

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 356**

4 (By Senators Kessler (Mr. President) and M. Hall,

5 By Request of the Executive)

6 _____
7 [Originating in the Committee on Government Organization;
8 reported January 29, 2014.]
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11
12 A BILL to amend and reenact §5A-1-1 of the Code of West Virginia,
13 1931, as amended; to amend said code by adding thereto a new
14 section, designated §5A-1-10; to amend and reenact §5A-3-1,
15 §5A-3-3, §5A-3-4, §5A-3-5, §5A-3-11, §5A-3-17, §5A-3-28,
16 §5A-3-30 and §5A-3-31 of said code; and to amend said code by
17 adding thereto three new sections, designated §5A-3-10d,
18 §5A-3-10e and §5A-3-60, all relating generally to purchasing;
19 revising the definition of "commodities"; eliminating the
20 definition of "contractual services"; defining "contract",
21 "grant", "procurement", "public funds" and "services";
22 revising the definition of "vendor"; requiring state spending
23 units to purchase commodities and services on a competitive
24 basis; authorizing the Secretary of the Department of

1 Administration to issue a notice to cease and desist when
2 purchases are not made on a competitive basis; clarifying the
3 purposes and policies of the Purchasing Division; clarifying
4 the applicability of the article; clarifying that procurements
5 must include adequate specifications and descriptions;
6 authorizing the Director of Purchasing to issue a notice to
7 cease and desist when purchases are not made on a competitive
8 basis; adding the term "services" to where "commodities" is
9 referenced throughout the code; removing reference to
10 "contractual services"; authorizing reverse auctions for
11 purchasing commodities; defining "reverse auction"; permitting
12 third-party vendors to administer reverse auctions; affording
13 the Director of the Purchasing Division rule-making authority
14 to implement reverse auctions; authorizing master contracts
15 and the direct order process for the direct procurement of
16 certain commodities; defining "information technology",
17 "state", "master agreement", "prequalified vendor" and the
18 "direct ordering process"; requiring approval of the Director
19 of the Purchasing Division for master contracts, direct order
20 of commodities pursuant to a master contract anticipated to
21 cost in excess of \$50,000 and information technology
22 procurements anticipated to cost in excess of \$1,000,000;
23 affording the Director of the Purchasing Division rule-making
24 authority to establish procedures regarding master contracts,

1 preapproval, the direct ordering process and related matters;
2 clarifying circumstances in which grants are exempt from
3 competitive bidding requirements; imposing personal liability
4 upon spending officers and other responsible individuals who
5 have knowingly and willfully violated competitive bidding
6 requirements; expanding criminal penalties for undermining
7 competition; requiring certain executive department officials
8 to attend annual training on purchasing procedures; and making
9 technical corrections.

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

11 That §5A-1-1 of the Code of West Virginia, 1931, as amended,
12 be amended and reenacted; that said code be amended by adding
13 thereto a new section, designated §5A-1-10; that §5A-3-1, §5A-3-3,
14 §5A-3-4, §5A-3-5, §5A-3-11, §5A-3-17, §5A-3-28, §5A-3-30 and
15 §5A-3-31 of said code be amended and reenacted; and that said code
16 be amended by adding thereto three new sections, designated
17 §5A-3-10d, §5A-3-10e and §5A-3-60, all to read as follows:

18 **ARTICLE 1. DEPARTMENT OF ADMINISTRATION.**

19 **§5A-1-1. Definitions.**

20 For the purpose of this chapter:

21 (1) "Commodities" means supplies, material, equipment,
22 ~~contractual services~~, and any other articles or things used by or
23 furnished to a department, agency or institution of state
24 government.

1 ~~(2) "Contractual services" means telephone, telegraph,~~
2 ~~electric light and power, water and similar services.~~

3 (2) "Contract" means an agreement between a state spending
4 unit and a vendor relating to the procurement of commodities or
5 services, or both.

