

SECTION 9: LIST OF COMMODITIES AND SERVICES IDENTIFIED AS IMPOSSIBLE TO BID

Impossible to Bid List Creation: The Director of the Purchasing Division has the authority to exempt transactions from competitive bidding requirements provided that the director determines such exemptions to be in the best interest of the state. The Director is also authorized to recognize that certain commodities and services are impossible to obtain through competitive bidding and make a list of those commodities and services. See W. Va. CSR § 148 -1-4.1. In accordance with that authority, the Director has identified those items that cannot be competitively bid in this List of Commodities and Services Identified as Impossible to Bid (hereinafter “Impossible to Bid List”) shown below.

A spending unit may request that commodities or services be added to the Impossible to Bid List by completing and submitting a WV-67 form entitled “Section 9 Impossible to Bid List Addition Request Form.” Pursuant to W. Va. CSR § 148-1-4.1, A spending unit’s request to add commodities and services to the list must be accompanied by written justification and an explanation of why competitive bids are not possible. That information must be included on the WV-67 form. .

Competitive Bidding Not Required: Spending units may purchase the commodities and services on the list directly from the vendor and are not required to have contracts for the purchase of those items approved by the Purchasing Division unless otherwise noted below with the applicable item.

Documentation Requirements: Even though competitive bidding and Purchasing Division approval are not required for most Impossible to Bid List procurements, the spending unit must continue to follow documentation requirements associated with the applicable spend threshold and obtain applicable third-party approvals, unless otherwise noted below with each item. For example, all vendors must complete vendor registration with the Purchasing Division and Secretary of State’s Office; perform vendor compliance checks, such as vendor debarment and workers compensation; and obtain fleet-, CIO-, or other third-party approvals necessary prior to completing any Impossible to Bid transaction. The use of a purchase order is required on all purchases over \$5,000, and spending units must continue to submit contracts to the Attorney General’s office for approval, as to form, in accordance with that Office’s requirements.

Registration Fee Waiver: The Director has also determined that pursuant to W. Va. C.S.R. § 148-1-6.1.c.5, waiving the vendor registration \$125 fee for all vendors providing commodities or services under Section 9 of the Purchasing Division Procedures Handbook is in the best interest of the State. Accordingly, the vendor registration fee is waived and, therefore, not required for a vendor providing commodities or services under Section 9 of this handbook. This waiver only applies to transactions conducted under Section 9 of the handbook. If the vendor in question also obtains contracts through competitive bidding, direct award, or some other method, fee payment will be required.

Guidance: The Section 9 Applicability Opinion Request Form (WV-68) may be used to formally inquire about the Purchasing Division's opinion on whether a particular transaction is included in one of the existing categories of the Impossible to Bid List. This form is only to be used when the applicability of a Section 9 item is questionable or unclear.

Impossible to Bid List: The following items comprise the Impossible to Bid List of commodities and services that may be purchased directly by spending units without advertisement or bid.

1. **Advertising:** This item includes any advertisement placed directly with newspapers, trade magazines, internet publications, social media or billboards. This item includes broadcast television and radio advertisements placed directly with the broadcaster or publisher. Additionally, this item includes participation fees for trade shows, conferences or conventions. This item does not include any indirect placement, promotional items or advertising consultant services.
2. **Artwork and Historical Items:** This item includes the purchase of and service to artwork and historical items, i.e. restoring governors' portraits, refurbishing chandeliers, etc. An agency attempting to procure commodities and services under this item must obtain written approval from the Purchasing Division prior to making any purchase.
3. **Attorneys and Law Firms:** This item includes hiring attorneys and law firms in an official attorney-client capacity. Nothing in this item eliminates the approval or oversight residing within the Attorney General's office.
4. **Aviation Fuel:** This item includes the purchase of aviation fuel but excludes bulk purchases for delivery to state dispensing stations.
5. **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.

6. **Court Ordered Placements:** This item includes when placing children at various educational and/or behavioral centers when ordered by West Virginia courts or the West Virginia Department of Health and Human Resources.
7. **Entertainers:** This item includes individuals and/or groups contracted at the request of the state to entertain or to assist in the production of entertainment.
8. **Hospitality:** This item includes expenses for food, beverages, facility rental and entertainment relating to conducting state business.
9. **Media License Fees:** This item includes program license fees for radio or television.
10. **Medical Fees:** Included in this item are fees for medical services (behavioral and physical) from individual doctors, dentists, clinics, hospitals, laboratory testing facilities, audiologists, county medical examiners, physical and occupational therapists, behavioral counseling and evaluations, etc. for individual patients, inmates, students and clients where the state is responsible for payment for this one-time service. This item also includes programs designed for low income / uninsured patient care on an individual basis provided that the program is open to all service providers. Also included in this item is body transportation for corpses and indigent burial expenses and direct award medical and psychological consultants for the purpose of determining Federal Social Security Administration Disability by the Disability Determination Services of the WV Division of Rehabilitation Services. Also included are medical fees for the purposes of determining vocational rehabilitation needs of clients of the Division of Rehabilitation Services. This item does not include inmate health care management, hospital management, consulting services or agreements to provide services for groups of patients, inmates, students or clients, etc. for state agencies.
11. **Postage:** This item includes stamps and other non-competitive mailing services from the United States Postal Service, but this does not include services available from statewide contracts. The Secretary of State registration is not required for transactions processed under this item.
12. **Professional Association Dues:** This item includes membership fees or association dues for professional associations that perform a licensing, certification or accreditation function for state employees or agencies (i.e., West Virginia State Bar, West Virginia Board of Accountancy, etc.).

