

**MERCER COUNTY BOARD OF EDUCATION  
PURCHASING POLICY**

WHEREAS, the Mercer County Board of Education is dedicated to securing high quality goods and services at reasonable cost while insuring that all purchasing actions be conducted in a fair and impartial manner with no impropriety or appearance thereof, that all qualified vendors have access to Board business and that no offeror be arbitrarily or capriciously excluded, and that the maximum feasible degree of competition is achieved; and

WHEREAS, the West Virginia Code, 18-9A-17, 18-9B-12, and 11-8-26 allow for the implementation of regulations for requisitioning, purchasing, and procedures consistent with proper fiscal administration of school funds; and

WHEREAS, the West Virginia Board of Education, policy 8100, Public School Finance, effective date July 16,1990 shall delegate purchasing authority from the County Board of Education to the County Superintendent of Schools or their delegate for the administration of purchasing functions.

THEREFORE be it resolved that this policy prescribes the procedures for the conduct of all purchasing within the Mercer County Board of Education to take effect upon passage. This policy is developed to ensure compliance with the West Virginia Board of Education Policy 8200, Purchasing Procedures for local Education Agencies, effective date February 11, 2008.

**Article 1  
General Provisions**

Section 1. **Title**

- a. This policy shall be known as the Mercer County Board of Education Purchasing Policy.

Section 2. **Organization**

- a. The Director of Purchasing shall be the employee who shall have general supervision of the Department. The Director of Purchasing shall be the designate of the Superintendent and approved by the Board of Education.
- b. The primary duty of the Director of Purchasing is to carry out the principles of modern central purchasing and supply management in accordance with applicable laws and regulations and with generally accepted professional standards in such a manner as to insure the maximum efficiency of governmental operation, and to give to taxpayers the benefit in savings that such accepted business procedures are known to produce.

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Section 3. **Rules and Regulations.**

- a. The Director of Purchasing shall prepare and maintain a purchasing manual containing detailed rules and regulations consistent with this resolution and the laws of West Virginia governing the operations of the Mercer County Board of Education purchasing inventory and supply management system.

Section 4. **Cooperative Procurement.**

- a. The Purchasing and Inventory Department may participate in, sponsor, conduct or administer a cooperative procurement agreement with one or more other public bodies or agencies of the United States for the purpose of combining requirements to increase efficiency or reduce administrative expenses. Such purchases shall include the Board's bidders list and purchases over \$10,000 be submitted to the Board for approval.

Section 5. **Exceptions**

- a. The school principal shall be responsible for the procurement of goods and services for individual schools when using funds generated from activities at the school. No single purchase shall exceed \$500.00 under the authority granted the level of Small Purchases, Article 2, Section 2, 5. Execution of orders, contracts or leases, shall be conducted under the rules and regulations established by this policy under the supervision of the Director of Purchasing.
- b. Each school faculty senate shall be responsible for the procurement of goods and services for individual schools when using funds granted under 18-9A-9. No single purchase shall exceed \$500 under the authority granted the level of Small Purchases, Article 2, Section 2, 5. Execution of orders, contracts or leases, shall be conducted under the rules and regulations established by this policy under the supervision of the Director of Purchasing.
- c. Items purchased from state and federal agency contracts require no additional administrative bidding procedures.

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Section 6. **Definitions.**

- a. Competitive Negotiation is a formal method of selecting the top rated offeror. It includes the issuance of a written request for proposals, public notice, evaluation based on the criteria set forth in the request for proposals, and allows negotiations with the top rated offeror.
- b. Construction shall mean building, altering, repairing, improving or demolishing any structure, building, road, drainage, or sanitary facility, and any draining, dredging, excavation, grading or similar work upon real property.
- c. Emergency shall be deemed to exist when a breakdown in machinery and/or a threatened termination of essential services or a dangerous condition develops, or when any unforeseen circumstances arise causing curtailment or diminution of essential service.
- d. Excess Property shall mean that property which exceeds the requirement of the Department to which the property is assigned.
- e. Fixed Asset shall mean a tangible item, not a component, which has an expected useful life of at least one year and a dollar value in excess of \$5,000.
- f. Tangible Goods shall mean all material, equipment, supplies, printing, and automated data processing hardware and software.
- g. Immediate Family shall mean a spouse, child, parent, brother, sister, and any other person living in the same household as the employee.
- h. Ineligibility shall mean an action taken to suspend or debar an individual or firm from consideration for award of contracts. The suspension shall not be for a period exceeding six (6) months and the debarment shall not be for a period exceeding three (3) years.
- i. Informality shall mean a minor defect, variation, or change, of a bid or proposal from the exact requirements of the invitation to bid or the request for proposal which does not affect the price, quality, or delivery schedule for the goods, services or construction being procured.

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- j. Nonprofessional Services shall mean any service not specifically identified as a professional or consultant service in the definition of professional and consultant services (paragraph p).
- k. Official Responsibility shall mean administrative or operating authority, whether intermediate or final, to initiate, approve, and disapprove or otherwise affect a procurement transaction or any claim resulting there from.
- l. Pecuniary Interest Arising from the Procurement shall mean a material or financial interest.
- m. Potential bidder or offeror shall mean a person who, at the time the Board negotiates and awards or proposes to award a contract, is engaged in the sale or lease of goods, or the sale of services, insurance or construction, of the type to be procured under such contract, and who at such time is eligible and qualified in all respects to perform that contract, and who would have been eligible and qualified to submit a bid or proposal had the contract been procured through competitive sealed bidding or competitive negotiation.
- n. Prequalified Bidder shall mean a bidder who has been prequalified for a particular service, product, or construction project. Consideration of bids or proposals will be limited to prequalified bidders evaluated to meet the criteria of responsibility set forth in a prequalification solicitation.
- o. Procurement Transaction shall mean all functions that pertain to the obtaining of any goods, services or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.
- p. Professional and Consultant Services shall mean any type of professional service which may be legally performed only pursuant to a certificate or license from a State examining board. And any other type of similar contractual service (including consultants), required by the Mercer County Board of Education but not furnished by its own employees, which is in its nature so unique that it should be obtained by competitive negotiation on the basis of demonstrated competence and qualification for the type of professional service required and at fair and reasonable compensation rather than by competitive sealed bidding.

The following professional services (accounting, actuarial services, architecture, land surveying, landscape architecture, legal services, medicine, optometry, and professional engineering) shall be procured as set forth in the definition of

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competitive negotiation at paragraph b of this section. Procurement of architectural or engineering services are governed by WV 5G-1.

