



Purpose

- Establishes the minimum requirements and procedures to be followed in the purchasing, receiving, safeguarding, and disposal of goods and services
- Agencies are encouraged to develop local policies, practices, and procedures that supplement the provisions contained within Policy 8200
 - Local policies can be more restrictive.



Applicability

- Applies to:

- County boards of education
- Multi-county vocational centers (MCVCs)
- Educational service cooperatives (ESCs) - ??

- It is unclear if Policy 8200 will apply to ESCs. The policy language contained in §126-202-4 states that "each local education agency (LEA).....is responsible for adhering to the requirements included in this policy for the purchasing, receiving, safeguarding and disposal of commodities and services used in its operations." HB 2711, which created the ESCs, indicated that ESCs are LEAs but Policy 8200 has not yet been updated to reflect whether the policy specifically applies to ESCs.



Key Provisions

- Adopts State purchasing requirements with appropriate revisions
- Defines purchasing responsibilities for LEAs
 - Code requirements (11-8-26, 18-9B-10)
 - Purchasing Director
 - Chief School Business Official (CSBO)
- Discusses acquisition planning
- Delineates differences between:
 - Purchase of commodities
 - Purchase of services



Key Provisions

- Summarizes requirements for:
 - Construction projects
 - Architectural and engineering services
 - Textbooks and instructional materials

- Establishes threshold limits for bidding and for approval of purchases

- Explains when non-competitive purchases may be used

- Establishes procedures for use of credit cards



Key Provisions

- Details emergency purchasing procedures:
 - Declared by the Governor
 - Local Emergencies
- Describes disposal procedures for surplus property:
 - Real property
 - Personal property (equipment)
- Vendors' rights and duties
- Remedies and suspensions
- Protests



Responsibilities (Section 2)

- Per WV Code §11-8-26, LEAs shall not expend money or incur obligations:
 1. In an unauthorized manner
 2. For an unauthorized purpose
 3. In excess of the amount allocated to the fund in the levy order
 4. In excess of the funds available for current expenses

- Purchasing Director responsibilities – Section 2.4
- CSBO responsibilities – Section 2.5



Responsibilities (Section 2.4)

The Purchasing Director has various responsibilities, including but not limited to:

- Ensuring all purchases and contracts are in accordance with state statute, state board policy 8200, and any local purchasing policies.

- Prescribing the manner in which commodities are purchased, delivered, stored and distributed.

- Reviewing all specifications and descriptions prior to soliciting bids to ensure that they do not favor a particular brand or vendor.

- Accepting or rejecting any bids in whole or in part.

- Prescribing the amount of deposit or bond to be submitted with any bid or contract.



Acquisition Planning (Section 3)

The following steps should be taken when preparing for a purchase:

- Define need
- Consider acquisition and delivery lead time
- Develop specifications
- Explore alternative sources
- Prepare the requisition
- Identify possible vendors



Specifications (Section 3.2.3)

- A specification is a concise statement explaining the type of product or service, the quality level, special requirements in design, performance, delivery and usage.
- ***Specifications must be written in such as way as to maximize and encourage competition.**
- Specifications must not be **restrictive** (locking in a specific vendor and limiting competition) or be **vague** (allowing a vendor to provide a lower than acceptable quality level product or service).



Specification Types (Section 3.2.3)

There are 3 types of specifications:

1. “Brand Name(s) or Equal” Specification
2. Performance Specification
3. Design Specification

A combination of the types may be used to communicate clear specifications to vendors.



Specification Types (Section 3.2.3)

1. “Brand Name(s) or Equal” Specification

- This is based upon one or more manufacturer’s commodity description(s), model number(s) and quality level.
- The manufacturer commodity number must be easily identifiable in a current publication available to most vendors.
- May be used to indicate a desired quality level.



Specification Types (Section 3.2.3)

2. Performance Specification

- This is based upon the specific performance needs of the LEA.
- The performance specification is less structured as to how the product is made and more structured as to how well it performs.
- May refer to a nationally accepted testing procedure for a commodity.



