WEST VIRGINIA CODE CHAPTER 5A ARTICLE 3

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§5A-3-1. Division created; purpose; director; applicability of article; continuation.

(a) The Purchasing Division within the Department of Administration is continued. The underlying purposes and policies of the Purchasing Division are:

(1) To serve as a source of expertise in procurement methods and practices for the various state agencies, and to assist and facilitate state agencies in procurement matters, including for travel services;

(2) To simplify, clarify, and modernize the law governing procurement by this state;

(3) To permit the continued development of procurement policies and practices;

(4) To make as consistent as possible the procurement rules and practices among the various spending units;

(5) To provide for increased public confidence in the procedures followed in public procurement;

(6) To ensure the fair and equitable treatment of all persons who deal with the procurement system of this state;

(7) To provide increased economy in procurement activities and to maximize to the fullest extent practicable the purchasing value of public funds;

(8) To foster effective broad-based competition within the free enterprise system;

(9) To provide safeguards for the maintenance of a procurement system of quality and integrity; and

(10) To obtain in a cost-effective and responsive manner the commodities and services required by spending units for those spending units to better serve this state’s businesses and residents.

(b) The provisions of this article apply to all of the spending units of state government, except as otherwise provided by this article or by law.

(c) The provisions of this article do not apply to:

(1) The judicial branch;

(2) The West Virginia State Police;

(3) The West Virginia Office of Laboratory Services;

(4) The legislative branch;

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(5) Purchases of stock made by the Alcohol Beverage Control Commissioner;

(6) Purchases of textbooks, instructional materials, digital content resources, instructional technology, hardware, software, telecommunications, and technical services by the State Board of Education for use in and in support of the public schools; and

(7) Purchases of voter registration systems, voting systems, electronic pollbooks, election results reporting systems, and other technologies used to register, maintain, or process voters or used in the conduct of an election by the West Virginia Secretary of State, which are critical election infrastructure protected by 42 U.S.C. § 5195c: *Provided*, That when any purchase or procurement has been made pursuant to this subdivision, the Secretary of State shall submit all bids, quotes, requested specifications, and contracts related to the purchase or procurement, as well as any subsequent change orders and amendments and addenda to contracts related to the purchase or procurement, to the director to be posted and publicly accessible on the division's website: *Provided, however*, That the Secretary of State is not required to submit to the director any document or portion of a document that would be exempt from disclosure if the document or portion of a document were requested pursuant to §29B-1-1 *et seq*. of this code.

(d) The provisions of this article do not apply to any contract, agreement, or memorandum of understanding between a spending unit of state government and West Virginia School of Osteopathic Medicine, West Virginia University, or Marshall University for services, except that any contract entered into under §9-2-6(5) of this code for the provision of Medicaid services by a risk-bearing entity is not exempt from the provisions of this article.

(e) Notwithstanding any other provisions of this article, commodities and services may be purchased by a spending unit in the open market for immediate delivery in emergencies: *Provided*, That the purchase and a description of the circumstances warranting such emergency purchase are timely reported by the agency head or other authorized agent of the spending unit under the provisions of § 5A-3-4(a)(2) of this code.

(f) The provisions of this article apply to every expenditure of public funds by a spending unit for commodities and services irrespective of the source of the funds, except as otherwise provided by this article or by law.

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§5A-3-1a. Prescription drug products.

In addition to other provisions of this article, the division is authorized, on behalf of the Public Employees Insurance Agency, the schools of medicine of the state colleges and universities, the department of vocational rehabilitation and the Department of Human Services, to negotiate and enter into agreements directly with manufacturers and distributors whose prescription drug products are sold in the state for sole-source and multiple-source drugs to be paid for under a state program for eligible recipients. Such agreements shall provide for a rebate of a negotiated percentage of the total product cost to be paid by the manufacturer or distributor of a specific product. Each agency is authorized to establish, either singularly or together with other agencies, a drug formulary.

Prescription drug products are included in the drug formulary only upon completion of the application to and approval of the division. Those products for which a rebate is successfully negotiated are automatically included in the drug formulary for a period of time coterminous with the negotiated rebate.

If there has been a failure to negotiate or renew a rebate agreement for a specific prescription drug product, the pharmaceutical manufacturer of that product shall disclose to the division its most favorable pricing arrangements available to state and nonstate government purchasers. If the division determines that the product needs to be included in the drug formulary, with the approval of the agency the division shall establish the amount to be reimbursed for the product based upon the price information provided by the manufacturer. The determination as to whether a product should be included in the drug formulary is based on the product's efficiency, cost, medical necessity and safety. Any rebate returns, as a result of the provisions of this section regarding prescription drugs, shall be deposited in the General Revenue Fund.

