

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Committee Substitute

for

House Bill 5604

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

[Originating in the Committee on Finance; Reported
on February 22, 2024]

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

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. PURCHASING DIVISION.

§5A-3-10. Competitive bids; 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. 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) Bids for the purchase of technical infrastructure. Notwithstanding the provisions of
12 subsection (b) of this section to the contrary, the director shall solicit, on behalf of spending units,
13 sealed bids for the purchase of technical infrastructure as defined in §5A-6-2 of this code which is
14 estimated to exceed \$250,000. The director shall delegate the procurement of technical
15 infrastructure estimated to be \$250,000 or less to the spending unit. The director may set a higher
16 or lower delegated procurement limit for a particular spending unit for the purchase of technical

17 infrastructure if the director determines that such action would be in the best interest of the
18 spending unit and the State.

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

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

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

44 ~~(f)~~ (g) (1) The director may, without competitive bidding, purchase commodities and
45 services produced and offered for sale by nonprofit workshops, as defined in §5A-1-1 of this code,
46 which are located in this state: *Provided*, That the commodities and services shall be of a fair
47 market price and of like quality comparable to other commodities and services otherwise available
48 as determined by the director.

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

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

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

1 Any state spending unit may make a written request to the director to procure technical
2 infrastructure pursuant to a competitively procured agreement. The director shall respond to the
3 request within 30 days of receipt of the request. If the director does not respond within 30 days of

4 receipt of the request, the director is deemed to have approved the request and the spending unit
5 may procure technical infrastructure pursuant to the competitively procured agreement.

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 marketplace portal" or "IT marketplace portal" means a structured
9 digital catalog that customers can use to find, buy, deploy, and manage third-party information
10 technology products and services whose pricing and discount levels are set by the third-party
11 providers.

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

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

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

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

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

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

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

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

1 (a) On or before September 1, 2024, the Secretary of Administration shall approve at least
2 two IT marketplace portals for use by state spending units. Any IT marketplace approved by the
3 Secretary must meet the following minimum qualifications: (1) Be as equally accessible to West
4 Virginia-based third-party solutions as they are to national solutions; (2) offer real-time transaction
5 capability; (3) offer third-party solutions in addition to a providers' own products; (4) have the
6 capability to apply negotiated contracts; (5) have the capability to search and filter by compliance
7 frameworks; (6) have capability to view product security compliance in real-time; and (7) offer

7 diverse solution types. Diverse solution types include, but are not limited to software, software as
8 a service, machine learning algorithms, professional services, large data sets, and virtual images.

9 (b) The Chief Information Officer shall determine if the procurement of technical
10 infrastructure through an IT marketplace portal is advantageous for the State of West Virginia. The
11 Chief Information Officer may utilize best value procurement when determining if using an IT
12 marketplace portal is most advantageous for the State.

13 (c) Upon the approval of an IT marketplace portal by the Secretary, a state spending unit
14 may use the IT marketplace to procure technical infrastructure.