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GOVERNOR

STATE OF WEST VIRGINIA
DEPARTMENT OF ADMINISTRATION
Purchasing Division
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MARY JANE PICKENS
ACTING CABINET SECRETARY

DAVID TINCHER
DIRECTOR

January 1, 2017

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

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

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

Dear Sirs:

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

This section of the Code reads:

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

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

President Cole and Speaker Armstead

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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 July 1, 2016, through December 31, 2016, there were no spending units that reported to our division the award of multiple contracts for "the same or similar commodity or service to an individual vendor over any 12-month period," where the total value of which exceeds twenty-five thousand dollars. However, the Purchasing Division inspectors discovered findings relating to five (5) different spending units during their reviews as stipulated in this section of the Code. The spending units were the Department of Military Affairs and Public Safety, Division of Corrections – Special Services; Department of Military Affairs and Public Safety, Adjutant General and Armory Board; Department of Education and the Arts, Division of Culture and History; Department of Transportation, Division of Highways (District 4) and Department of Transportation, Division of Highways (District 8). A summary of these findings is attached.

Pursuant to this requirement, my next report will be submitted to you in July of 2017. Should you have any questions regarding this correspondence, please feel free to contact me at your convenience at (304) 558-2538 or via e-mail at **David.Tincher@wv.gov**.

Sincerely,

A handwritten signature in cursive script that reads "Dave Tincher".

David Tincher, Director
West Virginia Purchasing Division

DT:dhb

West Virginia Purchasing Division
SUMMARY OF STRINGING ACTIVITIES
(July 1, 2016- December 31, 2016)

Department of Military Affairs and Public Safety, Division of Corrections-Special Services:

- 1) During the fiscal year under review, Division of Corrections-Special Services spent a total of \$65,495.85 for drug testing with Redwood Toxicology Laboratory, Inc. In their response to the Inspection report, the agency stated that:

We are diligently working on developing specifications to place a requisition request with the Purchasing Division for a contract for drug testing. We are, however, faced with continually changing manufactured drugs which complicate our efforts in that development. The continued use of Redwood Toxicology is a result of their pricing structure. Many of their competitors will not even submit bids if they know that Redwood is in consideration because they cannot compete on price. We are, however, anticipating the submission of such specifications to the Purchasing Division in short-order.

In the Purchasing Division's response to the agency comments, the Purchasing Division referenced *West Virginia Code §5A-3-11* and the *West Virginia Purchasing Division Procedures Handbook*:

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

Reference Section 6.2.17 Evaluation and Award: Once bids are received, they are examined by the Purchasing Division to ensure compliance with all specifications. When the Request for Quotation process is used, competitive bids are received, properly evaluated and an award is made to the **lowest responsible bidder** meeting specifications, in accordance with the **West Virginia Code §5A-3-11**.

Department of Military Affairs and Public Safety, Adjutant General and Armory Board:

- 1) During the fiscal year under review, Adjutant General and Armory Board spent a total of \$26,495.73 for stone and aggregate with Keystone Lime Company. In their response to the Inspection report, the agency stated that:

*We will establish a **Central Master Agreement** (open-end contract) for this commodity.*

Department of Education and the Arts, Division of Culture and History:

- 1) During the fiscal year under review, Division of Culture and History spent a total of \$42,250.00 for Historical Markers with Sewah Studios Inc. In their response to the Inspection report, the agency stated that:

*With respect to the additional notations in the report, "Any findings of Stringing **must** be answered with an explanation...", I offer the following regarding the matter of Issue 9, page 14 of the report, which states, "The pattern of transactions and amount spent with this vendor during the fiscal year could be construed as stringing." WVDCH regrets this situation and have taken all necessary measures to prevent this from occurring in the future. The workflow and standard operating systems are in place to provide ongoing monitoring of aggregate spend of the Agency. This includes expiration dates of all contracts, procurement of all commodities, service and vendors to determine purchasing thresholds and Agency Delegated Spending.*

Department of Transportation, Division of Highways, District 4:

- 1) During the fiscal year under review, Division of Highways, District 4 spent a total of \$25,877.53 in 59 transactions for heavy equipment parts with Best Line Equipment. In their response to the inspection report, the agency stated that:

District Four spent a total of \$25,877.53 in 59 transactions with this vendor, for an average purchase of \$438.60. We believe there was no intentional stringing in any of these purchases. District Four manages and services around 1,100 pieces of equipment that require thousands of dollars per year in unpredictable repairs and consumable items. Minimizing the down time of this fleet plays an essential part in maintaining our roads and bridges. The District is limited in the number of vendors that can efficiently supply certain needed parts, but does make attempts to purchase at the lowest possible price considering availability. In the future, we intend on performing a better job of properly educating our cardholders and devising a method to monitor ongoing purchases to avoid crossing delegated purchasing limits without applicable bids and proper documentation.

