



January 2015  
PE 14-11-565

## AGENCY REVIEW

# PURCHASING DIVISION DEPARTMENT OF ADMINISTRATION

## AUDIT OVERVIEW

Although the Purchasing Reform of Senate Bill 356 Has Strengthened the State's Procurement System, There Are Still Areas of Weakness and There Are High-Risk Areas of Circumvention That Purchasing Needs to Monitor Regularly.

The Division's Website Would Benefit From Enhancements to User-Friendliness and Transparency Features.



---

## JOINT COMMITTEE ON GOVERNMENT OPERATIONS

### Senate

Herb Snyder, Chair  
Mike Green, Vice-Chair  
Sam Cann  
Rocky Fitzsimmons  
Craig Blair  
Evan H. Jenkins

### House of Delegates

Jim Morgan, Chair  
Dale Stephens, Vice-Chair  
Brent Boggs  
Eric Nelson  
Ruth Rowan

### Agency/ Citizen Members

John A. Canfield  
Terry Lively  
W. Joseph McCoy  
Kenneth Queen  
Vacancy

## JOINT COMMITTEE ON GOVERNMENT ORGANIZATION

### Senate

Herb Snyder, Chair  
Ronald F. Miller, Vice-Chair  
Sam Cann  
Donald Cookman  
Rocky Fitzsimmons  
Mike Green  
Art Kirkendoll  
Ronald Stollings  
Bob Williams  
Jack Yost  
Craig Blair  
Donna J. Boley  
Evan H. Jenkins  
Dave Sypolt

### House of Delegates

Jim Morgan, Chair  
Dale Stephens, Vice-Chair  
Gary G. Howell, Minority Chair  
Tom Azinger  
Joshua J. Barker  
Mike Caputo  
Phil Diserio  
Jeff Eldridge  
Ryan Ferns  
William G. Hartman  
Ronnie D. Jones  
Timothy Kinsey  
Brady Paxton  
Margaret D. Smith

Margaret A. Staggers  
Randy Swartzmiller  
Karen Arvon  
Scott Cadle  
Larry Faircloth  
Michael Folk  
Larry D. Kump  
Joshua Nelson  
William Romine  
Anna Sheppard  
Randy Smith



WEST VIRGINIA LEGISLATIVE AUDITOR

## PERFORMANCE EVALUATION & RESEARCH DIVISION

Building 1, Room W-314  
State Capitol Complex  
Charleston, West Virginia 25305  
(304) 347-4890

Aaron Allred  
Legislative Auditor

John Sylvia  
Director

Brandon Burton  
Acting Research Manager

Tina L. C. Baker  
Research Analyst

Jordyn Reed  
Referencer

# CONTENTS

Executive Summary ..... 5

Issue 1: Although the Purchasing Reform of Senate Bill 356 Has Strengthened the Sate’s Procurement System, There Are Still Areas of Weakness and There Are High-Risk Areas of Circumvention That Purchasing Needs to Monitor Regularly ..... 9

Issue 2: The Division’s Website Would Benefit From Enhancements to User-Friendliness and Transparency Features .....45

## List of Tables

Table 1: Number of Agency Purchasing Designees and Unduplicated Staff Attending Purchasing Trainings in 2013 for West Virginia Departments ..... 16

Table 2: 2014 Section 9 Exempt Purchases .....22

Table 3: RFQs Requiring Extensive Experience .....29

Table 4: FY 2013 Change-Orders.....32

Table 5: Monetary Changes Caused by FY 2013 Change-Orders.....33

Table 6: Number of Change-Orders With Effective Dates Prior to the Division Approving the Change-Order .....33

Table 7: Surrounding States Comparison of Purchasing Audit Sections.....39

Table 8: Change in Performance Between Current Inspection and Previous Inspection FY 2011 Through FY 2013 .....40

Table 9: Purchasing Division Website Evaluation.....45

Table 10: Purchasing Division Website Evaluation Score .....46

## List of Figures

Figure 1: FY 2013 Purchase Order Analysis .....27

## List of Appendices

Appendix A: Transmittal Letter .....49

Appendix B: Objective, Scope and Methodology .....51

Appendix C: Website Criteria Checklist and Points System.....53

Appendix D: Agency Response .....57



## EXECUTIVE SUMMARY

The Legislative Auditor conducted an Agency Review of the Department of Administration. As part of this process, a performance review of the Purchasing Division will be conducted pursuant to *West Virginia Code §4-10-8*. Objectives of this audit were to assess the Purchasing Division's internal controls that are in place to minimize the threat of state agencies violating purchasing laws and evaluate the website for user-friendliness and transparency. The report contains the following issues:

### **Report Highlights:**

#### **Issue 1: Although the Purchasing Reform of Senate Bill 356 Has Strengthened the State's Procurement System, There Are Still Areas of Weakness and There Are High-Risk Areas of Circumvention That Purchasing Needs to Monitor Regularly.**

- The Division's internal controls were strengthened by the purchasing reforms implemented in SB 356. However, there are high-risk areas of circumvention that should be monitored.
- The Division should become proactive and assess the risks of deliberate or inadvertent noncompliance throughout the transaction process and develop methods to minimize these risks where it is appropriate and cost effective.
- The Division should develop monitoring procedures of requisitions that go through the Agency-Document option and Section 9 exemptions of the WVOASIS system.
- The Division should stop accepting and approving change-orders after the fact that have monetary repercussions for the State.

#### **Issue 2: The Division's Website Would Benefit From Enhancements to User-Friendliness and Transparency Features.**

- The Legislative Auditor finds that the Division's website needs improvements in both user-friendliness and transparency.
- The website could benefit from incorporating several user-friendliness features, including enhanced readability and a FAQ section, as well as additional transparency features such as performance measures, budget information, detailed FOIA information, and agency history.

### **PERD's Response of the Agency's Written Response**

The Board's written response (see Appendix D) indicates it is in agreement with each of the findings of the report. However, with respect to recommendation eight, the Division

reported that it generally agrees with the recommendation. The Division indicated that it has been developing a new inspection “grading” system which will be conducive to implementing this recommendation. The Division does report that by disabling an agency’s delegated authority shifts the burden associated with those procurements to the Division and could potentially lengthen processing times for all transactions.

## Recommendations

1. *The Legislative Auditor recommends that the Legislature consider amending West Virginia Code §5A-3-10a(d) to require that vendors provide a statement of good standing for state taxes in addition to an affidavit.*
2. *The Legislative Auditor recommends that the Legislature or the Division consider requiring all state agency employees who conduct purchasing as a primary job function to register with the Division and establish mandatory training requirements for these employees.*
3. *The Legislative Auditor recommends that the Division consider developing the objective of achieving a certain percentage of training for all purchasing staff and other appropriate objectives and goals.*
4. *The Legislative Auditor recommends that the Division become more proactive by routinely monitoring high-risk areas of noncompliance, particularly requisitions that are made through the Agency-Document option of the WVOASIS system.*
5. *The Legislative Auditor recommends that the Division improve the documentation of control activities as they relate to the Request For Proposal and Request For Quotation processes, including establishing a uniform template form that clearly states buyer review and approval, and creating an official form to document approval by the Best Value Review Committee.*
6. *The Legislative Auditor recommends that the Division consider requiring agencies to submit corrective action plans for dealing with inspection findings.*
7. *The Legislative Auditor recommends that the Division consider incorporating expanded inspection functions into its inspection program utilizing the enhanced reporting capabilities of the WVOASIS system in order to better identify instances of circumvention.*
8. *The Legislative Auditor recommends any agency identified as attempting to circumvent purchasing requirements through WVOASIS should have their agency-delegated authority disabled, thus making all purchases pass through the Division for approval.*
9. *The Legislative Auditor recommends that the Division should incorporate within its monitoring function a routine review of Agency-Document requisitions that looks for stringing, illegal contracts, and inappropriate uses of Section 9 exemptions.*

10. *The Legislative Auditor recommends that the Division require that all change-orders be approved by the Director of Purchasing before the effective date of the change-order.*
11. *The Legislative Auditor recommends that the Division consider enhancing the user-friendliness and transparency of its website by incorporating more of the website elements identified.*





## ISSUE 1

### **Although the Purchasing Reform of Senate Bill 356 Has Strengthened the State's Procurement System, There Are Still Areas of Weakness and There Are High-Risk Areas of Circumvention That Purchasing Needs to Monitor Regularly.**

#### **Issue Summary**

The Performance Evaluation and Research Division (PERD) within the Office of the Legislative Auditor conducted an extensive review of the internal controls the Purchasing Division (Division) has in place to minimize the threat of state agencies violating purchasing laws and procedures. PERD finds that while the purchasing reform initiative of Senate Bill 356 has strengthened the State's procurement system, there remains some areas of weakness and risks in the system that need to be routinely monitored. Areas that can be improved include the Director of Purchasing taking a more proactive approach in addressing the risks of deliberate or inadvertent purchasing violations, complying with the legislative intent in processing change-orders, utilizing programs that review transactions that are made through the WVOASIS's agency-delegated purchases, requiring state agency employees who conduct purchasing as a primary job function to register with the Division and that the Division establish mandatory training for these employees, requiring agencies to submit corrective action plans for dealing with issues identified in purchasing inspections, requiring vendors to provide a Statement of Good Standing, and improving the documentation of Request for Proposal and Request for Quotation control activities.

---

*The Performance Evaluation and Research Division (PERD) within the Office of the Legislative Auditor conducted an extensive review of the internal controls the Purchasing Division (Division) has in place to minimize the threat of state agencies violating purchasing laws and procedures.*

---

#### **Senate Bill 356 Provides Necessary Purchasing Reforms**

Weaknesses in Division internal control and the Division's allowance of agencies to use a secondary bid process allowed state spending units to circumvent state requirements for purchases over \$25,000. In two reports issued in 2013, PERD found violations of state purchasing laws in the spending of Broadband Technology Opportunities Program (BTOP) Grant funds. One of these reports further found that the secondary bid process enabled by *The Purchasing Division Procedures Handbook* at the time the report was released was not statutorily supported. The Division has since revised its procedures to eliminate this purchasing method, notified all agencies under its purview that secondary bidding is no longer a purchasing option available to be used, and cancelled all contracts that had been awarded using this method, effective June 30, 2013.

The Legislature also took action passing Senate Bill 356 during the 2014 Regular Session. Senate Bill 356 makes such changes as:

- requiring approval from the Director for agencies to utilize master contracts to procure commodities,
- clarifying instances in which grants are exempt from competitive bidding requirements,
- imposing personal liability on responsible individuals who knowingly violate purchasing laws or rules,
- requiring annual purchasing training for certain executive department officials, and
- authorizing the Division Director to issue a cease and desist notice to an agency if evidence exists that it has violated competitive bidding or other purchasing laws or rules.

---

*Senate Bill 356 approved the use of a master contract direct ordering process, which is similar to secondary bidding, and required the Division to develop Legislative Rules to establish procedures for using this procurement method.*

---

## **Senate Bill 356 Establishes the Use of Master Contract Direct Ordering**

Senate Bill 356 approved the use of a master contract direct ordering process, which is similar to secondary bidding, and required the Division to develop Legislative Rules to establish procedures for using this procurement method. Changes to Legislative Rule 148-1, which include provisions concerning master contracts, are currently undergoing the legislative approval process. Changes in State Code brought about by Senate Bill 356 and the proposed changes to the Division's Legislative Rule include several stipulations designed to prevent the sort of abuse in the use of this purchasing method that was identified in the use of secondary bidding. These stipulations include:

- a requirement that the establishment of master contracts with direct ordering options be justified in writing and obtain written approval from the Division Director;
- a term limit on master contracts of one year,
- dollar amount thresholds for direct ordering of \$1,000,000 for information technology commodities and \$50,000 for other commodities, and
- a provision that the Division may require spending units to provide notices to and receive approval from the Division prior to using the direct order process or that the Division may elect to conduct direct ordering on behalf of a spending unit if the Division determines that additional oversight is warranted.

---

*The changes made by Senate Bill 356 address some of the problems that enabled the violations identified in the 2013 reports to occur and the Division has taken action to address the issue of the use of a statutorily unsupported purchasing method.*

---

The changes made by Senate Bill 356 address some of the problems that enabled the violations identified in the 2013 reports to occur and the

Division has taken action to address the issue of the use of a statutorily unsupported purchasing method. This evaluation of the Division's internal controls seeks to determine whether the controls the Division has in place following these reforms provide reasonable assurance that state agencies are complying with purchasing requirements and are contributing to a competitive procurement system.