6 (3) "Debarment" means the exclusion of a vendor from the right
7 to bid on contracts to sell goods or supply services to the state
8 or its subdivisions for a specified period of time.

9 (4) "Director" means the director of the division referred to
10 in the heading of the article in which the word appears.

11 (5) "Electronic" means electrical, digital, magnetic, optical,
12 electromagnetic, or any other similar technology.

13 (6) "Electronic transmission" or "electronically transmitted"
14 means any process of communication not directly involving the
15 physical transfer of paper that is suitable for the retention,
16 retrieval and reproduction of information by the recipient.

17 (7) "Expendable commodities" means those commodities which,
18 when used in the ordinary course of business, will become consumed
19 or of no market value within the period of one year or less.

20 (8) "Grant" means the furnishing of assistance (financial or
21 otherwise) to any person or entity to support a program authorized
22 by law.

23 ~~(8)~~ (9) "Nonprofit workshops" means an establishment: (a)
24 Where any manufacture or handiwork is carried on; (b) which is

1 operated either by a public agency or by a cooperative or by a
2 nonprofit private corporation or nonprofit association, in which no
3 part of the net earnings thereof inures, or may lawfully inure, to
4 the benefit of any private shareholder or individual; (c) which is
5 operated for the primary purpose of providing remunerative
6 employment to blind or severely disabled persons who cannot be
7 absorbed into the competitive labor market; and (d) which shall be
8 approved, as evidenced by a certificate of approval, by the State
9 Board of Vocational Education, Division of Vocational
10 Rehabilitation.

11 ~~(9)~~ (10) "Printing" means printing, binding, ruling,
12 lithographing, engraving and other similar services.

13 (11) "Procurement" means the buying, purchasing, renting,
14 leasing or otherwise obtaining of commodities or services.

15 (12) "Public funds" means funds of any character, including
16 federal moneys, belonging to or in the custody of any state
17 spending unit.

18 ~~(10)~~ (13) "Record" means information that is inscribed on a
19 read-only tangible medium or that is stored in an electronic or
20 other medium and is retrievable in perceivable form.

21 ~~(11)~~ (14) "Removable property" means any personal property not
22 permanently affixed to or forming a part of real estate.

23 ~~(12)~~ (15) "Request for quotations" means a solicitation for a
24 bid where cost is the primary factor in determining the award.

1 ~~(13)~~ (16) "Responsible bidder" means a vendor who has the
2 capability to fully perform the contract requirements, and the
3 integrity and reliability which will assure good faith performance.

4 ~~(14)~~ (17) "Responsive bidder" means a vendor who has submitted
5 a bid which conforms in all material respects to the bid
6 solicitation.

7 ~~(15)~~ (18) "Secretary" means the Secretary of Administration.

8 (19) "Services" means the furnishing of labor, time, expertise
9 or effort by a contractor, not involving the delivery of a specific
10 end commodity or product, other than one that may be incidental to
11 the required performance.

12 ~~(16)~~ (20) "Spending officer" means the executive head of a
13 spending unit, or a person designated by him or her.

14 ~~(17)~~ (21) "Spending unit" means a department, agency or
15 institution of the state government for which an appropriation is
16 requested, or to which an appropriation is made by the Legislature.

17 ~~(18)~~ (22) "The state and its subdivisions" means the State of
18 West Virginia, every political subdivision thereof, every
19 administrative entity that includes such a subdivision, all
20 municipalities and all county boards of education.

21 ~~(19)~~ (23) "Vendor" means any person or entity that may,
22 through contract or expression of interest, is registered with the
23 ~~purchasing division to~~ supply the state or its subdivisions with
24 commodities or services and lessors of real property.

1 **§5A-1-10. General procurement provisions for the state and its**
2 **subdivisions, and spending units.**

3 (a) Unless this code specifically provides to the contrary,
4 purchases for commodities and services by spending units shall be
5 based, whenever possible, on a competitive process.