- 2) During the fiscal year under review, Division of Highways, District 4 spent a total of \$26,726.61 in 88 transactions for truck parts with CCC Truck Parts. In their response to the inspection report, the agency stated that:

District Four spent a total of \$26,726.61 in 88 transactions with this vendor, for an average purchase of \$303.71. This local vendor supplies parts needed when repairing the air brakes on equipment. Purchasing these items from other vendors much further away would likely incur substantial shipping costs added to the invoice, along with extending costly down time to our equipment. At the time, it was concluded to be in the best interests of our organization to purchase these products from CCC Truck Parts. Although some of these purchases lacked documentation of competitive bidding, there was certainly no intention of circumventing the bidding process or to trying to string our purchases. It appears as if this might be an area that would be best served by establishing an open-ended Agency contract, to allow for this volume of purchases.

- 3) During the fiscal year under review, Division of Highways, District 4 spent a total of \$25,110.80 in 15 transactions for bits with Equipment Express. In their response to the inspection report, the agency stated that:

District Four spent a total of \$25,110.80 in 15 transactions with this vendor, for an average purchase of \$1,674.05. These bits are known consumable product and need to be purchased under the protection of an agency open-end contract. We will begin addressing this problem and gathering the information that we need in order to build specifications to solicit bids.

- 4) During the fiscal year under review, Division of Highways, District 4 spent a total of \$157,777.36 in 470 transactions for equipment parts with Newlons International. In their response to the inspection report, the agency stated that:

District Four spent a total of \$157,777.36 in 470 transactions with this vendor, for an average purchase of \$335.70. Newlons supplies parts for the International make of trucks in our fleet. This vendor is currently used by all of the counties as well as our District Equipment Shop. With the majority of our repairs being unpredictable, and the absence of an Agency Contract to supply these parts, it is easy to see how these purchases could give the appearance of stringing. Again, we will work on devising a plan to monitor ongoing purchases in order to address these issues before they surpass our delegated purchasing limits. There was no intention of stringing any of the purchases under this finding. Better training and diligent oversight is the key.

- 5) During the fiscal year under review, Division of Highways, District 4 spent a total of \$31,189.75 in 84 transactions for equipment parts with Preston Parts. In their response to the inspection report, the agency stated that:

District Four spent a total of \$31,189.75 in 84 transactions with this vendor, for an average purchase of \$371.31. Preston County is located in a rural area and has limited access to auto parts stores, but we are not offering that as an excuse for not following the proper procedures for making these purchases. In the future, more effort will go into obtaining bids and following the proper purchasing path.

- 6) During the fiscal year under review, Division of Highways, District 4 spent a total of \$51,305.19 in 132 transactions for equipment parts with Quality Machine. In their response to the inspection report, the agency stated that:

District Four spent a total of \$51,305.19 on 132 transactions with this vendor, for an average purchase of \$388.68. Quality Machine is another local vendor who supplies raw steel materials and intricate fabrication services to provide customized parts that cannot be purchased commercially. Using this unique vendor eliminates a substantial amount of down time and costs that would be incurred if we pursued these services elsewhere. Our goal is to eliminate many of the purchases of raw steel materials that we can speculate needing and only obtain those through the formal bidding process. That should greatly reduce the amount spent with this vendor and allow us to continue to purchase the fabricated parts within the purchasing limits.

