

# MARSHALL UNIVERSITY BOARD OF GOVERNORS

## Policy No. FA-9

### Purchasing Policy

#### 1 General Information.

- 1.1 Scope: *Establishes the rules and policies governing and controlling purchase, acquisition and inventory management of materials, supplies, equipment, services, construction, and printing by the Governing Board of Marshall University, created pursuant to West Virginia Code §18B-2A-1 and hereinafter referred to as the "Governing Board".*
- 1.2 Authority: West Virginia Code §18B-5-3 through §18B-5-9.
- 1.3 Passage Date: April 29, 2021
- 1.4 Effective Date: June 9, 2021
- 1.5 Controlling over: Marshall University
- 1.6 Background: This policy amends the original policy FA-9 approved on January 25, 2006, updated April 22, 2010, further amended on April 17, 2012 and June 12, 2015. Statutory References: West Virginia Code §18B-5-3 through §18B-5-9. Amended on April 29, 2021, to clarify monetary threshold for bidding requirements for architectural, engineering, and other consultant services on projects.

#### 2 Definitions

- 2.1 As used in this policy, all terms have the same meaning as provided in West Virginia Code, and as follows:
  - 2.1.1 "Board" means the Governing Board of Marshall University.
  - 2.1.2 "Best Value Purchases" mean a procurement method that emphasizes value over price. The best value might not be the lowest cost. Generally achieved through the Request for Proposals (RFP) method. An assessment of the return that can be achieved based on the total life cycle cost of the item; may include an analysis of the functionality of the item; can use cost-benefit analysis to define the best combinations of quality, services, time, and cost considerations over the useful life of the acquired item.
  - 2.1.3 "Chief Financial Officer" means the individual designated by the president of Marshall University for that function in administrative procedure ADMIN-1.
  - 2.1.4 "Chief Operations Officer" means the individual designated by the president of Marshall University for that function in administrative procedure ADMIN-1.
  - 2.1.5 "Chief Procurement Officer" means the individual designated by a President of a state institution of higher education to manage, oversee and direct the purchasing and acquisition of supplies, equipment, services, and printing for that institution.
  - 2.1.6 "Commodity" means an article which is useful or serviceable, particularly an article of merchandise movable in trade; a good, or service of any kind, including construction; an article of trade or commerce; things that are bought and sold.

- 2.1.7 “Director of Physical Plant” means the individual to manage and direct the inventory management of materials, supplies, and equipment, and receipt of inventory for Marshall University.
- 2.1.8 "Essential Service" means something basic; a commodity that is necessary, indispensable, or unavoidable and is purchased in a routine, repetitive, and noncompetitive manner.
- 2.1.9 "F.O.B. Destination" and "Free on Board Destination" mean the seller or vendor must transport or pay for the transportation of the materials, supplies, equipment, services and printing, to the point of destination specified in the contract.
- 2.1.10 “Governing Board” means the institutional board of governors at Marshall University as provided for in the West Virginia state code.
- 2.1.11 “Higher Education Institution” means an institution as defined by Sections 401(f), (g) and (h) of the federal Higher Education Facilities Act of 1963, as amended.
- 2.1.12 “President” means the chief executive officer of Marshall University.
- 2.1.13 “Purchasing Agent" means an individual designated by a Chief Procurement Officer to perform designated purchasing and acquisition functions as authorized by the Chief Procurement Officer.
- 2.1.14 "Responsible Bidder" and "Responsible Vendor" mean a person and/or vendor who have the capability in all respects to perform contract requirements, and the integrity and reliability which will assure good faith performance.
- 2.1.15 "Responsive Bidder" and "Responsive Vendor" mean a person and/or a vendor who has submitted a bid which conforms in all material respects to the invitation to bid.
- 2.1.16 "Single Source" means that the desired product or service is available from only one supplier because of the uniqueness and characteristics of the product or service offered.
- 2.1.17 "Sole Source" means only one vendor can supply the desired product or service.
- 2.1.18 “Statutory Bid Minimum” means the amount in dollars identified in WV Code §18B-5-4 and §18B-5-4a (or their subsequent amended sections) as the value under which purchases do not require competitive bids. As of June 12, 2015, the statutory bid minimum is \$50,000 for general purchases and \$100,000 for construction projects.
- 2.1.19 “Vendor” means a seller of goods and services.
- 2.1.20 “Vice Chancellor for Administration” means that person employed by the Commission with the advice and consent of the Council in accordance with West Virginia Code §18B-4-2. The Vice Chancellor for Administration shall assume all powers and duties that were assigned to the Senior Administrator.

