

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Committee Substitute

for

Senate Bill 487

BY SENATORS SWOPE AND PLYMALE

[Originating in the Committee on Government

Organization; reported on March 19, 2021]

1 A BILL to amend and reenact §5A-3-10 and §5A-3-11 of the Code of West Virginia, 1931, as
2 amended, all relating to updating state procurement procedures and spending thresholds;
3 authorizing the Director of the Division of Purchasing to delegate bid solicitations and
4 commodity procurement to spending units within thresholds to be determined by the
5 director; authorizing the director to increase or decrease the dollar limit of agency-
6 delegated procurements based upon inspection; providing a process for an agency to cure
7 inspection findings; establishing method for calculation of total procurement by
8 commodity; providing that agency-delegated procurements must follow the same process
9 as procurements under the supervision of the Purchasing Division; providing access to
10 agency-delegated procurement records as public records; and defining monetary ranges
11 for different means of collecting competitive bids.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. PURCHASING DIVISION.

§5A-3-10. Competitive bids; publication of solicitations for sealed bids; purchase of products of nonprofit workshops; employee to assist in dealings with nonprofit workshops; continuing procurements over \$1 million.

1 (a) A purchase of and contract for commodities, printing, and services shall be based,
2 whenever possible, on competitive bids.

3 (b) The director shall solicit, on behalf of spending units, sealed bids for the purchase of
4 commodities and printing which is estimated to exceed \$25,000. The director may delegate the
5 procurement of commodities, services, or printing estimated to be \$25,000 or less to the spending
6 unit. The director may set a higher or lower delegated procurement limit for a particular spending
7 unit if the director finds through periodic inspection of the spending unit's procurement practices,
8 personnel, records, and anything else the director deems relevant, that such action would be in
9 the best interest of the spending unit and the state. In no event may the director authorize more
10 than \$100,000 of delegated procurement authority to a spending unit. If the director reduces a

11 spending unit's delegated procurement authority as a result of a negative inspection pursuant to
12 this subsection, the spending unit may request a follow-up inspection one year after the negative
13 inspection to determine if improved compliance with procurement law and policy would justify the
14 director restoring the spending unit's delegated procurement authority in whole or in part.

15 ~~(c) No spending unit~~ Spending units shall not make an individual purchase in excess of
16 the delegated procurement limit established in subsection (b) of this section, issue a series of
17 requisitions for the same or similar commodity or service, or nor divide or plan procurements to
18 circumvent this \$25,000 threshold the delegated procurement limit established in subsection (b)
19 of this section, or otherwise avoid the use of sealed bids. Compliance with the delegated
20 procurement limit will be determined by aggregating a spending unit's expenditures for the same
21 or similar commodity, service, or printing during the previous 12 months without regard to the
22 vendor or vendors providing that commodity, service, or printing at any time or for any period
23 within the fiscal year. Procurements from the same vendor shall be aggregated to determine
24 compliance with delegated spending limit unless the spending unit can clearly show that the
25 procurements were for commodities, services, or printing that cannot be considered the same or
26 similar. Any spending unit which awards multiple contracts for the same or similar commodity or
27 service to an individual vendor over any 12 month period, the total value of which exceeds
28 \$25,000, that discovers it is in violation of its delegated procurement limit shall file copies of all
29 contracts awarded to the vendor or orders placed for the commodity, service, or printing in
30 question within the 12 preceding months with the director immediately upon exceeding the
31 \$25,000 delegated limit, along with a statement explaining how the multiple contract awards or
32 orders do not circumvent the \$25,000 threshold delegated procurement limit or how the spending
33 unit plans to prevent this violation in the future. If the spending unit does not immediately report
34 to the director, the director may suspend the purchasing authority of the spending unit until the
35 spending unit complies with the reporting requirement of this subsection. The director may
36 conduct a review of any spending unit to ensure compliance with this subsection. Following a

37 review, the director shall complete a report summarizing his or her findings and forward the report
38 to the spending unit. In addition, the director shall report to the Joint Committee on Government
39 and Finance on January 1 and July 1 of each year the spending units which have reported under
40 this subsection and the findings of the director.

41 ~~(e)~~ (d) The director may permit bids by electronic transmission to be accepted in lieu of
42 sealed bids.

43 ~~(d)~~ (e) Bids shall be solicited by public notice. The notice may be published by any
44 advertising medium the director considers advisable. The director may also solicit sealed bids by
45 sending requests by mail or electronic transmission to prospective vendors.

46 ~~(e)~~ (f) (1) The director shall, without competitive bidding, purchase commodities and
47 services produced and offered for sale by nonprofit workshops, as defined in §5A-1-1 of this code,
48 which are located in this state: *Provided*, That the commodities and services shall be of a fair
49 market price and of like quality comparable to other commodities and services otherwise available
50 as determined by the director with the advice of the Committee on the Purchase of Commodities
51 and Services from the Handicapped.