- q. Public Body shall mean any legislative, executive or judicial body, agency, office, department, authority, post, commission, committee, institution board or political subdivision created by law to exercise some sovereign power or to perform some governmental duty, and empowered by law to undertake the activities described in this resolution.
- r. Board Employee shall mean any person employed by the Mercer County Board of Education including elected officials or contracted positions for the governing body.
- s. Responsible Bidder or Offeror shall mean an individual, company, firm, corporation, partnership or other organization who has the capability in all respects, to perform fully the contract requirements and the moral and business integrity and reliability which will assure good faith performance, and who has been prequalified, if required.
- t. Responsive Bidder or Offeror shall mean an individual, company, firm, corporation, partnership or other organization who has submitted a bid which conforms in all material respects to the invitation to bid or request for proposal.
- u. Surplus Property shall mean that property which exceeds the requirement of the Board. This includes obsolete property and property for which there is no longer a need.
- v. Services shall mean any work performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies.
- w. Sheltered Workshop shall mean a work-oriented rehabilitative facility with a controlled working environment and individual goals which utilizes work experience and related services for assisting the handicapped person to progress toward normal living and a productive vocational status.
- x. Board Approval will be required of all items bid through RFP or RFQ which are \$10,000 or more in value.
- y. Request for information (RFI) is a document used to solicit information to assist the Purchasing Director in preparing specifications prior to issuing an RFQ, RFP,

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or other device issued to solicit bids. RFIs are optional and cannot be used to award a bid. RFIs should be used when appropriate expertise or information is lacking to develop adequate specifications for an RFQ or RFP.

- z. Request for quotations (RFQ) is a document used to solicit competitive bids for commodities and that contain all of the specifications or scope of work and contractual terms and conditions. Conformity to specifications and price are the only factors used in the evaluation process.
- aa. Request for proposal (RFP) is a document used to solicit competitive bids for professional, technical, or other specialized services where the specific scope of the work may not be comparable and the cost is not the sole factor in determining the award.
- bb. Expression of interest (EOI) is similar to a request for proposal, but is used ONLY for the procurement of architectural and engineering services. It is used in the selection of architects and engineers and permits the MCBOE to award a contract to the most qualified vendor on the basis of demonstrated competence and qualification at a cost that is determined to be fair and reasonable.

**Article 2**

**Purchasing Policies**

Section 1. **General**

- a. Unless otherwise authorized by law, all Mercer County Board of Education contracts with nongovernmental contractors for the purchase or lease of goods, or for the purchase of services, insurance, or construction, when the estimated cost thereof shall be \$10,000 or more in value, shall be awarded based upon the results of RFPs or RFQs, except as otherwise provided for in this section.
- b. Upon a determination in writing that the issuance of an RFP or RFQ is either not practical or not advantageous to the public; goods, services, insurance or construction may be procured by competitive negotiation. A written record documenting the basis for this determination shall be included in the appropriate contract file.
- c. No contract for the construction of any building or for an addition to or improvement of an existing building for which state funds of \$25,000 or more, either by appropriation, grant-in-aid or loan, are used or are to be used for all or

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part of the cost of construction shall be awarded except through the RFP process. The procedure for the advertising for bids and execution of contracts shall conform to Chapter 5-22-1 of the West Virginia School Code. No person or firm shall be eligible to bid on any such contract or to have the same awarded to him or it who has been engaged as architect or engineer for the same project. All contractors who perform work under this section are to be licensed under the West Virginia Contractor Licensing Act, Chapter 21, Article 11.

- d. In accordance with State Law, contracts with successful bidders may be entered into for a timeframe not to exceed a period of one (1) year, at which time the contract may, upon mutual consent and Board approval if the renewal exceeds \$10,000, be renewed. Such renewals are for a period of one (1) year, with a maximum of two (2) one year renewals, or until such reasonable time thereafter as is necessary to obtain a new contract. The “reasonable time” period shall not exceed twelve (12) months.
- e. Architectural and Engineering Services. Execution of contracts under this section shall be conducted under the rules and regulations established by WV Code Chapter 5G-1, Procurement of Architect-Engineer Services. For projects over \$250,000 selection of architectural and engineering firms shall be selected by competitive negotiation. For projects less than \$250,000, the selection of firms may be made based upon previous satisfactory performance when special circumstances are judged to exist.
- f. Certification of sufficient funds; orders and contracts in violation of Code of West Virginia Chapter 11-8-26: Except in emergency, no order for delivery on a contract or open market order for supplies, materials, equipment or contractual services for any Board department shall be awarded until the Treasurer shall have certified that the unencumbered balance in the appropriation concerned, in excess of all unpaid obligations, is sufficient to defray the cost of such order. Whenever any department of the Board of Education shall purchase or contract for any supplies, materials, equipment or contractual services contrary to the provisions of Chapter 11-8-26 of the Code of West Virginia or the rules and regulations made thereunder such order or contract shall be void and of no effect. The costs of such order or contract and, if already paid for out of Board funds, the amount thereof may be recovered in the name of the Board in an appropriate action instituted therefor.

Section 2. **Methods of Procurement.**

- a. **Purchase of Commodities and Services.**

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1. Commodities and services are to be purchased in accordance with the procedures specified in this section.
2. The competitive method used is determined by the threshold limits discussed in Section 2.e1-5. These limits are based on the best estimate of the purchasing director at the time the bid prices are solicited.
3. The threshold level to be used is determined by the total estimated cost of the item being purchased, which is the unit cost multiplied by the quantity.
4. The bid method selected will be considered to be the appropriate method unless the lowest bid received exceeds the maximum dollar threshold of the bidding method selected by ten percent. If the lowest bid exceeds the threshold by more than ten percent, the bid must be re-bid using bid requirements with a higher dollar threshold level or competitive negotiation with the lowest bidder may occur.
5. Purchases cannot be separated into a series of separate requisitions or purchase orders, called stringing, for the purpose of circumventing the applicable threshold limits of these competitive bidding procedures.
6. Commodities may be purchased from a retail outlet that charges a membership fee, whenever it is determined to be in the best interest of the MCBOE. The membership fee is another cost associated with the purchase and needs to be taken into consideration in making the determination. Membership fees cannot be paid for individual employees to become members, nor can a MCBOE membership card be used by employees for personal purchases, even if the retail outlet does not charge an additional fee for employees to be members.
7. If the price is not the sole determining factor in making the selection, the MCBOE must establish the procedures and criteria for evaluating the proposals received.
8. Documentation of the criteria and selection process must be retained for review. See the Records Retention Schedule maintained by the Treasurer for the period of time that the records must be retained.



