

COMMITTEE SUBSTITUTE

FOR

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FOR

## **Senate Bill No. 356**

(By Senators Kessler (Mr. President) and M. Hall,  
By Request of the Executive)

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[Originating in the Committee on the Judiciary;  
reported February 11, 2014.]

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A BILL to amend and reenact §5A-1-1 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §5A-1-10; to amend and reenact §5A-3-1, §5A-3-3, §5A-3-4, §5A-3-5, §5A-3-11, §5A-3-17, §5A-3-28, §5A-3-30 and §5A-3-31 of said code; and to amend said code by adding thereto three new sections, designated §5A-3-10d, §5A-3-10e and §5A-3-60, all relating generally to purchasing; revising definitions; eliminating

definitions; defining terms; requiring state spending units purchase commodities and services on a competitive basis where possible; authorizing the Secretary of the Department of Administration to issue a notice to cease and desist when purchases are not made on a competitive basis; clarifying the purposes and policies of the Purchasing Division; clarifying the applicability of the article; clarifying that procurements must include adequate specifications and descriptions; clarifying the powers and duties of the Director of Purchasing; authorizing the Director of Purchasing to issue a notice to cease and desist when purchases are not made on a competitive basis; ensuring the purchasing requirements apply to services and commodities; authorizing reverse auctions for purchasing commodities; permitting third-party vendors to administer reverse auctions; affording the Director of the Purchasing Division rule-making authority to implement reverse auctions; authorizing master contracts and the direct order process for the direct procurement of certain commodities; defining additional terms; requiring approval of the Director of the Purchasing

Division for master contracts; setting forth direct order requirements and procedures; authorizing direct order of commodities in certain amounts; permitting direct order of certain commodities in excess of statutory amount with the written approval of the Director of Purchasing; affording the Director of the Purchasing Division rule-making authority to establish procedures regarding master contracts, preapproval, the direct ordering process and related matters; clarifying circumstances in which grants are exempt from competitive bidding requirements; imposing personal liability upon spending officers and other responsible individuals who have knowingly and willfully violated competitive bidding requirements; creating felony offense for acting alone to undermine competition; requiring certain executive department officials to attend annual training on purchasing procedures; and making technical corrections.

*Be it enacted by the Legislature of West Virginia:*

That §5A-1-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new section, designated §5A-1-10; that §5A-3-1, §5A-3-3,

§5A-3-4, §5A-3-5, §5A-3-11, §5A-3-17, §5A-3-28, §5A-3-30 and §5A-3-31 of said code be amended and reenacted; and that said code be amended by adding thereto three new sections, designated §5A-3-10d, §5A-3-10e and §5A-3-60, all to read as follows:

**ARTICLE 1. DEPARTMENT OF ADMINISTRATION.**

**§5A-1-1. Definitions.**

1 For the purpose of this chapter:

2 (1) “Commodities” means supplies, material, equipment  
3 ~~contractual services~~, and any other articles or things used by or  
4 furnished to a department, agency or institution of state  
5 government.

6 ~~(2) “Contractual services” means telephone, telegraph,~~  
7 ~~electric light and power, water and similar services.~~

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

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

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

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

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

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

26 (8) “Grant” means the furnishing of assistance (financial or  
27 otherwise) to any person or entity to support a program  
28 authorized by law.

29 ~~(8)~~ (9) “Nonprofit workshops” means an establishment:  
30 (A) Where any manufacture or handiwork is carried on; (B)  
31 which is operated either by a public agency or by a  
32 cooperative or by a nonprofit private corporation or nonprofit

33 association, in which no part of the net earnings thereof  
34 inures, or may lawfully inure, to the benefit of any private  
35 shareholder or individual; (C) which is operated for the  
36 primary purpose of providing remunerative employment to  
37 blind or severely disabled persons who cannot be absorbed  
38 into the competitive labor market; and (D) which shall be  
39 approved, as evidenced by a certificate of approval, by the  
40 State Board of Vocational Education, Division of Vocational  
41 Rehabilitation.

