

**H. B. 4215**

(By Delegates Guthrie, Sponaugle, D. Poling,  
Caputo, Manypenny, Moore, Fleischauer, Perdue)

[Introduced January 17, 2014; referred to the  
Committee on Government Organization then the Judiciary.]

A BILL to amend and reenact §5A-3-3, §5A-3-4, §5A-3-10, §5A-3-10b  
and §5A-3-11c of the Code of West Virginia, 1931, as amended,  
all relating generally to the purchasing division and best  
value contracting; ensuring that the process used by spending  
units to make direct purchases are consistent with the other  
purchasing requirements; removing certain exemptions;  
prohibiting the Director of Purchasing from authorizing  
contracts that could allow an agency to circumvent the \$25,000  
threshold; requiring the Director of Purchasing to prescribe  
procedures to ensure that the state retains ownership of its  
purchases; applying certain existing purchasing requirements  
to the executive and legislative branches of state government;  
permitting the Joint Committee on Government and Finance to  
deduct the total amount of those purchases contravening the  
\$25,000 threshold amount or otherwise avoided the use of

1 sealed bids, from the budget of that spending unit or the  
2 executive or legislative branches of state government for the  
3 following budget year cycle; requiring that best value  
4 procurements are subject to the other purchasing requirements;  
5 clarifying that an award to multiple vendors remains subject  
6 to the other requirements; removing a provision that prevents  
7 the Director of Purchasing from using best value procurement  
8 to enter into government construction contracts; and making  
9 technical corrections.

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

11 That §5A-3-3, §5A-3-4, §5A-3-10, §5A-3-10b and §5A-3-11c of  
12 the Code of West Virginia, 1931, as amended, be amended and  
13 reenacted, all to read as follows:

14 **ARTICLE 3. PURCHASING DIVISION.**

15 **§5A-3-3. Powers and duties of director of purchasing.**

16 The director, under the direction and supervision of the  
17 secretary, shall be the executive officer of the Purchasing  
18 Division and shall: ~~have the power and duty to:~~

19 (1) Direct the activities and employees of the Purchasing  
20 Division;

21 (2) Ensure that the purchase of or contract for commodities  
22 shall be based, whenever possible, on competitive bid;

23 (3) ~~Purchasing~~ Purchase or contract for, in the name of the  
24 state, the commodities and printing required by the spending units

1 of the state government;

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

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

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

9 (7) Establish and maintain a laboratory for the testing of  
10 commodities and make use of existing facilities in state  
11 institutions for that purpose as hereinafter provided, as the  
12 director deems advisable;

13 (8) Suspend the right and privilege of a vendor to bid on  
14 state purchases when the director has evidence that ~~such~~ the vendor  
15 has violated any of the provisions of the purchasing law or the  
16 rules and regulations of the director;

17 (9) Examine the provisions and terms of every contract entered  
18 into for and on behalf of the State of West Virginia that impose  
19 any obligation upon the state to pay any sums of money for  
20 commodities or services and approve each ~~such~~ contract as to ~~such~~  
21 the provisions and terms; and the duty of examination and approval  
22 herein set forth does not supersede the responsibility and duty of  
23 the Attorney General to approve ~~such~~ the contracts as to form.  
24 ~~Provided, That the provisions of this subdivision do not apply in~~

1 ~~any respect whatever to construction or repair contracts entered~~  
2 ~~into by the Division of Highways of the Department of~~  
3 ~~Transportation: Provided, however, That the provisions of this~~  
4 ~~subdivision do not apply in any respect whatever to contracts~~  
5 ~~entered into by the University of West Virginia Board of Trustees~~  
6 ~~or by the Board of Directors of the State College System, except to~~  
7 ~~the extent that such boards request the facilities and services of~~  
8 ~~the director under the provisions of this subdivision; and~~

9 (10) Assure that the specifications and commodity descriptions  
10 in all "requests for quotations" are prepared so as to permit all  
11 potential suppliers-vendors who can meet the requirements of the  
12 state an opportunity to bid and to assure that the specifications  
13 and descriptions do not favor a particular brand or vendor. If the  
14 director determines that any such specifications or descriptions as  
15 written favor a particular brand or vendor or if it is decided,  
16 either before or after the bids are opened, that a commodity having  
17 different specifications or quality or in different quantity can be  
18 bought, the director may rewrite the "requests for quotations" and  
19 the matter shall be rebid.

