



WVBE Policy 8200 (Anticipated Revisions)

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Overview

- WVBE Policy 8200 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.

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Overview

- Applies to:
 - County boards of education
 - Educational service cooperatives
 - Multi-county vocational centers (MCVCs)
 - Can be utilized as best practice for public charter schools
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Overview

- Last revised August 2012
 - WVBE Policy 8200 is being revised to incorporate changes to the procurement function related to revisions to W. Va. Code, advancement in technology within the procurement function, and other advancements intended to streamline procurement.
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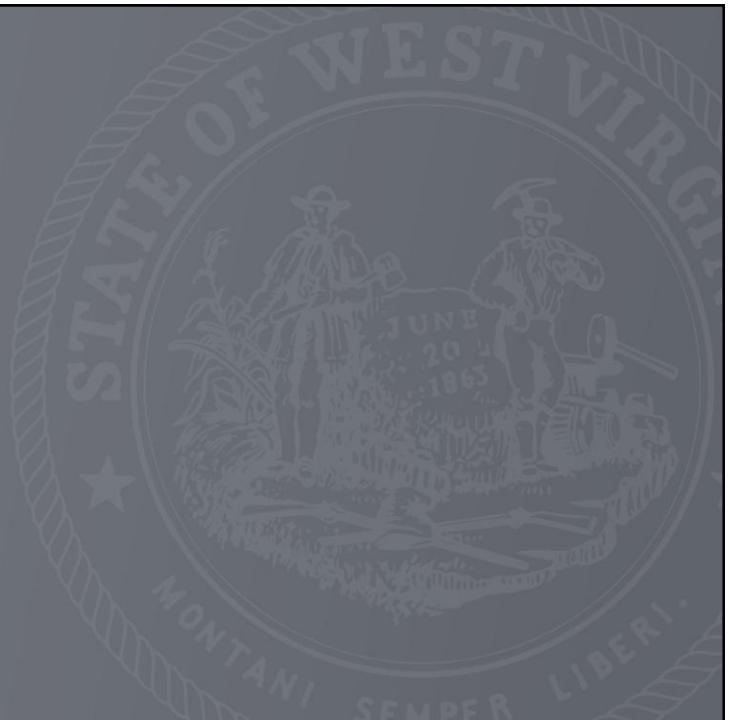


Overview

- WVDE's intent was to recommend the policy revision for approval during the July 2025 WVBE meeting; however, the passage of HB 2548 which clarifies the rule making authority of the State Superintendent, including potential impending litigation surrounding the legislation has delayed this plan.
 - WVDE is presenting planned revisions with the assumption that the policy will be revised during FY26. Applicable LEAs are encouraged to begin implementing changes immediately.
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Introduction



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Clarifying applicability/enforcement

- When procuring goods and services with federal funds, applicable LEAs must follow the most restrictive guidelines among federal, state, or local procurement procedures. When procuring goods and services with state or local funds, applicable LEAs must follow the most restrictive guidelines among state or local procurement procedures.
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Clarifying applicability/enforcement

- Vendors are not directly bound by the provisions of this policy. Policy references to vendor responsibilities or duties shall be explicitly stated within contractual terms in order to be enforceable.
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Whistleblower Protection

- Whistleblower protection language has been explicitly outlined within the policy to encourage whistleblowing actions and to clarify and strengthen protections for employees.
 - This is consistent with newly added language within 2 CFR 200.
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Acquisition Planning

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Life of Contract

- In accordance with W. Va. Code §11-8-26, local fiscal bodies are prohibited from expending funds or incurring obligations from future levies. Consequently, contracts normally shall cover a maximum 12-month period and/or cite a specific time for completion for of the project or service. However, WVDE has determined certain contractual agreements such as construction projects that require multi-year completion do not allow for this term structure. In the event that a multi-year contract is required, the applicable LEA must document sufficient resources are on hand in the initial year of the agreement to cover the full cost of the project.
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Requisitions and Purchase Orders