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9. Public notice of the invitation to bid at least five days prior to the date set for receipt of bids by posting in a designated public area, or publication in a newspaper of county-wide circulation, or both. In addition, bids may be solicited directly from potential vendors.
  10. Public opening and reading of all bids received.
  11. Evaluation of bids based upon the requirements set forth in the invitation, which may include special qualifications of potential vendors, prior experience with BOE, vendor references, life cycle costing, value analysis, and any other criteria such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, which are helpful in determining acceptability.
  12. Award to the lowest responsive and responsible bidder. Multiple awards may be made when so specified in the invitation to bid.
  13. Competitive sealed bidding shall not be required for acquisition of professional and consultant services. Competitive negotiation will be used.
- b. Competitive Negotiation is a method of contractor selection which includes the following elements:
1. Issuance of a written Request for Proposal indicating in general terms that which is sought to be procured, specifying the factors which will be used in evaluating the proposal and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities or qualifications which will be required of the contractor.
  2. Public notice of the Request for Proposal at least five days prior to the date set for receipt of proposals by posting in a designated public area or by publication in a newspaper of county-wide circulation or both. In addition, proposals may be solicited directly from potential vendors.
  3. Procurement shall be as follows:
    - (a) Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the request for proposal, including price if so stated in the request for proposal. Negotiations shall

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then be conducted with the top rated offeror and a contract awarded if one can be agreed upon. If a contract cannot be negotiated with the top rated offeror, then the negotiations shall be conducted with the second rated offeror, and a contract awarded if one can be agreed upon, and so forth.

- c. Sole Source - Upon a determination in writing that there is only one source practicably available for that which is to be procured, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation. A written record documenting the basis for this determination shall be included in the appropriate purchase order file.
  
- d. Emergency - In case of an emergency, a contract may be awarded without competitive sealed bidding or competitive negotiation; however, such procurement shall be made with such competition as is practical under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the appropriate purchase order file.
  - 1. If an emergency occurs during regular Board business hours, the head of the using department shall immediately notify the Director of Purchasing or Purchasing Agent who shall either purchase the required goods or services or authorize the department head to do so.
  
  - 2. If an emergency occurs at times other than regular Board business hours, the using department head may purchase the required goods or services directly. The department head shall, however, when practical, secure competitive oral or written bids and order delivery to be made by the lowest responsive and responsible bidder. The department head shall also, not later than the next regular Board business day thereafter, submit to the Director of Purchasing a requisition, a tabulation of the bids received, if any, a copy of the delivery record and a brief written explanation of the circumstances of the emergency.
  
  - 3. The Director of Purchasing shall maintain a record of all emergency purchases supporting the particular basis upon which the emergency purchase was made. Such records shall be available for public inspection during regular Board business hours in the office of the Board Purchasing Agent.
  
- e. Competitive Bid Threshold Limits:

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- 1. Purchases costing less than \$5,000:**
  - a. Competitive bids are encouraged but not required.
  - b. An approved purchase order is required before the merchandise or service is ordered.
  
- 2. Purchases costing \$5,000 or more but less than \$10,000:**
  - a. Competitive bids are required.
  - b. A minimum of three (3) verbal quotes must be obtained, whenever practical.
  - c. Bids may be solicited by telephone, internet, mail, or by visiting the vendor.
  - d. Documentation must be maintained of all quotes obtained, recording the name of the vendor, name of the vendor's representative, name to the MCBOE representative seeking the quote, date, commodity, and price.
  - e. Refer to the Records Retention Manual maintained by the Treasurer for the period of time that the documentation is to be retained.
  - f. An approved purchase order is required before the merchandise or service is ordered.
  
- 3. Purchases costing \$10,000 or more but less than \$25,000**
  - a. Competitive bids are required.
  - b. A minimum of three (3) written bids must be obtained, whenever practical.
  - c. Bids may be solicited by telephone, internet, or mail, but a written bid must be submitted by the vendor.

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- d. A “No bid” is not to be considered a received bid, so sufficient requests should be solicited to assure that at least three actual bids are received, whenever practical.
- e. All bids received must be retained for public review and inspection during normal business hours. Refer to the Records Retention Manual maintained by the Treasurer for the period of time that the bids are to be retained.
- f. An approved purchase order is required before the merchandise or service is ordered.

**4. Purchases costing \$25,000 or more but less than \$50,000:**

- a. Competitive bids are required and bids shall be solicited from at least three known suppliers whenever practical, using advertising media such as newspapers, the internet, trade journals, purchasing bulletins, and other media considered advisable or mass mailings.
- b. If a vendor list is maintained, this requirement may be met by submitting the bid request to the vendors on the list.
- c. If a vendor list is not maintained, a good faith effort must be made to solicit as many competitive bids as practical, providing them adequate time to submit proposals.
- d. The invitation for bids must include all specifications and pertinent attachments, and shall define the items or services in order for the bidder to properly respond.
- e. The Purchasing Director may waive the requirement to advertise when a vendor is considered to be the sole source for the item being purchased, when it is determined to be in the best interest of the MCBOE, or when professional, technical, or specialized services are being acquired under an agreement. All waivers must be well documented and those based on a best interest determination must be approved by the county Superintendent.
- f. Any and all bids may be rejected if there is a sound documented reason.
- g. The request for bids must be retained for public review and inspection during normal business hours. After the bid is awarded, all criteria and

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evaluations used in making the selection, as well as all bids received from vendors, must be retained for public review.

h. An approved purchase order is required before the merchandise or service is ordered.

**5. Purchases costing \$50,000 or more:**

a. The solicitation for bids must specify that the bids are to be received in the form of sealed bids.

b. The request for bids must be publicly advertised using such media as legal advertisements in local newspapers, the internet, trade journals, purchasing bulletins, mass mailings or other media considered advisable, and adequate time must be provided to allow interested bidders sufficient time to submit their responses prior to the date set for the opening of bids.

c. The invitation for bids must include all specifications and pertinent attachments and must define the items or services in order for the bidder to properly respond.

d. All bids will be publicly opened at the time and place specified in the invitation for bids.

e. The Purchasing Director may waive the requirement to advertise when a vendor is considered to be the sole source for the item, when it is determined to be in the best interest of the MCBOE or when professional, technical, or specialized services are being acquired under an agreement. All waivers must be well documented, and those based on a best interest determination must be approved by the governing body.

f. Any and all bids may be rejected if there is a sound documented reason.

g. The request for bids must be retained for public review and inspection during normal business hours. After the bid is awarded, all criteria and evaluations used in making the selection, as well as all bids received from vendors, must be retained for public review.

h. An approved purchase order is required before the merchandise or service is ordered.

