



## INSTITUTIONAL POLICY: F-11

Category:	Finance
Subject:	Procurement and Purchasing
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### **F 11-1. Authority**

W. Va. Code § 18B-1-6

### **F 11-2. Purpose**

The purpose of this document is to provide a detailed description of the requirements and conditions for procurement purposes to conduct business operations within the West Virginia School of Osteopathic Medicine (“WVSOM”).

### **F 11-3. Applicability and Scope**

This policy applies to all areas within the West Virginia School of Osteopathic Medicine.

### **F 11-4. Definitions**

- 4.1 “Best Value Purchases” means 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 define the best combinations of quality, services, time, and cost considerations over the useful life of the acquired item.
- 4.2 “Commodity(ies)” means 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.
- 4.3 “Essential Service” means something basic; a commodity that is necessary, indispensable, or unavoidable and is purchased in a routine, repetitive, and noncompetitive manner.
- 4.4 “Expression of Interest” is 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.
- 4.5 “Responsible Bidder” and “Responsible Vendor” mean 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.

- 4.6 “Responsive Bidder” and “Responsive Vendor” mean a person and/or a vendor who has submitted a bid which conforms in all material respects to the invitation to bid.
- 4.7 “Single Source” means that the desired product or service is available from only one supplier because of the uniqueness and characteristics of the product or service offered.
- 4.8 “Sole Source” means only one vendor can supply the desired product or service.
- 4.9 “Statutory Bid Minimum” means 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.
- 4.10 “Vendor” means a seller of goods and services.

#### **F 11-5. Delegation of Purchasing Authority and Responsibilities**

The WVSOM Board of Governors has, through its applicable Resolution Delegating Authority to the WVSOM President, as updated from time to time, delegated to the President the authority to perform certain functions as the chief executive officer of WVSOM.

#### **F 11-6. Authority, Duties, and Remedies of the Director of Contracts and Procurement**

- 6.1 The Director of Contracts and Procurement shall, unless otherwise stated in writing, have the full authority to act in matters of institutional purchasing as the designee of the President and shall serve as the central procurement officer for WVSOM. Such signature authority will be subject to W.Va. Code requirements and the current Resolution Delegating Authority to the WVSOM President.
- 6.2 The Director of Contracts and Procurement may appoint buyers and delegate authority to them as designees, or to any department within WVSOM.
- 6.3 As required by law and this policy, and consistent with administrative manuals, guidelines, and procedures developed by the Board of Governors, the Director of Contracts and Procurement shall have the duty and/or authority to:
  - 6.3.1 Purchase and contract for the materials, supplies, equipment, services, construction and printing required by WVSOM;
  - 6.3.2 Establish administrative procedures for purchases not exceeding the Statutory Bid Minimum;
  - 6.3.3 Establish administrative procedures for the competitive bidding process in accordance with the policy;
  - 6.3.4 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 of Vendor;

- 6.3.5 Advertise and post or otherwise make available notices for bids on all purchases exceeding the Statutory Bid Minimum, or all purchases for which competitive bids or proposals are being solicited by WVSOM's purchasing office;
  - 6.3.6 Maintain the purchasing files;
  - 6.3.7 Accept or reject any and all bids in whole or in part;
  - 6.3.8 Waive minor irregularities in bids, bidding documents, and/or specifications;
  - 6.3.9 Apply and enforce standard specifications;
  - 6.3.10 Prescribe the amount of deposit or bond to be submitted with any bid or contract;
  - 6.3.11 Prescribe contract provisions for liquidated damages, remedies and/or other damages provisions in the event of Vendor default;
  - 6.3.12 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;
  - 6.3.13 Hear and render opinions on Vendor complaints and protests;
  - 6.3.14 Ensure Vendors are registered with the Purchasing Division of the Department of Administration in accordance with West Virginia Code;
  - 6.3.15 Apply the preference for resident Vendors required by West Virginia Code;
  - 6.3.16 Apply and enforce other applicable provisions of state and federal laws pertaining to purchases;
  - 6.3.17 Ensure institutional compliance with West Virginia Code and this policy.
- 6.4 Remedies that are available to the Director of Contracts and Procurement when appropriate circumstances arise include:
- 6.4.1 In the event that a Vendor fails to honor any contractual term or condition, the Director of Contracts and Procurement may cancel the contract and re-award the contract to the next lowest responsible and responsive bidder;
  - 6.4.2 Vendors failing to honor contractual obligations may be held responsible for all differences in cost;
  - 6.4.3 Declare a Vendor or bid non-responsible 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
  - 6.4.4 Suspend, for a period determined by the Chief Financial Officer ("CFO") or as restricted in W.Va. Code, the right of a Vendor to bid on purchases when there is reason to believe that such Vendor has violated any of the provisions of the terms and conditions of a contract, this policy and/or state law.