42 ~~(9)~~ (10) “Printing” means printing, binding, ruling,  
43 lithographing, engraving and other similar services.

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

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

49 ~~(10)~~ (13) “Record” means information that is inscribed on  
50 a read-only tangible medium or that is stored in an electronic  
51 or other medium and is retrievable in perceivable form.

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52       ~~(11)~~ (14) “Removable property” means any personal  
53 property not permanently affixed to or forming a part of real  
54 estate.

55       ~~(12)~~ (15) “Request for quotations” means a solicitation  
56 for a bid where cost is the primary factor in determining the  
57 award.

58       ~~(13)~~ (16) “Responsible bidder” means a vendor who has  
59 the capability to fully perform the contract requirements, and  
60 the integrity and reliability which will assure good-faith  
61 performance.

62       ~~(14)~~ (17) “Responsive bidder” means a vendor who has  
63 submitted a bid which conforms in all material respects to the  
64 bid solicitation.

65       ~~(15)~~ (18) “Secretary” means the Secretary of  
66 Administration.

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

71        ~~(16)~~ (20) “Spending officer” means the executive head of  
72 a spending unit, or a person designated by him or her.

73        ~~(17)~~ (21) “Spending unit” means a department, agency or  
74 institution of the state government for which an appropriation  
75 is requested, or to which an appropriation is made by the  
76 Legislature.

77        ~~(18)~~ (22) “The state and its subdivisions” means the State  
78 of West Virginia, every political subdivision thereof, every  
79 administrative entity that includes such a subdivision, all  
80 municipalities and all county boards of education.

81        ~~(19)~~ (23) “Vendor” means any person or entity that is  
82 ~~registered with the purchasing division to~~ may, through  
83 contract or other means, supply the state or its subdivisions  
84 with commodities or services and lessors of real property.

**§5A-1-10. General procurement provisions for the state and its  
subdivisions and spending units.**

1        (a) Unless this code specifically provides to the contrary,  
2 purchases for commodities and services by spending units  
3 shall be based, whenever possible, on a competitive process.



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4 (b) The secretary shall issue a notice to cease and desist  
5 to any spending unit when the secretary has credible  
6 evidence that a spending unit has failed, where possible, to  
7 purchase commodities and services on a competitive basis.

### **ARTICLE 3. PURCHASING DIVISION.**

#### **§5A-3-1. Division created; purpose; director; applicability of article; continuation.**

1 (a) The Purchasing Division within the Department of  
2 Administration is continued. ~~for the purpose of establishing~~  
3 ~~centralized offices to provide purchasing, and travel services~~  
4 ~~to the various state agencies.~~ The underlying purposes and  
5 policies of the Purchasing Division are:

6 (1) To establish centralized offices to provide purchasing  
7 and travel services to the various state agencies;

8 (2) To simplify, clarify and modernize the law governing  
9 procurement by this state;

10 (3) To permit the continued development of procurement  
11 policies and practices;

12       (4) To make as consistent as possible the procurement  
13 rules and practices among the various spending units;

14       (5) To provide for increased public confidence in the  
15 procedures followed in public procurement;

16       (6) To ensure the fair and equitable treatment of all  
17 persons who deal with the procurement system of this state;

18       (7) To provide increased economy in procurement  
19 activities and to maximize to the fullest extent practicable the  
20 purchasing value of public funds;

21       (8) To foster effective broad-based competition within  
22 the free enterprise system;

23       (9) To provide safeguards for the maintenance of a  
24 procurement system of quality and integrity; and

25       (10) To obtain in a cost-effective and responsive manner  
26 the commodities and services required by spending units in  
27 order for those spending units to better serve this state's  
28 businesses and residents.

29       (b) The Director of the Purchasing Division shall, at the  
30 time of appointment:

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31 (1) Be a graduate of an accredited college or university; and

32 (2) Have spent a minimum of ten of the fifteen years  
33 immediately preceding his or her appointment employed in an  
34 executive capacity in purchasing for any unit of government or  
35 for any business, commercial or industrial enterprise.