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**f. Alternative Procurement Procedures.**

1. The Purchasing Director may purchase equipment and other commodities or services directly from a vendor without competitive bidding, if any of the following conditions exist:

a. The item cannot be obtained through ordinary purchasing procedures, such as in situations where no bidders respond to a request for bids;

b. The item is unique, or is not available from any other source (sole source). This can include copyrighted materials, conference facilities, lecturers, and workshop presenters;

c. The item is available from the State or another BOE, provided the price, availability, and quality are comparable to those in the open market;

d. The item is available from a statewide contract and “piggybacking” by local governmental entities is permitted in the contract;

e. The item is available from a federal or GSA contract and the supplier is willing to sell to the MCBOE at the same or lower price.

f. The item is available from a sheltered workshop;

g. The item is available from an internet website maintained by a legitimate government purchasing cooperative, such as the one maintained by the Government Purchasing Alliance or the Southern Region Education Board, or from a vendor who participates in a government purchasing cooperative, and where competitive bids have already been obtained;

h. The item is a used vehicle or piece of equipment and its purchase is determined by the purchasing director to be in the best interest of the MCBOE.

2. Documentation of the justification for using these alternative competitive procurement procedures must be maintained.

a. Small Purchase - Any purchase or lease of goods, nonprofessional services, or for the purchase of insurance or construction, when the estimated cost thereof shall not exceed \$500, shall be deemed a small purchase and shall not be subject to the rules governing open market transactions. However, the Board Purchasing Agent shall, wherever possible, attempt to place small purchases with

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vendors having an existing contract with the Board or who have registered on the Board's Bidders List.

**Section 3. Exceptions to the Requirement for Competitive Procurement**

- a. The Director of Purchasing may enter into contracts without competition for the purchase of goods or services which are produced or performed by persons or in schools or workshops under the supervision of the West Virginia Department of Human Services; or which are produced or performed by nonprofit sheltered workshops servicing the handicapped, provided that the goods or services can be purchased within ten percent of their fair market value, will be of acceptable quality and can be produced in sufficient quantities and within the time required.
- b. All exemptions authorized by West Virginia State Board Policy 8100, Section 9.

**Section 4. Prequalification Of Bidders**

- a. The Director of Purchasing shall be responsible for determining the prequalification of bidders and products. Prospective bidders may be prequalified for particular types of goods, services, insurance, or construction projects, and consideration of bids or proposals limited to prequalified bidders evaluated to meet the criteria of responsibility set forth in a prequalification solicitation. Prequalification solicitations shall be issued sufficiently in advance to allow potential bidders a fair opportunity to complete the process.

**1. Prequalification of Bidders for Construction Projects**

- (a) A prequalification solicitation for the purpose of determining responsibility of contractors for future projects will be issued by the Director of Purchasing. The prequalification solicitation will contain the criteria upon which the qualification of prospective contractors will be evaluated.
- (b) An evaluation committee chaired by the Director of Purchasing will evaluate contractor responses to the prequalification solicitation based upon criteria set forth in the prequalification solicitation.
- (c) The committee may deny prequalification to any contractor on a construction contract if the committee finds one of the following:

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- (1) The contractor does not have sufficient financial ability to perform the contract that would result from an award. Evidence that the contractor cannot acquire a surety bond from a corporation approved by the WV Secretary of State's office list of acceptable surety corporations in the amount and type required by the Board shall be sufficient to establish the financial ability of the contractor to perform the contract resulting from the award.
- (2) The contractor does not have appropriate experience to perform the construction project.
- (3) The contractor has a history of excessive change order history initiated by the contractor.
- (4) The contractor has a history of being unable to complete projects within the scheduled time frame.
- (5) The contractor has had judgments entered against him for breach of contracts for construction projects.
- (6) The contractor has been in substantial non compliance with the terms and conditions of prior construction contracts with the Board without good cause within the past five years.
- (7) If the Board has not contracted with the contractor in any prior construction contract, the Board may deny prequalification if the contractor has been in noncompliance with the terms and conditions of comparable construction contracts with another public body without good cause. Any such noncompliance shall be documented.
- (8) The contractor has been convicted within the past five years of a felony involving procurement of or performance of a construction contract.
- (9) Failure of the contractor to provide any related information requested by the prequalification solicitation.



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2. Prequalification of Bidders for Other than Construction Projects  
In determining prequalification following criteria will be considered:
- (a) The ability, capacity, and skill of the bidder to perform the contract or provide the service required.
  - (b) Whether the bidder can perform the contract, or provide the service promptly, or within the time specified, without delay or interference.
  - (c) The character, integrity, reputation, judgment, experience or efficiency of the bidder.
  - (d) The quality of performance of previous contracts or services to the Board.
  - (e) The previous and existing compliance by the bidder with laws and ordinances relating to the contract or services.
  - (f) The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service.
  - (g) The ability of the bidder to provide future maintenance and service for the use of the subject of the contract.
  - (h) The number and scope of the conditions attached to a prequalification response.
  - (i) Whether the bidder is in arrears to the Board on debt or contract or is a defaulter on surety to the Board.
  - (j) Whether the bidder is suspended or disbarred by the State of West Virginia Purchasing Department for nonpayment of Worker's Compensation or Unemployment Compensation premiums.
  - (k) Information compiled during a prequalification process.
  - (l) Such other information as may be secured by the Director of Purchasing having a bearing on the decision to award the purchase order.

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3. Prequalification of Products

(a) The Board may prequalify products used for a particular purpose. In the prequalification process the Board must include the criteria for prequalification and may consider the following criteria to determine acceptability of a product.

- (1) The quality of the product.
- (2) Fitness for a particular purpose.
- (3) Unit of measure of a product.
- (4) Failure to provide requested related information

Section 5. General Purchasing Provisions.

a. Competitive Solicitation Process

1. The Board Purchasing Agent shall solicit bids from responsible prospective vendors who have registered their firm to be included on the Board's Bidders List for all solicitations using the RFP, RFQ and competitive negotiation methods of procurement.

The Board's Bidders List shall also be used to identify bidders to be solicited for open market transactions. Other potential vendors may be solicited at the discretion of the Director of Purchasing.