It is expressly recognized that no other entity may interfere with the discretion and judgment given to the single state agency that administers the state's Medicaid program. Therefore, the Department of Human Services is authorized to negotiate rebates as provided for in this section.

WV Legislature

§5A-3-2. Books and records of director.

The director shall keep accurate books, accounts and records of all transactions of his or her division, and such books, accounts and records shall be public records, and shall at all proper times be available for inspection by any taxpayer of the state.

WV Legislature

§5A-3-3. Authority of Director of Purchasing.

The director, under the direction and supervision of the secretary, is the executive officer of the Purchasing Division and has the authority to:

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

(2) Ensure that the purchase of or contract for commodities and services are based on competitive bid, except when another method of procurement is determined to be in the best interest of the state;

(3) Purchase or contract for, or assist and facilitate the purchase or contract for the spending units of the state government, in the name of the state, the commodities, services, and printing required by the spending units of the state government;

(4) Apply and enforce standard specifications established in accordance with §5A-3-5 of this code as hereinafter provided;

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

(6) Have charge of central storerooms for the supply of spending units as the director considers advisable;

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

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

(9) Timely provide guidance to and assist any spending unit in the development of the provisions and terms of contracts entered into for and on behalf of the State of West Virginia that impose any obligation upon the state to pay any sums of money for commodities or services and approve contracts as to such provisions and terms; and the duties of providing guidance and assistance and approval herein set forth do not supersede the responsibility and duty of the Attorney General to approve the contracts as to form; *Provided*, That the provisions of this subdivision do not apply in any respect whatever to construction or repair contracts entered into by the Division of Highways of the Department of Transportation or to construction or reclamation contracts entered into by the Department of Environmental Protection; *Provided, however*, That the provisions of this subdivision do not apply in any respect whatsoever to contracts entered into by the University of West Virginia Board of Trustees or by the board of directors of the state college system, except to the extent that such boards request the facilities and services of the director under the provisions of this subdivision: *Provided further*, That the provisions of this subdivision do not apply to the West

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Virginia State Police and the West Virginia Office of Laboratory Services: *And provided further*, That the provisions of this subdivision shall not apply to contracts for any natural disaster recovery activities entered into by the West Virginia State Conservation Committee or the West Virginia Conservation Agency;

(10) Timely provide guidance to and assist any spending unit in the development of the specifications and descriptions in solicitations to be prepared so as to provide all potential suppliers-vendors who can meet the requirements of the state an opportunity to bid and to assure that the specifications and descriptions do not favor a particular brand or vendor; If the director determines that any such specifications or descriptions as written favor a particular brand or vendor or if it is decided by the relevant spending unit, in consultation with the director, either before or after the bids are opened, that a commodity or service having different specifications or quality or in different quantity can be acquired to better achieve the ends sought by the relevant spending unit, the solicitation may be rewritten and the matter shall be rebid or another procurement method pursued, where determined appropriate;

(11) Issue a notice to cease and desist to a spending unit when the director has credible evidence that a spending unit has violated the requirements of this article and the rules promulgated hereunder. Failure to abide by the notice may result in penalties set forth in §5A-3-17 of this code; and

(12) Exempt particular transactions, or particular categories of transactions, from the requirements of this article; provided that the director, in consultation with any relevant spending unit, shall determine such exemption to be in the best interest of the state.

(13) Make the resources and expertise of the division available to spending units exempted from the requirements of this article: *Provided*, That the director may, in consultation with the relevant spending unit, assess an exempt spending unit for the division’s reasonable costs in order to ensure sufficient staffing and other resources to timely provide all necessary or requested assistance to the various spending units of the state.

WV Legislature

§5A-3-3a. Additional exemptions from purchasing requirements.

(a) The provisions of §5A-3-3(9) of this code do not apply to the Division of Emergency Management created by §15-5-1 *et seq*. of this code: *Provided*, That if work on a purchase or contract has been started by the Purchasing Division, on behalf of the Division of Emergency Management, prior to the effective date of this section, the Purchasing Division shall continue to perform services for the Division of Emergency Management on that purchase or contract until the contract is awarded or the purchase is made, or the Division of Emergency Management decides not to make the purchase or award the contract.