Specification Types (Section 3.2.3)

3. Design Specification

- This concentrates on the dimensional and other physical requirements of an item being purchased.
- This is normally used when the commodity has to be specially made to meet the LEA's unique needs.
- May indicate the physical size and dimension of the commodity.



Specifications (Section 3.2.3)

- Examples of poor specifications are things such as:
 - Vendor must provide 3M paperclips
***This is missing the “or equal”
 - Vehicle must have 375.95 horsepower, a glove box of 29.55 cubic inches, marble gray interior with white thread, and a logo that includes the letters F O R D
***This is mimicking brand specifications on trivial requirements.



Purchase of Commodities (Section 7)

- Commodities must be purchased in accordance with the competitive bid procedures specified in Section 7 of the manual
- The competitive method used is determined by the threshold levels specified in Section 7.11 of the manual
- 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



Purchase of Commodities (Section 7)

- The bid method selected will be considered the appropriate method unless the lowest bid received exceeds the maximum dollar threshold of the method selected by 10% (Section 7.4)
- If it exceeds 10%, the bidding process must be repeated
- Purchases cannot be split into a series of separate requisitions or purchase orders for the purpose of circumventing the applicable threshold limits of competitive bidding – this is called Stringing.



Membership Outlets (Section 7.6)

- Commodities may be purchased from a retail outlet that charges a membership fee (Section 7.6)
- However:
 - Membership fees cannot be paid for employees to become members
 - Cards cannot be used for personal purchases of employees



Bidding Thresholds (Section 7.11)

- Purchase of commodities:

- Less than \$5,000 – Competitive bids encouraged but not required (see exception for federal purchases)
- \$5,000 or greater – Competitive bids required
 - \$5,000 - \$10,000 – A minimum of 3 verbal quotes required, when practical
 - \$10,000 - \$25,000 – A minimum of 3 written bids required, when practical – **Bids may be solicited by various means** (telephone, internet)
 - \$25,000 - \$50,000 – A minimum of 3 written bids required, when practical – **Good faith effort must be made to solicit as many bids as practical – by public notice or use of bidder list**
 - Greater than \$50,000 – **Public notice required – sealed bids** (Submission of Sealed Bids discussed in Section 16)



Federal Purchase Threshold

- Under federal regulations (2 CFR 200.67) competitive quotes are required for purchases \$3,500 or higher. Purchases for less than \$3,500 are considered micro-purchases.
- Micro-purchase means a purchase of supplies or services using simplified acquisition procedures, the aggregate amount of which does not exceed the micro-purchase threshold.
- Micro-purchases can be awarded without competitive bidding if the price is considered reasonable.
- **For purchases paid with federal funds, even though Policy 8200 doesn't require competitive bids until \$5,000, LEAs must comply with the federal regulations and obtain competitive quotes beginning at \$3,500.**



Approval (Section 18)

- Approval Thresholds – Commodities and Services:
 - Less than \$5,000 – Supervisor
 - \$5,000 - \$25,000 – Purchasing director or designee
 - \$25,000 - \$100,000 – Superintendent or MCVV Director
 - Greater than \$100,000 – Governing Board



Tied Bids (Section 19.7)

What do you do when tied bids are received?

There are many options:

- The tied vendors can make a “last and final offer”
- You can flip a coin
- You can do a draw of the cards
- You can use any other impartial method that the purchasing director considers prudent



Purchase of Commodities – Awarding

- The award for the purchase of commodities shall be made to the lowest responsible bidder (Section 19.1)
- EXCEPTION: SCHOOL BUSES
 - Per WV Code §5A-3-11, state bids on school buses shall be accepted from all bidders who shall then be awarded contracts if they meet the State Board’s “Minimum Standards for Design and Equipment of School Buses.”
 - County Boards may select from any bidder awarded a contract.



