

H. B. 2715

(By Mr. Speaker, (Mr. Thompson) and Delegate Armstead)
[By Request of the Executive]
[Introduced February 25, 2013; referred to the
Committee on Finance.]

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10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto three new sections, designated §5A-3-10d,
12 §5A-3-10e and §5A-3-60; and to amend and reenact §9-2-9b of
13 said code, all relating generally to purchasing; authorizing
14 reverse auction pilot program for purchasing commodities;
15 defining "reverse auction"; permitting third-party vendors to
16 administer reverse auctions; affording the director of the
17 Purchasing Division rule-making authority to implement reverse
18 auction pilot program; providing that reverse auction pilot
19 program expires on July 1, 2017; authorizing prequalification
20 agreements and the secondary bid process for the direct
21 procurement of commodities; defining "state,"
22 "prequalification agreement," "prequalified vendor" and the
23 "secondary bid process"; requiring approval of the director of
24 the Purchasing Division for prequalification agreement,

1 secondary bid process procurements anticipated to cost in
2 excess of \$50,000; affording the director of the Purchasing
3 Division rule-making authority to establish procedures
4 regarding prequalification agreements, prequalification, the
5 secondary bid process, and related matters; requiring certain
6 executive department officials to attend annual training on
7 purchasing procedures; and repealing the Department of Health
8 and Human Resources' Medicaid purchasing exemption.

9 *Be it enacted by the Legislature of West Virginia:*

10 That the Code of West Virginia, 1931, as amended, be amended
11 by adding thereto three new sections, designated §5A-3-10d,
12 §5A-3-10e and §5A-3-60; and that §9-2-9b of said code be amended
13 and reenacted, all to read as follows:

14 **CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.**

15 **ARTICLE 3. PURCHASING DIVISION.**

16 **§5A-3-10d. Reverse auction pilot program.**

17 (a) Notwithstanding any other provision of this code, the
18 director is hereby authorized to initiate a reverse auction pilot
19 program to procure commodities. The program may be utilized if the
20 director determines the use of a reverse auction would be fair,
21 economical and in the best interests of the state: *Provided, That*
22 the director determines that the commodity to be procured:

23 (1) Is subject to low price volatility;

1 (2) Has specifications that are common and not complex;

2 (3) Varies little between suppliers;

3 (4) Is sourced primarily on price, with limited ancillary
4 considerations;

5 (5) Requires little collaboration from suppliers; and

6 (6) Is sold by a large, competitive supply base.

7 (b) For purposes of this section, "reverse auction" means a
8 process by which bidders compete to provide commodities in an open
9 and interactive market, including, but not limited to, the
10 Internet. Reverse auction bids are opened and made public upon
11 receipt by the director, and then bidders are given the opportunity
12 to submit revised bids until the bidding process is complete. The
13 contract is awarded to the lowest responsible bidder.

14 (c) The director may contract with qualified,
15 industry-recognized third-party vendors to conduct reverse auctions
16 on behalf of the director.

17 (d) The director shall propose rules for legislative approval
18 in accordance with the provisions of article three, chapter
19 twenty-nine-a of this code to establish the procedures for
20 conducting reverse auctions under the pilot program authorized by
21 this section. The rules shall include procedures for contracting
22 with qualified, industry-recognized third-party vendors.

23 (e) This section shall expire and be of no further force and
24 effect on and after July 1, 2017.

1 **§5A-3-10e. Prequalification agreements; secondary bid process.**

2 Notwithstanding any other provision of this code, the director
3 may permit the state and its spending units to procure commodities
4 directly and on a recurrent basis pursuant to a prequalification
5 agreement and a secondary bid process if the director determines
6 the process is fair, economical and in the best interests of the
7 state.

8 (a) For purposes of this section, the term "state" includes
9 the State of West Virginia and its spending units.

10 (b) For purposes of this section, a "prequalification
11 agreement" is an agreement between the state and at least two
12 prequalified vendors authorizing the state to purchase a commodity
13 or commodities on a direct and recurrent basis through the
14 secondary bid process. All prequalification agreements shall be of
15 a specified duration and shall set forth the special requirements,
16 technical or otherwise, for the commodity or commodities the state
17 may wish to procure. Further, all prequalification agreements
18 shall be approved by the director of the Purchasing Division.

19 (c) For purposes of this section, a "prequalified vendor" is
20 a "vendor," as that term is defined in section one, article one,
21 chapter five-a of this code, that enters into a prequalification
22 agreement after demonstrating it is responsible and qualified to
23 provide the commodity or commodities identified or to be identified
24 in the prequalification agreement.

1 (d) For purposes of this section, the "secondary bid process"
2 is the competitive bidding process whereby the prequalified vendors
3 that are parties to a prequalification agreement may submit sealed
4 bids to provide the commodity or commodities identified therein.
5 The state shall commence the secondary bid process by issuing an
6 order for the commodity or commodities identified in the
7 prequalification agreement, stating in the order the quantity of
8 the commodity or commodities to be procured in that particular
9 instance. The prequalified vendor that submits the lowest
10 secondary bid in response to the order shall be awarded the
11 procurement in that particular instance.

