, the institution should check the Bureau of Employment Programs' database of vendors in default ([UC/WC Defaulted Accounts](#)).

4.6 Awards

4.6.1 After competitive bids are received for purchases greater than \$50,000, and after the bids have been evaluated, an award shall be made to the lowest responsible and responsive bidder. Neither personal preference nor "gold-plating" will be permitted. "Gold-plating" is the adding of additional features or functions by a bidder to a specified requirement for which no original request was made, and then expecting an award, at more dollars, claiming the product or service is better than the lowest responsible bidder who meets the specified requirement. If after a proper evaluation, an award is made to other than the lowest bidder; a justification must be written and retained for the purchasing file. The reasons given must be technically correct in terms of the bid specifications and not based on subjective or prejudicial reasons. The evaluator(s) must sign the justification.

4.7 Incurring Costs of Bids or Proposals

4.7.1 Neither the Council, Commission, nor the governing boards and their institutions shall be liable for any expense incurred by a vendor in preparation and/or presentation of a bid, proposal or quotation.

4.8 Protests

4.8.1 Vendors may file a written complaint or protest of a bid or planned award in accordance with [Section 7](#) of this Purchasing Procedures Manual.

4.9 Suspension

4.9.1 Vendors may be suspended from doing business with the Council, Commission, governing boards and their institutions for up to one year in accordance with [Section 8](#) of this Purchasing Procedures Manual. Vendor reconsideration or appeals are also discussed in that section.

SECTION 5
PURCHASE OR ACQUISITION OF MATERIALS, SUPPLIES, EQUIPMENT, SERVICES AND PRINTING

5.1 General Information

5.1.1 Unless otherwise authorized by law, all purchases or acquisitions of materials, supplies, equipment, services and printing shall be awarded by competitive bidding, except as provided below:

- a. Purchases not exceeding \$50,000;
- b. Competitive selection procedures for professional services;
- c. Sole source and single source procurement;
- d. Emergency procurement;
- e. Previously competed Federal, State and institutional contracts, and contracts issued by cooperative buying groups and consortia; and
- f. Essential services.

5.2 Purchases not exceeding \$50,000

5.2.1 The CPO/DOP of each institution shall establish institutional guidelines and procedures for purchases not exceeding \$50,000 per order. These guidelines and procedures shall provide for obtaining adequate and reasonable records to properly account for funds and to facilitate auditing. These guidelines and procedures, and any modifications thereto, shall be approved by the president and filed with the Vice Chancellor for Administration.

5.2.2 While competition is encouraged, purchases in this category do not require competitive bids or quotations.

5.3 Purchases Greater than \$50,000

5.3.1 Competitive sealed bidding is the preferred method for purchase and acquisition of materials, supplies, equipment, services and printing greater than \$50,000.

5.3.2 Request for Bids (RFB)

5.3.2.1 The RFB is used to initiate a competitive sealed procurement by requesting bids from interested vendors/bidders. The RFB shall include the following:

- a. Instructions and information to bidders concerning the bid submission requirements, including the time and date for receipt of bids, the address of the location to which bids are to be delivered, the maximum time the bid shall be held by the bidder for acceptance by the institution, and other special information if needed;
- b. A description or specification for the item(s) to be purchased, evaluation factors, shipping and performance requirements, and such inspection and acceptance requirements that are not detailed or included in the description or specification;
- c. The contract terms and conditions, including payment terms; delivery requirements; warranty requirements; and bonding or other security requirements, as applicable. The RFB may incorporate documents by reference, provided the Request for Bids specifies where such documents can be obtained or reviewed.

5.3.3 Bids

5.3.3.1 Bids shall be submitted by the bidder prior to the date and time of the bid opening on the prescribed form provided to the bidder. Substitutions may be made for the prescribed form if the substituted terms, conditions and/or provisions, if any, are approved by the CPO/DOP.

5.3.3.2 Bidders shall submit their bid to the location identified in the RFB prior to the specified date and time of the bid opening. A bid received after the required date and time is late and shall not be opened. Late bids should be returned to the bidder unopened.

5.3.3.3 The bid shall be signed by an authorized agent of the bidder who has the authority to bind the bidder to the bid price, terms, conditions and the requirements of the specification. The bid submitted must have an original signature. A corporate signature without an individual name shall not be construed an acceptable signature.

5.3.3.4 Facsimile transmitted bids are not acceptable for bids over \$50,000.

5.3.3.5 A bidder may make written modifications to a sealed bid prior to the bid opening provided they are made by the bidder in such a manner that the bid price is not revealed or known until the bid is opened. Modifications must be received by the CPO/DOP prior to the date and time of the bid opening. Facsimile and electronically transmitted modifications are acceptable if the bid price is not revealed.

5.3.4 Federal Procurement Standards

5.3.4.1 Non-Federal Entities Other than States: Non-federal entities other than states, including those operating federal programs as sub-recipients of states, must follow the procurement standards set out at 2 CFR Sections 200.318 through 200.326. They must use their own documented procurement procedures, which reflect applicable state and local laws and regulations, provided that the procurements conform to applicable federal statutes and the procurement requirements identified in 2 CFR Part 200.

A non-federal entity must:

- a. Meet the general procurement standards in 2 CFR Section 200.318, which include oversight of contractors' performance, maintaining written standards of conduct for employees involved in contracting, awarding contracts only to responsible contractors and maintaining records to document the history of the procurement.

- b. Conduct all procurement transactions in a manner providing full and open competition, in accordance with 2 CFR Section 319.
- c. Use the micro-purchase and small purchase methods only for procurements that meet the applicable criteria under 2 CFR Sections 200.320 (a) and (b). Under the micro-purchase method, the aggregate dollar amount does not exceed \$3,000 [\$2,000 in the case of acquisition for construction subject to the Wage Rate Requirements (Davis-Bacon Act)]. Small purchase procedures are used for purchases that exceed the micro-purchase amount but do not exceed the simplified acquisition threshold. Micro-purchases may be awarded without soliciting competitive quotations in the non-federal entity considers the price to be reasonable [2 CFR Section 200.320(a)]. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified resources [2 CFR Section 200.320(b)].
- d. For acquisitions exceeding the simplified acquisition threshold, the nonfederal entity must use one of the following procurement methods: (a) the sealed bid method if the acquisition meets the criteria in 200.320(c); (b) the competitive proposals method under the conditions specified in 2 CFR Section 200.320(d); or (c) the non-competitive proposals method (i.e. solicit a proposal from only one source) but only when one or more of four circumstances are met, in accordance with 2 CFR Section 200.320(f).
- e. Perform a cost or price analysis in connection with every procurement action in excess of the simplified acquisition threshold, including contract modifications [2 CFR Section 200.323(a)]. The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used [2 CFR Section 200.323(d)].
- f. Ensure that every purchase order or other contract includes applicable provisions required by 2 CFR Section 200.326. These provisions are described in Appendix H to CFR Part 200, "Contract Provisions for Non-Federal Entity Contracts Under Federal Awards."

5.3.5 Awards

5.3.5.1 An award shall be made to the lowest responsible and responsive vendor. In determining the lowest responsible and responsive vendor, consideration will be given to such factors as quality (meeting specifications), price, time of delivery, cost of delivery, and other terms and conditions considered prudent. Unit prices shall prevail in all cases when there is a conflict between the unit price and the extended price. A vendor that has been debarred or is in default with Unemployment Compensation or Workers' Compensation is not eligible to receive a purchase order/contract. See [paragraph 4.4](#) for more information about debarment and [paragraph 4.5](#) about default with Unemployment Compensation or Workers' Compensation. Also, see [subparagraph 5.3.17, Bid Evaluation and Award](#).

5.3.5.2 In some cases multiple and/or split awards may be made when it is determined to be in the best interest of the institution.

5.3.5.3 Occasionally, purchase orders may be issued which impose no obligation on the Council, Commission, the governing boards or their institutions to take delivery of a product and/or service and as such, these purchase orders shall be issued as blanket purchase orders or price agreements.

- 5.3.5.4 In situations where vendors are competing to provide a service that will generate income for an institution, the award shall be made to the highest responsible and responsive bidder.
- 5.3.6 Bidders Lists
- 5.36.1 Bidders lists may be compiled to provide the institution with the names of businesses that may be interested in competing for various types of institutional contracts. Unless otherwise provided, inclusion or exclusion of the name of a business does not indicate whether the business is responsible with respect to a particular procurement or otherwise capable of successfully performing an institutional contract. The CPO/DOP or designee may draw from a bidders list a sufficient number of prospective bidders to ensure competition; however, the CPO/DOP or designee is not obligated to send an RFB to every vendor listed.
- 5.3.6.2 Businesses that fail to respond to a Request for Bids on consecutive procurements of similar items may be removed from the applicable bidders list. Prospective bidders currently meeting the criteria for inclusion on the list may be reinstated on such lists at their request.
- 5.3.6.3 Institutions should develop an in-state bidders list to ensure that West Virginia suppliers are exposed to as many bidding opportunities as possible. Institutions are also encouraged to utilize the West Virginia bid networks to the greatest extent practical.
- 5.3.6.4 An RFB should be mailed, furnished or otherwise made available to a sufficient number of bidders (at least three whenever possible) for the purpose of securing competition.
- 5.3.7 Advertising for Purchases Greater than \$50,000
- 5.3.7.1 The CPO/DOP shall post, or make available, notices of competitive acquisitions and purchases exceeding \$50,000 in the institution's purchasing office no less than 5 calendar days prior to the date bids are due. The CPO/DOP shall ensure that the notice is available to the public during business hours.
- 5.3.7.2 Institutions are encouraged to advertise in a newspaper of general circulation in the county or region where the purchase will be made. The advertisement should appear at least 15 calendar days prior to the date bids are due.
- 5.3.8 Bidding Time for Purchases Greater than \$50,000
- 5.3.8.1 Bidding time for purchases greater than \$50,000 is the period of time between the date of advertising and posting in the institution's Purchasing Office and the date and time set for receipt of bids. The CPO/DOP shall set a reasonable bidding time for each purchase to afford bidders the opportunity to become aware of the RFB and to prepare and deliver their bid to the institution. The minimum bidding time permitted is 5 calendar days.
- 5.3.9 Bid Submission
- 5.3.9.1 Bids shall be submitted on the RFB, or in some case, the form of proposal provided with it, in accordance with the instructions to bidders. The bidder, or his or her authorized agent, shall sign the bid and provide any other necessary and required information or attachments. The bid shall be submitted in a sealed opaque envelope clearly marked with the information requested in the RFB, such as the RFB number and the opening date and time, to clearly mark and distinguish it as a bid.

5.3.10 Pre-bid Conferences

5.3.10.1 Pre-bid conferences may be held at the discretion of the CPO/DOP to explain the RFB which includes the procurement requirements, specifications, terms and conditions, and other relevant information concerning the bid or project. The pre-bid conference shall be announced to all prospective bidders known to the CPO/DOP to have received an RFB. The conference should be held long enough after the RFB has been issued to allow bidders to become familiar with the specifications, terms and conditions, but sufficiently before the bid opening to allow bidders enough time to consider the conference information and results in preparing their bid.

5.3.10.2 If the pre-bid conference is advertised as mandatory, only those vendors who attend the conference are eligible to bid. A list of the attendees shall be made for the purchasing file. Addenda and supplemental information issued after the mandatory pre-bid conference should be distributed only to those vendors who are eligible to bid. Mandatory pre-bid conferences should be held when bidders need to be made aware of unique circumstances, conditions, and situations that cannot adequately be explained in the RFQs, RFB, RFP or REOI.

5.3.10.3 Nothing stated at the pre-bid conference shall change the RFB unless a change is made by written amendment called an "Addendum." A summary report of the conference may be provided to all those prospective bidders known to the CPO/DOP to have received an RFB. If a conference summary report is made, it shall be placed in the purchasing file and become a matter of public record.

5.3.11 Addendum to an RFB

5.3.11.1 An Addendum to an RFB, if needed, shall be issued by the CPO/DOP and it shall be identified as such. It shall reference the part(s) of the RFB amended or clarified and it shall be issued to all prospective bidders known by the CPO/DOP to have received an RFB.

5.3.11.2 An Addendum shall be issued by the CPO/DOP in time to allow prospective bidders to consider it in preparing their bids. If the date and time set for receipt of bids will not allow sufficient time for such preparation, then the bid opening date and time shall be extended by the Addendum to afford bidders sufficient time. The bidder shall acknowledge receipt of each Addendum in accordance with instructions in the bid documents.

5.3.11.3 An Addendum should be used for the following purposes:

- a. Make changes in the RFB such as changes in quantity, specifications, delivery schedule, opening time and date, terms and conditions, etc.;
- b. Correct defects or ambiguities; or
- c. Furnish to other bidders information given to one bidder if such information will assist the other bidders in submitting bids or if the lack of such information would prejudice the other bidders.

5.3.12 Pre-opening Modifications or Withdrawal of Bids

5.3.12.1 Bids over \$50,000 may be modified or withdrawn by a bidder by written notice delivered in a sealed opaque envelope. Said notice must be clearly marked as a bid modification or withdrawal on the envelope, it must reference the bid being modified or withdrawn on the envelope, and it must be received at the location designated for receipt of bids in the RFB

prior to the date and time set for bid opening. A bid may be modified or withdrawn by facsimile or electronic notice provided it is received at the location designated for receipt of bids prior to the date and time for receipt of bids. If a bid is modified, the modification shall be made in such a manner so as not to reveal the bid result until the bid is opened.

5.3.12.2 If a bid is withdrawn in accordance with this Section, the bid security, if any, shall be returned to the bidder.

5.3.12.3 All documents relating to the modification or withdrawal of a bid shall be made a part of the purchasing file.

5.3.13 Late Bids, Late Withdrawals, and Late Modifications

5.3.13.1 Any bid, withdrawal or modification received after the date and time set for receipt of bids is late. No late bid, late modification, or late withdrawal will be considered. The clock in the institution's Purchasing Office shall be considered the official timepiece used to determine whether the bid, withdrawal, or modification was late.

5.3.14 Receipt, Opening, and Recording of Bids

5.3.14.1 Upon its receipt, each bid and modification shall be time and date stamped but not opened and shall be stored in a secure place until the date and time set for bid opening.

5.3.14.2 Bids, modifications and withdrawals shall be opened publicly, in the presence of one or more witnesses who are employees of the institution at the time, date and location designated in the RFB. The name of each bidder, the bid price, and such other information as is deemed appropriate by the CPO/DOP, shall be read aloud or recorded at the time of bid opening; that is, the bids shall be tabulated or a bid abstract made. The names and signatures of the institutional witnesses present at the bid opening shall also be recorded on the bid tabulation or abstract. Following the opening the bids shall be available for public inspection. Bidders may request a copy of a bid or bids and the institution shall have a reasonable amount of time to make the requested copies. The CPO/DOP may also establish a reasonable charge for copying and handling costs.

5.3.15 Trade Secrets, Confidential or Proprietary Data

5.3.15.1 A bidder by designating certain information or data submitted with a bid as confidential, proprietary, or a trade secret may as a result establish an exception to the public inspection policy for the information or data so designated. Such designation shall be in accordance with [Chapter 29B of the West Virginia Code](#) and shall be made in writing by the bidder at the time the bid is submitted. A bidder may not claim this designation after bids have been opened. Information or data so designated shall be readily separable from the bid in order to facilitate public inspection of the non-confidential portion of the bid. Prices, brands, model, or catalog numbers of the items offered, deliveries, and terms of payment shall be available for public inspection following the bid opening regardless of any designation to the contrary.

5.3.15.2 If an interested party wishes to inspect information or data designated by a bidder as confidential, proprietary or a trade secret, such request shall be made in writing. The CPO/DOP shall examine the information or data to determine the validity of any request for nondisclosure. The CPO/DOP shall inform the parties involved of his or her decision about disclosure in writing. If any of the parties object to the CPO/DOP's decision, a protest must be filed in writing within five calendar days after receiving the decision; otherwise, the

CPO/DOP's decision shall be final. Following award of the contract or purchase order, the bids shall be open to public inspection, subject to any continuing prohibition on the disclosure of confidential, proprietary or trade secret information or data.

5.3.16 Mistakes in Bids

5.3.16.1 Mistakes Discovered Before the Bid Opening: A bidder may correct mistakes discovered before the time and date set for bid opening by withdrawing or correcting the bid as provided in "Pre-opening Modification or Withdrawal of Bids," [subparagraph 5.3.12](#).

5.3.16.2 Mistakes Discovered After the Bid Opening but Before Award: Correction or withdrawal of a bid because of an inadvertent, nonjudgmental mistake in the bid requires careful consideration to protect the integrity of the competitive bidding process, and to assure fairness. If the mistake is attributable to an error in judgment, the bid may not be corrected. A bid correction or withdrawal because of a nonjudgmental mistake is permissible but only to the extent that it is not contrary to the interest of the institution or the fair treatment of other bidders. When the CPO/DOP knows or has reason to conclude that a mistake has been or may have been made, he or she should request the bidder to confirm the bid. Situations in which confirmation should be requested include obvious, apparent errors on the face of the bid or a bid unreasonably lower (or higher) than the other bids submitted. Unit price shall be the governing factor if an error is made in extending the unit price. If the bidder alleges a mistake, the bid may be corrected or withdrawn if the conditions set forth below are met:

- a. Minor Informalities or Irregularities: Minor informalities or irregularities, or significant mistakes that can be waived or corrected without prejudice to other bidders, which are evident after examining the bid, are considered matters of form rather than substance; that is, the effect on price, quantity, quality, or terms and conditions is negligible. The CPO/DOP may waive such informalities or irregularities or allow the bidder to correct such mistakes, depending on which is in the best interest of the institution. An example is the failure of a bidder to sign the bid, but only if the unsigned bid is accompanied by other material indicating the bidder's intent to be bound. Another example is the lack of specifications on alternate bids. Additional specifications may be requested to make an accurate determination.
- b. Mistakes Where Intended Correct Bid Is Evident: If the mistake and the intended correct bid are clearly evident on the face of the bid document, the bid shall be corrected to the intended correct bid and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid document are typographical errors, errors in extending unit prices, transposition errors, and arithmetical errors.
- c. Mistakes Where Intended Correct Bid Is Not Evident: A bidder may be permitted to withdraw a low bid if: (1) a mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or (2) the bidder submits proof of evidentiary value which clearly and convincingly demonstrates the mistake.