### **3 APPLICABILITY**

3.1 This policy applies to all areas within Marshall University.

### **4 AUTHORITY OF THE GOVERNING BOARD**

4.1 Pursuant to West Virginia Code §18B-5-4, the Governing Board shall adopt rules governing and controlling acquisitions, purchases and inventory management of materials, supplies, equipment, services, construction, and printing.

### **5 AUTHORITY AND DUTIES OF THE PRESIDENT FOR MARSHALL UNIVERSITY**

5.1 The President of Marshall University shall, in the name of the Governing Board, have the authority and duty to:

5.1.1 Administer and oversee the purchasing system of the Governing Board;

5.1.2 Recommend to the Governing Board additional rules or modifications as may be required for efficient and cost effective management of purchases, inventorying of materials, supplies, and equipment. ;

5.1.3 Develop administrative manuals, guidelines, procedures, and forms which shall be followed by the institutions for purchase, acquisition and inventory management.

5.1.4 Provide for a periodic audit of the institution for compliance with the rules and policies that have been adopted by the Board and the administrative manuals, guidelines, procedures and forms developed by the Board;

5.1.5 If requested, provide assistance to other institutions in the purchase, acquisition and inventory management of materials, supplies, equipment, services, construction, and printing,; and

### **6 DELEGATION OF PURCHASING AUTHORITY AND RESPONSIBILITIES**

6.1 The Governing Board, through the President, or as shall be delegated by him or her, shall purchase or acquire materials, supplies, equipment, services, construction, and printing as required by that Governing Board. The Governing Board shall have fiduciary responsibility to ensure that purchases and acquisitions are made within the limits of available appropriations and funds in accordance with applicable provisions of West Virginia Code §5A-2-1 et seq., and for the inventory of materials, supplies and equipment.

6.2 In order to assist the Governing Board in carrying out its duties, obligations and responsibilities under this policy, the Board may, by resolution of the Board, delegate authority to the President of Marshall University who shall have overall control and management of the institution's purchases, inventory. The President shall appoint the Director of Purchasing as the University's Chief Procurement Officer to assist the President in carrying out the duties, obligations and remedies imposed by the Governing Board and this rule. This appointment shall be made in writing and filed with the State Auditor and the Attorney General.

6.3 Unless otherwise stated in writing by the President, the Chief Procurement Officer shall have full authority to act as the designee of the President for purchase, acquisition, supplies, equipment,

services, construction, and printing, as may be required by the institution. Contractual signature authority shall be held solely by the President, the Chief Operations Officer, and the Chief Procurement Officer. Others may be designated by the President for approval of specific contracts.

## **7 AUTHORITY, DUTIES AND REMEDIES OF THE CHIEF PROCUREMENT OFFICER**

- 7.1 The Chief Procurement Officer shall, unless otherwise stated in writing, have full authority to act in matters of institutional purchasing as the designee of the President and shall serve as the central procurement officer for the institution.
- 7.2 The Chief Procurement Officer may appoint buyers and delegate authority to them as designees, or to any department within the University. Delegation of authority by the Chief Procurement Officer, and any limits thereupon, shall be in writing and filed with the State Auditor and the Attorney General. Responsibility for ensuring institutional compliance with the West Virginia Code and this rule shall rest with and be the responsibility of the Chief Procurement Officer.
- 7.3 As required by law and this policy, and consistent with administrative manuals, guidelines and procedures developed by the Board, the Chief Procurement Officer shall have the duty and/or authority to:
  - 7.3.1 Purchase and contract for the materials, supplies, equipment, services, construction and printing required by Marshall University;
  - 7.3.2 Establish administrative procedures for purchases not exceeding the statutory bid minimum;
  - 7.3.3 Review specifications and descriptions before soliciting bids or proposals to ensure that they are competitive and fair and do not unfairly favor or discriminate against a particular brand or vendor;
  - 7.3.4 Advertise and post or otherwise make available notices for bids on all purchases exceeding the statutory bid minimum, or all purchases for which competitive bids or proposals are being solicited by the University's purchasing office;
  - 7.3.5 Maintain the purchasing files;
  - 7.3.6 Accept or reject any and all bids in whole or in part;
  - 7.3.7 Waive minor irregularities in bids, bidding documents and/or specifications;
  - 7.3.8 Apply and enforce standard specifications;
  - 7.3.9 Prescribe the amount of deposit or bond to be submitted with any bid or contract;
  - 7.3.10 Prescribe contract provisions for liquidated damages, remedies and/or other damages provisions in the event of vendor default;
  - 7.3.11 Exempt from competitive bidding purchases of materials, supplies, equipment, services and printing purchased from within state government, from West Virginia sheltered workshops, from cooperative buying groups and consortia, and from the federal government or federal government contracts when price, availability and quality are comparable to those on the

open market;