### **Adequate Internal Control Over State Agency Purchasing Is Necessary for the Purchasing Division to Comply With Its Statutory Mandate.**

In order for the Division to meet its statutory mandate, it must have adequate internal control not only over its staff and Division operations, but also over the purchasing staff and operations of state agencies. This is implied in several places in the Division's enabling statute as it relates to a state agency's purchasing practices. For example, the Division is required to:

- ensure that purchases or contracts for commodities by state spending units are competitively bid whenever possible (W. Va. §5A-3-3(2));
- apply and enforce standard specifications for certain commodities and services (W. Va. 5A-3-3(4));
- prescribe the manner in which commodities shall be purchased, delivered, stored and distributed (5A-3-4(3)); and
- void purchases or contracts that are contrary to the state purchasing law (5A-3-17).

---

*In order for the Division to meet its statutory mandate, it must have adequate internal control not only over its staff and Division operations, but also over the purchasing staff and operations of state agencies.*

---

This evaluation is based on the five internal control components established by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). According to COSO, internal control provides reasonable assurance of achieving effectiveness and efficiency of operations, reliability of financial reporting, and compliance with laws and regulations. The five major components of internal control are:

1. Control Environment,
2. Risk Assessment,
3. Control Activities,
4. Information and Communications, and
5. Monitoring.

## The Division's Control Environment Has Been Strengthened By Senate Bill 356.

**Control Environment:** The Control Environment reflects management's commitment to good governance. It should be a pervasive tone throughout an organization of the importance of conducting operations with the highest degree of integrity, effectiveness and competency.

The control environment is an important component of internal control. As stated above, management sets the tone for the entire agency as to the priority it places on effective, competent and compliant operations. There are several sub-components of the control environment. The most relevant sub-components for the Purchasing Division as they relate to overseeing state agency procurement are:

- the establishment and communication of written policies and procedures,
- the application of disciplinary action against violations of proper procedures,
- a commitment to competency,
- an appropriate organizational structure, and
- a monitoring process of operations is in place.

---

*In addition to statutory requirements, the Division publishes and frequently updates The Purchasing Division Procedures Handbook. This publication details procedures to be followed by state agencies under the Division's purview and vendors selling services and supplies to the State.*

---

### The establishment and communication of written policies and procedures.

It is important that the Division have proper procedures defined in writing in order that state agencies have a clear understanding of purchasing requirements. Much of the Division's policies and procedures are established in Chapter 5A, Article 3 of the West Virginia Code, and the Code of State Rules §148-1. In addition to statutory requirements, the Division publishes and frequently updates The Purchasing Division Procedures Handbook. This publication details procedures to be followed by state agencies under the Division's purview and vendors selling services and supplies to the State. The Division also has written procedures to be followed by Division buyers. The Standard Operating Procedures for Buyers specifies the steps that should be followed by buyers in processing procurement requests.

The Legislative Auditor finds that the Division effectively communicates its policies to Division staff by holding weekly staff

meetings to review and make staff members aware of updates. These meetings also review State Code to ensure that staff members understand the requirements of W.Va. Code §5A-3. Also, policies, procedures and updates are communicated to state agencies via the Division’s intranet, training, monthly newsletters, and emails.

---

**The application of disciplinary action against violations of proper procedures.**

With respect to applying disciplinary action against state agency violations of purchasing laws, the Division’s control environment was strengthened with the passage of Senate Bill 356 in 2014. This bill requires approval from the Director for agencies to utilize master contracts to procure commodities, clarifies instances in which grants are exempt from competitive bidding requirements, imposes personal liability on responsible individuals who knowingly violate purchasing laws or rules, and requires annual purchasing training for certain executive department officials. Senate Bill 356 also gives the Division Director the authority to issue a notice to cease and desist to an agency if evidence exists that it has violated competitive bidding or other purchasing laws or rules. These enhancements to the Division’s control environment are especially vital given that two reports released by the Office of the Legislative Auditor in 2013 found violations of state purchasing laws in the spending of Broadband Technology Opportunities Program (BTOP) Grant funds. **For example, upon learning of the violations in awarding the contract for tower construction using BTOP funds, the Division Director advised that construction be halted pending review and approval by the Division to ensure compliance with purchasing laws. This suggestion was disregarded and construction continued.** At the time, the Division did not have the power to issue a cease and desist order. The passage of Senate Bill 356 gives the Division that power should such a violation occur in the future.

Prior to Senate Bill 356, the Division had some disciplinary actions it could take when agencies deviate from procedures or regulations. The primary enforcement action the Division utilizes is to disapprove formal purchasing requests that are not compliant. Formal purchases are those that exceed \$25,000. Every formal purchasing request is evaluated by a Division buyer. If the request violates purchasing requirements, the buyer sends the request back to the agency for correction. Once approved by the buyer, formal purchases go through additional checks within the Division as well as being checked by the Attorney General’s Office as to form. If at any point in the verification process a violation is discovered, the purchase is not approved and is sent back to the agency for correction.

Purchases that are below the \$25,000 threshold are called agency-delegated purchases. These do not pass through the Division for approval;

---

*With respect to applying disciplinary action against state agency violations of purchasing laws, the Division’s control environment was strengthened with the passage of Senate Bill 356 in 2014.*

---



---

*Prior to Senate Bill 356, the Division had some disciplinary actions it could take when agencies deviate from procedures or regulations. The primary enforcement action the Division utilizes is to disapprove formal purchasing requests that are not compliant.*

---

however, the Division does conduct audits of agency-delegated purchases to evaluate compliance with purchasing requirements. As discussed in the Monitoring component of this review, these audits are seen as an educational tool by the Division and they do not result in any punitive actions against agencies that violate purchasing procedures, except in the case of “stringing.” Stringing is an act of circumvention whereby an agency divides a planned procurement into multiple purchases to avoid the \$25,000 threshold and the use of sealed bids. West Virginia Code §5A-3-10(b) requires state agencies to report to the Division when multiple contracts cumulatively exceed \$25,000 are awarded for the same or similar commodity or service to a vendor in a 12-month period, and gives the Director the authority to reduce the spending authority of agencies that violate this requirement. Although violations have been identified through inspections, the Division indicates that agency responses have always been satisfactory and so the power to reduce agency spending authority has never been used.

Beyond the enforcement powers that can be utilized with regards to state agencies, the Division is granted certain authority in West Virginia Code with respect to vendors doing business with the State. For example, §5A-3-33b gives the Director the authority to debar vendors from contracting or subcontracting with the State who:

- are convicted of certain crimes,
- default on moneys owed the State,
- fail to meet state licensure requirements, or
- commit other violations as detailed in West Virginia Code §5A-3-33d.

There are currently three vendors that are debarred. While vendor debarment is a key punitive power, the Legislative Auditor is concerned with the limited information available to the Division in evaluating vendors in the area of debts owed to the State. West Virginia Code §5A-3-10a prohibits awarding contracts to vendors who owe debts to the State or its subdivisions. However, the only requirement for a vendor to demonstrate that it is in good standing is to provide an affidavit to the Division stating that it does not owe an amount in excess of \$1,000 to the State. The Division does provide an extra level of checks by requiring state agencies to access the workers compensation and unemployment compensation defaulted accounts databases provided by the Offices of the Insurance Commissioner and WORKFORCE West Virginia to verify that vendors are not in default of these obligations. However, no such database exists to enable agencies to independently verify vendors are not in default on state taxes. The West Virginia State Tax Department will provide taxpayers upon request a Statement of Good Standing that officially indicates that the taxpayer is in good standing. While the affidavit makes vendors accountable for the host of debts they could owe the State or political subdivisions, receiving official documentation of good

---

*Beyond the enforcement powers that can be utilized with regards to state agencies, the Division is granted certain authority in West Virginia Code with respect to vendors doing business with the State.*

---



---

*West Virginia Code §5A-3-10a prohibits awarding contracts to vendors who owe debts to the State or its subdivisions. However, the only requirement for a vendor to demonstrate that it is in good standing is to provide an affidavit to the Division stating that it does not owe an amount in excess of \$1,000 to the State.*

---

standing in addition to the affidavit for state taxes would provide greater assurance of good standing in this important state obligation. Therefore, **the Legislative Auditor recommends that the Legislature consider amending West Virginia Code §5A-3-10a(d) to require that vendors provide a statement of good standing for state taxes in addition to an affidavit.**

---

**A Commitment to Competency.**

In order to foster competency in state agency purchasing staff and Division staff, the Division provides training on purchasing procedures. Division staff members are expected to be thoroughly familiar with purchasing rules, code, and procedures, and be able to discuss and explain these provisions to state agency purchasing staff and vendors. Beyond familiarity with state purchasing requirements, several Division staff members have obtained certificates as Certified Professional Public Buyers or Certified Public Procurement Officers. At the time of this review, other staff members were in the process of pursuing these certifications or others, such as National Certified Inspector Training (NCIT), Accreditation in Public Relations (APR), and Certified Professional in Learning and Performance (CPLP), among others.

One area of concern is the lack of mandatory training for many state agency purchasing staff who are primarily responsible for their agency's procurement. Prior to the passage of SB 356, the purchasing law did not require agency procurement staff to receive training. Moreover, the Division's Legislative Rule 148, Series 1, requires all state agencies to designate a person who must approve all purchases, but the rule does not require that person to take purchasing training; it only says that the person "should" take training. Although SB 356 now requires that all state agency executive leadership positions<sup>1</sup> receive two hours of purchasing training, the law still does not require mandatory purchasing training for procurement staff. However, the Division is currently proposing changes to its legislative rule that will require an agency's purchasing designee to attend at least 10 hours of training each year. This proposed amendment to the rule is a step in the right direction. However, there is a considerably larger number of employees who conduct purchasing activities for state agencies than the purchasing designees. This can be seen in Table 1, which shows that the number of purchasing staff in the State's 10 departments who voluntarily attended the Division's training. This is an unduplicated number and it only represents those who attended at least one training session. There may be other purchasing staff in agencies who did not attend any training in 2013.

---

*In order to foster competency in state agency purchasing staff and Division staff, the Division provides training on purchasing procedures.*

---

---

*One area of concern is the lack of mandatory training for many state agency purchasing staff who are primarily responsible for their agency's procurement.*

---

---

<sup>1</sup>Leadership positions include all executive department secretaries, commissioners, deputy commissioners, assistant commissioners, directors, deputy directors, assistant directors, department heads, deputy department heads and assistant department heads.

Table 1

### Number of Agency Purchasing Designees and Unduplicated Staff Attending Purchasing Trainings in 2013 for West Virginia Departments

Department	Number of Purchasing Designees	Number of Staff Attending Any Purchasing Trainings in 2013**
Department of Military Affairs and Public Safety	20	108
Department of Transportation	6	105
Department of Health and Human Resources	5	71
Department of Commerce	17	60
Department of Administration*	24	49
Department of Environmental Protection	4	23
Department of Education and the Arts	10	20
Department of Revenue	12	18
Department of Education	4	13
Department of Veterans Assistance	5	11
Department of Agriculture	4	8

\*Department of Administration figures do not include the Purchasing Division.

\*\* Includes the purchasing designees.

Source: PERD calculations based on Division list of state agency purchasing designees and Division training attendance rosters.

Table 1 suggests that the Division does well in notifying agency staff of upcoming training and encouraging purchasing staff to attend, and that state agency purchasing staff are voluntarily obtaining purchasing training. However, it also raises the concern that there are a large number of state employees conducting procurement who are not subject to mandatory training requirements. This increases the risk that purchasing may be carried out by inadequately trained employees. Therefore, **the Legislative Auditor recommends that the Legislature or the Division consider requiring all state agency employees who conduct purchasing as a primary job function to register with the Division and establish mandatory training requirements for these employees.** If voluntary training is continued, the Division should attempt to determine the total number of agency purchasing staff, through surveying the purchasing designees, in order to calculate the participation rate under a voluntary training system. This could also serve as an indicator of whether mandatory training is necessary.



---

**An Appropriate Organizational Structure.**

The Division’s oversight of state agency procurement is challenged by having over 100 agencies to oversee. While this organizational structure is challenging, the Division manages the volume of purchasing transactions by grouping state agencies among 9 buyers. *The Standard Operating Procedures for Buyers* lays out the steps that must be followed by buyers in processing procurement requests, including various levels of checks and oversight by management. This is discussed in further detail in the Control Activities section of this review.