- Where possible/practical, purchase orders are required for purchases made through p-card. This is required when p-cards are used to procure fixed assets.
 - For transparency purposes, whenever possible, the purchase order should be issued to the vendor rather than the banking institution.
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Open Ended Contracts, Price Agreements, and Blanket Purchase Orders

- An initial purchase order must be established to utilize these agreement types.
 - If utilizing these options, applicable LEAs should ensure that proper controls are in place to avoid duplication of encumbrances and other budgetary issues that could be created.
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Open Ended Contracts, Price Agreements, and Blanket Purchase Orders

- Competitive bidding thresholds must be considered in developing blanket purchase orders and/or open-ended contracts. This shall be accomplished by doing market research and price comparisons of typical commodities purchased under the blanket purchase order. Documentation of this process must be maintained for audit/review purposes. The cost of convenience may be considered when developing blanket purchase orders and/or awarding open-ended contracts.
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Purchase of Commodities and Services

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Stringing

- Stringing may be either intentional or unintentional.
- The following examples highlight instances in which an applicable LEA will have impermissibly exceeded a bid limit via stringing:
 - a) Making a one-time payment of \$10,000.01 or more to a single vendor multiple times within a fiscal year;
 - b) Making multiple payments to a single vendor, for the same or similar commodity or service, that aggregate to \$10,000.01 or more within a fiscal year; and
 - c) Making multiple payments to multiple vendors for the same commodity or service that aggregate to \$10,000.01 or more within a fiscal year.

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Competitive Bidding

- When considering the various requirements outlined in the threshold limits in Section 7.10, practicality must be considered. Due diligence must be documented as proof that it is impractical to meet certain requirements. Examples include: signed memorandum outlining steps taken to meet requirements, screenprints of price comparisons, documentation of solicitation strategies utilized, etc.
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Competitive Bidding

- Competitive bid threshold is now \$10,000. There is no longer a requirement for verbal bid and corresponding documentation of this threshold previously outlined in the policy. All other bid threshold requirements remain the same.
 - When advertisement is required, the solicitation must occur for a minimum of 10 business days.
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Competitive Bidding

- Sole source must be determined by the LEA. A sole source letter provided by the vendor does not justify due diligence.

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Alternative Procurement Methods

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Procurement of Used Goods

- Clarification is provided that the procurement of all goods (commodities, vehicles, and equipment) may be obtained by direct award.
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Cooperative Contracts

- Clarifying language is added to require the LEA to ensure the cooperative is following the minimum requirements outlined in Policy 8200 when awarding contracts.
 - Updated the construction threshold to \$50,000 in accordance with W. Va. Code §5-22 et. seq.
 - Stipulates that construction projects may not be procured directly from a cooperative contract; however, the contract may be used as a starting point in beginning the sealed bid process.
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Exemptions from Competitive Bid Requirements

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Utilities

- This item includes natural gas, water, sewage, electric, telephone, garbage, cable television service, connection fees, trash hauling and dumpster rental [if only one PSC approved hauler is in the area]. This item does not include propane gas, coal, internet services (E-rate), and satellite television, all of which must be competitively bid.

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Governmental Agencies

- This item only includes: 1) contracts between governmental agencies and spending units when a state or federal law requires the commodity or service be obtained from the governmental agency (any contract or purchase order issued must cite the law and maintain a copy on file); and 2) regulatory fees legally imposed by government agencies. Governmental entities are not required to register with the Secretary of State's Office so that compliance check is not required.
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Professional Association Dues

- This item includes membership fees or association dues for professional associations that perform a licensing, certification, or accreditation function for agencies. The membership must be in the name of the applicable LEA and cannot be in the name of an individual.
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Local Fresh Produce Under the Farm Act