20 **§5A-3-4. Rules of director.**

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

24 (1) Authorize a spending unit to purchase specified

1 commodities directly and prescribe the manner in which such  
2 purchases shall be made, consistent with the requirements of this  
3 article;

4 (2) Authorize, in writing, a spending unit to purchase  
5 commodities in the open market for immediate delivery in  
6 emergencies, defines emergencies and prescribe the manner in which  
7 such purchases shall be made and reported to the director;

8 (3) Prescribe the manner in which commodities shall be  
9 purchased, delivered, stored and distributed;

10 (4) Prescribe the time for making requisitions and estimates  
11 of commodities, the future period which they are to cover, the form  
12 in which they shall be submitted and the manner of their  
13 authentication;

14 (5) Prescribe the manner of inspecting all deliveries of  
15 commodities, and making chemical and physical tests of samples  
16 submitted with bids and samples of deliveries to determine  
17 compliance with specifications;

18 (6) Prescribe the amount and type of deposit or bond to be  
19 submitted with a bid or contract and the amount of deposit or bond  
20 to be given for the faithful performance of a contract;

21 (7) Prescribe a system whereby the director ~~shall be~~ is  
22 required, upon the payment by a vendor of an annual fee established  
23 by the director, to give notice to such vendor of all bid  
24 solicitations for commodities of the type with respect to which

1 such vendor specified notice was to be given, but no such fee ~~shall~~  
2 may exceed the cost of giving the notice to such vendor, nor ~~shall~~  
3 may such fee exceed the sum of \$125 per fiscal year nor ~~shall~~ may  
4 such fee be charged to persons seeking only reimbursement from a  
5 spending unit;

6 (8) Prescribe that each state contract entered into by the  
7 Purchasing Division ~~shall~~ contains provisions for liquidated  
8 damages, remedies or provisions for the determination of the amount  
9 or amounts which the vendor shall owe as damages, in the event of  
10 default under such contract by such vendor, as determined by the  
11 director;

12 (9) Prescribe contract management procedures for all state  
13 contracts; ~~except government construction contracts including, but~~  
14 ~~not limited to, those set forth in article twenty-two, chapter five~~  
15 ~~of this code;~~

16 (10) Prescribe procedures by which oversight is provided to  
17 actively monitor spending unit purchases using state or federal  
18 funds serving the state or its citizens, including, but not limited  
19 to, all communication networks, all technology and software  
20 commodities and contractual services exceeding \$1 million, approval  
21 of change orders and final acceptance by the spending units;

22 (11) Prescribe procedures to ensure that spending units and  
23 the state retain ownership of goods and the results of services  
24 provided by vendors to the state;

1       ~~(11)~~ (12) Prescribe that each state contract entered into by  
2 the Purchasing Division contain provisions for the cancellation of  
3 the contract upon thirty days' notice to the vendor;

4       ~~(12)~~ (13) Prescribe procedures for selling surplus commodities  
5 to the highest bidder by means of an Internet auction site;

6       ~~(13)~~ (14) Provide such other matters as may be necessary to  
7 give effect to the foregoing rules and the provisions of this  
8 article; and

9       ~~(14)~~ (15) Prescribe procedures for encumbering purchase orders  
10 to ensure that the proper account may be encumbered before sending  
11 purchase orders to vendors.

12       (b) The director shall propose rules for legislative approval  
13 in accordance with ~~the provisions of~~ article three, chapter  
14 twenty-nine-a of this code to prescribe qualifications to be met by  
15 any person who is to be employed in the Purchasing Division as a  
16 state buyer. The rules must provide that a person may not be  
17 employed as a state buyer unless he or she at the time of  
18 employment either is:

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

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

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

1 **§5A-3-10. Competitive bids; publication of solicitations for**  
2 **sealed bids; purchase of products of nonprofit**  
3 **workshops; employee to assist in dealings with**  
4 **nonprofit workshops.**

5 (a) A purchase of and contract for commodities, printing and  
6 services shall be based, whenever possible, on competitive bids.

7 (b) The director shall solicit sealed bids for the purchase of  
8 commodities and printing which is estimated to exceed \$25,000. No  
9 spending unit ~~shall~~ may issue a series of requisitions or divide or  
10 plan procurements to circumvent this \$25,000 threshold or otherwise  
11 avoid the use of sealed bids. The director may not approve any  
12 contract that would allow an agency or the executive or legislative  
13 branches of state government to make purchases that circumvent the  
14 \$25,000 threshold or otherwise avoid the use of sealed bids, unless  
15 the contract is otherwise consistent with the requirements of this  
16 article. Any spending unit or the executive or legislative  
17 branches of state government which awards multiple contracts for  
18 the same or similar commodity or service to an individual vendor  
19 over any twelve-month period, the total value of which exceeds  
20 \$25,000, shall file copies of all contracts awarded to the vendor  
21 within the twelve preceding months with the director immediately  
22 upon exceeding the \$25,000 limit, along with a statement explaining  
23 how the multiple contract awards do not circumvent the \$25,000



1 threshold. If the spending unit or the executive or legislative  
2 branches of state government does not immediately report to the  
3 director, the director may suspend the purchasing authority of the  
4 spending unit or the executive or legislative branches of state  
5 government until the spending unit or the executive or legislative  
6 branches of state government complies with the reporting  
7 requirement of this subsection. The director may conduct a review  
8 of any spending unit to ensure compliance with this subsection.  
9 Following a review, the director shall complete a report  
10 summarizing his or her findings and forward the report to the  
11 spending unit or the executive or legislative branches of state  
12 government. In addition, the director shall report to the Joint  
13 Committee on Government and Finance on January 1, and July of each  
14 year the spending units which have reported under this subsection  
15 and the findings of the director. If it has been determined that  
16 the spending unit or the executive or legislative branches of state  
17 government circumvented the \$25,000 threshold or otherwise avoided  
18 the use of sealed bids, the Joint Committee on Government and  
19 Finance may deduct the total amount of those purchases from the  
20 budget of that spending unit or the executive or legislative  
21 branches of state government for the following budget year cycle.