36 (c) The provisions of this article apply to all of the spending  
37 units of state government, except as otherwise provided by this  
38 article or by law.

39 (d) The provisions of this article do not apply to the judicial  
40 branch, the legislative branch, to purchases of stock made by the  
41 Alcohol Beverage Control Commissioner and to purchases of  
42 textbooks for the State Board of Education.

43 (e) The provisions of this article shall apply to every  
44 expenditure of public funds by a spending unit for commodities  
45 and services irrespective of the source of the funds.

**§5A-3-3. Powers and duties of Director of Purchasing.**

1 The director, under the direction and supervision of the  
2 secretary, shall be the executive officer of the Purchasing  
3 Division and shall have the power and duty to:

4           (1) Direct the activities and employees of the Purchasing  
5 Division;

6           (2) Ensure that the purchase of or contract for  
7 commodities and services shall be based, whenever possible,  
8 on competitive bid;

9           (3) ~~Purchasing~~ Purchase or contract for, in the name of  
10 the state, the commodities, services and printing required by  
11 the spending units of the state government;

12           (4) Apply and enforce standard specifications established  
13 in accordance with section five of this article as hereinafter  
14 provided;

15           (5) Transfer to or between spending units or sell  
16 commodities that are surplus, obsolete or unused as  
17 hereinafter provided;

18           (6) Have charge of central storerooms for the supply of  
19 spending units, as the director deems advisable;

20           (7) Establish and maintain a laboratory for the testing of  
21 commodities and make use of existing facilities in state

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22 institutions for that purpose as hereinafter provided, as the  
23 director deems advisable;

24 (8) Suspend the right and privilege of a vendor to bid on  
25 state purchases when the director has evidence that such  
26 vendor has violated any of the provisions of the purchasing  
27 law or the rules and regulations of the director;

28 (9) Examine the provisions and terms of every contract  
29 entered into for and on behalf of the State of West Virginia  
30 that impose any obligation upon the state to pay any sums of  
31 money for commodities or services and approve each such  
32 contract as to such provisions and terms; and the duty of  
33 examination and approval herein set forth does not supersede  
34 the responsibility and duty of the Attorney General to  
35 approve such contracts as to form: *Provided*, That the  
36 provisions of this subdivision do not apply in any respect  
37 whatever to construction or repair contracts entered into by  
38 the Division of Highways of the Department of  
39 Transportation: *Provided, however*, That the provisions of  
40 this subdivision do not apply in any respect whatever to

41 contracts entered into by the University of West Virginia  
42 Board of Trustees or by the Board of Directors of the State  
43 College System, except to the extent that such boards request  
44 the facilities and services of the director under the provisions  
45 of this subdivision; ~~and~~

46 (10) Assure that the specifications and ~~commodity~~  
47 descriptions in all ~~“requests for quotations”~~ solicitations are  
48 prepared so as to ~~permit~~ provide all potential suppliers-vendors  
49 who can meet the requirements of the state an opportunity to bid  
50 and to assure that the specifications and descriptions do not  
51 favor a particular brand or vendor. If the director determines  
52 that any such specifications or descriptions as written favor a  
53 particular brand or vendor or if it is decided, either before or  
54 after the bids are opened, that a commodity or service having  
55 different specifications or quality or in different quantity can be  
56 bought, the director may rewrite the ~~“requests for quotations”~~  
57 solicitation and the matter shall be rebid; and

58 (11) Issue a notice to cease and desist to a spending unit  
59 when the director has credible evidence that a spending unit

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60 has violated competitive bidding or other requirements  
61 established by this article and the rules promulgated  
62 hereunder. Failure to abide by such notice may result in  
63 penalties set forth in section seventeen of this article.

