

# **WEST VIRGINIA LEGISLATURE**

## **2020 REGULAR SESSION**

**Introduced**

### **House Bill 4463**

BY DELEGATES HOWELL, SYPOLT, J. JEFFRIES, HOTT AND

C. MARTIN

BY REQUEST

[Introduced January 22, 2020; Referred to the  
Committee on Government Organization]

1 A BILL to amend and reenact §5A-3-10e of the Code of West Virginia, 1931, as amended, relating  
 2 to prequalification of vendors for state contracts, allowing for prequalification agreements  
 3 for the purchase of services and removing obsolete terms.

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

**ARTICLE 3. PURCHASING DIVISION.**

**§5A-3-10e. Prequalification agreement; agency- delegated bidding.**

1 (a) Subject to the limitations of this section, the director may permit spending units to  
 2 procure commodities and services from a preapproved vendor through a prequalification  
 3 agreement and delegated prequalification bidding if the director determines the process is fair,  
 4 economical and in the best interests of the state.

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

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

8 ~~(2) “Prequalification agreement” means an agreement, having a term of no more than~~  
 9 ~~three years, between the Purchasing Division and at least two prequalified vendors authorizing a~~  
 10 ~~spending unit to purchase a commodity or service on a recurrent basis through the delegated~~  
 11 ~~prequalification bidding process defined in the prequalification agreement.~~

12 ~~(3) “Prequalified vendor” means a “vendor”, as that term is defined in §5A-1-1 of this code,~~  
 13 ~~that has entered into a prequalification agreement with the Purchasing Division and may~~  
 14 ~~participate in the delegated prequalification bidding subject to the terms and conditions of the~~  
 15 ~~prequalification agreement.~~

16 ~~(4) “Delegated prequalification bidding” means the competitive bidding process whereby~~  
 17 ~~the prequalified vendors that are parties to a prequalification agreement may submit sealed bids~~  
 18 ~~directly to spending units to provide a commodity or service identified in the prequalification~~  
 19 ~~agreement subject to the limitations set forth in this section.~~

20 (c) Prequalification agreement. —

21 (1) For each prequalification agreement, the director shall set forth the requirements,  
22 technical or otherwise, under which a vendor may be qualified to supply a commodity or service  
23 through the delegated prequalification bidding. For each prequalification agreement, the director  
24 shall follow the notice and advertising requirements set forth in §5A-3-10 of this code.

25 (2) A prequalification agreement may authorize the delegated prequalification bidding for  
26 only one type of commodity or service.

27 (3) A vendor may submit information to the director to establish that it meets the  
28 requirements set forth in the prequalification agreement.

29 (4) If the director determines that a vendor meets the requirements set forth in the  
30 prequalification agreement, the vendor may enter into the prequalification agreement as a  
31 prequalified vendor.

32 (d) Delegated prequalification bidding procedures. —

33 (1) A spending unit may commence the delegated prequalification bidding process by  
34 issuing a request for a commodity or service identified in the prequalification agreement stating in  
35 the request the quantity of the commodity or if a service, the scope of work to be completed, to  
36 be procured.

37 (2) The prequalified vendor that submits the lowest bid in response to the request shall be  
38 awarded the procurement.

39 (3) The delegated prequalification bidding may not be utilized for any request for  
40 commodities or services anticipated to cost more than \$1 million, unless approved in writing by  
41 the Director of Purchasing. The state may not issue a series of orders each anticipated to cost  
42 less than \$1 million to circumvent the monetary limitation in this subsection. The limit expressed  
43 herein applies to each delegated prequalification bid conducted pursuant to the prequalification  
44 agreement and not to total spending under the prequalification agreement.

45 (e) Rule-making authority. — The Director of the Purchasing Division shall propose rules  
46 for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code to

- 47 implement this section, including, but not limited to, provisions to establish procedures for the
- 48 solicitation and authorization of prequalification agreements, prequalification of vendors, and
- 49 implementation of delegated prequalification bidding.

NOTE: The purpose of this bill is to allow for services to be bought on state contracts through prequalification agreements with prequalified vendors.

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