Procurement of Services (Section 7)

- Services may be procured without basing the vendor’s selection on lowest price:
 - Negotiation
 - Request for Proposals (RFP)/Expression of interest (EOI) (for architectural or engineering services) recommended
- If the price is not the sole determining factor in making the selection, the LEA must establish the procedures and criteria for evaluating the proposals received. Documentation of the criteria and selection process must be retained for review.



Federal Competition

- Note that under 2 CFR 200.319, situations that are considered to be restrictive of competition and a violation of federal regulations include but are not limited to:
 - Placing unreasonable requirements on firms in order for them to qualify to do business
 - Requiring unnecessary experience and excessive bonding
 - Non-competitive pricing practices
 - **Non-competitive contracts to consultants**
 - Organizational conflicts of interest
 - Arbitrary actions in the procurement process
 - Specifying only a “brand name” product instead of allowing “an equal” product to be offered



Alternative Procurement (Section 8.1)

LEAs may purchase equipment, commodities, or services directly from a vendor without competitive bidding if any of the following conditions exist (see exception for federal purchases):

- Item cannot be purchased through normal bidding procedures (no responses to RFP/RFQ)
- Item is unique or not available from any other source (sole source)
- Item is available from the State, a RESA or another LEA
- Item is available from a statewide contract



Alternative Procurement (Section 8.1)

- Available from a GSA schedule
- Available from a sheltered workshop
- Available from a local purchasing cooperative, such as a RESA or group of county boards working together
- Available from a legitimate government purchasing cooperative that has already obtained competitive bids that meet the requirements of Policy 8200
- Item is a used vehicle or piece of equipment



Exemptions from Competitive Bidding (Section 9)

- The following items or services may be purchased directly without advertisement or obtaining competitive bids (see exception for federal purchases):
 - Accounting services and audits (exclusive of the annual financial statement audit – Section 19.4.1)
 - Advertising directly with newspapers, trade magazines, etc.
 - Artwork and Historical Items
 - Attorneys and Law Firms
 - Auditing Contracts between Government Agencies



Exemptions from Competitive Bidding (Section 9)

- Entertainers
- Facilities Rentals
- Medical Fees for individual students
- Postage
- Software maintenance
- Student activities
- Investigative services
- Subscriptions and Publications
- Training activities



Exemptions from Competitive Bidding (Section 9)

- Tuition, stipends, accreditation and registration fees
- Utilities – Regulated by the Public Service Commission
- Livestock and fish stock for vocational programs
- Fees imposed by Other Government Entities (licenses, permits, etc.)
- Court Ordered Payments
- Court Ordered Placements



Are basic telephone services exempt (E-Rate)?

Basic telephone services were de-regulated by the Public Service Commission (PSC) a couple of years ago. Since they are no longer regulated by the PSC, they technically do not meet the exemption contained in Section 9.1.16 of Policy 8200. Therefore, the competitive bidding requirements in Section 7 must be followed. Form 470 can serve as the RFP except when the annual amount of telephone services are expected to be greater than \$50,000 since sealed bids are required at that level of procurement.



Federal Non-Competitive Proposals

Under 2 CFR Section 200.320, federal procurement by noncompetitive proposals may be used only when one or more of the following apply:

- The item is available only from a single source
- An emergency will not permit competitive solicitation
- The awarding agency or pass-through expressly authorizes noncompetitive proposals
- After solicitation, competition is determined to be inadequate



Contract Length (Section 3.2.5)

- Contracts generally cover a 12-month period or cite a specific time for completion of the project or service.
- A solicitation for a contract that includes an option on the part of the LEA to extend or renew the contract for an additional period may be advantageous.
- Renewals shall be in accordance with the terms and conditions of the original contract and are limited to **two** successive one year periods.
- A letter of justification for each renewal should be maintained on file stating pertinent reasons for renewal.



Contract Cancellation (Section 3.2.5)

- The LEA reserves the right to cancel any contract or purchase order upon written notice to the vendor if the commodities and services supplied are of an inferior quality or do not conform with the specifications of the bid or award.