5.3.16.3 The CPO/DOP may reject an erroneous bid after the bid opening, upon request of the bidder, if all of the following conditions exist:

- a. An error was made that materially affected the bid or proposal;
- b. Rejection of the bid or proposal would not cause a hardship on the institution other than losing an opportunity to receive materials, supplies, equipment, services and/or

printing at a reduced cost; and

c. Enforcement of the part of the bid or proposal in error would be unconscionable.

5.3.16.4 Mistakes Discovered After Award: Mistakes shall not be corrected after award of the contract except where the CPO/DOP makes a written determination that it would be unconscionable not to allow the mistake to be corrected.

5.3.16.5 CPO/DOP's Determination: When a bid is corrected or withdrawn, or correction or withdrawal is denied, the CPO/DOP shall prepare a written determination showing that the relief was granted or denied in accordance with this Purchasing Procedures Manual.

5.3.17 Bid Evaluation and Award

5.3.17.1 The contract is to be awarded to the lowest responsible and responsive bidder. No bid shall be evaluated for any requirements or criteria that are not disclosed in the RFB.

5.3.17.2 A bid may be rejected if: (a) the product quoted does not meet compatibility requirements; (b) where in certain circumstances a partial bid is not acceptable; (c) when timely delivery requirements are significant to the purchase; and/or (d) when the bidder fails to comply with the stated terms and conditions.

5.3.17.3 Following determination of product acceptability, if any is required; bids will be evaluated to determine the lowest responsible and responsive bidder. Consideration shall be given to such factors as quality (meeting specifications), price, time of delivery, cost of delivery and other terms and conditions considered prudent, as set forth in the RFB. In some cases, multiple or split awards may be made if determined by the CPO/DOP to be in the best interest of the institution.

5.3.17.4 Nothing in this section shall preclude an award to a bidder submitting a higher quality product or item than that designated in the RFB if such bidder submitted the lowest bid.

5.3.17.5 Vendors that have been debarred or are in default with Unemployment Compensation or Workers' Compensation are not eligible to bid on or receive contracts to supply goods and services to the state and its subdivisions for a specified period of time. See [paragraph 4.4](#) in this Manual for more information on debarment and [paragraph 4.5](#) about default with Unemployment Compensation or Workers' Compensation. Before a contract or purchase order is issued the debarment list and the Bureau of Employment programs' default database should be checked to make sure a vendor is not listed. If the vendor is listed, the vendor is not eligible for a contract or purchase order.

5.3.17.6 Negotiation with a bidder or bidders is not permitted; however, clarifications that do not alter a bid are permitted.

5.3.18 Low Tie Bids

5.3.18.1 Low tie bids are low responsive bids from responsible bidders that are identical in price and which meet all the requirements and criteria set forth in the RFB.

5.3.18.2 At the discretion of the CPO/DOP, award may be made in any permissible manner that will discourage tie bids. When tie bids occur, the tie will be broken and an award made by allowing the tie bidders to make a "best and final offer," by a flip of a coin, or any other impartial

method deemed prudent by the CPO/DOP.

5.3.19 Documentation of Award

5.3.19.1 Following an award, if it is not apparent on the face of the bid, a record showing the basis for determining the successful bid shall be made a part of the purchasing file, and the successful bid shall be marked as the successful bid.

5.3.20 Publicizing Awards

5.3.20.1 Written notice via letter, memorandum, electronic transmission or a purchase order shall be sent to the successful bidder. Notice of the award shall be posted or otherwise made available in the institution's purchasing office for competitive transactions greater than \$50,000.

5.4 Request for Proposals (RFP)

5.4.1 Competitive sealed bidding is the preferred method of procurement; however, if the use of competitive sealed bidding is either not practicable or not advantageous to the institution, a contract may be entered into by an RFP.

5.4.2 The words "practicable" and "advantageous" are to be given ordinary dictionary meanings. The term "practicable" denotes what may be accomplished or put into practical application. "Advantageous" connotes a judgmental assessment of what is in the institution's best interest. An RFP may be practicable, that is reasonably possible, but not necessarily advantageous, that is, in the institution's best interest.

5.4.3 The key element in determining advantageousness will be the need for flexibility. The RFP method allows for the following:

- a. It permits discussions with competing offeror and changes in their proposals, including price; and
- b. It allows comparative judgmental evaluations to be made when selecting among acceptable proposals for award of the contract.

5.4.4 Competitive sealed bidding normally requires award to a low bidder who agrees in its bid to perform without condition or reservation in accordance with the purchase description, delivery or performance schedule, and all other terms and conditions of the RFB. Factors to be considered in determining whether competitive sealed bidding is not practicable include:

- a. Whether the contract needs to be other than a fixed-type;
- b. Whether oral or written discussions may need to be conducted with offerors concerning technical and price aspects of their proposals;
- c. Whether offerors may need to be afforded the opportunity to revise their proposals, including price;
- d. Whether the award may need to be based upon a comparative evaluation, as stated in the RFP, or differing price, quality, and contractual factors in order to determine the most advantageous offering. Quality factors include technical and performance capability and the content of the technical proposal; and

e. Whether the primary consideration in determining award may not be the price.

5.4.5 An important difference between Requests for Proposals and competitive sealed bidding is the finality of initial offers. Under a RFP, alterations in the nature of the proposal and/or in prices may be made after proposals are opened.

5.4.6 The RFP method of purchasing is used to obtain goods and services when sufficient knowledge or expertise does not exist to adequately specify the details of the desired result. The desired result is written into the RFP. The vendor responds to the RFP with a proposal identifying the intended approach to meet the desired result along with a proposed price or fee. Terms and conditions of the contract shall be included in the RFP, along with pre-established award criteria based on value or points. Whenever desirable, interviews may be conducted with interested parties for clarification and/or determination of qualifications and experience prior to an award. Requests for Proposals go beyond price alone. They also look at the vendor's ability and resources to furnish the desired service to get the desired result. Quality of service and performance are important considerations. RFPs are primarily used for large dollar projects requiring a high level of expertise on the part of the vendor.

5.5 Content of the RFP

5.5.1 An RFP shall be prepared in accordance with [subparagraph 5.3.2](#), RFBs, and may also include:

- a. A statement that discussions may be held with offerors who submit proposals that are under further or final consideration for award, but that proposals may be accepted without such discussions; and
- b. A statement of when and how price should be submitted.

5.6 Proposal Preparation Time

5.6.1 Proposal preparation time shall be set to provide vendors a reasonable time to prepare their proposals. Thirty calendar days is recommended but the CPO/DOP shall provide not less than 14 calendar days.

5.7 Public Notice (Advertising and Posting)

5.7.1 Public notice shall be given by distributing the RFP in the same manner provided for distributing an RFB in [subparagraph 5.3.6](#), Advertising for Bids \$50,000 and above.

5.8 Pre-proposal Conferences

5.8.1 Pre-proposal conferences may be conducted in accordance with [subparagraph 5.3.9](#), Pre-bid Conferences. Any such conference should be held prior to submission of initial proposals.

5.9 Addendum to an RFP

5.9.1 An addendum to an RFP may be made in accordance with [subparagraph 5.3.10](#), Addendum to an RFB, prior to the date and time for submission of proposals.

5.10 Pre-opening Modification or Withdrawal of Proposals

5.10.1 Proposals may be modified or withdrawn prior to the established date and time for the proposal opening in accordance with [subparagraph 5.3.11](#), Pre-opening Modification or Withdrawal of Bids.

5.11 Late Proposals, Late Withdrawals and Late Modifications

5.11.1 Any proposal, withdrawal, or modification received after the established date and time due at the place designated for receipt of proposals is late.

5.12 Receipt and Registration of Proposals

5.12.1 Packages containing proposals and modifications shall be date and time stamped upon receipt and held in a secure place until the established date and time due. Proposals shall be opened in the presence of one or more witnesses who are employees of the institution. After the date established for receipt of proposals, a register of all proposals shall be prepared which shall include the name and address of each offeror, the number of modifications received, if any, and a description sufficient to identify the goods or services offered. Proposals and modifications shall be shown only to institutional personnel having a legitimate interest in them prior to award of a contract.

5.13 Evaluation of Proposals

5.13.1 The RFP shall state all of the evaluation factors, their relative importance, and how the fee or price will be evaluated in relation to the other evaluative criteria.

5.13.2 The evaluation of proposals shall be based on the evaluation factors set forth in the RFP. Numerical rating systems may be used but are not required. Factors or evaluative criteria not stated in the RFP shall not be considered in evaluating the proposals.

5.13.3 For the purpose of conducting discussions with individual offerors, proposals shall be initially classified as acceptable, potentially acceptable, or unacceptable.

5.14 Proposal Discussions with Individual Offerors

5.14.1 The term "offerors" includes only those vendors submitting proposals that are acceptable or potentially acceptable. The term shall not include vendors who submitted unacceptable proposals.

5.14.2 Discussions or interviews may be held to promote understanding of the institution's requirements and the offerors' proposals, and to facilitate arriving at a contract that will be most advantageous to the institution taking into consideration price and the other evaluation factors set forth in the RFP.

5.14.3 Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussions, interviews and revisions of proposals. The CPO/DOP should establish procedures and schedules for conducting discussions and interviews. If during discussions and interviews, there is a need for a substantial clarification or a change in the RFP, it may be amended to incorporate such clarification or change. Auction techniques (revealing one offeror's proposal to another) and disclosure of any information derived from competing proposals are prohibited. Any substantial oral clarification of a proposal shall be reduced to writing by the offeror.

5.14.4 Best and Final Offers: The CPO/DOP shall establish a common date and time for the submission of best and final offers if necessary. Best and final offers shall be submitted only once; provided, however, the CPO/DOP may make a written determination that it is in the institution's best interest to conduct additional discussions or change the institution's requirements and require another submission of best and final offers. Otherwise, no discussion of or changes in the best and final offers shall be allowed prior to award. Offerors shall also be informed that if they do not submit a notice of withdrawal or another best and final offer, their immediate previous offer will be construed as their best and final offer.

5.15 Mistakes in Proposals

5.15.1 Mistakes Discovered Before An Award: When the CPO/DOP knows or has reason to conclude before an award that a mistake has been made in a proposal, he or she should request the offeror to confirm the proposal. If the offeror alleges a mistake, the proposal may be corrected or withdrawn during any discussions or interviews that are held, or if the conditions set forth below are met. The following presents four situations in which mistakes in proposals are discovered after receipt of proposals but before award:

- a. Once discussions are commenced with any offeror or after best and final offers are requested, any offeror may freely correct any mistake by modifying or withdrawing the proposal until the date and time set for receipt for best and final offers.
- b. Minor informalities, unless otherwise corrected by an offeror as provided herein, shall be treated as they are under competitive sealed bidding in [subparagraph 5.3.15](#), Mistakes in Bids, [clause 5.3.15.3](#).
- c. If discussions are not held or if the best and final offers upon which the award will be made have been received, mistakes may be corrected and the intended correct offer considered only if:
 1. The mistake and the intended correct offer are clearly evident on the face of the proposal, in this event the proposal may not be withdrawn; or
 2. The mistake is not clearly evident on the face of the proposal, but the offeror submits proof of evidentiary value which clearly and convincingly demonstrates both the existence of a mistake and the intended correct offer, and such correction would not be contrary to the fair and equal treatment of the other offerors.
- d. If discussions or interviews are not held, or if the best and final offers upon which award will be made have been received, the offeror may be permitted to withdraw the proposal if:
 1. The mistake is clearly evident on the face of the proposal and the intended correct offer is not;
 2. The offeror submits proof of evidentiary value which clearly and convincingly demonstrates the intended correct offer; or
 3. The offeror submits proof of evidentiary value which clearly and convincingly demonstrates the intended correct offer, but to allow correction

would be contrary to the fair and equal treatment of the other offerors.

5.15.2 Mistakes Discovered After Award: Mistakes discovered after an award shall not be corrected after the contract is issued except when the CPO/DOP finds it would be unconscionable not to allow the mistake to be corrected.

5.15.3 Documentation of Determination: When a proposal is corrected or withdrawn, or correction or withdrawal is denied, a written determination shall be prepared showing that relief was granted or denied. The CPO/DOP shall prepare the determination, except when the decision was made under the [clause 5.3.15.5, Minor Informalities or Irregularities](#). In this situation, the Buyer handling the procurement may prepare the determination.

5.16 Award

5.16.1 The CPO/DOP or designee shall make a written determination showing the basis on which the award was found to be most advantageous to the institution based on the factors and evaluative criteria set forth in the RFP.

5.16.2 Vendors that have been debarred or are in default with Unemployment Compensation or Workers' Compensation are not eligible to bid on or receive contracts to supply goods and services to the state and its subdivisions for a specified period of time. See [paragraph 4.4](#) in this Manual for more information on debarment and [paragraph 4.5](#) about default with Unemployment Compensation or Workers' Compensation. Before a contract or purchase order is issued the debarment list and Bureau of Employment Programs' database should be checked to make sure a vendor is not listed. If the vendor is listed, the vendor is not eligible for a contract or purchase order.

5.17 Competitive Selection Procedures for Professional Services

5.17.1 These procedures apply to procurement of the services of accountants, land surveyors, clergy, physicians, lawyers, or others as applicable. Except as authorized under Sole/Single Source Procurement or Emergency Procurement, formal competitive selection procedures shall be used for procurement of professional services in excess of \$50,000. For the services of architects and engineers, please refer to [subparagraph 5.17.4](#).

5.17.2 The competitive selection procedure for professional services is similar to the process used for competitive sealed proposals (RFPs); however, greater weight is given to the ability to perform the service as reflected by technical training, education and experience, and in some cases artistic and aesthetic values and capabilities. In these cases, price may be a secondary consideration.

5.17.3 See [subparagraph 5.16.2](#) about the prohibition on awarding contracts to vendors that have been debarred or are in default with Unemployment Compensation or Workers' Compensation

5.17.4 Hiring Architects and Engineers: The process for hiring architects and engineers is set forth in [Chapter 5G of the West Virginia Code](#). The Legislature has decided that it is the policy of the state, and its political subdivisions, to procure architectural or engineering services or both on the basis of demonstrated competence and qualification for the type of professional services required. The contracts for architectural and engineering services have been approved by the Attorney General (See Appendix A)

5.17.4.1 Procurement of Architectural and Engineering Services for Projects Estimated to Cost \$250,000 and Greater

- a. Firms engaged in the lawful practice of the profession shall be encouraged to submit expressions of interest. See [paragraph 5.19](#) for what to include in a Request for Expressions of Interest.
- b. All such jobs (projects) shall be announced by a Class II legal advertisement which requires publishing in a qualified newspaper once a week for two successive weeks. "Once a week for two successive weeks" means two publications of a legal advertisement in a qualified newspaper occurring within a period of fourteen consecutive days with at least an interval of six full days within the period between the date of the first publication and the date of the second publication. For additional information refer to [West Virginia Code §59-3](#). In addition, a notice should be provided to the West Virginia Chapter of the American Institute of Architects ([AIA West Virginia](#)).
- c. A committee of three to five representatives of the institution initiating the request shall evaluate the statements of qualifications and performance data and other materials submitted by interested firms and select at least three firms that, in their opinion, are best qualified to perform the desired service.
- d. Interviews with each firm selected shall be conducted and the committee shall conduct discussions regarding anticipated concepts and proposed methods of approach to the assignment.
- e. The committee shall then rank, in order of preference, no less than three professional firms deemed to be the most highly qualified to provide the services required, and shall commence scope of service and price negotiations with the highest qualified professional firm for architectural or engineering services.
- f. Should the institution be unable to negotiate a satisfactory contract with the professional firm considered to be the most qualified, at a fee determined to be fair and reasonable, price negotiations with the firm of second choice shall commence. Failing accord with the second most qualified professional firm, the committee shall undertake price negotiations with the third most qualified professional firm.
- g. Should all negotiations fail, the institution may start the Request for Expressions of Interest process over.

5.17.4.2 Procurement of Architectural and Engineering Services for Projects Estimated to Cost Less than \$250,000

- a. In the procurement of architectural and engineering services for projects estimated to cost less than \$250,000, the institution shall seek competition. The institution shall conduct discussions with three or more professional firms solicited on the basis of known or submitted qualifications for the assignment prior to the awarding of any contract.
- b. If a judgment is made by the CPO/DOP that special circumstances exist and that seeking competition is not practical, the institution may select a firm on the basis of previous satisfactory performance and knowledge of the institution's facilities and

needs. After selection, the institution and firm shall develop the scope of services required and negotiate a fee and a contract.

5.18 Public Notice in Competitive Selection Procedures (Advertising and Posting)

5.18.1 Notice of the need for professional services shall be made by the CPO/DOP in the form of an RFP or Request for Expressions of Interest. Adequate public notice shall be given as provided in [paragraph 5.7](#), and such notice shall also consist of distributing the RFP or REOI to persons who are or may be interested in performing the services required by the proposed contract. In the case of architectural and engineering services, notice shall be as described in [subparagraph 5.17.3](#).

