

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

ENGROSSED

House Bill 4855

By Delegate Burkhammer

[Introduced January 17, 2024; Referred to the
Committee on Government Organization]

1 A BILL to amend and reenact §5A-3-3 and §5A-3-18 of the Code of West Virginia, 1931, as
2 amended, all relating to the purchasing division; and requiring the purchasing division
3 contracts to be nonspecific in regards to manufacturers or suppliers of commodities;
4 providing that the director may allow the purchase of a commodity or service from a
5 specific manufacturer or supplier, or bearing a specific trade name or brand, under certain
6 specified conditions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. PURCHASING DIVISION.

§5A-3-3. Authority of Director of Purchasing.

1 The director, under the direction and supervision of the secretary, is the executive officer of
2 the Purchasing Division and has the authority to:

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

4 (2) Ensure that the purchase of or contract for commodities and services ~~are~~ is based on
5 competitive bid and is nonspecific in regard to a specific manufacturer, supplier, trade name, or
6 brand, except when another method of procurement is determined to be in the best interest of the
7 state pursuant to §5A-3-18 of this code;

8 (3) Purchase or contract for, or assist and facilitate the purchase or contract for the
9 spending units of the state government, in the name of the state, the commodities, services, and
10 printing required by the spending units of the state government;

11 (4) Apply and enforce standard specifications established in accordance with §5A-3-5 of
12 this code as hereinafter provided;

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

15 (6) Have charge of central storerooms for the supply of spending units as the director
16 considers advisable;

17 (7) Establish and maintain a laboratory for the testing of commodities and make use of
18 existing facilities in state institutions for that purpose as hereinafter provided as the director
19 considers advisable;

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

23 (9) Timely provide guidance to and assist any spending unit in the development of the
24 provisions and terms of contracts entered into for and on behalf of the State of West Virginia that
25 impose any obligation upon the state to pay any sums of money for commodities or services and
26 approve contracts as to such provisions and terms; and the duties of providing guidance and
27 assistance and approval herein set forth do not supersede the responsibility and duty of the
28 Attorney General to approve the contracts as to form; *Provided*, That the provisions of this
29 subdivision do not apply in any respect whatever to construction or repair contracts entered into by
30 the Division of Highways of the Department of Transportation or to construction or reclamation
31 contracts entered into by the Department of Environmental Protection; *Provided, however*, That
32 the provisions of this subdivision do not apply in any respect whatsoever to contracts entered into
33 by the University of West Virginia Board of Trustees or by the board of directors of the state college
34 system, except to the extent that such boards request the facilities and services of the director
35 under the provisions of this subdivision: *Provided further*, That the provisions of this subdivision do
36 not apply to the West Virginia State Police and the West Virginia Office of Laboratory Services:
37 *And provided further*, That the provisions of this subdivision shall not apply to contracts for any
38 natural disaster recovery activities entered into by the West Virginia State Conservation
39 Committee or the West Virginia Conservation Agency;

40 (10) Timely provide guidance to and assist any spending unit in the development of the
41 specifications and descriptions in solicitations to be prepared so as to provide all potential
42 suppliers-vendors who can meet the requirements of the state an opportunity to bid and to assure

43 that the specifications and descriptions do not favor a particular brand or vendor; If the director
44 determines that any such specifications or descriptions as written favor a particular brand or
45 vendor or if it is decided by the relevant spending unit, in consultation with the director, either
46 before or after the bids are opened, that a commodity or service having different specifications or
47 quality or in different quantity can be acquired to better achieve the ends sought by the relevant
48 spending unit, the solicitation may be rewritten and the matter shall be rebid or another
49 procurement method pursued, where determined appropriate;

50 (11) Issue a notice to cease and desist to a spending unit when the director has credible
51 evidence that a spending unit has violated the requirements of this article and the rules
52 promulgated hereunder. Failure to abide by the notice may result in penalties set forth in §5A-3-17
53 of this code; and

54 (12) Exempt particular transactions, or particular categories of transactions, from the
55 requirements of this article; provided that the director, in consultation with any relevant spending
56 unit, shall determine such exemption to be in the best interest of the state.

57 (13) Make the resources and expertise of the division available to spending units
58 exempted from the requirements of this article: *Provided*, That the director may, in consultation
59 with the relevant spending unit, assess an exempt spending unit for the division's reasonable
60 costs in order to ensure sufficient staffing and other resources to timely provide all necessary or
61 requested assistance to the various spending units of the state.

§5A-3-18. Substituting for commodity bearing particular trade name or brand Request for exemption to purchase a commodity or service from a specific manufacturer or supplier or bearing a specific trade name or brand.

1 If a spending unit requests the purchase of a commodity bearing a particular trade name or
2 brand, the director may substitute, after consultation with the relevant spending unit, a commodity
3 bearing a different trade name or brand, if the substituted commodity reasonably conforms to the
4 adopted standard specifications and can be obtained at an equal or lower price.

1 The director may allow the purchase of a commodity or service from a specific
2 manufacturer or supplier, or bearing a specific trade name or brand, if the following conditions are
3 met:

4 (1) The spending unit submits to the director a written request for the purchase of a
5 commodity or service from a specific manufacturer or supplier, or bearing a specific trade name or
6 brand; and

7 (2) The director determines that the purchase of a commodity or service from a specific
8 manufacturer or supplier, or bearing a specific trade name or brand, is in the best interest of this
9 state; and

10 (A) Nonspecific commodities or services cannot be purchased at an equal or lower price;
11 or

12 (B) The specific commodities or services are determined to be most advantageous to the
13 state pursuant to the best value procurement process and criteria found in §5A-3-10b of this code.