Open Ended Contracts, Blanket Purchase Orders (Section 5)

- Open ended contracts (price agreements) -Used only in situations where the commodity and price are known, but quantity is not (ex: child nutrition commodities, office paper)
- Blanket purchase orders – Used in situations where there is high volume of small dollar items but the commodity is not known (ex: facility or vehicle maintenance activities). Should be issued on a periodic basis throughout the year, such as monthly or quarterly.



Contract Documents

- A contract is defined by Policy 8200 as a written, legally binding agreement between two (2) or more parties in which is specified the terms and conditions to which the parties have agreed.
- A purchase order is defined by Policy 8200 as a written or electronic document issued by the LEA to a vendor authorizing or executing a purchase transaction.



Contract Documents

All contracts (including purchase orders intended to serve as contracts) must contain the following:

- A reference to the RFP/RFQ
- A reference to the successful vendor's bid documents
- The signature of an authorized representative of both the LEA and the successful vendor.
- No debt affidavit indicating that the vendor does not owe any debt to the State in excess of \$1,000. (Section 19.3)
- Any required bonds – Ex: performance and payment bonds for construction contracts in excess of \$25,000. (Section 20)
- Basic contract terms and conditions. If the vendor has provided an agreement with terms and conditions, the agreement addendum from Appendix C of State Board Policy 8200 must be attached. (*Agreements discussed on the next two slides*)



West Virginia DEPARTMENT OF
EDUCATION

Agreements (Section 12)

- An agreement is an arrangement between parties regarding a method of action.
- Used for obtaining professional, technical, or other specialized **services** where the scope of the services is known but price is not the sole factor in determining the award.
- A local policy should be developed in order to evaluate and negotiate the agreements. (Section 19.2.2)



West Virginia DEPARTMENT OF
EDUCATION

Agreements (Section 12)

- Must be in writing:
 - The total cost must be state either as a “sum certain,” or at a fixed rate.
- Agreement rate must also include the total for an anticipated travel expenses.
 - Room or travel accommodations are **not** to be paid directly by the LEA for contract service providers.



Leases and Lease Purchase Agreements (Section 13)

- Lease and lease purchases are methods by which an LEA can obtain equipment and make payments for the use of the equipment over time.
- Competitive bids are encouraged but not required
- The collateral for the agreement must be the property being acquired (it cannot be property already owned by the LEA)
- Because LEAs are prohibited from expending funds or incurring obligations from future levies, all lease purchase agreements must contain a non-binding cancellation clause where the contract can be terminated at the end of fiscal year.



Agreement Addendum

- The universal Agreement Addendum form is included in Appendix C. It was updated with the latest manual revision.
- It should be completed and included as part of the final contract/agreement any time a vendor requires the LEA to sign the vendor's contract/agreement or the vendor submits alternate language with its bid or contract.
- LEAs are urged to execute it for all contracts, agreements, or leases where equipment with maintenance is included.



Agreement Addendum

- The agreement addendum is designed to protect LEAs from contract terms and conditions that violate state code. In the event that the original contract and the addendum conflict, the addendum controls the particular item.
- Examples of things covered in the agreement addendum include:
 - Disputes must be resolved in the county circuit court
 - Hold Harmless clauses are deleted.
 - Governing law is that of WV
 - Any provision requiring the payment of taxes is deleted.
 - Prepayment references are deleted. Only fees for software licenses, subscriptions, or maintenance are payable annually in advance. Payment for services are to be in arrears.
 - Fiscal Year Funding Clause where contract can terminate at June 30 without penalty if funding not available.
 - Right to Terminate upon 30 days written notice to vendor.
 - Automatic renewal is not allowed. Must have mutual written agreement of both parties.
 - Any provision to require purchase of insurance for the vendor's property is deleted.