6 (b) The secretary shall issue a notice to cease and desist to
7 any spending unit when the secretary has credible evidence that a
8 spending unit has failed, where possible, to purchase commodities
9 and services on a competitive basis.

10 **ARTICLE 3. PURCHASING DIVISION.**

11 **§5A-3-1. Division created; purpose; director; applicability of**
12 **article; continuation.**

13 (a) The Purchasing Division within the Department of
14 Administration is continued. ~~for the purpose of establishing~~
15 ~~centralized offices to provide purchasing, and travel services to~~
16 ~~the various state agencies.~~ The underlying purposes and policies
17 of the Purchasing Division are:

18 (1) To establish centralized offices to provide purchasing and
19 travel services to the various state agencies;

20 (2) To simplify, clarify, and modernize the law governing
21 procurement by this state;

22 (3) To permit the continued development of procurement
23 policies and practices;

24 (4) To make as consistent as possible the procurement rules

1 and practices among the various spending units;

2 (5) To provide for increased public confidence in the
3 procedures followed in public procurement;

4 (6) To ensure the fair and equitable treatment of all persons
5 who deal with the procurement system of this state;

6 (7) To provide increased economy in procurement activities and
7 to maximize to the fullest extent practicable the purchasing value
8 of public funds;

9 (8) To foster effective broad-based competition within the
10 free enterprise system;

11 (9) To provide safeguards for the maintenance of a procurement
12 system of quality and integrity; and

13 (10) To obtain in a cost-effective and responsive manner the
14 commodities and services required by spending units in order for
15 those spending units to better serve this state's businesses and
16 residents.

17 (b) The director of the Purchasing Division shall, at the time
18 of appointment:

19 (1) Be a graduate of an accredited college or university; and

20 (2) Have spent a minimum of ten of the fifteen years
21 immediately preceding his or her appointment employed in an
22 executive capacity in purchasing for any unit of government or for
23 any business, commercial or industrial enterprise.

24 (c) The provisions of this article apply to all of the

1 spending units of state government, except as otherwise provided by
2 this article or by law.

3 (d) The provisions of this article do not apply to the
4 judicial branch, the legislative branch, to purchases of stock made
5 by the Alcohol Beverage Control Commissioner, and to purchases of
6 textbooks for the State Board of Education.

7 (e) The provisions of this article shall apply to every
8 expenditure of public funds by a spending unit for commodities and
9 services irrespective of the source of the funds.

10 **§5A-3-3. Powers and duties of director of purchasing.**

11 The director, under the direction and supervision of the
12 secretary, shall be the executive officer of the Purchasing
13 Division and shall have the power and duty to:

14 (1) Direct the activities and employees of the Purchasing
15 Division;

16 (2) Ensure that the purchase of or contract for commodities
17 and services shall be based, whenever possible, on competitive bid;

18 (3) ~~Purchasing~~ Purchase or contract for, in the name of the
19 state, the commodities, services and printing required by the
20 spending units of the state government;

21 (4) Apply and enforce standard specifications established in
22 accordance with section five of this article as hereinafter
23 provided;

24 (5) Transfer to or between spending units or sell commodities

1 that are surplus, obsolete or unused as hereinafter provided;

2 (6) Have charge of central storerooms for the supply of
3 spending units, as the director deems advisable;

4 (7) Establish and maintain a laboratory for the testing of
5 commodities and make use of existing facilities in state
6 institutions for that purpose as hereinafter provided, as the
7 director deems advisable;

8 (8) Suspend the right and privilege of a vendor to bid on
9 state purchases when the director has evidence that such vendor has
10 violated any of the provisions of the purchasing law or the rules
11 and regulations of the director;