- This item includes fresh produce purchased to satisfy the requirements of the Department of Agriculture's Fresh Food Act which requires that at least 5% of fresh produce be purchased from in-state producers. The Act is codified as W. Va. Code section 19-37-1, et. seq. (the "Act").
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Construction Projects

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Construction General

- **Competitive bidding is not required under the following circumstances:**
 - 1.) work performed by regular full-time employees
 - 2.) work performed by students enrolled in vocational programs when the work performed is associated with the program of study and
 - 3.) emergency repairs to building components and systems.
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At-risk Contracts

- **At-risk contracts allow for the use of an RFP process in lieu of an RFQ to procure construction contracts in the amount of \$20 million or greater. Certain criteria surrounding the use of a construction manager and the evaluation process for selecting the construction manager are outlined in W. Va. Code §5-22B et. seq.**
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Budgeted Construction

- W. Va. Code §5-22-4 establishes provisions that allow for the State and subsidiaries, which includes LEAs, to establish a maximum budgeted amount for a particular construction project. In the event that all bids received exceed the maximum budgeted amount, if established, LEAs may negotiate the cost of service with the lowest qualified bidder. If an LEA chooses to exercise this provision of statute, the LEA must maintain confidentiality of the maximum budgeted amount prior to awarding the contract. Additionally, this provision shall not be utilized if negotiations result in more than a ten percent change in scope or cost from the original bid.
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Prevailing Wage

- Reference to West Virginia prevailing wage law removed. Provisions specific to Davis Bacon added.
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Change Orders

- Construction change orders cannot be used to: include additional work of a significant nature that was not in the original scope of the project, expand the cost of the project significantly beyond the original contract amount in excess of 10% of the original contract amount, or expand the work beyond the original work site. This policy section is not intended to impact unforeseen circumstances that may come up during the course of a construction project.
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Change Orders

- Applicable LEAs must establish an approval process for all change orders. The process should include the review and approval by the purchasing director of all change orders. Change orders that have a material impact on the total cost of the project and change orders that have an impact on the cost exceeding \$150,000 in total cost in aggregate for all change orders or that have a material impact on the scope of the project must be submitted to the applicable LEA's board for approval. The approval process should also address the timely approval of time sensitive construction work that must be completed as soon as possible to minimize disruption of the construction process. Change orders deemed to not be material in cost or scope must still be presented to the board after the fact making the board aware of the change.
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Energy-Savings Contracts

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Energy-Savings Contracts General

- According to W. Va. Code §18-5-9a, applicable LEAs may enter into an energy-savings contract with a qualified provider to reduce energy operating costs significantly. Before entering into such a contract or before the installation of equipment, modifications, or remodeling to be furnished under such a contract, the qualified provider shall first issue a proposal summarizing the scope of work to be performed.

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Energy-Savings Contracts General

- The proposal shall contain estimates of all costs of installation, modifications, or remodeling, including the costs of design, engineering, installation, maintenance, repairs, or debt service, as well as estimates of the amounts by which energy operating costs will be reduced.
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Energy-Savings Contracts General

- An energy-savings contract may extend beyond the fiscal year in which it first becomes effective except that such a contract may not exceed a fifteen-year term and shall be void unless such agreement provides the applicable LEA the option to terminate the agreement during each fiscal year of the contract.
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Service Agreements

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Clarifying Language on Agreement Addendum

- If using an agreement provided by the vendor, care must be exercised to ensure that the agreement does not contain contractual requirements that are in violation of state statutes, such as any clause that requires a prepayment, the imposition of a penalty or termination charge should the applicable LEA cancel the agreement, or the requirement that the LEA indemnify or hold harmless the vendor. A sample of an agreement addendum is included in Appendix C that ~~can~~ must be attached to any agreement to ~~modify common requirements that are not acceptable.~~ to ensure that unsatisfactory terms and conditions are not agreed to by the applicable LEA. This does not preclude an applicable LEA from enforcing their own terms and conditions assuming the terms and conditions are at a minimum as restrictive as the agreement addendum.