2. The Director of Purchasing shall encourage open and competitive bidding by all possible means and shall endeavor to obtain the maximum degree of open competition on all purchase transactions using the competitive sealed bidding, competitive negotiation, or open market transaction methods of procurement. In submitting a bid each bidder shall, by virtue of submitting a bid, guarantee that the bidder has not been a party with other bidders to an agreement to bid a fixed or uniform price. Violation of this implied guarantee shall render void the bid of such bidders. Any disclosure to or acquisition by a competitive bidder, in advance of the opening of the bids, of the terms or conditions of the bid submitted by another competitor shall render the entire proceedings void and shall require readvertising for bids.
3. All awarded competitive sealed bids and competitive negotiation responses shall be available for public inspection in the offices of the Board Purchasing Department during regular Board business hours, after

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award has been made, for a period of not less than thirty calendar days from date of award.

4. All formal bids or proposals shall include the following provisions:
  - (a) Each bidder or offeror shall certify, upon signing a bid or proposal, that to the best of his or her knowledge no Mercer County Board of Education official or employee having official responsibility for the procurement transaction, or member of his or her immediate family, has received or will receive any financial benefit of more than nominal or minimal value relating to the award of this contract. If such a benefit has been received or will be received, this fact shall be disclosed with the bid or proposal or as soon thereafter as it appears that such a benefit will be received. Failure to disclose the information prescribed above may result in suspension or debarment, or rescission of the contract made, or could affect payment pursuant to the terms of the purchase order.
  - (b) Drug Free Workplace Certification
  - (c) WV Workers Compensation Compliance
  - (d) Affidavit of Non Collusion
  - (e) Debarment Statement
5. Unless otherwise provided in the invitation to bid, the name of a certain brand, make or manufacturer does not restrict bidders to the specific brand, make or manufacturer named; it conveys the general style, type, character and quality of the article desired, and any article which the Board in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted.
6. Prospective contractors may be debarred from contracting for particular types of goods, services, insurance, or construction, for specified periods of time. The debarment procedures are set forth under Article 3, Section 1.

b. Contract Award Process

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1. The Director of Purchasing shall have the authority to waive informalities in bids, extend the time frame for advertisement of bids, reject all bids, parts of all bids, or all bids for any one or more goods or services included in a solicitation when in his/her judgment the public interest may be served thereby. If all bids are for the same total amount or unit price (including authorized discounts and delivery times) and if the public interest will not permit the delay of readvertisement for bids, the Director of Purchasing is authorized to award the contract to the resident West Virginia tie bidder, or if there be none, to one of the tie bidders by drawing lots in public; or the Director of Purchasing may purchase the goods or services in the open market except that the price paid shall not exceed the lowest contract bid price submitted for the same goods and services
2. If an apparent low bidder is not awarded the purchase order for reasons of non-responsibility, the Director of Purchasing shall so notify that bidder and shall have recorded the reasons in the purchase order file.
3. All contracts and leases shall be approved as to form by the Board Attorney or other qualified attorney.
4. Unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as submitted, except that if the bid from the lowest responsible bidder exceeds available funds, the Board may negotiate with the apparent low bidder to obtain a contract price within available funds; however, such negotiations may be undertaken only under conditions and procedures described in writing and approved by the Board prior to issuance of the Invitation to Bid and summarized therein.
5. A contract may include provisions for modification of the contract during performance. In no event may the amount of any contract, without adequate consideration, be increased for any purpose including, but not limited to, relief of an offeror from the consequences of an error in its bid or offer. Additional modifications must be processed through change-order procedures and approved by both parties.
6. In any contract for construction which provides for progress payments in installments based upon an estimated percentage of completion, the contractor shall be paid at least ninety percent of the earned sum when payment is due, with not more than ten percent being retained to assure faithful performance of the contract. All amounts withheld may be

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included in the final payment. Any subcontract for a public project which provides for similar progress payments shall be subject to the same limitations.

c. Withdrawal of bids by a bidder.

1. A bidder for a public construction contract, may withdraw his bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake therein, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn. The following procedure for withdrawal of a bid shall be:
  - (a) The bidder shall give notice in writing of his claim of right to withdraw his bid within two business days after the conclusion of the bid opening procedure. Such claim of mistake shall be proved only from the original work papers, documents and material submitted to the Board. Original work papers shall reach the Director of Purchasing office within three business days after date fixed for submission of bids.
2. A bidder for a contract other than for public construction may request withdrawal of their bid under the following circumstances:
  - (a) Requests for withdrawal of bids prior to opening of such bids shall be transmitted to the Director of Purchasing in writing.
  - (b) Requests for withdrawal of bids after opening of such bids but prior to award shall be transmitted to the Director of Purchasing, in writing, accompanied by full documentation supporting the request. If the request is based on a claim of error, documentation must show the basis of the error. Such documentation may take the form of supplier quotations, vendor work sheets, etc. If bid bonds were tendered with the bid, the Board may exercise its right of collection.

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3. No bid may be withdrawn under this paragraph when the result would be the awarding of the contract on another bid of the same bidder or of another bidder in which the ownership of the withdrawing bidder is more than five percent.
4. If a bid is withdrawn under the authority of this paragraph, the lowest remaining bid shall be deemed to be the low bid.
5. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.
6. If the Board denies the withdrawal of a bid under the provision of this paragraph, it shall notify the bidder in writing stating the reasons for its decision and award the contract to such bidder at the bid price, provided such bidder is a responsible and responsive bidder.
7. Work papers, documents and materials submitted in support of a withdrawal of bids may be considered as trade secrets or proprietary information.

d. Bonds

1. Except in cases of emergency, all bids or proposals for construction contracts of \$25,000-00 or more shall be accompanied by a bid bond from a surety company selected by the bidder which is legally authorized to do business in West Virginia, as a guarantee that if the contract is awarded to such bidder, that bidder will enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not exceed five percent of the amount bid.

No forfeiture under a bid bond shall exceed the lesser of:

- (a) The difference between the bid for which the bond was written and the next low bid, or
- (b) The face amount of the bid bond.

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Nothing in this section shall preclude the Board from requiring bid bonds to accompany bids or proposals for construction contracts anticipated to be less than \$25,000.

2. Performance and payment bonds:
  - (a) Upon the award of any construction contract of \$25,000.00 or more awarded to any prime contractor, such contractor shall furnish to the Board the following bonds:
    - (1) A performance bond in the sum of the contract amount conditioned upon the faithful performance of the contract in strict conformity with the plans, specifications and conditions of the contract.
    - (2) A payment bond in the sum of the contract amount. Such bond shall be for the protection of claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom the contract was awarded, or to any subcontractors in the prosecution of the work provided for in such contract, and shall be conditioned upon the prompt payment for all such material furnished or labor supplied or performed in the prosecution of the work. "Labor or materials" shall include public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the site.
  - (b) Each of such bonds shall be executed by one or more surety companies selected by the contractor which are legally authorized to do business in West Virginia.
  - (c) Such bonds shall be payable to the Mercer County Board of Education and filed with the Board or a designated office or official thereof.
  - (d) Nothing in this section shall preclude the Board from requiring payment or performance bonds for construction contracts below \$25,000.
  - (e) Nothing in this section shall preclude such contractor from requiring each subcontractor to furnish a payment bond with surety

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thereon in the sum of the full amount of the contract with such subcontractor conditioned upon the payment to all persons who have and fulfill contracts which are directly with the subcontractor for performing labor and furnishing materials in the prosecution of the work provided for in the subcontract.

