

H. B. 4374

(By Delegates Fragale and Iaquina)
[Introduced January 30, 2014; referred to the
Committee on Government Organization then Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §5A-3-10 and §5A-3-11 of the Code of
West Virginia, 1931, as amended, all relating to permitting
purchases up to \$100,000 without competitive bids.

Be it enacted by the Legislature of West Virginia:

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

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.**

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

(b) The director shall solicit sealed bids for the purchase of
commodities and printing which is estimated to exceed ~~\$25,000~~
\$100,000. No spending unit ~~shall~~ may issue a series of
requisitions or divide or plan procurements to circumvent this

1 ~~\$25,000~~ \$100,000 threshold or otherwise avoid the use of sealed
2 bids. Any spending unit which awards multiple contracts for the
3 same or similar commodity or service to an individual vendor over
4 any twelve-month period, the total value of which exceeds ~~\$25,000~~
5 \$100,000, shall file copies of all contracts awarded to the vendor
6 within the twelve preceding months with the director immediately
7 upon exceeding the ~~\$25,000~~ \$100,000 limit, along with a statement
8 explaining how the multiple contract awards do not circumvent the
9 ~~\$25,000~~ \$100,000 threshold. If the spending unit does not
10 immediately report to the director, the director may suspend the
11 purchasing authority of the spending unit until the spending unit
12 complies with the reporting requirement of this subsection. The
13 director may conduct a review of any spending unit to ensure
14 compliance with this subsection. Following a review, the director
15 shall complete a report summarizing his or her findings and forward
16 the report to the spending unit. In addition, the director shall
17 report to the Joint Committee on Government and Finance on January
18 1, and July of each year the spending units which have reported
19 under this subsection and the findings of the director.

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

22 (d) Bids shall be solicited by public notice. The notice may
23 be published by any advertising medium the director deems
24 advisable. The director may also solicit sealed bids by sending
25 requests by mail or electronic transmission to prospective vendors.

26 (e) The director shall, without competitive bidding, purchase

1 commodities and services produced and offered for sale by nonprofit
 2 workshops, as defined in section one, article one of this chapter,
 3 which are located in this state: *Provided, That ~~such~~ the*
 4 commodities and services ~~shall~~ must be of a fair market price and
 5 of like quality comparable to other commodities and services
 6 otherwise available as determined by the director with the advice
 7 of the Committee on the Purchase of Commodities and Services from
 8 the Handicapped.

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

20 **§5A-3-11. Purchasing in open market on competitive bids;**
 21 **debarment; bids to be based on written**
 22 **specifications; period for alteration or withdrawal**
 23 **of bids; awards to lowest responsible bidder;**
 24 **uniform bids; record of bids; requirements of**
 25 **vendors to pay taxes, fees and debts; and**
 26 **exception.**

1 (a) The director may make a purchase of commodities, printing,
2 and services of ~~\$25,000~~ \$100,000 or less in amount in the open
3 market, but the purchase shall, wherever possible, be based on at
4 least three competitive bids, and shall include the cost of
5 maintenance and expected life of the commodities if the director
6 determines there are nationally accepted industry standards for the
7 commodities being purchased.

8 (b) The director may authorize spending units to purchase
9 commodities, printing and services in the amount of ~~\$2,500~~ \$10,000
10 or less in the open market without competitive bids: *Provided,*
11 That the cost of maintenance and expected life of the commodities
12 must be taken into consideration if the director determines there
13 are nationally accepted industry standards for the commodities
14 being.

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

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

22 (e) All open market orders, purchases based on advertised bid
23 requests or contracts made by the director or by a state department
24 shall be awarded to the lowest responsible bidder or bidders,
25 taking into consideration the qualities of the commodities or
26 services to be supplied, their conformity with specifications,

1 their suitability to the requirements of the government, the
2 delivery terms and, if the director determines there are nationally
3 accepted industry standards, cost of maintenance and the expected
4 life of the commodities: *Provided*, That state bids on school buses
5 shall be accepted from all bidders who shall then be awarded
6 contracts if they meet the state board's "Minimum Standards for
7 Design and Equipment of School Buses." County boards of education
8 may select from those bidders who have been awarded contracts and
9 shall pay the difference between the state aid formula amount and
10 the actual cost of bus replacement. Any or all bids may be
11 rejected.

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

17 (g) The bid must be received by the Purchasing Division prior
18 to the specified date and time of the bid opening. The failure to
19 deliver or the nonreceipt of the bid by the Purchasing Division
20 prior to the appointed date and hour shall result in the rejection
21 of the bid. The vendor is solely responsible for the receipt of
22 bid by the Purchasing Division prior to the appointed date and hour
23 of the bid opening. All bids will be opened publicly by two or
24 more persons from the Purchasing Division. Vendors will be given
25 notice of the day, time and place of the public bid opening. Bids
26 may be viewed immediately after being opened.

1 (h) After the award of the order or contract, the director, or
2 someone appointed by him or her for that purpose, shall indicate
3 upon the successful bid that it was the successful bid.
4 Thereafter, the copy of each bid in the possession of the director
5 shall be maintained as a public record, shall be open to public
6 inspection in the office of the director and may not be destroyed
7 without the written consent of the Legislative Auditor.

NOTE: The purpose of this bill is to increase the amount of purchases which the state may make without competitive bids or in the open market from \$25,000 to \$100,000.

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