

# POST AUDIT DIVISION

## LEGISLATIVE AUDIT REPORT

# Report on the Division of Highway's Continued Use of Bayliss & Ramey Contractors

## REPORT SUMMARY

- Finding 1: Bayliss & Ramey was Awarded DOH Contracts after the Company and its President Admitted to the Alleged Stealing of \$1.5 Million from DOH and the West Virginia Taxpayers
- Finding 2: The Legislative Auditor Recommends the State Purchasing Division Debar Bayliss & Ramey from Future State Contracts



JOINT COMMITTEE ON  
GOVERNMENT & FINANCE

*Note: On Monday, February 6, 2017, the Legislative Manager/ Legislative Auditor's wife, Ashley Summitt, began employment as the Governor's Deputy Chief Counsel. Most of the actions discussed and work performed in this report occurred prior to this date. Therefore, the Post Audit Division does not believe there are any threats to independence with regard to this report.*

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



GENERALLY ACCEPTED GOVERNMENT  
AUDITING STANDARDS STATEMENT

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards (GAGAS). 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.

POST AUDIT DIVISION  
Director, Denny Rhodes

# Notice of Modification of Audit Report.

The original report published August 20, 2017, misquoted the Division of Purchasing Acting Director. The misquote, was stated twice, once in Item #10 in the “expanded summary of events” on page 2, and again within the third paragraph on page 5. In the first instance containing the misquote on page 2, the audit report stated:

10. **W. Michael Sheets, Acting Director of the Purchasing Division, responds by letter to Delegate Gary Howell’s inquiry regarding whether Balyliss & Ramey should be debarred from bidding on State government contracts. In his letter, Mr. Sheets stated **that for the debarment statute to apply there “must be a conviction. A mere allegation, or even a plea is not sufficient....”****

The quote was corrected and the report amended to read as follows:

10. **W. Michael Sheets, Acting Director of the Purchasing Division responds by letter to Delegate Gary Howell’s inquiry regarding whether Bayliss & Ramey should be debarred from bidding on State government contracts. In his letter, Mr. Sheets stated “...It is important to note that for many of these grounds [for debarment] to apply, the statute requires a conviction. A mere accusation, allegation or even a plea is not sufficient....”**

In the second instance containing the misquote within the third paragraph on page 5, the audit report stated:

**As stated in the timeline above, the Acting Director of the State Purchasing Division stated that for the debarment statute to apply there “...must be a conviction. A mere accusation, allegation, or even a plea is not sufficient.” The Acting Director of the Purchasing Division is not correct. West Virginia Code 5A-3-33d, as amended, which lists the grounds for debarment by the Director of Purchasing, states in part:**

The first sentence containing the misquote, as well as the second sentence of the paragraph, were deleted in the amended report. Only the last sentence in the paragraph remains, as follows:

**West Virginia Code 5A-3-33d, as amended, which lists the grounds for debarment by the Director of Purchasing, states in part:**

The corrections were made and the report reuploaded to the West Virginia Legislative website on October 17, 2017.



Denny Rhodes, Post Audit Division, Director  
October 17, 2017



# POST AUDIT DIVISION

## POST AUDITS SUBCOMMITTEE MEMBERS

SENATE MEMBERS  
President, Mitch Carmichael  
Mike Hall  
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Tim Armstead, Speaker  
Timothy Miley  
Eric E. Nelson Jr.

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AUGUST 20, 2017  
LEGISLATIVE AUDIT REPORT  
REPORT UPDATED  
OCTOBER 17, 2017

## Report on the Division of Highway's Continued Use of Bayliss & Ramey Contractors

### POST AUDIT STAFF CONTRIBUTORS

Denny Rhodes ..... Director  
Stanley Lynch..... Deputy Director  
Nicholas Hamilton ..... Auditor

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# WEST VIRGINIA LEGISLATIVE AUDITOR'S OFFICE

*Post Audit Division*

1900 Kanawha Blvd. East, Room W-329  
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(304) 347-4880

**Denny Rhodes**  
Director



The Honorable Mitch Carmichael, President  
West Virginia State Senate  
Post Audits Subcommittee, Co-Chair  
Room 229 M, Building 1  
State Capitol Complex  
Charleston, WV 25306

The Honorable Timothy Armstead, Speaker  
West Virginia House of Delegates  
Post Audits Subcommittee, Co-Chair  
Room 228 M, Building 1  
State Capitol Complex  
Charleston, WV 25306

Dear Mr. President and Mr. Speaker:

In compliance with the provisions of the West Virginia Code, Chapter 4, Article 2, as amended, the Legislative Auditor conducted an audit of active contracts between Bayliss & Ramey Inc., and the Division of Highways. The audit scope was limited to determining whether Bayliss & Ramey Inc., should have been debarred from bidding on contracts issued by the State.

