



Administrative Policy #: Click or tap here to enter number

Title: Procurement

Effective Date: Click or tap here to enter date

SECTION 1. PURPOSE & SCOPE

- 1.1. **PURPOSE:** Fairmont State University (Fairmont State) is committed to maintaining a fair, transparent, and ethical procurement process for all goods and services acquired with University funds. Procurement activities shall support the efficient use of public resources, ensure the best value for Fairmont State, and comply with all applicable procurement laws and regulations of the State of West Virginia.
- 1.2. **SCOPE:** This administrative policy outlines the guiding principles for Procurement at Fairmont State University. The policy applies to anyone engaging in University purchasing activities.
- 1.3. **Supplemental Documents:** Detailed procedures are outlined in the Purchasing Manual (currently being updated). The manual is available on the Procurement webpage: <https://www.fairmontstate.edu/files/procurement/purchasingmanual202306.pdf>

SECTION 2. APPROVAL, DELEGATION & APPLICABILITY

- 2.1. **AUTHORITY:** The Governing Board delegates authority to the president to administer and oversee the institution's purchasing activities.
- 2.2. **DELEGATION:** The president appoints and delegates authority to a Chief Procurement Officer (CPO) who shall assist in carrying out the duties, obligations and remedies imposed by the governing board. The CPO may appoint Buyers and delegate authority to them as designees. Such delegation of authority shall be in compliance with state law, the rules, policies, and procedures of the HEPC, the governing board and the institutions purchasing manual. Notwithstanding any provision to the contrary, responsibility for ensuring institutional compliance with the West Virginia Code and the West Virginia Higher Education Policy Commission's (HEPC) and governing board policies and rules shall rest with and be the responsibility of the CPO.

- 2.3. APPLICABILITY: This policy applies to all faculty and staff. Each unit's leadership is responsible for ensuring that procurement activities within their unit comply with this policy.

SECTION 3. DEFINITIONS

- 3.1. Best Value Purchases: a procurement method that emphasizes value over price. The best value might not be the lowest cost. Generally achieved through the Request for Proposals (RFP) method. An assessment of the return that can be achieved based on the total life cycle cost of the item may include an analysis of the functionality of the item; can use cost-benefit analysis to determine the best combinations of quality, services, time, and cost considerations over the useful life of the acquired item.
- 3.2. Bid: a response by a vendor to a solicitation issued by Fairmont State. This includes Request for Proposals, Request for Quotations and any other solicitation methodology used by Fairmont State.
- 3.3. Buyer: an individual designated by the CPO to perform designated purchasing and acquisition functions as authorized by the COP/DOP.
- 3.4. Chancellor: the chief executive officer of the WV Higher Education Policy Commission employed pursuant to West Virginia Code §18B-1B-5.
- 3.5. Chief Procurement Officer (CPO): the individual designated by Fairmont State's president to manage, oversee and direct the purchasing, acquisition and inventory management of materials, supplies, equipment, services, and printing, and disposal of obsolete and surplus materials, supplies, and equipment for Fairmont State.
- 3.6. Commodity: an article which is useful or serviceable, particularly an article of merchandise movable in trade; a good, or service of any kind, including construction; an article of trade or commerce; things that are bought and sold.
- 3.7. Essential service: something basic; a commodity that is necessary, indispensable, or unavoidable and is purchased in a routine, repetitive, and noncompetitive manner.
- 3.8. Expression of Interest: a formal process used to select qualified architects and engineers for large-scale projects, emphasizing qualifications, competence, and the best overall value rather than solely focusing on cost.

- 3.9. President: the chief executive officer of Fairmont State.
- 3.10. Purchase order: the document issued by Fairmont State to a vendor for the acquisition of goods and services. A purchase order may also be referred to as a “contract.”
- 3.11. Single source: the desired product or service is available from only one supplier because of the uniqueness and characteristics of the product or service offered.
- 3.12. Sole source: only one vendor can supply the desired product or service.
- 3.13. Responsible bidder and Responsible Vendor: a person and/or vendor who have the capability in all respects to perform contract requirements, and the integrity and reliability which will assure good faith performance.
- 3.14. Responsive bidder and Responsive Vendor: a person and/or vendor who has submitted a bid which conforms in all material respects to the invitation to bid.
- 3.15. Statutory Bid Minimum: the amount in dollars identified in W.Va. Code §18B-5-4 and §18B-5-4a (or their subsequent amended sections) as the value under which purchases do not require competitive bids. As of June 12, 2015, the Statutory Bid Minimum is \$50,000 for general purchases and \$100,000 for construction projects.
- 3.16. Vendor: a seller of goods and services. A vendor must be registered with the West Virginia Department of Administration prior to the receipt of a purchase order or contract.
- 3.17. Vice Chancellor for Administration: the person employed by the Commission with the advice and consent of the Council in accordance with West Virginia Code §18B-4-2. The Vice Chancellor for Administration shall assume all powers and duties that were assigned to the Senior Administrator.
- 3.18. West Virginia Higher Education Policy Commission (HEPC): the commission created pursuant to West Virginia Code §18B-1B-1.