12 (9) Examine the provisions and terms of every contract entered
13 into for and on behalf of the State of West Virginia that impose
14 any obligation upon the state to pay any sums of money for
15 commodities or services and approve each such contract as to such
16 provisions and terms; and the duty of examination and approval
17 herein set forth does not supersede the responsibility and duty of
18 the Attorney General to approve such contracts as to form:
19 *Provided*, That the provisions of this subdivision do not apply in
20 any respect whatever to construction or repair contracts entered
21 into by the Division of Highways of the Department of
22 Transportation: *Provided, however*, That the provisions of this
23 subdivision do not apply in any respect whatever to contracts
24 entered into by the University of West Virginia Board of Trustees

1 or by the Board of Directors of the State College System, except to
2 the extent that such boards request the facilities and services of
3 the director under the provisions of this subdivision; ~~and~~

4 (10) Assure that the specifications and ~~commodity~~ descriptions
5 in all ~~"requests for quotations"~~ procurements are prepared so as to
6 ~~permit~~ provide all potential suppliers-vendors who can meet the
7 requirements of the state an opportunity to bid and to assure that
8 the specifications and descriptions do not favor a particular brand
9 or vendor. If the director determines that any such specifications
10 or descriptions as written favor a particular brand or vendor or if
11 it is decided, either before or after the bids are opened, that a
12 commodity or service having different specifications or quality or
13 in different quantity can be bought, the director may rewrite the
14 ~~"requests for quotations"~~ request at issue and the matter shall be
15 rebid; and

16 (11) Issue a notice to cease and desist to a spending unit
17 when the director has credible evidence that a spending unit has
18 violated competitive bidding or other requirements established by
19 this article and the rules promulgated hereunder. Failure to abide
20 by such notice may result in penalties set forth in section
21 seventeen of this article.

22 **§5A-3-4. Rules of director.**

23 (a) The director shall propose rules for legislative approval
24 in accordance with the provisions of article three, chapter

1 twenty-nine-a of this code to:

2 (1) Authorize a spending unit to purchase specified
3 commodities and services directly and prescribe the manner in which
4 such purchases shall be made;

5 (2) Authorize, in writing, a spending unit to purchase
6 commodities and services in the open market for immediate delivery
7 in emergencies, ~~defines~~ define emergencies and prescribe the manner
8 in which such purchases shall be made and reported to the director;

9 (3) Prescribe the manner in which commodities and services
10 shall be purchased, delivered, stored and distributed;

11 (4) Prescribe the time for making requisitions and estimates
12 of commodities and services, the future period which they are to
13 cover, the form in which they shall be submitted and the manner of
14 their authentication;

15 (5) Prescribe the manner of inspecting all deliveries of
16 commodities, and making chemical and physical tests of samples
17 submitted with bids and samples of deliveries to determine
18 compliance with specifications;

19 (6) Prescribe the amount and type of deposit or bond to be
20 submitted with a bid or contract and the amount of deposit or bond
21 to be given for the faithful performance of a contract;

22 (7) Prescribe a system whereby the director shall be required,
23 upon the payment by a vendor of an annual fee established by the
24 director, to give notice to such vendor of all bid solicitations

1 for commodities and services of the type with respect to which such
2 vendor specified notice was to be given, but no such fee shall
3 exceed the cost of giving the notice to such vendor, nor shall such
4 fee exceed the sum of \$125 per fiscal year nor shall such fee be
5 charged to persons seeking only reimbursement from a spending unit;

6 (8) Prescribe that each state contract entered into by the
7 Purchasing Division shall contain provisions for liquidated
8 damages, remedies or provisions for the determination of the amount
9 or amounts which the vendor shall owe as damages, in the event of
10 default under such contract by such vendor, as determined by the
11 director;

12 (9) Prescribe contract management procedures for all state
13 contracts except government construction contracts including, but
14 not limited to, those set forth in article twenty-two, chapter five
15 of this code;

16 (10) Prescribe procedures by which oversight is provided to
17 actively monitor spending unit purchases, including, but not
18 limited to, all technology and software commodities and ~~contractual~~
19 services exceeding \$1 million, approval of change orders and final
20 acceptance by the spending units;