The audit disclosed certain findings, which are detailed in this report. The Division of Highways' and the Division of Purchasing's management responses to the audit findings are included at the end of the report.

Respectfully submitted,

A handwritten signature in blue ink that reads "Denny Rhodes".

Denny Rhodes





## BACKGROUND: Bayliss & Ramey, Inc., and its Former President’s Involvement in a \$1.5 Million Fraudulent Scheme Perpetrated Against the Division of Highways

*Bayliss & Ramey, Inc.*, is a highway electrical contractor specializing in the installation and repair of traffic signals, highway lighting, and hi-tech roadway messaging systems. We reviewed the financial information of the West Virginia Division of Highways (DOH) and noted DOH has several on-going contracts with Bayliss & Ramey. **Three of these contracts were dated after Mark R. Whitt, former President of Bayliss & Ramey, pleaded guilty to his role in the kickback scheme that allegedly caused \$1.5 million worth of DOH projects to be illegally diverted to Dennis Corporation, a South Carolina engineering consulting firm.**

What follows is a timeline of events involving Mr. Whitt, Bayliss & Ramey, and their dealings with the DOH:

### Department of Highways Contract History

*With Bayliss & Ramsey*



An expanded summary of events involving Mr. Whitt, Bayliss & Ramey, and their dealings with the DOH:

1. October 27, 2016: Janice Whitt, President of Bayliss & Ramey, signs a **Deferred Prosecution Agreement** leading to the filing of a felony charge against the firm in the United States District Court for the Northern District of West Virginia. In the agreement, Bayliss and Ramey acknowledged that through the conduct of its then-president Mark R. Whitt “...B&R engaged in, and is criminally culpable for, the charged violation” of “Conspiracy to Commit Wire Fraud” against the DOH. Furthermore, the terms also specify that Bayliss and Ramey will not contradict its acceptance of responsibility in any public statement, in litigation or otherwise.

2. December 13, 2016: Mark R. Whitt, the former President of Bayliss & Ramey, pleads guilty to one count of Wire Fraud Conspiracy.
3. March 20, 2017: Bayliss & Ramey files an application with the Office of the West Virginia Secretary of State to remove Mark Whitt and install Janice Whitt (his spouse) as President of the company.
4. March 23, 2017: DOH enters into a contract for \$399,984 with Bayliss & Ramey for the installation of various signage devices on U.S. Route 50 in Doddridge County.
5. March 23, 2017: DOH enters into a contract for \$137,361.50 with Bayliss & Ramey for a traffic signal in Mineral County.
6. April 5, 2017: DOH enters into a contract for \$62,862 with Bayliss & Ramey to obtain lighting for the Buffalo Bridge in Putnam County.
7. June 8, 2017: Mark Whitt emails DOH representatives informing them that he will be the “emergency contact” for Bayliss & Ramey and all “emergency callout will need to be called in to [him].”
8. June 15, 2017: Jonathan Storage, DOH General Counsel, writes W. Michael Sheets, Acting Director for the West Virginia State Purchasing Division. In the letter, Mr. Storage recounts in detail the federal prosecution of Bayliss & Ramey and its former president, Mark Whitt. Mr. Storage adds that Mr. Whitt pleaded guilty to “the charges against him” even though he continues to work for the company as its “ITS Coordinator Estimator.” After citing the W. Va. Code sections relating to debarment of vendors, Mr. Storage requested the Purchasing Division “determine what appropriate action should be taken on the information provided.”
9. June 21, 2017: Aaron Allred, Legislative Auditor, writes W. Michael Sheets, Acting Director of the Purchasing Division, citing the acknowledgement of Bayliss & Ramey to criminal culpability and written acceptance of responsibility for the acts alleged against it. This letter also cited the provisions of W. Va. Code §5A-3-33d(8) for statutory grounds for debarment. The Legislative Auditor then asked if Acting Director Sheets would make a decision whether to initiate debarment proceedings against Bayliss & Ramey.
10. W. Michael Sheets, Acting Director of the Purchasing Division responds by letter to Delegate Gary Howell’s inquiry regarding whether Bayliss & Ramey should be debarred from bidding on State government contracts. In his letter, Mr. Sheets stated “...It is important to note that for many of these grounds [for debarment] to apply, the statute requires a conviction. A mere accusation, allegation or even a plea is not sufficient....”