- 7) During the fiscal year under review, Division of Highways, District 4 purchased auto parts with the 11 vendors listed below. Total expenditures with these eleven vendors indicate that a series of requisitions or purchase orders were issued for the same or similar commodity or service for the amount of \$167,868.55. These expenditures include the following vendors:
- a. \$ 7,081.75 with Advanced Auto
 - b. \$ 1,822.42 with Autozone
 - c. \$31,403.96 with Chenoweth Ford
 - d. \$ 4,640.85 with Country Club Chrysler
 - e. \$15,912.98 with Fisher Auto Parts
 - f. \$14,382.19 with Freys Auto
 - g. \$ 1,916.92 with Grafton Auto Parts
 - h. \$ 4,702.39 with Jenkins Auto Parts
 - i. \$21,881.04 with Morgan Auto Parts
 - j. \$49,382.17 with Napa Auto Parts
 - k. \$14,741.88 with Scott Ford

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

District Four spent a total of \$167,868.55 with 11 different vendors in multiple transactions for the same or similar commodity. Once again, the area of auto parts is a massive thorn in the side of adherence to purchasing limits. Without an auto parts contract, it is nearly impossible to effectively operate within limits. These purchases were not intentionally strung, but do give the appearance of it on paper. We will closely monitor these purchases in the future and hopefully avoid surpassing the limits without following the proper process.

In the Purchasing Division's response to the agency comments, the Purchasing Division referenced *West Virginia Code §5A-3-10(b)*, *§5A-3-11*, and the *West Virginia Purchasing Division Procedures Handbook*:

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 and for any spending unit to award multiple contracts for the same or similar commodity or service to an individual vendor over any twelve-month period which exceeds \$25,000.00.

Reference West Virginia Code §5A-3-10(b)

Reference Section 3.7.1.2 of the Purchasing Procedure Handbook: Open-End Contracts:

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

Reference Section 6.2.17 Evaluation and Award: Once bids are received, they are examined by the Purchasing Division to ensure compliance with all specifications. When the Request for

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

Department of Transportation, Division of Highways, District 6:

- 1) During the fiscal year under review, Division of Highways, District 6 spent a total of \$63,536.39 in 140 transactions for truck parts and repairs from Matheny Motors.
- 2) During the fiscal year under review, Division of Highways, District 6 spent a total of \$27,635.36 in 206 transactions for equipment parts from Wheeling Rubber Products.
- 3) During the fiscal year under review, Division of Highways, District 6 spent a total of \$35,273.35 in 76 transactions for equipment parts and repairs from Wheeling Spring.
- 4) During the fiscal year under review, Division of Highways, District 6 spent a total of \$45,626.38 in 145 transactions for truck parts and repairs from WVOH Motor Sales.
- 5) During the fiscal year under review, Division of Highways, District 6 purchased auto parts with the 13 vendors listed below. Total expenditures with these eleven vendors indicate that a series of requisitions or purchase orders were issued for the same or similar commodity or service for the amount of \$166,833.35. These expenditures include the following vendors:
 - a. \$27,409.08 with Advanced Auto
 - b. \$ 4,016.16 with Auto Choice
 - c. \$26,508.33 with Autozone
 - d. \$ 6,907.13 with Bob Robinson Chevrolet
 - e. \$ 1,767.05 with Bridgeport Auto Parts
 - f. \$ 13,099.66 with Glen Dale Motors
 - g. \$ 6,256.31 with Jim Robinson Ford
 - h. \$ 13,904.06 with Morgan Auto Parts
 - i. \$ 4,177.77 with New Martinsville Auto Parts
 - j. \$ 25,370.02 with Team Ford
 - k. \$ 24,659.77 with Valley Auto Parts
 - l. \$ 4,914.08 with Weirton Auto Parts
 - m. \$ 7,843.93 with Wellsburg Auto Parts

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

These are broken up across locations and throughout the year for different purposes. This would require a large amount bids to be done. This will be communicated to employees and we will try to do better.

In the Purchasing Division's response to the agency comments, the Purchasing Division referenced *West Virginia Code §5A-3-11* and the *West Virginia Purchasing Division Procedures Handbook*:

Reference Section 3.7.1.2 of the Purchasing Procedure Handbook: Open-End Contracts:

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

Reference Section 6.2.17 Evaluation and Award: Once bids are received, they are examined by the Purchasing Division to ensure compliance with all specifications. When the Request for Quotation process is used, competitive bids are received, properly evaluated and an award is made to the **lowest responsible bidder** meeting specifications, in accordance with the **West Virginia Code** §5A-3-11.