**§5A-3-4. Rules of director.**

1 (a) The director shall propose rules for legislative  
2 approval in accordance with the provisions of article three,  
3 chapter twenty-nine-a of this code to:

4 (1) Authorize a spending unit to purchase specified  
5 commodities and services directly and prescribe the manner  
6 in which such purchases shall be made;

7 (2) Authorize, in writing, a spending unit to purchase  
8 commodities and services in the open market for immediate  
9 delivery in emergencies, ~~defines~~ define emergencies and  
10 prescribe the manner in which such purchases shall be made  
11 and reported to the director;

12 (3) Prescribe the manner in which commodities and  
13 services shall be purchased, delivered, stored and  
14 distributed;

15           (4) Prescribe the time for making requisitions and  
16 estimates of commodities and services, the future period  
17 which they are to cover, the form in which they shall be  
18 submitted and the manner of their authentication;

19           (5) Prescribe the manner of inspecting all deliveries of  
20 commodities, and making chemical and physical tests of  
21 samples submitted with bids and samples of deliveries to  
22 determine compliance with specifications;

23           (6) Prescribe the amount and type of deposit or bond to  
24 be submitted with a bid or contract and the amount of  
25 deposit or bond to be given for the faithful performance of  
26 a contract;

27           (7) Prescribe a system whereby the director shall be  
28 required, upon the payment by a vendor of an annual fee  
29 established by the director, to give notice to such vendor of  
30 all bid solicitations for commodities and services of the  
31 type with respect to which such vendor specified notice  
32 was to be given, but no such fee shall exceed the cost of  
33 giving the notice to such vendor, nor shall such fee exceed



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34 the sum of \$125 per fiscal year nor shall such fee be  
35 charged to persons seeking only reimbursement from a  
36 spending unit;

37 (8) Prescribe that each state contract entered into by the  
38 Purchasing Division shall contain provisions for liquidated  
39 damages, remedies or provisions for the determination of the  
40 amount or amounts which the vendor shall owe as damages,  
41 in the event of default under such contract by such vendor, as  
42 determined by the director;

43 (9) Prescribe contract management procedures for all  
44 state contracts except government construction contracts  
45 including, but not limited to, those set forth in article  
46 twenty-two, chapter five of this code;

47 (10) Prescribe procedures by which oversight is  
48 provided to actively monitor spending unit purchases,  
49 including, but not limited to, all technology and software  
50 commodities and ~~contractual~~ services exceeding \$1  
51 million, approval of change orders and final acceptance by  
52 the spending units;

53           (11) Prescribe that each state contract entered into by the  
54 Purchasing Division contain provisions for the cancellation  
55 of the contract upon thirty days' notice to the vendor;

56           (12) Prescribe procedures for selling surplus commodities  
57 to the highest bidder by means of an Internet auction site;

58           (13) Provide such other matters as may be necessary to  
59 give effect to the foregoing rules and the provisions of this  
60 article; and

61           (14) Prescribe procedures for encumbering purchase  
62 orders to ensure that the proper account may be encumbered  
63 before sending purchase orders to vendors.

64           (b) The director shall propose rules for legislative  
65 approval in accordance with the provisions of article three,  
66 chapter twenty-nine-a of this code to prescribe qualifications  
67 to be met by any person who is to be employed in the  
68 Purchasing Division as a state buyer. The rules must provide  
69 that a person may not be employed as a state buyer unless he  
70 or she at the time of employment either is:

71           (1) A graduate of an accredited college or university; or

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72 (2) Has at least four years' experience in purchasing for  
73 any unit of government or for any business, commercial or  
74 industrial enterprise.

75 Persons serving as state buyers are subject to the  
76 provisions of article six, chapter twenty-nine of this code.

**§5A-3-5. Purchasing section standard specifications –  
Promulgation and adoption by director;  
applicable to all purchases.**

1 The director shall promulgate and adopt standard  
2 specifications based on scientific and technical data for  
3 appropriate commodities and services, which shall establish  
4 the quality to which commodities to be purchased and  
5 services to be contracted for by the state must conform.  
6 Standard specifications shall apply to every future purchase  
7 of or contract for the commodities or services described in  
8 the specifications and shall include information relating to  
9 the cost of maintenance and expected life of the commodity  
10 if the director determines there are nationally accepted  
11 industry standards for the commodity. No purchases by any

12 spending unit may be exempt from compliance with the  
13 standard specifications so established, but the director may  
14 exempt the purchase of particular items from the standard  
15 specifications if it is considered necessary and advisable.  
16 The director shall update the standard specifications, as  
17 necessary.