- 7.3.12 Perform chemical and physical tests on samples submitted with bids and samples of deliveries to determine compliance with specifications, if deemed necessary and prudent;
  - 7.3.13 Hear and render opinions on vendor complaints and protests;
  - 7.3.14 Register vendors with the Purchasing Division of the Department of Administration in accordance with the West Virginia Code;
  - 7.3.15 Apply the preference for resident vendors required by the West Virginia Code;
  - 7.3.16 File contracts and purchase orders that exceed the dollar limit required for competitive bidding with the State Auditor;
  - 7.3.17 Submit contracts and purchase orders to the Attorney General for approval as to form or administrative procedures and guidelines as may be required by law.
  - 7.3.18 Apply and enforce other applicable provisions of state and federal laws pertaining to purchases.
- 7.4 Remedies that are available to the Chief Procurement Officer when appropriate circumstances arise include:
- 7.4.1 In the event that a vendor fails to honor any contractual term or condition, the Chief Procurement Officer may cancel the contract and re-award the contract to the next lowest responsible and responsive bidder;
  - 7.4.2 Vendors failing to honor contractual obligations may be held responsible for all differences in cost;
  - 7.4.3 Declare a vendor or bid non-responsible or non-responsive and refuse to award a purchase order. All such instances shall be substantiated in writing giving the reason(s) thereof, and such documentation shall be considered a public document available for inspection at all reasonable times; and
  - 7.4.4 Suspend, for a period not to exceed one (1) year, the right of a vendor to bid on purchases when there is reason to believe that such vendor has violated any of the provisions of the terms and conditions of a contract, this rule and/or state law.

## **8 PURCHASE OR ACQUISITION OF MATERIALS, SUPPLIES, EQUIPMENT, SERVICES, CONSTRUCTION AND PRINTING**

- 8.1 Unless otherwise authorized by law, all purchases or acquisitions of materials, supplies, equipment, services, construction and printing shall be awarded by competitive bidding, except as provided in the following paragraphs of this rule:
  - 8.1.1 (a) Purchases not exceeding the statutory bid minimum;
    - 8.1.1.1 The Chief Procurement Officer shall establish administrative procedures for purchases

not exceeding the statutory bid minimum. These procedures shall provide for obtaining adequate and reasonable records to properly account for funds and to facilitate auditing. They shall be approved by the President and be on file in the University's purchasing office and made available to the public upon request.

8.1.1.2 Purchases in this category do not require competitive bids under \$50,000. Signed quotations may be required for all non-contract material purchases exceeding \$25,000. Fax and electronic signatures are acceptable.

8.1.2 (b) Competitive Proposals

8.1.2.1 For purchases exceeding the statutory of \$50,000.01 bid threshold, competitive bids are the preferred method of procurement; however, if it is either not practicable or advantageous, a contract may be entered into by a request for proposals. The words "practicable" and "advantageous" are to be given ordinary dictionary meanings. The term "practicable" denotes what may be accomplished or put into practical application. "Advantageous" connotes a judgmental assessment of what is in the institution's best interest. The key element in determining advantageousness will be the need for flexibility.

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

8.1.3 (c) Competitive selection procedures for professional services;

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

8.1.3.2 Architectural, engineering, and other consultant services for projects estimated to cost in excess of \$625,000 shall be procured through an Expression of Interest.

8.1.4 (d) Sole source and single source procurement;

8.1.4.1 The Chief Procurement Officer may approve the purchase of materials, supplies, equipment, services, construction and/or printing directly from a vendor without competitive bid or proposals, if any of the following conditions exist:

