

# **WEST VIRGINIA LEGISLATURE**

## **2017 REGULAR SESSION**

**Introduced**

### **Senate Bill 597**

BY SENATOR BLAIR

[Introduced March 14, 2017; Referred  
to the Committee on Government Organization]

1 A BILL to amend and reenact §5A-3-11 and §5A-3-19 of the Code of West Virginia, 1931, as  
2 amended, all relating to the procurement of technical infrastructure.

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

1 That §5A-3-11 and §5A-3-19 of the Code of West Virginia, 1931, as amended, be  
2 amended and reenacted, all to read as follows:

**ARTICLE 3. PURCHASING DIVISION.**

**§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, printing and services of \$25,000  
2 or less in amount in the open market, but the purchase shall, wherever possible, be based on at  
3 least three competitive bids, and shall include the cost of maintenance and expected life of the  
4 commodities if the director determines there are nationally accepted industry standards for the  
5 commodities being purchased: Provided, That the procurement of Technical Infrastructure as  
6 defined in the provisions of section two, article six, chapter five-a of the code, up to \$500,000 may  
7 be purchased by spending units without the approval of the Director of the Purchasing Division  
8 but shall continue to utilize the Purchasing Divisions code of state rules, as it relates to the  
9 purchases of commodities and services, as a general guide for procurement of Technical  
10 Infrastructure. If a spending unit wishes to utilize the Request for Proposal (RFP) process for  
11 Technical Infrastructure, prior to the development of the RFP, a letter of justification must be  
12 submitted in writing to the Chief Technology Officer of the Office of Technology, the justification  
13 for utilizing this process.

14 (b) The director may authorize spending units to purchase commodities, printing and  
15 services in the amount of \$2,500 or less in the open market without competitive bids: *Provided,*  
16 That the cost of maintenance and expected life of the commodities must be taken into

17 consideration if the director determines there are nationally accepted industry standards for the  
18 commodities being purchased.

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20 not be altered or withdrawn after the appointed hour for the opening of the bids.

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

23 (e) All open market orders, purchases based on advertised bid requests or contracts made  
24 by the director or by a state department shall be awarded to the lowest responsible bidder or  
25 bidders, taking into consideration the qualities of the commodities or services to be supplied, their  
26 conformity with specifications, their suitability to the requirements of the government, the delivery  
27 terms and, if the director determines there are nationally accepted industry standards, cost of  
28 maintenance and the expected life of the commodities: *Provided*, That state bids on school buses  
29 shall be accepted from all bidders who shall then be awarded contracts if they meet the state  
30 board's Minimum Standards for Design and Equipment of School Buses. County boards of  
31 education may select from those bidders who have been awarded contracts and shall pay the  
32 difference between the state aid formula amount and the actual cost of bus replacement. Any or  
33 all bids may be rejected.

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

38 (g) The bid must be received by the Purchasing Division prior to the specified date and  
39 time of the bid opening. The failure to deliver or the nonreceipt of the bid by the Purchasing  
40 Division prior to the appointed date and hour shall result in the rejection of the bid. The vendor is  
41 solely responsible for the receipt of bid by the Purchasing Division prior to the appointed date and  
42 hour of the bid opening. All bids will be opened publicly by two or more persons from the

43 Purchasing Division. Vendors will be given notice of the day, time and place of the public bid  
44 opening. Bids may be viewed immediately after being opened.

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

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

53 (2) If a grant awarded to the state requires the procurement of commodities or services  
54 that will directly benefit a spending unit, the procurement is not exempt from the competitive  
55 bidding requirements set forth in this chapter.

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

**§5A-3-19. Purchases from federal government and other sources.**

1 (a) Notwithstanding any other provision of this article, the director may, upon the  
2 recommendation of a state spending unit, participate in, sponsor, conduct, or administer a  
3 cooperative purchasing agreement or consortium for the purchase of commodities or services  
4 with agencies of the federal government, agencies of other states, other public bodies or other  
5 state agencies, if available and financially advantageous: Provided, That the director shall upon  
6 the recommendation of the Office of Technology participate in, sponsor, conduct, or administer a  
7 cooperative purchasing agreement or consortium for the purchase of Technical Infrastructure, as  
8 defined in the provisions of section two, article six, chapter five-a of the code, with agencies of

9 the federal government, agencies of other states, other public bodies or other state agencies, if  
10 available. ~~At the discretion of the director, bids may be solicited to determine whether participation~~  
11 ~~in such a cooperative purchasing agreement or consortium is financially advantageous~~

12 (b) The Department of Administration may approve administrative fees, not to exceed the  
13 amount of \$50,000 necessary to participate in a cooperative purchasing agreement. Fees which  
14 exceed \$50,000 are subject to the competitive bid requirements of this article.

NOTE: The purpose of this bill is to provide more flexibility to state agencies for the procurement of technical infrastructure.

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