---

*The Division’s oversight of state agency procurement is challenged by having over 100 agencies to oversee.*

---

---

**A Monitoring Process of Operations Is in Place.**

The Division has in place a system for auditing state agency purchases to evaluate compliance, deter willful violations, and provide education where needed. These audits are discussed in detail in the section of this review that discusses the Monitoring component of internal control.

---

*The Division has in place a system for auditing state agency purchases to evaluate compliance, deter willful violations, and provide education where needed.*

---

**The Division Needs to Develop Procedures to Minimize Risks of Circumvention in High-Risk Areas.**

**Risk Assessment:** Risk assessment is the identification and analysis of internal and external risks relevant to the agency’s goals and mission, which helps determine how risks should be managed. A key requirement to risk assessment is the establishment of clear, consistent goals and objectives.

Risk assessment is a process by which an agency first establishes goals and objectives and then identifies the risks that would impede the achievement of these goals. Primary goals for the Division are: 1) a timely purchasing process, 2) an adequately trained state agency procurement staff, and 3) a high compliance rate for state agencies. Primary risks against achieving these goals are inefficient procurement processes, insufficient training, low training participation rates, deliberate or inadvertent violations of purchasing regulations, temptations to circumvent purchasing requirements, and the inability to detect noncompliance. Once risks have been identified, the agency should analyze their significance

and develop approaches to mitigate their effects on achieving the agency's objectives.

Within the risk assessment component are several sub-components. The most relevant sub-components for the Purchasing Division as they relate to overseeing state agency procurement are:

- the establishment of objectives,
- the identification of risks from external and internal factors, and
- the analysis of the possible effect of identified risks.

#### Establishment of objectives.

The establishment of objectives is a fundamental precondition to carrying out risk assessment. The Division has listed objectives in the State of West Virginia FY 2015 Executive Budget. Two objectives and their measures are listed below:

- Maintain an average procurement cycle of 30 days or less.

<b>Fiscal Year</b>	<b>Actual 2011</b>	<b>Actual 2012</b>	<b>Estimated 2013</b>	<b>Actual 2013</b>	<b>Estimated 2014</b>	<b>Estimated 2015</b>
<b>Average procurement cycle (days)</b>	28	29	30	30	30	30

Source: State of West Virginia FY 2015 Executive Budget. The Legislative Auditor's Office was able to verify data for FY 2011, but the Division was unable to provide supporting documentation for FY 2012. The reported average procurement cycle for FY 2013 is erroneous. The actual average cycle for that year was 31 days.

- Provide training to at least 75% of all state agencies under the Purchasing Division's authority (excluding boards and commissions) at the annual Agency Purchasing Conference.

<b>Fiscal Year</b>	<b>Actual 2011</b>	<b>Actual 2012</b>	<b>Estimated 2013</b>	<b>Actual 2013</b>	<b>Estimated 2014</b>	<b>Estimated 2015</b>
<b>Agency representation at training conference</b>	81%	76%	75%	78%	75%	75%

Source: State of West Virginia FY 2015 Executive Budget. Figures were verified by the Legislative Auditor's Office using attendance rosters provided by the Division.

These two goals are relevant for timeliness and state agency training. Although achieving the goal that at least 75 percent of state agencies under the Division's authority are represented at the Annual Purchasing Conference is important, along with requiring purchasing designees to have at least 10 hours of training, this does not necessarily mean that agency training is sufficient. **The more relevant issue is knowing how many procurement staff each agency has and what percentage of the total are participating in the Division's training.** The Legislative Auditor recognizes that many procurement staff from a host of state agencies voluntarily attend the Division's training, and it may be that the voluntary participation rate is relatively high. However, since the Division does not know the total number of agency procurement staff, it does not know the participation rate of its training for all purchasing staff. **The Division should consider developing an objective of achieving an appropriate participation rate for all agency purchasing staff.** This can be done by annually surveying agencies' procurement designees for the total number of purchasing staff their agencies have and calculating the participation rate based on the number that voluntarily attend training. The voluntary participation rate will be an indicator of whether there is a need to establish mandatory training for all agency purchasing staff. In addition, the Division should consider other objectives such as achieving an appropriate percentage of agencies represented at Division trainings. The Division should also consider objectives in the area of achieving compliance rates, possibly through the Division's monitoring process.

---

*The Division staff indicated that it does not utilize risk assessments to identify and assess risks to the agency's objectives.*

---

---

**Identification of risks from external and internal factors and analysis of the possible effect of identified risks.**

The Division staff indicated that it does not utilize risk assessments to identify and assess risks to the agency's objectives. PERD did find, however, that an informal risk assessment was used to develop the inspection schedule that was previously followed by the Division's Inspections Unit to conduct audits of state agency purchase transactions. In developing the inspection schedule, the Division determined which agencies should be inspected more frequently based on such factors as the number of purchasing transactions the agency conducts and past incidences of stringing or other violations. High risk agencies were categorized as Group A and scheduled to be inspected every other year. Lower risk agencies were categorized as Group B, which supplement Group A inspections as needed, or Group C, which are to be inspected every two years. However, the Division has since stopped using this risk-based schedule and is focusing solely on inspecting each agency every three years. At this time, agencies are being selected for review whose inspections are three or more years in arrears.

There is no evidence that the Division has assessed the risks of deliberate or inadvertent violations of purchasing regulations, temptations to circumvent purchasing requirements, or the Division's inability to detect noncompliance. However, the risk of noncompliance is evident in a few instances of noncompliance reported by the Office of the Legislative Auditor. The BTOP reports issued by the Legislative Auditor in 2013 illustrated that some state agencies will circumvent purchasing requirements. Also, the Legislative Auditor's Post-Audit Division reported in November 2014 that the Hatfield McCoy Regional Recreation Authority has conducted its business consistently since the year 2001 without following the State's purchasing laws. Additionally, PERD found in a 2014 regulatory board review of the Board of Nursing (Board) that the Board had awarded contracts to a vendor without competitive bidding as required by law. From September 2013 through June 30, 2014, the Board contracted with a Florida vendor named Florida IPN for the total amount of \$123,541. This contract has been recently renewed for more than \$219,000 through June 30, 2015. The Board stated that it believes the contracted services were exempt from purchasing requirements because the language in West Virginia Code §30-7E-3 that authorizes the program states that: "*The West Virginia Board of Examiners of Registered Professional Nurses has the sole discretion to designate nurse health programs for licensees of the board....*" A legal opinion obtained by the Legislative Auditor indicates that this language does not present an exemption to competitive bidding requirements.

---

*There is no evidence that the Division has assessed the risks of deliberate or inadvertent violations of purchasing regulations, temptations to circumvent purchasing requirements, or the Division's inability to detect non-compliance.*

---

**According to the Board, it did not bid the contract based on advice from a Division employee that the Board should determine for itself how it should proceed.** The Legislative Auditor contacted the Division to confirm the Board's statement. The Division indicated that no one from the Division advised the Board that it was exempt from competitive bidding requirements or told the Board to make its own determination. The Division disagrees with the Board's interpretation of West Virginia Code §30-7E-3 as providing an exemption, which means the contract should have been competitively bid. It is the Legislative Auditor's opinion that since the Board's enabling statute does not exempt it from purchasing requirements and the Division does not list the Board as being exempt, that the contract with Florida IPN should have been competitively bid as required by West Virginia Code §5A-3-10. Furthermore, it is unquestionably the Division's responsibility to determine whether a purchase is eligible for exemption from competitive bidding requirements, not the agencies.

**The Legislative Auditor recommends that the Division assess the risks of deliberate or inadvertent noncompliance and develop**

**methods to minimize these risks where it is appropriate and cost effective.** PERD identified two major risk areas. These are:

1. Agency-Document requisitions, and
2. Section 9 exempt purchases.

**Agency-Document Requisitions:**

The WVOASIS system provides state agencies two options when submitting a requisition, one being Agency-Document and the other is Central-Document. Requisitions that are submitted through the Agency-Document option do not go through the Purchasing Division but requisitions through Central-Document do. The Agency-Document option is available without restriction because state agencies are authorized to make purchases below \$25,000 without going directly through the Division. When purchases are made through the Central-Document option, they go through a host of approval levels for Division staff review, signatures, and vendor requirements. There are several “hard-stops” that can prevent a Central-Document requisition from being approved. However, the only hard-stops that an Agency-Document requisition can encounter are for vendor requirements. **Therefore, if a transaction is required to go through the Division, but the agency deliberately or inadvertently chooses to use the Agency-Document option and the vendor passes the system’s vendor checks, then the transaction is automatically approved.** Since Agency-Document requisitions do not go through the Division, this is a major source of risk of circumvention.

If, for example, the Board of Nurses decided to submit a requisition to renew the previously mentioned contract, there is nothing in WVOASIS that would prevent the Board from submitting it through the Agency-Document option and the requisition would not go through the Division. Staff of WVOASIS indicated to PERD that there are too many special exemptions for WVOASIS to be programmed to automatically determine if an agency transaction should go through the Purchasing Division or not. Therefore, the WVOASIS system allows state procurement officers to voluntarily choose Agency or Central Document to submit requisitions. The Division should consider a proactive approach that involves monitoring requisitions that go through the Agency-Document option. According to WVOASIS staff, the Division can revoke agency-delegated purchases if it has concerns about an agency’s purchases through the Agency-Document option. The staff of WVOASIS indicated that the system can be configured to disable an agency’s ability to utilize agency-level procurement documents while leaving in place the agency’s ability to submit central-level procurement documents.

---

*The WVOASIS system provides state agencies two options when submitting a requisition, one being Agency-Document and the other is Central-Document. Requisitions that are submitted through the Agency-Document option do not go through the Purchasing Division but requisitions through Central-Document do.*

---

---

*Since Agency-Document requisitions do not go through the Division, this is a major source of risk of circumvention.*

---

### **Section 9 Exempt Purchases:**

Within Section 9 of the Division's Procedures Handbook, a list of 32 categories of commodities and services are listed that the Director establishes are not possible to submit for competitive bid and may be purchased directly by agencies without advertisement or bid (see Table 2 below). The Legislative Auditor acknowledges that certain types of services and commodities, such as those listed in Table 2, cannot be competitively bid. Nevertheless, such exemptions represent a source of risk of circumvention.

Advertising	Artwork and Historical Items	Attorneys and Law Firms
Aviation Fuel	Cash Advances	Contracts Between Governmental Agencies
Court Ordered Placements	Employee Expense Accounts and Reimbursements	Entertainers
Fees Imposed by Other Governmental Entities	Governor's Mansion Furnishings	Grants
Hospitality	Medical License Fees	Medical Fees
Medical Fees, Emergency Trauma Reimbursement	NASCAR	Postage
Professional Association Dues	Railroad Car Hire Fees	Resale Items
Shipping Charges and Freight	System Maintenance	Student Activities
Investigative Services; Subject Matter Experts and Witnesses	Subscriptions and Publications	Training Activities
Tuitions, Stipends, Accreditations and Registration Fees	Utilities (Regulated Services by the Public Service Commission)	Department of Agriculture Exemptions
Court Ordered Payments	Intellectual Property	

*Source: 2014 West Virginia Purchasing Division's Procedures Handbook.*

As part of PERD's risk assessment of requisitions through the Agency-Document option, a sample of 355 transactions was taken from the universe of 4,629 Agency-Document transactions that went through the WVOASIS system from July 1, 2014 – October 15, 2014.<sup>2</sup> PERD then identified all transactions over \$25,000 and found 12 such transactions. It was determined that these 12 transactions were not exempt from adhering

<sup>2</sup> WVOASIS became active for purchasing activities on July 1, 2014. The sample size provides a confidence level (margin of error) of 5 percent and a 95 percent confidence interval.

to the State's acquisition procedures. Four (4) of the 12 transactions were Section 9 Exemptions and the remaining 8 were purchases against open-ended contracts that were bid and awarded through the Division, according to Division staff. However, 1 of the 8 purchases was for the amount of \$681,285 and the Division requires that agencies must receive approval from the Division when orders of more than \$250,000 are made against open-ended contracts. Therefore, this purchase should have gone through the Central-Document route for the Division's approval.