22 (c) The director may permit bids by electronic transmission to  
23 be accepted in lieu of sealed bids.

24 (d) Bids shall be solicited by public notice. The notice may

1 be published by any advertising medium the director deems  
2 advisable. The director may also solicit sealed bids by sending  
3 requests by mail or electronic transmission to prospective vendors.

4 (e) The director shall, without competitive bidding, purchase  
5 commodities and services produced and offered for sale by nonprofit  
6 workshops, as defined in section one, article one of this chapter,  
7 which are located in this state: *Provided*, That such commodities  
8 and services shall be of a fair market price and of like quality  
9 comparable to other commodities and services otherwise available as  
10 determined by the director with the advice of the committee on the  
11 purchase of commodities and services from the handicapped.

12 To encourage contracts for commodities and services with  
13 nonprofit workshops, the director shall employ a person whose  
14 responsibilities in addition to other duties shall be to identify  
15 all commodities and services available for purchase from nonprofit  
16 workshops, to evaluate the need of the state for commodities and  
17 services to coordinate the various nonprofit workshops in their  
18 production efforts and to make available to such workshops  
19 information about available opportunities within state government  
20 for purchase of commodities or services which might be produced and  
21 sold by such workshops. Funds to employ such a person shall be  
22 included annually in the budget.

23 **§5A-3-10b. Best value procurement.**

24 (a) The director may utilize best value procurement to enter

1 into a contract when he or she determines in writing that it is  
2 advantageous to the state.

3 (b) A solicitation for bids under best value procurement shall  
4 be made in the same manner as provided in section ten of this  
5 article.

6 (c) Best value procurement awards shall be based on criteria  
7 set forth in the solicitation including, but not limited to, price,  
8 the total cost of acquiring, operating, maintaining and supporting  
9 a commodity or service over its projected lifetime, the evaluated  
10 technical merit of the bidder's bid or proposal, the bidder's past  
11 performance, and the evaluated probability of performing the  
12 requirements stated in the solicitation on time, with high quality,  
13 and in a manner that accomplishes the business objectives set forth  
14 in the solicitation.

15 (d) The award must be made to the highest scoring responsive  
16 and responsible bidder whose bid is determined, in writing, to be  
17 most advantageous to the state, taking into consideration all  
18 evaluation factors set forth in the best value solicitation.

19 ~~(e) The director may not use best value procurement to enter~~  
20 ~~into government construction contracts, including, but not limited~~  
21 ~~to, those set forth in article twenty-two, chapter five of this~~  
22 ~~code.~~

23 (e) The director may not use best value procurement nor allow  
24 a spending unit, an agency or the executive or legislative branches

1 of state government to use best value procurement to enter into  
2 contracts that could later be used to circumvent the requirements  
3 of subsection (b), section ten of this article.

4 **§5A-3-11c. Multiple awards.**

5       (a) The director may elect to award a contract to one or more  
6 responsive and responsible bidders if the director determines in  
7 writing that a single award to an individual bidder would be  
8 insufficient: *Provided*, That the basis for the selection among  
9 multiple contracts at the time of purchase shall be the most  
10 practical and economical alternative and shall be in the best  
11 interests of the state.

12       (b) The bidding process and each contract awarded under this  
13 section remain subject to all of the requirements of this article  
14 that would otherwise apply to a single contract awarded by the  
15 director.

NOTE: The purpose of this bill is to require the Director of the Purchasing Division's direct purchases be consistent with the other requirements of the purchasing process and best value contracting. The bill removes certain exemptions. The bill prohibits the Director of Purchasing from authorizing contracts that could allow an agency to circumvent the \$25,000 threshold. The bill requiring the Director of Purchasing to prescribe procedures to ensure that the state retains ownership of its purchases. The bill applies certain existing purchasing requirements also apply to the executive and legislative branches of state government. The bill permits the Joint Committee on Government and Finance to deduct the total amount of those purchases contravening the \$25,000 threshold amount or otherwise avoided the use of sealed bids, from the budget of that spending unit or the executive or legislative branches of state government for the following budget year cycle. The bill ensures that best value contracting cannot be used to

circumvent other purchasing requirements. The bill ensures that contracts awarded under best value procurement and awards to multiple vendors remain subject to the requirements of the purchasing process. The bill removes a provision that prevents the Director of Purchasing from using best value procurement to enter into government construction contracts. The bill also makes technical corrections.

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