



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

1       \$50,000 and information technology procurements anticipated to  
2       cost in excess of \$1,000,000; affording the Director of the  
3       Purchasing Division rule-making authority to establish  
4       procedures regarding prequalification agreements,  
5       prequalification, the secondary bid process and related  
6       matters; clarifying circumstances in which grants are exempt  
7       from competitive bidding requirements; imposing personal  
8       liability upon spending officers and other responsible  
9       individuals who have knowingly and willfully violated  
10      competitive bidding requirements; expanding criminal penalties  
11      for undermining competition; requiring certain executive  
12      department officials to attend annual training on purchasing  
13      procedures; and making technical corrections.

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

15       That §5A-1-1 of the Code of West Virginia, 1931, as amended,  
16      be amended and reenacted; that said code be amended by adding  
17      thereto a new section, designated §5A-1-10; that §5A-3-1, §5A-3-3,  
18      §5A-3-4, §5A-3-5, §5A-3-11, §5A-3-17, §5A-3-28, §5A-3-30 and  
19      §5A-3-31 of said code be amended and reenacted; and that said code  
20      be amended by adding thereto three new sections, designated  
21      §5A-3-10d, §5A-3-10e and §5A-3-60, all to read as follows:

22 **ARTICLE 1. DEPARTMENT OF ADMINISTRATION.**

1 **§5A-1-1. Definitions.**

2 For the purpose of this chapter:

3 (1) "Commodities" means supplies, material, equipment,  
4 ~~contractual services,~~ and any other articles or things used by or  
5 furnished to a department, agency or institution of state  
6 government.

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

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

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

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

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

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

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

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

7           ~~(8)~~ (9) "Nonprofit workshops" means an establishment: (a)  
8 Where any manufacture or handiwork is carried on; (b) which is  
9 operated either by a public agency or by a cooperative or by a  
10 nonprofit private corporation or nonprofit association, in which no  
11 part of the net earnings thereof inures, or may lawfully inure, to  
12 the benefit of any private shareholder or individual; (c) which is  
13 operated for the primary purpose of providing remunerative  
14 employment to blind or severely disabled persons who cannot be  
15 absorbed into the competitive labor market; and (d) which shall be  
16 approved, as evidenced by a certificate of approval, by the State  
17 Board of Vocational Education, Division of Vocational  
18 Rehabilitation.

19           ~~(9)~~ (10) "Printing" means printing, binding, ruling,  
20 lithographing, engraving and other similar services.

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

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

4        ~~(10)~~ (13) "Record" means information that is inscribed on a  
5 read-only tangible medium or that is stored in an electronic or  
6 other medium and is retrievable in perceivable form.

7        ~~(11)~~ (14) "Removable property" means any personal property not  
8 permanently affixed to or forming a part of real estate.

9        ~~(12)~~ (15) "Request for quotations" means a solicitation for a  
10 bid where cost is the primary factor in determining the award.

11        ~~(13)~~ (16) "Responsible bidder" means a vendor who has the  
12 capability to fully perform the contract requirements, and the  
13 integrity and reliability which will assure good faith performance.

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

17        ~~(15)~~ (18) "Secretary" means the Secretary of Administration.

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

22        ~~(16)~~ (20) "Spending officer" means the executive head of a

1 spending unit, or a person designated by him or her.

2       ~~(17)~~ (21) "Spending unit" means a department, agency or  
3 institution of the state government for which an appropriation is  
4 requested, or to which an appropriation is made by the Legislature.

5       ~~(18)~~ (22) "The state and its subdivisions" means the State of  
6 West Virginia, every political subdivision thereof, every  
7 administrative entity that includes such a subdivision, all  
8 municipalities and all county boards of education.

9       ~~(19)~~ (23) "Vendor" means any person or entity that may,  
10 through contract or expression of interest, ~~is registered with the~~  
11 ~~purchasing division to~~ supply the state or its subdivisions with  
12 commodities or services and lessors of real property.