5.19 RFP or REOI

5.19.1 The RFP or REOI shall be in the form specified by the CPO/DOP and shall contain at least the following information:

- a. The type of services required;
- b. A description of the work involved or scope of the project;
- c. An estimate of when and for how long the services will be required;
- d. The type of contract to be used;
- e. A date by which proposals or expressions of interest for the performance of the services shall be submitted;
- f. A statement that the proposals or expressions of interest shall be in writing;
- g. A statement that offerors may designate those portions that contains trade secrets or other proprietary data that may remain confidential;
- h. A request for total cost and price if the institution deems it necessary for budgeting considerations, except for architectural and engineering services. As stipulated in the State Code, fee information is not to be requested for architectural and engineering services in the Request of Expressions of Interest;
- i. A statement of the minimum information that the proposal or expression of interest should contain, includes the following:
 1. The name of the offeror, the location of the offeror's principal place of business and, if different, the place of performance of the proposed contract;
 2. The age of the offeror's business and average number of employees over a previous period of time, if deemed relevant by the CPO/DOP, and specified in the RFP or REOI;
 3. The abilities, qualifications, and experience of all persons who would be assigned to provide the required services;
 4. A listing of other contracts under which services similar in scope, size, or

discipline to the required services were performed or undertaken within a previous period of time, as specified in the RFP or REOI; and

5. A plan, giving as much detail as practical, explaining how the services will be performed; and

j. The factors and evaluative criteria to be used in the evaluation and selection process and their relative importance.

5.19.2 Proposals shall be evaluated only on the basis of evaluation factors and criteria stated in the RFP or REOI. The following factors and criteria may be appropriate to use in conducting the evaluation. The relative importance of these and other factors and criteria will vary according to the type of service needed. The following are suggested as minimum factors or criteria:

a. The plan for performing the required service;

b. Ability to timely perform the services as reflected by technical training and education, general experience, specific experience in providing the required services, and the qualifications and abilities of personnel proposed to be assigned to perform the services;

c. The personnel, equipment, and facilities to perform the services currently available or demonstrated to be made available at the time of contracting; and

d. A record of past performance in successfully providing or performing similar work and services.

5.19.3 Preproposal conferences, as appropriate, may be conducted. Such a conference may be held any time prior to the date established for submission of proposals or expressions of interest.

5.20 Receipt and Handling of Proposals and Expressions of Interest

5.20.1 Receiving, Opening and Registration: Proposals, expressions of interest and modifications shall be date and time stamped upon receipt and held in a secure place until the established date and time due. Proposals or expressions of interest shall not be disclosed to unauthorized persons prior to an award, but shall be opened in the presence of one or more witnesses who are employees of the institution. A register of proposals or expressions of interest shall be prepared which shall include the name and address of each offeror, the number of modifications received, if any, and a description sufficient to identify the services offered.

5.20.2 Requests for Nondisclosure of Data: If an offeror has requested in writing, at the time the proposal or expression of interest is submitted, nondisclosure of trade secrets and other proprietary or confidential data, as provided in [Chapter 29B of the West Virginia Code](#), the CPO/DOP or designee shall examine the request to determine its validity prior to entering into negotiations. If the parties do not agree as to the disclosure of data in the contract, the CPO/DOP conducting the procurement, or a designee, shall inform the offeror in writing what portion of the proposal shall be disclosed and that, unless the offeror withdraws the proposal or protests in writing, the proposal will be so disclosed.

5.21 Selection of the Best Qualified Offerors

5.21.1 After evaluating the proposals or expressions of interest based on the stated evaluative factors

or criteria and after validating qualifications, the CPO/DOP or designee shall select in the order of their respective qualification rankings no fewer than three acceptable offers, or a lesser number if less than three acceptable proposals were received, that are deemed to be the best qualified to provide the required services. If discussions or interviews are to be held, the CPO/DOP or designee shall schedule a date, time and place and notify the selected offerors; otherwise, the CPO/DOP or designee shall begin fee and contract negotiations, if any are required, with the highest ranked offeror.

5.22 Discussions and Interviews

5.22.1 The CPO/DOP, or designee, managing the procurement shall evaluate all proposals submitted and may hold discussions or interviews with any offeror. The purpose of such discussions shall be to:

- a. Determine in greater detail each offeror's qualifications; and/or
- b. Explore with the offeror the scope and nature of the required services, the offeror's proposed method of performance, and the relative utility of alternative methods of approach.

5.22.2 During or following the interviews, the offerors are to be ranked by the evaluation committee from the highest to the least qualified.

5.22.3 The CPO/DOP or designee shall not disclose information derived from proposals submitted by other offerors during discussions and interviews, and other employees of the institution on the evaluation committee shall not disclose information contained in any proposal until after an award has been made. After the award, all proposals or expressions of interest shall be open to public inspection, except for trade secrets, proprietary and confidential data and information.

5.22.4 Proposals may be modified or withdrawn at any time prior to the conclusion of discussions.

5.23 Negotiation and Award of Contract

5.23.1 The CPO/DOP or designee managing the procurement shall award a contract to the best qualified offeror as determined during the selection process for the required services at a mutually acceptable fee.

5.23.2 If fee and contract negotiations are necessary, the CPO/DOP or designee shall begin such negotiations with the best qualified offeror. Elements of negotiation may include but are not limited to:

- a. Making certain that the offeror and the institution have a clear understanding of the scope of work, specifically, the essential requirements involved in providing the required services;
- b. Arriving at a mutually acceptable agreement, and establishing a fee and reimbursable expenses; and
- c. Determining that the offeror will make available the necessary personnel and facilities to perform the services within the required time.

- 5.23.3 If negotiations with the best qualified offeror cannot be satisfactorily concluded, the CPO/DOP or designee shall so state in writing giving the reasons therefore and shall place this document in the purchasing file. The CPO/DOP or designee shall advise such offeror of the termination of negotiations which shall be confirmed by written notice.
- 5.23.4 Upon failure to negotiate a contract with the best qualified offeror, the CPO/DOP or designee may enter into negotiations with the next most qualified offeror. If compensation, contract requirements, and contract documents can be agreed upon, then the contract shall be awarded to that offeror. If negotiations again fail, negotiations shall be terminated and commenced with the next most qualified offeror.
- 5.23.5 If, after failing to negotiate an agreement with the best qualified offeror, the CPO/DOP may cancel the procurement at any time and begin the process again if he or she determines it is in the best interest of the institution to do so.
- 5.23.6 See [subparagraph 5.16.2](#) about the prohibition on awarding contracts to vendors that have been debarred or are in default with Unemployment Compensation or Workers' Compensation.

5.24 Notice of Award

- 5.24.1 Written notice of an award shall be public information and made a part of the purchasing file.

5.25 Memorandum of Evaluation, Negotiation and Award

- 5.25.1 At the conclusion of negotiations, if any, resulting in a contract award, the CPO/DOP or designee managing the procurement shall prepare a memorandum setting forth the basis of the award. This memorandum shall include but not necessarily be limited to:
- a. How the evaluation factors stated in the RFP or REOI were applied to determine the best qualified offeror; and
 - b. The principal elements of the negotiation, if any, including significant considerations relating to price and other terms of the contract.

5.26 Cancellation of Solicitations; Rejection of Bids, Proposals or Expressions of Interest

- 5.26.1 These guidelines are intended to provide information to the CPO/DOP concerning cancellation of any solicitations whether issued under competitive sealed bidding, RFPs or REOI, small purchases, or any other procurement method; and rejection of bids, proposals, or expressions of interest in whole or in part.
- 5.26.2 Solicitations should only be issued when there is a valid procurement need unless the solicitation states that it is for information purposes only.
- 5.26.3 Preparing and distributing a solicitation requires the expenditure of time and funds. Businesses likewise incur expenses in examining and responding to solicitations. Although issuance of a solicitation does not compel award of a contract, a solicitation should be canceled only when there are cogent and compelling reasons to believe that the cancellation of the solicitation is in the institution's best interest.
- 5.26.4 Cancellation of a Solicitation

- 5.26.4.1 Each solicitation issued by the institution shall state that the solicitation may be canceled.
- 5.26.4.2 Cancellation Prior to Opening: A solicitation may be canceled in whole or in part when the CPO/DOP determines in writing that such action is in the institution's best interest for reasons including but not limited to:
- a. The institution no longer requires the materials, supplies, equipment, services, printing, repairs and alterations or construction;
 - b. The institution no longer can reasonably expect to fund the procurement; or
 - c. Proposed amendments to the solicitation would be of such magnitude that a new solicitation is desirable.
- 5.26.4.3 Cancellation after the Opening: Prior to award, all bids, proposals or expressions of interest may be rejected in whole or in part when the CPO/DOP determines in writing that such action is in the institution's best interest for reasons including but not limited to:
- a. The materials, supplies, equipment, services, printing, repairs and alterations, or construction being procured are no longer required;
 - b. Ambiguous or otherwise inadequate specifications were part of the solicitation;
 - c. The solicitation did not provide for consideration of all factors of significance to the institution;
 - d. Prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;
 - e. All otherwise acceptable bids, proposals or expressions of interest received are at clearly unreasonable prices; or
 - f. There is reason to believe that the bids, proposals or expressions of interest may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith.
- 5.26.5 Rejection of Individual Bids or Proposals
- 5.26.5.1 Each solicitation issued by the institution shall provide that any quotation, bid, proposal or expression of interest may be rejected in whole or in part when it is in the best interest of the institution as provided in this Purchasing Procedures Manual.
- 5.26.5.2 Reasons for Rejection: Reasons for rejecting a quotation, bid, proposal or expression of interest include but are not limited to:
- a. The business that submitted the quotation, bid, proposal or expression of interest is identified as not being a responsible firm;
 - b. The quotation, bid, proposal or expression of interest is not responsive, that is, it does not conform in all material respects to the RFQ, the RFB, the RFP or the REOI;
 - c. The materials, supplies, equipment, service, printing, repair and alteration, or

construction offered is unacceptable by reason of its failure to meet the requirements of the specifications, or permissible alternates, or other acceptable criteria set forth; and

- d. The quoted or proposed price or fee is clearly unreasonable.

5.26.6 Notice of Cancellation or Rejection to Vendors

5.26.6.1 When a solicitation is canceled, notice of cancellation shall be sent to all businesses solicited or known by the CPO/DOP or designee to have received an RFQ, an RFB, an RFP or an REOI. The notice of cancellation shall:

- a. Identify the solicitation;
- b. Briefly explain the reason for cancellation; and
- c. When appropriate, explain that an opportunity will be given to compete on any re-solicitation or any future procurement of similar materials, supplies, equipment, services, printing, repairs and alterations or construction.

5.26.7 Documentation of Cancellation or Rejection

5.26.7.1 The reason(s) for cancellation or rejection shall be made a part of the procurement file and shall be available for public inspection.

5.27 Disposition of Quotations, Bids, Proposals or Expressions of Interest

5.27.1 When quotations, bids, proposals or expressions of interest are rejected, or a solicitation is canceled after quotations, bids, proposals or expressions of interest are received; those which have been opened shall be retained in the procurement file. If they are unopened, they shall be returned to the bidders or offerors upon request, or otherwise retained in the procurement file.

5.28 Sole/Single Source Procurement

5.28.1 Sole source and single source procurement are not permissible unless the materials, supplies, equipment, services and printing needed are available from only one supplier. A requirement for a particular proprietary item does not justify sole or single source procurement if there is more than one potential bidder or offeror for that item. Single source procurement is permitted only when the goods and services are of such a unique nature that they cannot be acquired from any other source. The following are examples of circumstances that could necessitate sole/single source procurement:

- a. Where the compatibility of equipment, accessories, or replacement parts is the paramount consideration;
- b. The item cannot be obtained through ordinary purchasing procedures and methods;
- c. The item is available from a state spending unit or other institution with preference under the West Virginia Code; and
- d. Where specific and unique items are called for on a grant or contract.

5.28.2 The determination as to whether procurement shall be made as a sole/single source shall be made by the CPO/DOP. Such determination and the basis therefore shall be in writing. The CPO/DOP may specify the application of such determination and the duration of its effectiveness. In cases of reasonable doubt, competition should be solicited. Any request that procurement be restricted to one potential supplier shall be accompanied by an explanation as to why no other will be suitable or acceptable to meet the need.

5.29 Emergency Procurement

5.29.1 **Emergency Purchases Using a Purchase Order:** Emergency purchases may be made when there exists a threat to public health, welfare, or safety such as may arise by reason of floods, epidemics, riots, equipment failures, loss of essential function of the institution, or to meet bona fide emergencies arising from unforeseen causes, including delays by contractors, delays in transportation, and unanticipated volume of work, provided that such emergency procurement shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the purchase file and shall be open to public inspection. Emergency procurement shall be limited to those materials, supplies, equipment, services, printing, repairs and alterations, or construction items necessary to meet the emergency.

5.29.2 Emergency purchases exceeding \$50,000 that requires a purchase order must receive the prior approval of the CPO/DOP or designee.

5.29.3 Emergency purchases shall not be used for hardship resulting from neglect, poor planning or lack of organization by the spending unit.

5.29.4 **Emergency Purchases Using the State Purchase Card:** As provided in [West Virginia Code §18B-5-9](#), the Council, Commission and each institution shall maintain one purchase card for use only in and for situations declared to be an emergency by the president and approved by the Chancellor. Such emergencies shall include but not be limited to (1) partial or total destruction of a campus facility; (2) loss of a critical component of utility infrastructure; (3) heating; (4) ventilation or air conditioning failure in an essential academic building; (5) loss of campus road, parking lot or campus entrance; or (6) local, regional, or national emergency situation that has a direct impact on the campus. Use of the purchase card for emergency purchases shall be governed by state law and the rules and procedures issued by the State Auditor.

5.30 Open End Contracts, Federal Contracts, Contracts Issued by Cooperative Buying Groups and Consortia, Bulk Purchase Contracts and Contracts Issued through Reverse Bidding and Electronic Marketplaces

5.30.1 The Council, Commission, the governing boards and their institutions may enter into open-end contracts, bulk purchase contracts and contracts issued through reverse bidding and electronic marketplaces for materials, supplies, equipment, services and/or printing to supply their respective needs in the form of statewide contracts, blanket orders or price agreements. Once issued, purchases and acquisition may be made from these contracts without securing any other quotations, bids, proposals, or expressions of interest.

5.30.2 The Council, Commission, the governing boards and their institutions may, without securing quotations, bids, proposals or expressions of interest, make purchases from the federal government and from federal government contracts, and contracts issued by cooperative buying groups and consortia, if the materials, supplies, equipment, services, and printing to be

purchased are available from the federal government and from federal government contracts, and if this is the most financially advantageous manner of making such purchases.

5.31 Motor Vehicle Purchases

5.31.1 Purchase and leasing of motor vehicles shall be consistent with state law, the rules, policies and procedures of the Council, Commission and the governing board having jurisdiction. The Vice Chancellor for Administration may issue additional policies and procedures if deemed appropriate to manage the purchase and lease of vehicles.

5.32 Leases for Grounds, Buildings, Office Space or Other Space

5.32.1 As provided in [West Virginia Code §18B](#), the Council, Commission and the governing boards have the authority, in the name of the state, to lease, or offer to lease, as lessee, any grounds, buildings, office or other space, the rental of which is required by the Council, Commission or the governing board for the institutions under their jurisdiction. The lease agreement used should be the agreement preapproved by the Attorney General, without modification to the terms and conditions (see Appendix B). If the preapproved lease agreement is not used, or there are modifications to the terms and conditions of the preapproved agreement, the agreement must be approved “as to form” by the Attorney General.

5.32.2 The chief executive officer of the Council, Commission or an institution shall certify the following before entering into a lease agreement:

- a. That the grounds, buildings, office space or other space requested is necessarily required for the proper function of the Council, Commission or institution;
- b. That the Council, Commission or institution will be responsible for all rent and other necessary payments in connection with the contract or lease; and
- c. That satisfactory grounds, buildings, office space or other space is not available on grounds and in buildings now owned or leased by the Council, Commission or the institution.

5.32.3 The Council, Commission and the governing boards are authorized to enter into long-term agreements for buildings, land and space for periods longer than one fiscal year, but not to exceed 40 years. Any purchases of real estate, any lease-purchase agreement and any construction of new buildings or other acquisition of buildings, office space or grounds resulting shall be presented by the Council or Commission to the Joint Committee on Government and Finance for prior review. Any such lease shall contain, in substance, all the following provisions:

- a. That the Council, Commission or the governing board, as lessee, have the right to cancel the lease without further obligation on the part of the lessee upon giving thirty days' written notice to the lessor at least thirty days prior to the last day of the succeeding month;
- b. That the lease shall be considered canceled without further obligation on the part of the lessee if the Legislature or the federal government fails to appropriate sufficient funds or otherwise acts to impair the lease or cause it to be canceled; and
- c. That the lease shall be considered renewed for each ensuing fiscal year during the

term of the lease unless the Council, Commission or the governing board before the end of the then-current fiscal year cancels it.

5.32.4 The Council, Commission or an institution which has leased any grounds, buildings, office space or other space may not order or make permanent changes of any type, unless the Council, Commission or the governing board, as appropriate, has first determined that the change is necessary for the proper, efficient and economically sound operation of the institution. A "permanent change" means any addition, alteration, improvement, remodeling, repair or other change involving the expenditure of state funds for the installation of any tangible thing which cannot be economically removed from the grounds, buildings, office space or other space when vacated by the institution.

5.32.5 The chief executive officer of the Council, Commission or the institution may sign leases and other instruments for grounds, buildings, office or other space, once approved by the Council, Commission or governing board. Any lease or instrument exceeding \$100,000 annually shall be approved "as to form" by the Attorney General. A lease or other instrument for grounds, buildings, office or other space that contains a term, including any options, of more than six months for its fulfillment shall be filed with the State Auditor.