- (f) If approved by the Board Attorney, a bidder may furnish a personal bond, property bond, or bank or saving and loan association's letter of credit on certain designated funds in the face amount required for the bid bond. Approval shall be granted only upon a determination that the alternative form of security proffered affords protection to the Board equivalent to a corporate surety's bond.

- 3. The Board may, at the discretion of the Director of Purchasing, require bid, payment, or performance bonds for contracts for goods or services if provided in the RFP or RFQ.

e. Disclosure of Information

Except as provided herein, all proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the West Virginia Freedom of Information Act.

- 1. Cost estimates relating to a proposed procurement transaction prepared by or for a public body shall not be open to public inspection.
- 2. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect bid records within a reasonable time after the opening of all bids, except in the event that the Board decides not to accept any of the bids and to reopen the contract. Otherwise, bid records shall be open to public inspection only after award of the contract.

Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect the awarded proposal records within a reasonable time after the evaluation and negotiations of proposals are completed, except in the event that the Board decides not to accept any of the proposals and to reopen the contract. Otherwise, awarded proposal records shall be open to the public inspection only after award of the contract except as provided in paragraph E 3. Any inspection of procurement transaction records under this section shall be subject



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to reasonable restrictions to ensure the security and integrity of the records.

3. Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection with a procurement transaction shall not be subject to public disclosure under the West Virginia Freedom of Information Act; however, the bidder, offeror or contractor must invoke the protection of this section prior to or upon submission of the data or other materials, and must identify the data or other materials to be protected and state the reasons why protection is necessary.
4. Nothing contained in this section shall be construed to require the Board, when procuring by "competitive negotiation" to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous to the Board.

f. Non Discrimination

The Board will not discriminate because of race, color, religion, creed, or sex in the performance of its procurement activity.

Every contract of \$10,000 or more shall include the following provisions:

1. During the performance of this contract, the contractor agrees as follows:
  - (a) The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin, except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
  - (b) The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
  - (c) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this provision.

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- (d) The contractor will include the provisions of paragraphs (a), (b), and (c) above in every subcontract or purchase order of \$10,000 or more so that the provisions will be binding upon every subcontractor or vendor.
- (e) The contractor has in effect and is in compliance with a Drug Free Workplace Policy.

Section 5. **Compliance with Conditions on Federal Grants or Contract.**

- a. The procurement transactions which involve the expenditure of federal funds are administered under Office of Management and Budget, Uniform Administrative Requirements for Grants and Cooperative Agreements, Part III, Federal Register, Volume 53, Number 214, November 4, 1988, Sub section 36 and U.S. Education Department General Administrative Regulations, (EDGAR), Parts 74-86 of Title 34 of the Code of Federal Regulations which states that "grantees and sub grantees shall use their own procurement procedures and regulations," in the administration of federal funds.
- b. Where a procurement transaction involves the expenditure of federal assistance or contract funds, the receipt of which is conditioned upon compliance with mandatory requirements in federal laws or regulations not in conformance with the policy of full and open competition, the Director of Purchasing may comply with the federal requirements only upon written determination by the Board that acceptance of the grant or contract funds under the applicable conditions is in the public interest. Such determination shall state the specific provisions of this section in conflict with the conditions of the grant or contract.

**Article 3**

**Bidder/Contractor Remedies**

Section 1. **Ineligibility.**

- a. Any person or firm suspended or debarred from participation in Board procurement shall be notified in writing by the Director of Purchasing.
  - 1. The Notice of Suspension shall state the reasons for the actions taken and such decision shall be final unless the person or firm appeals within thirty (30) days of receipt of the Notice by giving written notice of its desire to

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invoke the suspension/debarment administrative appeals procedures as set forth in this section.

2. The Notice of Debarment shall state the reasons for the actions taken and the decision shall be final unless the person or firm appeals within thirty (30) days of receipt of the notice by giving written notice of its desire to invoke the suspension/debarment administrative appeals procedures as set forth in this section.
- b. The Director of Purchasing shall have the authority to suspend or debar a person or firm from bidding on any contract for the causes stated below:
1. conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
  2. conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a Board contractor;
  3. conviction under the state or federal antitrust statutes arising out of the submission of bids or proposals;
  4. violation of contract provisions, as set forth below, of a character which is regarded by the Director of Purchasing to be so serious as to justify suspension or debarment action:
    - (a) failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
    - (b) failing to respond to communication from MCBOE Administrators such as the Treasurer or from the Director of Purchasing or failing to remedy performance deficiencies in a satisfactory fashion.
    - (c) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided, that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for suspension or debarment;

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5. any other cause the Director of Purchasing determines to be so serious and compelling as to affect responsibility as a contractor, such as debarment by another governmental entity for any cause listed herein, or because of prior reprimands
  6. the contractor has abandoned performance or been terminated for default on any other Board project;
  7. the contractor is in default on any surety bond or written guarantee on which Mercer County Board of Education is an obligee.
- c. Procedure for Appeal from Suspension/Debarment. The appeals hearing for suspension/debarment shall be conducted by the Board of Education or designate, who shall make all findings of fact. The person or firm shall be given the opportunity to be heard, submit documentary evidence, and present witnesses.

The Board or designate shall make findings of fact. Based on these findings, the Board or designate shall decide if there is cause or that no cause exists. If cause exists, the Board or designate may bar the person or firm from bidding on any and all Board contracts for a period of up to three (3) years, or in the case of suspension, a period up to twelve (12) months. The decision of the Board or designate shall be in writing and include findings of fact, reasons substantiating the decision, and period of suspension or debarment if cause exists.

- d. If, upon appeal, it is determined that the action taken by the Director of Purchasing was arbitrary or capricious, or not in accordance with policies, statutes or regulations, or otherwise in error, the sole relief available to the person or firm shall be restoration of eligibility. The person or firm may not institute legal proceedings until all statutory requirements have been met.