**§5A-3-10d. Reverse auctions.**

1 (a) Notwithstanding any other provision of this code, the  
2 director is hereby authorized to initiate reverse auctions to  
3 procure commodities. The director may not use reverse  
4 auctions for the procurement of services under any  
5 circumstances.

6 (b) Reverse auctions may be utilized if the director  
7 determines their use would be fair, economical and in the  
8 best interests of the state, and the commodities to be  
9 procured:

- 10 (1) Are subject to low price volatility;  
11 (2) Have specifications that are common and not complex;  
12 (3) Vary little between suppliers;

13 (4) Are sourced primarily based on price, with limited  
14 ancillary considerations;

15 (5) Require little collaboration from suppliers; and

16 (6) Are sold by a large, competitive supply base.

17 (c) For purposes of this section, “reverse auction” means a  
18 process by which bidders compete to provide commodities in an  
19 open and interactive market, including but not limited to the  
20 Internet. Reverse auction bids are opened and made public upon  
21 receipt by the director, and then bidders are given the  
22 opportunity to submit revised bids until the bidding process is  
23 complete. The contract is awarded to the lowest responsible  
24 bidder.

25 (d) The director may contract with qualified,  
26 industry-recognized third-party vendors to conduct reverse  
27 auctions on behalf of the director.

28 (e) The director shall propose rules for legislative  
29 approval in accordance with the provisions of article three,  
30 chapter twenty-nine-a of this code to establish the procedures  
31 for conducting reverse auctions. The rules shall include

32 procedures for contracting with qualified,  
33 industry-recognized third-party vendors.

**§5A-3-10e. Master contracts; direct ordering process.**

1 (a) Subject to the limitations of this section, the director  
2 may permit spending units to procure commodities directly  
3 from a pre-approved vendor through a master contract direct  
4 ordering process if the director determines the process is fair,  
5 economical and in the best interests of the state.

6 (b) *Definitions.*— For purposes of this section:

7 (1) “Information technology” means hardware and  
8 software related to electronic processing, and storage,  
9 retrieval, transmittal and manipulation of data.

10 (2) “Master contract” means an agreement, having a term  
11 of no more than one year, between the Purchasing Division  
12 and at least two pre-approved vendors authorizing a spending  
13 unit to purchase a commodity directly and on a recurrent  
14 basis through the direct ordering process.

15 (3) “Pre-approved vendor” means a “vendor”, as that  
16 term is defined in section one, article one, chapter five-a of

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17 this code, that has entered into a master contract with the  
18 Purchasing Division and may participate in the direct  
19 ordering process subject to the terms and conditions of the  
20 master contract.

21 (4) "Direct ordering process" means the competitive  
22 bidding process whereby the pre-approved vendors that are  
23 parties to a master contract may submit sealed bids directly  
24 to spending units to provide a commodity identified in the  
25 master contract subject to the limitations set forth in this  
26 section.

27 (c) *Master contract procedures.*—

28 (1) For each master contract, the director shall set forth the  
29 requirements, technical or otherwise, under which a vendor may  
30 be qualified to supply a commodity through the direct ordering  
31 process. For each master contract, the director shall follow the  
32 notice and advertising requirements set forth in section ten,  
33 article three, chapter five-a of this code.

34 (2) A master contract may authorize the direct ordering  
35 process for only one type of commodity.

36           (3) A vendor may submit information to the director to  
37       establish that it meets the requirements set forth in the master  
38       contract.

39           (4) If the director determines that a vendor meets the  
40       requirements set forth in the master contract, the vendor may  
41       enter into the master contract as a pre-approved vendor.