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Service Agreements General

- Applicable LEAs should ensure that billing for services matches the frequency (daily, weekly, monthly, etc.) and duration (number of hours, days, etc.) described in the contract (janitorial, security, etc.). Applicable LEAs should also ensure that any required reports, analysis, statistics, or recommendations are received as specified in the contract.
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Procurement of Instructional Resources

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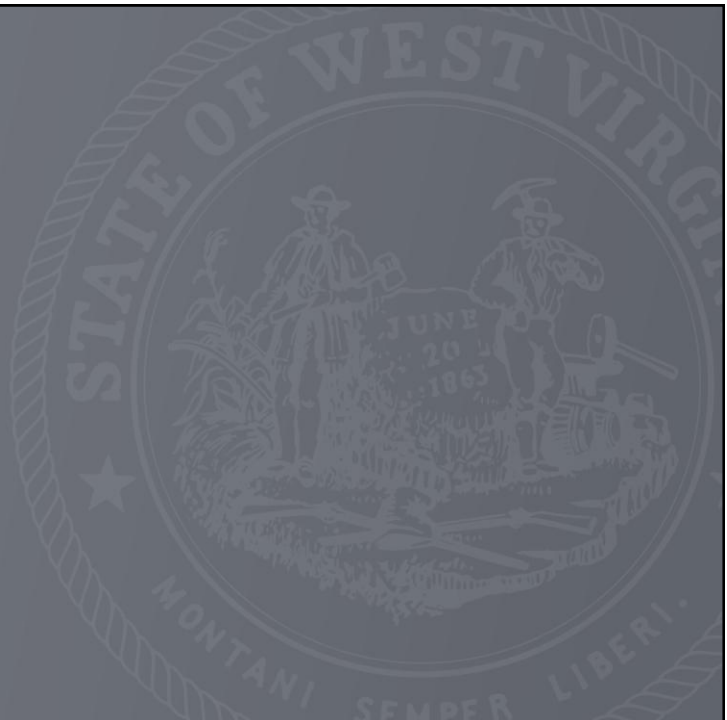


Procurement of Instructional Resources General

- Clarifies that the contracts for instructional resources will be between the applicable LEA and the vendor.
- Additional language added to stipulate the purchase of supplementary instructional resources, including, but not limited to, reading books, library books, reference books, or other supplementary instructional resources shall be ordered, received, examined, and paid for in the same manner and by the same persons as other supplies and equipment.

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Sealed Bids



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Sealed Bids General

- Electronic sealed bids are allowable.
 - In situations where an applicable LEA allows electronic sealed bids, vendors who choose to submit sealed bids through electronic mail must do so by submitting password protected electronic files to the appropriate individual(s) at the county. The password would then be emailed separately by the vendor at the scheduled time of the bid opening to ensure that the sealed bid is not opened in advance. If the applicable LEA is utilizing a cloud-based platform, the applicable LEA must ensure that vendor responses remain secured and unviewed until the date of bid opening.
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Resident Vendor Preference

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Resident Vendor Preference Overhaul

- In any instance that a purchase of commodities or printing by an applicable LEA is required to be made upon competitive bids, preference shall only be given to resident vendors of West Virginia against a nonresident vendor from any state that gives or requires a preference to bidders from that state. The amount of the preference shall be equal to the amount of the preference given or required by the state of the nonresident vendor for that particular supply. This process used in granting resident vendor preference is referred to as reciprocal preference and must be adhered to in accordance with W. Va. Code §5A-3-37(b).
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Resident Vendor Preference Overhaul

- In accordance with 2 CFR 200.322, as appropriate and to the extent consistent with law, when procurement is made with federal funds, applicable LEAs should, to the greatest extent practicable under a federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States.
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Resident Vendor Preference Overhaul