SECTION 4. POLICY

- 4.1. POLICY: Authority, Duties and Remedies of the Chief Procurement Officer
- 4.1.1. It is the policy of Fairmont State University that the CPO shall, unless otherwise stated in writing, have full authority to act in matters of institutional purchasing,

inventory management, and disposal of surplus and obsolete property as the designee of the president,

- 4.1.2. The CPO may appoint buyers and delegate authority to them as designees, or to any department within the institution. Delegation of authority by the chief procurement officer or the director of procurement, and any limits thereupon, shall be in writing and filed with the Vice Chancellor for Administration, the State Auditor, and the Attorney General. Responsibility for ensuring institutional compliance with the West Virginia Code and this rule shall rest with and be the responsibility of the chief procurement officer or director of procurement.
- 4.1.3. As required by law and this policy, and consistent with administrative manuals, guidelines and procedures developed by the Board of Governors, the CPO shall have the duty and/or authority to:
 - 4.1.3.1. Purchase and contract for the materials, supplies, equipment, services, construction, and printing required by Fairmont State;
 - 4.1.3.2. Establish institutional guidelines and procedures for purchases not exceeding the Statutory Bid Minimum;
 - 4.1.3.3. Establish institutional guidelines and procedures for receiving, inventorying and distributing materials, supplies, equipment, services, and printing;
 - 4.1.3.4. Review specifications and descriptions before soliciting bids or proposals to ensure that they are competitive and fair and do not unfairly favor or discriminate against a particular brand or vendor;
 - 4.1.3.5. Advertise for bids on all purchases exceeding the Statutory Bid Minimum, and post or otherwise make available notices of all purchases for which competitive bids or proposals are being solicited by the institution's purchasing office;
 - 4.1.3.6. Maintain the University's purchasing files;
 - 4.1.3.7. Accept or reject any and all bids in whole or in part;

- 4.1.3.8. Waive minor irregularities in bids, bidding documents and/or specifications;
- 4.1.3.9. Apply and enforce standard specifications;
- 4.1.3.10. Manage the institution's inventory of materials, supplies and equipment, authorize transfers to or between institutions, and sell surplus, obsolete or unused materials, supplies, and equipment;
- 4.1.3.11. Prescribe the amount of deposit or bond to be submitted with any bid or contract;
- 4.1.3.12. Prescribe contract provisions for liquidated damages, remedies, and/or other damages provisions in the event of vendor default;
- 4.1.3.13. Exempt from competitive bidding purchases of materials, supplies, equipment, services, and printing purchased from within state government, from West Virginia sheltered workshops, from cooperative buying groups and consortia, and from the federal government or federal government contracts when price, availability and quality are comparable to those on the open market;
- 4.1.3.14. Hear and render opinions on vendor complaints and protests;
- 4.1.3.15. Ensure vendors are registered with the Purchasing Division of the Department of Administration in accordance with West Virginia Code;
- 4.1.3.16. Apply the preference for resident vendors required by the West Virginia Code;
- 4.1.3.17. File contracts and purchase orders that exceed the dollar limit required for competitive sealed bidding with the State Auditor;
- 4.1.3.18. Submit contracts and purchase orders to the Attorney General for approval or as may be required by law, administrative procedures and guidelines;
- 4.1.3.19. Ensure that purchases exceeding the dollar amount for competitive bidding are encumbered and entered into the State's accounting system as required by West Virginia Code §18B-5-4(g) and §5A-2-1 et. seq.

4.1.3.20. Apply and enforce other applicable provisions of state and federal laws pertaining to purchases, inventory management and disposal of surplus and obsolete materials, supplies, and equipment.