11. June 23, 2017: W. Michael Sheets, Acting Director of the Purchasing Division, responds by letter to the Legislative Auditor's June 21, 2017 letter of inquiry. In his reply, Acting Director Sheets states that "the enclosed response to Delegate Howell will answer all your questions but one" (see #10 above). The remaining question asked whether the Purchasing Division had existing contracts with Bayliss & Ramey. In response, the Acting Director stated the Division "...reviewed its records and found no active contracts with Bayliss & Ramey, Inc."
12. June 28, 2017: Mark Whitt emails various DOH contacts and copies Janice Whitt, President of Bayliss & Ramey. Mr. Whitt states that Richard Jacobs is no longer working for Bayliss & Ramey and that if the DOH has any questions to contact either Janice Whitt or him. (**See Attachment A**).
13. June 29, 2017: W. Michael Sheets, Acting Director of the Purchasing Division replies to DOH General Counsel Jonathan Storage's inquiry (see #8 above). In his reply, Acting Director Sheets states that West Virginia Code §5A-3-33d "lists eight grounds for debarment. Of those eight, four require convictions, one rests on circumventing or avoiding the use of sealed bids, one rests on breach of contract, and the two others appear to be inapplicable." The Acting Director did add that debarment may be warranted; however, to do so the Purchasing Division would require more information be provided.

**Finding 1: Bayliss & Ramey was Awarded DOH Contracts after the Company and its President Admitted to the Alleged Stealing of \$1.5 Million from DOH and the West Virginia Taxpayers**

The events documented in the timeline clearly show that: (A) Bayliss and Ramey admitted to engaging in, and being criminally culpable for, conspiracy to commit wire fraud; (B) DOH awarded three contracts totaling more than \$600,000 to Bayliss & Ramey subsequent to this admission of culpability; and (C) Mark Whitt, after pleading guilty to his part in a wire fraud conspiracy that allegedly defrauded DOH out of \$1.5 million, remains an integral part of Bayliss & Ramey's operations by functioning as DOH's principle "emergency contact."

Title 157, Series 3, Section 13.2 of DOH's Legislative Rule states in part:

13.2. Disqualification. The Commissioner may, in his or her sole discretion, disqualify a pre-qualified contractor or its affiliates from bidding on division contracts for any of the following causes:

13.2.b. Conviction, judgment or **admission of any other crime for an illegal act(s) that pertains to competition for or performance of contract work for the division. (Emphasis Added)**

Certainly, the admission of culpability by the company and the entered guilty plea of the company's former President in the kickback scheme qualifies as "...an admission of any other crime that pertains to competition for or performance of contract work..." as stipulated in the Rule. Therefore, DOH should have disqualified Bayliss & Ramey from bidding on the three contracts that were awarded to the company after the company admitted to being culpable in the *Deferred Prosecution Agreement* and Mark Whitt pleaded guilty to one count of wire fraud conspiracy.

Although Mark Whitt must pay restitution to the State, the firm of Bayliss & Ramey does not have to make restitution of any kind. Bayliss and Ramey, Inc., is a closely-held corporation. Mr. Whitt is still employed with the company<sup>1</sup>. His wife, Janice Whitt, is now President of the company as well as the company's Secretary and Director. Mark Whitt's brother, Paul Allen Whitt, is the Vice President and Treasurer for the company. **Under these circumstances, it is clear that future profits and receipts will continue to flow to Mark Whitt's family.** Since July 1, 2014, the State has paid Bayliss & Ramey approximately \$12.7 million.