Signature Authority

- Local policy should designate who has signature authority for:
 - Agreements
 - Contracts
 - Purchase orders



Resident Vendor Preference (Section 17)

- LEAs may establish by local policy procedures for granting resident vendor preference for State residents
- No statutory authority for granting resident vendor preference for residents of a county or community
- Resident vendor preference cannot exceed 5% of the lowest bid received



Resident Vendor Preference

- County boards utilizing a local policy to grant resident vendor preference needs to make sure that the local policy complies with WVC §5A-3-37.
- Under 2 CFR 200.319, the procurement process for federal purchases cannot use statutorily or administratively imposed state, local or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference.
- Under Department of Agriculture rules for the Child Nutrition Program, an optional geographic preference can be used in the procurement of “unprocessed locally grown or locally raised agricultural products.” Note that although this is allowed by the federal rules, the state rules would also apply. As a result, the geographic preference could only be limited to vendors within West Virginia, not vendors in a local county or community.



Remedies (Section 22.1)

- Remedies if a vendor does not honor the contractual terms:
 - Cancel the contract and re-award to the next lowest bidder.
 - Declare a vendor non-responsible or non-responsive and refuse to award a purchase order.
 - Suspend the vendor for a period of time (not to exceed a year).



Vendor Suspensions (Section 22.2)

- Adequate grounds for suspension:
 - An exhibited pattern of poor performance
 - Breached any contract
 - Been convicted of a federal, state, or local crime punishable as a felony.

*****Document justification for utilizing any of the remedies or suspensions listed above.**



Payment for Commodities or Services (Section 26)

- According to WVC 12-3-18, it is unlawful for any board to pay a claim for services rendered or materials furnished unless an itemized claim is filed by the claimant
 - Payments must be made from an itemized **invoice** – not a summarized statement
 - Payments **cannot** be made in advance
 - ***Exception on prepayments to reserve rooms or purchase airline tickets before the date of travel.



Release of Final Settlement (Section 26)

- According to WVC 11-10-11(d), LEAs must withhold payment in the final settlement of any contract until a release is obtained from the state tax commissioner.
 - “Release of Final Settlement” form in Appendix C.
- According to WVC 23-1-1(c), LEAs must withhold payment in the final settlement of any contractor until the receipt of a certificate from the WV Insurance Commissioner to the effect that the contractor’s Workers Compensation coverage is up to date.
- According to WVC 21A-2-6c, LEAs must withhold payment in the final settlement of any contract until receipt of a certificate from the Executive Director of Workforce West Virginia to the effect that the contractor’s Unemployment Compensation coverage is up to date.



Purchases by Schools (Section 29)

- Purchases by schools are to be made in accordance with Policy 1224.1
- Except for faculty senate funds, schools can only expend quasi-public funds raised by school



Purchases by Schools (Section 29)

- **LEAs cannot distribute public funds to schools for expenditure**
- **Very limited exceptions to this rule:**
 - Faculty senate funds
 - Occasional or infrequent reimbursement of an expense unintentionally paid by a school
 - The disbursement of funds to a school for the repetitive purchase of specific items, such as postage, where it is impractical to handle the transaction in any other manner.



Purchases by Schools (Section 29)

- Schools are not separate legal entities.
 - School principals cannot enter into contracts obligating board funds.
 - All contracts must be approved and signed by county board or superintendent if approval authority has been delegated.
- All state or federal grant funds received directly by an individual school are to be remitted immediately to the board office.



Methods of Payment

- Order (check) signed by the president of the board, superintendent and treasurer (WVC 18-9-3, 18A-4-9)
- Wire transfer (WVC 12-3-20, 21-5-3)
- Credit cards (WVC 12-3-10a)
- In all cases, goods or services being purchased must be received prior to or at the same time that payment is made



Credit Cards (Section 27)

- Types of Credit Cards:
 - Bank or vendor issued credit cards
 - Purchasing Cards
 - Corporate credit card for the payment of authorized travel expenses



Bank or Vendor Issued Credit Cards (Section 27.2)

