



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

ROSS TAYLOR  
CABINET SECRETARY

DAVID TINCHER  
DIRECTOR

July 1, 2014

The Honorable Jeffrey Kessler  
President of the State Senate  
Room 227M, Building 1  
State Capitol Complex  
Charleston, WV 25305

The Honorable Tim Miley  
Speaker of the House  
Room 228M, Building 1  
State Capitol Complex  
Charleston, WV 25305

**SUBJECT:** Legislative Reporting Requirement §5A-3-10(b)

Dear Sirs:

In accordance with **West Virginia Code** §5A-3-10(b), as director of the West Virginia Purchasing Division, I am required to submit in January and July of each year to the Joint Committee on Government and Finance a report summarizing our division's findings of any spending unit which awarded multiple contracts for the same or similar commodity or service to an individual vendor over any 12 month period with a value exceeding \$25,000.

This section of the Code reads:

**§5A-3-10. Competitive bids; publication of solicitations for sealed bids; purchase of products of nonprofit workshops; employee to assist in dealings with nonprofit workshops.**

*(b) The director shall solicit sealed bids for the purchase of commodities and printing which is estimated to exceed twenty-five thousand dollars. No spending unit shall issue a series of requisitions or divide or plan procurements to circumvent this twenty-five thousand dollar threshold or otherwise avoid the use of sealed bids. Any spending unit which awards multiple contracts for the same or similar*

**Senator Kessler and Delegate Miley**

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*commodity or service to an individual vendor over any twelve-month period, the total value of which exceeds twenty-five thousand dollars, shall file copies of all contracts awarded to the vendor within the twelve preceding months with the director immediately upon exceeding the twenty-five thousand dollar limit, along with a statement explaining how the multiple contract awards do not circumvent the twenty-five thousand dollar threshold. If the spending unit does not immediately report to the director, the director may suspend the purchasing authority of the spending unit until the spending unit complies with the reporting requirement of this subsection. The director may conduct a review of any spending unit to ensure compliance with this subsection. Following a review, the director shall complete a report summarizing his or her findings and forward the report to the spending unit. In addition, the director shall report to the Joint Committee on Government and Finance on the first day of January and July of each year the spending units which have reported under this subsection and the findings of the director.*

For the period of January 1, 2014 through June 30, 2014, one spending unit (Department of Transportation, Division of Highways – Equipment Division) has reported to our division the award of multiple contracts for “the same or similar commodity or service to an individual vendor over any 12-month period,” where the total value of which exceeds twenty-five thousand dollars. Additionally, the Purchasing Division inspectors discovered findings relating to five different spending units during their reviews as stipulated in this section of the Code. The spending units were the WV State Police, Department of Education, Cacapon State Park, Fire Commission and Cass Scenic Rail Road. A summary of these findings is attached.

Pursuant to this requirement, my next report will be submitted to you in January of 2015. Should you have any questions regarding this correspondence, please feel free to contact me at your convenience at (304) 558-2538 or via e-mail at **David.Tincher@wv.gov**.

Sincerely,



David Tincher, CPPO, Director  
West Virginia Purchasing Division

DT:dhb

cc: Aaron Allred, Legislative Auditor  
Ross Taylor, Cabinet Secretary of Administration

West Virginia Purchasing Division  
**SUMMARY OF STRINGING ACTIVITIES**  
(January 1, 2014 – June 30, 2014)

**WV State Police:**

- 1) During the fiscal year under review, the WV State Police made twenty-five purchases for HVAC service from Johnson Controls, SSNA. The total for the purchases was \$53,569.90.
- 2) During the fiscal year under review, the WV State Police made six purchases for auto emergency lighting equipment from Mallimar Inc. The total for the purchases was \$48,459.99.
- 3) During the fiscal year under review, the WV State Police made twenty-eight purchases for two way communication equipment from TESSCO Inc. The total for the purchases was \$71,078.10.