***Recommendation 1:***

The Legislative Auditor recommends the Division of Highways comply with Title 157, Series 3, Section 13.2 of its Legislative Rule and immediately disqualify Bayliss & Ramey from bidding on any future Division contracts. The Legislative Auditor also requests the attendance of Division of Highways management during the September Post Audit Subcommittee interim meeting to report on the status of disqualification proceedings for Bayliss & Ramey.

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<sup>1</sup> Mr. Whitt sent an email to the DOH on August 16, 2017 stating that "As of tomorrow, August 17, 2017, [he] will no longer be an employee of Bayliss & Ramey, Inc...."

**Finding 2: The Legislative Auditor Recommends the State Purchasing Division Debar Bayliss & Ramey from Future State Contracts**

It seems implausible that the State and DOH would continue to conduct business with a company and an individual that have admitted guilt in an illegal kickback scheme that allegedly defrauded the DOH out of \$1.5 million. Yet, this is exactly the current situation.

West Virginia Code §5A-1-1(3) defines “debarment” as “...the exclusion of a vendor from the right to bid on contracts to sell goods or supply services to the state or its subdivisions for a specified period of time...” However, debarment proceedings were not initiated against Bayliss & Ramey after the company publicly admitted culpability in the *Deferred Prosecution Agreement* and the former President of the company pleaded guilty to the fraudulent scheme perpetrated against the DOH. Consequently, after the date of the *Deferred Prosecution Agreement* and the date the guilty plea was entered, the company was permitted to bid on, and be awarded, three contracts valued at just over \$600,000.

West Virginia Code §5A-3-33e(a) provides that the Director of Purchasing may initiate State vendor debarment proceedings “if he or she finds probable cause for debarment for any ground set forth in section thirty-three-d.” This condition allows for the Director to use his or her discretion in determining debarment and does **not** require a State agency to demand debarment.

West Virginia Code 5A-3-33d, as amended, which lists the grounds for debarment by the Director of Purchasing, states in part:

- (8) Violation of the terms of a public contract or subcontract for:...
- (E) Any other cause of a serious and compelling nature amounting to **knowing and willful misconduct of the vendor that demonstrates a wanton indifference to the interests of the public and that caused, or that had a substantial likelihood of causing serious harm to the public. (Emphasis Added)**

For the above statute to apply for debarment, Bayliss & Ramey must be in “...violation of the terms of a public contract...” with DOH. The various contracts entered between the DOH and Bayliss & Ramey include the standard condition that the “[c]ontractor agrees to conform to the laws of the State of West Virginia...” Although the criminal prosecution of Bayliss & Ramey was based on federal statute, the company admitted and accepted responsibility for violating State laws as part of the conspiracy as spelled out in the *Deferred Prosecution Agreement*. In doing so, Bayliss & Ramey has admitted to violating State laws, in breach of their contract with DOH.

The scheme involving Bayliss & Ramey was an intentional violation of the competitive bidding laws of the State and since the company marked up the actual cost of the work invoices, the State ended up paying far more for these services. This certainly seems to demonstrate a “**wanton indifference**” and “**serious harm to the public.**”

***Recommendation 2:***

Under the provisions of West Virginia Code §5A-3-33c(e) the Director of Purchasing has a legal duty of “[i]nitiating and conducting debarment procedures” for State vendors. Therefore, in accordance with the legal duty of the Director of Purchasing and in light of what seems to be clear grounds for debarment, the Legislative Auditor recommends the State Purchasing Division **immediately initiate proceedings to debar Bayliss & Ramey from bidding on future State contracts** for violation of subdivision (8) of West Virginia Code 5A-3-33d, as quoted above. The Legislative Auditor also requests the attendance of Division of Purchasing management during the September Post Audit Subcommittee interim meeting to report on the status of debarment proceedings for Bayliss & Ramey.