4.1.4. Remedies that are available to the CPO when appropriate circumstance arise include:

4.1.4.1. In the event that a vendor fails to honor any contractual term or condition, the chief procurement officer or the director of procurement may cancel the contract and re-award the contract to the next lowest responsible and responsive bidder;

4.1.4.2. Vendors failing to honor contractual obligations may be held responsible for all differences in cost;

4.1.4.3. Declare a vendor or bid non-responsive or non-responsive and refuse to award a purchase order. All such instances shall be substantiated in writing giving the reason(s) thereof, and such documentation shall be considered a public document available for inspection at all reasonable times; and

4.1.4.4. Suspend, for a period not to exceed one (1) year, the right of a vendor to bid when there is reason to believe that such vendor has violated any of the provisions of the terms and conditions of a contract, this rule and/or state law.

4.2. Purchase or Acquisition of Materials, Supplies, Equipment, Services, Construction and Printing: Unless otherwise authorized by law, all purchases or acquisitions of materials, supplies, equipment, services, construction and printing shall be awarded by competitive bidding, except: (a) Purchases not exceeding the Statutory Bid Minimum, (b) Competitive Proposals, (c) Competitive Selection for Procedures for Professional Services, (d) Sole Source and Single Source Procurement, (e) Emergency Procurement, (f) Open End and Federal Contracts, and (g) Essential Services, as provided in the following sections of this policy:

4.2.1. Purchases not exceeding the Statutory Bid Minimum

4.2.1.1. The CPO shall establish administrative procedures for purchases not exceeding the Statutory Bid Minimum, which do not require competitive

bidding. These guidelines and procedures shall provide for obtaining adequate and reasonable records to properly account for funds and to facilitate auditing. They shall be approved by the President, filed with the Vice Chancellor for Administration and be on file in the university's purchasing office and made available to the public upon request.

4.2.1.2. Additionally, procurement contracts for consulting services under the statutory bid limit do not require competitive bids under this policy.

4.2.1.3. Purchases in the category do not require competitive bids.

4.2.2. Competitive Proposals

4.2.2.1. For purchases exceeding the statutory bid threshold, competitive bids are the preferred method of procurement; however, if it is either not practicable or advantageous, a contract may be entered into by a request for proposals. The words "practicable" and "advantageous" are to be given ordinary dictionary meanings. The term "practicable" denotes what may be accomplished or put into practical application. "Advantageous" connotes a judgmental assessment of what is in the institution's best interest. The key element in determining advantageousness will be the need for flexibility.

4.2.2.2. The request for proposal (RFP) method of purchasing is used to obtain goods and services when sufficient knowledge or expertise does not exist to adequately specify the details of the desired result. The desired result is written into the RFP. The Vendor responds to the RFP with a proposal identifying its intended approach to meet the desired result along with a proposed price or fee. Terms and conditions of the contract shall be included in an RFP, along with pre-established award criteria based on value or points. Whenever desirable, interviews may be conducted with interested parties for clarification and/or determination of qualifications and experience prior to award. RFPs go beyond price alone. They also look at the Vendor's ability and resources to furnish the desired service to get the desired result. Quality of service and performance are important considerations. RFPs are primarily

used for large dollar projects requiring a high level of expertise on the part of the Vendor.

4.2.3. Competitive selection procedures for professional services:

4.2.3.1. The competitive selection procedure for professional services is similar to the process used for competitive sealed proposals (RFP); however, greater weight is given to the ability to perform the service as reflected by technical training, education, and experience, and in some cases, artistic and aesthetic values, and capabilities. In these cases, price may be a secondary consideration.

4.2.3.2. Architectural, engineering, and other consultant services for projects estimated to cost in excess of \$250,000 shall be procured through an Expression of Interest.

4.2.3.3. The competitive selection process for hiring architects and engineers is set forth in Chapter 5G of the West Virginia Code.

4.2.4. Sole Source and Single Source Procurement:

4.2.4.1. The CPO may approve the purchase of materials, supplies, equipment, services, and/or printing directly from a vendor without competitive bid or proposals, if any of the following conditions exist:

- (a) the item cannot be obtained through ordinary purchasing procedures;
- (b) the item is of unique nature and not available from any other source; or
- (c) the item is available from a state spending unit or other institution with preference under the West Virginia Code, provided the price, availability, and quality are comparable to those in the open market.

4.2.5. Emergency Procurement:

4.2.5.1. Emergency purchases exceeding the Statutory Bid Minimum must receive the prior written approval of the CPO unless made according to subparagraph 4.2.5.2 An emergency situation requiring purchase of materials, supplies, equipment, services, construction or printing must be the result of unforeseen events of circumstances, including delays by contractors, delays in

transportation, or an unanticipated volume of work. Emergency purchases shall not be used for hardship resulting from neglect, poor planning, or lack of organization by the spending unit. Competitive bids must be obtained if possible.