5.33 Lease-Purchases of Capital Improvements and Equipment

5.33.1 As provided in [West Virginia Code §18B-19-11](#), the Council, Commission and governing boards may enter into lease-purchase agreements for capital improvements and equipment. As provided in the Council/Commission's procedural rule for [Capital Project Management, Title 133, Series 12](#), the Council or Commission, in addition to the governing board, must grant prior approval for lease-purchase agreements of \$1,000,000 and above. Lease-purchase agreements shall be presented by the Council or Commission to the Joint Committee on Government and Finance for prior review. Lease-purchase agreements less than \$1,000,000 shall be approved according to the procedures of the governing board and do not require Council or Commission approval.

5.33.2 The lease-purchase agreement shall be the agreement preapproved by the Attorney General, without modification to the terms and conditions (See Appendix B). If the terms and conditions of the preapproved agreement are modified or if a different agreement is used, then "approval as to form" is required by the Attorney General. In addition, a lease-purchase agreement, which exceeds \$100,000 in total, shall be approved by the Attorney General. Any agreement exceeding \$25,000 and takes more than six months to fulfill shall be filed with the State Auditor.

5.33.3 A lease-purchase arrangement shall constitute a special obligation of the State of West Virginia. The obligation under a lease-purchase arrangement so entered may be from any funds legally available to the Council, Commission or institution and must be cancelable at the option of the Council, Commission, governing board or institution at the end of any fiscal year. The obligation, any assignment or securitization thereof, shall never constitute an indebtedness of the State of West Virginia or any department, agency or political subdivision thereof, within the meaning of any constitutional provision or statutory limitation, and may not be a charge against the general credit or taxing powers of the state or any political subdivision thereof; and such facts shall be plainly stated in any lease-purchase agreement. Further, the lease-purchase agreement shall prohibit assignment or securitization without consent of the lessee and the approval of the Attorney General. Proposals for any arrangement must be requested in accordance with the requirements of state law and any rules or guidelines of the Council or Commission. The interest component of any lease-purchase obligation shall

be exempt from all taxation of the State of West Virginia, except inheritance, estate and transfer taxes. It is the intent of the Legislature that if the requirements set forth in the Internal Revenue Code of 1986, as amended, and any regulations promulgated pursuant thereto are met, the interest component of any lease-purchase obligation also shall be exempt from the gross income of the recipient for purposes of federal income taxation and may be designated by the Council, Commission, governing board or the president of the institution as a bank-qualified obligation.

5.34 Purchasing File

5.34.1 The CPO/DOP shall maintain a purchasing file for each procurement or acquisition that shall contain all relevant information pertaining to such purchase or acquisition, including but not limited to:

- a. The RFQ, RFP or REOI used to solicit the procurement, any Addenda thereto, and any pre-bid or preproposal conference summary reports;
- b. The quotations, bids, proposals or expressions of interest received in response to a solicitation; however, an unopened quotation, bid, proposal or expression of interest and documents or portions of documents in the procurement file stamped or marked “proprietary” in accordance with the [West Virginia Code, Chapter 29B](#), shall not be considered a public document or record;
- c. A bid summary or register of proposals or expressions of interest, and identification and certification of the successful quotation, bid, proposal or expression of interest;
- d. Why any quotation, bid, proposal or expression of interest is rejected in whole or in part;
- e. Why a solicitation was canceled;
- f. Justification for award to other than the lowest vendor; and
- g. Vendor protests or complaints.

5.34.2 Except as provided above, the purchasing file shall be a public record open to inspection during normal business hours.

5.34.3 No records in the purchasing file shall be destroyed without the written consent of the Legislative Auditor; however, those files in which the original documentation has been held for at least one year and in which the original documents have been reproduced and archived on microfilm or other equivalent method of duplication, may be destroyed without the written consent of the Legislative Auditor. All files, no matter the storage method, shall be open for inspection by the Legislative Auditor upon request.

5.35 Vendor's Rights and Duties

5.35.1 Each vendor shall be solely responsible for delivery of his or her quotation, bid, proposal, expression of interest, modification or cancellation to the designated location for receipt of quotations, bids, proposals or expressions of interest bids or proposals prior to the specified date and time of the bid or proposal opening; otherwise, it shall be considered late and returned unopened to the vendor.

- 5.35.2 If there is a conflict between the extension price and the unit price, the unit price shall prevail.
- 5.35.3 Any changes made by the vendor in the specifications listed in the RFQ, RFB, RFP or REOI must be clearly identified. If the changes are not clearly identified, it will be assumed that items and services offered meet the specifications in all respects.
- 5.35.4 Vendors are solely responsible for the accuracy of the information in their quotation, bid, proposal and expression of interest and on the envelope used to submit said quotation, bid, proposal or expression of interest.
- 5.35.5 All sales to the Council, Commission, the governing boards and their institutions are exempt from consumer sales tax or excise tax by blanket state exemption and blanket federal exemption.
- 5.35.6 It is the vendor's exclusive duty and obligation to file protests and requests for reconsideration of suspension, in accordance with the requirements of Section 7 and Section 8 of this Purchasing Procedures Manual; otherwise, they shall be waived.

SECTION 6
APPROVAL AS TO FORM BY THE ATTORNEY GENERAL, STANDARD FORMS, TERMS AND
CONDITIONS, AND FILING WITH THE STATE AUDITOR

6.1 Signing Contracts in the Name of the Institution

6.1.1 Contracts entered into pursuant to WV Code §18B5-4 through 5-7 shall be signed in the name of the institution by the institution's CPO/DOP or by another person in the employ of the institution who is lawfully authorized to sign contracts and has signature authority for the institution.

6.2 Standardized Contract Forms

6.2.1 The following documents have been reviewed by the Attorney General and suggested for use by higher education institutions; however, usage of these forms does not preclude the need for the Attorney General's Office signature of approval of all contracts "as to form".

- a. The WV-96 State of West Virginia Addendum to Vendor's Standard Contractual Forms. This is to be utilized when the vendor desires to incorporate one or more forms it created into the Contract.
(<https://www.state.wv.us/admin/purchase/vrc/wv96.pdf>)
- b. Purchasing Division approved_AIA Documents A201 and B101. These forms are to be used for construction and architectural/engineering contracts
(<https://www.state.wv.us/admin/purchase/aia/default.html>)
- c. Purchasing Division Official Bond Forms including bid bond, labor and material payment bond, maintenance bond and performance bonds.
(<https://www.state.wv.us/admin/purchase/forms2.html>)
- d. Higher Education Policy Commission Lease and Lease Agreement Purchase Forms (see Appendix B).

6.3 Attorney General Approval of Contracts

6.3.1 The following higher education documents require the Attorney General's approval "as to form":

- a. Contracts for legal services.
- b. Contracts or change orders to contracts in which the vendor has proposed terms and conditions which they desire to add to the contract/purchase order. The institution should present the WV-96 State of West Virginia Addendum to Vendor's Standard Contractual Forms to the vendor for signature prior to submitting the contract to the Attorney General's Office for approval.
- c. Contracts dealing with the following terms should be reviewed by in-house

legal staff, institution privacy officers and/or the Commission's legal counsel prior to submission to the Attorney General for approval.

1. Order of Precedence
2. Warranties
3. Limitation of Liability
4. Indemnification
5. Confidentiality
6. Personally Identifiable Information (PII) including retention, deletion and protection of the data
7. Web/cloud based services
8. Energy Savings Contracts

c. Lease-purchase agreements for capital improvements.

d. Leases or other instruments for grounds, buildings, office or other space.

6.4 State Auditor Filing Requirements

6.4.1 A contract that exceeds \$50,000 shall be filed with the State Auditor.

6.4.2 Upon request of the State Auditor, the CPO/DOP shall make all contracts, available to the State Auditor for inspection, including those that do not exceed \$50,000.

SECTION 7
COMPLAINTS, PROTESTS AND RECONSIDERATION

7.1 Complaints

7.1.1 Complaints to the CPO/DOP, a Buyer or other designee about the procurement activities or actions of an institution may be made at any time, either verbally or in writing. If the complaint is made in writing, it should identify the number of the RFQ, Bids, Proposals, Expressions of Interest or purchase order, the reason for the complaint, and the action the complainant is seeking from the institution.

7.1.2 A complaint shall not be considered a protest, but an informal expression of dissatisfaction by the complainant about the procurement activities or actions of an institution. Complaints shall not be considered sufficient reason to delay or postpone evaluation and award of a contract or purchase order. Complainants should seek resolution of their complaint with the CPO/DOP, Buyer, or other designee.

7.2 Protests

7.2.1 Protests based on specifications or improprieties in any type of solicitation that are apparent, or should have been apparent prior to the bid or proposal opening date, must be filed no later than five calendar days prior to the bid or proposal opening or closing date. A protest of the award must be filed no later than five calendar days following award of the contract as posted or otherwise made available in the institution's Purchasing Office for competitive transactions above \$25,000. Information regarding awards may be obtained from the institution's Purchasing Office, and a vendor contemplating a protest has a duty to obtain this information in a timely manner, so that the protest can be made within the stated time limit.

7.2.2 Protests filed prior to an award shall be resolved in accordance with the Purchasing Rule of the Council/Commission and this Purchasing Procedures Manual before an award is made. When a protest has been filed after an award, the CPO/DOP may, after consulting with the Chief Financial Officer and/or president, or in the case of the Council, Commission or West Virginia Network for Educational Telecomputing, with the Vice Chancellor for Administration, allow the successful vendor to proceed with fulfilling the contract or order without delay if he or she determines that it is necessary to protect substantial interests of the institution.

7.2.3 A protest must be filed in writing with the CPO/DOP and contain the name and address of the protestor, the number of the RFQ, Bids, Proposals, Expressions of Interest or purchase order, a statement of the grounds for protest and supporting documentation, the relief sought, and if a hearing on the merits of the protest is requested.

7.2.4 The CPO/DOP will review the protest and issue a decision in writing. In the event the protestor requests a hearing on the merits of the protest, the CPO/DOP shall set a time and place for the hearing. The hearing shall be conducted in an informal manner; technical rules of evidence shall not apply. It shall be recorded and an official record shall be prepared. Following the hearing, the CPO/DOP shall issue a written decision.

7.3 Reconsideration

7.3.1 Reconsideration of a decision on a protest by the CPO/DOP may be requested by an aggrieved party to the institution's Chief Financial Officer. A request for reconsideration shall be made

in writing within five calendar days after receiving the CPO/DOP's written decision. It shall contain the name and address of the aggrieved party, the number of the RFQ, Bids, Proposals, Expressions of Interest or purchase order, a statement of the grounds for reconsideration with supporting documentation, a copy of the CPO/DOP's written decision, the relief sought, and if a hearing on the merits is requested.

7.3.2 The Chief Financial Officer shall review the request for reconsideration and issue a decision in writing. In the event the aggrieved party requests a hearing on the merits, the Chief Financial Officer shall set a time and place for the hearing. The hearing shall be conducted in an informal manner; technical rules of evidence shall not apply. It shall be recorded and an official record shall be prepared. Following the hearing, the Chief Financial Officer shall issue a decision in writing to the aggrieved party and his or her decision shall be final.

7.3.3 The institution may refuse to decide any protest or reconsideration when the matter involved is the subject of litigation before a court of competent jurisdiction, or has been decided on the merits by such court. The foregoing shall not apply when the court requests, expects or otherwise expresses interest in the decision of the institution.

7.4 Filing Protests, Requests for Reconsideration and Decisions with the Vice Chancellor for Administration

7.4.1 Within 15 calendar days after receiving a protest or request for reconsideration, the CPO/DOP or the Chief Financial Officer shall forward a copy of the protest or request for reconsideration to the Vice Chancellor for Administration, along with all supporting documentation provided by the protestor.

7.4.2 A decision on a protest by the CPO/DOP and on reconsideration by the Chief Financial Officer shall be forwarded to the Vice Chancellor for Administration at the time such decision is mailed, transmitted or delivered to the protestor.

SECTION 8
SUSPENSION AND RECONSIDERATION

8.1 Suspension

- 8.1.1 The CPO/DOP shall have the power and authority to suspend, for a period not exceeding one year, the right and privilege of a vendor to bid on purchases of the institution.
- 8.1.2 The following shall be considered adequate grounds for suspension of a vendor: (a) a vendor has exhibited a pattern of poor performance in fulfilling its contractual obligation(s) including, but not limited to, providing or furnishing commodities, materials or services late, or at a quantity or quality level below that which is specified in the contract, or repeated instances of poor performance; or (b) the vendor has breached any contract entered into pursuant to the provisions of West Virginia Code §18B-5-4 through §18B-5-7 [[click here for access to Chapter 18B](#)] or [Series 30](#) and [Series 43](#) of the Council's and Commission's rules, or the vendor has been convicted of any federal or state law punishable as a felony if such conviction is directly related to the performance of a contract entered into pursuant to West Virginia Code §18B-5-4 through §18B-5-7 or this rule. Any such suspension must be imposed within one year of the date of the act, omission, or conviction the suspension is based upon, or within one year of the CPO/DOP's discovery of such act, omission, or conviction.
- 8.1.3 When the CPO/DOP determines that sufficient reason or cause exists to warrant suspension of a vendor, the CPO/DOP shall:
- a. Notify the vendor by letter posted by certified mail, or such other means to verify receipt, of such reason or cause; and
 - b. Give the vendor sufficient time, but no less than ten calendar days after receipt of the CPO/DOP's letter, to respond in writing, or the vendor may make a written request for a hearing before the CPO/DOP.
- 8.1.4 If the vendor responds in writing but does not request a hearing, the CPO/DOP shall consider the vendor's response and what bearing, if any, it may have on his or her decision to suspend the vendor. The CPO/DOP may request additional information from the vendor prior to making a decision. If the CPO/DOP decides that the suspension should be made, notice of such suspension and the reason(s) therefore shall be sent to the vendor by letter posted by registered mail.
- 8.1.5 If the vendor responds in writing and requests a hearing, the CPO/DOP shall schedule one within a reasonable amount of time and notify the vendor by letter, posted by registered mail, of the date, time, and place.
- 8.1.6 If the vendor or his or her representative does not appear at the hearing, the CPO/DOP may suspend the vendor without further recourse and shall notify the vendor of such suspension and the reason(s) therefore by letter posted by certified mail or such other means to verify receipt.
- 8.1.7 The CPO/DOP shall act as hearing examiner at any hearing held. An opportunity shall be afforded to all parties to present evidence and arguments with respect to the matters and issues involved. The affected vendor shall have the right to be represented by a representative of his or her choice. The hearing shall be conducted in an informal manner; technical rules of evidence shall not apply. The vendor and CPO/DOP or their respective representatives shall

have the right to examine and cross-examine witnesses who testify, and shall have the right to submit rebuttal evidence.

8.1.8 All of the testimony, evidence and exhibits presented and any rulings on their admissibility shall be recorded and an official record shall be prepared.

8.1.9 Decisions rendered by the CPO/DOP shall be in writing or stated in the record and shall be accompanied by findings of fact and conclusions of law. A copy of the decision and accompanying findings and conclusions shall be provided to each party and his or her representative of record, if any, in person, by certified mail or such other means so as to confirm receipt.

8.2 Reconsideration

8.2.1 Reconsideration of a decision on suspension by the CPO/DOP may be requested by an aggrieved party to the institution's Chief Financial Officer. A request for reconsideration shall be made in writing within five calendar days after receiving the CPO/DOP's decision and it shall contain the name and address of the aggrieved party, a statement of the grounds for reconsideration with supporting documentation, the relief sought, and if a hearing on the merits is requested.

8.2.2 The Chief Financial Officer will review the request for reconsideration and issue a decision in writing. In the event the aggrieved party requests a hearing on the merits, the Chief Financial Officer shall set a time and place for the conference. The hearing shall be conducted in an informal manner; technical rules of evidence shall not apply. It shall be recorded and an official record shall be prepared. Following the hearing, the Chief Financial Officer shall issue a decision in writing to the aggrieved party and his or her decision shall be final.

8.2.3 The institution may refuse to decide any reconsideration where the matter involved is the subject of litigation before a court of competent jurisdiction, or has been decided on the merits by such court. The foregoing shall not apply where the court requests, expects or otherwise expresses interest in the decision of the institution.

8.3 Notification to the Vice Chancellor for Administration

8.3.1 An institution that suspends the right and privilege of a vendor to bid on purchases of the institution shall forward a copy of the suspension notice to the CPO/DOP of the Council or Commission Office, who shall maintain a record of such suspensions and shall notify all institutions under the jurisdiction of the governing boards as well as the Director of the State Division of Purchasing of such suspension.

8.3.2 If the CPO/DOP of the Council or Commission Office determines that the actions of the vendor leading to the suspension by an institution are of a serious enough nature to justify imposition of a system-wide suspension, he or she shall forward the suspension and his or her recommendation to the Vice Chancellor for Administration for review. If the Vice Chancellor for Administration determines that the actions of the suspended vendor justifies a system-wide suspension, he or she shall notify the vendor and the institutions within the same system as the institution that suspended the vendor that the vendor's suspension shall apply to all institutions within that system for the period of the original suspension.

SECTION 9 RECEIVING AND INVENTORY MANAGEMENT

9.1 Receiving

9.1.1 The CPO/DOP shall establish institutional guidelines and procedures for receiving and distributing materials, supplies, equipment, services and printing to departments and offices within the institution. These guidelines and procedures shall be consistent with state law and the rules, policies and procedures of the Council, Commission and the governing board having jurisdiction over the institution. They shall be approved by the president and filed with the Vice Chancellor for Administration.

9.1.2 Receiving and inspection of materials, supplies, equipment, services and printing is very important, but often an overlooked aspect of procurement. Without adequate receiving procedures, the effort expended in writing specifications, bidding, and buying is meaningless. Only with effective receiving and inspection can the institution be assured of obtaining the products and services ordered. In order to achieve the traditional "three-way match" (a match between the purchase order, the receiving ticket and the invoice), the receiving procedures developed by the CPO/DOP will be an integral part of the purchasing process.