42           (d) *Direct ordering procedures.*—

43           (1) A spending unit may commence the direct ordering  
44       process by issuing a request for a commodity identified in the  
45       master contract, stating in the request the quantity of the  
46       commodity to be procured in that particular instance.

47           (2) The pre-approved vendor that submits the lowest bid  
48       in response to the request shall be awarded the procurement  
49       in that particular instance.

50           (3) The direct ordering process may not be utilized for  
51       any request for commodities, other than information  
52       technology, anticipated to cost more than \$50,000, unless  
53       approved in writing by the Director of Purchasing. The state  
54       may not issue a series of orders each anticipated to cost less



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55 than \$50,000 to circumvent the monetary limitation in this  
56 subsection.

57 (4) The direct ordering process may not be utilized for  
58 any request for information technology anticipated to cost  
59 more than \$1,000,000, unless approved in writing by the  
60 Director of Purchasing. The state may not issue a series of  
61 orders each anticipated to cost less than \$1,000,000 to  
62 circumvent the monetary limitation in this subsection.

63 (e) *Rule-making authority.*— The Director of the  
64 Purchasing Division shall propose rules for legislative  
65 approval in accordance with the provisions of article three,  
66 chapter twenty-nine-a of this code, to establish, among other  
67 things, procedures by which master contracts shall be  
68 solicited and entered into; procedures by which interested  
69 vendors may be preapproved; and procedures by which the  
70 direct ordering process shall be conducted.

**§5A-3-11. Purchasing in open market on competitive bids;  
debarment; bids to be based on written  
specifications; period for alteration or**

**withdrawal of bids; awards to lowest responsible bidder; uniform bids; record of bids; requirements of vendors to pay taxes, fees and debts; exception; grant exemption.**

1           (a) The director may make a purchase of commodities,  
2     printing and services of \$25,000 or less in amount in the  
3     open market, but the purchase shall, wherever possible, be  
4     based on at least three competitive bids, and shall include  
5     the cost of maintenance and expected life of the  
6     commodities if the director determines there are nationally  
7     accepted industry standards for the commodities being  
8     purchased.

9           (b) The director may authorize spending units to  
10    purchase commodities, printing and services in the amount  
11    of \$2,500 or less in the open market without competitive  
12    bids: *Provided*, That the cost of maintenance and expected  
13    life of the commodities must be taken into consideration if  
14    the director determines there are nationally accepted  
15    industry standards for the commodities being purchased.

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16 (c) Bids shall be based on the written specifications in the  
17 advertised bid request and may not be altered or withdrawn  
18 after the appointed hour for the opening of the bids.

19 (d) A vendor who has been debarred pursuant to the  
20 provisions of sections thirty-three-a through thirty-three-f  
21 ~~article three, chapter five-a~~ of this ~~code~~ article may not bid on  
22 or be awarded a contract under this section.

23 (e) All open market orders, purchases based on advertised  
24 bid requests or contracts made by the director or by a state  
25 department shall be awarded to the lowest responsible bidder  
26 or bidders, taking into consideration the qualities of the  
27 commodities or services to be supplied, their conformity with  
28 specifications, their suitability to the requirements of the  
29 government, the delivery terms and, if the director determines  
30 there are nationally accepted industry standards, cost of  
31 maintenance and the expected life of the commodities:  
32 *Provided*, That state bids on school buses shall be accepted  
33 from all bidders who shall then be awarded contracts if they  
34 meet the state board's Minimum Standards for Design and

35 Equipment of School Buses. County boards of education  
36 may select from those bidders who have been awarded  
37 contracts and shall pay the difference between the state aid  
38 formula amount and the actual cost of bus replacement. Any  
39 or all bids may be rejected.

40 (f) If all bids received on a pending contract are for the  
41 same unit price or total amount, the director has the authority  
42 to reject all bids, and to purchase the required commodities,  
43 printing and services in the open market, if the price paid in  
44 the open market does not exceed the bid prices.