**Update 1 – Debarment Proceedings:**

After various inquiries were made by the Legislative Auditor and others to the Acting Director of the Division of Purchasing concerning whether the Division intended to debar Bayliss & Ramey, the Purchasing Division commenced debarment proceedings. In separate letters dated August 9, 2017, the Acting Director informed Janice Whitt, President of Bayliss & Ramey, Inc. and Daniel Dennis, President of Dennis Corporation, that the Division of Purchasing “...is initiating debarment proceedings...” against Bayliss & Ramey and Dennis Corporation. In addition, the Purchasing Division sent individual debarment letters also dated August 9, 2017, informing the following persons that the Division has initiated debarment proceedings against them: Mark R. Whitt, Andrew P. Nichols, Bruce E. Kenny, III, James Travis Miller, and Daniel R. Dennis, III. Per the letters, these individuals entered guilty pleas to various charges connected to illegal activities related to “procurement contracts with the State of West Virginia.”

**Update 2 – Performance Bond:**

The fraud against the Division of Highways (DOH) was perpetrated through an open-ended contract DOH entered with Bayliss & Ramey, Inc., in 2009 (P.O #859C3021). Through this contract, Bayliss & Ramey billed DOH for \$1.5 million in services allegedly provided by Dennis Corporation that were not performed. Bayliss & Ramey posted a performance bond for \$819,150.00 for the contract with the Purchasing Division of the Department of Administration (DOP) that apparently is still being held by the DOP. The Legislative Auditor inquired from the Department of Administration if the DOP had instituted legal proceedings to collect as much as is legally permissible in order to recover some portion of the monies from which the DOH was defrauded. In his written response dated August 18, 2017, the Cabinet Secretary for the Department of Administration stated that “...a recovery for fraudulent actions is not appropriate under a performance bond...” Attorneys for Legislative Services will continue to research this issue and the Legislative Auditor will report on the conclusions of the Legislative Attorneys during the September interim meeting of the Post Audits Subcommittee.

## APPENDIX A

### Authority, Objectives, Scope, and Methodology

#### Authority

The Post Audit Division within the Office of the Legislative Auditor conducted this review as authorized by Chapter 4, Article 2, Section 5 of the West Virginia Code, as amended. The Post Audit Division of the Office of the Legislative Auditor is organized under the Legislative Branch of the State and the audits are reported to the Legislative Post Audits Subcommittee. This organizational structure has historically allowed the Division to be organizationally independent when audits are performed on an agency, board, or program of the Executive Branch of the State.

#### Scope

The scope of the audit included conducting research of WV Code, Legislative Rules and Division of Highways (DOH) policies related to debarment and/or disqualification of vendors. Also, the scope included an examination of DOH documents that support the awarding of State contracts, as well as payments made by State agencies to Bayliss & Ramey, after the date the company acknowledged in a *Deferred Prosecution Agreement* that it was criminally culpable for “conspiracy to commit wire fraud.” In addition, since the former President of Bayliss & Ramey pleaded guilty to wire fraud conspiracy related to defrauding the DOH, the scope included reviewing available documents indicating the level of involvement of the former Bayliss & Ramey President in the company’s transactions and communications with DOH. Lastly, our scope includes determining if the State, through the DOP, has legal remedy to collect as much as is lawfully permissible in order to recover all or a portion of the monies that was defrauded from DOH.

#### **Objective 1**

Determine if any laws or policies were violated by the Division of Highways (DOH) or the Department of Administration’s Purchasing Division (DOP) in permitting Bayliss & Ramey, Inc., to submit bids and be awarded DOH contracts after Bayliss & Ramey entered into the *Deferred Prosecution Agreement* with the United States District Court for the Northern District of West Virginia

#### Methodology for Objective

To achieve our objective, we obtained the following:

- (1) DOH fiscal year 2009 open-ended contract with B&R
- (2) The Deferred Prosecution Agreement between United States District Court for the Northern District of West Virginia and Bayliss and Ramey, Inc.



- (3) All active contracts, as of August 2, 2017, between DOH and Bayliss & Ramey
- (4) Various letter and email correspondence with or about Bayliss & Ramey
- (5) Recent newspaper and internet articles concerning the Bayliss & Ramey fraud scheme
- (6) A wvOasis report documenting all State agency payments to Bayliss & Ramey since July 1, 2014
- (7) WV Code §5A-3-33C, §5A-3-33D, and §5A-3-33E
- (8) Legislative Rule Title 157, Series 3

To achieve our objective, we reviewed current contracts between DOH and Bayliss & Ramey to determine if contracts were entered into after the company signed the *Deferred Prosecution Agreement*. Once we verified three contracts were awarded to Bayliss & Ramey after the date of the *Deferred Prosecution Agreement*, we researched WV Code and Legislative Rules to ascertain if any laws or rules were violated in connection with the awarding of these contracts. We also reviewed emails and other correspondence to determine if the former President, who pleaded guilty to fraud in December of 2016, remained as a Bayliss & Ramey contract person for DOH after the plea.