In their response to the inspection report, the agency stated that:

*"We as an agency are making every attempt to comply with these findings. This includes being more stringent in making use of existing statewide contracts, obtaining agency contracts for those things which are not under contract, maintaining and attaching appropriate documentation such as verification of vendor registration, Workers Compensation, Employment Compensation, Affidavits,, Non-Conflict forms and other purchasing related documents. We continue the practice of checking the documents attached to purchasing paperwork in this office and have continued with education to our Troop locations.*

*On issue of stringing, we have purchases being made throughout the State at various Troop locations as well as here at Headquarters and are constantly striving against this issue. The stringing issue is also part of our on-going education with our Logistic Officers and purchasers. It is certainly not the intention of this agency to do anything that is improper or in violation of any purchasing guidelines or legislature rule.*

*We appreciate that you have pointed out the areas where we have been deficient and will continually strive to make any and all purchases in accordance with purchasing guidelines"*

**Department of Education**

- 1) During the fiscal year under review, the Department of Education made twelve purchases for web recording from Arkadin Inc. The total for the purchases was \$28,413.74. In their response to the inspection report, the agency stated that:

*"The West Virginia Department of Education has one stringing finding with Arkadin, Inc. The review indicates the Agency made twelve purchases for web recording that total \$28,413.74, which exceeds the formal bid limit of \$25,000.00. To correct this problem of tracking cumulative purchase orders and self-reporting, the Agency is attempting to find several solutions which would perform the required measuring of data necessary for cumulative totals to vendors to be tracked. Also, we are hopeful that the state's new ERP system (WVOASIS), once implemented, will have components which will systematically and automatically perform tasks such as this."*

## Cacapon State Park:

- 1) During the fiscal year under review, Cacapon State Park spent a total of \$44,037.61 in one hundred thirty-six transactions for propane from Blue Flame. In their response to the inspection report, the agency stated that:

*"With reference to the propane gas finding we are reviewing various established procedures from several of our fellow parks to see how best to proceed. We plan to put together a contract request to provide installation, removal, supply, emergency repair and maintenance so we may maintain a safe efficient and secure HV/AC system throughout the park"*

- 2) During the fiscal year under review, Cacapon State Park spent a total of \$42,172.26 in fourteen transactions for seed/chemicals from Trinity Turf. In their response to the inspection report, the agency stated that:

*"As you may or may not know; taking care of a golf course is administratively and technically challenging, and is constantly changing. Agronomy is a complex science and course maintenance is more than just growing grass. There are a multitude of issues to deal with; disease, environmental concerns, insects, weeds, green speed, turf health, overseeding, curative fertilizers, maintenance fertilizers, soil alkalinity, irrigation rates, drainage rates, and available equipment. Those are just a small sampling of the issues confronted by a golf course superintendent (or in case of a State Park, a Grounds Maintenance Supervisor) as he attempts to manage and maintain the turfgrass on a daily basis.*

*Turfgrasses under intensive management are often subject to outbreaks of infectious diseases/ Diseases usually are most damaging when weather or cultural conditions favor the disease-causing agent. There are somewhere in the neighborhood of 100 different diseases that affect turfgrasses. Just like human illnesses, each turf disease has a specific prescription for its cure and prevention. Some diseases can be suppressed by the application of nitrogen fertilizer, whereas others are encouraged by more nitrogen. Some diseases are suppressed by high soil pH, whereas others are encouraged by low pH. There is absolutely no way of knowing what type of disease, infestation, or alkalinity imbalance will afflict your turfgrass; and by consequence, you cannot accurately bid out and bulk purchase in advance the correct fungicides, pesticides and fertilizer mixtures to be applied. For instance; let's say at the beginning of the fiscal we were going to go through the formal written bidding process to purchase the fungicides needed to treat Fairy Ring based solely on the knowledge that we have been afflicted by that disease before. We award the bid and purchase the chemicals. Then by the grace of god we never get the disease that year but we get one of the 100 other types. Not only have we wasted the budget money on a chemical we cannot use, but now we have no money to purchase the chemical needed to treat the new disease.*

*In the not-too-distant past, Broad spectrum fungicides were available that were very powerful, and could be used to treat several forms of turfgrass disease. These have since been removed from the market due to environmental concerns. They were replaced by a new generation of products that may have very narrow control-spectrums. They are very effective, and safe for the environment, but they are only effective against a very small number of diseases. Because of this change in the turfgrass industry, accurate diagnosis of disease type and the prompt and timely application of chemical treatments are vital to continuous operations of a golf course.*