(b) Notwithstanding any other provision of this code, the Agency for Surplus Property is hereby empowered to transfer funds generated from the sale of vehicles, other equipment, and commodities belonging to the West Virginia Division of Emergency Management to a special revenue account within the Division of Emergency Management entitled the West Virginia Division of Emergency Management, WV Interoperable Radio Project Account.

WV Legislature

§5A-3-3b. Exemption of facilities providing direct patient care services that are managed, directed, controlled and governed by the Secretary of the Department of Health Facilities.

Notwithstanding any provisions of section one or three of this article to the contrary, the provisions of this article do not apply to facilities providing direct patient care services that are managed, directed, controlled and governed by the Secretary of the Department of Health Facilities: *Provided*, That on or before July 1, 2020, the Legislative Auditor shall audit the purchasing procedures of the facilities described in this section and report the results to the Joint Committee on Government and Finance on the effects of exempting said facilities from the provisions of this article, including, but not limited to, any realized cost savings and changes in purchasing policies resulting from such exemption.

WV Legislature

§5A-3-3c. Exemptions from purchasing requirements for contracts entered into as part of recovery from a declared state of emergency.

(a) The provisions of this article do not apply to contracts entered into during a state of emergency declared by the Governor pursuant to §15-5-6 of this code, so long as the contract is directly and solely related to the recovery from the declared state of emergency.

(b) The provisions of this article do not apply to the renewal of a contract entered into during a state of emergency declared pursuant to §15-5-6 of this code, if the contract is directly and solely related to the recovery from the declared state of emergency during which the contract was initially entered. For purposes of this subsection, recovery does not include permanent reconstruction after the initial state of emergency has ended.

(c) The provisions of this article do not apply to the purchase of goods or services from the federal government, or an agency thereof, if the purchase of those goods and services is directly and solely related to the recovery from a state of emergency declared pursuant to §15-5-6 of this code.

(d) At the discretion of the Chief Information Officer, the provisions of this article may not apply to the purchase, procurement, or implementation of information technology in response to a qualified cyber security incident, as defined by §5A-6C-3 of this code: *Provided*, That the information technology is imminently necessary to protect the state's infrastructure or data.

(e) To qualify for the exemption contained in this section, the Director of the Division of Homeland Security and Emergency Management must certify that the contract or purchase is directly and solely related to the recovery from a declared state of emergency and attach a copy of the proclamation issued by the Governor's office to the certification. Such certifications shall be maintained by the Division of Homeland Security and Emergency Management until the contracts or purchase agreements have been fully executed.

(f) For purposes of this section, "directly and solely related" means that the goods or services being purchased or contracted for will be used for recovery from the state of emergency only and will not be used for any other purpose.

WV Legislature

§5A-3-3d. Exemption of Rural Health Transformation Program.

(a) The Legislature hereby finds and declares:

(1) That the federal Rural Health Transformation Program presents an unprecedented opportunity for the State to make critical improvements to health care in rural areas, modernize various aspects of health care delivery systems, enhance educational and work force pathways for health care, and expand the technological boundaries of health care science, analytics, and technology for the benefit of all West Virginians;

(2) That the federal Rural Health Transformation Program places many significant compliance requirements on the use of federal funds granted to the Department of Health, that use of funds received from the federal Rural Health Transformation Program must be used in accordance with the requirements and limitations of that program reflected in guidance and documentation from U.S. Center for Medicare and Medicaid Services ("CMS");

(3) That CMS will be closely monitoring the progress of the State's implementation of the program outlined in its application for funding submitted to CMS on November 5, 2025, and granted an award on or about December 29, 2025;

(4) That the federal Rural Health Transformation Program requires rapid, targeted deployment of the awarded funds; and

(5) That such utilization be performed within rigid time frames, with the understanding that failures to comply with the limitations on how these funds may be used—as well as requirements on proper processes for the deployment—may result in clawbacks of funds both currently awarded as well as jeopardizing future awards by CMS.

(b) To ensure conformity with the unique requirements of the federal Rural Health Transformation Program, notwithstanding any provisions of §5A-3-1 or § 5A-3-3 of this code to the contrary, the provisions of this article shall not apply to the State's implementation of the Rural Health Transformation Program, for which the program office is located within the Department of Health.

WV Legislature

§5A-3-4. Rules of director.