21 (11) Prescribe that each state contract entered into by the
22 Purchasing Division contain provisions for the cancellation of the
23 contract upon thirty days' notice to the vendor;

24 (12) Prescribe procedures for selling surplus commodities to

1 the highest bidder by means of an Internet auction site;

2 (13) Provide such other matters as may be necessary to give
3 effect to the foregoing rules and the provisions of this article;
4 and

5 (14) Prescribe procedures for encumbering purchase orders to
6 ensure that the proper account may be encumbered before sending
7 purchase orders to vendors.

8 (b) The director shall propose rules for legislative approval
9 in accordance with the provisions of article three, chapter
10 twenty-nine-a of this code to prescribe qualifications to be met by
11 any person who is to be employed in the Purchasing Division as a
12 state buyer. The rules must provide that a person may not be
13 employed as a state buyer unless he or she at the time of
14 employment either is:

15 (1) A graduate of an accredited college or university; or

16 (2) Has at least four years' experience in purchasing for any
17 unit of government or for any business, commercial or industrial
18 enterprise.

19 Persons serving as state buyers are subject to the provisions
20 of article six, chapter twenty-nine of this code.

21 **§5A-3-5. Purchasing section standard specifications -**
22 **Promulgation and adoption by director; applicable to**
23 **all purchases.**

24 The director shall promulgate and adopt standard

1 specifications based on scientific and technical data for
2 appropriate commodities and services, which shall establish the
3 quality to which commodities to be purchased and services to be
4 contracted for by the state must conform. Standard specifications
5 shall apply to every future purchase of or contract for the
6 commodities or services described in the specifications and shall
7 include information relating to the cost of maintenance and
8 expected life of the commodity if the director determines there are
9 nationally accepted industry standards for the commodity. No
10 purchases by any spending unit may be exempt from compliance with
11 the standard specifications so established, but the director may
12 exempt the purchase of particular items from the standard
13 specifications if it is considered necessary and advisable. The
14 director shall update the standard specifications, as necessary.

15 **§5A-3-10d. Reverse auctions.**

16 (a) Notwithstanding any other provision of this code, the
17 director is hereby authorized to initiate reverse auctions to
18 procure commodities. The director may not use reverse auctions for
19 the procurement of services under any circumstances.

20 (b) Reverse auctions may be utilized if the director
21 determines their use would be fair, economical and in the best
22 interests of the state, and the commodities to be procured:

23 (1) Are subject to low price volatility;

24 (2) Have specifications that are common and not complex;

1 (3) Vary little between suppliers;

2 (4) Are sourced primarily based on price, with limited
3 ancillary considerations;

4 (5) Require little collaboration from suppliers; and

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

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

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

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

22 **§5A-3-10e. Master contracts; direct ordering process.**

23 (a) Subject to the limitations of this section, the director
24 may permit spending units to procure commodities directly from a

1 pre-approved vendor through a master contract direct ordering
2 process if the director determines the process is fair, economical
3 and in the best interests of the state.

4 (b) *Definitions.* For purposes of this section:

5 (1) "Information technology" means hardware and software
6 related to electronic processing, and storage, retrieval,
7 transmittal and manipulation of data.

8 (2) "Master contract" means an agreement, having a term of no
9 more than one year, between the purchasing division and at least
10 two pre-approved vendors authorizing a spending unit to purchase a
11 commodity directly and on a recurrent basis through the direct
12 ordering process.

13 (3) "Pre-approved vendor" means a "vendor," as that term is
14 defined in section one, article one, chapter five-a of this code,
15 that has entered into a master contract with the purchasing
16 division and may participate in the direct ordering process subject
17 to the terms and conditions of the master contract.

18 (4) "Direct ordering process" means the competitive bidding
19 process whereby the pre-approved vendors that are parties to a
20 master contract may submit sealed bids directly to spending units
21 to provide a commodity identified in the master contract subject to
22 the limitations set forth in this section.