*Turfgrass diseases typically begin with mild symptomology and are localized in a small area. The symptoms gradually become more severe and wide spread over time. The rate of its progress depends on the type of disease, the host, weather, atmospheric humidity, and cultural factors such as mower height, clippings management and the transfer and spread to other areas on the bottom of golf shoes (we suspect the second outbreak of dollar spot was caused by transfer via golf shoes from another local course that had it). In general, disease will begin to spread over a period of several days to several weeks. Again, the rapid recognition that a disease exist, the accurate diagnosis of the disease type, and the prompt and timely application of the appropriate chemical treatments is absolutely vital to the continuous operations of the states multi-million dollar investment. In some severe cases of disease outbreak, failure to act quickly is almost as bad as not acting at all, and is tantamount to dereliction of duty.*

*There are two general types of fungicides used in turfgrass management. Contact fungicides, sometimes called protectant fungicides which remain on plant surfaces and do not penetrate the plant tissue. Contact fungicides must be present on the plants surface before the infection begins in order to be effective. These could be ordered seasonally and in an amount that would be estimated to last a full year given average environmental conditions. As they aren't absorbed into the plant they are subject to wash off in an abnormally wet weather, resulting in wasted product and a need to order more.(bid it again?).*

*Systemic fungicides; sometimes called curative fungicides, are those that are absorbed into the plant. Systemic fungicides can suppress the disease or fungus after it has infected the plant. Unless your gambling man willing to play with the taxpayers money, these cannot be ordered in bulk in advance. They must be purchased as required and in short time frame to be effective.*

*Another issue that must be dealt with is fungicidal resistance. Academic testing has proven that infectious fungi can develop to particular fungicides ( much in the same manner that humans develop resistance to antibiotics), especially when a product is used repeatedly without alternating with chemically unrelated fungicides. When the resistance develops, the use of that product will no longer control the disease effectively. Industry best practices call for the continuous rotation of different products to prevent the resistance from developing.*

*In conclusion; over the course of the time period that was reviewed, we were forced to make multiple purchases of golf course chemicals for the treatment and eradication of separate outbreaks of uniquely different turfgrass diseases and insect infestation. We promptly treated and eradicated the diseases and the infestation as they occurred with a variant of fungicides, insecticides, and herbicides in accordance with established industry standards. We did so under the advisement and according to the recommendations of the USGA. Our actions were taken with the best interest of the state of West Virginia in mind and in sincere diligence to protect its investment. There were no attempts at deception or intentional circumvention of purchasing procedures.”*

## **Fire Commission:**

- 1) During the fiscal year under review, the Fire Commission had transactions for uniforms and accessories with each of the following vendors: All American Fire Equipment Inc., WV Uniforms Inc., and Galls Intern. The total for the purchases was \$26,181.74.

The fiscal year totals for each vendor are as follows:

-All American Fire Equipment Inc.	\$16,208.31
-WV Uniforms Inc.	\$8,888.79
-Galls	\$1,791.85

- 2) During the fiscal year under review, the Fire Commission made twenty-one purchases for equipment and accessories from Galls Intern. The total for the purchases was \$28,926.21.

In their response to the inspection report, the agency stated that:

*"I am in receipt of your preliminary purchasing review report for the State Fire Commission. This review was for FY2013 and revealed several errors and oversights in purchasing practices. First I wish to commend you and your staff for the time and effort in bringing these issues to my attention. It is my intention to fully comply with the spending laws and policies of this state.*

*I first need to draw attention to my situation since assuming the position of Acting State Fire Marshal on May 1, 2013. At the time not only was I in a new position of overall authority, but I also had a fairly new employee in the senior administrative post responsible for procurement in addition to her other assigned duties. She had little to no experience in that position and still learning her job. As a small agency I cannot afford to hire a separate section solely dedicated to one facet of agency administration and all the other various rules, policies and duties associated with each one. I must juggle and split job assignments between two administrative positions in a manner that distributes the workload as fair as possible while making sure the agency continues to function. Obviously, there is little excuse for some of the findings presented and as I indicated these issues will be addressed in time.*

*Insofar as the one finding of possible "stringing", I must respectfully object to the nature of the allegation. It was never the intent of this office to purposely side-step or blatantly violate the existing purchasing policies in obtaining uniforms for staff. We did at one time have a separate contract with Ronk's Uniforms located in Huntington, WV. However, at the time to renew the contract, the vendor chose not to renew said contract and subsequently went out of business not long after. In addition, it never dawned on me, much less the procurement officer that uniform items must be tracked for the duration of the fiscal year. I thought that we were abiding by the purchasing limits as far as bids were concerned and must claim ignorance to this particular requirement. I am currently deliberating the possibility of obtaining our own agency-specific contract for uniform items since piggy-back purchases are no longer accepted for whatever reasoning and rationale.*