## Objective 2

Determine if the Division of Purchasing is in possession of a performance bond and a labor & materials bond for the open-ended contract (P.O.#859C3021) that was used by Bayliss & Ramey, Inc., to fraudulently steal approximately \$1.5 million from DOH.

### Methodology for Objective

To achieve our objective, a letter of inquiry was mailed to the Secretary of the Department of Administration on August 17, 2017. In his August 18, 2017 reply, the Secretary stated that the Division of Purchasing is in possession of the bonds.

## Objective 3

Determine if the Division of Purchasing instituted legal proceedings to collect on either the *performance bond* and/or the *labor & materials bond* in order to recover all or some of the losses incurred due to the fraud committed by B&R.

### Methodology for Objective

In his August 18, 2017 letter, the Secretary of the Department of the Administration stated that "...a recovery of fraudulent actions is not appropriate under of a performance bond or a labor/materials payment bond." Based on our research, this statement would seem to be accurate; however, attorneys for Legislative Services will continue to research this issue. According to the Director of the DOH Legal Division, DOH is exploring whether to require contractors to post a **fidelity bond** as DOH insurance against losses due to fraud perpetrated by contractors.

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**From:** Mark Whitt <MWhitt@baylissandramey.com>  
**Sent:** Wednesday, June 28, 2017 2:34 PM  
**To:** DOT DT Traffic Maintenance Contract; Cramer, Cindy L; Hardy, Donna J; Krofcheck, Brandi G; Skiles, Matthew H; Ellars, Daniel L  
**Cc:** Janice Whitt  
**Subject:** Richard jacobs

To all it may concern

I was ask to inform you that Richard Jacobs has resigned and is no longer working for Bayliss & Ramey, Inc.

If u have any question feel free to contact Janice Whitt or myself.

Thank you and we wish him well on his future endeavors

*Mark R. Whitt*

**ITS Coordinator / Estimator**  
**BAYLISS & RAMEY, INC.**  
**Electrical Contractors**  
PO Box D  
145 Vaughan Drive  
Fraziers Bottom, WV 25082  
O: 304-937-3900  
F: 304-937-3901  
[mwhitt@baylissandramey.com](mailto:mwhitt@baylissandramey.com)



Attachment B

STATE OF WEST VIRGINIA  
DEPARTMENT OF ADMINISTRATION

JIM JUSTICE  
GOVERNOR

JOHN A. MYERS  
CABINET SECRETARY

August 18, 2017

Denny Rhodes  
Director, Post Audit Division  
West Virginia Legislative Auditor's Office  
1900 Kanawha Boulevard East  
Building 1, Room E-119  
Charleston, WV 25305

Joint Committee

AUG 18 2017

Post Audit Committee

**Re: Response to Post Audit Report on Bayliss & Ramey Debarment**

Mr. Rhodes,

In your letter dated August 9, 2017, you requested a written response to the above-referenced report. In response, I would point out that item 10 of the timeline included in your report misquotes the Purchasing Division Acting Director. Your letter states that "Mr. Sheets stated that for the debarment statute to apply there . . . must be a conviction. A mere accusation, allegation, or even a plea is not sufficient." This misquote implies that the Purchasing Division believed that no other grounds for debarment existed in spite of your prior letter pointing out the opposite. What Mr. Sheets actually wrote is:

*"As you noted in your letter, fraudulent schemes like the one at issue may constitute grounds for vendor debarment under W. Va. Code § 5A-3-33d. It is important to note that for many of these grounds to apply, the statute requires a conviction."*

Mr. Sheets also wrote that

*"The Purchasing Division recognizes that a few grounds for debarment do not require a conviction and those grounds will certainly be alleged were appropriate. The strongest case for securing debarment of all involved parties, however, rests on the grounds that require conviction."*

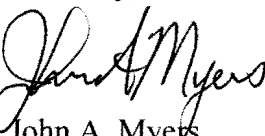
A copy of the letter with these paragraphs highlighted is attached for your verification.