With respect to the four Section 9 Exemptions, they each appear to fall within an appropriate Section 9 Exemption category. One was for the Department of Health and Human Resources to pay for meeting rooms, equipment, and food and beverages to hold a training conference at Stonewall Resort. This would be in line with the Hospitality Exemption. Another was to extend the Insurance Commissioner's subscription for Lexis Nexis legal research 12 months for 15 users. The third and fourth exemptions were for the Department of Education to extend its membership with Marketing & Business Administration Research and Curriculum Center to acquire curriculum packages and course guides for statewide online business and marketing courses for teachers and students. These three could be appropriate for the Subscription and Publications Exemption.

While the Legislative Auditor understands the need to exempt certain purchases from going through the Division, such as Section 9 purchases, it is also clear that they can easily be used to circumvent purchasing requirements because some of the categories can be broadly interpreted. While PERD's findings in its review of Agency-Document purchases shows a low incidence of purchasing violations, the Division should recognize that Agency-Document transactions are a significant source of risk to the State's procurement system in the form of stringing, illegal purchases through contracts, and inappropriate use of the Section 9 exemption. Therefore, the Division should take a proactive approach by developing monitoring procedures of these transactions.

---

*While the Legislative Auditor understands the need to exempt certain purchases from going through the Division, such as Section 9 purchases, it is also clear that they can easily be used to circumvent purchasing requirements because some of the categories can be broadly interpreted.*

---

### **Most Control Activities Are Adequate But Documentation of Staff Actions Can Be Improved and the Change Order Process Violates Legislative Intent.**

**Control Activities:** Control activities are the actions put in place by management to help ensure that directives to mitigate risks are carried out. These include policies and procedures, approvals and authorization, segregation of duties, and other activities.

**The establishment of appropriate control activities.**

The Division has established various control activities to provide reasonable assurance that state agencies are in compliance with purchasing laws. Control activities are defined by COSO as the actions put in place by management to address risks. These include activities such as:

- policies and procedures,
- approvals and authorizations,
- reviews of performance, and
- segregation of duties.

The Division has developed written policies and procedures to be followed by state agencies and by Division staff. The Division's Inspections Unit conducts audits of agency-delegated purchases (\$25,000 or less per purchase). These audits check for compliance with purchasing laws and procedures and look for violations such as stringing<sup>3</sup>. However, formal purchases, those that exceed \$25,000, are processed directly through the Division staff.<sup>4</sup> The Legislative Auditor examined the control activities of these formal purchases, particularly the Request for Proposal (RFP) and Request for Quotation (RFQ). The control activities are generally reviews by Division staff of the RFPs and RFQs submitted by agencies. These reviews are important because previous audits performed by PERD show that agencies have not always followed proper procedure in the RFP process. Division buyers are required to review submitted proposals, proposed vendor disqualifications, and review the agency purchasing committee's evaluation to ensure compliance with requirements of the RFP. Once the buyer approves an evaluation, it is then sent for review and approval of the Best Value Committee.

The Legislative Auditor examined RFP and RFQ documents from FY 2012 through 2013 to determine if established control activities are being applied by Division staff. This review found that the Division staff consistently carries out the required control activities, and the correct documentation was submitted by state agencies at the various stages of the RFQ and RFP processes. However, the timeliness and documentation of the Division's review activities can be improved. Appropriate documentation is important, not only so the Division Director can know that control activities are being consistently applied, but also so that the Division can address any challenges by vendors of the Division's decisions. Below are listed the findings concerning the documentation of the review activities.

---

*The Division has established various control activities to provide reasonable assurance that state agencies are in compliance with purchasing laws.*

---



---

*The Legislative Auditor examined RFP and RFQ documents from FY 2012 through 2013 to determine if established control activities are being applied by Division staff.*

---

<sup>3</sup> Stringing is the practice of issuing a series of requisitions or purchase orders to circumvent competitive bidding or to defeat the State Purchasing Card transaction or delegated purchasing limit.

<sup>4</sup> These formal purchasing procedures are Requests for Quotations, Requests for Proposals, Expressions of Interest, Life Cycle Cost, and Design-Build.



- **Many reviews take longer than three days.** According to written policies, buyers are to review purchase requests within three business days, but this time frame was exceeded in 54 percent of the sampled RFPs and 37 percent of the sampled RFQs. The average review timeframe for RFPs that exceeded the three day time frame was seven and the average review timeframe for RFQs that exceeded the three day time frame was eight days. However, it does not appear to be affecting the overall goal of completing the entire purchasing cycle within 30 days.
- **Inadequate documentation of purchase order review and approval.** The Division should consider making signatures on purchase orders official and well-documented, with printed and signed names of individuals signing the document, along with their titles.
- **Lack of uniformity in documentation of buyer review and approval.** The Division’s buyers document their review and approval in a variety of ways, some of which are not clear and provide less documentation than others. The Division should consider establishing a template form for all buyers that clearly states their review and approval.
- **Inadequate documentation of review by the Best Value Review Committee.** The Division should consider creating an official signature form to be used by the committee to document its approval and included in the file documents.

---

*PERD found no evidence of error in processing and awarding RFPs and RFQs. However, the lack of quality documentation could present problems in the event the Division has to justify its decisions.*

---

PERD found no evidence of error in processing and awarding RFPs and RFQs. However, the lack of quality documentation could present problems in the event the Division has to justify its decisions. There were several instances in the documents reviewed in which vendors objected to the award of contracts to another vendor. One civil suit was filed against the Division as a result of such an objection, although the suit was eventually dismissed. It is important that all oversight processes are adequately documented to show clear and unbiased decisions. Therefore, **the Legislative Auditor recommends that the Division improve the documentation of its Request for Proposal and Request for Quotation processes.**

PERD also reviewed RFPs for accuracy in bid evaluations conducted by agencies. Reports issued by the Office of the Legislative Auditor in 1998 and 2000 found some errors in the evaluation of bids. These errors included:

- incorrectly disqualifying vendors,
- failing to disqualify vendors that should have been disqualified,
- incorrectly applying the Resident Vendor Preference,
- failing to establish an evaluation committee as required by purchasing procedures, and
- awarding two contracts to the wrong vendors.

The Legislative Auditor recommended that agency training on RFP procedures be improved and that a formal review process be established by the Division to assure the accuracy of agencies' evaluations. The Division's procedures have been updated since that time. In addition to the oversight of the RFP process already described, it is now required that all members of an agency's evaluation committee receive best value evaluation training prior to evaluating bids. Also, the agency procurement officer or a member of the procurement staff who is knowledgeable in purchasing procedures must attend committee meetings and serve as a voting member of the committee. These new control activities are clear improvements that address the issues identified by the Legislative Auditor in previous reports. A review of the 13 RFPs processed by the Division in FY 2012 through 2013 found no errors in agencies' evaluations.

---

*A review of the 13 RFPs processed by the Division in FY 2012 through 2013 found no errors in agencies' evaluations.*

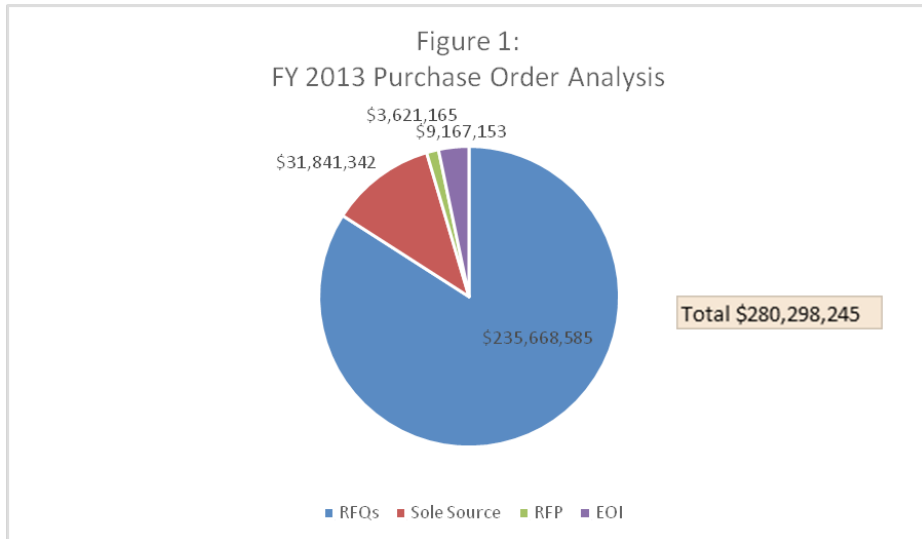
---

In addition to evaluating control activities as demonstrated in the processing of all RFPs and a sample of RFQs for FY 2012-2013, PERD conducted an in-depth review of select FY 2013 purchasing files to determine the amount of oversight and review that various purchasing methods are subjected to. This review included the following:

- Requests For Quotations (RFQ) – RFQs are a method of soliciting bids in which conformity to specifications and price are the only factors used in the evaluation process.
- Sole Source Determination – Sole source procurement is used when the product or service is available from only one source.
- Expressions of Interest (EOI) – EOIs are used primarily to select architects and engineers. This enables the State to find the vendor that is best suited to conducting the desired service based on qualifications and competence. Price is negotiated after the vendor is selected.
- Change Orders – Change orders are used to amend, clarify, change or cancel contracts.

This evaluation of documents included all sole source and EOI files for FY 2013 and random samples of RFQs and change orders. Figure 1 provides the amounts spent by state agencies using RFQs, sole

source determinations, EOIs, and RFPs in FY 2013, as reported by the Division.



The Purchasing Division utilizes two electronic databases to process and report on purchases. One is the TEAM system, which was used to determine samples and pull files for this review, and the other is Requisition Tracking. While evaluating these documents, the physical files were also compared with the electronic information in the Division’s Requisition Tracking system to determine the reliability of the data used to compile the samples and the data used by the Division to do things such as run reports. Several issues were found, that affect the quality of the samples drawn. It was found that 38 of the files in the RFQ sample had been mislabeled in the system and were not actually RFQs, and one file labelled as an EOI was actually an RFQ. Additionally, the TEAM system indicated that there were four RFPs that were not included in the first analysis of RFPs and RFQs, but upon examination, none of these four files were RFPs. One of the RFQ files did not exist in the Requisition Tracking system or in paper form and so was eliminated from the sample. One file was eliminated from the change order sample because it was actually from FY 2014. The information in the Requisition Tracking system was more reliable than the information from the TEAM system, with only two errors found. These data entry errors could be problematic for the Division in terms of generating reports for various entities as well as for day-to-day purchase processing functions. The WVOASIS system began being used for state purchasing functions July 1, 2014 and will replace both TEAM and Requisition Tracking. WVOASIS uses different purchasing documents for each type of purchase made, which should help to prevent the most common type of error seen here, which is the

mislabeled of one kind of purchase as another. The results of the in-depth analyses of RFQs, sole source determinations, EOIs, and change orders are discussed in the subsections to follow.

## **RFQs**

Based on the TEAM-generated report, there were 738 RFQs processed in FY 2013. Using this population, a random sample of 253 files was generated for a 95 percent confidence interval and a 5 percent margin of error (confidence level). After eliminating the files mislabeled as RFQs, the file that did not exist in the system, and two files that were out of the office at the time documents were evaluated, the sample consisted of 211 files.

State Code and Division rules and procedures make it clear that competition is to be encouraged as much as possible in procurement by state agencies. RFQs are competition based. Unlike Best Value Procurement methods such as the RFP or EOI, price is the sole determining factor in selecting the winning bidder for an RFQ. If a vendor submits the lowest bid and meets the specifications of the RFQ, that vendor must be selected as the winning bidder. If the lowest bidder is not selected, there must be adequate justification for making this decision.

PERD evaluated the 211 sample RFQs to ensure that the lowest bidder was selected. Of the 211 files, the lowest bidder was selected in 123 cases, only one bid was received in response to 25 of the RFQs and so was automatically the winning bid, and 56 of the RFQs were multiple awards to all bidders meeting the specifications of the RFQ. Only seven contracts were awarded to a bidder that was not the lowest bidder. In four of these cases the low bidders did not meet the mandatory specifications of the RFQ and so the award was made to a higher bidder that did meet specifications. In two cases the low bid vendor was disqualified for missing a mandatory pre-bid meeting and in one case the low bidder had submitted the bid late and so was disqualified. In all cases the justification for awarding to other than the low bidder was adequate.

