WEST virginia legislature

2021 regular session

Introduced

House Bill 2528

By Delegate Fast

[Introduced February 15, 2021; Referred

To the Committee on Government Organization then Finance]

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

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. PURCHASING DIVISION.

§5A-3-10e. Prequalification agreement; agency-delegated bidding.

[Repealed].

§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.

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

(b) ~~The director may authorize spending units~~ Spending units may not be required to obtain written bids to purchase commodities, printing and services in the amount of $2,500 or less, ~~in the open market without competitive bids~~ but the spending unit must purchase the commodities, printing or services at the lowest price, whether purchased online or within a reasonable geographic area for that spending unit, for the commodities, printing or services, at the level of quality specified by the spending unit: *Provided,* That the cost of maintenance and expected life of the commodities must be taken into consideration if the director determines there are nationally accepted industry standards for the commodities being purchased.

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

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

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

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

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

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

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

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

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

NOTE: The purpose of this bill is to eliminate prequalification agreement and agency-delegated bidding that agencies must 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.