

# POST AUDIT DIVISION

## POST AUDITS SUBCOMMITTEE MEMBERS

SENATE MEMBERS  
President, Mitch Carmichael  
Ed Gaunch  
Roman Prezioso

HOUSE MEMBERS  
Tim Armstead, Speaker  
Timothy Miley  
Eric Nelson Jr.



DECEMBER 3, 2017  
LEGISLATIVE LETTER REPORT

JOINT COMMITTEE ON  
GOVERNMENT & FINANCE

## PURCHASING DIVISION

### GENERAL TERMS & CONDITIONS

### POST AUDIT STAFF CONTRIBUTORS

Denny Rhodes ..... Director  
Justin Robinson..... Audit Manager

**Note:** On Monday, February 6, 2017, the Legislative Manager/Legislative Auditor's wife, Elizabeth Summit, began employment as the Governor's Deputy Chief Counsel. Most or all the actions discussed and work performed in this report occurred after this date. However, the Governor's Deputy Chief Counsel was not involved in the subject matter of this report, nor did the audit team have any communications with her regarding the report. As Deputy Chief Counsel, the Legislative Auditor's wife is not in a policy making position within the Executive Branch. Therefore, the Post Audit Division does not believe there are any threats to independence with regard to this report as defined in A3.06.a and A3.06.b of the Generally Accepted Government Auditing Standards. Furthermore, the Legislative Auditor has instructed the Director of the Post Audit Division to document and discuss any issues he believes are a threat to the division's independence with the President of the Senate and the Speaker of the House due to Ms. Summit's position.

OFFICE OF THE  
LEGISLATIVE AUDITOR  
Legislative Manager & Legislative Auditor, Aaron Allred

**WEST VIRGINIA LEGISLATIVE AUDITOR'S OFFICE**  
*Post Audit Division*

**1900 Kanawha Blvd. East, Room W-329**  
**Charleston, WV 25305-0610**  
**(304) 347-4880**



**Denny Rhodes**  
**Director**

December 3, 2017

The Honorable Mitch Carmichael, President  
West Virginia State Senate  
Post Audits Sub-Committee, Co-Chair  
Room 229 M, Building 1  
State Capitol Complex  
Charleston, WV 25305

The Honorable Tim Armstead, Speaker  
West Virginia House of Delegates  
Post Audits Sub-Committee, Co-Chair  
Room 228 M, Building 1  
State Capitol Complex  
Charleston, WV 25305

Mr. President and Mr. Speaker:

The Legislative Auditor has identified an issue that arises from instances where subcontractors operate under a primary State contractor. The issue is that some subcontractors are not properly registering with the local government and municipality in which they are performing work under the subcontract, and as a result, these subcontractors are not properly paying local Business and Operation Tax (B&O Tax). Many local government and municipalities may be unaware that subcontractors are operating in their area, as they must rely solely on the subcontractor to notify them, and have no other way of learning that the subcontractor is performing that work. The Legislative Auditor has concluded this may be occurring due to a lack of explicit language in the General Terms and Conditions contained in the Purchasing Division's bidding documents stating that those contracting with the State are required to inform their subcontractors of their duty to register properly with all applicable local government and municipalities, and also, of their requirement to pay any applicable taxes that arise from operating within those local governments and municipalities.

As a result of this issue, the Legislative Auditor recommends the Purchasing Division's General Terms and Conditions be amended to include the following:

**SUBCONTRACTORS** – The firm agrees to notify each subcontractor of its potential responsibility to register with all municipalities in which it will perform work under this contract and to pay all requisite taxes, including all business and occupancy taxes, to those municipalities. Notification under this term must occur prior to the performance of any work under the contract by subcontractor.

By enacting this recommendation, the State, local governments, and municipalities will be better protected should some legal recourse be needed to collect unpaid B&O taxes for work performed under a State contract. Also, this recommendation proactively establishes the requirement that all contractors inform their subcontractors of their duty to register with the appropriate local government and municipalities and to pay all applicable taxes associated with that contract.

Sincerely,



Denny Rhodes

cc. John A. Myers, Cabinet Secretary, Department of Administration