23 (c) *Master contract procedures.*

24 (1) For each master contract, the director shall set forth the

1 requirements, technical or otherwise, under which a vendor may be
2 qualified to supply a commodity through the direct ordering
3 process. For each master contract, the director shall follow the
4 notice and advertising requirements set forth in section ten,
5 article three, chapter five-a of this code.

6 (2) A master contract may authorize the direct ordering
7 process for only one type of commodity.

8 (3) A vendor may submit information to the director to
9 establish that it meets the requirements set forth in the master
10 contract.

11 (4) If the director determines that a vendor meets the
12 requirements set forth in the master contract, the vendor may enter
13 into the master contract as a pre-approved vendor.

14 (d) *Direct ordering procedures.*

15 (1) A spending unit may commence the direct ordering process
16 by issuing a request for a commodity identified in the master
17 contract, stating in the request the quantity of the commodity to
18 be procured in that particular instance.

19 (2) The pre-approved vendor that submits the lowest bid in
20 response to the request shall be awarded the procurement in that
21 particular instance.

22 (3) The direct ordering process may not be utilized for any
23 request for commodities, other than information technology,
24 anticipated to cost more than \$50,000, unless approved in writing

1 by the director of purchasing. The state may not issue a series of
2 orders each anticipated to cost less than \$50,000 to circumvent the
3 monetary limitation in this subsection.

4 (4) The direct ordering process may not be utilized for any
5 request for information technology anticipated to cost more than
6 \$1,000,000, unless approved in writing by the director of
7 purchasing. The state may not issue a series of orders each
8 anticipated to cost less than \$1,000,000 to circumvent the monetary
9 limitation in this subsection.

10 (e) *Rulemaking authority.* The director of the Purchasing
11 Division shall propose rules for legislative approval in accordance
12 with the provisions of article three, chapter twenty-nine-a of this
13 code, to establish, among other things, procedures by which master
14 contracts shall be solicited and entered into; procedures by which
15 interested vendors may be pre-approved; and procedures by which the
16 direct ordering process shall be conducted.

17 **§5A-3-11. Purchasing in open market on competitive bids;**
18 **debarment; bids to be based on written**
19 **specifications; period for alteration or withdrawal**
20 **of bids; awards to lowest responsible bidder;**
21 **uniform bids; record of bids; requirements of**
22 **vendors to pay taxes, fees and debts; and**
23 **exception; and grant exemption.**

24 (a) The director may make a purchase of commodities, printing,

1 and services of \$25,000 or less in amount in the open market, but
2 the purchase shall, wherever possible, be based on at least three
3 competitive bids, and shall include the cost of maintenance and
4 expected life of the commodities if the director determines there
5 are nationally accepted industry standards for the commodities
6 being purchased.

7 (b) The director may authorize spending units to purchase
8 commodities, printing and services in the amount of \$2,500 or less
9 in the open market without competitive bids: *Provided*, That the
10 cost of maintenance and expected life of the commodities must be
11 taken into consideration if the director determines there are
12 nationally accepted industry standards for the commodities being
13 purchased.

14 (c) Bids shall be based on the written specifications in the
15 advertised bid request and may not be altered or withdrawn after
16 the appointed hour for the opening of the bids.

17 (d) A vendor who has been debarred pursuant to the provisions
18 of sections thirty-three-a through thirty-three-f, article three,
19 chapter five-a of this code, may not bid on or be awarded a
20 contract under this section.