13 **§5A-1-10. General procurement provisions for the state and its**  
14 **subdivisions, and spending units.**

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

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

22 **ARTICLE 3. PURCHASING DIVISION.**

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

3 (a) The Purchasing Division within the Department of  
4 Administration is continued. ~~for the purpose of establishing~~  
5 ~~centralized offices to provide purchasing, and travel services to~~  
6 ~~the various state agencies.~~ The underlying purposes and policies  
7 of the Purchasing Division are:

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

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

12 (3) To permit the continued development of procurement  
13 policies and practices;

14 (4) To make as consistent as possible the procurement rules  
15 and practices among the various spending units;

16 (5) To provide for increased public confidence in the  
17 procedures followed in public procurement;

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

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

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

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

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

9       (b) The director of the Purchasing Division shall, at the time  
10 of appointment:

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

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

16       (c) The provisions of this article apply to all of the  
17 spending units of state government, except as otherwise provided by  
18 this article or by law.

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

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

4 **§5A-3-3. Powers and duties of director of purchasing.**

5       The director, under the direction and supervision of the  
6 secretary, shall be the executive officer of the Purchasing  
7 Division and shall have the power and duty to:

8       (1) Direct the activities and employees of the Purchasing  
9 Division;

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

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

15       (4) Apply and enforce standard specifications established in  
16 accordance with section five of this article as hereinafter  
17 provided;

18       (5) Transfer to or between spending units or sell commodities  
19 that are surplus, obsolete or unused as hereinafter provided;

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

22       (7) Establish and maintain a laboratory for the testing of

1 commodities and make use of existing facilities in state  
2 institutions for that purpose as hereinafter provided, as the  
3 director deems advisable;

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

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

1 the director under the provisions of this subdivision; ~~and~~

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

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

20 **§5A-3-4. Rules of director.**

21 (a) The director shall propose rules for legislative approval  
22 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,

1 upon the payment by a vendor of an annual fee established by the  
2 director, to give notice to such vendor of all bid solicitations  
3 for commodities and services of the type with respect to which such  
4 vendor specified notice was to be given, but no such fee shall  
5 exceed the cost of giving the notice to such vendor, nor shall such  
6 fee exceed the sum of \$125 per fiscal year nor shall such fee be  
7 charged to persons seeking only reimbursement from a spending unit;

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

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

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

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

4           (12) Prescribe procedures for selling surplus commodities to  
5 the highest bidder by means of an Internet auction site;

6           (13) Provide such other matters as may be necessary to give  
7 effect to the foregoing rules and the provisions of this article;  
8 and

9           (14) Prescribe procedures for encumbering purchase orders to  
10 ensure that the proper account may be encumbered before sending  
11 purchase orders to vendors.

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

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

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

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

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

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

21 **§5A-3-10d. Reverse auctions.**

22 (a) Notwithstanding any other provision of this code, the

1 director is hereby authorized to initiate reverse auctions to  
2 procure commodities. The director may not use reverse auctions for  
3 the procurement of services under any circumstances.

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

7 (1) Are subject to low price volatility;

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

9 (3) Vary little between suppliers;

10 (4) Are sourced primarily based on price, with limited  
11 ancillary considerations;

12 (5) Require little collaboration from suppliers; and

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

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

21 (d) The director may contract with qualified,  
22 industry-recognized third-party vendors to conduct reverse auctions

1 on behalf of the director.

2 (e) The director shall propose rules for legislative approval  
3 in accordance with the provisions of article three, chapter  
4 twenty-nine-a of this code to establish the procedures for  
5 conducting reverse auctions. The rules shall include procedures  
6 for contracting with qualified, industry-recognized third-party  
7 vendors.

8 **§5A-3-10e. Prequalification agreements; secondary bid process.**

9 (a) Subject to the limitations of this section, the director  
10 may permit the state and its spending units to procure commodities  
11 directly through a secondary bid process if the director determines  
12 the process is fair, economical and in the best interests of the  
13 state.

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

15 (1) "Information technology" means hardware and software  
16 related to electronic processing, and storage, retrieval,  
17 transmittal and manipulation of data.

18 (2) "Prequalification agreement" means an agreement between  
19 the state and at least two prequalified vendors authorizing the  
20 state to purchase a commodity directly and on a recurrent basis  
21 through the secondary bid process.

