WEST virginia legislature

2023 regular session

Committee Substitute

for

Senate Bill 199

By Senators Hamilton, Karnes, Phillips, Barrett, Martin, Queen, Maroney, and Oliverio

[Originating in the Committee on Government Organization; reported on February 7, 2023]

A BILL to amend and reenact §5A-1-1 of the West Virginia Code, 1931, as amended; to amend and reenact §5A-3-10 of said code; and to amend and reenact §5A-3A-2, §5A-3A-3, §5A-3A-4, and §5A-3A-6 of said code, all relating to requiring purchases of certain commodities and services from state use program partners; revising definitions; updating terms; requiring director to purchase certain commodities and services from state use program partners; providing that determination that commodities and services purchased from state use program partners are of fair market value and quality comparable to commodities and services otherwise available is to be made by Committee on the Purchase of Commodities and Services from the Disabled; revising qualifications for chair of committee; and clarifying date for annual report of committee.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. DEPARTMENT OF ADMINISTRATION.

§5A-1-1. Definitions.

For the purpose of this chapter:

(1) Commodities means supplies, material, equipment, and any other articles or things used by or furnished to a department, agency, or institution of state government.

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

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

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

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

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

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

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

(9) ~~Nonprofit workshops~~ “Approved state use program partner” means an establishment: (A) Where any manufacture or handiwork is carried on; (B) which is operated either by a public agency or private approved partner working with a nonprofit through apprenticeship or memorandum of understanding or by a cooperative or by a nonprofit private corporation or nonprofit association in which no part of the net earnings thereof inures, or may lawfully inure, to the benefit of any private shareholder or individual; (C) which is operated for the primary purpose of providing remunerative employment to blind or ~~severely~~ disabled persons ~~who cannot be absorbed into the competitive labor market~~; and (D) which ~~shall~~ may be approved, as evidenced by a certificate of approval, by the State Board of Vocational Education, Division of Vocational Rehabilitation.

(10) Printing means printing, binding, ruling, lithographing, engraving, and other similar services.

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

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

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

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

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

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

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

(18) Secretary means the Secretary of Administration.

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

(20) Spending officer means the executive head of a spending unit, or a person designated by him or her.

(21) Spending unit means a department, bureau, department, division, office, board, commission, authority, agency, or institution of the state government for which an appropriation is requested of the Governor, or to which an appropriation is made by the Legislature, unless a specific exemption from this chapter is provided in this code.

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

(23) Vendor means any person or entity that may, through contract or other means, supply the state or its subdivisions with commodities or services, and lessors of real property.

ARTICLE 3. PURCHASING DIVISION.

§5A-3-10. Competitive bids; publication of solicitations for sealed bids; purchase of products of ~~nonprofit workshops~~ approved state use program partners; employee to assist in dealings with ~~nonprofit workshops~~ central nonprofit agency; continuing procurements over $1 million.

(a) A purchase of and contract for commodities, printing, and services shall be based on competitive bids, except when another method of procurement is determined to be in the best interest of the state.

(b) The director shall solicit, on behalf of spending units, sealed bids for the purchase of commodities and printing which is estimated to exceed $25,000. The director may delegate the procurement of commodities, services, or printing estimated to be $25,000 or less to the spending unit. The director may set a higher or lower delegated procurement limit for a particular spending unit if the director determines that such action would be in the best interest of the spending unit and the State. In no event may the director authorize more than $100,000 of delegated procurement authority to a spending unit.

(c) Spending units shall not make an individual purchase in excess of the delegated procurement limit established in subsection (b) of this section, issue a series of requisitions for the same or similar commodity or service or divide or plan procurements with the intention to circumvent the delegated procurement limit established in subsection (b), or otherwise avoid the use of sealed bids. Any spending unit that discovers it has awarded multiple contracts for the same or similar commodity or service to an individual vendor over any 12-month period shall file copies of all contracts awarded or orders placed for the commodity, service, or printing in question within the 12 preceding months with the director upon exceeding the delegated limit, along with a statement explaining how either the multiple contract awards or orders do not circumvent the delegated procurement limit, or how the contracts or orders were not intended to circumvent the delegated limit. If the spending unit does not report to the director within a reasonable period, the director shall contact the spending unit to request such statement and may suspend the purchasing authority of the spending unit until the spending unit complies with the reporting requirement of this subsection, as determined appropriate. The director may conduct a review of any spending unit to ensure compliance with this subsection. Following a review, in consultation with the relevant spending unit, the director shall complete a report summarizing his or her findings and forward the report to the spending unit. In addition, the director shall report to the Joint Committee on Government and Finance on January 1 and July 1 of each year the spending units which have reported under this subsection and the findings of the director.

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

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

(f) (1) The director ~~may~~ shall, without competitive bidding, purchase commodities and services produced and offered for sale by ~~nonprofit workshops~~ an approved state use program partner, as defined in §5A-1-1 of this code, which are located in this state: *Provided,* That the commodities and services shall be of a fair market price and of like quality comparable to other commodities and services otherwise available as determined by the ~~director~~ Committee for the Purchase of Commodities and Services from the Disabled.

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

(g) For all commodities and services in an amount exceeding $1 million, if the procurement of the commodity or service is continuing in nature, 12 months prior to the expiration of the contract or final renewal option, whichever is later, the spending unit shall coordinate with the Purchasing Division on a new procurement for such commodity or service under the requirements of this article. This procurement shall be awarded or terminated no later than 180 days after the procurement specifications have been finally approved by the Purchasing Division.

ARTICLE 3A. CENTRAL NONPROFIT COORDINATING AGENCY AND COMMITTEE FOR THE PURCHASE OF COMMODITIES AND SERVICES FROM THE ~~HANDICAPPED~~ DISABLED.