21 (e) All open market orders, purchases based on advertised bid
22 requests or contracts made by the director or by a state department
23 shall be awarded to the lowest responsible bidder or bidders,
24 taking into consideration the qualities of the commodities or

1 services to be supplied, their conformity with specifications,
2 their suitability to the requirements of the government, the
3 delivery terms and, if the director determines there are nationally
4 accepted industry standards, cost of maintenance and the expected
5 life of the commodities: *Provided*, That state bids on school buses
6 shall be accepted from all bidders who shall then be awarded
7 contracts if they meet the state board's "Minimum Standards for
8 Design and Equipment of School Buses." County boards of education
9 may select from those bidders who have been awarded contracts and
10 shall pay the difference between the state aid formula amount and
11 the actual cost of bus replacement. Any or all bids may be
12 rejected.

13 (f) If all bids received on a pending contract are for the
14 same unit price or total amount, the director has the authority to
15 reject all bids, and to purchase the required commodities, printing
16 and services in the open market, if the price paid in the open
17 market does not exceed the bid prices.

18 (g) The bid must be received by the Purchasing Division prior
19 to the specified date and time of the bid opening. The failure to
20 deliver or the nonreceipt of the bid by the Purchasing Division
21 prior to the appointed date and hour shall result in the rejection
22 of the bid. The vendor is solely responsible for the receipt of
23 bid by the Purchasing Division prior to the appointed date and hour
24 of the bid opening. All bids will be opened publicly by two or

1 more persons from the Purchasing Division. Vendors will be given
2 notice of the day, time and place of the public bid opening. Bids
3 may be viewed immediately after being opened.

4 (h) After the award of the order or contract, the director, or
5 someone appointed by him or her for that purpose, shall indicate
6 upon the successful bid that it was the successful bid.
7 Thereafter, the copy of each bid in the possession of the director
8 shall be maintained as a public record, shall be open to public
9 inspection in the office of the director and may not be destroyed
10 without the written consent of the Legislative Auditor.

11 (i)(1) A grant awarded by the state is exempt from the
12 competitive bidding requirements set forth in this chapter, unless
13 the grant is used to procure commodities or services that directly
14 benefit a spending unit.

15 (2) Where a grant awarded to the state requires the
16 procurement of commodities or services that will directly benefit
17 a spending unit, the procurement is not exempt from the competitive
18 bidding requirements set forth in this chapter.

19 (3) Where a grant awarded to the state requires the state to
20 transfer some or all of the grant to an individual, entity or
21 vendor as a subgrant to accomplish a public purpose, and no
22 contract for commodities or services directly benefitting a
23 spending unit will result, the subgrant is not subject to the
24 competitive bidding requirements set forth in this chapter.

1 **§5A-3-17. Purchases or contracts violating article void; personal**
2 **liability.**

3 If a spending unit purchases or contracts for commodities or
4 services contrary to the provisions of this article or the rules
5 and regulations made thereunder, such purchase or contract shall be
6 void and of no effect. The ~~head~~ spending officer of such spending
7 unit, or any other individual charged with responsibility for the
8 purchase or contract shall be personally liable for the costs of
9 such purchase or contract, and, if already paid out of state funds,
10 the amount thereof may be recovered in the name of the state in an
11 appropriate action instituted therefor: Provided, That the state
12 establishes by a preponderance of the evidence that the individual
13 acted knowingly and willfully.

14 **§5A-3-28. Financial interest of secretary, etc.; receiving reward**
15 **from interested party; penalty; application of bribery**
16 **statute.**

17 Neither the secretary, nor the director nor any employee of
18 the division of purchasing, shall be financially interested, or
19 have any beneficial personal interest, directly or indirectly, in
20 the purchase of any commodities, services or printing, nor in any
21 firm, partnership, corporation or association furnishing them.
22 Neither the secretary, nor the director nor any employee of the
23 division of purchasing shall accept or receive directly or
24 indirectly from any person, firm or corporation, known by such

1 secretary, director or employee to be interested in any bid,
2 contract or purchase, by rebate, gift or otherwise, any money or
3 other thing of value whatsoever, or any promise, obligation or
4 contract for future reward, or compensation.