9.1.3 The purpose of inspection in the receiving process is to examine commodities and delivery records to make certain that vendors furnish the commodities ordered and to insure that the requirements as set forth in the purchase order are actually met; to protect the institution from receiving merchandise, supplies, equipment, services, and printing that are below the specified quality level; and to prevent unfairness to the other bidders. Institutions should develop internal and departmental procedures to assist the CPO/DOP in the inspection process.

9.2 Receiving Report Required for Commodities Received

9.2.1 [West Virginia Code §12-3-10f](#) requires that a receiving report be submitted to the State Auditor verifying the receipt of commodities by a state spending unit. The receiving report shall be an internally generated document, either written or prepared using electronic media that identifies commodities received. Commodities as defined in this section include, but are not limited to, the following: materials, equipment, supplies, printing and automated data processing hardware and software. The State Auditor has developed a form and format for the receiving report (See Appendix H). Also, consult the State Auditor's legislative rule, [Title 155, Series 1, Standards for Requisitions for Payment Issued by State Officers on the Auditor](#) for instructions on how to record receipt for purchases.

9.2.2 The state officer or employee acting as head of each spending unit is responsible for the completion and timely submission of the receiving reports, which shall be prepared at the original point of receipt of the commodities at the spending unit by employees designated by the head of the spending unit to receive the commodities and prepare the receiving reports. The receiving reports shall include, but not be limited to, the following information: vendor name, description and quantity of commodities received, date commodities are received, whether commodities are acceptable for payment, and a signed acknowledgment of receipt by the employees receiving the commodities. The receiving reports required by this section shall be prepared within twenty-four hours of the receipt of the commodities.

9.2.3 The head of a spending unit may not issue a requisition on the State Auditor in payment of a claim for commodities received by the spending unit unless the receiving report accompanies the claim for payment. The spending unit is liable for a debt improperly incurred or for a payment improperly made if the receiving report was not filed with the state auditor as set

forth in this section.

9.3 Inventory

- 9.3.1 The purpose of inventory and inventory management is to track and account for the monies spent for equipment and furnishings so as to protect the assets of the institution.
- 9.3.2 The CPO/DOP shall develop inventory procedures and an inventory management system for the institution that conforms to generally accepted accounting standards and practices, state law, the rules, policies and procedures of the Council, Commission and the governing board have jurisdiction over the institution, and to meet the requirements of the institution's annual financial audit. The president shall approve the institution's inventory procedures and inventory system, and a copy of the procedures and a description of the inventory management system shall be filed with the Vice Chancellor for Administration.
- 9.3.3 At a minimum, the inventory procedures and inventory management system developed by the CPO/DOP shall:
- a. Account for all equipment and furnishings with a value at the time of purchase of \$5,000 or more per unit. An institution may elect to inventory equipment and furnishings with a value of less than \$5,000 per unit;
 - b. Establish a procedure to number and tag all equipment and furnishings required to be inventoried;
 - c. Identify the date of acquisition, model number and serial number, if applicable;
 - d. Provide a short physical description;
 - e. Identify the cost of acquisition, including shipping and installation costs;
 - f. Record the location of equipment or furnishings; i.e., the department, or the building and room number;
 - g. Provide the purchase order number and account number(s) used to pay for the purchase; and
 - h. When retired, indicate the retirement date, method of retirement and disposal price, if applicable.
- 9.3.4 The CPO/DOP shall perform or provide for an institution-wide audit and inventory of the institution's assets on a schedule consistent with generally accepted accounting standards and as prescribed by law or regulation, when applicable.
- 9.3.5 The institution's inventory report shall be kept on file in the institution's Purchasing Office and made available to appropriate parties upon request.

SECTION 10
DISPOSITION OF SURPLUS EQUIPMENT, SUPPLIES AND MATERIALS

10.1 General Information

- 10.1.1 The Council, Commission, the governing boards and their institutions have the authority to dispose of obsolete, surplus and unusable materials, supplies and equipment, either by transfer to other governmental agencies or institutions, by exchange or trade, or by sale as junk or otherwise.
- 10.1.2 The CPO/DOP or designee shall identify and inventory the institution's obsolete, surplus and unusable materials, supplies and equipment and shall store these materials, supplies and equipment until such time as they may be disposed of in a manner consistent with state law and the rules, regulations and procedures of the Council, Commission and the governing board having jurisdiction over the institution.
- 10.1.3 Under no circumstances shall any obsolete, surplus and unusable materials, supplies and equipment be sold, transferred or conveyed to any private person, firm or corporation other than at public auction or by sealed bid or as otherwise provided in [West Virginia Code §18B-5-7](#).
- 10.1.4 The funds an institution receives from the sale of obsolete, surplus and unusable materials, supplies and equipment shall be deposited in the institutional account originally used to purchase said materials, supplies and equipment if such account is readily ascertainable, minus any administrative costs associated with the disposal. If such account is not readily ascertainable or no longer exists, the net proceeds shall be deposited in an appropriate account as determined by the Chief Financial Officer.

10.2 Methods of Disposal of Obsolete, Surplus and Unusable Materials, Supplies and Equipment

- 10.2.1 Institutions may dispose of obsolete, surplus and unusable materials, supplies and equipment in one or more of the following manners:
- a. Trade in on replacement materials, supplies and equipment if the trade in value is advantageous to the institution as determined by the CPO/DOP or designee;
 - b. Sale to the general public by sealed bid or at public auction;
 - c. Transfer to municipal, county, state and federal agencies and institutions;
 - d. Donation to charity/nonprofit organizations
 - e. Joining with Marshall University or West Virginia University at their surplus auction or sale; and
 - f. Utilizing the Surplus Property Division of the Department of Administration.
- 10.2.2 The chosen method should be one that has the best prospect of yielding the greatest return to the institution after the cost of the sale has been deducted from the revenue derived. Transfers to other governmental agencies and institutions should cover those aspects that will enhance

the institution's public awareness in the local community and in the interest of providing a needed service to the community.

10.2.3 Trade In

10.2.3.1 The institution may take advantage of a trade in on replacement materials, supplies and equipment if the trade in value is advantageous to the institution as determined by the CPO/DOP or designee.

10.2.4 Sealed Bids or Public Auction

10.2.4.1 Sales by sealed bid or at public auction may be conducted by any institution. Institutions shall, in accordance with state law and the rules, policies and procedures of the Council, Commission and the governing board having jurisdiction, develop their own procedures for conducting sales by sealed bid or at public auction; provided that (a) at least ten days prior to the disposition an advertisement of such sale shall be published as a Class II legal advertisement, as provided in [West Virginia Code §59-3](#) (which means two publications of a legal advertisement in a qualified newspaper occurring within a period of fourteen consecutive days with at least an interval of six full days within the period between the date of the first publication and the date of the second publication), in the county in which the equipment, supplies and materials are located; (b) the procedures are documented and available to all who are interested in participating prior to the date for receipt of bids or the date of the auction; and (c) that the institution has the right to reject all bids and that all sales are final.

10.2.4.2 Original documentation of the sealed bid process or auction shall be kept by the institution for a period of one year. After that date, the documentation may be reproduced and archived on microfilm or other equivalent method of duplication for review or auditing purposes.

10.2.5 Transfer to Municipal, County, State and Federal Agencies and Institutions

10.2.5.1 Transfers of obsolete, surplus and unusable materials, supplies and equipment may be made to municipal, county, state and federal agencies and institutions. The CPO/DOP shall keep a record of such transfers containing the following information on each item:

- a. Inventory tag number, if applicable;
- b. Description;
- c. Model number, if applicable;
- d. Serial number, if applicable;
- e. Present value of the materials, supplies and equipment; and
- f. The name and address of the agency or institution receiving the materials, supplies and equipment.

10.2.5.2 These records shall be kept as a public record open to public inspection for a period of two years. These items shall be removed from the institution's inventory.

10.2.6 Donation to Charity/Nonprofit Organizations

- 10.2.6.1 Donations of obsolete, surplus and unusable materials, supplies and equipment may be made to Charity/Nonprofit Organizations. The organization must submit evidence of their nonprofit status prior to any donations. The CPO/DOP shall keep a record of such donations containing the following information on each item:
- a. Inventory tag number, if applicable;
 - b. Description;
 - c. Model number, if applicable;
 - d. Serial number, if applicable;
 - e. Present value of the materials, supplies and equipment; and
 - f. The name, address and proof of non-profit status of the organization receiving the materials, supplies and equipment.
- 10.2.6.2 These records shall be kept as a public record open to public inspection for a period of two years. These items shall be removed from the institution's inventory.
- 10.2.7 Joining with Marshall University or West Virginia University at their Surplus Auction or Sale
- 10.2.7.1 When an institution determines that it is in its best interest, it may join with either Marshall University in Huntington or West Virginia University in Morgantown to dispose of obsolete, surplus and unusable materials, supplies and equipment. Any institution desiring to participate in Marshall University's or West Virginia University's sale or auction shall:
- a. Provide at least 90 days advance notification prior to the date of the upcoming public auction or sale to the university involved;
 - b. Deliver and unload the obsolete, surplus and unusable materials, supplies and equipment to the university involved;
 - c. Make arrangements with the university involved to obtain the services of a qualified auctioneer, if the sale is by public auction, and provide a physical description of the items being offered for sale for advertising purposes;
 - d. Reimburse the university involved for all expenses related to selling the institution's obsolete, surplus and unusable materials, supplies and equipment at the university's auction or sale;
 - e. Affix the institution's identification on all items to be sold so as to assure fair allocation of the auction sale proceeds;
 - f. Send a representative to the public auction or sale to act on the institution's behalf. Institutions shall have the right to refuse any bid; and
 - g. Remove as scrap or otherwise any surplus items not sold during the public auction or sale.
- 10.2.8 Utilizing the Surplus Property Division of the Department of Administration

10.2.8.1 Institutions may also dispose of obsolete, surplus and unusable materials, supplies and equipment through the Surplus Property Division of the Department of Administration; in such case, all of the rules and regulations of the Department of Administration shall be followed.

10.3 Reporting Requirements

10.3.1 All inventories of surplus equipment, supplies and materials sold shall be kept as a public record open to public inspection for a period of two (2) years.

10.3.2 As provided in [West Virginia Code §18B-5-7\(b\)](#), The Council, Commission or governing board, as appropriate, shall report semiannually to the Legislative Auditor all sales of commodities made during the preceding six months. The report shall provide an itemized listing of each commodity sold and include the inventory tag number, a description of the commodity, the name of the buyer and the price paid by the buyer. The dates for these reports are February 1 for the period of July 1 through December 31 and August 1 for the period of January 1 through June 30. The form and format of this report shall be as required by the Vice Chancellor for Administration and/or the Legislative Auditor (see Appendix C).

10.4 Surplus Removal Contracts

10.4.1 Any contracts for removal of obsolete, surplus and unusable materials, supplies and equipment shall be issued by the CPO/DOP in accordance with state law and the policies, procedures and guidelines of the Council, Commission and the governing board having jurisdiction over the institution.

10.5 Redeposit of Funds

10.5.1 All monies derived from the sale of obsolete, surplus and unusable materials, supplies and equipment must be redeposited as follows, provided the account originally used for the purchase is readily ascertainable, minus any administrative costs associated with such sale. If such account is not readily ascertainable or no longer exists, the net proceeds shall be deposited in an appropriate account as determined by the Chief Financial Officer.

- a. Purchases made from general revenue funds must be deposited according to wvOASIS requirements for refunds into the general revenue fund; and
- b. Purchases made from special revenue funds must be redeposited into the same fund from which the expenditure originally occurred.

SECTION 11
ESSENTIAL SERVICES

11.1 Essential Services

11.1.1 A special class of goods and services known as essential services. The list below contains items considered to be essential services.

- a. License fees of all types;
- b. Utilities of all types, including cable TV and connections and disconnections;
- c. Federal, state, county, and municipal fees and assessments;
- d. Postage;
- e. Association dues;
- f. Accreditation fees;
- g. Employee travel, subsistence, and other reimbursement;
- h. Shipping, handling, and freight charges;
- i. Subscriptions, periodicals, and publications;
- j. Motor vehicle and aircraft fuel;
- k. Cash advances;
- l. Refunds;
- m. Credit card fees and charges and bank fees;
- n. Inter-library loan charges;
- o. Inter/intra-institutional charges and fund transfers;
- p. Registration and tuition fees;
- q. Insurance premiums;
- r. Medical and doctor's fees, prescriptions, drugs, medical sundries, fees for human subjects, medical studies, tests, x-rays, CAT scans, MRIs, and emergency medical procedures and tests of all types; and
- s. Contracts for artists, entertainers and speakers with terms and conditions which do not conflict with the WV-96 form, and adjudicators and others who are charging travel expenses only for their services.
- t. Services utilized on a one-time basis.

The above essential services are to be paid with all available back-up documentation to allow for adequate review and approval but do not require a purchase order. Adequate back-up documentation includes any detail available regarding how the dollar amount of the payment was determined. One-time services will be acceptable for payment only with an order acknowledgement that either pre-dates or is the same as the date of service and is signed as accepted by the institution.

11.1.2

In addition, there are services that are considered to be essential that require either an open-end contract, agreement or a purchase order in order to be paid. These services include:

- a. Books and related items, including those for libraries and bookstores. Back-up includes any open-end agreements with book suppliers or quotes received prior to purchase.
- b. Hospitality expenses. Back-up includes any agreements made with vendors for a booked conference and/or meeting as well as an approved hospitality form, a list of attendees and receipts from food vendors.
- c. Athletic and academic team travel and related expenses. Back-up includes any agreements with a hotel/motel for a guaranteed room rate or other similar agreements made in association with the travel. If no agreements are made then documentation stating such must be included.
- d. Advertising. In the case of newspaper, magazine and/or internet (etc.) advertisement placements, back-up includes evidence of the advertisement and the rate quote (if obtained). If an advertising company is hired to perform services then the back-up must include a copy of the contract.
- e. Software and software license/maintenance agreements. Back-up includes contracts entered into for monthly and/or annual services or maintenance. If the software is a one-time purchase then evidence of the price quotation is required.
- f. Resale merchandise, sundries, food and related items used by auxiliary services. Back-up for repetitive purchases includes any contracts or agreements with the vendor providing these products. If the purchase is a one-time purchase, evidence of the price quotation is required and certification of the transaction as a one-time purchase is required.
- g. Maintenance contracts. Back-up includes the agreement with the vendor detailing the length of the contract, services included and the agreed upon pricing.
- h. Student awards, scholarships, stipends, loans and grants. Back-up includes the signed document/agreement for each of the aforementioned documents. In the case of a stipend, if no formal agreement exists then documentation of the invitation to participate at a guaranteed rate needs to be included.
- i. Contracts for artists, entertainers and speakers. For contracts that require a WV96, back-up includes the signed contract including the guaranteed terms, the price for the services, any related expenses including travel and the signed WV96.

SECTION 12 PERFORMANCE AUDITS

12.1 Legislative Performance Audit

12.1.1 [West Virginia Code §18B-5-4\(n\)](#) requires the Joint Committee on Government and Finance to conduct an independent performance audit of all purchasing functions and duties performed at any institution of higher education once in each three year period. The Council, Commission and the governing boards shall be responsible for paying the cost of the audits from funds appropriated to them.

12.1.2 Each institution shall have available all records and supporting documentation for items that were purchased during a given fiscal year. Information in the purchasing file for each vendor shall include, but not necessarily be limited to the following:

- a. Vendor's name and complete address;
- b. Telephone number, if the quotation was obtained via telephone;
- c. Complete item description;
- d. Bid for each item and the extended price;
- e. Name of person contacted and providing the bid; and
- f. Name of person at the institution receiving the bid/price via telephone.

12.1.3 The Purchasing Department at each institution may be called upon to provide the following information for the audit:

- a. Total dollars spent on equipment, services, repairs and alterations, and other items;
- b. Total number of vendors contracted with and identified as being either in-state, out-of-state, or out-of-state with an in-state branch;
- c. Total dollar amount of items purchased in-state, out-of-state, or out-of-state with an in-state branch;
- d. Number of items put out for competitive bid; and
- e. Vendor name, address, price quote and reason for award or rejection of bid(s) on each RFQ, RFB, RFP or REOI.

12.1.4 All purchasing documents shall be available for inspection by the performance auditor. No records in the purchasing file shall be destroyed without the written consent of the Legislative Auditor. Those files in which the original documentation has been held for at least one year and in which the original documents have been reproduced and archived on microfilm or other equivalent method of duplication may be destroyed without the consent of the Legislative Auditor.

12.2 Purchasing Audits Performed by the Council or Commission

12.2.1 The Vice Chancellor for Administration may provide for a periodic audit of institutions for compliance with the rules, policies and procedures of the Council and Commission, upon request of the Council/Commission.

12.2.2 As provided in West Virginia Code §18B-5-4(r)(1), the Council/Commission also has an obligation to conduct a performance audit of the policies, procedures and results of the procurement of goods and services by the state institutions of higher education at least once in each three-year period. The Council/Commission must also make a report to the Legislative Oversight Commission on Educational Accountability (LOCEA) on the results of the performance audits, together with any recommendations for additional actions that might be taken to improve the efficiency, effectiveness and economy of the administrative operations of the institutions and the Council and Commission.

12.3 Internal Purchasing Audits Performed by the CPO/DOP

12.3.1 The CPO/DOP may, at his or her discretion, or in the absence of a Legislative Performance Audit for any fiscal year, provide for an independent audit of the institution's purchasing function, and for any delegations of purchasing authority. The CPO/DOP may also carry out the audit at the request of the Vice Chancellor for Administration, the institution's president, or its Chief Financial Officer. It is recommended that each institution conduct an internal audit of its purchasing function at least once every two years to ensure compliance with state law and the rules, policies and procedures of the governing board having jurisdiction over the institution.