- 4.2.5.2. The University shall maintain a purchasing card or cards for use in and for situations declared an emergency by the President and approved by the HEPC Chancellor. Such emergencies may include but are not limited to partial or total destruction of a campus facility; loss of a critical component of utility infrastructure; heating, ventilating, or air conditioning failure in an essential academic building; loss of campus road, parking lot, or campus entrance; or a local, regional, or national emergency situation that has a direct impact on the institution.
- 4.2.5.3. In the event of an emergency declared by the President and approved by the Chancellor, the President or their designee may authorize the use of a purchasing card by a designated representative in accordance with the procedures set forth in the State Auditor's Legislative Rule for the purchasing card program.
- 4.2.6. Open End, Consortium, Buying Groups and Federal Contracts:
- 4.2.6.1. Fairmont State may enter into open end contracts for materials, supplies, equipment, services, construction, and/or printing to supply their respective needs in the form of statewide contracts, blanket orders, or price agreements. Once issued, purchases and acquisitions may be made from these contracts without securing any other bids or quotations. These contracts may be made available to other institutions for their use.
- 4.2.6.2. Fairmont State may, without securing any other bids or quotations, make purchases from cooperative buying groups, consortia, the federal government, and from federal government contracts if the materials, supplies, equipment, services, and printing to be purchased are available from these

groups, consortia, or the federal government and its contract, and if this is the most financially advantageous manner of making the purchase.

4.2.7. Essential Services:

4.2.7.1. Essential services may be purchased and paid for without securing competitive bids or proposals or issuing purchase orders. Commodities in this category may include but are not limited to utilities of all kinds; postage; items for resale; municipal, county, state, and federal fees; student awards, stipends, loans, and grants; shipping and freight charges; tuition and registration fees and refunds thereof; professional dues; etc.

4.2.8. Purchasing Card:

4.2.8.1. 4.2.8.1 The state purchasing card (PCard) may be used as a purchasing and payment method as provided in the applicable provisions of WV Code §12-3-10a and §12-3-10b, §18B-5-4(u), and §18B-5-9(d).

4.2.8.2. All current purchasing policies must be followed regardless of payment method.

4.2.8.3. Refer to the Fairmont State PCard Manual for additional information.

4.2.9. Vehicle Purchase:

4.2.9.1. The purchase and leasing of motor vehicles shall be consistent with the Department of Administration's Procedural Rule on State Owned Vehicles, Title 148, Series 3. These rules, guidelines, and procedures are adopted by the university.

4.2.10. Purchases Greater Than the Statutory Bid Minimum (greater than \$50K)

4.2.10.1. Competitive bidding is the preferred method for the purchase and acquisition of materials, supplies, equipment, services, and printing greater than the statutory bid minimum.

4.2.10.2. The CPO shall advertise for bids on all purchases exceeding the Statutory Bid Minimum. The advertisement shall appear no less than five (5) calendar days prior to the date bids are due.

- 4.2.10.3. The CPO or director of procurement shall, in addition to advertising, post or otherwise make available notice of all acquisitions and purchases for which competitive bids are being solicited in the purchasing office of the institution involved in the purchase no less than 5 days prior to making such purchase and shall ensure that the notice is available to the public during business hours.
- 4.2.10.4. Bids shall be delivered to the specified location for receipt of bids by the bidder prior to the date and time of the bid opening according to the instructions contained in the request for bids and any addenda or modifications officially issued.
- 4.2.10.5. Bids not properly delivered or received after the required time and date shall not be opened and shall be returned to the bidder.
- 4.2.10.6. The bid shall be signed by an authorized agent of the bidder. A corporate signature without an individual's name and signature shall not be construed as an acceptable signature.
- 4.2.10.7. Facsimile transmitted bids are not acceptable for bids over the statutory bid threshold. Facsimile and electronically transmitted modifications are acceptable if the bid price is not revealed.
- 4.2.10.8. A bidder may make a written modification to a sealed bid prior to the bid opening, provided modifications are made by the bidder in such a manner that the bid price is not revealed or known until the bid is opened. Written modifications must be received by the chief procurement officer or the director of procurement prior to the date and time of the bid opening. Electronically transmitted modifications are acceptable if submitted prior to the bid opening date and time and the bid price is not revealed.
- 4.2.10.9. Originals or copies of bids shall be available for public inspection after the bid opening. Vendors may designate in writing with the bid submission information contained within the bid constituting trade secrets, pursuant to West Virginia Code §29B-1-4(1), which shall be exempt from disclosure. The

purchasing files shall be open for public inspection after the award has been made, except for information qualifying for the exemption in the West Virginia Freedom of Information Act.