- 6.5 The Director of Contracts and Procurement is responsible for developing and maintaining up-to-date procedures that guide responsible purchasing practices for WVSOM employees, in accordance with W.Va. Code §18B-5-4.

**F 11-7. Purchase or Acquisition of Materials, Supplies, Equipment, Services, Construction, and Printing**

- 7.1 Unless otherwise authorized by law, all purchases or acquisitions of materials, supplies, equipment, services, construction and printing shall be awarded by competitive bidding, except as provided in the following paragraphs of this policy:

7.1.1 Purchases not exceeding the Statutory Bid Minimum

7.1.1.1 The Director of Contracts and Procurement shall establish administrative procedures for purchases not exceeding the Statutory Bid Minimum of \$50,000.00 for goods and services, and \$100,000.00 for construction, which do not require competitive bidding. These 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 and be on file in WVSOM's purchasing office and made available to the public upon request.

7.1.1.2 Additionally, procurement contracts for consulting services under \$50,000.000 do not require competitive bids under this policy.

7.1.2 Competitive Proposals

7.1.2.1 For purchases exceeding the statutory \$50,000.00 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.

7.1.2.2 The request for proposal 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 request for proposals. The Vendor responds to the request for proposals 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 a request for proposals, along with a 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. Requests for proposals 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. Requests for proposals are primarily used for large dollar projects requiring a high level of expertise on the part of the Vendor.

### 7.1.3 Competitive selection procedures for professional services

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

7.1.3.2 Architectural, engineering, and other consultant services for projects estimated to cost in excess of \$250,000.00 shall be procured through an Expression of Interest.

### 7.1.4 Sole Source and Single Source procurement

7.1.4.1 The Director of Contracts and Procurement may approve the purchase of materials, supplies, equipment, services, construction and/or printing directly from a Vendor without competitive bid or proposals, if any of the following conditions exist:

7.1.4.1.1 The item cannot be obtained through ordinary purchasing procedures;

7.1.4.1.2 The item is of unique nature and not available from any other source; or

7.1.4.1.3 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.

### 7.1.5 Emergency procurement

7.1.5.1 Emergency purchases exceeding the Statutory Bid Minimum must receive the prior written approval of the Director of Contracts and Procurement unless made according to subparagraph 7.1.5.3. An emergency situation requiring purchase of materials, supplies, equipment, services, construction or printing must be the result of unforeseen events or 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.

7.1.5.2 WVSOM shall maintain a purchasing card or cards for use in and for situations declared an emergency by the President. 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.

7.1.5.3 In the event of an emergency declared by the President of WVSOM, 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.

#### 7.1.6 Open end, consortium, buying group, and federal contracts

7.1.6.1 WVSOM 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.

7.1.6.2 WVSOM 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.

#### 7.1.7 Accepted governmental methods and practices

7.1.7.1 WVSOM may purchase and pay for Commodities using accepted governmental methods and practices—such as routine, regularly scheduled payments—without the need for competitive bids, proposals, or purchase orders. Additional guidance on these types of purchases will be outlined in administrative procedures.