52 (2) To encourage contracts for commodities and services with nonprofit workshops, the
53 director shall employ a person whose responsibilities in addition to other duties are to identify all
54 commodities and services available for purchase from nonprofit workshops, to evaluate the need
55 of the state for commodities and services to coordinate the various nonprofit workshops in their
56 production efforts, and to make available to the workshops information about available
57 opportunities within state government for purchase of commodities or services which might be
58 produced and sold by such workshops. Funds to employ such a person shall be included annually
59 in the budget.

60 ~~(f)~~ (g) For all commodities and services in an amount exceeding \$1 million, if the
61 procurement of the commodity or service is continuing in nature, 12 months prior to the expiration
62 of the contract or final renewal option, whichever is later, the spending unit shall submit a new

63 procurement for approval and release to the Purchasing Division. This procurement shall be
64 awarded or terminated no later than 180 days after the procurement specifications have been
65 submitted to and approved by the Purchasing Division.

**§5A-3-11. Purchasing in open market on competitive bids; 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 the cost of maintenance and expected life of the~~
4 ~~commodities if the director determines there are nationally accepted industry standards for the~~
5 ~~commodities being purchased.~~

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

11 (a) Unless a procurement is conducted in accordance with another method authorized by
12 this article, the procurement must be based on the advertised bid requests and must be awarded
13 to the lowest responsible bidder or bidders meeting the required specifications: *Provided,* That
14 state bids on school buses shall be accepted from all bidders who shall then be awarded contracts
15 if they meet the state board's Minimum Standards for Design and Equipment of School Buses.
16 County boards of education may select from those bidders who have been awarded contracts
17 and shall pay the difference between the state aid formula amount and the actual cost of bus
18 replacement. Any or all bids may be rejected.

19 ~~(e)~~ (b) Bids shall be based on the written specifications in the advertised bid request and
20 may not be altered or withdrawn after the appointed hour for the opening of the bids.

21 ~~(d)~~ (c) A vendor who has been debarred pursuant to the provisions of §5A-3-33b through
22 §5A-3-33f of this code may not bid on or be awarded a contract under this section.

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

34 ~~(f)~~ (d) If all bids received on a pending contract are for the same unit price or total amount,
35 the director has the authority to reject all bids, and to purchase the required commodities, printing,
36 and services in the open market, if the price paid in the open market does not exceed the bid
37 prices.

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

45 the spending unit will take the place of the Purchasing Division on delegated procurements and
46 the same requirements will apply.

47 ~~(h)~~ (f) After the award of ~~the~~ an order or contract, ~~the director, or someone appointed by~~
48 ~~him or her for that purpose,~~ the Purchasing Division, or spending unit in the case of a delegated
49 procurement, shall indicate upon the successful bid that it was the successful bid. Thereafter, the
50 copy of each bid in the possession of the ~~director~~ Purchasing Division, or spending unit in the
51 case of a delegated procurement, shall be maintained as a public record, shall be open to public
52 inspection, ~~in the office of the director~~ and may not be destroyed without the written consent of
53 the Legislative Auditor.

54 (g) The director may establish a delegated spending limit for a spending unit ranging from
55 zero to \$100,000 as described in §5A-3-10 of this code. Delegated procurements must follow the
56 same procedures outlined in this article for nondelegated procurements, except that the process
57 is conducted by the spending unit rather than the Purchasing Division, and subject to the
58 modifications expressly allowed in this section.

59 (1) The director may authorize spending units to purchase commodities, printing, and
60 services in the amount of \$2,500 or less in the open market without competitive bids. The director
61 may increase this no-bid limit up to \$5,000 if any agency is granted a delegated spending limit
62 higher than \$25,000, but in no instance can it be increased above \$5,000.

63 (2) The director may authorize spending units to purchase commodities, services, and
64 printing in the amount of \$2,500.01 to \$10,000 with appropriately documented verbal bids. The
65 spending unit must obtain three verbal bids where possible. The director may also increase this
66 verbal bid limit if an agency is granted a delegated spending limit higher than \$25,000, but in no
67 instance can it be increased above \$15,000.

68 (3) The director may authorize spending units to purchase commodities, services, and
69 printing in the amount of \$10,000.01 to \$25,000 with written sealed bids. The spending unit must
70 obtain three written bids where possible. The director may also increase this written sealed bid

71 limit if an agency is granted a delegated spending limit higher than \$25,000, but in no instance
72 can it be increased above \$100,000.

73 (4) Compliance with delegated limits established under this section shall be calculated in
74 the same manner as compliance with the bid limit described in §5A-3-10 of this code.

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

78 (2) If a grant awarded to the state requires the procurement of commodities or services
79 that will directly benefit a spending unit, the procurement is not exempt from the competitive
80 bidding requirements set forth in this chapter.

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