4.2.10.10. The CPO may reject an erroneous bid after the bid opening upon request of the bidder if all of the following conditions exist: (a) an error was made; (b) the error materially affected the bid or proposal; (c) rejection of the bid or proposal would not cause a hardship on the institution other than losing an opportunity to receive materials, supplies, equipment, services, construction and/or printing at a reduced cost; and (d) enforcement of the part of the bid or proposal in error would be unconscionable. In order to reject a bid or proposal, the purchasing file must contain documented evidence that all of the above conditions exist.

4.2.10.11. Price and other adjustments shall be allowed on any purchase order if specific provisions for adjustments have been incorporated in the prescribed forms and the purchase order. All such requests for adjustments shall be made in accordance with the specific terms and conditions of the individual purchase order. In the event no provision for adjustments has been made, discretion to grant adjustments shall rest with the CPO.

4.2.10.12. Every person, firm or corporation selling or offering to sell to the Commission, Council, a Governing Board and its institutions, materials, supplies, equipment, services, construction and printing, upon competitive bid or otherwise, in excess of \$50,000 per order, shall be registered with the West Virginia Department of Administration, Purchasing Division, pursuant to West Virginia Code §18B-5-5 and §5A-3-12. Purchase orders in excess of \$50,000 may not be issued to any vendor not properly registered with the West Virginia Department of Administration.

4.2.10.13. Contracts, purchase orders, and associated documents such as performance and labor/material payment bonds and certificates of insurance are not required to be approved by the Attorney General provided standard

terms and conditions or standardized forms previously approved by the Attorney General are used.

4.2.10.14. Contracts and purchase orders that exceed the amount set forth in West Virginia Code §18B-5-4 for sealed competitive bidding shall be filed with the State Auditor.

4.3. Specifications and Awards

4.3.1. Specifications shall be written to maximize and encourage competition. In certain cases, a “brand name or equal” may be used as a specification.

4.3.2. All purchases and acquisitions shall be made in consideration of and within limits of available appropriations and funds in accordance with applicable provision of West Virginia Code §5A-2, relating to expenditure schedules and quarterly allotments of funds.

4.3.3. Award shall be made to the lowest responsible and responsive vendor. In determining the lowest responsible and responsive vendor, consideration will be given to such factors as quality (meeting specifications), price, time of delivery, cost of delivery, and other terms and conditions considered prudent. Unit prices shall prevail in all cases when there is a conflict between the unit price and extended price. In some cases, multiple and/or split awards may be made when determined to be in the best interest of the institution. Occasionally, purchase orders may be issued which impose no obligation to take delivery of a product and/or service and as such, these purchase orders shall be issued as blanket purchase orders or price agreements. In situations where vendors are competing to provide a service that will generate income for an institution, the award shall be made to the highest responsible and responsive bidder, taking into consideration the above factors.

4.3.4. The CPO may accept or reject, in whole or in part, any bid or proposal when the CPO believes it to be in the best interest of Fairmont State. If any bid or proposal is rejected, a written explanation shall be placed in the purchasing file.

4.3.5. When tie bids or proposals are received, the tie shall be broken and an award made by allowing the tied vendors to make a "last and final offer." If a tie bid is not

broken by a “last and final offer,” then the tie may be broken by a flip of a coin, draw of the cards or any other impartial method deemed prudent by the CPO.

4.3.6. Except for exemptions granted in the West Virginia Code, all material, supplies, equipment, services, and printing made upon competitive bids or proposals shall be subject to any resident vendor preference set forth in the West Virginia Code.

4.3.7. The CPO shall determine the applicability and amounts of bonds and/or deposits required of a vendor at any time, if, in his or her judgment, such security is necessary to safeguard the institution from undue risk. The CPO may require the vendor to submit a certified check, certificate of deposit, performance bond, or any other security acceptable to the CPO, payable to Fairmont State. Personal checks and/or company checks are not acceptable. When a contract has been satisfactorily completed on which a surety bond or other deposit has been previously submitted, the spending unit shall certify the completion in writing to the CPO. The CPO, upon receipt of the notification, shall return the check or deposit to the vendor.