22 (3) "Prequalified vendor" means a "vendor," as that term is

1 defined in section one, article one, chapter five-a of this code,  
2 that has entered into a prequalification agreement with the state  
3 and may use the secondary bid process subject to the terms and  
4 conditions of the prequalification agreement.

5 (4) "Secondary bid process" means the competitive bidding  
6 process whereby the prequalified vendors that are parties to a  
7 prequalification agreement may submit sealed bids to provide a  
8 commodity identified in the prequalification agreement subject to  
9 the limitations set forth in this section.

10 (5) "State" means the State of West Virginia and its spending  
11 units.

12 (c) *Prequalification procedures.*

13 (1) For each prequalification agreement, the director shall  
14 set forth the requirements, technical or otherwise, under which a  
15 vendor may be qualified to supply a commodity through the secondary  
16 bid process.

17 (2) A prequalification agreement may authorize the secondary  
18 bid process for only one type of commodity.

19 (3) A vendor may submit information to the director to  
20 establish that it meets the requirements set forth in the  
21 prequalification agreement.

22 (4) If the director determines that a vendor meets the

1 requirements set forth in the prequalification agreement, the  
2 vendor may enter into the prequalification agreement as a  
3 prequalified vendor.

4 (d) Secondary bid procedures.

5 (1) The state may commence the secondary bid process by  
6 issuing a request for a commodity identified in the  
7 prequalification agreement, stating in the request the quantity of  
8 the commodity to be procured in that particular instance.

9 (2) The prequalified vendor that submits the lowest secondary  
10 bid in response to the request shall be awarded the procurement in  
11 that particular instance.

12 (3) The secondary bid process may not be utilized for any  
13 request for commodities, other than information technology,  
14 anticipated to cost more than \$50,000, unless approved in writing  
15 by the director of purchasing. The state may not issue a series of  
16 orders each anticipated to cost less than \$50,000 to circumvent the  
17 monetary limitation in this subsection.

18 (4) The secondary bid process may not be utilized for any  
19 request for information technology anticipated to cost more than  
20 \$1,000,000, unless approved in writing by the director of  
21 purchasing. The state may not issue a series of orders each  
22 anticipated to cost less than \$1,000,000 to circumvent the monetary

1 limitation in this subsection.

2 (e) *Rulemaking authority.* The director of the Purchasing  
3 Division shall propose rules for legislative approval in accordance  
4 with the provisions of article three, chapter twenty-nine-a of this  
5 code, to establish, among other things, procedures by which  
6 prequalification agreements shall be solicited and entered into;  
7 procedures by which interested vendors may be prequalified; and  
8 procedures by which the secondary bid process shall be conducted.

9 **§5A-3-11. Purchasing in open market on competitive bids;**  
10 **debarment; bids to be based on written**  
11 **specifications; period for alteration or withdrawal**  
12 **of bids; awards to lowest responsible bidder;**  
13 **uniform bids; record of bids; requirements of**  
14 **vendors to pay taxes, fees and debts; and**  
15 **exception; and grant exemption.**

16 (a) The director may make a purchase of commodities, printing,  
17 and services of \$25,000 or less in amount in the open market, but  
18 the purchase shall, wherever possible, be based on at least three  
19 competitive bids, and shall include the cost of maintenance and  
20 expected life of the commodities if the director determines there  
21 are nationally accepted industry standards for the commodities  
22 being purchased.

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

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

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

15           (e) All open market orders, purchases based on advertised bid  
16 requests or contracts made by the director or by a state department  
17 shall be awarded to the lowest responsible bidder or bidders,  
18 taking into consideration the qualities of the commodities or  
19 services to be supplied, their conformity with specifications,  
20 their suitability to the requirements of the government, the  
21 delivery terms and, if the director determines there are nationally  
22 accepted industry standards, cost of maintenance and the expected

1 life of the commodities: *Provided*, That state bids on school buses  
2 shall be accepted from all bidders who shall then be awarded  
3 contracts if they meet the state board's "Minimum Standards for  
4 Design and Equipment of School Buses." County boards of education  
5 may select from those bidders who have been awarded contracts and  
6 shall pay the difference between the state aid formula amount and  
7 the actual cost of bus replacement. Any or all bids may be  
8 rejected.