- 8.1.4.1.1 the item cannot be obtained through ordinary purchasing procedures;
- 8.1.4.1.2 the item is of unique nature and not available from any other source; or
- 8.1.4.1.3 the item is available from a state spending unit or other institution with preference under the West Virginia Code, provided the price, availability and quality are comparable to those in the open market.
- 8.1.5 (e) Emergency procurement;
  - 8.1.5.1 Emergency purchases exceeding the statutory bid minimum must receive the prior written approval of the Chief Procurement Officer unless made according to subparagraph 8.1.5.3. An emergency situation requiring purchase of materials, supplies, equipment, services, construction or printing must be the result of unforeseen events or circumstances, including delays by contractors, delays in transportation, or an unanticipated volume of work. Emergency purchases shall not be used for hardship resulting from neglect, poor planning or lack of organization by the spending unit. Competitive bids must be obtained if possible.
  - 8.1.5.2 The University shall maintain a purchasing card or cards for use in and for situations declared an emergency by the President. Such emergencies may include but are not limited to partial or total destruction of a campus facility; loss of a critical component of utility infrastructure; heating ventilating, or air conditioning failure in an essential academic building; loss of campus road, parking lot or campus entrance; or a local, regional, or national emergency situation that has a direct impact on the campus.
  - 8.1.5.3 In the event of an emergency declared by the President of Marshall University, the President or his or her designee may authorize the use of an emergency purchasing card by a designated representative in accordance with the procedures set forth in the State Auditor's Legislative Rule for the purchasing card program.
- 8.1.6 (f) Open end, consortium, buying group, and federal contracts; and
  - 8.1.6.1 Marshall University may enter into open end contracts for materials, supplies, equipment, services, construction and/or printing to supply their respective needs in the form of statewide contracts, blanket orders or price agreements. Once issued, purchases and acquisitions may be made from these contracts without securing any other bids or quotations. These contracts may be made available to other institutions for their use.
  - 8.1.6.2 The University may, without securing any other bids or quotations, make purchases from cooperative buying groups, consortia, the federal government and from federal government contracts if the materials, supplies, equipment, services, and printing to be purchased are available from these groups, consortia, or the federal government and its contracts, and if this is the most financially advantageous manner of making the purchase.
- 8.1.7 (g) Essential services.
  - 8.1.7.1 Essential services (commodities in this category may include, but are not limited to routine, regularly scheduled payments) may be purchased and paid for by the University

without securing competitive bids or proposals or issuing purchase orders. Administrative procedures will provide additional guidance on these types of purchases.

#### 8.1.8 (h) Purchasing Card

8.1.8.1 The Chief Financial Officer shall establish administrative procedures relating to payment. All current purchasing policies must be followed regardless of payment method. The state purchasing card may be used as a purchasing and payment method as provided in applicable provisions of West Virginia Code §12-3-10a and b, §18B-5-4 (u) and §18B-5-9(d).

8.1.8.2 The University shall maintain a purchasing card or cards that may be used for emergencies declared by the President in accordance with WVC §18B-5-9 (d) (3).

#### 8.2 Purchases Greater than the statutory bid minimum

8.2.1 Competitive bidding is the preferred method for purchase and acquisition of materials, supplies, equipment, services, and printing greater than the statutory bid minimum. The Chief Procurement Officer shall advertise for bids on all purchases exceeding the statutory bid minimum. The advertisement shall appear no less than 5 calendar days prior to the date bids are due.

8.2.2 The Chief Procurement Officer shall, in addition to advertising, post or otherwise make available notice of all acquisitions and purchases for which competitive bids are being solicited in the University's purchasing office no less than 5 calendar days prior to making such purchase and shall ensure that the notice is available to the public during business hours.

8.2.3 Bids shall be delivered to the specified location for receipt of bids by the bidder prior to the date and time of the bid opening according to the instruction contained in the request for bids and any addenda or modifications officially issued.

8.2.4 Bids not properly delivered or received after the required time and date shall not be opened and shall be returned to the bidder.

8.2.5 The bid shall be signed by an authorized agent of the bidder. A corporate signature without an individual's name and signature shall not be construed as an acceptable signature.

8.2.6 Facsimile and electronically transmitted bids are not acceptable for bids over the statutory bid minimum, unless the specifications allow such submissions and instructions for such submissions are in the request.

8.2.7 A bidder may make a written modification to a bid prior to the bid opening, provided modifications are made by the bidder in such a manner that the bid price is not revealed or known until the bid is opened. Written modifications must be received by the Chief Procurement Officer prior to the date and time of the bid opening. Facsimile and electronically transmitted modifications are acceptable if the bid price is not revealed.

8.2.8 Originals or copies of bids shall be available for public inspection after the bid opening. Vendors may designate in writing with the bid submission information contained within the bid constituting trade secrets, pursuant to West Virginia Code §29B-1-4(1), which shall be



exempt from disclosure. The purchasing files shall be open for public inspection after the award has been made, except for information qualifying for the exemption set out above.