- Contracting with small businesses, minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms should be considered.
- Such consideration means: (1) These business types are included on solicitation lists; (2) These business types are solicited whenever they are deemed eligible as potential sources; (3) Dividing procurement transactions into separate procurements to permit maximum participation by these business types; (4) Establishing delivery schedules (for example, the percentage of an order to be delivered by a given date of each month) that encourage participation by these business types; (5) Utilizing organizations such as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

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Approval

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Approval General

- Restrictive language added to stipulate that anyone who executes a contract on behalf of the applicable LEA without proper approval shall be held personally liable for payment of the contract, if the entity pursues legal action.
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Service Agreements

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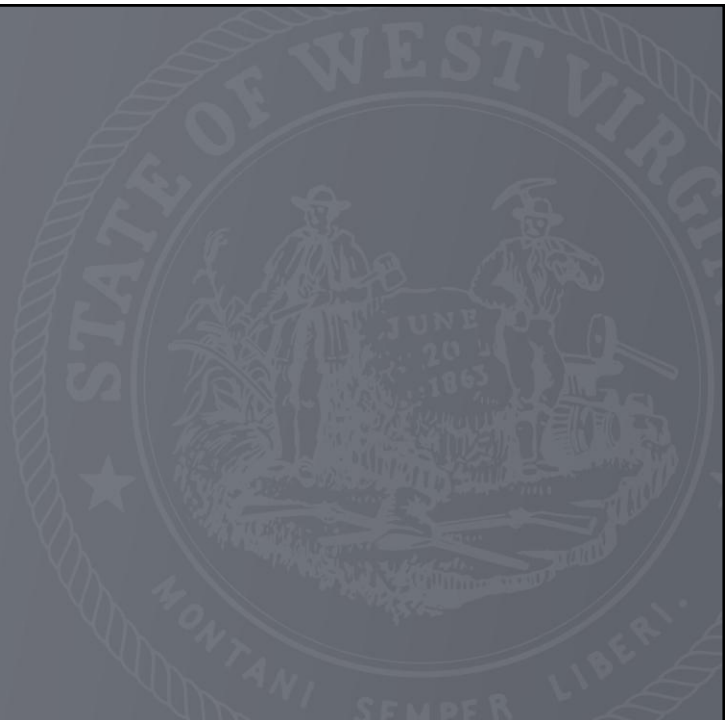


Service Agreements General

- Since the variety and quality of services can vary significantly among service providers, services may be procured without basing the selection of the vendor solely on price. **However, this is not intended to remove competitive bidding in its entirety.**

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Contracts



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Vendor Registration Requirements

- Prior to awarding an agreement or contract to a vendor as referenced in sections 20.2 and 20.3 respectively, applicable LEAs must confirm that the vendor is able to conduct business within the State of WV. Applicable vendors must hold both a Business Registration License with the WV Secretary of State (WV SOS) (Legislative Rule CSR §148-1-6.1.7) and a Business Registration Certificate with the WV State Tax Department (W. Va. Code §11-12-3) unless specific exemptions apply. The Vendor Registration Memorandum found in Appendix C has been established to aid in the registration verification process.
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Contract Cancellation

- The Agreement Addendum provides two types of cancellation options, cancellation for cause and cancellation for convenience. An Agreement Addendum must be signed by both parties to be enforceable.
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Contract Cancellation

- Cancellation for cause: applicable LEAs reserve the right to cancel any contract or purchase order upon written notice to the vendor under any one of the conditions including but not limited to the following:
 - • The vendor agrees to the cancellation;
 - • The vendor has obtained the contract by fraud, collusion, conspiracy, or in conflict with any statutory or constitutional provision of the state of West Virginia;
 - • The vendor fails to conform to contract requirements or standard commercial practices;
 - • The existence of an organizational conflict of interest is identified;
 - • Funds are not appropriated, or an appropriation is discontinued by the legislature for the acquisition;
 - • A violation of any federal, state, or local law, regulation, or ordinance occurs; or
 - • The contract was awarded in error.
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Contract Cancellation

