WEST VIRGINIA CODE: §18B-5-4

§18B-5-4. Purchase or acquisition of materials, supplies, equipment, services, and printing.

(a) The council, commission, and each governing board shall purchase or acquire all materials, supplies, equipment, services, and printing required for their respective needs: Provided, That the governing boards under the jurisdiction of the commission, including the exempted schools, are subject to §18B-5-4(d) of this code.

(b) The commission and council jointly shall adopt rules governing and controlling acquisitions and purchases in accordance with this section: Provided, That these rules do not apply to the exempted schools and the governing boards of the exempted schools shall adopt their own rules consistent with this section: Provided, however, That the joint rules shall provide for appropriate deference to the value judgments of governing boards under the jurisdiction of the commission. The rules shall ensure that the following procedures are followed:

(1) No person is precluded from participating and making sales thereof to the council, commission, or governing board except as otherwise provided in §18B-5-5 of this code. Providing consulting services such as strategic planning services does not preclude or inhibit the governing boards, council, or commission from considering a qualified bid or response for delivery of a product or a commodity from the individual providing the services;

(2) Specifications are established and prescribed for materials, supplies, equipment, services, and printing to be purchased;

(3) Purchase order, requisition, or other forms as may be required are adopted and prescribed;

(4) Purchases and acquisitions in such quantities, at such times and under contract, are negotiated for and made in the open market or through other accepted methods of governmental purchasing as may be practicable in accordance with general law;

(5) Bids are advertised on all purchases exceeding $50,000 and made by means of sealed or electronically submitted bids and competitive bidding or advantageous purchases effected through other accepted governmental methods and practices. Competitive bids are not required for purchases of $50,000 or less;

(6) Notices for acquisitions and purchases for which competitive bids are being solicited are posted either in the purchasing office of the specified institution involved in the purchase or by electronic means available to the public at least five days prior to making the purchases. The rules shall ensure that the notice is available to the public during business hours;

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(7) Purchases are made in the open market;

(8) Vendors are notified of bid solicitation and emergency purchasing; and

(9) No fewer than three bids are obtained when bidding is required, except if fewer than three bids are submitted, an award may be made from among those received.

(c) When a state institution of higher education submits a contract, agreement, or other document to the Attorney General for approval as to form as required by this chapter, the following conditions apply:

(1) "Form" means compliance with the Constitution and statutes of the State of West Virginia;

(2) The Attorney General does not have the authority to reject a contract, agreement, or other document based on the substantive provisions in the contract, agreement, or document or any extrinsic matter as long as it complies with the Constitution and statutes of this state;

(3) Within 15 days of receipt, the Attorney General shall notify the appropriate state institution of higher education in writing that the contract, agreement, or other document is approved or disapproved as to form. If the contract, agreement, or other document is disapproved as to form, the notice of disapproval shall identify each defect that supports the disapproval; and

(4) If the state institution elects to challenge the disapproval by filing a writ of mandamus or other action and prevails, then the Attorney General shall pay reasonable attorney fees and costs incurred.

(d) Pursuant to this subsection, the governing boards under the jurisdiction of the commission, including the exempted schools, respectively, may carry out the following actions:

(1) Purchase or acquire all materials, supplies, equipment, services, and printing required for the governing board without approval from the commission or the Vice Chancellor for Administration and may issue checks in advance to cover postage as provided in §18B-5-4(f) of this code;

(2) Purchase from cooperative buying groups, consortia, the federal government or from federal government contracts, or from West Virginia public institution of higher education contracts, if the materials, supplies, services, equipment, or printing to be purchased is available from these groups and if this would be the most financially advantageous manner of making the purchase;

(3) Select and acquire by contract or lease all grounds, buildings, office space, or other space, and capital improvements, including equipment, if the rental is necessarily required

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by the governing board; and

(4) Use purchase cards.

(e) The governing boards shall adopt sufficient accounting and auditing procedures and promulgate and adopt appropriate rules subject to §18B-1-6 of this code to govern and control acquisitions, purchases, leases, and other instruments for grounds, buildings, office, or other space, and capital improvements, including equipment, or lease-purchase agreements.

(f) The council, commission, or each governing board may issue a check in advance to a company supplying postage meters for postage used by that board, the council, or commission and by the state institutions of higher education under their jurisdiction.