- 8.2.9 The Chief Procurement Officer may reject an erroneous bid after the bid opening upon request of the bidder if all of the following conditions exist:
- 8.2.9.1 an error was made;
  - 8.2.9.2 the error materially affected the bid or proposal;
  - 8.2.9.3 rejection of the bid or proposal would not cause a hardship on the institution other than losing an opportunity to receive materials, supplies, equipment, services, construction and/or printing at a reduced cost; and
  - 8.2.9.4 enforcement of the part of the bid or proposal in error would be unconscionable. In order to reject a bid or proposal, the purchasing file must contain documented evidence that all of the above conditions exist.
- 8.2.10 Price and other adjustments shall be allowed on any purchase order if specific provisions for adjustments have been incorporated in the prescribed forms and the purchase order. All such requests for adjustments shall be made in accordance with the specific terms and conditions of the individual purchase order. In the event no provision for adjustments has been made, discretion to grant adjustments shall rest with the Chief Procurement Officer.
- 8.2.11 Every person, firm or corporation selling or offering to sell to the University materials, supplies, equipment, services, construction and printing, upon competitive bid or otherwise, in excess of the statutory bid minimum per order, shall be registered with the West Virginia Department of Administration, Purchasing Division, pursuant to West Virginia Code §18B-5-5 and §5A-3-12. Purchase orders in excess of the statutory bid minimum may not be issued to any vendor not properly registered with the State of West Virginia.
- 8.2.12 Contracts, purchase orders and associated documents such as performance and labor/material payment bonds and certificates of insurance are not required to be approved by the Attorney General provided standard terms and conditions or standardized forms previously approved by the Attorney General are used.
- 8.2.13 Contracts and purchase orders that exceed the amount set forth in West Virginia Code §18B-5-4 for competitive bidding shall be filed with the State Auditor.
- 8.3 Specifications and Awards
- 8.3.1 Specifications shall be written to maximize and encourage competition. In certain cases, a "brand name or equal" may be used as a specification.
  - 8.3.2 All purchases and acquisitions shall be made in consideration of and within limits of available appropriations and funds and in accordance with applicable provisions of West Virginia Code §5A-2, relating to expenditure schedules and quarterly allotments of funds.
  - 8.3.3 Award shall be made to the lowest responsible and responsive vendor. Unit prices shall prevail in all cases when there is a conflict between the unit price and extended price. In

some cases multiple and/or split awards may be made when determined to be in the best interest of the institution. Occasionally, purchase orders may be issued which impose no obligation to take delivery of a product and/or service and as such, these purchase orders shall be issued as blanket purchase orders or price agreements. In situations where vendors are competing to provide a service that will generate income for an institution, the award shall be made to the highest responsible and responsive bidder, taking into consideration the above factors.

- 8.3.4 The Chief Procurement Officer may accept or reject, in whole or in part, any bid or proposal when he or she believes it to be in the best interest of the institution. If any bid or proposal is rejected, a written explanation shall be placed in the purchasing file.
- 8.3.5 When tie bids or proposals are received, the tie shall be broken and an award made by allowing the tied vendors to make a "best and final offer." If a tie bid is not broken by a "best and final offer," then the tie may be broken by a flip of a coin, draw of the cards or any other impartial method deemed prudent by the Chief Procurement Officer.
- 8.3.6 Except for exemptions granted in the West Virginia Code, all material, supplies, equipment, services and printing made upon competitive bids or proposals shall be subject to any resident vendor preference set forth in the West Virginia Code.
- 8.3.7 The Chief Procurement Officer shall determine the applicability and amounts of bonds and/or deposits required of a vendor at any time, if, in his or her judgment, such security is necessary to safeguard the institution from undue risk. The Chief Procurement Officer may require the vendor to submit a certified check, certificate of deposit, performance bond, or any other security acceptable to the Chief Procurement Officer, payable to the institution. Personal checks and/or company checks are not acceptable. When a contract has been satisfactorily completed on which a surety bond or other deposit has been previously submitted, the spending unit shall certify the completion in writing to the Chief Procurement Officer. The Chief Procurement Officer, upon receipt of the notification, shall return the check or deposit to the vendor.
- 8.4 Vendor's Rights and Duties
- 8.4.1 Each vendor is solely responsible for delivery of its bid or proposal to the designated location for receipt of bids or proposals prior to the specified date and time of the bid or proposal opening.
- 8.4.2 If there is a conflict between the extension price and the unit price, the unit price shall prevail.
- 8.4.3 Any changes made by the vendor in the specifications listed in the bid request must be clearly stated. If changes are not stated, it will be assumed that items offered meet the specifications in all respects.
- 8.4.4 Vendors are responsible for the accuracy of the information in their bid or proposal and on the bid or proposal envelope.
- 8.4.5 All sales to the University are exempt from West Virginia consumer sales tax or excise tax by blanket state exemption and blanket federal exemption.