5 A person who violates this section shall be guilty of a
6 misdemeanor, and, upon conviction thereof, shall be confined in
7 jail not less than three months nor more than one year, or fined
8 not less than \$50 nor more than \$1,000, or both, in the discretion
9 of the court: *Provided*, That any person who violates any of the
10 provisions of the last sentence of the first paragraph of this
11 section under circumstances constituting the crime of bribery under
12 the provisions of section three, article five-a, chapter sixty-one
13 of this code, shall, upon conviction of bribery, be punished as
14 provided in said article five-a.

15 **§5A-3-30. Statement of purpose; obtaining money and property under**
16 **false pretenses or by fraud from the state or a**
17 **political subdivision of the state; penalties;**
18 **definition.**

19 (a) The Legislature of the State of West Virginia hereby
20 declares that the purpose of this statute is to promote equal and
21 fair bidding for the purchase of commodities and services by the
22 state and any political subdivision of the state purchasing
23 commodities and services under any state contract; to eliminate
24 fraud in the procurement of commodities and services by the state.

1 (b) It is unlawful for any person to obtain any services,
2 money, goods or other property from the state or any political
3 subdivision of the state under any contract made under the
4 provisions of this article, by false pretense, token or
5 representation, or by delivery of inferior commodities, with intent
6 to defraud. A person who violates this subsection is guilty of a
7 felony, and, upon conviction thereof, shall be confined in a state
8 correctional facility for not less than one year nor more than five
9 years, and shall be fined not exceeding \$1,000.

10 (c) It shall not be a defense to a charge under this section
11 that: (1) The commodities or services purchased were accepted and
12 used, or are being used, by the state or a political subdivision of
13 the state; or (2) the commodities or services are functional or
14 suitable for the purpose for which the commodities or services were
15 purchased by the state or a political subdivision of the state
16 notwithstanding the standard or specification issued by the
17 purchasing agency or the division of purchasing.

18 (d) For the purpose of this section, "inferior commodities"
19 includes, but shall not be limited to: (1) Any commodity which does
20 not meet the specification or standard issued by the purchasing
21 agency and the division of purchasing, or any change order approved
22 by both the purchasing agency and division of purchasing; and (2)
23 any commodity which is of a lesser quality, quantity, or measure of
24 any kind set forth within the specification or standard issued by

1 the purchasing agency and the division of purchasing.

2 **§5A-3-31. Corrupt actions, combinations, collusions or**
3 **conspiracies prohibited; penalties.**

4 It shall be unlawful for any person to corruptly act alone or
5 combine, collude or conspire with one or more other persons with
6 respect to the purchasing or supplying of services, commodities or
7 printing to the state under the provisions of this article if the
8 purpose or effect of such action, combination, collusion or
9 conspiracy is either to: (1) Lessen competition among prospective
10 vendors; or (2) cause the state to pay a higher price for such
11 services, commodities or printing than would be or would have been
12 paid in the absence of such action, combination, collusion or
13 conspiracy; or (3) cause one prospective vendor or vendors to be
14 preferred over one or more other prospective vendor or vendors.
15 Any person who violates any provision of this section shall be
16 guilty of a felony, and, upon conviction thereof, shall be confined
17 in ~~penitentiary~~ a correctional facility not less than one nor more
18 than five years, and be fined not exceeding \$5,000.

19 **§5A-3-60. Annual purchasing training.**

20 (a) All Executive Department secretaries, commissioners,
21 deputy commissioners, assistant commissioners, directors, deputy
22 directors, assistant directors, department heads, deputy department
23 heads, and assistant department heads are hereby required to take
24 one hour of training on purchasing procedures annually.

1 (b) The director of the Purchasing Division shall offer the
2 one-hour training contemplated by this section at least two times
3 per year and shall develop its substance in accordance with the
4 requirements of this article. The training shall be recorded by
5 audio and visual means and shall be made available to the
6 individuals listed in subsection (a) of this section in the event
7 they are unable to attend the training in person.

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