Section 2. **Appeal of Denial of Withdrawal of Bid.**

- a. A decision denying withdrawal of a bid submitted by a bidder or offeror shall be final and conclusive unless the bidder appeals the decision within ten (10) days after receipt of the decision by invoking the administrative appeals procedures as provided in Section 6 of this Article.
- b. If no bid bond was posted, a bidder refused withdrawal of bid, prior to appealing, shall deliver to the Board a certified check or cash bond in the amount of the difference between the bid sought to be withdrawn and the next low bid. Such

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security shall be released only upon a final determination that the bidder was entitled to withdraw the bid.

- c. If, upon appeal, it is determined that the decision refusing withdrawal of the bid was arbitrary or capricious, the sole relief shall be withdrawal of the bid.

Section 3. **Appeal of Determination of Nonresponsibility.**

- a. Any bidder who, despite being the apparent low bidder, is determined not to be a responsible bidder for a particular Board contract shall be notified in writing by the Director of Purchasing. Such notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within ten (10) days of receipt of the notice by invoking the Board's Administrative Appeals Procedures as provided in Section 6 of this Article.
- b. If, upon appeal, it is determined that the decision of the Director of Purchasing was arbitrary or capricious, or otherwise in error and the award for the particular Board contract in question has not been made, the sole relief available to the bidder shall be a finding that the bidder is a responsible bidder for the Board contract in question. Where the award has been made and performance has begun, the Board may declare the contract void upon a finding that this action is in the best interest of the public. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.

Section 4. **Protest of Award or Decision to Award.**

- a. Any bidder or offeror may protest the award or decision to award a contract by submitting a protest in writing to the Director of Purchasing, or an official designated by the Board, no later than five (5) days after the award. Any potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to protest the award or decision to award such contract shall submit such protest in the same manner no later than five (5) days after posting or publication of the notice of such contract as provided in Article 2, Section 2 c d. However, if the protest of any actual or potential bidder or offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction which are subject to inspection under Article 2, Section 4 e, Disclosure of Information, then the time within which the protest must be submitted shall expire five (5) days after those records are available for inspection by such bidder or offeror, or at such later time as provided herein. The written

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protest shall include the basis for the protest and the relief sought. The Director of Purchasing shall issue a decision in writing within five (5) days of the receipt of the protest stating the reasons for the action taken. This decision shall be final unless the bidder or offeror appeals within five (5) days of receipt of the written decision by invoking the Board's Administrative Appeals Procedures as provided in Section 6 of this Article.

- b. If prior to award it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The Director of Purchasing shall cancel the proposed award or revise it to comply with policy. If, after an award, it is determined that an award of a contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided. Where the award has been made but performance has not begun, the performance of the contract may be declared void by the Board. Where the award has been made and performance has begun, the Director of Purchasing may declare the contract void upon a finding that this action is in the best interest of the Board. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance at the rate specified in the contract up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.
- c. Pending final determination of a protest or appeal, the validity of a contract awarded and accepted in good faith in accordance with this article shall not be affected by the fact that a protest or appeal has been filed.
- d. An award need not be delayed for the period allowed a bidder or offeror to protest, but in the event of a timely protest, no further action to award the contract will be taken unless there is a written determination that proceeding without delay is necessary to protect the public interest or unless the bid or offer would expire.

Section 5. **Contractual Disputes.**

- a. Any dispute concerning a question of fact as a result of a contract with the Board which is not disposed of by agreement shall be decided by the Director of Purchasing, who shall reduce his decision to writing and mail or otherwise forward a copy thereof to the contractor within five (5) days. The decision of the Director of Purchasing shall be final and conclusive unless the contractor appeals within five (5) days of receipt of the written decision by invoking the Board's Administrative Appeals Procedures as provided in Section 6 of this Article.
- b. Contractual claims, whether for money or other relief, shall be submitted in writing no later than sixty days after final payment; however, written notice of the

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contractor's intention to file such claim shall have been given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

- c. No construction contract entered into shall waive, release, or extinguish the rights of a contractor to recover costs or damages for unreasonable delay, in performing such contract, either on his behalf or on behalf of his subcontractor if and to the extent such delay is caused by acts or omissions of the Board, its agents or employees and due to causes within their control.
  - 1. Subsection shall not be construed to render void any provision of a Board construction contract that:
    - (a) Allows the Board to recover that portion of delay costs caused by the acts or omissions of the contractor, or its subcontractors, agents or employees;
    - (b) Requires notice of any delay by the party claiming the delay;
    - (c) Provides for liquidated damages for delay; or
    - (d) Provides for arbitration or any other procedure designed to settle contract disputes.
- d. A contractor making a claim against the Board for costs or damages due to the alleged delaying of the contractor in the performance of its work under any Board construction contract shall be liable to the Board and shall pay it for a percentage of all costs incurred by the Board in investigating, analyzing, negotiating, litigating and arbitrating the claim, which percentage shall be equal to the percentage of the contractor's total delay claim which is determined through litigation or arbitration to be false or to have no basis in law or in fact.

Section 6. **Administrative Appeals Procedures.**

- a. The Board or designate shall hear appeals of protests to the Director of Purchasing's decision for refusal to allow withdrawal of bids, determination of nonresponsibility, protests of award or decisions to award, and appeals from decisions on disputes arising during the performance of a contract. The Board or

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designate shall provide for a hearing, the opportunity to present pertinent information and shall issue a written decision containing findings of facts. The findings of fact shall be final and conclusive and shall not be set aside unless the same are fraudulent or arbitrary or capricious, or so grossly erroneous as to imply bad faith.

Section 7. **Exhaustion of Administrative Remedies.**

- a. No bidder, offeror, potential bidder or offeror, or contractor shall institute any legal action until all administrative remedies available under this Article have been exhausted and until statutory requirements have been met.

Article 4

**Ethics in Board Contracting**

Section 1. **General.**

- a. No Board employee having official responsibility for any aspect of a procurement transaction shall participate in that transaction on behalf of the Board when the employee knows that:
  1. The employee is contemporaneously employed by a bidder, offeror or contractor involved in the procurement transaction; or,
  2. The employee, the employee's partner, or any member of the employee's immediate family holds a position with a bidder, offeror, or contractor such as an officer, director, trustee, partner or the like, or is employed in a capacity involving personal and substantial participation in the procurement transaction, or owns or controls an interest of more than five percent; or,
  3. The employee, the employee's partner, or any member of the employee's immediate family has a pecuniary interest arising from the procurement transaction; or,
  4. The employee, the employee's partner, or any member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment with a bidder, offeror or contractor.