12.3.2 Any internal audit conducted by the institution should be documented in an internal report, detailing any irregularities and any recommendations for improving the institution's purchasing procedures. This report is to be made available to the performance auditor. The CPO/DOP shall be responsible for the method of conducting the internal audit.

SECTION 13 GLOSSARY OF TERMS

13.1 Definitions

The words defined in the Higher Education Purchasing Procedures manual shall have the meanings set forth below whenever they appear unless:

- a. the context in which they are used clearly requires a different meaning; or
- b. a different definition is prescribed for a particular section or provision.

Addendum: An official written modification to specifications or other documents in a RFQ or request for proposal issued by the purchasing office of an institution prior to receiving quotations or proposals.

Assets: Property of all kinds that has an appreciable and calculable period of usefulness of more than one year and is intended to be held and used, such as land, buildings, machinery, furniture, roads, bridges and other equipment.

Authorized Signature: The signature of an individual empowered by a superior authority to enter into a contractual agreement that binds an institution and a vendor to the stated terms, conditions and obligations of performance.

Bid: An offer to perform a contract for services, work and labor, or the supplying of materials or goods at a specified price in accordance with specifications in a request for bids.

Bidder: One who makes a bid.

Buyer: An individual designated by a chief procurement officer to perform designated purchasing and acquisition functions as authorized by the chief procurement officer.

Bid Bond: A type of indemnity bond that must be submitted at the time of the bid and which protects the institution in the event that the bidder refuses to enter into a contract after the award to him or withdraws his bid before the award.

Bid Sample: A sample furnished by a bidder to show the characteristics of the item offered in a bid.

Board: See governing board.

Business: Any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.

Chancellor for Community and Technical College Education: The chief executive officer of the Council employed pursuant to West Virginia Code §18B-2B-3.

Chancellor for Higher Education: The chief executive officer of the Commission employed pursuant to West Virginia Code §18B-1B-5.

Change Order: Any written alteration in a specification, delivery point, rate of delivery, period of performance, price, quantity, quality, terms and conditions or other provisions of any contract or purchase order accomplished by mutual consent of parties to the contract or purchase order.

Chief Procurement Officer (CPO/DOP): The individual designated by a president of a state institution of higher education to manage, oversee, and direct the purchasing, acquisition, receiving, and inventory management of materials, supplies, equipment, services and printing, and disposal of obsolete, surplus and unusable materials, supplies and equipment of that institution. For the Council or Commission Office and West Virginia Network for Educational Telecomputing, the CPO/DOP, in each case, is the person designated by the Vice Chancellor for Administration.

Commission: See West Virginia Higher Education Policy Commission.

Commission Office: The office that houses the Vice Chancellor for Administration and such professional, administrative, clerical and other employees as may be necessary to assist the Vice Chancellor for Administration perform his or her functions, tasks and duties..

Commodity: Those things that are useful or serviceable, particularly articles or merchandise movable in trade. Materials, supplies, equipment, services, printing, repairs and alterations, and construction, and any article or thing used by or furnished to an institution.

Complainant: One who lodges a complaint.

Complaint: An informal expression of dissatisfaction by a complainant to the CPO/DOP or designee, or to a senior officer of an institution, about the procurement activities of an institution.

Contract: An agreement between two or more persons that creates an obligation to do or not to do a particular thing. An agreement to procure, provide or dispose of goods and services in accordance with mutually acceptable terms and conditions for a specified price.

Contract Modification: See Change Order.

Contractor: One who has a contract with the Commission, Council, a governing board or one of its institutions.

Council: See West Virginia Council for Community and Technical College Education.

Data: Recorded information, regardless of form or characteristic.

Descriptive Literature: Information available in the ordinary course of business which shows the characteristics, construction, or operation of an item and which enables the institution to consider whether the item meets its needs.

Designee: A duly-authorized representative of a person holding a superior position.

Employee: An individual drawing a salary from an institution.

Equal: Implies identity but duality, and the use of one thing as a measure of another.

Equipment: Physical assets of a permanent or long-term nature used in the operation of an institution and not intended for sale. Assets that have a life of at least one (1) year and an initial cost in excess of \$1,000.

Equivalent: Alike; uniform, but not necessarily identical; on the same plane or level with respect to efficiency, worth, value, amount, force, measure, volume, effect, power, or rights.

Expression of Interest: A formal, written statement or document submitted in response to a request for expressions of interest declaring one's desire to provide commodities, usually professional services, to the

institution. Frequently an expression of interest does not contain a price proposal; but instead, it is a submission of credentials, experience, and/or a response to written criteria that will be used to judge responses for selection of a successful respondent.

Governing board(s): The institutional boards of governors created pursuant to West Virginia Code §18B-2A-1.

Higher Education Institution: An institution as defined by Sections 401(f), (g) and (h) of the federal Higher Education Facilities Act of 1963, as amended. See Institution.

Interested Party: An actual or prospective bidder, offeror, or contractor that may be aggrieved by the solicitation or award of a contract, or by the protest.

Institution(s): Any public West Virginia university, college, and community and technical college, individually or collectively, created pursuant to West Virginia Code §18B-1-2. For the purposes of this rule, the Council, Commission Office and West Virginia Network for Educational Telecomputing shall also be considered institutions.

Invitation to Bid: Notice or advertisement of an intent by an institution to purchase or dispose of materials, supplies, equipment, services, printing or any other thing of value. Also, see RFQ, request for bids, request for proposals, and request for expressions of interest.

Labor and Material Payment Bond: A type of indemnity bond given by an obligor, usually on a public construction project, that guarantees payment of labor and material costs, or guarantees reimbursement to an obligee for any loss suffered due to the conduct of the obligor or a third party.

Maintenance Bond: A type of indemnity bond given by an obligor to an obligee, usually on a public construction project, that guarantees the upkeep or preservation of condition of property, including ordinary repairs necessary and proper from time to time for that purpose.

May: Denotes the permissive.

Open End: A contract for a specified period of time, at an agreed upon price, for an unspecified quantity of product or service.

Performance Bond: Surety bond that guarantees that contractor will fully perform contract and guarantees against breach of contract. Proceeds of bond are to be used to complete contract or compensate for loss in the event of nonperformance.

Person: Any individual, business, corporation, union, committee, club, or other organization, or group of individuals.

President: The chief executive officer of a higher education institution.

Procurement: Buying, purchasing, renting, leasing, or otherwise acquiring materials, supplies, equipment, services, printing, repairs and alterations, or construction. It also includes all functions that pertain to the obtaining of said commodities, including description of requirements, selection, and solicitation of sources, and administration.

Procurement Officer/Agent: See Buyer. The term also includes an authorized representative acting within the limits of authority.

Proposal: An offer; something proffered. An offer, by one person to another, based on stated terms and conditions with reference to some work or undertaking, or for the transfer of property, the acceptance whereof will make a contract between them.

Protest: A formal and written declaration made by an actual or prospective bidder interested in or concerned about a procurement whereby he expresses his dissent or disapproval, or affirms the act against his will. The object of such dissent is to save some right that would be lost to him.

Protestor: Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or the award of a contract and who files a protest.

Purchasing Department/Office: The administrative unit of an institution that is responsible for managing the institution's purchase and acquisition of materials, supplies, equipment, services and printing, receiving, inventory management, and disposal of surplus, obsolete and unusable materials, supplies and equipment.

Quotation: An offer to perform a contract for services, work and labor, or the supplying of materials or goods at a specified price in accordance with specifications in a RFQ, usually for commodities which cost \$50,000 or less.

Request for Bids: A document issued for the purpose of soliciting a bid, usually for commodities that cost in excess of \$50,000.

Request for Expressions of Interest: A document issued for the purpose of soliciting an expression of interest.

Request for Proposals (RFP): A document issued for the purpose of soliciting a proposal.

Request for Quotations (RFQ): A document used for the purpose of soliciting a quotation or bid.

Requisition: A document prepared by a person or department within an institution that is used to officially request goods or services. It usually contains a specification for the article or service requested.

Resident Vendor or Bidder: A vendor or bidder who meets the requirements of the West Virginia Code for being considered an in-state individual or business.

Responsible Bidder or Vendor: A person who has the capability in all respects to perform contract requirements, and the integrity and reliability that will assure good faith performance.

Responsive Bidder or Vendor: A person who has submitted a bid that conforms in all material respects to the requirements and minimum specifications of the invitation to bid.

Services: The furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports, which are merely incidental to the required performance. This term shall not include employment agreements or collective bargaining agreements.

Shall: Denotes the imperative.

Signature: The name of a person written with his or her own hand; the act of signing one's name. The act of putting one's name at the end of an instrument to attest to its validity.

Specification: A clear and accurate description of the physical, functional, or performance characteristics or nature of the material, supplies, services, equipment, or printing to be purchased. A specification may also include requirements for inspection, testing and preparing the commodity for delivery. The purpose of a

specification is to serve as a basis for obtaining a commodity adequate and suitable in a cost-effective manner, taking into account the cost of ownership and operation as well as initial acquisition cost.

Supplies: Materials or items that will be consumed during the normal course of business within one (1) year, or have a useful life of one (1) year or less, and have an initial cost of \$1,000 or less.

State Code: Denotes the West Virginia State Code; the law of the State of West Virginia.

Unauthorized Signature: One made without actual, implied or apparent authority and includes a forgery.

Vendor: A supplier who provides, in exchange for consideration, materials, supplies, equipment, services, printing, repairs, alterations, and construction.

Vendor Preference: The preference given on competitive bids to a West Virginia resident vendor over a low bid from a nonresident vendor in accordance with the Code of West Virginia.

West Virginia Council for Community and Technical College Education (or Council): The council created pursuant to West Virginia Code §18B-2B-1.

West Virginia Higher Education Policy Commission (or Commission): The commission created pursuant to West Virginia Code §18B-1B-1.

Will: Denotes the imperative.

Appendix A

AIA B101-2017 Supplementary Conditions Standard form of Agreement Between Owner and Architect.

This current version of this form can be found at:

<http://www.state.wv.us/admin/purchase/aia/default.html>

AIA A201-2017 Supplementary Conditions to Standard Form of Agreement Between Owner and Contractor

The current version of this form can be found at:

<http://www.state.wv.us/admin/purchase/aia/default.html>

Higher Education Real Property Lease-Purchase Agreement***Section 1.01 HIGHER EDUCATION REAL PROPERTY
LEASE-PURCHASE AGREEMENT***

THIS REAL PROPERTY LEASE-PURCHASE AGREEMENT ("Lease"), made this _____ day of _____, 20____, by and between ***[INSERT LESSOR'S LEGAL NAME]*** ("Lessor"), and ***[INSERT INSTITUTION'S LEGAL NAME]*** ("Lessee");

WHEREAS, pursuant to provisions of West Virginia Code §18B-19-11, the Board of Governors of ***[Name of Institution]*** enters into this Lease with the approval of ***[the West Virginia Higher Education Policy Commission OR the West Virginia Council for Community and Technical College Education, as appropriate]***; and

WHEREAS, Lessee seeks to enter into an agreement with Lessor to lease-purchase the Leased Premises, as defined below, for the amount of _____ Dollars (\$ _____), pursuant to the terms and conditions hereinafter stated;

Section 1.02 NOW, THEREFORE, THIS LEASE-PURCHASE AGREEMENT WITNESSETH:

1. Lease. For and in consideration of the full and complete performance of the covenants, terms, and conditions hereinafter set forth, Lessee agrees to lease and Lessor hereby leases unto the Lessee, the capital improvements, appurtenances and fixtures thereto consisting of ___ parcel(s) of property located at _____ ***[INSERT PROPERTY LOCATION OR ADDRESS]***, as specified in Exhibit A attached hereto and made a part hereof (the "Leased Premises"). Upon execution, this Lease is binding on and enforceable against Lessor and Lessee in accordance with its terms.

2. Representation, Covenants and Warranties of the Lessee. The Lessee represents, covenants and warrants as follows:
 - (a) Lessee is authorized by the laws and Constitution of the State of West Virginia to enter into this Lease and to perform its obligations hereunder. The Lessee has been authorized to enter into and has approved the execution and delivery of the Lease, as a legal, valid and binding obligation of the Lessee in accordance with the respective terms hereof.

 - (b) The execution and delivery of this Lease, the fulfillment of or compliance with the terms and considerations hereof, and the consummation of the transaction contemplated hereby, will not conflict with, constitute a breach of, or default under, the Constitution and laws of the State, or the rules of procedure of the Lessee or agreement or other instrument to which the Lessee is a party or by which it is bound, or any constitutional or statutory provision, or order, rule, regulation, decree or ordinance of any court, government or governmental body to which the Lessee, the Leased Premises or any of the Lessee's other properties are subject.

 - (c) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, regulatory agency, public board or body pending or, to the best of the Lessee's knowledge, threatened, against the Lessee, wherein an unfavorable ruling or finding would adversely affect the validity or enforceability of this Lease, or which would materially and adversely affect the transaction contemplated thereby or Lessee's ability to perform its obligations hereunder.

 - (d) The Leased Premises at all times will be used by the Lessee for the purpose of performing educational and other activities. The Leased Premises will be used by the Lessee for the purposes of performing an essential governmental function, and the leasing and acquisition of the Leased Premises is necessary to the operation of the Lessee and is consistent with the permissible scope of the Lessee's authority.

- (e) All consents and approvals of, the giving of notice to, registration with, and the taking of any action in respect of any federal, state, or local governmental authority, necessary to the execution of the Lease or to permit the transaction contemplated by this Lease to occur have been received, have occurred, have taken, or have been performed prior to delivery of the Lease.
 - (f) Lessee hereby declares its current need for the Leased Premises and its present intention and expectation that this Lease will not be terminated until all Lease Payments hereunder have been paid pursuant to the Lease, but this representation shall be subject to the Lessee's rights to terminate this Lease pursuant to the provisions of the Lease.
 - (g) The officer of the lessee executing this Lease has been duly authorized to execute and deliver this Lease.
3. Representation, Covenants and Warranties of Lessor. Lessor represents, covenants and warrants as follows:
- (a) Lessor is the owner of the Leased Premises and has full authority to enter into this Lease.
 - (b) Lessor will not assign its right, title and interest in and to the Lease Payments under, or assign, pledge or grant any security interest in its right, title and interest in, to and under this Lease or the Leased Premises without the written consent of the Lessee and approval of the Attorney General. Lessor will not assign its duties and obligations under this Lease to any other person, firm or corporation, so as to impair or violate the representations, covenants and warranties contained herein.
 - (c) Neither the execution and delivery of the Lease or any reasonable requested documentation, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, will conflict with, constitute a breach of or a default under, any agreement or other instrument to which the Lessor is a party or by which the
Lessor or any of its properties may be bound, or any constitutional or statutory provision or order, rule, regulation, decree or ordinance or any court, government or governmental body to which the Lessor or any of its properties are subject.
 - (d) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, regulatory agency, public board or body pending or, to the best knowledge of the Lessor, threatened against the Lessor, wherein an unfavorable ruling or finding would adversely affect the validity or enforceability of the Lease, or any document to which Lessor is a party or which would materially and adversely affect the ability of Lessor to perform Lessor's obligations under this Lease or any other document to which Lessor is a party.
 - (e) During the term of this Lease and as long as an Event of Default, as defined in Section 14, is not occurring, Lessee shall have control of the Leased Premises.
4. Term and Notices. The Lease Term, subject to the provisions hereof, shall commence on the date of delivery of the Leased Premises to Lessee, and shall terminate upon the first to occur:
- (a) Payment of the final Lease Payment;
 - (b) Payment of the Purchase Option Price as provided in Section 8;
 - (c) An Event of Non-appropriation as defined in Section 10;
 - (d) An Event of Default as defined in Section 12; or
 - (e) Cancellation at the option of the Lessee pursuant to Section 14.

Pursuant to West Virginia Code §18B-19-12(e)(3), this Lease shall be considered renewed for each ensuing fiscal year and all portions thereof during the term of this Lease unless it is canceled by the Lessee before the end of the then current fiscal year. If not sooner terminated, this Lease shall terminate as of the date of payment in full of the Lease Payments hereunder or payment of the Purchase Option Price.

Notices shall be made in writing and mailed to the other party at its address as set forth below, or at such address as the party may provide in writing from time to time. Any such notice shall be deemed to have been received five (5) days after mailing. Notices shall be directed as follows:

<u>To the</u> _____ _____ _____	<u>To the Lessor:</u> _____ _____ _____
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[INSERT NAME AND MAILING ADDRESS FOR NOTICES]

5. Lease Payments. Lessee agrees to pay to Lessor as Lease Payments for the Leased Premises, on or before the first day of each month during the term of the Lease for the preceding month, in the amounts set forth on the Lease Payment Schedule attached hereto as Exhibit B and made a part hereof.

6. Payments Constitute Limited Obligation. This Lease constitutes a special obligation of the State of West Virginia. The obligation may be met by any funds legally available to the Lessee. The obligation of Lessee to pay Lease Payments hereunder is a current expense of Lessee, subject to and dependent upon appropriations being made available by the West Virginia State Legislature for such purposes. No provision of the Lease shall be construed or interpreted as creating a general obligation or other indebtedness of the Lessee, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or monies of the Lessee or the State of West Virginia beyond any fiscal year for which such revenues, funds or monies are appropriated.

This Lease, or any assignment or securitization hereof, shall never constitute an indebtedness of the State of West Virginia or any department, agency or political subdivision of the State, within the meaning of any constitutional provision or statutory limitation, and may not be a charge against the general credit or taxing powers of the State or any political subdivision thereof.

Neither this Lease nor any assignment hereof shall directly or indirectly obligate the Lessee or the State of West Virginia to make any Lease Payments beyond those actually appropriated for the then current fiscal year. The Lessee shall not be under any obligation whatsoever to exercise its option to purchase the Leased Premises.