(a) The director shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq*. of this code to:

(1) Authorize a spending unit to purchase specified commodities and services directly and prescribe the manner in which such purchases shall be made;

(2) Prescribe the manner in which emergency purchases made under § 5A-3-1(d) shall be reported to the director;

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

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

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

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

(7) Prescribe a system whereby the director shall be required, upon the payment by a vendor of an annual fee established by the director, to give notice to such vendor of all bid solicitations for commodities and services of the type with respect to which such vendor specified notice was to be given, but no such fee shall exceed the cost of giving the notice to such vendor, nor shall such fee exceed the sum of $125 per fiscal year nor shall such fee be charged to persons or entities seeking only reimbursement from a spending unit or to persons or entities only seeking to accept moneys granted by a spending unit under a grant agreement;

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

(9) Prescribe contract management procedures for all state contracts except government construction contracts including, but not limited to, those set forth in §5-22-1 *et seq*. of this code;

(10) Prescribe procedures by which oversight is provided to actively monitor spending unit purchases, including, but not limited to, all technology and software commodities and services exceeding $1 million, approval of change orders and final acceptance by the

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spending units;

(11) Prescribe that each state contract entered into by the Purchasing Division contain provisions for the cancellation of the contract upon 30 days' notice to the vendor;

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

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

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

(b) A person may not be employed as a state buyer unless he or she at the time of employment fulfills either of the following requirements:

(1) A graduate of an accredited college or university in a field determined relevant by the director; or

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

Persons serving as State buyers are subject to the provisions of §29-6-1 *et seq*. of this code. Any director of the Purchasing Division hired after July 1, 2022, shall serve at the will and pleasure of the secretary and may not be subject to the provisions of §29-6-1 *et seq*. of this code.

WV Legislature

§5A-3-5. Purchasing section standard specifications -- Promulgation and adoption by director; applicable to all purchases.

(a) The director shall promulgate and adopt standard specifications based on scientific and technical data for appropriate commodities and services, which shall establish the quality to which commodities to be purchased and services to be contracted for by the state must conform.

(b) Standard specifications shall apply to every future purchase of or contract for the commodities or services described in the specifications and shall include information relating to the cost of maintenance and expected life of the commodity if the director determines there are nationally accepted industry standards for the commodity.

(c) No purchases by any spending unit may be exempt from compliance with the standard specifications so established, but the director may exempt the purchase of particular items from the standard specifications if it is considered necessary and advisable.

(d) The director shall update the standard specifications, as necessary.

WV Legislature

§5A-3-6. Purchasing section standard specifications -- Advisers from spending units.

The secretary may from time to time request any official or employee of any spending unit to aid and advise the director in formulating, revising or amending the schedule of standard specifications provided for in section five of this article. Such official or employee shall act at the request of the secretary and shall be entitled to receive his necessary expenses incurred in compliance therewith, but shall receive no additional compensation therefor.

WV Legislature

§5A-3-7. Director to advise with heads of state and other institutions producing commodities, services and printing.

The director shall advise with the heads of the various state and other institutions producing commodities, services and printing, with the view to making these articles suitable for the needs of state spending units. Notwithstanding any provision of this code to the contrary, in the event of conflict between state and other institutions producing commodities, services and printing with preference in accordance with the code, the director shall determine which institution shall provide a commodity, service or printing, basing such determination on quality, price and the efficient and economical operation of state government.

WV Legislature

§5A-3-8. Facilities of division available to local governmental bodies.

The director shall make available the facilities and services of his or her division to counties, county schools, municipalities, urban mass transportation authorities, created pursuant to §8-27-1 et seq. of this code, mass transportation divisions of county and municipal governments, fire departments, and other local governmental bodies within this state. The actual expenses incurred thereby shall be paid by the local governmental body.

WV Legislature

§5A-3-8a. Facilities of division available to volunteer fire departments and emergency medical services.

The director shall make available the facilities and services of his or her division to fire departments and companies, including volunteer and part-volunteer departments and companies, as well as to emergency medical services agencies that are designated to provide emergency response by one or more county emergency dispatch centers. The director shall provide, whether by legislative rule proposed pursuant to §29-3-1 et seq. of this code or other agreement entered into between the director and another governmental body or agency of the state, for the implementation of this section.

WV Legislature

§5A-3-9. Examination and testing of purchases; report required.

Within the limit of funds available, the director, or some person appointed by the director, shall determine whether commodities delivered or services performed conform to contractual requirements. Nonconformity shall be reported to the director and chief officer of the spending unit purchasing such commodities or services for remedial action.

WV Legislature

§5A-3-9a. Creation of a fund.

The "Vendor Registration Payment Fund" is hereby redesignated and continued as the "Vendor Fee Fund," and the balance remaining upon the effective date of this section shall remain upon redesignation. Moneys deposited in this fund shall be administered by the Purchasing Division and used for the purposes established in this article. Expenditures are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions of article two, chapter eleven-b of this code: Provided, That for the fiscal year beginning July 1, 2006, expenditures are authorized from deposits rather than pursuant to appropriations by the Legislature.