45 (g) The bid must be received by the Purchasing Division  
46 prior to the specified date and time of the bid opening. The  
47 failure to deliver or the nonreceipt of the bid by the  
48 Purchasing Division prior to the appointed date and hour  
49 shall result in the rejection of the bid. The vendor is solely  
50 responsible for the receipt of bid by the Purchasing Division  
51 prior to the appointed date and hour of the bid opening. All  
52 bids will be opened publicly by two or more persons from the  
53 Purchasing Division. Vendors will be given notice of the

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54 day, time and place of the public bid opening. Bids may be  
55 viewed immediately after being opened.

56 (h) After the award of the order or contract, the director,  
57 or someone appointed by him or her for that purpose, shall  
58 indicate upon the successful bid that it was the successful bid.  
59 Thereafter, the copy of each bid in the possession of the  
60 director shall be maintained as a public record, shall be open  
61 to public inspection in the office of the director and may not  
62 be destroyed without the written consent of the Legislative  
63 Auditor.

64 (i)(1) A grant awarded by the state is exempt from the  
65 competitive bidding requirements set forth in this chapter,  
66 unless the grant is used to procure commodities or services  
67 that directly benefit a spending unit.

68 (2) Where a grant awarded to the state requires the  
69 procurement of commodities or services that will directly  
70 benefit a spending unit, the procurement is not exempt  
71 from the competitive bidding requirements set forth in this  
72 chapter.

73           (3) Where a grant awarded to the state requires the state  
74           to transfer some or all of the grant to an individual, entity or  
75           vendor as a subgrant to accomplish a public purpose, and no  
76           contract for commodities or services directly benefitting a  
77           spending unit will result, the subgrant is not subject to the  
78           competitive bidding requirements set forth in this chapter.

**§5A-3-17. Purchases or contracts violating article void;  
personal liability.**

1           If a spending unit purchases or contracts for commodities or  
2           services contrary to the provisions of this article or the rules and  
3           regulations made thereunder, such purchase or contract shall be  
4           void and of no effect. The ~~head~~ spending officer of such  
5           spending unit, or any other individual charged with  
6           responsibility for the purchase or contract, shall be personally  
7           liable for the costs of such purchase or contract, and, if already  
8           paid out of state funds, the amount thereof may be recovered in  
9           the name of the state in an appropriate action instituted therefor:  
10          Provided, That the state establishes by a preponderance of the  
11          evidence that the individual acted knowingly and willfully.

**§5A-3-28. Financial interest of secretary, etc.; receiving reward  
from interested party; penalty; application of  
bribery statute.**

1       Neither the secretary, nor the director nor any employee  
2       of the Division of Purchasing, shall be financially interested,  
3       or have any beneficial personal interest, directly or indirectly,  
4       in the purchase of any commodities, services or printing, nor  
5       in any firm, partnership, corporation or association furnishing  
6       them. Neither the secretary, nor the director nor any  
7       employee of the Division of Purchasing, shall accept or  
8       receive directly or indirectly from any person, firm or  
9       corporation, known by such secretary, director or employee  
10      to be interested in any bid, contract or purchase, by rebate,  
11      gift or otherwise, any money or other thing of value  
12      whatsoever, or any promise, obligation or contract for future  
13      reward or compensation.

14      A person who violates this section shall be guilty of a  
15      misdemeanor, and, upon conviction thereof, shall be confined  
16      in jail not less than three months nor more than one year, or

17 fined not less than \$50 nor more than \$1,000, or both, in the  
18 discretion of the court: *Provided*, That any person who  
19 violates any of the provisions of the last sentence of the first  
20 paragraph of this section under circumstances constituting the  
21 crime of bribery under the provisions of section three, article  
22 five-a, chapter sixty-one of this code, shall, upon conviction  
23 of bribery, be punished as provided in said article five-a.