PERD also evaluated the specifications of the sample RFQs to verify that the correct purchasing method was used and that the specifications did not inhibit competition. Most specifications did not seem questionable, but one item did stand out. When preparing specifications for services being sought, agencies may include minimum qualifications requirements. Unlike qualifications requirements for RFPs, which are used to score and compare vendors, the qualifications requirements for RFQs are just set as one of the specifications that a vendor must meet in order for the vendor's price bid to qualify for consideration. In some cases in the sample files where qualifications requirements were set, the requirements consisted of requiring related experience with no specific timeframe required. Some requirements were for what seemed like reasonable amounts of experience, such as six months paid experience

---

*If a vendor submits the lowest bid and meets the specifications of the RFQ, that vendor must be selected as the winning bidder. If the lowest bidder is not selected, there must be adequate justification for making this decision.*

---



---

*In all cases the justification for awarding to other than the low bidder was adequate.*

---

for a drill operator helper or one year paid experience for a drill operator. Some requirements were more extensive, but still did not seem overly restrictive, such as 2 years’ experience recycling electronic waste or having completed 10 similar projects over the preceding 5 years for a structural steel fabricator. However, in 4 RFQs, the specifications called for the vendor to have at least 10 years’ experience and 1 RFQ required 25 years’ experience.

It is unclear whether these requirements inhibited competition for these RFQs. Table 3 illustrates the details regarding the RFQs and the number of vendors who bid for them. As the table shows, three of the RFQs had multiple bids and two received only one bid.

<b>Table 3</b>			
<b>RFQs Requiring Extensive Experience</b>			
<b>Requisition Number</b>	<b>Service/Commodity Being Requested</b>	<b>Experience Requirements</b>	<b>Number of Bidders</b>
HHR12071	Case management software, installation, and implementation	10 years’ experience in case management systems	2
HHR13017	CPA firm to conduct audits	Company in business for 15 years, plus 10 years’ experience in government audits	4
PSC13533	Consulting and expert testimony services	10 years’ experience testifying on electricity resource issues involving regulated utilities	1
PSC13534	Consultant services	10 years’ experience testifying on revenue requirement issues involving regulated utilities	1
TAX13002	One-time review to ensure methodologies used by the Tax Division in the utility appraisal process conform to best practices	25 years’ experience in utility appraisal services	2
Source: PERD analysis of RFQ documents received from the Purchasing Division.			

The Division's Procedures Handbook provides guidance for agencies to use in developing specifications. The guidelines are clear as to having specifications that are clear, concise, complete and that avoid limiting competition. However, despite clear guidance, **it is important to note that qualification requirements could be used to inhibit competition.** PERD inquired whether buyers evaluate the qualifications requirements that agencies include in specifications for appropriateness. The Division indicated the following:

*Decisions relating to vendor qualifications, such as the appropriate number of years of experience a vendor must have to supply products or service to the state, are subjective decisions initially made in the specification drafting phase of a procurement. The agency generally drafts those specifications and then submits those specifications for review by the Purchasing Division buyer prior to release to prospective vendors.*

*Vendor qualifications necessary to perform a state contract (as determined by the state) would depend likely on the complexity of product or service to be provided and the risk to the state should the vendor fail to perform. In some cases, however, the specialized knowledge held by the agency seeking the products or services necessitates a high degree of deference be given to the agencies subjective decisions relating to vendor qualifications.*

*In addition to the review described above, we would note that vendors also have the ability to challenge what they perceive to be overly restrictive, overly inclusive, or mistaken qualification requirements. The first and most informal means of challenge is a question posed to the Purchasing Division. The second and more formal method of challenge is a protest of specifications.*

PERD also evaluated RFQs for evidence of disputed awards to determine whether awards are being made to the appropriate bidders. Of the 211 files evaluated, there were 5 that contained protests. One of these protests was considered justified by the Division and resulted in the cancellation of a portion of a statewide contract for automobiles to be

rebid at a later date due to an error in the specifications of the RFQ. The other four disputes, three in which vendors protested being disqualified and one in which a vendor who was not awarded protested the award of the contract to a lower bidder, were not considered justified. Upon review of the dispute documentation, the Legislative Auditor agreed with the Division's assessments.

### **Sole Source**

According to figures provided by the Division as obtained from the TEAM system, there were 21 sole source purchases processed by the Division in FY 2013. PERD evaluated all 21 of these purchase files. After the evaluation was complete, it was discovered that the sole source report submitted to the Legislature on July 1, 2013 indicated that 42 sole source determinations were made in FY 2013, of which 1 was denied. Eight of the purchase orders included in the report to the Legislature were among the files incorrectly coded as RFQs by the TEAM system. The list provided to the Legislature included 17 of the 21 sole source purchases on the list provided for this audit. Based on this fairly large discrepancy, the reliability of the data generated by the Division for reporting purposes is again called into question.

The evaluation of 21 sole source files for FY 2013 sought to determine whether agencies and the Division are following sole source purchasing procedures in such a way to provide reasonable assurance that the process is not being used to circumvent competitive purchasing requirements. Of particular interest was whether or not there was evidence that the agency made efforts to determine the availability of other sources for the item being purchased and that registered vendors were notified by the Division and given the opportunity to express interest in providing the item. Of the 21 files evaluated, 4 contained requests from agencies that failed to demonstrate that efforts had been made to determine whether there may be another source for the item being purchased. All of the files contained evidence that the Division had posted the proposed purchase in the Purchasing Bulletin for registered vendors to express interest in providing the item. In no case did another vendor indicate the ability to provide the items being sought.

### **EOIs**

The information received from the Division indicated that there were 41 Expressions of Interest processed in FY 2013. One of these files was mislabeled in the TEAM system and was actually an RFQ. The remaining 40 were evaluated for compliance with EOI procedures in the Division's procedures manual. No instances of violations of policy were discovered in the EOI review.

EOIs anticipated to exceed \$250,000 require that the agency develop a short list of at least three firms deemed most qualified,

---

*The evaluation of 21 sole source files for FY 2013 sought to determine whether agencies and the Division are following sole source purchasing procedures in such a way to provide reasonable assurance that the process is not being used to circumvent competitive purchasing requirements.*

---

---

*All of the files contained evidence that the Division had posted the proposed purchase in the Purchasing Bulletin for registered vendors to express interest in providing the item.*

---

interview each of the short-listed firms, rank the firms, and submit its recommendation for selection to the Division with written justification for the selection that includes score sheets illustrating how the firms were evaluated. Of the 40 EOIs, there were 29 that were estimated to exceed \$250,000 and so were required to follow these steps. PERD evaluated the justifications for adequate explanations of deductions made and score sheets for accuracy in calculating final scores. The analysis of file documentation found that justification was provided for all deductions and there were no errors in final calculations. One EOI score sheet contained inaccurate math within the subsections of the scores for two of the firms evaluated, but the final scores were correct. In all cases, the selected firm was the one with the highest ranking.

### **Change-Orders**

Based on the TEAM-generated report provided by the Division, there were 96 contracts that had change orders in FY 2013. A random sample of 77 contracts was taken to provide a 95 percent confidence interval with 5 percent margin of error. One of these files was out of the office at the time documents were being evaluated and one was eliminated because it was a FY 2014 file, so the sample ultimately consisted of 75 documents. Findings included the following:

- The 75 contracts had a total of 86 change-orders. The majority of contracts had only one change-order in FY 2013 (see Table 4).

---

*Forty-four (44) percent of the change-orders caused no change in the total contract amount, 43 percent of change-orders increased the contract amount, and 13 percent of the change-orders decreased the contract amount.*

---

<b>Number of Change-Orders</b>	<b>Number of Contracts</b>
1	67
2	5
3	3
Total	75
<i>Source: PERD's analysis of a sample of change-orders provided by the Purchasing Division.</i>	

- Table 5 provides figures for monetary changes caused by FY 2013 change-orders. Forty-four (44) percent of the change-orders caused no change in the total contract amount, 43 percent of change-orders increased the contract amount, and 13 percent of the change-orders decreased the contract amount.



<b>Table 5 Monetary Changes Caused by FY 2013 Change-Orders</b>		
	Number of Contracts	Monetary Change
Change-Orders with no change in total contract amount.	33	N/A
Change-Orders that increased total contract amount.	32	\$2,862,438
Change-Orders that decreased total amount.	10	-\$1,744,028

*Source: PERD's analysis of a sample of change-orders provided by the Purchasing Division.*

- The Division’s policies and procedures require that agencies submit justification for any change-order that causes a 10 percent or greater change in the amount of the original contract. Of the 42 contracts that were increased or decreased by change-orders in FY 2013, there were 23 that were changed by 10 percent or more. Justification was provided for all of these changes. In addition, it was further found in reviewing the change-order files that in practice the Division actually requires justification for all change-orders, regardless of the amount of change in funds. This would seem to add an extra layer of oversight to the change order process.

---

*PERD found that 31 of the change-orders, affecting 26 of the 75 contracts, had effective dates prior to the dates the Division and Attorney General approved the changes.*

---

In addition to the findings above, PERD found that 31 of the change-orders, affecting 26 of the 75 contracts, had effective dates prior to the dates the Division and Attorney General approved the changes (see Table 6). **In fact, 18 of the change-orders had effective dates prior to the Division receiving them.**

<b>Table 6 Number of Change-Orders With Effective Dates Prior to the Division Approving the Change-Order</b>				
Number of days change-order was effective before the Division approved it.	1-15 Days	16-30 Days	31-60 Days	Over 60 Days
Number of change-orders.	9	10	8	4
Total Positive Monetary Change.	\$588,320	\$126,576	\$1,684,029	\$9,376

*Source: PERD's analysis of a sample of change-orders provided by the Purchasing Division.*

Of these 31 change-orders, 13 caused no monetary change to the original contract and 18 did have a monetary impact. The total amount of monetary changes caused by these change-orders with effective dates preceding the Division's approval was \$2,408,301. **This amount is 84 percent of all change-orders with positive monetary change in the sample. Therefore, the sample estimates that the large majority of change-orders with positive monetary changes to the original contract have effective dates prior to the Division's approval.** As Table 6 shows, the State has become obligated to pay for relatively large amounts long before they have been approved by the Division.

According to section 7.7.1 of the Division's policies and procedures manual, "all changes must be approved by the Purchasing Division and the Attorney General's Office, as to form, prior to commencement of any work. Violations may result in penalties." Moreover, the manual goes on to state:

**All agreements, many change orders and other documents require an effective date, at which time the vendor may begin to supply the commodities and services as specified.** *The West Virginia Code §5A-3-1 et seq. requires the Purchasing Division to authorize purchases on behalf of state agencies and the Attorney General's office to approve those purchases as to form before the contract is legal and binding. **The Purchasing Division will not accept any agreements, change orders or other documents which set an effective date that precedes the date of arrival in the Purchasing Division by more than twenty (20) calendar days.** All documents beyond twenty (20) days will be returned unapproved. Any exceptions must be approved by the Purchasing Director. (emphasis added)*

These policy statements contradicts themselves by stating that vendors may begin supplying services and commodities on the effective date, all changes must be approved prior to the commencement of work, but then states that agencies have up to 20 days after the effective date to submit change-orders for approval. In addition, West Virginia Code §5A-3-3(9), states that it is the power and duty of the Director to:

*Examine the provisions and terms of every contract entered into for and on behalf of the State of West Virginia that impose any obligation upon the state to pay any sums of money for commodities or services and approve each such contract as to such provisions and terms...*

It is the opinion of the Legislative Auditor that the legislative intent of this statute is for the Director's review and approval to occur *prior to* the vendor beginning work or providing commodities. As such,

---

*Therefore, the sample estimates that the large majority of change-orders with positive monetary changes to the original contract have effective dates prior to the Division's approval.*

---



---

*It is the opinion of the Legislative Auditor that the legislative intent of this statute is for the Director's review and approval to occur prior to the vendor beginning work or providing commodities.*

---

the Division's inclusion of wording in its procedures manual allowing effective dates of change-orders to precede the change-order even being received by the Division violates West Virginia Code. PERD requested a legal opinion on the issue from the West Virginia Legislative Services. According to Legislative Services:

*“If an agency is making a major change to the provisions and terms of a contract that alters the state’s obligations, the Director needs to be examining and approving those pursuant to his statutory duties. It is implicit that the approval would need to take place before the contract is performed to be meaningful and to carry out legislative intent.”*

**Therefore, the Division should ensure that the West Virginia Purchasing Division Procedures Handbook is in compliance with the stipulations of West Virginia Code.** PERD inquired whether there are exemptions for certain kinds of changes or changes to certain kinds of contracts needing prior approval. The Division indicated the following:

*Advance approval of change orders is not presently required in the **West Virginia Code** or **Code of State Rules**, but the Purchasing Division believes that advance approval of contractual changes is the best practice. Agencies are strongly discouraged from allowing vendors to perform any work prior to the change order being approved in advance. Although we are not aware at the time the work may have been done we believe, it does happen on occasion in spite of our best efforts. Vendors who do perform work without a change order are assuming the risk that the change order may not be approved and, thus, the vendor would not be approved for payment. As noted in the **Purchasing Division Procedures Handbook**, the Director of the Purchasing Division does reserve the right to approve change orders after the fact. Each request to approve a change order after the fact is different and is currently considered on a case-by-case basis.*

The Legislative Auditor disagrees with the Division's interpretation of West Virginia Code as not requiring advance approval of change-orders. It is not a good business practice for the State to have vendors assume any risk of not being paid for services or commodities rendered if the contract specifies an effective date. According to the legal opinion:

*If Purchasing were to refuse to approve a change order after a vendor had already provided a good or service to a state entity, there are numerous legal bases on which a court could award relief to the vendor, i.e. equitable relief. In addition, the vendor would likely have a remedy in the*

---

*Vendors who do perform work without a change-order are assuming the risk that the change-order may not be approved and, thus, the vendor would not be approved for payment.*

---

---

*It is not a good business practice for the State to have vendors assume any risk of not being paid for service or commodities rendered if the contract specifies an effective date.*

---

*court of claims. . . . Such a process likely leads to uncritical approval of all change orders, because a decision not to approve terms that have already been performed would almost certainly lead to a legal action.*

**Therefore, the Division should uphold and enforce West Virginia Code in processing and approving change orders.** In order to do so, the Division should stop accepting and approving change-orders after the fact that have monetary repercussions for the State. The Division's Legislative Rule is currently in the process of being changed. Although the rule that is currently in effect has no language regarding change-orders, the proposed rule adds stipulations for change-orders, including the following:

*6.8.f. Timing of Work. Spending units must not permit vendors to perform work that the spending unit anticipates will be added to a contract through a change order until such time as the change order has been formally approved by the Purchasing Division and the Attorney General's office, encumbered by the Purchasing Division, and mailed to the vendor.*

The Division indicated that this wording was intended to eliminate situations where change-orders were submitted after the commencement of work affected by the order, though the Division stated that the 20-day rule for administrative changes with no monetary impact caused by change-orders would not be affected. It should be noted that section 7.7.1 of the Division's procedures manual as previously quoted does not specify that the 20-day rule only applies to administrative changes. Therefore the Division must amend its procedures manual and put into practice a process that approves change-orders with monetary impacts prior to the effective date of the change-order.

---

*Therefore, the Division should uphold and enforce West Virginia Code in processing and approving change orders. In order to do so, the Division should stop accepting and approving change-orders after the fact that have monetary repercussions for the State.*

---

## **The Division Has a Strong Focus on Information and Communications.**

**Information and Communications:** Effective communication of relevant, accurate, and timely information is necessary to meet an agency's objectives.

**Effective internal and external communications using a variety of means of communication**

The Division communicates information internally to Division staff and externally to state agencies. Staff meetings are held weekly to discuss the work of each Division section and to review any issues or updates of which staff members need to be aware. As part of these meetings, the staff attorney conducts a “Code review” in which a part of the Division code section is discussed in-depth to make sure it is understood by everyone.

State agencies receive information through training, monthly newsletters, emails and the Division’s Intranet. The Division offers a number of training programs, including:

- webinars,
- online resource modules,
- a face-to-face In-House Training Program,
- annual conferences, and
- a certification program whereby agency-designated purchasing officers may obtain Basic or Advanced certification.

---

*The Division communicates information internally to Division staff and externally to state agencies. Staff meetings are held weekly to discuss the work of each Division section and to review any issues or updates of which staff members need to be aware.*

---

The Division also publishes *The Buyers Network*, a monthly newsletter that describes and clarifies new or confusing purchasing processes, answers questions submitted by agencies, lists changes to current statewide contracts issued by the Division, notifies agencies of upcoming training opportunities, etc. The Division emails state agency purchasing staff regarding changes to policies and procedures, training opportunities, the release of the monthly newsletter, and other pertinent changes or occurrences. Additionally, the Division’s Intranet provides access to information and resources regarding all aspects of the State purchasing process for both vendors or potential vendors and state agency purchasing staff.

### **The Division Has an Adequate Monitoring System in Place But It Needs to Include a Review of Agency-Document Purchases.**

**Monitoring:** Monitoring refers to assessing the quality of performance over time. This can involve on-going monitoring activities, which occur in the normal course of operations, as well as separate evaluations such as internal or external audits. Monitoring also includes ensuring the prompt resolution of findings.

Within the monitoring component of internal control are several sub-components. The most relevant sub-components for the Purchasing Division as they relate to overseeing state agency procurement are:

- ongoing monitoring in the normal course of operations,
- separate monitoring in the form of external and/or internal audits or reviews, and
- prompt resolution of findings identified by monitoring activities.

### Ongoing monitoring in the normal course of operations

Monitoring activities help to detect any deficiencies in control activities and in the individual components of internal control. Most of the Division's monitoring activities are ongoing and built into its processes. For example, the approval and signature processes required for purchasing transactions assure not only legal compliance, but also state agency and Division staff compliance. Furthermore, the State requires an additional layer of review by having the Attorney General's Office review and approve contracts as to form. **However, the Division should incorporate within its monitoring function a routine review of Agency-Document requisitions that looks for stringing, illegal contracts, and inappropriate uses of Section 9 exemptions.**

---

*Monitoring activities help to detect any deficiencies in control activities and in the individual components of internal control. Most of the Division's monitoring activities are ongoing and built into its processes.*

---

### External or Internal Reviews

The Division undergoes an external audit as part of the State's Single Audit process, where auditors perform a random sample of already executed contracts. A review of the last three Single Audit reports, released in 2009, 2011, and 2013, showed no findings identified in the analysis of contracts, although the 2013 report listed the results of the Legislative Auditor's BTOP audit as a finding. Furthermore, the Legislative Auditor also has authority to review the Division's performance.

Since 2007, the Division's Inspections Unit has monitored agency-delegated purchases that are \$25,000 or less. These audits, which are written as inspection reports, determine compliance with Code, Legislative Rule and the Division's Procedures Handbook. Although incidents of stringing discovered by the audits are reported to the Joint Committee on Government and Finance as required by West Virginia Code §5A-3-10(b), the audits are primarily used to identify areas in which agencies are under-educated or misinformed in order to train them to comply with all purchasing processes and requirements. A written report is released to the agency for review and comment. The inspector also meets with the agency to discuss the findings and, if necessary, provide training concerning purchasing procedures. In its inspection reports the Division

---

*Since 2007, the Division's Inspections Unit has monitored agency-delegated purchases that are \$25,000 or less. These audits, which are written as inspection reports, determine compliance with Code, Legislative Rule and the Division's Procedures Handbook.*

---

also includes a list of agency staff that attended the annual purchasing conference, and the number of classes each attended.

The Legislative Auditor contacted surrounding states to determine whether their purchasing agencies conduct compliance audits of state agency purchasing. Information was received from Virginia and Pennsylvania. Both states indicate that they have similar auditing sections. As with the Division’s reports, audits by these states are used internally. These audits are released only to the agency being reviewed. A comparison of Virginia’s and Pennsylvania’s purchasing audit sections with the Division’s Inspections Unit is provided in Table 7.

<b>Table 7</b> <b>Surrounding States</b> <b>Comparison of Purchasing Audit Sections</b>			
	Number of Audit Staff	Audit Staff Devoted Primarily to Conducting Audits (Y/N)	Average Number of Audits Conducted Annually
West Virginia	3	Y	33
Pennsylvania	4	N	10
Virginia	10	N	15

Source: Correspondence with States’ purchasing division staff.

Despite fewer staff, the Division has more of a focus on the inspection function and conducts more inspections each year than either Pennsylvania or Virginia.<sup>5</sup> Virginia’s purchasing director indicated that the State’s purchasing division prefers to focus on operating as the State’s “strategic procurement entity” and leave compliance oversight to other state entities. The chief of Pennsylvania’s Strategic Support and Audit Division indicated that compliance reviews make up only a small portion of audit staff members’ work schedules.

*Despite fewer staff, the Division has more of a focus on the inspection function and conducts more inspections each year than either Pennsylvania or Virginia.*

**Prompt Resolutions of Monitor Findings**

The Legislative Auditor reviewed inspection reports conducted by the Division for FY 2011 through 2013. Inspection reports describe the issues, called “findings,” identified in the sampled purchasing files. Findings may be identified in 11 categories, which include:

- stringing,
- failure to utilize statewide contracts,

<sup>5</sup> In fact, the Division was operating with only two inspectors until May 2014.

- failure to utilize internal resources for procurement (such as Surplus Property),
- failure to receive or document required bids,
- failure to verify or document vendor registration,
- failure to verify or document vendor's unemployment/workers' compensation status,
- failure to maintain documentation of the vendor affidavit,
- failure to use a purchase order,
- failure to add reportable items to the Fixed Asset System,
- failure to document Certification of Non-Conflict of Interest, and
- miscellaneous issues.

The results of inspections vary greatly from one agency to another. A few agencies had no identified findings, while one agency had 215 findings. Given this large range, the average number of findings for all agencies is about 21. Reports include a comparison of the number of findings in the current inspection with those of the previous inspection of the agency. Many of the FY 2011 inspections had not been inspected previously and so did not have prior inspections for comparison. Table 8 provides a summary of these comparisons.

<b>Table 8</b>				
<b>Change in Performance Between Current Inspection and Previous Inspection</b>				
<b>FY 2011 through FY 2013</b>				
	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>Total Number of Agencies</b>
	<b>Number of Agencies</b>	<b>Number of Agencies</b>	<b>Number of Agencies</b>	
<b>Improved Performance (Fewer Findings)</b>	5	19	21	45
<b>Worse Performance (More Findings)</b>	5	15	10	30
<b>No Change</b>	0	1	0	1
<b>No Findings In Current or Previous Inspection</b>	0	1	2	3
<b>Total</b>	10*	36	33	79

*Source: FY 2011-2013 Purchasing Division Inspection Reports*  
*\*Only 10 inspections from 2011 had prior inspections with which to compare results.*



Table 8 illustrates more agencies improve their performance from inspection to inspection than have worse performance. This indicates that inspections performed by the Inspections Unit and the purchasing education provided by inspectors are having a positive impact on agencies' compliance with purchasing requirements.

Although the inspections and follow-up training provided to agencies seem to improve agency performance, there is no additional monitoring after inspections take place. Several years pass between inspections of an agency. Three of the FY 2011 inspections indicated that the findings of those inspections were severe enough that a follow-up inspection should be scheduled in six months; however, no follow-up inspections were conducted. The Division explained that this was due to a vacancy in the position that creates the inspection schedules. None of the FY 2012 or 2013 inspections indicated that a six-month follow-up review would be conducted. The Division indicates that follow-up reviews have not been used in recent years because agencies either would not have processed enough purchases to be reviewed in a shorter timeframe, or would not have had adequate time to remedy findings or solidify proper procedures.

The Legislative Auditor agrees that follow-up reviews may be unnecessary in some cases. However, it would be beneficial to the agency and to the Division if agencies are required to provide a response and a corrective action plan to inspections. Although agencies are required to respond to findings of stringing, they are not required to respond to inspection reports if stringing was not found, so some agencies submit responses but others do not. **Consideration should be given to requiring all agencies with findings to submit a corrective action plan to facilitate positive resolutions.**

## Conclusion

Overall, the Division's internal controls were strengthened by the purchasing reforms implemented in SB 356. The Division also has addressed some of the issues identified by the Legislative Auditor in previous performance audits. However, there are areas that can be further strengthened. The Director of Purchasing needs to take a more proactive approach in monitoring high-risk areas of deliberate or inadvertent noncompliance by state agencies throughout the transaction process. An area of particular concern are requisitions that go through the Agency-Document option of the WVOASIS system. Since these purchases do not go through the Division, it is a high risk area. Section 9 exemptions is another risk area. While the need for these exemptions is understandable, it is clear that state agencies can utilize this to circumvent purchasing requirements. The Division also needs to follow the intent of law and

---

*Overall, the Division's internal controls were strengthened by the purchasing reforms implemented in SB 356.*

---



---

*However, there are areas that can be further strengthened. The Director of Purchasing needs to take a more proactive approach in monitoring high-risk areas of deliberate or inadvertent noncompliance by state agencies throughout the transaction process.*

---

approve all change-orders prior to their effective dates. It is not the intent of the State to have vendors assume any risk of not being paid for services or commodities rendered to it.