#### 7.1.8 Purchasing Card

7.1.8.1 The Director of Contracts and Procurement shall establish administrative procedures relating to payment. All current purchasing policies must be followed regardless of payment method. The state purchasing card may be used as a purchasing and payment method as provided in applicable provisions of W.Va. Code §12-3-10a and §12-3-10b, §18B-5-4(u), and §18B-5-9(d).

7.1.8.2 WVSOM shall maintain a purchasing card or cards that may be used for emergencies declared by the President in accordance with W.Va. Code §18B-5-9(d)(3).

### 7.2 Purchases Greater Than the Statutory Bid Minimum

7.2.1 Competitive bidding is the preferred method for purchase and acquisition of materials, supplies, equipment, services, and printing greater than the statutory bid minimum. The Director of Contracts and Procurement 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.

7.2.2 The Director of Contracts and 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 WVSOM's purchasing office no less than five (5) calendar days prior to making such purchase and shall ensure that the notice is available to the public during business hours.

- 7.2.3 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 instruction contained in the request for bids and any addenda or modifications officially issued.
- 7.2.4 Bids not properly delivered or received after the required time and date shall not be opened and shall be returned to the bidder.
- 7.2.5 The bid shall be signed by any authorized agent of the bidder. A corporate signature without an individual's name and signature shall not be construed as an acceptable signature.
- 7.2.6 Electronically transmitted bids are not acceptable for bids over the Statutory Bid Minimum, unless the specifications allow such submissions and instructions for such submissions are in the request.
- 7.2.7 A bidder may make a written modification to a 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 Director of Contracts and Procurement prior to the date and time of the bid opening. Electronically transmitted modifications are acceptable if the bid price is not revealed.
- 7.2.8 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 W.Va. 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 exemptions set out in the West Virginia Freedom of Information Act.
- 7.2.9 The Director of Contracts and Procurement may reject an erroneous bid after the bid opening upon request of the bidder if all of the following conditions exist:
  - 7.2.9.1 An error was made;
  - 7.2.9.2 The error materially affected the bid or proposal;
  - 7.2.9.3 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
  - 7.2.9.4 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.
- 7.2.10 Every person, firm, or corporation selling or offering to sell to WVSOM materials, supplies, equipment, services, construction, or printing, upon competitive bid or otherwise, in excess of the Statutory Bid Minimum per order, shall be registered with the West Virginia Department of Administration, Purchasing Division, pursuant to W.Va. Code §18B-5-5 and §5A-3-12. Purchase orders in excess of the Statutory Bid Minimum may not be issued to any Vendor not properly registered with the State of West Virginia.



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

### 7.3 Specifications and Awards

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

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

7.3.3 Awards shall generally be made to the lowest responsible and responsive Vendor subject to other applicable sections of this policy. 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.

7.3.4 The Director of Contracts and Procurement may accept or reject, in whole or in part, any bid or proposal when they believe it to be in the best interest of the institution. If any bid or proposal is rejected, a written explanation shall be placed in the purchasing file.

7.3.5 When tie bids or proposals are received, the tie shall be broken and an award made by allowing the tied Vendors to make a “best and final offer”. If a tie bid is not broken by a “best 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 Director of Contracts and Procurement.

7.3.6 Except for exemptions granted in 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.

7.3.7 The Director of Contracts and Procurement shall determine the applicability and amounts of bonds and/or deposits required of a Vendor at any time, if, in their judgment, such security is necessary to safeguard the institution from undue risk. The Director of Contracts and Procurement may require the Vendor to submit a certified check, certificate of deposit, performance bond, or any other security acceptable to the Director of Contracts and Procurement, payable to WVSOM. 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 Director of Contracts and Procurement. The Director of Contracts and Procurement, upon receipt of the notification, shall return the check or deposit to the Vendor.