- 8.4.6 It is the vendor's exclusive duty and obligation to file protests and requests for reconsideration according to the requirements of Section 9, and for reconsideration of suspension, in accordance with the requirements of Section 10 of this rule; otherwise, they shall be waived.
- 8.5 Vehicle Purchase
- 8.5.1 The purchase and leasing of motor vehicles shall be consistent with the Department of Administration's Procedural Rule on State Owned Vehicles, Title 148, Series 3. This rule guidelines and procedures are adopted by the University.
- 8.6 Procurement File
- 8.6.1 The Chief Procurement Officer shall maintain a purchasing file for each procurement or acquisition. This file shall contain all relevant information pertaining to such purchase or acquisition, including but not limited to:
- 8.6.1.1 bids, proposals or quotations received in response to a request for bids or proposals;
  - 8.6.1.2 identification and certification of the successful bid;
  - 8.6.1.3 why any bid or proposal is rejected in whole or in part;
  - 8.6.1.4 justification for award to other than the lowest vendor; and
  - 8.6.1.5 vendor protests or complaints.
- 8.6.2 The purchasing file shall be a public record open to inspection during normal business hours. No records in the purchasing file shall be destroyed without the written consent of the Legislative Auditor, except as set forth in subparagraph 8.6.3.
- 8.6.3 Those files in which the original documentation has been held for at least one year and in which the original documents have been reproduced may be destroyed without written consent of the Legislative Auditor. All files, no matter the storage method, shall be open for inspection by the Legislative Auditor upon request.
- 8.7 Lease-Purchase Arrangements
- 8.7.1 The University may enter into lease-purchase arrangements for capital improvements, including equipment, regardless of value, without the approval of the Higher Education Policy Commission in accordance with West Virginia Code §18B -19-11(c).
- 8.7.2 Lease-purchase arrangements shall be made in accordance with West Virginia Code §18B-5-4 (d and e) and §18B -19-11.
- 8.7.3 Lease-purchase agreements exceeding the minimum value stated in WV Code §18B -19-11(e) (or its subsequent amended section) must be approved as to form by the Attorney General in accordance with WV Code §18B -19-11(e).
- 8.8 Lease Agreements for Grounds, Buildings, Office Space, Classrooms

- 8.8.1 The University has the authority to enter into lease agreements, as lessee, for grounds, buildings, office space or other space in the name of the State for more than one fiscal year but not exceeding forty years under the following conditions:
- 8.8.1.1 Marshall University shall be responsible for all rent and other necessary payments in connection with the contract of lease; and
- 8.8.1.2 Sufficient grounds, buildings, office or other space is not available on University property or in buildings currently owned or leased.
- 8.8.2 Before executing any rental contract or lease, the University shall do the following:
- 8.8.2.1 Determine the fair rental value of the grounds, building, office space or other space to be leased in the condition in which they exist, and shall contract for or lease the premises at a price not to exceed the fair market value;
- 8.8.2.2 Leases shall contain, in substance, all of the following provisions:
- 8.8.2.2.1 That the University, as lessee, has the right to cancel the lease without further obligation on the part of the lessee upon giving thirty days' written notice to the lessor at least thirty days prior to the last day of the succeeding month;
- 8.8.2.2.2 That the lease shall be considered canceled without further obligation on the part of the lessee if the Legislature or the federal government fails to appropriate sufficient funds for the lease or otherwise acts to impair the lease or causes it to be canceled; and
- 8.8.2.2.3 That the lease shall be considered renewed for each ensuing fiscal year during the term of the lease unless it is canceled by the University before the end of the then-current fiscal year.
- 8.8.3 The University, which is granted any grounds, buildings, office space or other space leased in accordance with West Virginia Code §18B-5-4 may not order or make permanent changes of any type unless the Governing Board, as appropriate, has first determined that the change is necessary for the proper, efficient and economically sound operation of the institution. For purposes of this section, a "permanent change" means any addition, alteration, improvement, remodeling, repair or other change involving the expenditure of state funds for the installation of any tangible thing which cannot be economically removed from the grounds, buildings, office space or other space when vacated by the institution. For improvements costing less than the statutory bid minimum for construction projects, the Governing Board delegate's approval authority through the President to the Chief Operations Officer.
- 8.8.4 Leases and other instruments for grounds, buildings, office or other space, once approved by the Governing Board, may be signed by the President, the Chief Operations Officer or the Chief Procurement Officer. Leases and other instruments entered into by the University that exceeds \$1 million over the lease term must receive prior approval of the Governing Board. Leases costing less shall be approved by the Chief Operations Officer.
- 8.8.5 The University shall present to the Joint Committee on Government and Finance a copy of any contract for the purchase of real estate, any lease-purchase agreement and any construction for new buildings or other acquisitions of buildings, office space, or grounds

exceeding one million dollars.