## Recommendations

1. *The Legislative Auditor recommends that the Legislature consider amending West Virginia Code §5A-3-10a(d) to require that vendors provide a statement of good standing for state taxes in addition to an affidavit.*
2. *The Legislative Auditor recommends that the Legislature or the Division consider requiring all state agency employees who conduct purchasing as a primary job function to register with the Division and establish mandatory training requirements for these employees.*
3. *The Legislative Auditor recommends that the Division consider developing the objective of achieving a certain percentage of training for all purchasing staff and other appropriate objectives and goals.*
4. *The Legislative Auditor recommends that the Division become more proactive by routinely monitoring high-risk areas of noncompliance, particularly requisitions that are made through the Agency-Document option of the WVOASIS system.*
5. *The Legislative Auditor recommends that the Division improve the documentation of control activities as they relate to the Request For Proposal and Request For Quotation processes, including establishing a uniform template form that clearly states buyer review and approval, and creating an official form to document approval by the Best Value Review Committee.*
6. *The Legislative Auditor recommends that the Division consider requiring agencies to submit corrective action plans for dealing with inspection findings.*
7. *The Legislative Auditor recommends that the Division consider incorporating expanded inspection functions into its inspection program utilizing the enhanced reporting capabilities of the WVOASIS system in order to better identify instances of circumvention.*

8. *The Legislative Auditor recommends any agency identified as attempting to circumvent purchasing requirements through WVOASIS should have their agency-delegated authority disabled, thus making all purchases pass through the Division for approval.*
9. *The Legislative Auditor recommends that the Division should incorporate within its monitoring function a routine review of Agency-Document requisitions that looks for stringing, illegal contracts, and inappropriate uses of Section 9 exemptions.*
10. *The Legislative Auditor recommends that the Division require that all change-orders be approved by the Director of Purchasing before the effective date of the change-order.*



## ISSUE2

### The Division’s Website Would Benefit From Enhancements to User-Friendliness and Transparency Features.

#### Issue Summary

It has become common and expected that government convey information to the public through websites. A number of organizations have developed assessment criteria to evaluate federal and state government websites for transparency and user-friendliness. The Legislative Auditor conducted a literature review on assessments of government websites and developed an assessment tool to evaluate West Virginia’s state agency websites (see Appendix C). The Legislative Auditor finds that the Division’s website needs improvements in both user-friendliness and transparency.

---

*Overall the Division integrates 46 percent of the checklist items within its website, which suggests that improvements are needed.*

---

### The Division’s Website Lacks Many Key Elements of User-Friendliness and Transparency.

The assessment tool lists a large number of website elements; however, some elements should be included in every state website, while other elements such as social media links, graphics and audio/video features may not be necessary or practical for certain agencies. Table 9 indicates that overall the Division integrates 46 percent of the checklist items within its website, which suggests that improvements are needed.

Table 9 Purchasing Division Website Evaluation			
Substantial Improvement Needed	More Improvement Needed	Modest Improvement Needed	Little or No Improvement Needed
0-25%	26-50%	51-75%	76-100%
	Division: 46%		

*Source: The Legislative Auditor’s review of the Division’s website, as of 6-19-14.*

### The Division’s Website Needs Multiple Improvements in the Area of User-Friendliness.

In order for citizens to actively engage with government online, they must first be able to access and comprehend information on the website. Therefore, the website should be designed with the public in mind. A user-friendly website is readable, efficient, and allows for the

public to easily navigate from page to page. A government website should also be transparent and provide the public with confidence and trust in the government agency. Transparency promotes accountability and provides information for citizens about an agency's activities. A website that is transparent will have elements such as email contact information, the location of the agency, the agency's phone number, as well as public records, the budget and performance measures.

PERD reviewed the Division's website for both user-friendliness and transparency. Table 10 shows the website's total score as being 23 out of a possible 50 points. Thus, improvements are needed to address areas that are lacking.

Category	Possible Points	Agency Points	Percentage
User-Friendly	18	7	39%
Transparent	32	16	50%
<b>Total</b>	<b>50</b>	<b>23</b>	<b>46%</b>

*Source: The Legislative Auditor's calculations based on a criteria checklist of common website features.*

The Division's website has 39 percent of the common components for user-friendliness. The website is fairly easy to navigate, as every page is linked to its homepage and contains a navigation bar. However, the website does not allow for font adjustment or translation into other languages, which could make it difficult to read for some users. Given studies that reveal that the average reading level in the United States is at the 8<sup>th</sup> grade, it is recommended that government websites should not exceed the 8<sup>th</sup> grade reading level. According to the Flesch-Kincaid test, which is widely used by federal and state agencies to measure readability, the Division's website is written at a college level, making it difficult for many citizens to comprehend.

### User-Friendly Considerations

The following are a few attributes that could enhance the website's user-friendliness:

- **Readability** – Information posted on the website should be easily understood by the general public.
- **Site Functionality** - The website should include buttons to adjust the font size.
- **FAQ Section** – A page should be provided that lists the Division's most frequently asked questions and responses.

---

*The website is fairly easy to navigate, as every page is linked to its homepage and contains a navigation bar. However, the website does not allow for font adjustment or translation into other languages, which could make it difficult to read for some users.*

---

- **Help Link** – There should be a link that allows users to access a help section.
- **Search Tool** – Every page of the site should have a search box, not just the homepage.
- **Mobile Functionality** – The website should be available in a mobile version and/or via a mobile application developed by the Division.
- **Social Media Links** – The site should contain buttons that allow users to post content to social media pages.
- **Foreign Language Accessibility** – The website should contain a link to translate all web pages into one or more languages other than English.

### **Changes Are Also Needed to Improve the Transparency of the Division’s Website.**

The Division’s website has 50 percent of the common website components for transparency. The website contains e-mail and telephone contact information for all administrative staff, as well as the phone number and physical address for the Division’s office. The website also provides updated information on events, downloadable forms and other publications, and information about contracts, rules and regulations, and statutes. However, the website does not provide the Division’s budget data, the agency history, or a biography of the Director. Further, the website does not provide any method by which users can file a complaint, and contains only minimal information on how to submit a Freedom of Information Act (FOIA) request without providing an online submission form.

---

*The Division’s website has 50 percent of the common website components for transparency. The website contains e-mail and telephone contact information for all administrative staff, as well as the phone number and physical address for the Division’s office.*

---

### **Transparency Considerations**

The following are a few attributes that would be beneficial to the Division in increasing its transparency:

- **Email** – The site should include a general website contact.
- **Administrator’s Biography** – A biography should be provided explaining the Director’s professional qualifications and experience.
- **Division Budget** – A link to the annual budget should be provided.
- **Performance Measures** – The website should provide a link from the homepage explaining the Division’s performance goals and measures.
- **FOIA Information-** Detailed information on how to submit a FOIA request should be provided, ideally with an online submission form.

- **Complaint Form-** A link should be provided from the homepage that contains a form to file a complaint, preferably an online form.
- **Mapped Location of Division's Offices-** The contact page should include an embedded map that shows the Division's location.
- **Job Postings and links to the Personnel Division Website** – the Division should have a section on its homepage for open job postings and a link to the application page for the Personnel Division.
- **Website Updates** – The site should have a website update status, ideally for every page.

## Conclusion

The Legislative Auditor finds that improvements to the Division's website are needed. The website could benefit from incorporating several user-friendliness features, including enhanced readability, foreign language accessibility, and a FAQ section, as well as additional transparency features such as performance measures, budget information, detailed FOIA information, and agency history.

## Recommendation

11. *The Legislative Auditor recommends that the Division consider enhancing the user-friendliness and transparency of its website by incorporating more of the website elements identified.*



# Appendix A Transmittal Letter

## WEST VIRGINIA LEGISLATURE *Performance Evaluation and Research Division*

Building 1, Room W-314  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305-0610  
(304) 347-4890  
(304) 347-4939 FAX



John Sylvia  
Director

December 23, 2014

David Tincher, Director  
West Virginia Department of Administration  
Purchasing Division  
2019 Washington Street, E.,  
P.O. Box 50130  
Charleston, WV 25305

Dear Director Tincher:

This is to transmit a draft copy of the Performance Evaluation of the Purchasing Division. This report is tentatively scheduled to be presented during the January 11-13, 2015 interim meetings of the Joint Committee on Government Operations, and the Joint Committee on Government Organization. We will inform you of the exact time and location once the information becomes available. It is expected that a representative from your agency be present at the meeting to orally respond to the report and answer any questions the committees may have.

We need to schedule an exit conference to discuss any concerns you may have with the report. We would like to have the meeting on either Tuesday, December 30, 2014 or Friday, January 2, 2015. Please notify us to schedule an exact time. In addition, we need your written response by noon on Monday, January 5, 2015 in order for it to be included in the final report. If your agency intends to distribute additional material to committee members at the meeting, please contact the House Government Organization staff at 304-340-3192 by Thursday, January 8, 2015 to make arrangements.

We request that your personnel not disclose the report to anyone not affiliated with your agency. Thank you for your cooperation.

Sincerely,

A handwritten signature in blue ink that reads "John Sylvia".

John Sylvia

Enclosure

---

*Joint Committee on Government and Finance*

---



---

## Appendix B

# Objectives, Scope and Methodology

The Performance Evaluation and Research Division within the Office of the Legislative Auditor conducted this performance review of the Purchasing Division as part of the agency review of the West Virginia Department of Administration required by West Virginia Code §4-10-8(b)(2). The purpose of the Division, as established in West Virginia Code §5A-3-1 is to provide purchasing and travel services to the various state agencies.

### Objectives

There are two objectives in this review. The first is to determine whether the Division has adequate internal controls in place to minimize the threat of state agencies under its authority violating purchasing laws and regulations. The second objective is to assess the Division's website for user-friendliness and transparency.

### Scope

The scope of this review for Issue 1 consisted of the internal controls the Division has in place over purchasing functions of state agencies under its purview, as evidenced in activities from January 2012 - January 2014. The agency's controls were evaluated for the five components of internal control established by the Committee of Sponsoring Organizations of the Treadway Commission (COSO), which are control environment, risk assessment, control activities, information and communications, and monitoring. Specific areas of focus within the agency were the Inspections Unit, training programs offered by the Division, and processes in place to evaluate state agency compliance with RFP and RFQ requirements. The scope did not include internal controls at state agencies under the Division's purview, but only the internal controls at the Purchasing Division level. The scope also did not include analyses of sole source procurement, agency-delegated procurement, emergency procurement, reverse auctions, direct ordering (formerly secondary bid), or other specific purchasing processes.

For Issue 2 the scope comprised a review of the Division's website on June 19, 2014.

### Methodology

PERD gathered and analyzed several sources of information and conducted audit procedures to assess the sufficiency and appropriateness of the information used as evidence. The information gathered and the audit procedures are described below.

In order to determine the sufficiency of the Division's internal controls, state purchasing rules, regulations, and policies were reviewed. Testimonial evidence was gathered through interviews with the Division's staff. This testimonial evidence was confirmed by written statements and documentary evidence. An evaluation was conducted of the trainings offered by the Division and the participation rates for these trainings. As part of this evaluation, a member of the audit team attended a day-long training course offered to state agency purchasing officers seeking certification through the Division. A review of the 100 inspection reports issued by the Division's Inspections Unit in FY 2011-2013 was also conducted, as well as a review of all Requests for Proposals (RFPs) and a sample of Requests for Quotations (RFQs) for FY 2012 through FY 2013 to determine compliance with written procedures.

---

In order to evaluate state agency websites, the Legislative Auditor conducted a literature review of government website studies, reviewed top-ranked government websites, and reviewed the work of groups that rate government websites in order to establish a master list of essential website elements. The Brookings Institute's "2008 State and Federal E-Government in the United States" and the Rutgers University's 2008 "U.S. States E-Governance Survey (2008): An Assessment of State Websites" helped identify the top ranked states in regards to e-government. The Legislative Auditor identified three states (Indiana, Maine and Massachusetts) that were ranked in the top 10 in both studies and reviewed all 3 states' main portals for trends and common elements in transparency and user-friendliness.