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

14 (g) The bid must be received by the Purchasing Division prior  
15 to the specified date and time of the bid opening. The failure to  
16 deliver or the nonreceipt of the bid by the Purchasing Division  
17 prior to the appointed date and hour shall result in the rejection  
18 of the bid. The vendor is solely responsible for the receipt of  
19 bid by the Purchasing Division prior to the appointed date and hour  
20 of the bid opening. All bids will be opened publicly by two or  
21 more persons from the Purchasing Division. Vendors will be given  
22 notice of the day, time and place of the public bid opening. Bids

1 may be viewed immediately after being opened.

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

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

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

17 (3) Where a grant awarded to the state requires the state to  
18 transfer some or all of the grant to an individual, entity or  
19 vendor as a subgrant to accomplish a public purpose, and no  
20 contract for commodities or services directly benefitting a  
21 spending unit will result, the subgrant is not subject to the  
22 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

1 division of purchasing shall accept or receive directly or  
2 indirectly from any person, firm or corporation, known by such  
3 secretary, director or employee to be interested in any bid,  
4 contract or purchase, by rebate, gift or otherwise, any money or  
5 other thing of value whatsoever, or any promise, obligation or  
6 contract for future reward, or compensation.

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

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

21 (a) The Legislature of the State of West Virginia hereby  
22 declares that the purpose of this statute is to promote equal and

1 fair bidding for the purchase of commodities and services by the  
2 state and any political subdivision of the state purchasing  
3 commodities and services under any state contract; to eliminate  
4 fraud in the procurement of commodities and services by the state.

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

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

22 (d) For the purpose of this section, "inferior commodities"

1 includes, but shall not be limited to: (1) Any commodity which does  
2 not meet the specification or standard issued by the purchasing  
3 agency and the division of purchasing, or any change order approved  
4 by both the purchasing agency and division of purchasing; and (2)  
5 any commodity which is of a lesser quality, quantity, or measure of  
6 any kind set forth within the specification or standard issued by  
7 the purchasing agency and the division of purchasing.

8 **§5A-3-31. Corrupt actions, combinations, collusions or**  
9 **conspiracies prohibited; penalties.**

10 It shall be unlawful for any person to corruptly act alone or  
11 combine, collude or conspire with one or more other persons with  
12 respect to the purchasing or supplying of services, commodities or  
13 printing to the state under the provisions of this article if the  
14 purpose or effect of such action, combination, collusion or  
15 conspiracy is either to: (1) Lessen competition among prospective  
16 vendors; or (2) cause the state to pay a higher price for such  
17 services, commodities or printing than would be or would have been  
18 paid in the absence of such action, combination, collusion or  
19 conspiracy; or (3) cause one prospective vendor or vendors to be  
20 preferred over one or more other prospective vendor or vendors.  
21 Any person who violates any provision of this section shall be  
22 guilty of a felony, and, upon conviction thereof, shall be confined

1 in ~~penitentiary~~ a correctional facility not less than one nor more  
2 than five years, and be fined not exceeding \$5,000.

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

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

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

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

NOTE: The purpose of this bill is to implement purchasing reforms. Specifically, the bill modifies and creates several definitions; clarifies the purposes of the purchasing provisions; authorizes the secretary of the Department of Administration and the director of purchasing to issue cease and desist notices when a spending unit has violated competitive bidding requirements; adds "services" to references of "commodities"; provides the Purchasing Division with alternative methods to purchase certain commodities, including the reverse auction and prequalification agreement/secondary bid processes; imposes a civil penalty on individuals who have knowingly and willingly violated competitive bidding requirements; imposes a criminal penalty on individuals who undermine the fair competitive bidding process; and requires certain executive department officials to attend annual training on purchasing procedures.

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

§5A-1-10, §5A-3-10d, §5A-3-10e, and §5A-3-60 are new; therefore, strike-throughs and underscoring have been omitted.