**§5A-3-30. Statement of purpose; obtaining money and  
property under false pretenses or by fraud from  
the state or a political subdivision of the state;  
penalties; definition.**

1 (a) The Legislature of the State of West Virginia hereby  
2 declares that the purpose of this statute is to promote equal  
3 and fair bidding for the purchase of commodities and services  
4 by the state and any political subdivision of the state  
5 purchasing commodities and services under any state  
6 contract, to eliminate fraud in the procurement of  
7 commodities and services by the state or any political  
8 subdivision of the state.



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9 (b) It is unlawful for any person to obtain any services,  
10 money, goods or other property from the state or any political  
11 subdivision of the state under any contract made under the  
12 provisions of this article, by false pretense, token or  
13 representation, or by delivery of inferior commodities, with  
14 intent to defraud. A person who violates this subsection is  
15 guilty of a felony and, upon conviction thereof, shall be  
16 confined in a state correctional facility for not less than one  
17 year nor more than five years, and shall be fined not  
18 exceeding \$1,000.

19 (c) It shall not be a defense to a charge under this section  
20 that: (1) The commodities or services purchased were  
21 accepted and used, or are being used, by the state or a  
22 political subdivision of the state; or (2) the commodities or  
23 services are functional or suitable for the purpose for which  
24 the commodities or services were purchased by the state or a  
25 political subdivision of the state notwithstanding the standard  
26 or specification issued by the purchasing agency or the  
27 division of purchasing.

28 (d) For the purpose of this section, “inferior  
29 commodities” includes, but shall not be limited to: (1) Any  
30 commodity which does not meet the specification or standard  
31 issued by the purchasing agency and the Division of  
32 Purchasing, or any change order approved by both the  
33 purchasing agency and Division of Purchasing; and (2) any  
34 commodity which is of a lesser quality, quantity or measure  
35 of any kind set forth within the specification or standard  
36 issued by the purchasing agency and the Division of  
37 Purchasing.

**§5A-3-31. Corrupt actions, combinations, collusions or  
conspiracies prohibited; penalties.**

1 It shall be unlawful for any person to corruptly act  
2 alone or combine, collude or conspire with one or more  
3 other persons with respect to the purchasing or supplying  
4 of services, commodities or printing to the state or any  
5 political subdivision of the state under the provisions of  
6 this article if the purpose or effect of such action,  
7 combination, collusion or conspiracy is either to: (1)

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8    Lessen competition among prospective vendors; or (2)  
9    cause the state or any political subdivision of the state to  
10   pay a higher price for such services, commodities or  
11   printing than would be or would have been paid in the  
12   absence of such action, combination, collusion or  
13   conspiracy; or (3) cause one prospective vendor or vendors  
14   to be preferred over one or more other prospective vendor  
15   or vendors. Any person who violates any provision of this  
16   section ~~shall be~~ is guilty of a felony and, upon conviction  
17   thereof, shall be ~~confined~~ imprisoned in ~~penitentiary~~ a state  
18   correctional facility not less than one nor more than five  
19   years, and be fined not exceeding \$5,000.

**§5A-3-60. Annual purchasing training.**

1       (a) All executive department secretaries, commissioners,  
2   deputy commissioners, assistant commissioners, directors,  
3   deputy directors, assistant directors, department heads,  
4   deputy department heads and assistant department heads are  
5   hereby required to take two hours of training on purchasing  
6   procedures and purchasing cards annually.

7           (b) The Director of the Purchasing Division and the  
8 Auditor shall offer the two-hour training required by this  
9 section at least two times per year and shall develop its  
10 substance in accordance with the requirements of this article  
11 and other relevant provisions of this code. The training shall  
12 be recorded by audio and visual means and shall be made  
13 available to the individuals listed in subsection (a) of this  
14 section in the event they are unable to attend the training in  
15 person.

16           (c) All individuals listed in subsection (a) of this section  
17 shall certify, in writing and on a form developed by the  
18 Director of the Purchasing Division, the date, time, location  
19 and manner in which they took the training. Completed  
20 forms shall be returned to the director and maintained in his  
21 or her office.