- Cancellation for convenience: applicable LEAs must include an agreement addendum, or their own terms as a part of any contract executed by the agency. The agreement addendum includes language that allows the agency the right to terminate the agreement upon thirty (30) days written notice to the vendor without cause.
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Receipt of Deliveries

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Receiving General

- When deliveries are made to a central warehouse, or directly to a school or other cost center, personnel receiving the commodities are responsible for the ~~inspecting~~ inspection of goods, ensuring that purchases meet contractual requirements – including reconciliation of the receiving report to the purchase order, signing for the commodities, and forwarding the receipting documents to the business office for payment of the invoice.

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Release of Final Payment

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Release of Final Payment General

- Removal of release from West Virginia Insurance Commissioner has been removed due to its removal from W. Va. Code.

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Credit Card Programs

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Credit Card Programs General

- Local policy must stipulate the earning of reward benefits on purchases made under credit card programs and how the benefits can be utilized. Travel rewards may be earned by individuals; however, all reward benefits earned on the purchase of commodities and services must be in the name of the applicable LEA.

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P-cards

- In accordance with the WVSAO Purchasing Card Policies and Procedures Manual, local spending units must develop and document appropriate internal control procedures to ensure proper program oversight, compliance with P-Card Policies and Procedures, and that P-Card usage is consistent with the WVSAO manual.
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P-cards

- WVDE is adopting a methodology offered by the WVSAO allowing for a single department p-card that can be signed in and out rather than having multiple individual cards. AKA "Ghost Accounts"
 - Must have detailed controls including a sign in/out log in which users must list their name, date, vendor, PO#, purchase amount, and signature. Each logged entry must be cosigned by the p-card custody.
 - Purchases must be accompanied by an itemized receipt at the point of sale in which the original receipt is to be provided to the p-card custody when the p-card is logged back in. It is the responsibility of the person using the card to ensure all invoices/receipts are itemized.
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P-cards

- Sample, detailed, cardholder agreement and application for new account is now included in the policy's appendices.
 - The cardholder agreement lists all responsibilities the cardholder is bound by. An annual training of the responsibilities and all p-card procedures and best practices must be provided by the p-card coordinator.
 - The application includes parameters limiting the dollar amount of a single transaction, the number of transactions per day, and any further restrictions the LEA may want to initiate.
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P-cards

- A card shall not be used to obtain cash advances or cash credits. Cards should not be used to pay a vendor requiring the payment of a surcharge or convenience fee. If a surcharge or convenience fee is being added, the invoice must clearly state the surcharge.
 - An applicable LEA allowing surcharges to be paid must ensure that the rebate earned on purchases/payments exceeds the surcharge or convenience fee.
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P-cards

- Local policy must stipulate the earning of reward benefits on purchases made under credit card programs and how the benefits can be utilized. Travel rewards may be earned by individuals; however, all reward benefits earned on the purchase of commodities and services must be in the name of the applicable LEA and be paid back as a monetary rebate to the applicable LEA.
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P-cards

- Each applicable LEA should have a policy regarding reconciliation and reviews. Depending on the type of card, each applicable LEA should determine if a cardholder is responsible for reconciling his/her statement every month or a program coordinator.
 - In accordance with the WVSAO Purchasing Card Policies and Procedures Manual (PCard), local spending units must develop and document appropriate internal control procedures to ensure proper program oversight, compliance with P-Card Policies and Procedures, and that P-Card usage is consistent with the WVSAO manual.
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P-card Unauthorized Use, Misuse, and Abuse

- Misuse and abuse is the improper, unlawful or incorrect use, compromise or misapplication of the p-card. Examples include:
 - a. Failure to maintain security protecting your p-card.
 - b. Paying for items in which the p-card is not authorized for payment.
 - c. Purchase of authorized goods or services, at terms (price, quantity) that are excessive.
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P-card Unauthorized Use, Misuse, and Abuse