7. Obligation Unconditional. Subject to the provisions hereof, the obligation of the Lessee to pay the Lease Payments during a fiscal year for which an appropriation has been made or funds are otherwise available as provided hereunder shall be absolute and unconditional, and payment of the Lease Payments shall not be abated through accident or unforeseen circumstances, any damage to or destruction of the Leased Premises or any part thereof, any taking of the Leased Premises or any part thereof by condemnation or otherwise, or any other prohibition, limitation, restriction, or prevention of the Lessee's use, occupancy, or enjoyment of the Leased Premises, except as provided in Section 15 herein.

8. Option to Purchase. At any time during the Lease Term, Lessee shall have the option to purchase the Leased Premises by paying the Lessor the Purchase Option Price as shown in the attached Lease Payment Schedule (Exhibit B).

As used herein, "Purchase Option Price" means the amount equal to the outstanding principal, as set forth in the Lease Payment Schedule, plus any unpaid interest that has accrued on such principal to the date of payment of the Purchase Option Price, provided that any other sum due under this Lease has or is being paid, payable at the option of Lessee for the purpose of purchasing the Leased Premises.

9. Budgeting and Appropriations. Lessee reasonably believes that sufficient funds can be obtained to make all Lease Payments during the Lease Term. The Lessee shall annually request an appropriation or budget allocation of sufficient moneys to fund the Lease Payments for the next fiscal year. Lessee intends to make Lease Payments for the full term of this Lease, and represents that the Leased Premises will be used for one or more governmental or proprietary functions essential to its proper, efficient and economic operation.
10. Event of Non-Appropriation. Notwithstanding anything in this Lease to the contrary, the parties agree that in accordance with West Virginia Code § 18B-19-12(e)(2), this Lease shall be considered canceled, without further obligation on the part of the Lessee, if the State Legislature or the Federal government should subsequently fail to appropriate sufficient funds therefor, or should otherwise act to impair this Lease or cause it to be canceled.

Upon the occurrence of an Event of Non-appropriation, this Lease shall terminate without penalty at the end of the current fiscal year and the Lease and other payments shall be canceled. In any event aforementioned, the Lessee shall immediately redeliver possession of the Leased Premises to the Lessor, and upon such redelivery Lessee shall be relieved from any and all obligations hereunder concerning the Leased Premises, except for rent accruing prior to the date of redelivery. Lessee agrees to provide written notice to Lessor of an Event of Non-appropriation as soon as Lessee determines that such an event exists. An Event of Non-appropriation shall not be considered an Event of Default.

11. Remedies on Non-Appropriation. If any Event of Non-Appropriation shall have occurred, and no appropriation is made in the next fiscal year, the Lessor may notify Lessee that the Lease is terminated, and re-enter on the Leased Premises, unless Lessee exercises its right to purchase the Leased Premises as set out herein. Upon such re-entry by Lessor, Lessee shall redeliver the Leased Premises to Lessor and shall release any right, title and interest they may have in the Leased Premises.

12. Events of Default. The following constitute an “Event of Default” under this Lease:

- (a) Failure by Lessee to pay as the same become due any Lease Payments appropriated by the West Virginia State Legislature during the Lease Term within the time frames described in Section 5 of this Lease; or
- (b) Failure by the Lessee to surrender possession of the Leased Premises upon the termination of this Lease, upon the occurrence of an Event of Non-appropriation pursuant to Section 10, or cancellation of this Lease pursuant to Section 14 hereof; or
- (c) Failure by the Lessee to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in clause (a) or clause (b) hereof, provided that (i) the Lessor has notified the Lessee of such failure and (ii) the Lessor has declared such failure to be an Event of Default.

13. Remedies on Default. If an Event of Default occurs, the Lessor shall notify the Lessee, in writing, of such default and if such default is not corrected with sixty (60) days after receipt of notification, the Lessor may notify Lessee that the Lease is terminated, and re-enter the Leased Premises, unless Lessee exercises its right to purchase the Leased Premises as set forth herein. In such event, Lessee shall redeliver the Leased Premises to Lessor and shall release any right, title and interest they may have in the Leased Premises.

14. Cancellation of Lease. Pursuant to West Virginia Code § 18B-19-11(d), this Lease shall be cancelable at the option of the Lessee at the end of any fiscal year. In such event, the Lessee shall redeliver possession of the Leased Premises to Lessor, and upon such redelivery shall be relieved from any further obligations hereunder.

15. Quiet Enjoyment of Leased Premises. Lessor covenants that as of the delivery of this Lease, it was seized of the Leased Premises as the sole owner thereof, in fee simple, free of all liens, encumbrances and any outstanding

interests whatsoever, and that upon payment of the Lease Payments, it will warrant and defend the title of Lessee against any and all claims whatsoever, not arising hereunder, during the term of this Lease; and that the Lessee shall, at all times during the term of this Lease, peaceably and quietly have, hold, and enjoy the Leased Premises.

16. Title to Leased Premises. During the term of this Lease, title to the Leased Premises and any alterations thereto or replacements thereof shall vest in the Lessee, so long as Lessee is not in default or shall not have terminated the Lease as to the Leased Premises. To secure Lessee's obligations hereunder, Lessee hereby grants to Lessor a security interest in any right, title and interest of Lessee in the Leased Premises.

Upon payment of all Lease Payments, or upon payment of the Purchase Option Price by Lessee, Lessor shall convey all of Lessor's right, title and interest in and to the Leased Premises to Lessee by delivery of a General Warranty Deed in substantially the form set forth as Exhibit C hereto.

17. Taxes and Assessments. The parties acknowledge that the Lessee is exempt from federal, state and local taxation, and as such, shall not be liable or responsible for the payment or reimbursement of any tax of any type incurred in connection with this Lease, nor will it file any tax returns or reports on behalf of Lessor or its assignees. The Lessee shall be responsible for paying any and all municipal or county fees, such as fire service fees, that may be applicable to the Leased Premises during the Term.

As title to the Leased Premises shall vest in the Lessee during the term of this Lease, the Leased Premises shall be exempt from real property tax pursuant to West Virginia Code § 11-3-9(a)(27).

Pursuant to West Virginia Code § 18B-19-11(f), the interest component of any lease-purchase obligation is exempt from all taxation of the State of West Virginia, except inheritance, estate and transfer taxes. It is the intent of the West Virginia Legislature that if the requirements set forth in the Internal Revenue Code of 1986, as amended, and any regulations promulgated pursuant thereto are met, the interest component of the Lease Payments made under this Lease be and remain exempt from the gross income of the Lessor for purposes of federal income taxation.

Lessee covenants that it will take any and all action reasonably necessary to maintain the exemption from federal income taxation of the interest portion of the Lease Payments, and that it will not perform any act or enter into any agreement or use or permit the use of the Leased Premises or any portion thereof in a manner that shall have the effect of terminating or denying the exemption from federal income taxation of the interest portion of the Lease Payments.

18. Suitability of Premises. Lessor warrants the Leased Premises to be suitable for use as a State higher education facility and for the conduct of Lessee's business.
19. Assignment and Subleasing. This Lease may not be assigned by either party without the written consent of the other party, except that Lessee may sublet the Leased Premises in whole or in part to another State agency without the consent of the Lessor, provided that Lessee shall furnish or cause to be furnished to Lessor a copy of any such sublease agreement. Any assignment by Lessor with Lessee's written consent must also be approved as to form by the Attorney General of West Virginia.
20. Use and Maintenance of Leased Premises. Lessee covenants that it shall not commit waste on the Leased Premises. Lessee will, at its expense, maintain, preserve, and keep the Leased Premises in good repair, working order and condition.

Lessee agrees to comply with all federal, state and local laws, ordinances and regulations applicable to the possession, use or maintenance of the Leased Premises. Lessee will not use, operate or maintain the Leased Premises improperly, carelessly, in violation of any applicable law, or in a manner contrary to that contemplated by this Lease. Lessee shall obtain all permits and licenses, if any, necessary for the use, occupancy and operation of the Leased Premises.

21. Utilities and Other Related Services. Lessee covenants to promptly pay for all water, gas, heat, light, power, telephone service, and other public utilities of every kind furnished to the Leased Premises incurred on and after the delivery of the Leased Premises to Lessee. Prior to such date of delivery, Lessor will remain responsible for all such

utilities.

22. Insurance. Lessee is self-insured through the West Virginia Board of Risk and Insurance Management and will protect the interests of the Lessor and Lessee against property losses or damage. Lessee is also self insured against liability related to the Leased Premises. In the event of any loss, damage, injury or accident involving the Leased Premises, Lessee shall promptly provide Lessor with written notice thereof and make available to Lessor all information and documentation thereof.

Lessee confirms and agrees that in the event any attempt is made to take the Lease or the Leased Premises by eminent domain that it shall use its best efforts to ensure that the compensation shall in no event be less than an amount sufficient to pay the current Purchase Option Price. If the Leased Premises or any portion thereof is destroyed, in whole or in part, or is damaged by fire or other casualty, or if title to, or the temporary use of the Leased Premises or any part thereof is taken under the exercise of the power of eminent domain, Lessee and Lessor will cause the net proceeds of any insurance claim or condemnation award to be applied either to the prompt repair or restoration of the Leased Premises or, at Lessee's option, to the payment of the Purchase Option Price.

Any balance of the net proceeds remaining after such work or purchase has been completed shall be paid to the Lessee. Net proceeds shall mean the amount remaining from the gross proceeds of any insurance claim or condemnation award after deducting all expenses incurred in the collection of such claims or award. If the net proceeds are insufficient to pay in full the cost of any repair, restoration, modification or replacement, Lessee shall either (a) complete the work or pay any cost in excess of the amount of net proceeds, or (b) pay to Lessor the Purchase Option Price. The amount of the net proceeds in excess of the then applicable Purchase Option Price, if any, may be retained by Lessee.

23. No Encumbrance, Mortgage or Pledge of Leased Premises. Neither the Lessor or the Lessee shall permit any mechanic's or other lien to be established or remain against the Leased Premises, nor shall Lessor or Lessee directly or indirectly create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Leased Premises.
24. Restriction on Contracts. Lessor agrees that so long as the Lessee is not in default hereunder, it will not enter into any other contract or agreement affecting this Lease or the Leased Premises in any way or attempt to sell, assign, convey or otherwise alienate any interest it may have in the Leased Premises, this Lease or the Lease Payments, or assign the same as security for any other obligations of the Lessor without the prior written consent of the Lessee, which consent shall not be unreasonably withheld, and approval as to form by the Attorney General.

Lessor hereby covenants not to sell or offer to sell or otherwise transfer or encumber this Lease through, nor shall this Lease be sold, transferred or encumbered through,

(1) a certificate of participation program, whereby two or more interests are created in the Lease, the Leased Premises or the Lease Payments; or (2) other similar instruments, agreements, securitizations and obligations through a pool, trust, limited partnership or other entity, without the express written consent of Lessee and approval of the agreement as to form by the Attorney General of West Virginia.

25. Further Assurance and Corrective Instruments. Lessor and Lessee agree that they will execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such further instruments as reasonably may be required for correcting any inadequate or incorrect description of the Leased Premises hereby leased or intended to be leased or for otherwise carrying out the intentions hereof.
26. Payments Due on Holidays. If the date for making any payment or the last day for performance of any act or the exercising of any right, as provided in this Lease, shall be a legal holiday or a day on which banking institutions are authorized by law to remain closed, such payment may be made or act performed or right exercised on the next succeeding day that is not a legal holiday or a day on which such banking institutions are authorized by law to remain closed, with the same force and effect as if done on the date otherwise specified herein.
27. Entire Agreement. This Lease constitutes the entire agreement between Lessor and Lessee with respect to the Leased

Premises. There are no understandings, agreements, representations or warranties, express or implied, not stated herein.

The waiver by one party of any breach of any term, covenant or condition hereto shall not operate as a waiver of any subsequent breach thereof. No consent or waiver shall be effective unless set forth in a writing signed by the party to be bound by such consent or waiver.

28. Cooperation of Lessor. The Lessor shall cooperate fully with Lessee in filing any proofs of loss with respect to any insurance policy covering the events described in this Lease, in the prosecution or defense of any prospective or pending condemnation proceeding with respect to the Leased Premises, or in any action relating to any contract or agreement relating to the events described in this Lease. In no event shall the Lessor voluntarily settle, or consent to the settlement of, any proceeding arising out of any such insurance claim, performance or payment bond claim, prospective or pending condemnation proceeding, or action, without the written consent of the Lessee.
29. Binding Effect. This Lease shall inure to the benefit of and shall be binding upon Lessor and Lessee and their respective successors and assigns.
30. Time of the Essence. Time is of the essence of this Lease, and of each and every covenant, term, condition and provision hereof.
31. Severability. Any provision of this Lease found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of this Lease.
32. Compliance with Law. The parties shall comply with all applicable statutes, ordinances, rules and regulations of federal, state and municipal governments, and shall observe and comply promptly with all current and future orders of all courts having jurisdiction over the Leased Premises or any portion thereof, and all current and future requirements of all insurance companies writing policies covering the Leased Premises or any portion thereof.
33. Headings. The headings to the various sections of this Lease have been inserted for reference only and shall not in any manner be construed as modifying, amending or affecting in any way the express terms and provisions hereof.
34. Amendments. All amendments, modifications, alterations or changes to this Lease shall be in writing and signed by Lessor and Lessee.
35. Governing Law. This Lease shall be governed by and construed in accordance with the laws of the State of West Virginia.

IN WITNESS WHEREOF, the parties hereto have caused their names to be affixed to this Lease.

Lessor

By _____

Its _____

Lessee

By _____

Its _____

Approved as to Form this _____ day of _____, 20____
_____, Attorney General

By: _____

STATE OF WEST VIRGINIA

COUNTY OF _____, to wit:

The foregoing instrument was acknowledged before me this _____ day
of _____, 20__, by _____, as
_____, for and on behalf of _____, Lessor.

My commission expires: _____

Notary Public

(Seal)

STATE OF WEST VIRGINIA

COUNTY OF _____, to wit:

The foregoing instrument was acknowledged before me this _____ day
of _____, 20__, by _____, as
_____, for and on behalf of _____, Lessee.

My commission expires: _____

Notary Public

(Seal)

Section 1.03 CERTIFICATE OF ESSENTIAL USE

THE UNDERSIGNED, _____, President of _____
_____, Lessee, in that certain Lease-Purchase Agreement ("Lease") dated the
_____ day of _____, 20____, hereby certifies as follows:

1. The Leased Premises will be used by the Lessee for the specific purpose of higher education activities for the State of West Virginia.
2. The Leased Premises are essential for the functioning of the Lessee and are immediately needed by the Lessee. Such need is neither temporary nor expected to diminish during the term of the Lease. The Leased Premises are expected to be used by Lessee for a period in excess of the term of the Lease.
3. Funds for the Lease Payments are expected to come from _____ account.
4. The Lease was issued under and pursuant to West Virginia law to finance the acquisition of the Leased Premises described therein.
5. Pursuant to the Lease, Lessee is entitled to receive the Leased Premises in consideration for the obligation under the Lease. The Leased Premises will be used in furtherance of the public purposes of Lessee. The Lessee does not intend to sell or to otherwise dispose of the Leased Premises during the term of the Lease.
6. The undersigned has the power and authority to execute this Certificate on behalf of Lessee.

To the best of my knowledge, information and belief, the expectations expressed herein are reasonable and there are no facts, estimates or circumstances other than those expressed herein that would materially affect the expectations herein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day
of _____, 20_____.

_____, President
_____, Lessee

Article II. EXHIBIT A

(Legal Description of Leased Premises)

APPENDIX B

Contract of Lease

Article III. CONTRACT OF LEASE

THIS CONTRACT OF LEASE, effective _____, 20__, by and between *[INSERT LESSOR'S LEGAL NAME]*, hereinafter referred to as "Lessor," and the *[INSERT INSTITUTION'S LEGAL NAME]*, hereinafter referred to as "Lessee."

WHEREAS, pursuant to provisions of W.Va. Code §18B-19-12, the Chief Executive Officer certifies that the space herein leased is necessary for the proper function of *[INSERT INSTITUTION'S LEGAL NAME]*, and that satisfactory space is not available in other buildings now owned or leased by the State; and

Article IV. NOW THEREFORE, THIS CONTRACT OF LEASE FOR USE BY LESSEE WITNESSETH:

That for and in consideration of the full and complete performance of the covenants, terms, and conditions hereinafter set forth, the Lessor hereby leases unto the Lessee the following described premises:

Section 4.01 *[INSERT*
DESCRIPTION OF LEASED PREMISES --- EXAMPLE: *Containing*
approximately 30,000 square feet, more or less, on the first floor, second floor, third floor and fourth floor, plus a minimum of 1,000 square feet of storage area in the basement, of that certain building commonly known as the Boulevard Building located at 1000 Kanawha Boulevard, East, in the city of Charleston, Kanawha County, West Virginia, together with 25 adjacent (on-site) parking spaces and 30 additional off-site parking spaces.]

The parties hereto covenant and bind themselves as follows:

(1) TERM AND NOTICES

The term of this lease, subject to the provisions hereof, shall begin on _____, 20__ and end at midnight on _____, 20__. This lease shall be considered renewed for each ensuing fiscal year during the term of the lease unless it is canceled by the Lessee before the end of the then current fiscal year.

