

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]

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

- 1 For the purpose of this chapter:
- 2 (1) "Commodities" means supplies, material, equipment, and any other articles or things
3 used by or furnished to a department, agency, or institution of state government.
- 4 (2) "Contract" means an agreement between a state spending unit and a vendor relating to
5 the procurement of commodities or services, or both.
- 6 (3) "Debarment" means the exclusion of a vendor from the right to bid on contracts to sell
7 goods or supply services to the state or its subdivisions for a specified period of time.
- 8 (4) "Director" means the director of the division referred to in the heading of the article in
9 which the word appears.
- 10 (5) "Electronic" means electrical, digital, magnetic, optical, electromagnetic, or any other
11 similar technology.
- 12 (6) "Electronic transmission" or "electronically transmitted" means any process of

13 communication not directly involving the physical transfer of paper that is suitable for the retention,
14 retrieval, and reproduction of information by the recipient.

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

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

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

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

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

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

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

38 (14) "Removable property" means any personal property not permanently affixed to or

39 forming a part of real estate.

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

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

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

47 (18) "Secretary" means the Secretary of Administration.

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

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

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

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

60 (23) "Vendor" means any person or entity that may, through contract or other means,
61 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.**

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

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

11 (c) Spending units shall not make an individual purchase in excess of the delegated
12 procurement limit established in subsection (b) of this section, issue a series of requisitions for the
13 same or similar commodity or service or divide or plan procurements with the intention to
14 circumvent the delegated procurement limit established in subsection (b), or otherwise avoid the
15 use of sealed bids. Any spending unit that discovers it has awarded multiple contracts for the same
16 or similar commodity or service to an individual vendor over any 12-month period shall file copies
17 of all contracts awarded or orders placed for the commodity, service, or printing in question within
18 the 12 preceding months with the director upon exceeding the delegated limit, along with a
19 statement explaining how either the multiple contract awards or orders do not circumvent the
20 delegated procurement limit, or how the contracts or orders were not intended to circumvent the
21 delegated limit. If the spending unit does not report to the director within a reasonable period, the
22 director shall contact the spending unit to request such statement and may suspend the
23 purchasing authority of the spending unit until the spending unit complies with the reporting
24 requirement of this subsection, as determined appropriate. The director may conduct a review of

25 any spending unit to ensure compliance with this subsection. Following a review, in consultation
26 with the relevant spending unit, the director shall complete a report summarizing his or her findings
27 and forward the report to the spending unit. In addition, the director shall report to the Joint
28 Committee on Government and Finance on January 1 and July 1 of each year the spending units
29 which have reported under this subsection and the findings of the director.

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

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

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

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

50 (g) For all commodities and services in an amount exceeding \$1 million, if the procurement
51 of the commodity or service is continuing in nature, 12 months prior to the expiration of the contract
52 or final renewal option, whichever is later, the spending unit shall coordinate with the Purchasing
53 Division on a new procurement for such commodity or service under the requirements of this
54 article. This procurement shall be awarded or terminated no later than 180 days after the
55 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.

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

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

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

12 (c) Overseeing ~~workshops~~ approved state use program partners to ensure compliance
13 with contract performance and quality standards; list the commodities and services of participating
14 ~~workshops~~ approved state use program partners, research and assist the ~~workshops~~ approved
15 state use program partners in developing new products and upgrading existing ones, and shall

16 survey applicable private industry to provide input on fair market prices; and

17 (d) Present an annual report for each fiscal year concerning the operations of its ~~nonprofit~~
18 ~~workshops~~ approved state use program partners to the ~~director of the Division of Rehabilitation~~
19 ~~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.**

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

13 (b) Members of the committee are appointed to serve two-year terms expiring on January
14 31 of odd-numbered years. Members who are not state employees shall receive compensation for
15 their service of \$50 per day for each day actually engaged in the work of the committee and all
16 members shall receive reimbursement by the state for expenses incurred in performing their
17 duties as members.

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

21 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.**

1 The committee shall have the following duties and responsibilities:

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

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

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

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

24 disbursed by the committee during the preceding year.

§5A-3A-6.

Exceptions.

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

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

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

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

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

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