4.4. Vendor’s Rights and Duties

4.4.1. Each vendor is solely responsible for delivery of its bid to the specified location prior to the specified date and time of the bid or proposal opening.

4.4.2. If there is a conflict between the extension price and the unit price, the unit price shall prevail.

4.4.3. Any changes made by the vendor in the specifications listed in the bid request must be clearly stated. If changes are not stated, it will be assumed that items offered meet the specifications in all respects.

4.4.4. Vendors are responsible for the accuracy of the information in their bid or proposal and on the bid or proposal envelope.

4.4.5. All sales to the university are exempt from West Virginia consumer sales tax or excise tax by blanket state exemption and blanket federal exemption.

4.4.6. It is the vendor's exclusive duty and obligation to file protests and requests for reconsideration according to the requirements of Section 4.9.2, and for

reconsideration of suspension, in accordance with the requirements of Section 4.10 of this policy; otherwise, they shall be waived.

4.5. Procurement File:

4.5.1. The CPO shall maintain a purchasing file for each procurement or acquisition.

This file shall contain all relevant information pertaining to such purchase or acquisition, including but not limited to:

- (a) bids, proposals, or quotations received in response to a request for sealed bids or proposals; however, an unopened bid or proposal shall not be considered a public document or record;
- (b) identification and certification of the successful bid;
- (c) why any bid or proposal is rejected in whole or in part;
- (d) justification for award to other than the lowest vendor; and
- (e) vendor protests or complaints. The purchasing file shall be a public record open to inspection during normal business hours. No records in the purchasing file shall be destroyed without the written consent of the Legislative Auditor, except as set forth.

4.5.2. 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 written consent of the Legislative Auditor. All files, no matter the storage method, shall be open for inspection by the Legislative Auditor upon request.

4.6. Approval of Lease-Purchase Agreement

4.6.1. The University may enter into lease-purchase agreements for capital improvements, including equipment. Any lease-purchase agreement exceeding one million dollars in total must have prior approval of the HEPC.

4.6.2. Proposals for any lease-purchase agreements shall be made in accordance with West Virginia Code §18B-19-11.

4.6.3. Lease-purchase agreements exceeding one hundred thousand dollars must be approved as to form by the Attorney General.

4.7. Lease Agreement for Grounds, Buildings, Office Space or Other Space

- 4.7.1. The University has the authority to enter into lease agreements for grounds, buildings, office space, or other space in the name of the State *for more than one fiscal year* but not exceeding forty years under the following conditions:
- 4.7.1.1. The University shall be responsible for all rent and other necessary payments in connection with the contract of lease; and
- 4.7.1.2. Satisfactory grounds, buildings, office, or other space is not available on grounds and in buildings currently owned or leased.
- 4.7.2. Before executing any rental contract or lease, the university shall do the following:
- 4.7.2.1. Determine the fair rental value of the grounds, building, office space, or other space to be leased in the condition in which they exist, and shall contract for or lease the premises at a price not to exceed the fair market value;
- 4.7.2.2. Leases shall contain, in substance, all of the following provisions:
- 4.7.2.3. That the University, as lessee, has the right to cancel the lease without further obligation on the part of the lessee upon giving thirty days' written notice to the lessor at least thirty days prior to the last day of the succeeding month;
- 4.7.2.4. That the lease shall be considered canceled without further obligation on the part of the lessee if the Legislature or the federal government fails to appropriate sufficient funds for the lease or otherwise acts to impair the lease or causes it to be canceled; and
- 4.7.2.5. That the lease shall be considered renewed for each ensuing fiscal year during the term of the lease unless it is canceled by the university before the end of the then-current fiscal year.
- 4.7.3. The University, which is granted any grounds, buildings, office space or other space leased in accordance with West Virginia Code §18B-19-11, may not order or make permanent changes of any type unless the Governing Board has first determined that the change is necessary for the proper, efficient and economically

sound operation of the institution. For purposes of this section, a "permanent change" means any addition, alteration, improvement, remodeling, repair, or other change involving the expenditure of state funds for the installation of any tangible thing which cannot be economically removed from the grounds, buildings, office space, or other space when vacated by the institution.

4.7.4. Leases and other instruments for grounds, buildings, office or other space, may be signed by the CPO. A lease and other instrument entered into by a Governing Board that exceeds one million dollars in total must receive prior approval of HEPC, before being executed by the Governing Board or the university.

