

# **WEST VIRGINIA LEGISLATURE**

**2023 REGULAR SESSION**

**Committee Substitute**

**for**

**Committee Substitute**

**for**

**Senate Bill 199**

BY SENATORS HAMILTON, KARNES, PHILLIPS, BARRETT,

MARTIN, QUEEN, MARONEY, AND OLIVERIO

[Originating in the Committee on Finance; reported on

February 27, 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; to amend and reenact §5A-3A-2 of said code; and to  
3 repeal §5A-3A-3, §5A-3A-4, §5A-3A-5, and §5A-3A-6 of said code, all relating to requiring  
4 purchases of certain commodities and services from state use program partners; revising  
5 definitions; updating terms; and requiring Division of Purchasing to purchase certain  
6 commodities and services from approved state use program partners if approved state  
7 use program partner bid is within five percent of lowest competitor bid.

*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  
5 to 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 by a cooperative or by a nonprofit private corporation or nonprofit association in which  
23 no part of the net earnings thereof inures, or may lawfully inure, to the benefit of any private  
24 shareholder or individual; (C) which is operated for the primary purpose of providing remunerative  
25 employment to blind or ~~severely~~ disabled persons ~~who cannot be absorbed into the competitive~~  
26 ~~labor market~~; and (D) which ~~shall~~ may be approved, as evidenced by a certificate of approval, by  
27 the State Board of Vocational Education, Division of Vocational Rehabilitation.

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

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

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

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

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

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

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

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

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

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

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

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

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

58 (23) "Vendor" means any person or entity that may, through contract or other means,  
59 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  
9 and the state. In no event may the director authorize more than \$100,000 of delegated  
10 procurement 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  
13 the 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) of this section, or  
15 otherwise avoid the use of sealed bids. Any spending unit that discovers it has awarded multiple  
16 contracts for the same or similar commodity or service to an individual vendor over any 12-month  
17 period shall file copies of all contracts awarded or orders placed for the commodity, service, or  
18 printing in question within the 12 preceding months with the director upon exceeding the  
19 delegated limit, along with a statement explaining how either the multiple contract awards or  
20 orders do not circumvent the delegated procurement limit, or how the contracts or orders were  
21 not intended to circumvent the delegated limit. If the spending unit does not report to the director  
22 within a reasonable period, the director shall contact the spending unit to request such statement  
23 and may suspend the purchasing authority of the spending unit until the spending unit complies  
24 with the reporting requirement of this subsection, as determined appropriate. The director may  
25 conduct a review of any spending unit to ensure compliance with this subsection. Following a

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

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

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

36 (f) (1) The director may, ~~without competitive bidding,~~ purchase commodities and services  
37 produced and offered for sale by ~~nonprofit workshops~~ an approved state use program partner, as  
38 defined in §5A-1-1 of this code, which are located in this state. ~~Provided, That the commodities~~  
39 ~~and services shall be of a fair market price and of like quality comparable to other commodities~~  
40 ~~and services otherwise available as determined by the director~~ Should a qualified state use  
41 program partner bid exceed the lowest bid by 5 percent or less, the Division of Purchasing shall  
42 offer the partner the opportunity to match the lowest bid.

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

50 commodities or services which might be produced and sold by such ~~workshops~~ approved state  
51 use program partners. Funds to employ such a person shall be included annually in the budget.

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

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 to the director of the Division of Rehabilitation Services.~~

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

1 [Repealed].

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

1 [Repealed].

**§5A-3A-5. Rules.**

1 [Repealed].

**§5A-3A-6. Exceptions.**

1 [Repealed].