*One particular finding over the purchase of ammunition raises a valid point in my opinion. Access to the various decisions and procedures seems to be rather cumbersome for the spending units to obtain unless they have intimate knowledge of the complex process of purchasing. Regardless, this agency used existing contract for the State Police to obtain our ammunition as we have done numerous times in recent past. Not only ammunition, but other items purchased using this method as it was easier for smaller agencies such as this one. For example, this agency purchased mobile radios under the existing contracts for State Police as well. Again, I do not understand the reasoning for abandoning the piggy-back contracts for state agencies.*

*The remaining items listed as findings we agree with in principle. In fact we have already taken steps to correct some, although not all, findings since the time of the audit."*

*"While it is no excuse for not following the State Purchasing rules, I am inclined to respond to the attached report. First, my predecessor retired when I was hired and I had no training on purchasing until October 2013, when I attended the State Purchasing Conference. At that conference there was an overwhelming amount of information which was very confusing to a beginner. While at the conference I spoke to someone from Purchasing about getting beginners training and they said that they usually have a beginners track but didn't this past year. They told me to sign up for the in house training the first of the year. Which I did and it was very useful. However the inspection came before that training.*

*Also, during the Conference I learned about TEAMS. I was given an application for access and was told to fax it to Mark Totten. I faxed it on November 6th did not get access until February, after sending several emails to remind him. I could not have check vendor registration without it.*

*I have full intentions of complying with State Purchasing rules and have already made several corrections. However, I am still learning and appreciate any help from the Purchasing Division."*

### **Cass Scenic Rail Road:**

- 1) During the fiscal year under review, Cass Scenic Rail Road made eight transactions for HVAC work with David Davis Heating. The total for the purchases was \$29,355.00. In their response to the inspection report, the agency stated that:

*"Currently, the superintendent and assistant superintendent who were supervisory responsible for purchasing are no longer present to answer to answer the findings of Stringing. Enclosed is an Agency Purchase Order from the installation of a HVAC system that demonstrates that purchasing guidelines are being followed."*

- 2) During the fiscal year under review, Cass Scenic Rail Road made forty-seven transactions for propane with Southern States. The total for the purchases was \$51,803.03. In their response to the inspection report, the agency stated that:

*"Currently, the superintendent and assistant superintendent who were supervisory responsible for purchasing are no longer present to answer to answer the findings of Stringing. Enclosed is an Agency Purchase Order (Propane CO# 1) for propane from Southern States demonstrating that purchasing guidelines are being followed."*

**Holley, Diane M**

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**To:** Holley, Diane M  
**Subject:** FW: Aspen Aerials Purchase - Equipment Division

**From:** Ray, Travis L  
**Sent:** Friday, May 16, 2014 2:10 PM  
**To:** Moorman, Angie J  
**Cc:** Hash, Jim B; Tincher, David R  
**Subject:** Aspen Aerials Purchase - Equipment Division

Angie,

As you are probably aware, I am under new assignment as Acting Director of the Equipment Division as of May 1<sup>st</sup>. It has come to my attention that we have expended over \$25,000 with Aspen Aerials on parts for 3 bridge inspection trucks (933-004, 934-002, 934-004). I have asked questions and found that these parts can only be found from sole source Aspen Aerials. There has been no blatant wrongdoing with any of these purchases. We have simply been trying to keep this equipment operational for our timely federally mandated bridge inspection program. I have in my possession an invoice for parts and two work orders for additional preventive maintenance. The invoice is \$4,435.00 from Aspen Aerials for parts that have already been placed on 933-004. This was in the process prior to me coming here. The 2 work orders are for parts that will need to be installed during the next PM on 934-002 and 934-004 for an approximate amount of \$2300.

In an attempt to rectify this situation and develop consistency, the Equipment Division has developed a parts contract that will be forthcoming. Hopefully, this can be expedited so we will not continue to violate purchasing rules and regulations.

Thank you for your assistance on this matter!

Travis