4.7.5. The HEPC shall present to the Joint Committee on Government and Finance for prior review any purchase of real estate, any lease-purchase agreement and any construction of new buildings or other acquisitions of buildings, office space, grounds resulting from a lease entered into pursuant to the provisions of West Virginia Code §18B-19-13, if the transaction exceeds \$1 million.

4.7.6. Any lease or instrument exceeding one hundred thousand dollars (\$100,000) annually shall be approved as to form by the Attorney General. A lease or other instrument for grounds, buildings, office, or other space that contains a term, including any options, of more than six months for its fulfillment shall be filed with the State Auditor.

4.8. The Commission, and institutions, individually or cooperatively, will maximize their use of the following purchasing practices, when determined to provide a financial advantage:

- 4.8.1. Bulk purchasing;
- 4.8.2. Reverse bidding;
- 4.8.3. Electronic marketplaces; and
- 4.8.4. Electronic remitting

4.9. Protests and Reconsideration:

4.9.1. Protests and requests for reconsideration of a decision made by the CPO may only be made by a person and/or vendor who is a potential or actual bidder on that particular contract and/or purchase.

4.9.2. Protests.

4.9.2.1. Protests based on specifications or improprieties in any type of solicitation which are apparent or should have been apparent prior to the bid or proposal opening or closing date must be filed not later than five (5) calendar days prior to the bid or proposal opening or closing date. A protest of the award must be filed no later than five (5) calendar days following the notice of the institution's intent to award the contract as posted or otherwise made available in the university's purchasing office for competitive transactions greater than \$50,000.

4.9.2.2. Protests filed prior to five calendar days following the notice of intent to award shall be resolved in accordance with this policy before an award is made. Information regarding awards may be obtained from the university's purchasing office, and a vendor contemplating a protest has a duty to obtain this information in a timely manner. The burden of filing a protest and collecting documents to submit a protest is on the person and/or Vendor and time will not be extended based on unpreparedness.

4.9.2.3. The protest must be filed in writing with the CPO and contain the name and address of the protestor, the requisition number of the bid or the purchase order number, a statement of the grounds for protest and supporting documentation, the relief sought, and if a hearing on the merits of the protest is requested.

4.9.2.4. The CPO shall review the protest and issue a decision in writing. In the event a hearing on the merits of the protest is requested by the protestor, the chief procurement officer or director of procurement shall set a time and place for the hearing. The hearing shall be recorded, and an official record shall be prepared. Following the hearing, the CPO shall issue a written decision.

4.9.3. Reconsideration.

4.9.3.1. Reconsideration of a decision on a protest by the CPO may be requested by an aggrieved party to the university's CFO. A request for reconsideration shall be made in writing within five (5) calendar days after receiving the chief procurement officer or director of procurement's written decision, and it shall contain the name and address of the aggrieved party, the requisition or purchase order number, a statement of the grounds for reconsideration with supporting documentation, the relief sought, and if a hearing on the merits is requested.

4.9.3.2. The CFO shall review the request for reconsideration and issue a decision in writing. In the event a hearing on the merits is requested by the aggrieved party, the chief financial officer shall set a time and place for the hearing. The hearing shall be recorded, and an official record shall be prepared. Following the hearing, the CFO shall issue a decision in writing to the aggrieved party and his or her decision shall be final.

4.9.3.3. The CPO and CFO may refuse to decide any protest or reconsideration where the matter involved is the subject of litigation before a court of competent jurisdiction or has been decided on the merits by such court. The foregoing shall not apply where the court requests, expects, or otherwise expresses interest in the decision of the CPO and CFO.

4.10. Suspension and Reconsideration

4.10.1. Suspension

4.10.1.1. The CPO shall have authority to suspend, for a period not exceeding one year, the right and privilege of a person to bid on purchases of the institution.

4.10.1.2. The following shall be considered adequate grounds for suspension of a vendor: (a) a vendor has exhibited a pattern of poor performance in fulfilling its contractual obligation(s) including, but not limited to, providing or furnishing commodities, materials, services or construction late, or at a quantity or quality level below that which is specified in the contract, or repeated instances of poor performance; or (b) the vendor has breached any

contract entered into pursuant to the provisions of West Virginia Code §18B-5-4 through §18B-5-9 or this policy, or the vendor has been convicted of any federal or state law punishable as a felony if such conviction is directly related to the performance of a contract entered into pursuant to West Virginia Code §18B-5-4 through §18B-5-9 or this policy. Any such suspension must be imposed within one year of the date of the act, omission, or conviction the suspension is based upon, or within one year of the CPO's discovery of such act, omission, or conviction.