§5A-3A-2. Central nonprofit agency.

A central nonprofit agency approved by the director of the Division of Rehabilitation Services is established for the purpose of coordinating purchases under the provisions of §5A-3-10 of this code, between various “spending units” of the state and ~~“nonprofit workshops.”~~ “approved state use program partners”. This agency shall have the following responsibilities:

(a) Represent ~~qualified nonprofit workshops~~ approved state use program partners in dealing with state purchasing agents and the other bodies charged with purchasing responsibilities;

(b) Evaluating the qualifications and capabilities of ~~workshops~~ approved state use program partners and entering, as necessary, into contracts with government procuring entities for the furnishing of the commodities or services provided by the ~~workshops~~ approved state use program partners;

(c) Overseeing ~~workshops~~ approved state use program partners to ensure compliance with contract performance and quality standards; list the commodities and services of participating ~~workshops~~ approved state use program partners, research and assist the ~~workshops~~ approved state use program partners in developing new products and upgrading existing ones, and shall survey applicable private industry to provide input on fair market prices; and

(d) Present an annual report for each fiscal year concerning the operations of its ~~nonprofit workshops~~ approved state use program partners to the ~~director of the Division of Rehabilitation Services~~ Committee for the Purchase of Commodities and Services from the Disabled.

§5A-3A-3. Committee for the purchase of commodities and services from the ~~handicapped~~ disabled.

(a) The committee for the purchase of commodities and services from the ~~handicapped~~ disabled is hereby created as a part of the Department of Administration and shall be composed of the following six members who are to be appointed by the Governor with the advice and consent of the Senate: A private citizen who is conversant with the problems incidental to the employment of ~~handicapped~~ disabled persons; a representative of a producing ~~nonprofit workshop~~ approved state use program partner; a representative of the Division of Rehabilitation Services; a representative of the Department of Administration who is knowledgeable in the purchasing requirements of the state; a representative of private business who is knowledgeable in the activities involved in the sale of commodities or services to governmental entities; and a representative of organized labor who is knowledgeable in matters relating to employment of the disabled. The Governor shall appoint one nongovernmental employee member to serve as chairperson.

(b) Members of the committee are appointed to serve two-year terms expiring on January 31 of odd-numbered years. Members who are not state employees shall receive compensation for their service of $50 per day for each day actually engaged in the work of the committee and all members shall receive reimbursement by the state for expenses incurred in performing their duties as members.

(c) The committee shall have as an executive secretary the person charged with program management in §5A-3-10 of this code. The executive secretary shall be responsible for the day-to-day management of the committee and shall coordinate with the central nonprofit agency to perform the duties outlined in §5A-3-10 of this code.

§5A-3A-4. Responsibilities of the committee for the purchase of commodities and services from the ~~handicapped~~ disabled.

The committee shall have the following duties and responsibilities:

(a) Determining the fair market price of all commodities, printing and services produced by ~~nonprofit workshops~~ approved state use program partners and offered for sale by the central nonprofit agency to the various departments and political subdivisions of the state. Prices shall be revised periodically to reflect changing market conditions.

(b) Monitoring the activities of the central nonprofit agency to assure that the interests of the state's ~~handicapped~~ citizens with disabilities are advanced by the agency. The committee shall make rules necessary to monitor the agency as well as matters related to the state's use of the products and services produced by ~~the handicapped~~ individuals with disabilities. Except as stated in §5A-3-10 of this code, rules shall reflect agreement with the policies and procedures established by the state's purchasing units.

(c) Monitoring the performance of the central nonprofit agency to see that the commodities and services produced meet state specifications (or in the absence of specifications meet standards in use by the federal government or industry) as to quality and delivery. The committee shall provide procedures for formal and informal resolution of provider and consumer grievances or complaints.

(d) Maintaining records pertaining to its activities under the act including records of sales, formal grievances, number of ~~handicapped~~ workers with disabilities employed, a summary of disabilities for workers providing services, a list of ~~workshop~~ products and services, and the geographic distribution of provider ~~workshops~~ approved state use program partners. ~~On or before January 1,~~ In January of each year, or coinciding with legislative session the committee shall file with the Governor and the presiding officer of each house of the Legislature a written report summarizing the above records and giving a detailed accounting for all funds received and disbursed by the committee during the preceding year.

§5A-3A-6. Exceptions.

The purchasing unit is exempt from the operation of the mandatory provisions of §5A-3-10 of this code when:

(1) The ~~director of purchasing~~ committee determines that the commodity or service so produced or provided does not meet the reasonable requirements of the purchasing unit;

(2) The committee or central nonprofit agency determines that ~~a nonprofit workshop~~ an approved state use program partner cannot reasonably provide the commodity or service;

(3) The ~~purchasing director~~ committee determines, after considering any ~~recommendation of the committee or~~ bids which may have been offered, that the commodity or service is not of a fair market price; or

(4) The ~~purchasing director~~ committee determines, after consulting with the ~~committee~~ spending unit, that the commodity or service is not of like quality to other commodities or services available.

No purchasing unit may evade the intent of this section when required goods or services are reasonably available from ~~nonprofit workshops~~ approved state use program partners: *Provided,* That if a purchasing unit is required or may be required by federal statute or regulations to purchase commodities or services with competitive bidding, or may otherwise be disqualified from federal funding or assistance if it fails to purchase commodities or services with competitive bidding, the purchasing unit shall not be required to purchase commodities or services from ~~nonprofit workshops~~ approved state use program partners. Such purchasing units not required to purchase commodities or services from ~~nonprofit workshops~~ approved state use program partners include military installations of the National Guard.