#### 7.4 Vendors' Rights and Duties

- 7.4.1 Each Vendor is solely responsible for delivery of its bid or proposal to the designated location for receipt of bids or proposals prior to the specified date and time of the bid or proposal opening.
- 7.4.2 If there is a conflict between the extension price and the unit price, the unit price shall prevail.
- 7.4.3 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.
- 7.4.4 Vendors are responsible for the accuracy of the information in their bid or proposal and on the bid or proposal envelope.

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

It is the Vendor's exclusive duty and obligation to file protests and requests for reconsideration according to the requirements of Section 8, and for reconsideration of suspension, in accordance with the requirements of Section 9 of this policy; otherwise, they shall be waived.

#### 7.5 Vehicle Purchase

- 7.5.1 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. This rule, guidelines, and procedures are adopted by WVSOM.

#### 7.6 Procurement File

- 7.6.1 The Director of Contracts and Procurement 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:
  - 7.6.1.1 Bids, proposals, or quotations received in response to a request for bids or proposals;
  - 7.6.1.2 Identification and certification of the successful bid;
  - 7.6.1.3 Why any bid or proposal is rejected in whole or in part;
  - 7.6.1.4 Justification for award if not to the lowest Vendor; and
  - 7.6.1.5 Vendor protests and complaints.
- 7.6.2 The Director of Contracts and Procurement will be responsible for maintaining proper records in accordance with Institutional Policy GA-11: Record Retention and accompanying Procedure.

#### 7.7 Lease-Purchase Arrangements

- 7.7.1 WVSOM may enter into lease-purchase arrangements for capital improvements, including equipment, regardless of value, without the approval of the Higher

Education Policy Commission (“HEPC”) in accordance with W.Va. Code §18B-19-11(c).

7.7.2 Lease-purchase agreements shall be made in accordance with W.Va. Code §18B-5-4(d) and (e) and §18B-19-11.

7.7.3 Lease-purchase agreements exceeding the minimum value stated in W.Va. Code §18B-19-11(e) (or its subsequent amended section) must be approved as to form by the Attorney General in accordance with W.Va. Code §18B-19-11(e).

## 7.8 Lease Agreements for Grounds, Buildings, Office Space, Classrooms

7.8.1 WVSOM has the authority to enter into lease agreements, as lessee, for grounds, buildings, office space or other space in the name of the State for more than one (1) fiscal year but not exceeding forty (40) years under the following conditions:

7.8.1.1 WVSOM shall be responsible for all rent and other necessary payments in connection with the contract of lease; and

7.8.1.2 Sufficient grounds, buildings, office or other space is not available on WVSOM property or in buildings currently owned or leased.

7.8.2 Before executing any rental contract or lease, WVSOM shall do the following:

7.8.2.1 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;

7.8.2.2 Leases shall contain, in substance, all of the following provisions:

7.8.2.2.1 That WVSOM, as lessee, has the right to cancel the lease without further obligation on the part of the lessee upon giving thirty (30) days’ written notice to the lessor at least thirty (30) days prior to the last day of the succeeding month;

7.8.2.2.2 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

7.8.2.2.3 That the lease shall be considered renewed for each ensuing fiscal year during the term of the lease unless it is canceled by WVSOM before the end of the then-current fiscal year.

7.8.2.3 Leases and other instruments entered into by WVSOM that exceeds one million dollars (\$1,000,000.00) over the lease term must receive approval by the Board of Governors. Leases costing less shall be approved by the CFO. Leases and other instruments for grounds, buildings, office or other space, once approved by the Board of Governors, may be signed by the President, the CFO, or the Director of Contracts and Procurement, if so designated.

7.8.2.4 Any lease or instrument exceeding the minimum value stated in W.Va. Code §18B-19-12(h) (or its subsequent amended section) 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.

- 7.8.2.5 The Board of Governors may promulgate additional rules deemed necessary to carry out the provisions of this section, and the President may issue procedures for complying with this section.

## **F 11-8. Protests and Reconsideration**

- 8.1 Protests and requests for reconsideration of a decision made by the Director of Contracts and Procurement may only be made by a person and/or a Vendor who is a potential or actual bidder on that particular contract and/or purchase.