(g) When a purchase is to be made by bid, any or all bids may be rejected. However, all purchases based on advertised bid requests shall be awarded to the lowest responsible bidder taking into consideration the qualities of the articles to be supplied, their conformity with specifications, their suitability to the requirements of the governing boards, council, or commission and delivery terms.

(h) The governing boards, council, and commission shall maintain a purchase file, which shall be a public record and open for public inspection.

(1) After the award of the order or contract, the governing boards, council, and commission shall indicate upon the successful bid the following information:

(A) Designation as the successful bid;

(B) The reason any bids were rejected; and

(C) The reason for rejection, if the mathematical low vendor was not awarded the order or contract.

(2) A record in the purchase file may not be destroyed without the written consent of the Legislative Auditor. Those files in which the original documentation has been held for at least one year and in which the original documents have been reproduced and archived on microfilm or other equivalent method of duplication may be destroyed without the written consent of the Legislative Auditor.

(3) All files, no matter the storage method, shall be open for inspection by the Legislative Auditor upon request.

(i) The commission and council, also jointly, shall promulgate rules to prescribe qualifications to be met by any person who is to be employed as a buyer at a state college and university or community and technical college pursuant to this section. These rules shall require that a person may not be employed as a buyer unless that person, at the time of

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employment, has one of the following qualifications:

(1) Is a graduate of an accredited college or university; or

(2) Has at least four years' experience in purchasing for any unit of government or for any business, commercial, or industrial enterprise.

(j) Any person making purchases and acquisitions pursuant to this section shall execute a bond in the penalty of $50,000, payable to the State of West Virginia, with a corporate bonding or surety company authorized to do business in this state as surety thereon, in form prescribed by the Attorney General and conditioned upon the faithful performance of all duties in accordance with this section and sections five through eight, inclusive, of this article and the rules of the governing board and the council and commission. In lieu of separate bonds for these buyers, a blanket surety bond may be obtained. The bond shall be filed with the Secretary of State and the cost of the bond shall be paid from funds appropriated to the applicable governing board or the council or commission.

(k) All purchases and acquisitions shall be made in consideration and within limits of available appropriations and funds and in accordance with applicable provisions of §5A-2-1 et seq. of this code relating to expenditure schedules and quarterly allotments of funds. Notwithstanding any other provision of this code to the contrary, only those purchases exceeding the dollar amount for competitive sealed bids in this section are required to be encumbered. Such purchases may be entered into the state's centralized accounting system by the staff of the commission, council, or governing boards to satisfy the requirements of §5A-2-1 et seq. of this code to determine whether the amount of the purchase is within the quarterly allotment of the commission, council, or governing board, is in accordance with the approved expenditure schedule and otherwise conforms to the article: Provided, That, notwithstanding the foregoing provisions of this subsection or any other provision of this code to the contrary, purchases by exempted schools are not required to be encumbered.

(l) The governing boards, council, or commission may make requisitions upon the State Auditor for a sum to be known as an advance allowance account, not to exceed five percent of the total of the appropriations for the governing board, council, or commission, and the State Auditor shall draw a warrant upon the Treasurer for those accounts. All advance allowance accounts shall be accounted for by the applicable governing board or the council or commission once every 30 days or more often if required by the State Auditor.

(m) Contracts entered into pursuant to this section shall be signed by the applicable governing board or the council or commission in the name of the state and shall be approved as to form by the Attorney General. A contract which requires approval as to form by the Attorney General is considered approved if the Attorney General has not responded within 15 days of presentation of the contract. A contract or a change order for that contract and notwithstanding any other provision of this code to the contrary, associated documents such as performance and labor/material payments, bonds, and certificates of insurance which use terms and conditions or standardized forms previously approved by the Attorney General

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and do not make substantive changes in the terms and conditions of the contract do not require approval as to form by the Attorney General. The Attorney General shall make a list of those changes which he or she considers to be substantive and the list, and any changes to the list, shall be published in the State Register. A contract that exceeds the dollar amount requiring competitive sealed bids in this section shall be filed with the State Auditor. If requested to do so, the governing boards, council, or commission shall make all contracts available for inspection by the State Auditor. The governing board, council, or commission, as appropriate, shall prescribe the amount of deposit or bond to be submitted with a bid or contract, if any, and the amount of deposit or bond to be given for the faithful performance of a contract.