At no time did the Purchasing Division state or even imply that all debarment grounds require conviction. What the Purchasing Division did state is that conviction provided the strongest case

Denny Rhodes  
August 18, 2017  
Page Two

for securing a debarment. Given the circumstances, however, the Purchasing Division moved forward on lesser grounds.

To avoid this issue in the future, the Purchasing Division would request that the debarment statute be amended to include such items as guilty pleas and deferred prosecution agreements where wrong doing is admitted. The Purchasing Division hopes to provide a draft of a revised debarment statute for legislative consideration during the next session.

Sincerely,  
  
John A. Myers  
Cabinet Secretary

JM/cjn

Attachment



JIM JUSTICE  
GOVERNOR

STATE OF WEST VIRGINIA  
DEPARTMENT OF ADMINISTRATION  
PURCHASING DIVISION  
2019 WASHINGTON STREET, EAST  
CHARLESTON, WEST VIRGINIA 25305-0130

JOHN A. MYERS  
CABINET SECRETARY  
W. MICHAEL SHEETS  
ACTING DIRECTOR

June 22, 2017

The Honorable Gary Howell  
West Virginia House of Delegates  
Building 1, Room 213-E  
1900 Kanawha Boulevard, East  
Charleston, WV 25305

**Re: Debarment Resulting from Guilty Plea in DOH Kickback Scheme**

Dear Delegate Howell,

Your letter to Mr. David Tincher dated June 14, 2017, was received by the Purchasing Division on June 19, 2017 and forwarded to my attention as the Acting Director of the State's Purchasing Division. Director Tincher made the decision to retire this spring after nearly 40 years of service to the State of West Virginia.

In your letter, you inquire about actions that have been or will be taken against individuals and related firms that have been involved in a kickback scheme reported by Eric Eyre on June 12, 2017. The Purchasing Division has been following the progress of the criminal investigation and prosecution for some time. The Purchasing Division has worked closely with the Legislature's Commission on Special Investigations on this and many other matters involving wrong doing in the public procurement arena. The Purchasing Division is also working with legal counsel from the Department of Transportation on this issue.

At this time, it is my understanding that guilty pleas have been entered by four individuals connected with the kickback scheme. Court records also indicate that Bayliss & Ramey signed a deferred prosecution agreement with the United States Attorney's Office. Sentencing is currently scheduled for July 31, 2017.

As you noted in your letter, fraudulent schemes like the one at issue may constitute grounds for vendor debarment under W. Va. Code § 5A-3-33d. It is important to note that for many of these grounds to apply, the statute requires a conviction. A mere accusation, allegation, or even a plea is not sufficient. The Purchasing Division's General Counsel has advised me that a guilty plea in a criminal case can change and does not represent a conviction until the case is finalized. In fact, Orders entered by the United States District Court for the Southern District of West

Virginia in the case against Bruce E. Kenny, James Travis Miller, and Mark Rudolph Whitt all state that “The Court . . . will defer adjudging the defendant GUILTY of the crime charged . . . until the time of sentencing.” In other words, conviction will not occur until sentencing has been completed on July 31, 2017.

The Purchasing Division recognizes that a few grounds for debarment do not require conviction and those grounds will certainly be alleged were appropriate. The strongest case for securing debarment of all the involved parties, however, rests on the grounds that require conviction. Accordingly, the Purchasing Division will pursue formal debarment proceedings once the criminal proceedings have been finalized, and convictions entered. The debarment proceedings will be conducted in accordance with the procedure and timelines prescribed in West Virginia Code §§ 5A-3-33b – 33f and the West Virginia Code of State Rules § 148-1-5.5.

Sincerely,



W. Michael Sheets, CPPO  
Acting Director  
West Virginia Purchasing Division

cc: *The Honorable Craig Blair, West Virginia Senate*  
*Aaron Allred, Legislative Auditor* ✓  
*Kelli Talbott, Deputy Attorney General, Office of Attorney General*  
*John Myers, Cabinet Secretary, Department of Administration*



POST AUDITS SUBCOMMITTEE  
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