12 (e) For purposes of this section, all orders anticipated to
13 cost \$50,000 or less may be issued by the state directly to the
14 prequalified vendors. However, orders anticipated to cost in
15 excess of \$50,000 require advance approval from the director of
16 the Purchasing Division. The state is not permitted to issue a
17 series of orders anticipated to cost \$50,000 or less to circumvent
18 the requirements stated in this subsection.

19 (f) The director of the Purchasing Division shall propose
20 rules for legislative approval in accordance with the provisions of
21 article three, chapter twenty-nine-a of this code, to establish,
22 among other things, procedures by which prequalification agreements
23 are solicited and entered into; procedures by which interested
24 vendors may be prequalified; and procedures by which the secondary

1 bid processis conducted. The rules shall also address the
2 procedures the state and the Purchasing Division shall follow in
3 the event an order is anticipated to cost in excess of \$50,000.

4 **§5A-3-60. Annual purchasing training.**

5 (a) All executive department secretaries, commissioners,
6 deputy commissioners, assistant commissioners, directors, deputy
7 directors, assistant directors, department heads, deputy department
8 heads, and assistant department heads are hereby required to take
9 one hour of training on purchasing procedures annually.

10 (b) The director of the Purchasing Division shall offer the
11 one-hour training contemplated by this section at least two times
12 per year and shall develop its substance in accordance with the
13 requirements of this article. The training shall be recorded by
14 audio and visual means and shall be made available to the
15 individuals listed in subsection (a) of this section in the event
16 they are unable to attend the training in person.

17 (c) All individuals listed in subsection (a) shall certify, in
18 writing and on a form developed by the director of the Purchasing
19 Division, the date, time, location and manner in which they took
20 the training. Completed forms shall be returned to the director
21 and maintained in his or her office.

22 **CHAPTER 9. HUMAN SERVICES.**

23 **ARTICLE 2. COMMISSIONER OF HUMAN SERVICES; POWERS; DUTIES AND**

1 **RESPONSIBILITIES GENERALLY.**

2 **§9-2-9b. Contract procedure for the Medicaid program.**

3 (a) The secretary is authorized to execute a contract to
4 implement professional health care, managed care, actuarial and
5 health care-related monitoring, quality review/utilization, claims
6 processing and independent professional consultant contracts for
7 the Medicaid program.

8 (b) The provisions of article three, chapter five-a of this
9 code do not apply to contracts set out in subsection (a) of this
10 section: *Provided*, That the secretary shall comply with the
11 requirements set forth in this section.

12 (c) The secretary shall develop procedures and requirements
13 for competitive bidding and the awarding of contracts set out in
14 subsection (a) of this section, which procedures and requirements
15 shall include, but are not limited to, the following:

16 (1) Submitting public notice bids;

17 (2) The general terms and conditions for the contract;

18 (3) Awarding contracts;

19 (4) The description of the commodities and services required
20 for the contract, stated with sufficient clarity to assure that
21 there is a comprehensive understanding of the contract's scope and
22 requirements; and

23 (5) Contract management procedures which will ensure the
24 assessment of contractor performance and compliance with contract

1 requirements on a regular basis as appropriate for the specific
2 contract and no less frequently than on an annual basis for any
3 contract awarded pursuant to the provisions of this section.

4 (d) The awarding of the contract may be based on:

5 (1) Best value;

6 (2) Low bid;

7 (3) Sole source; or

8 (4) Any other basis the secretary chooses to award or reject
9 the bid: *Provided*, That the secretary shall document the basis of
10 any decision made pursuant to the provisions of this subsection.

11 (e) The secretary may employ the services of independent
12 professional consultants to assist in preparing solicitations or
13 for the evaluation of any responses to such solicitations:
14 *Provided*, That the independent professional consultant, or member
15 of his or her immediate family, or business with which he or she is
16 associated may not have any interest in the profits or benefits of
17 the contract for which he or she may participate in the preparation
18 of the solicitation or in the evaluation of the response.

19 (f) The secretary may terminate any contract with thirty days'
20 prior written notice.

21 (g) The provisions of subsections (b), (c), (d), (e) and (f)
22 of this section expire on and are of no further force and effect
23 after June 30, 2013: *Provided*, That the secretary may continue
24 with any procurement pursuant to the provisions of this section for

1 the competitive bidding and awarding of a contract in which a
2 public notice bid issued pursuant to this section occurred on or
3 before January 1, 2013: *Provided, however,* That the secretary
4 retains authority to review, approve and issue changes to contracts
5 issued under this section, and is responsible for challenges,
6 disputes, protests, and legal actions related to contracts issued
7 under this section.

NOTE: The purpose of this bill is to implement purchasing reforms. Specifically, the bill provides the Purchasing Division with alternative methods to purchase commodities, including the reverse auction and prequalification agreement/secondary bid processes; requires certain executive department officials to attend annual training on purchasing procedures; and repeals the Department of Health and Human Resources' Medicaid program purchasing exemption.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

§5A-3-10d, §5A-3-10e and §5A-3-60 are new; therefore, they have been completely underscored.