Section 2. **Solicitation or Acceptance of Gifts.**



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- a. No Board employee having official responsibility for any aspect of a procurement transaction shall solicit, demand, accept or agree to accept from a bidder, offeror, contractor or subcontractor any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal or minimal value, present or promised, unless consideration of substantially equal or greater value is exchanged. The Board may recover the value of anything conveyed in violation of this section.

Section 3. **Gifts.**

- a. No bidder, offeror, contractor or subcontractor shall confer upon any Board employee having official responsibility for any aspect of a procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is exchanged.

Section 4. **Kickbacks.**

- a. No contractor or subcontractor shall demand or receive from any of his suppliers or his subcontractors, as an inducement for the award of a subcontract or order, any payment, loan, subscription, advance, deposit of money, services or anything present or promised, unless consideration of substantially equal or greater value is exchanged.
- b. No subcontractor or supplier shall make, or offer to make, kickbacks as described in this section.
- c. No person shall demand or receive any payment, loan, subscription, advance, deposit of money, services or anything of value in return for an agreement not to compete on a Board contract.
- d. If a subcontractor or supplier makes a kickback or other prohibited payment as described in this section, the amount thereof shall be conclusively presumed to have been included in the price of the subcontract or order and ultimately borne by the public body and will be recoverable from both the maker and recipient. Recovery from one offending party shall not preclude recovery from other offending parties.

Section 5. **Purchase of Building Materials, etc., from Architect or Engineer Prohibited.**

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- a. Except in cases of emergency, no building materials, supplies or equipment for any building or structure constructed by or for the Board shall be sold by or purchased from any person employed as an independent contractor by the Board to furnish architectural or engineering services, for such building or structure; or any partnership, association or corporation in which such architect or engineer has a pecuniary interest.

Article 5

**Supply Management**

The Director of the Purchasing and Inventory Department is responsible for the management of all supplies and equipment except as excluded by formal agreement between the Board and other public bodies. This includes publishing a catalog of materials used by the Board, inventory management of consumable supplies, disposition of excess and surplus property and the physical accountability of fixed assets.

Section 1. **Item Identification.**

- a. The Director of the Purchasing and Inventory Department will establish and maintain a Board equipment identification numbering system for items used.

The system, Mercer Board Identification Number (MBIN), is based on the National Institute of Governmental Purchasing (NIGP) commodity class item system. A catalog of MBIN's will be maintained and published.

- b. The Director of the Purchasing and Inventory Department shall establish a Committee on Standardization composed of such officials or employees of the Board and other appropriate public bodies as he may designate.

- c. The duties of the Committee shall be:

1. **Classification.** To classify all the supplies furnished to all using departments.
2. **Standardization.** To adopt as standards the minimum number of quantities, sizes, and varieties of supplies consistent with the successful operation of the Board.

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3. Specifications. To work with the Director of the Purchasing and Inventory Department in preparing written specifications of all such standard supplies, adopting to the maximum extent possible the standard specifications of other governmental jurisdictions and of nationally recognized standardizing bodies.
  4. Estimates. To study the problem of estimates of requirements in supplies and contractual services, and to recommend to the Director of the Purchasing and Inventory Department such rules governing estimates of needs as will best serve the interest of efficient central purchasing without adding procedures burdensome to using agencies.
  5. Purchasing Review. To recommend to the Director of the Purchasing and Inventory Department changes or improvements in the purchasing system of any kind and at any time.
- d. The Director of the Purchasing and Inventory Department and the Committee are authorized to make use of the Board's staff and technical facilities in the development of specifications and in the testing of supplies received under the standard specifications, or to arrange for the testing of supplies through the facilities of reputable testing laboratories.

Section 2. **Inventory Management.**

- a. The Director of the Purchasing and Inventory Department is responsible for the following:
  1. Operation of the Board's Central Warehouse which serves as the central receiving point for supplies and equipment and provides temporary storage and distribution of the supplies and equipment to all Board departments.
- b. The Director of the Purchasing and Inventory Department shall prescribe the procedures to be observed by using agencies in receipt, storage, issue and stock control of supplies.

Section 3. **Excess and Surplus Property**

- a. The Director of the Purchasing and Inventory Department is responsible for:

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1. Disposal of the Board's surplus personal property through sealed bid, auction, or fixed price sale. Equipment may also be disposed of by junking, sold as scrap metal, or cannibalization. Sale of surplus personal property shall be based wherever feasible on competitive bids. If the amount of the sale is estimated to exceed \$1,000, sealed bids shall, unless the Board shall provide otherwise, be solicited by public notice inserted at least once in a newspaper of county-wide circulation and at least ten calendar days before the final date of submitting bids.
  2. Redistribution of serviceable excess equipment.
  3. Management of recyclable material contracts. These contracts involve disposal of scrap metal, paper, waste oil, scrap tires, waste silver, etc.
- b. The Board of Education may donate surplus Board property to charitable and other non-county activities where appropriate. The Director of the Purchasing and Inventory Department will evaluate the request for donation and determine that the requested item is surplus; i.e., it is not needed by any school department. Public relations and goodwill are valid benefits to the Board. The Director of the Purchasing and Inventory Department will provide his evaluation and recommendation to the Superintendent for forwarding to the Board for approval.
- c. Board employees and members of their immediate family are not eligible to buy surplus Board personal property except where the property is offered to the general public.

Section 4. **Property Accountability.**

- a. The Director of the Purchasing and Inventory Department is responsible for:
  1. The Board's fixed assets accountability program.
  2. Conducting semiannual inventories and updating all fixed asset accounts.
  3. Maintaining and updating the description table for assigned fixed assets.
- b. Property offered as a donation to a Board department which exceeds \$500 in value may be accepted only after approval by the Director of the Purchasing and Inventory Department. Requests for approval must be in writing and contain an estimate of the fair market value of the property, condition of the property, and describe and future maintenance requirements. Once accepted, donated property will be included in the property accountability program.

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**Severability**

If any portion of this policy or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this policy.

Authority: W.Va. Constitution, Article XII, §2, and W.Va. Code §§16-9A-4, 16-9A-9, 17A-1-1, 18-2-5, 18-2-5a, 18-2-7b, 18-2-9, 18-2-33, 18-2C-1 et seq., 18-5-1, 18-5-13, 18-16-1, 18A-1-1, 18A-5-1, 18A-5-1a, 60A-1-101, 60A-7-11a, 61-2-15, 61-7-2, and 61-7-11a.

Source: Board of Education Minutes

Dates: 8/88; 11/17/98; 3/26/02; 1/24/06; 1/11/11