

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Committee Substitute

for

House Bill 2936

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WESTFALL AND ROWAN

[Originating in the Committee on Finance;

March 22, 2017]

1 A BILL to repeal §5A-3-10e of the Code of West Virginia, 1931, as amended; and to amend and
2 reenact §5A-3-11 of said code, all relating to requiring competitive bidding for all state
3 purchases of commodities, printing and services of \$25,000 or less in cost; repealing the
4 provision for master contracts and approved vendors; requiring purchases to be made at
5 the lowest retail cost for the desired level of quality of the commodities, printing and
6 services; eliminating requirements for written bids for purchases of \$2,500 or less;
7 requiring purchases to be made at the lowest retail price available for the commodities,
8 printing and services at the level of quality sought by the spending unit.

Be it enacted by the Legislature of West Virginia:

1 That §5A-3-10e of the Code of West Virginia, 1931, as amended, be repealed; and that
2 §5A-3-11 of said code be amended and reenacted, all to read as follows:

ARTICLE 3. PURCHASING DIVISION.

§5A-3-11. Purchasing in open market on competitive bids; simplified procedure for purchases of \$2,500 or less; debarment; bids to be based on written specifications; period for alteration or withdrawal of bids; awards to lowest responsible bidder; uniform bids; record of bids; requirements of vendors to pay taxes, fees and debts; exception; grant exemption.

1 (a) The director may make a purchase of commodities, printing and services of \$25,000
2 or less in amount in the open market, but the purchase shall, wherever possible, be based on at
3 least three competitive bids, ~~and shall include~~ but shall not exceed the retail market cost of the
4 commodity, printing or services at the level of quality specified by the spending unit: *Provided,*
5 That the cost of maintenance and expected life of the commodities may be taken into
6 consideration if the director determines there are nationally accepted industry standards for the
7 commodities being purchased.

8 (b) ~~The director may authorize spending units~~ Spending units shall not be required to
9 obtain written bids to purchase commodities, printing and services in the amount of \$2,500 or

10 less, ~~in the open market without competitive bids~~ but the spending unit must purchase the
11 commodities, printing or services at the lowest price, whether purchased online or within a
12 reasonable geographic area for that spending unit, for the commodities, printing or services, at
13 the level of quality specified by the spending unit: *Provided*, That the cost of maintenance and
14 expected life of the commodities must be taken into consideration if the director determines there
15 are nationally accepted industry standards for the commodities being purchased: *Provided*
16 *however*, That the preference for non-profit workshops pursuant to section ten of article five-a of
17 this chapter shall be preserved. .

18 (c) Bids that are required shall be based on the written specifications in the advertised bid
19 request and may not be altered or withdrawn after the appointed hour for the opening of the bids.

20 (d) A vendor who has been debarred pursuant to the provisions of sections thirty-three-b
21 through thirty-three-f of this article may not bid on or be awarded a contract under this section.

22 (e) All open market ~~orders~~ purchases based on advertised bid requests or contracts made
23 by the director or by a state department shall be awarded to the lowest priced responsible ~~bidder~~
24 ~~or bidders~~ vendor or vendors, taking into consideration the qualities of the commodities or
25 services to be supplied, their conformity with specifications, their suitability to the requirements of
26 the government, the delivery terms and, if the director determines there are nationally accepted
27 industry standards, cost of maintenance and the expected life of the commodities: *Provided*, That
28 state bids on school buses shall only be accepted from all bidders who shall then be awarded
29 contracts if they meet the state board's Minimum Standards for Design and Equipment of School
30 Buses. County boards of education may select from those bidders who have been awarded
31 contracts pursuant to this section and shall pay the difference between the state aid formula
32 amount and the actual cost of bus replacement. Any or all bids may be rejected.

33 (f) If all bids received on a pending contract are for the same unit price or total amount,
34 the director has the authority to reject all bids, and to purchase the required commodities, printing

35 and services in the open market, if the price paid in the open market does not exceed the bid
36 prices.

37 (g) The bid must be received by the Purchasing Division prior to the specified date and
38 time of the bid opening. The failure to deliver or the nonreceipt of the bid by the Purchasing
39 Division prior to the appointed date and hour shall result in the rejection of the bid. The vendor is
40 solely responsible for the receipt of bid by the Purchasing Division prior to the appointed date and
41 hour of the bid opening. All bids will be opened publicly by two or more persons from the
42 Purchasing Division. Vendors will be given notice of the day, time and place of the public bid
43 opening. Bids may be viewed immediately after being opened.

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

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

52 (2) If a grant awarded to the state requires the procurement of commodities or services
53 that will directly benefit a spending unit, the procurement is not exempt from the competitive
54 bidding and lowest price purchase requirements set forth in this chapter.

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

NOTE: The purpose of this bill is to eliminate master contracts that agencies may currently use to purchase certain commodities. Spending units must purchase commodities, printing and services at the lowest retail price for the spending unit's desired level of quality within a reasonable geographical market area.

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