Notices may be given by personal service upon the party(s) entitled to such notice, or by certified mail, duly stamped and directed to the last-known address of the party to be notified, and deposited in the post office. The proper mailing of such notice and not the receipt thereof shall constitute the giving of such notice by either party to the other. Notices shall be directed as follows:

Article V. To the Lessee To the Lessor

Section 5.01 *[INSERT NAME AND MAILING ADDRESS FOR NOTICES]*

(2) RENT

The Lessee covenants that the Lessee shall pay rent unto the Lessor based on the following rent schedule: *[INSERT RENT SCHEDULE PER SQUARE FOOT --- EXAMPLE:*

Section 5.02 \$8.00 per square foot for the period July 1, 2007 through June 30, 2008; \$8.50 per square foot for the period July 1, 2008 through June 30, 2009; \$9.00 per square foot the period July 1, 2009 through June 30, 2010; \$9.50 for the period July 1, 2010 through June 30, 2011; and \$10.00 for the period July 1, 2011 through June 30, 2012.]

Based on said rent schedule, the Lessee shall pay unto the Lessor as rent for the premises herein leased, the sum identified in the following monthly payment schedule which shall be payable upon receipt of invoice from Lessor to the Lessee on the first day of every month for the preceding month during the term of this lease: *[INSERT MONTHLY PAYMENT SCHEDULE*

Section 5.03 --- EXAMPLE: Twenty Thousand Dollars (\$20,000.00) per month for the period July1, 2007 through June 30, 2008; Twenty-One Thousand Two Hundred-Fifty Dollars (\$21,250.00) per month for the period July 1, 2008 through June 30, 2009; Twenty-Two Thousand Five Hundred Dollars (\$22,500.00) per month for the period July 1, 2009 through June 30, 2010; Twenty-Three Thousand Seven Hundred-Fifty Dollars (\$23,750.00) per month for the period July 1, 2010 through June 30, 2011; and Twenty Five Thousand Dollars (\$25,000.00) per month for the period July 1, 2011 through June 30, 2012.]

(3) UTILITIES AND OTHER RELATED SERVICES

The Lessor agrees to furnish all utilities and janitorial services for the premises herein leased, with the exception of telephone services which shall be provided by Lessee.

Section 5.04 [OR INSERT ALTERNATE LANGUAGE IN PLACE OF THE LANGUAGE ABOVE]

(4) MAINTENANCE

Lessor binds itself to maintain the premises, including the structure of the premises, both interior and exterior; the electrical, HVAC and plumbing fixtures and equipment, except such fixtures and equipment as may be owned by Lessee; and the interior and exterior painting in a good and tenantable condition equal to that of the premises as at the time possession thereof is delivered to the Lessee. If Lessor fails to maintain the interior and exterior structure of the premises, and the electrical, HVAC and plumbing fixtures and equipment owned by Lessor in a good and tenantable condition of repair, the Lessee shall request the Lessor, in writing, to correct any deficiency which may have occurred since possession of the premises by the Lessee, provided, however, such deficiency was not caused by the neglect or acts of the Lessee. Upon refusal or neglect of Lessor to comply with Lessee's request for the repair or reinstatement of previously-existing conditions, Lessee may, thirty (30) days after receipt of such request by the Lessor, cause the repairs to be made and deduct the costs and expense thereof from the rents which may become due and payable thereafter to the Lessor until the Lessee is fully reimbursed therefor.

(5) TAXES AND ASSESSMENTS

The Lessor will pay taxes and assessments levied on the subject premises during the term of this lease.

(6) FIRE AND HEALTH HAZARDS

The Lessor will remove and correct any fire or health hazards not caused by the neglect or acts of the Lessee, its agents, employees or servants that any public authority may order corrected or removed during the term of this lease. Upon refusal or neglect of Lessor to comply with any such order, the Lessee may comply therewith and deduct the costs and expenses from monthly rentals payable thereafter to the Lessor until the Lessee is fully reimbursed therefor.

(7) SUITABILITY OF PREMISES

Lessor warrants the premises to be suitable for use as a State facility and for the conduct of Lessee's business, and that

there shall be no liability on the part of the State of West Virginia, its officers, agents or employees for any loss or damage to the leased premises, whether caused by overloading the floors with equipment or otherwise installing fixtures and equipment commonly used in a business office, nor any liability on any individual by virtue of any of the provisions of this lease.

Lessor shall have the right to approve of any unusually heavy equipment put on the leased premises.

(8) TRANSFER OR ASSIGNMENT OF LEASE

The Lessee agrees not to transfer or assign this lease, or sublet the subject premises without the written consent of the Lessor.

(9) NEGLECT OF PREMISES

The Lessee shall not commit waste on the premises herein leased, and the premises will be returned to the Lessor at the termination of this lease in substantially as good condition as at the commencement thereof, damages from natural elements, normal depreciation and decay excepted.

(10) DEFAULT BY LESSEE

In the event the Lessee defaults in any of the covenants contained herein, the Lessor shall notify the Lessee, in writing, of such default and if such default is not corrected within sixty days after receipt of notification, the Lessor may notify Lessee that the lease is terminated, and reenter the premises herein leased.

(11) DAMAGE TO PREMISES BY FIRE, ETC.

It is agreed by and between the parties hereto that in the event the premises are destroyed or damaged by fire, natural elements, or other cause to such an extent that continued occupancy by the Lessee would be impractical, the Lessee shall give immediate notice thereof to the Lessor, in writing, and this lease shall terminate. If only a part of the premises shall be rendered untenable, leaving the remainder suitable for occupancy, the rental shall be proportionately abated until the premises have been repaired. The Lessor shall have five (5) days from receipt of such notice to decide whether or not to repair the premises. Any repairs undertaken must be completed within a reasonable length of time after Lessor's decision. Should Lessor decide not to repair the premises, this lease shall terminate, and Lessee shall deliver possession of the premises to the Lessor and thereupon be relieved of any and all liability hereunder or concerning the premises except for any unpaid rent through the final day of occupancy.

(12) PROVISIONS FOR IMMEDIATE TERMINATION

It is further agreed by and between the parties hereto that this lease shall be considered canceled, without further obligation on the part of the Lessee, if the State Legislature or the Federal Government should subsequently fail to appropriate sufficient funds therefor, or should otherwise act to impair this lease or cause it to be canceled, or in the event it shall become unlawful to maintain a State facility on leased premises. In any event aforementioned, the Lessee may immediately redeliver possession of the premises to the Lessor and thereupon be relieved from any and all obligations hereunder or concerning the premises except for rent accruing prior to such date of redelivery.

(13) QUIET ENJOYMENT OF PREMISES

The Lessor covenants that at the date of this lease, Lessor was seized of said premises as the sole owner(s) thereof, in fee simple, free of all liens, encumbrances and any outstanding interests whatsoever, and that upon payment of rentals as hereinbefore set forth, it will warrant and defend the title of Lessee against any and all claims whatsoever, not arising hereunder during the term of this lease; that the Lessee shall, at all times during the term of this lease, peaceably and quietly have, hold and enjoy the said leased premises.

(14) CANCELLATION OF LEASE

It is further agreed by and between the parties hereto that the Lessee shall have the right to cancel this lease, without further obligation on the part of the Lessee, upon giving thirty (30) days' written notice to the Lessor, such notice being given at least thirty days prior to the last day of the succeeding month.

(15) REMOVAL OF MACHINERY AND EQUIPMENT

It is understood and agreed that all machinery and equipment installed by the Lessee, or placed upon the leased premises incident to Lessee's business, whether annexed to the freehold or not, shall remain the personal property of the Lessee, and Lessee shall have the privilege and right to remove same at any time during the term of this lease provided the premises are restored to as good condition as existed prior to installation of said machinery and equipment, reasonable wear and tear expected.

(16) STRUCTURAL OR OTHER CHANGES TO PREMISES

In the event the Lessee requires structural or other changes in said premises to improve the use and efficiency of same, and if said changes are completed by Lessor at its cost and expense, the Lessee agrees to reappraise and renegotiate this lease to arrive at a fair rental value, if warranted.

(17) IMPROVEMENTS

The Lessor agrees to cause certain improvements to be made to the premises herein leased, consisting of, but not limited to:

Section 5.05 *[PROVIDE DESCRIPTION OF IMPROVEMENT IF ANY]*

(18) HEADINGS

The headings to the various paragraphs of this lease have been inserted for reference only and shall not in any manner be construed as modifying or amending in any way the express terms and provisions hereof.

(19) PARKING

Lessor agrees to provide, at no additional cost to the Lessee, _____ parking spaces immediately adjacent to the leased premises.

(20) ADDITIONAL SPACE

Lessor agrees that Lessee shall have the option of first refusal of up to _____ square feet of any additional space that may become available in the leased premises. Lessee shall, within _____ days of Lessor's written notice and proof of a bona fide offer of lease, give Lessor written notice of its intention to exercise or decline its option. The additional space shall be leased under the same terms and conditions as provided herein, if space is accepted "as is."

(21) OPTION TO RENEW

Lessor agrees that Lessee may, at its option, extend the term of this lease for two (2) additional one-year periods by giving written notice unto the Lessor sixty (60) days prior to the expiration of the then-current lease term. Any increase in rent during the extension periods shall not exceed five percent (5%) per annum.

(22) SEVERABILITY

Any provision of this lease found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of this lease.

(23) NON-SMOKING FACILITY

The Lessee will make every effort to assist the Lessor to be in compliance with the non- smoking building ordinance issued by the _____ County Health Department.

(24) ACCESSIBILITY REQUIREMENTS

The Lessor hereby agrees that any renovations made within the space herein leased shall comply with the accessibility standards established and set forth by the Americans with Disabilities Act of 1990, whether requested by the Lessee or required by law.

IN WITNESS WHEREOF, the parties hereto have caused their names to be affixed to this contract of lease.

_____, Lessor

By _____

Section 5.06 [TYPE NAME & TITLE]

_____, Lessee

By _____

Section 5.07 [TYPE NAME & TITLE]

STATE OF WEST VIRGINIA

COUNTY OF _____, TO-WIT:

I _____, notary public in and for said county and state, do hereby certify that _____, who as _____ signed the foregoing lease for _____, Lessor, has this day acknowledged the same before me in my said county and declared the same to be the act and deed of said corporation.

Given under my hand this _____ day of _____, 20____. My commission will expire

_____ 20____.

NOTARY PUBLIC

STATE OF WEST VIRGINIA COUNTY OF KANAWHA, TO-WIT:

I _____, notary public in and for said county and state, do hereby certify that _____, who, as _____, signed the foregoing lease for the _____, Lessee, has this day acknowledged the same before me in my said county and declared the same to be the act and deed of said agency.

Given under my hand this _____ day of _____, 20_. My commission will expire
_____, 20_.

NOTARY PUBLIC

Approved as to form this _____ day of _____, 20____.
_____, Attorney General

By _____,

TERMS AND CONDITIONS

1. **ACCEPTANCE:** Vendor shall be bound by this Order and its terms and conditions upon receipt of this Order. This Order expressly limits acceptance to the terms and conditions stated herein. Additional or different terms proposed by the Vendor are objected to and are hereby rejected, unless otherwise provided for in writing by the Institution and approved by the Attorney General.
2. **APPLICABLE LAW:** The laws of the State of West Virginia and the Procedural Rules of the WV Higher Education Policy Commission, Council for Community and Technical Education or Governing Board, whichever has jurisdiction pursuant to W. Va. Code, shall govern all rights and duties under the Contract, including without limitation the validity of this Purchase Order/Contract.
3. **ASSIGNMENT:** Neither this Order nor any monies due, or to become due hereunder, may be assigned by the Vendor without the Institution's consent.
4. **INSTITUTION:** For the purposes of these Terms and Conditions, the "Institution" means the institution purchasing goods and services for which a Purchase Order has been lawfully issued to the Vendor.
5. **CANCELLATION:** The Institution may cancel any Purchase Order/Contract upon 30 days written notice to the Vendor.
6. **COMPLIANCE:** Vendor shall comply with all federal, state and local laws, regulations and ordinances, if applicable.
7. **DELIVERY:** For exceptions to the delivery date as specified in the Order, the Vendor shall give prior notification and obtain the approval of the Institution. Time is of the essence of this Order and it is subject to termination by the Institution for failure to deliver on time.
8. **DISPUTES:** Disputes arising out of the agreement shall be submitted to the West Virginia Claims Commission.
9. **HOLD HARMLESS:** The Institution will not agree to hold the Vendor or any other party harmless because such agreement is not consistent with state law.
10. **MODIFICATIONS:** This writing is the parties' final expression of intent. No modification of this Order shall be binding unless agreed to in writing by the Institution.
11. **NON-FUNDING:** All services performed or goods delivered under this Purchase Order/Contract are to be continued for the term of the Purchase Order/Contract, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise available for these services or goods, this Purchase Order/Contract becomes void and of no effect after June 30.
12. **ORDER NUMBERS:** Contract Order numbers or Purchase Order numbers shall be clearly shown on all acknowledgments, shipping labels, packing slips, invoices and correspondence.
13. **PAYMENTS:** Payments may only be made after the delivery of goods or services.
14. **RENEWAL:** The Contract may be renewed only upon mutual written agreement of the parties.
15. **REJECTION:** All goods or materials purchased herein are subject to approval of the Institution. Rejection of goods or materials due to nonconformity with the terms, conditions or specifications of this Order, whether held by the Institution or returned to the Vendor, will be at the Vendor's risk and expense.
16. **VENDOR:** For the purposes of these Terms and Conditions, the "Vendor" means the vendor whose quotation, bid, proposal or expression of interest has been accepted and has received a lawfully issued Purchase Order from the Institution.
17. **SHIPPING, PACKING, BILLING & PRICING:** Unless otherwise stated, all goods are to be shipped prepaid, FOB destination. No charges will be allowed for special handling, packing, wrapping, bags, containers, etc., unless otherwise specified. All goods or services shall be shipped on or before the date specified in this Order. Prices are those that are stated in this Order. No price increase will be accepted without written authority from the Institution.
18. **TAXES:** The State of West Virginia (the Institution) is exempt from Federal and State taxes and will not pay or reimburse such taxes.
19. **TERMINATION:** In the event of a breach by the Vendor of any of the provisions of this contract, the Institution reserves the right to cancel and terminate this contract forthwith upon giving written notice to the Vendor. The Vendor shall be liable for damages suffered by the Institution resulting from the Vendor's breach of contract.
20. **WARRANTY:** The Vendor expressly warrants that the goods and/or services covered by this Order will: (a) conform to the specifications, drawings, samples or other description furnished or specified by the Institution; (b) be merchantable and fit for the purpose intended; (c) be free and clear of all liens, claims and encumbrances of any kind; and/or (d) be free from defect in material and workmanship.

Agreement Addendum WV-96

The latest version of this form can be found at:

<http://www.state.wv.us/admin/purchase/vrc/wv96.pdf>

Purchasing Affidavit

The latest version of this form can be found at:

<http://www.state.wv.us/admin/purchase/vrc/pAffidavit.pdf>

Bid Bond Forms

All Official Bond Forms Approved by the WV Attorney General's Office can be found at:

<http://www.state.wv.us/admin/purchase/forms2.html>

Vendor Registration Form

The latest version of the Vendor Registration Form can be found at:

<http://www.state.wv.us/admin/purchase/vrc/wv1.pdf>

Designation of Buyer Form

**WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION
FORM FOR DESIGNATION OF A BUYER**

(Institution)

I, as Chief Procurement Officer/Director of Procurement for the institution named above, hereby designate the individual whose name and signature appear below as a Buyer for the institution in accordance with §133-30-7.2, of the Commission’s Procedural Rules. I certify that this individual meets the requirements for a Buyer as contained in §133-30-11.1.a of the Commission’s Procedural Rules.

This individual shall have full authority to act as the designee of the Chief Procurement officer for the following matters (place an “X” in the boxes below to indicate authority granted). This designation shall continue until rescinded or superseded in writing.

- Purchase and acquisition of materials, supplies, equipment, printing and services up to and including \$_____
- Receiving materials, supplies, equipment, printing and services.
- Inventory management for materials, supplies and equipment
- Disposal of obsolete or surplus materials, supplies and equipment.

Other Limitations of Authority: The individual designated as a Buyer shall not have authority to act as the designee of the Chief Procurement Officer in the following matters: (if there are no other limitations, write “None”)

Name of Buyer
(please print or type)

Signature of Buyer

Name of Chief Procurement Officer (CPO)
(please print or type)

Signature of CPO

Originals to be filed with: Executive Vice Chancellor for Administration (WVHEPC)
WV State Auditor’s Office
WV Attorney General’s Office

APPENDIX C

Designation of Chief Procurement Officer Form

WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION
FORM FOR DESIGNATION OF CHIEF PROCUREMENT OFFICER

(Institution)

I, as President or other administrative head of the institution named above, hereby designate the individual whose name and signature appears below as the Chief Procurement Officer/Director of Procurement for the institution in accordance with §133-30-6.2, of the Commission’s Procedural Rule. I certify that this individual meets the qualifications for a Chief Procurement Officer/Director of Procurement as stated in §133-Series 30-11.2.a.

This individual, unless otherwise stated below, shall have full authority to act as the designee of the President, or other administrative head, for purchase, acquisition, receipt of and inventory management of all materials, supplies, equipment, services and printing, and for disposal of obsolete or surplus materials, supplies and equipment. This designation shall continue until rescinded or superseded in writing.

Limitations on Delegated Authority: In accordance with Series 30, the Commission’s procedural rule on Purchasing, the individual designated as Chief Procurement Officer shall not have authority to act as the designee of the President in the following matters: (if there are no exceptions, write “None”)

Name of Chief Procurement Officer
(please print or type)

Signature of Chief Procurement Officer

Name of President
(please print or type)

Signature of President

Date

Originals to be filed with: Executive Vice Chancellor for Administration (WVHEPC)
 WV State Auditor’s Office
 WV State Attorney General’s Office



Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from a covered transaction by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this award had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall include an explanation with this document.

Organization Name: _____

PO/Contract Number or Project Name: _____

Name(s) and Title(s) of Authorized Representative(s): _____

Signature: _____

Date: _____