- Used in the same manner as a purchasing card:
 - May be issued in the name of the LEA, or in the name of both the individual and the LEA
- Cannot be used for travel
- LEA must establish board policy procedures for:
 - Controlling and safeguarding the card
 - Reconciling charges
- If the card is issued only in the name of the LEA, the LEA must maintain a log for each card where employees are required to sign-out the card for usage



Purchasing Cards (Section 27.3)

- Used for the purchase of commodities & services
- Commonly used for repetitive purchases of small dollar items (maintenance items)
- Must be issued in the name of the **individual** (cannot be generic in the name of the LEA or a school)
- May be issued only to regular full-time employees



Purchasing Cards (Section 27.3)

- Each cardholder must complete and sign a purchasing card application
- Cardholders cannot delegate card to another individual
- Card cannot be used to obtain cash advances or cash credits
- Each cardholder is responsible for reconciling their own statement each month



Corporate Credit Card for Travel (Section 27.4)

- Used for travel expenses only:
 - Card must be issued in the name of the LEA **and** the individual
 - LEA may elect to have **statements** issued to each individual cardholder or to the LEA for payment
- All travel authorization and reimbursement procedures must be followed
- Cardholders cannot charge travel for other LEA employees to their cards.



Emergency Procurement (Section 28)

- The Governor declares an emergency situation:
 - Bid threshold rules still apply...UNLESS, if, in the opinion of the LEA, using sound judgment and discretion, time does not permit bids to be received.
 - Awards made to the lowest, responsible bidder.
 - A complete written record of all expenditures relating to the emergency shall be submitted to the Governor within 30 days of the expiration of the declaration of the emergency.



Emergency Procurement (Section 28)

- Local emergency situations not declared an emergency by the Governor:
 - Each LEA must establish a local policy detailing the procedures to be followed in the case of a local emergency.
- ***Emergency purchases are not to be used for hardships created by neglect, poor planning, or lack of organization.**



Disposal of Property (Section 31)

Real Property:

- Must be sold at public auction (with exceptions discussed in Section 31.1)



Disposal of Property (Section 31)

Personal Property:

- Property must be declared surplus by the purchasing director and CSBO and disposed of in the most economical method for the benefit of the LEA.
- May be disposed of in several ways:
 - Discarded or junked if determined to have no salvageable value
 - Traded towards the purchase of a replacement item
 - Sold at public auction, by competitive bid to the highest bidder, or by fixed price
 - Contributed to:
 - The state or political subdivisions, including county commissions
 - A private, nonprofit, tax-exempt organization (as determined by the IRS) for nominal consideration, provided that the property is for charitable, economic development or other community use.



Disposal of Federal Property

- Federal regulations provide guidance on how to properly dispose of equipment purchased with federal funds.
- When equipment is no longer needed for the original federal program that purchased it, the grantee can use the equipment to support other federal programs. If another federally funded program does not need the equipment, the grantee must follow the disposition rules contained in EDGAR.
- Under the disposition rules in EDGAR, if the current fair market value of the equipment is less than \$5,000, the grantee can keep, sell or otherwise dispose of the equipment with no further obligation to the awarding agency.



Disposal of Federal Property (Cont'd)

- If the current fair market value of the equipment is greater than \$5,000, the grantee may keep or sell the property, but must pay back to the federal awarding agency a share of the funds based on the percentage of federal participation in the original purchase.
- For example, if the property was 50% federally funded through IDEA and the grantee wants to keep it for use in a non-federal program, the grantee would have to determine the current fair market value of the property and remit 50% of that amount of funding to WVDE to return to USDE.



Violations (Section 34)

- Cites various code sections
- Any person who authorizes or approves a purchase or contract in violation of code or policy may be held personally liable
- Vendors may be suspended from bidding for up to one year for violating policy



Policy 8200

- Policy 8200 is available on the WVDE Office of School Finance website at:
<https://wvde.us/finance-and-administration/school-finance/manuals-policies/>