13. **Railroad Car Hire Fees:** This item includes national association fees required from all railroads to monitor the location and use of railroad cars for the owners.
14. **Resale Items:** This item includes items that are acquired specifically for resale by the state agency to the general public that should be selected on the basis of quality and delivery constraints due to customer demand.
15. **Investigative Services; Subject Matter Experts and Witnesses for Administrative Hearing and Legal Proceedings:** This item includes obtaining investigative services and the services of a subject matter expert or witness that is intended to help prepare for, or will be utilized in, administrative or legal hearings/proceedings. This item does not include agency consulting services or former employees retained by their agency or hired by another agency.
16. **Subscriptions and publications:** This item includes newspapers, textbooks and publications – electronic and hard copy – purchased directly from the publisher.
17. **Training Activities:** This item includes lecturers, honorariums, copyrighted test and training materials, test monitors/examination proctors, and registration fees, where competition is not available.
18. **Utilities Regulated by the Public Service Commission:** 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 and satellite television, all of which must be competitively bid.
19. **Department of Agriculture:** Approved items for the West Virginia Department of Agriculture include purchase of livestock, the acquisition of bees for repopulation purposes and commodity processing services for USDA donated foods.
20. **Court Ordered Payments:** This item includes court order payment. A copy of the court order must be maintained in the agency file, unless sealed and restricted by the respective judge. If the order is sealed and restricted, an explanation must be maintained in the agency file referencing the court order. Court ordered payments are exempt from all documentation requirements listed above but spending units should comply with those requirements where possible.
21. **Intellectual Property:** This item includes the West Virginia Lottery's purchase of licenses to intellectual property, such as copyrighted or trademarked material, for creative use in the

development of lottery products, promotions or advertising when the license can be obtained from only one source. This item in no way applies to software.

- 22. Emergency Services (Non-Construction and Non-Architectural/Engineering “A/E”):** This item includes non-construction and non-A/E services that must be procured on an emergency basis when (1) formal bidding would cause the government to lose the ability to perform some critical function for itself or citizens of the State of West Virginia or (2) formal bidding would delay a response to a declared state of emergency. Any use of this item must be approved by the Purchasing Division Director in advance in accordance with the procedures for commodities outlined in W. Va. Code § 5A-3-15, related rules, and the Purchasing Division Procedures Handbook. (For more information on emergencies related to construction or A/E services, please review the applicable law and Sections 5 and 6 of the Purchasing Division Procedures Handbook).
- 23. Vaccines:** This item includes vaccines purchased through contracts issued by the Centers for Disease Control (CDC).
- 24. Transcripts from Court Reporters Employed by Court, Judge or Opposing Counsel:** This item includes transcripts procured from court reporters who are employed by the court, judge or opposing counsel. These transactions are exempted from all documentation requirements listed above but spending units should comply with those requirements where possible.
- 25. Copies of Government Documents/Records Obtained from the Government:** This item includes fees paid to the government entity required to obtain records of court and administrative proceedings as well as documents filed in those proceedings, and charges paid to a government entity for other official documents or records obtained from that government entity. Examples of transactions that this item is intended to cover are fees associated with obtaining documents from the federal court’s PACER system, similar fees charged by county or local courts for records, fees required to obtain official copies of real estate records from the County Clerk’s Office, and FOIA fees.
- 26. Commodities or services for a shared facility arrangement with the U.S. Government:** Effective July 1, 2018, commodities or services contracted by the U.S. Government and provided to a state agency when those commodities or services are: (1) offered as part of a shared facility arrangement, and (2) those commodities or services for the State cannot be easily separated from those for the U.S. Government. The Secretary of State registration is not required for transactions processed under this item.

- 27. Obtaining Commodities Through the Federal Surplus Property Program:** This item includes requests to obtain federal surplus property through the West Virginia State Agency for Surplus Property (“WVSASP”). Both the donation and fixed price sale methods of obtaining federal property are included. Agencies must facilitate the transaction through the WVSASP. The Secretary of State registration is not required for transactions processed under this item. In the case of donated property, a Purchase Order would also not be required. The necessary documentation to facilitate the transaction can be obtained from the WVSASP.
- 28. 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”).
- 29. Livestock Genetic Material:** This item includes the purchase of genetic material for livestock artificial insemination.
- 30. Towing Services:** This item includes towing services initiated by law enforcement, or needed to clear a roadway after an accident or breakdown.
- 31. Court filing fees:** This item includes filing fees that must be paid either directly to the court, or to third party e-filing software providers, to file documents with municipal, county, state, and federal courts.
- 32. Automobiles:** This item includes cars, trucks, and SUVs with a GVWR under 14,000 pounds. An agency attempting to procure commodities and services under this item must obtain prior approval from the Governor's Office.