4.10.2. Reconsideration

4.10.2.1. Reconsideration of a decision on suspension by the CPO may be requested by an aggrieved party to the institution's chief financial officer. A request for reconsideration shall be made in writing within five calendar days after receiving the chief procurement officer's decision and it shall contain the name and address of the aggrieved party, a statement of the grounds for reconsideration with supporting documentation, the relief sought, and if a hearing on the merits is requested.

4.10.2.2. The CFO will review the request for reconsideration and issue a decision in writing. In the event a hearing on the merits is requested by the aggrieved party, the chief financial officer shall set a time and place for the hearing. The hearing shall be recorded and an official record prepared. Following the hearing, the CFO will issue a decision in writing to the aggrieved party and his or her decision shall be final.

4.10.2.3. The CFO may refuse to decide any reconsideration when the matter involved is the subject of litigation before a court of competent jurisdiction or has been decided on the merits by such court. The foregoing shall not apply when the court requests, expects, or otherwise expresses interest in the decision of the institution.

4.10.3. Vice Chancellor for Administration

4.10.3.1. When the university suspends the right and privilege of a vendor to bid on purchases of the university, the Procurement Office shall forward a copy of the suspension notice to the CPO of the HEPC, who shall maintain a record of such suspension and shall notify all institutions of such suspension.

4.10.3.2. If the CPO of the HEPC determines that the actions of the vendor leading to the suspension by the university are of a serious enough nature to justify imposition of a system-wide suspension, he or she shall forward the suspension and his or her recommendation to the Vice Chancellor for Administration for review. If the Vice Chancellor for Administration determines that the actions of the suspended vendor justify a system-wide suspension, he or she shall notify the vendor and all institutions of the system-wide suspension.

4.11. Receiving and Inventory Management

4.11.1. Receiving

4.11.1.1. The Facilities Department shall establish institutional guidelines and procedures for receiving and distributing materials, supplies, equipment, services, and printing to departments and offices within the institution. These guidelines and procedures shall be consistent with this rule, and they shall be approved by the president, filed with the Vice Chancellor for Administration, and shall be on file in the institution's purchasing office and made available to the public upon request.

4.11.2. Inventory Management

4.11.2.1. The accounting unit of the Finance Division shall inventory all equipment and furnishings that have a value at the time of purchase or acquisition of \$5,000 or more per unit. Such inventory shall be kept current at all times. An institution may elect to inventory equipment and furnishings with a value less than \$5,000 per unit.

4.11.2.2. The accounting unit of the Finance Division shall set up and maintain the institution's inventory management systems on the basis of generally

accepted accounting standards. This system shall also conform to the requirements of the state and the federal government as applicable.

4.11.2.3. The accounting unit of the Finance Division shall conduct an audit of the institution's inventory, at a minimum, every three years.

SECTION 5. COMPLIANCE

5.1. COMPLIANCE:

5.2. NONCOMPLIANCE:

5.2.1. Any person who authorizes or approves a purchase contract in a manner in violation of the West Virginia Code, this rule, or any policy or procedure adopted by the Commission, Council, and the Governing Board shall be personally liable for the cost of such purchase or contract. Purchases or contracts violating the West Virginia Code and/or this rule shall be void and of no effect.

5.2.2. Any person receiving anything of value from a known interested party in the awarding of a purchase order shall be subject to the provisions of West Virginia Code §5A-3-28, -29, -30, -31.

5.2.3. Except as may be authorized by the provisions of Chapter 6B of the West Virginia Code no employee of the university shall be financially interested, or have any beneficial personal interest, directly or indirectly, in the purchase of any equipment, materials, supplies, services, or printing, nor in any firm, partnership, corporation or association furnishing them. No employee shall accept or receive directly or indirectly, from any person, firm or corporation, known by such employee to be interested in any bid, contract or purchase, by rebate, gift or otherwise, any money or other thing of value whatsoever or any promise, obligation or contract for future reward or compensation.

5.2.4. Any vendor violating the West Virginia Code or this policy may be suspended from the right to bid on or submit a proposal for institutional purchases for a period of up to one year.

SECTION 6. REVISION HISTORY

- 6.1. FREQUENCY OF REVIEW: This administrative policy will be reviewed by Procurement at least every three years or when updates to Series 30 (or its successor rule) are issued.
- 6.2. APPROVED: Click or tap here to enter text

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