

# **WEST VIRGINIA LEGISLATURE**

**2020 REGULAR SESSION**

**Enrolled**

**Senate Bill 322**

BY SENATOR MAYNARD

[Passed March 6, 2020; in effect 90 days from passage]



1 AN ACT to amend and reenact §5A-3-10e of the Code of West Virginia, 1931, as amended,  
2 relating to prequalification of vendors for state contracts; allowing for prequalification  
3 agreements 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 “Prequalification agreement” means an agreement, having a term of no more than three  
7 years, between the Purchasing Division and at least two prequalified vendors authorizing a  
8 spending unit to purchase a commodity or service on a recurrent basis through the delegated  
9 prequalification bidding process defined in the prequalification agreement.

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

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

18 (c) *Prequalification agreement.* —

19 (1) For each prequalification agreement, the director shall set forth the requirements,  
20 technical or otherwise, under which a vendor may be qualified to supply a commodity or service

21 through the delegated prequalification bidding. For each prequalification agreement, the director  
22 shall follow the notice and advertising requirements set forth in §5A-3-10 of this code.

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

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

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

30 (d) *Delegated prequalification bidding procedures.* —

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

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

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

43 (e) *Rule-making authority.* — The Director of the Purchasing Division shall propose rules  
44 for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code to  
45 implement this section, including, but not limited to, provisions to establish procedures for the

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- 46 solicitation and authorization of prequalification agreements, prequalification of vendors, and
- 47 implementation of delegated prequalification bidding.



The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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*Chairman, Senate Committee*

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*Chairman, House Committee*

Originated in the Senate.

In effect 90 days from passage.

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*Clerk of the Senate*

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*Clerk of the House of Delegates*

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*President of the Senate*

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*Speaker of the House of Delegates*

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The within ..... this the.....  
Day of ....., 2020.

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*Governor*