The Legislative Auditor also reviewed a 2010 report from the West Virginia Center on Budget and Policy that was useful in identifying a group of core elements from the master list that should be considered for state websites to increase their transparency and e-governance. It is understood that not every item listed in the master list is to be found in a department or agency website because some of the technology may not be practical or useful for some state agencies. Therefore, the Legislative Auditor compared the Division's website to the established criteria for user-friendliness and transparency so that the Division can determine if it is progressing in step with the e-government movement and if improvements to its website should be made.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

## Appendix C

### Website Criteria Checklist and Points System

<b>West Virginia Purchasing Division</b>			
<b>Review Date: 6-19-14</b>			
<b>User-Friendly</b>	<b>Description</b>	<b>Total Points Possible</b>	<b>Total Agency Points</b>
<b>Criteria</b>	The ease of navigation from page to page along with the usefulness of the website.	<b>18</b>	<b>7</b>
		<b>Individual Points Possible</b>	<b>Individual Agency Points</b>
Search Tool	The website should contain a search box (1), preferably on every page (1).	2 points	1
Help Link	There should be a link that allows users to access a help section (1) and agency contact information (1) on a single page. The link’s text does not have to contain the word help, but it should contain language that clearly indicates that the user can find assistance by clicking the link (i.e. “How do I...”, “Questions?” or “Need assistance?”)	2 points	1
Foreign language accessibility	A link to translate all webpages into languages other than English.	1 point	0
Content Readability	The website should be written on an 8th grade reading level. The Flesch-Kincaid Test is widely used by Federal and State agencies to measure readability.	No points, see narrative	
Site Functionality	The website should use sans serif fonts (1), the website should include buttons to adjust the font size (1), and resizing of text should not distort site graphics or text (1).	3 points	2
Site Map	A list of pages contained in a website that can be accessed by web crawlers and users. The Site Map acts as an index of the entire website and a link to the department’s entire site should be located on the bottom of every page.	1 point	1
Mobile Functionality	The agency’s website is available in a mobile version (1) and/or the agency has created mobile applications (apps) (1).	2 points	0
Navigation	Every page should be linked to the agency’s homepage (1) and should have a navigation bar at the top of every page (1).	2 points	2
FAQ Section	A page that lists the agency’s most frequent asked questions and responses.	1 point	0

<b>West Virginia Purchasing Division</b>			
<b>Review Date: 6-19-14</b>			
Feedback Options	A page where users can voluntarily submit feedback about the website or particular section of the website.	1 point	0
Online survey/poll	A short survey that pops up and requests users to evaluate the website.	1 point	0
Social Media Links	The website should contain buttons that allow users to post an agency's content to social media pages such as Facebook and Twitter.	1 point	0
RSS Feeds	RSS stands for "Really Simple Syndication" and allows subscribers to receive regularly updated work (i.e. blog posts, news stories, audio/video, etc.) in a standardized format.	1 point	0
<b>Transparency</b>	<b>Description</b>	<b>Total Points Possible</b>	<b>Total Agency Points</b>
<b>Criteria</b>	A website which promotes accountability and provides information for citizens about what the agency is doing. It encourages public participation while also utilizing tools and methods to collaborate across all levels of government.	<b>32</b>	<b>16</b>
		<b>Individual Points Possible</b>	<b>Individual Agency Points</b>
Email	General website contact.	1 point	0
Physical Address	General address of stage agency.	1 point	1
Phone Number	Correct phone number of state agency.	1 point	1
Location of Agency Headquarters	The agency's contact page should include an embedded map that shows the agency's location.	1 point	0
Administrative officials	Names (1) and contact information (1) of administrative officials.	2 points	2
Administrator(s) biography	A biography explaining the administrator(s) professional qualifications and experience.	1 point	0
Privacy policy	A clear explanation of the agency/state's online privacy policy.	1 point	1

<b>West Virginia Purchasing Division</b> <b>Review Date: 6-19-14</b>			
Public Records	<p>The website should contain all applicable public records relating to the agency’s function. If the website contains more than one of the following criteria the agency will receive two points:</p> <ul style="list-style-type: none"> <li>• Statutes</li> <li>• Rules and/or regulations</li> <li>• Contracts</li> <li>• Permits/licenses</li> <li>• Audits</li> <li>• Violations/disciplinary actions</li> <li>• Meeting Minutes</li> <li>• Grants</li> </ul>	2 points	2
Complaint form	A specific page that contains a form to file a complaint (1), preferably an online form (1).	2 points	0
Budget	Budget data is available (1) at the checkbook level (1), ideally in a searchable database (1).	3 points	0
Mission statement	The agency’s mission statement should be located on the homepage.	1 point	1
Calendar of events	Information on events, meetings, etc. (1) ideally imbedded using a calendar program (1).	2 points	1
e-Publications	Agency publications should be online (1) and downloadable (1).	2 points	2
Agency Organizational Chart	A narrative describing the agency organization (1), preferably in a pictorial representation such as a hierarchy/organizational chart (1).	2 points	2
Graphic capabilities	Allows users to access relevant graphics such as maps, diagrams, etc.	1 point	1
Audio/video features	Allows users to access and download relevant audio and video content.	1 point	1
FOIA information	Information on how to submit a FOIA request (1), ideally with an online submission form (1).	2 points	1
Performance measures/outcomes	A page linked to the homepage explaining the agencies performance measures and outcomes.	1 point	0

<b>West Virginia Purchasing Division</b>			
<b>Review Date: 6-19-14</b>			
Agency history	The agency's website should include a page explaining how the agency was created, what it has done, and how, if applicable, has its mission changed over time.	1 point	0
Website updates	The website should have a website update status on screen (1) and ideally for every page (1).	2 points	0
Job Postings/links to Personnel Division website	The agency should have a section on homepage for open job postings (1) and a link to the application page Personnel Division (1).	2 points	0



# Appendix D Agency Response

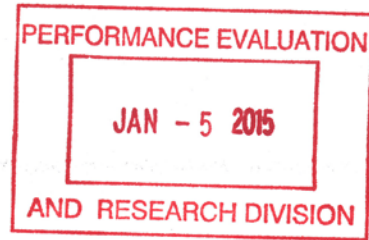


**EARL RAY TOMBLIN**  
GOVERNOR

STATE OF WEST VIRGINIA  
DEPARTMENT OF ADMINISTRATION  
PURCHASING DIVISION  
2019 WASHINGTON STREET, EAST  
P.O. Box 50130  
CHARLESTON, WEST VIRGINIA 25305-0130

**JASON PIZATELLA**  
ACTING CABINET SECRETARY  
**DAVID TINCHER**  
DIRECTOR

January 5, 2015



Mr. John Sylvia, Director  
Performance Evaluation and Research Division  
West Virginia Legislature  
Building 1, Room W-314  
Charleston, West Virginia 25305-0610

Dear Mr. Sylvia:

Pursuant to the recent audit by the Performance Evaluation and Research Division ("PERD") of the West Virginia Purchasing Division (hereinafter sometimes referred to as the "Division"), the agency offers the following in response to the PERD report and will take the appropriate action where noted below.

- 1. The Legislative Auditor recommends that the Legislature consider amending West Virginia Code §5A-3-10a(d) to require that vendors provide a statement of good standing for state taxes in addition to an affidavit.**

**Response:** The Purchasing Division agrees with this recommendation. An alternate recommendation that may be considered is requiring the "Statement of Good Standing" as part of the standard bid specifications. By doing so, this document would be required of all bidders in order to be considered for a contract or purchase order award.

- 2. The Legislative Auditor recommends that the Legislature or the Division consider requiring all state agency employees who conduct purchasing as a primary job function to register with the Division and establish mandatory training requirements for these employees.**

**Response:** The Purchasing Division agrees with this recommendation.

- 3. The Legislative Auditor recommends that the Division consider developing the objective of achieving a certain percentage of training for all purchasing staff and other appropriate objectives and goals.**

**Response:** The Purchasing Division agrees with this recommendation. The Division will track the training efforts completed by those state employees who are identified as being responsible for purchasing as a primary job function.

4. **The Legislative Auditor recommends that the Division become more proactive by routinely monitoring high-risk areas of noncompliance, particularly requisitions that are made through the Agency-Document option of the wvOASIS system.**

**Response:** The Purchasing Division agrees with this recommendation. The Division inspectors conduct their reviews in arrears; therefore, they are currently utilizing the previous statewide systems and will be more proactive in reviewing Agency-Document options in wvOASIS for future inspections.

5. **The Legislative Auditor recommends that the Division improve the documentation of control activities as they relate to the Request for Proposal and Request for Quotation processes, including establishing a uniform template form that clearly states buyer review and approval, and creating an official form to document approval by the Best Value Review Committee.**

**Response:** The Purchasing Division agrees with this recommendation and will create a template for buyer review and approvals as well as a template for document approval by the Best Value Review Committee.

6. **The Legislative Auditor recommends that the Division consider requiring agencies to submit corrective action plans for dealing with inspection findings.**

**Response:** The Purchasing Division agrees with this recommendation. The corrective action plans from the respective agency will be implemented into the inspection process.

7. **The Legislative Auditor recommends that the Division consider incorporating expanded inspection functions into its inspection program utilizing the enhanced reporting capabilities of the wvOASIS system in order to better identify instances of circumstances.**

**Response:** The Purchasing Division agrees with this recommendation. The Division's inspection of agencies focuses on procurement transactions that have already been completed. Since these reviews are performed in arrears, the former statewide systems are currently being used. For future inspections, however, the Division will utilize wvOASIS since it is the new system of record. The Business Intelligence component of wvOASIS will be the source of reporting for future inspections.

8. **The Legislative Auditor recommends any agency identified as attempting to circumvent purchasing requirements through wvOASIS should have their agency-delegated authority disabled, thus making all purchases pass through the Division for approval.**

**Response:** The Purchasing Division generally agrees with this recommendation. The Division has been developing a new inspection “grading” system which will be conducive to implementing this recommendation. For agencies receiving a poor rating, the Division will have the authority to disable the agency’s delegated authority. It should be noted, however, that disabling an agency’s delegated authority shifts the burden associated with those procurements to the Division and could potentially lengthen processing times for all transactions processed by the Division in the customary manner. If additional resources are provided to the Division, this potential adverse impact on processing time may be reduced.

**9. The Legislative Auditor recommends that the Division should incorporate within its monitoring function a routine review of Agency-Document requisitions that looks for stringing, illegal contracts, and inappropriate uses of Section 9 exemptions.**

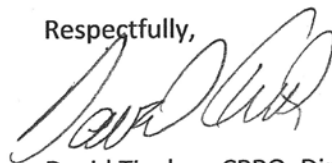
**Response:** The Purchasing Division agrees with this recommendation. The Division currently performs a routine review of Agency-Document requisitions that looks for stringing, illegal contracts, and inappropriate uses of Section 9 exemptions through its inspection process and will continue to do so in the future. Since the Division conducts its inspections in arrears, we are currently using the statewide systems that were in place at the time the purchasing documents were processed. For future inspections, however, wvOASIS will be utilized to identify circumstances of stringing, illegal contracts, and inappropriate uses of Section 9 exemptions.

**10. The Legislative Auditor recommends that the Division consider enhancing the user-friendliness and transparency of its website by incorporating more of the website elements identified.**

**Response:** The Purchasing Division agrees with this recommendation and will determine areas for improvement on its website based on the areas highlighted by this report.

As noted in its report and discussed at the exit interview, PERD made several references to the use of change orders and the method in which the Division reviews and ultimately approves change orders. Though no formal recommendations were made, the Division has incorporated language in its proposed legislative rule to clarify the change order process. Moreover, the Division will continue to follow all applicable statutes and legislative rules as we seek ways to enhance our programs and services to state agencies, the vendor community and to the citizens of West Virginia.

Respectfully,



David Tincher, CPPO, Director

cc: *Aaron Allred, Legislative Manager/Auditor, WV Legislature*  
*Brandon Burton, Acting Research Manager, WV Legislature*  
*Jason Pizatella, Acting Cabinet Secretary, Department of Administration*





WEST VIRGINIA LEGISLATIVE AUDITOR

**PERFORMANCE EVALUATION & RESEARCH DIVISION**

Building 1, Room W-314, State Capitol Complex, Charleston, West Virginia 25305

telephone: 1-304-347-4890 | [www.legis.state.wv.us/Joint/PERD/perd.cfm](http://www.legis.state.wv.us/Joint/PERD/perd.cfm) | fax: 1-304-347-4939