

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5604

By Delegates Householder, Riley, Hanshaw (Mr. Speaker), Cannon, Linville, Maynor, Phillips, Burkhammer, and Hott

[Introduced February 12, 2024; Referred to the Committee on Finance]

1 A BILL to amend and reenact §5A-3-10 of the Code of West Virginia, 1931, as amended; and to
 2 amend said code by adding thereto a new section designated §5A-3-10f, and to amend
 3 and reenact §5A-6-2 of said code, and to amend said code by adding thereto a new
 4 section, designated §5A-6-4f, all relating to procurement by state spending units.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. PURCHASING DIVISION.

§5A-3-10. Competitive bids; technical infrastructure; publication of solicitations for sealed bids; purchase of products of nonprofit workshops; employee to assist in dealings with nonprofit workshops; 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, but the director shall not solicit,
 6 on behalf of spending units, sealed bids for the purchase of technical infrastructure as defined in
 7 §5A-6-2 of this code, which is estimated to not exceed \$250,000. The director may delegate the
 8 procurement of commodities, services, or printing estimated to be \$25,000 or less to the spending
 9 unit, ~~The~~ and shall delegate the procurement of technical infrastructure as defined in §5A-6-2 of
 10 this code, which is estimated to be \$250,000 or less to the spending unit. Except for technical
 11 infrastructure, the director may set a higher or lower delegated procurement limit for a particular
 12 spending unit if the director determines that such action would be in the best interest of the
 13 spending unit and the State. ~~In~~ For technical infrastructure, the director may set a higher delegated
 14 procurement limit for a particular spending unit if the director determines that such action would be
 15 in the best interest of the spending unit and the State. Except for technical infrastructure, in no
 16 event may the director authorize more than \$100,000 of delegated procurement authority to a
 17 spending unit.

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

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

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

42 (f) (1) The director may, without competitive bidding, purchase commodities and services
43 produced and offered for sale by nonprofit workshops, as defined in §5A-1-1 of this code, which

44 are located in this state: *Provided*, That the commodities and services shall be of a fair market
45 price and of like quality comparable to other commodities and services otherwise available as
46 determined by the director.

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

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

§5A-3-10f. Use of cooperative contracts.

1 Any state spending unit that desires to obtain the procurement of commodities, printing, or
2 services, or technical infrastructure through the use of competitively procured agreements,
3 including, but not limited to, the National Association of State Procurement Officials and OMNIA
4 Partners, must be allowed to do so within 30 days of a written request to the director.

ARTICLE 6. OFFICE OF TECHNOLOGY.

§5A-6-2. Definitions.

1 As used in this article:
2 "Information systems" means a discrete set of information resources organized for the

3 collection, processing, maintenance, use, sharing, dissemination, or disposition of information.

4 "Information technology" means any equipment or interconnected system or subsystem of
5 equipment that is used in the automatic acquisition, storage, manipulation, management,
6 movement, control, display, switching, interchange, transmission, or reception of data or
7 information.

8 "Information technology (IT) marketplace portal" means a structured digital catalog that
9 customers can use to find, buy, deploy, and manage third-party IT products and services whose
10 pricing and discount levels are set by said third party providers. These products and services
11 should include, but are not limited to software, data, and services to build solutions and run their
12 businesses for use by state spending units. No IT marketplace portal may disfavor a third-party
13 provider solely due to their status as a business incorporated in West Virginia.

14 "Technology services" means professional services designed to provide functions,
15 maintenance, and support of information technology devices, or services including, but not limited
16 to, computer systems application development and maintenance; systems integration and
17 interoperability; operating systems maintenance and design; computer systems programming;
18 computer systems software support; planning and security relating to information technology
19 devices; data management consultation; information technology education and consulting;
20 information technology planning and standards; establishment of local area network and
21 workstation management standards; and cloud computing.

22 "Telecommunications" means the preparation, transmission, communication, or related
23 processing of information by electrical, electromagnetic, electromechanical, electro-optical, or
24 electronic means.

25 "Chief Information Officer" means the person holding the position created in §5A-6-3 of this
26 code and vested with authority to oversee state spending units in planning and coordinating
27 information systems that serve the effectiveness and efficiency of the state and individual state
28 spending units, and further the overall management goals and purposes of government: *Provided,*

29 That reference to "Chief Technology Officer" in other articles of this code shall mean "Chief
30 Information Officer".

31 "Technical infrastructure" means all information systems, information technology,
32 information technology equipment, telecommunications, and technology services as defined in
33 this section.

34 "Technology project" means a project where technology is a significant component and is
35 either valued at \$250,000 or more, or will involve sensitive or restricted data.

36 "Steering committee" means an internal agency oversight committee established jointly by
37 the Chief Information Officer and the agency proposing the project, which shall include
38 representatives from the Office of Technology and at least one representative from the agency
39 proposing the project.

40 "Technology portfolio" means a strategic management process documenting relationships
41 between agency missions and information technology and telecommunications investments.

§5A-6-4f. Information technology marketplace portal.

1 (a) By September 1, 2024, the Secretary of Administration shall approve for use at least
2 two IT marketplace portals for use by state departments, state agencies, local governments, K-12
3 schools, and state institutions of higher education. The IT marketplaces shall be included in
4 agreements that offer technical infrastructure. The IT marketplaces must be as equally accessible
5 to West Virginia-based third-party solutions as they are to national solutions; and must offer real-
6 time transaction capability; third party solutions in addition to a providers' own products; capability
7 to apply negotiated contracts; capability to search and filter by compliance frameworks; capability
8 to view product security compliance in real-time; and diverse solution types. These diverse
9 solution types include, but are not limited to software as a service, machine learning algorithms,
10 professional services, large data sets, and virtual images.

11 (b) When the procurement of technical infrastructure through an IT Marketplace is
12 advantageous for the State of West Virginia, the spending unit shall use the IT Marketplace. The

- 13 director may utilize best value procurement when determining which technical infrastructure is
14 most advantageous for the State.

NOTE: The purpose of this bill is to streamline procurement by state spending units, so that West Virginia can move to the forefront of government innovation, improve citizen services, and reduce government inefficiency.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.