### **8.2 Protests**

- 8.2.1 Protests must be filed either within five (5) calendar days: (1) of the bid or proposal opening or closing if protest is based on specifications or improprieties of any type of solicitation; or, (2) of the notice of WVSOM's intent to award the contract as posted or made available. 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.
- 8.2.2 The protest must be filed in writing with the Director of Contracts and Procurement 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.
- 8.2.3 The Director of Contracts and Procurement 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 Director of Contracts and 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 Director of Contracts and Procurement shall issue a written decision.

### **8.3 Reconsideration**

- 8.3.1 Reconsideration of a decision on a protest by the Director of Contracts and Procurement may be requested by an aggrieved party to WVSOM's CFO. A request for reconsideration shall be made in writing within five (5) calendar days after receipt of the Director of Contracts and 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.
- 8.3.2 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 CFO 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 their decision shall be final.

- 8.3.3 The Director of Contracts and Procurement 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 two.

## **F 11-9. Suspension and Reconsideration**

### **9.1 Suspension**

- 9.1.1 The Director of Contracts and Procurement shall have the authority to suspend, for a period determined by the CFO, the right and privilege of a Vendor to bid on purchases at WVSOM.
- 9.1.2 The following shall be considered adequate grounds for suspension of a Vendor:
- 9.1.2.1 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, or 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
- 9.1.2.2 The Vendor has breached any contract entered into pursuant to the provisions of W.Va. 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 W.Va. Code §18B-5-4 through §18B-5-9 or this policy. Any such suspension must be imposed within one (1) year of the date of the act, omission, or conviction the suspension is based upon, or within one year of the Director of Contracts and Procurement's discovery of such act, omission, or conviction.

### **9.2 Reconsideration**

- 9.2.1 Reconsideration of a decision on suspension by the Director of Contracts and Procurement may be requested by an aggrieved party to WVSOM's CFO. A request for reconsideration shall be made in writing within five (5) calendar days after receiving the Director of Contracts and Procurement's decision and it shall contain the name and address of the aggrieved party, a statement of the grounds for reconsideration for supporting documentation, the relief sought, and if a hearing on the merits is requested.
- 9.2.2 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 CFO 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.
- 9.2.3 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.

### 9.3 Vice Chancellor for Administration

9.3.1 When WVSOM suspends the right and privilege of a Vendor to bid on purchases of the WVSOM, the Purchasing Office shall forward a copy of the suspension notice to the Chief Procurement Officer for the Higher Education Policy Commission, who shall maintain a record of such suspension and shall notify all institutions as well as the Director of the State Division of Purchasing of such suspension.

9.3.2 If the Chief Procurement Officer of the HEPC determines that the actions of the Vendor leading to the suspension by WVSOM 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.

## **F 11-10. Violations**

- 10.1 Any person who authorizes or approves a purchase contract in a manner in violation of the W.Va. Code, this policy or any policy or procedure adopted by the Board of Governors shall be personally liable for the cost of such purchase or contract. Purchases or contracts violating the W.Va. Code and/or this policy shall be void and of no effect.
- 10.2 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 W.Va. Code §18B-5-6, §5A-3-29, §5A-3-30, and §5A-3-31.
- 10.3 Except as may be authorized by the provisions of the West Virginia Governmental Ethics Act (W.Va. Code §6B-1-1 through §6B-3-11), neither the Board of Governors, nor any employee of WVSOM 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. Neither the Board of Governors nor any employee of WVSOM shall accept or receive directly or indirectly, from any person, firm, or corporation, known by the Board of Governors or WVSOM's employees 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.
- 10.4 Any Vendor violating the West Virginia Code or this policy may be suspended from the right to bid or submit a proposal for institutional purchases for a period of up to one (1) year.

## **F 11-11. Performance Audits**

- 11.1 The Board of Governors is required by W.Va. Code §18B-5-4(r)(1) to conduct an independent performance audit of WVSOM's purchasing functions once every three (3) years.