- 8.8.6 Any lease or instrument exceeding the minimum value stated in WV Code §18B -19-12(h) (or its subsequent amended section) annually shall be approved as to form by the Attorney General. A lease or other instrument for grounds, buildings, office or other space that contains a term, including any options, of more than six months for its fulfillment shall be filed with the State Auditor.
- 8.8.7 The Governing Board may promulgate additional rules deemed necessary to carry out the provisions of this section, and the President may issue procedures for complying with this section.

## **9 PROTESTS AND RECONSIDERATION**

- 9.1 Protests and requests for reconsideration of a decision made by Chief Procurement Officer may only be made by a person and/or a vendor who is a potential or actual bidder on that particular contract and/or purchase.
- 9.2 Protests
- 9.2.1 Protests based on specifications or improprieties in any type of solicitation which are apparent or should have been apparent prior to the bid or proposal opening or closing date must be filed not later than five calendar days prior to the bid or proposal opening or closing date. A protest of the award must be filed no later than five calendar days following the notice of the University's intent to award the contract as posted or otherwise made available in the institution's Purchasing Office for competitive transactions greater than the statutory bid minimum. Protests filed prior to five calendar days following the notice of intent to award shall be resolved in accordance with this rule before an award is made. Information regarding awards may be obtained from the Purchasing Office, and a vendor contemplating a protest has a duty to obtain this information in a timely manner.
- 9.2.2 The protest must be filed in writing with the Chief Procurement Officer and contain the name and address of the protestor, the requisition number of the bid or the purchase order number, a statement of the grounds for protest and supporting documentation, the relief sought, and if a hearing on the merits of the protest is requested.
- 9.2.3 The Chief Procurement Officer shall review the protest and issue a decision in writing. In the event a hearing on the merits of the protest is requested by the protestor, the Chief Procurement Officer shall set a time and place for the hearing. The hearing shall be recorded and an official record shall be prepared. Following the hearing, the Chief Procurement Officer shall issue a written decision.
- 9.3 Reconsideration
- 9.3.1 Reconsideration of a decision on a protest by the Chief Procurement Officer may be requested by an aggrieved party to the University's Chief Operations Officer. A request for reconsideration shall be made in writing within five calendar days after receiving the Chief Procurement Officer's written decision, and it shall contain the name and address of the aggrieved party, the requisition or purchase order number, a statement of the grounds for reconsideration with supporting documentation, the relief sought, and if a hearing on the

merits is requested.

- 9.3.2 The Chief Operations Officer shall review the request for reconsideration and issue a decision in writing. In the event a hearing on the merits is requested by the aggrieved party, he or she shall set a time and place for the hearing. The hearing shall be recorded and an official record shall be prepared. Following the hearing, he or she shall issue a decision in writing to the aggrieved party and his or her decision shall be final.
- 9.3.3 The Chief Procurement Officer and Chief Operations Officer may refuse to decide any protest or reconsideration where the matter involved is the subject of litigation before a court of competent jurisdiction, or has been decided on the merits by such court. The foregoing shall not apply where the court requests, expects or otherwise expresses interest in the decision of the two.

## **10 SUSPENSION AND RECONSIDERATION**

### **10.1 Suspension**

- 10.1.1 The Chief Procurement Officer shall have authority to suspend, for a period not exceeding one year, the right and privilege of a person to bid on purchases at Marshall University.
- 10.1.2 The following shall be considered adequate grounds for suspension of a vendor:
- 10.1.2.1 a vendor has exhibited a pattern of poor performance in fulfilling its contractual obligation(s) including, but not limited to, providing or furnishing commodities, materials, or services or construction late, or at a quantity or quality level below that which is specified in the contract, or repeated instances of poor performance; or
- 10.1.2.2 the vendor has breached any contract entered into pursuant to the provisions of West Virginia Code §18B-5-4 through §18B-5-9 or this policy, or the vendor has been convicted of any federal or state law punishable as a felony if such conviction is directly related to the performance of a contract entered into pursuant to West Virginia Code §18B-5-4 through §18B-5-9 or this policy. Any such suspension must be imposed within one year of the date of the act, omission, or conviction the suspension is based upon, or within one year of the Chief Procurement Officer's discovery of such act, omission, or conviction.