- Fraud is a deception deliberately practiced in order to secure unfair or unlawful gain. Fraud occurs when the cardholders' s account information has been intentionally utilized for personal gain. Intentional use of the PCard to make purchases for personal use or non-LEA business is fraudulent and is prohibited.
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P-card Unauthorized Use, Misuse, and Abuse

- The use of the p-card for non-business-related items is considered misuse/abuse/fraud. This includes purchases of items deemed “personal” by the WV Ethics Act. Individuals using the p-card to knowingly pay for items intended for personal use will be subject to disciplinary action up to and including termination and prosecution under state law and may be subject to civil action by the credit card company for personal liability.
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P-card Unauthorized Use, Misuse, and Abuse

- Use of the PCard is a privilege, not a right and disciplinary action may be taken for fraud, misuse, and abuse of the PCard.
 - Disciplinary actions can include but not limited to:
 1. Reprimand
 2. P-card privileges suspended or canceled
 3. Mandatory refresher training
 4. Suspension of employment
 5. Termination of employment
 6. Criminal prosecution
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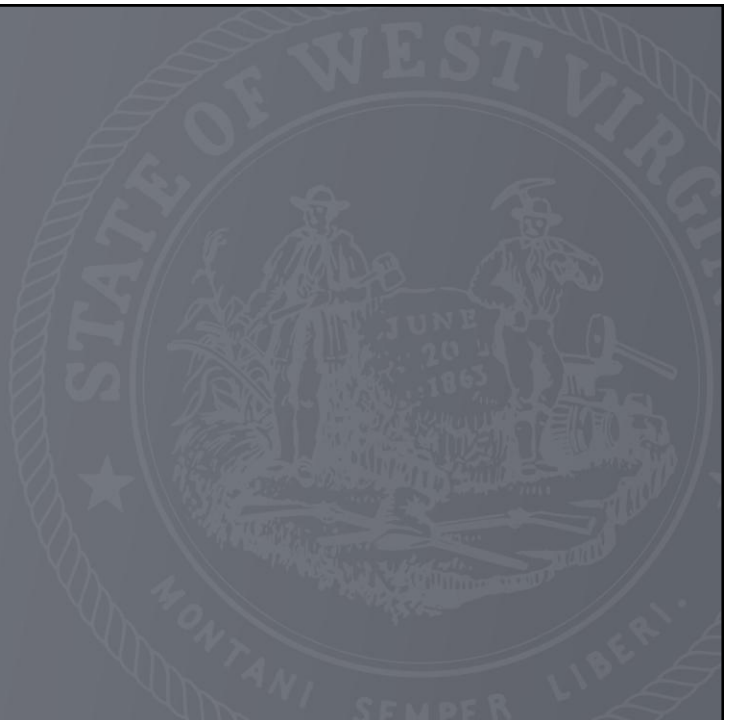


P-card Unauthorized Use, Misuse, and Abuse

- Any known instances of unauthorized use, misuse, or abuse should immediately be reported to the card issuer, WVDE Finance, and/or WVSAO or the LEA's auditing firm. Failure to report in a timely manner could result in the LEA being responsible for non-allowable charges.

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Asset Disposal



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Disposal General

- If it is determined that materials and equipment used by students in the course of instruction or extracurricular activities is considered surplus with no material salvage value, the equipment may be offered to students for minimal or no cost. The applicable LEA must have a local policy in place that governs this process.
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Federal Disposal General

- Some key aspects of the federal regulations are as follows:
 - When acquiring replacement equipment, the recipient or subrecipient may either trade-in or sell the equipment and use the proceeds to offset the cost of the replacement equipment.
 - Equipment with a current fair market value of \$10,000 or less (per unit) may be retained, sold, or otherwise disposed of with no further responsibility to the Federal agency or pass-through entity.
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Questions?

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Thank you!

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