(n) If the governing board, council, or commission purchases or contracts for materials, supplies, equipment, services, and printing contrary to §18B-5-4 through §18B-5-7 of this code or the rules pursuant to this article, the purchase or contract is void and of no effect.

(o) A governing board or the council, or commission, as appropriate, may request the director of purchasing to make available the facilities and services of that department to the governing boards, council, or commission in the purchase and acquisition of materials, supplies, equipment, services, and printing. The director of purchasing shall cooperate with that governing board, council, or commission, as appropriate, in all such purchases and acquisitions upon that request.

(p) Each governing board or the council, or commission, as appropriate, may permit affiliated organizations, state institutions of higher education, or private institutions of higher education to join as purchasers on purchase contracts for materials, supplies, services, and equipment entered into by that governing board or the council, or commission. An affiliated organization, state institution of higher education, or private institution desiring to join as purchaser on purchase contracts shall file with that governing board or the council or commission, as appropriate, an affidavit signed by the president or designee of the affiliated organization, state institution of higher education, or private institution requesting that it be authorized to join as purchaser on purchase contracts of that governing board or the council, or commission, as appropriate. The affiliated organization, state institution of higher education, or private institution shall agree that it is bound by such terms and conditions as that governing board or the council, or commission may prescribe and that it will be responsible for payment directly to the vendor under each purchase contract.

(q) Notwithstanding any other provision of this code to the contrary, the governing boards, council, and commission, as appropriate, may make purchases from cooperative buying groups, consortia, the federal government or from federal government contracts if the materials, supplies, services, equipment, or printing to be purchased is available from that source, and purchasing from that source would be the most financially advantageous manner of making the purchase.

(r) An independent performance audit of all purchasing functions and duties which are performed at any state institution of higher education shall be performed at least once in

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each three-year period. The Joint Committee on Government and Finance shall require a performance audit and the governing boards, council, and commission, as appropriate, are responsible for paying the cost of the audit from funds appropriated to the governing boards, council, or commission.

(1) The governing board shall provide for independent performance audits of all purchasing functions and duties on its campus at least once in each three-year period.

(2) Each audit shall be inclusive of the entire time period that has elapsed since the date of the preceding audit.

(3) Copies of all appropriate documents relating to any audit performed by a governing board shall be furnished to the Joint Committee on Government and Finance and the Legislative Oversight Commission on Education Accountability within 30 days of the date the audit report is completed.

(s) The governing boards shall require each institution under their respective jurisdictions to notify and inform every vendor doing business with that institution of §5A-3-54 of this code, also known as the Prompt Pay Act of 1990.

(t) Consultant services, such as strategic planning services, do not preclude or inhibit the governing boards, council, or commission from considering any qualified bid or response for delivery of a product or a commodity because of the rendering of those consultant services.

(u) Purchasing card use may be expanded by the council, commission, and state institutions of higher education pursuant to this subsection.

(1) The council and commission jointly shall establish procedures to be implemented by the council, commission, and any state college and university or community and technical college using purchasing cards. The governing boards of the exempted schools shall establish procedures to be implemented by their respective institutions. The procedures shall ensure that each meets the following conditions:

(A) Appropriate use of the purchasing card system;

(B) Full compliance of §12-3-1 et seq. of this code relating to the purchasing card program; and

(C) Sufficient accounting and auditing procedures for all purchasing card transactions.

(2) Notwithstanding any other provision of this code to the contrary, the council, commission, and any institution authorized pursuant to §18B-5-4(u)(3) of this code may use purchasing cards for the following purposes:

(A) Payment of travel expenses directly related to the job duties of the traveling employee, including, but not limited to, fuel and food; and

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(B) Payment of any routine, regularly scheduled payment, including, but not limited to, utility payments and real property rental fees.

(3) The commission and council each shall evaluate the capacity of each state college and university and community and technical college under its jurisdiction for complying with the procedures established pursuant to §18B-5-4(u)(2) of this code. The commission and council each shall authorize expanded use of purchasing cards pursuant to that subdivision for any state college and university and community and technical college it determines has the capacity to comply.

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