### **10.2 Reconsideration**

- 10.2.1 Reconsideration of a decision on suspension by the Chief Procurement Officer may be requested by an aggrieved party to Marshall University's Chief Operations Officer. A request for reconsideration shall be made in writing within five calendar days after receiving the Chief Procurement Officer's decision and it shall contain the name and address of the aggrieved party, a statement of the grounds for reconsideration with supporting documentation, the relief sought, and if a hearing on the merits is requested.
- 10.2.2 The Chief Operations Officer will review the request for reconsideration and issue a decision in writing. In the event a hearing on the merits is requested by the aggrieved party, he or she shall set a time and place for the hearing. The hearing shall be recorded and an official record prepared. Following the hearing, he or she will issue a decision in writing to the aggrieved

party and his or her decision shall be final.

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

### 10.3 Vice Chancellor for Administration

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

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

## **11 QUALIFICATIONS OF A PURCHASING AGENT AND A CHIEF PROCUREMENT OFFICER**

### 11.1 Buyer

11.1.1 No person shall be employed as a buyer unless that person, at the time of employment, is either: (a) a graduate of an accredited college or university; or (b) has at least four years' experience in purchasing for any unit of government or for any business, commercial or industrial enterprise.

11.1.2 Any person making purchases and acquisitions pursuant to this section shall execute a bond in the penalty of fifty thousand dollars, payable to the state of West Virginia, with a corporate bonding or surety company authorized to do business in this state as surety thereon, in a form prescribed by the Attorney General and conditioned upon the faithful performance of all duties in accordance with West Virginia Code §18B-5-4 through §18B-5-9 and this policy. In lieu of separate bonds for such buyers, a blanket surety may be obtained. Any such bond shall be filed with the Secretary of State. The cost of any such bond or bonds shall be paid from funds appropriated to the Governing Board.

### 11.2 Chief Procurement Officer

11.2.1 No new person shall be employed as a Chief Procurement Officer unless that person, at the time of employment, is:

11.2.1.1 a graduate of and has received a baccalaureate degree from an accredited college or university; and

11.2.1.2 has at least four years' experience in purchasing for any unit of government or for any

business, commercial or industrial enterprise.

- 11.2.2 The bonding provisions set forth in subparagraph 11.1.2 shall also apply to any person employed as a Chief Procurement Officer.

## **12 RECEIVING AND INVENTORY MANAGEMENT**

### **12.1 Receiving**

- 12.1.1 The Director of Physical Plant shall establish University administrative procedures for receiving and distributing materials, supplies, equipment, services and printing to departments and offices within the University. These procedures shall be consistent with this policy, and they shall be approved by the President, shall be on file with the Chief Operations Officer Office and made available to the public upon request.

### **12.2 Inventory Management**

- 12.2.1 Effective July 1, 2006, the Director of Physical Plant shall inventory all equipment that has a unit value at the time of purchase or acquisition of \$5,000 or greater. Such inventory shall be kept current at all times. All equipment purchases with a unit value of \$5,000 or more must be purchased inside the University procurement modules.
- 12.2.2 The Director of Physical Plant shall set up and maintain the Marshall University's inventory management system on the basis of generally accepted accounting standards. This system shall also conform to the requirements of the Governing Board, the state and the federal government as applicable.
- 12.2.3 The Director of Physical Plant shall conduct an annual audit of Marshall's inventory with a physical audit of all equipment being accomplished every three years on a cyclical basis.

## **13 VIOLATIONS**

- 13.1 Any person who authorizes or approves a purchase contract in a manner in violation of the West Virginia Code, this rule, or any policy or procedure adopted by the Governing Board shall be personally liable for the cost of such purchase or contract. Purchases or contracts violating the West Virginia Code and/or this rule shall be void and of no effect.
- 13.2 Any person receiving anything of value from a known interested party in the awarding of a purchase order shall be subject to the provisions of West Virginia Code §18B-5-6 and §5A-3--29, -30, -31.
- 13.3 Except as may be authorized by the provisions of Chapter 6B of the West Virginia Code, neither the Governing Board, nor any employee of the University, shall be financially interested, or have any beneficial personal interest, directly or indirectly, in the purchase of any equipment, materials, supplies, services, or printing, nor in any firm, partnership, corporation or association furnishing them. Neither the Governing Board nor any employee of the University shall accept or receive directly or indirectly, from any person, firm or corporation, known by the Governing Board or the University's employees to be interested in any bid, contract or purchase, by rebate, gift or otherwise, any money or other thing of value whatsoever or any promise, obligation or contract for future reward or compensation.



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

#### **14 PERFORMANCE AUDITS**

- 14.1 The Governing Board is required by West Virginia Code to conduct an independent performance audit of the University's purchasing functions at least once every three years. A copy of the audit shall be provided to the Joint Committee on Government and Finance and the Legislative Oversight Commission on Education Accountability within thirty days of the date the audit report is completed.