Amounts collected which are found from time to time to exceed the funds needed for purposes set forth in this article may be transferred to other accounts or funds and used for other purposes by appropriation of the Legislature.

WV Legislature

§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; continuing procurements over $1 million.

(a) A purchase of and contract for commodities, printing, and services shall be based on competitive bids, except when another method of procurement is determined to be in the best interest of the State.

(b) The director shall solicit, on behalf of spending units, sealed bids for the purchase of commodities and printing which is estimated to exceed $25,000. The director may delegate the procurement of commodities, services, or printing estimated to be $25,000 or less to the spending unit. The director may set a higher or lower delegated procurement limit for a particular spending unit if the director determines that such action would be in the best interest of the spending unit and the State. In no event may the director authorize more than $100,000 of delegated procurement authority to a spending unit.

(c) Spending units shall not make an individual purchase in excess of the delegated procurement limit established in subsection (b) of this section, issue a series of requisitions for the same or similar commodity or service or divide or plan procurements with the intention to circumvent the delegated procurement limit established in subsection (b), or otherwise avoid the use of sealed bids. Any spending unit that discovers it has awarded multiple contracts for the same or similar commodity or service to an individual vendor over any 12-month period shall file copies of all contracts awarded or orders placed for the commodity, service, or printing in question within the 12 preceding months with the director upon exceeding the delegated limit, along with a statement explaining how either the multiple contract awards or orders do not circumvent the delegated procurement limit, or how the contracts or orders were not intended to circumvent the delegated limit. If the spending unit does not report to the director within a reasonable period, the director shall contact the spending unit to request such statement and may suspend the purchasing authority of the spending unit until the spending unit complies with the reporting requirement of this subsection, as determined appropriate. The director may conduct a review of any spending unit to ensure compliance with this subsection. Following a review, in consultation with the relevant spending unit, the director shall complete a report summarizing his or her findings and forward the report to the spending unit. In addition, the director shall report to the Joint Committee on Government and Finance on January 1 and July 1 of each year the spending units which have reported under this subsection and the findings of the director.

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

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

(f) (1) The director may, without competitive bidding, purchase commodities and services produced and offered for sale by nonprofit workshops, as defined in §5A-1-1 of this code, which are located in this state: *Provided*, That the commodities and services shall be of a fair market price and of like quality comparable to other commodities and services otherwise available as determined by the director.

(2) To encourage contracts for commodities and services with nonprofit workshops, the director shall employ a person whose responsibilities in addition to other duties are to identify all commodities and services available for purchase from nonprofit workshops, to evaluate the need of the state for commodities and services to coordinate the various nonprofit workshops in their production efforts, and to make available to the workshops information about available opportunities within state government for purchase of commodities or services which might be produced and sold by such workshops. Funds to employ such a person shall be included annually in the budget.

(g) For all commodities and services in an amount exceeding $1 million, if the procurement of the commodity or service is continuing in nature, 12 months prior to the expiration of the contract or final renewal option, whichever is later, the spending unit shall coordinate with the Purchasing Division on a new procurement for such commodity or service under the requirements of this article. This procurement shall be awarded or terminated no later than 180 days after the procurement specifications have been finally approved by the Purchasing Division.

WV Legislature

§5A-3-10a. Prohibition for awarding contracts to vendors which owe a debt to the State or its political subdivisions.

(a) Unless the context clearly requires a different meaning, for the purposes of this section, the terms:

(1) "Debt" means any assessment, premium, penalty, fine, tax or other amount of money owed to the state or any of its political subdivisions because of a judgment, fine, permit violation, license assessment, amounts owed to the Workers' Compensation Funds as defined in §23-2C-1 *et seq*. of this code, penalty or other assessment or surcharge presently delinquent or due and required to be paid to the state or any of its political subdivisions, including any interest or additional penalties accrued thereon.

(2) "Debtor" means any individual, corporation, partnership, association, limited liability company or any other form or business association owing a debt to the state or any of its political subdivisions, and includes any person or entity that is in employer default.

(3) "Employer default" means having an outstanding balance or liability to the old fund or to the uninsured employers' fund or being in policy default, as defined in §23-2C-2 of this code, failure to maintain mandatory workers' compensation coverage, or failure to fully meet its obligations as a workers' compensation self-insured employer. An employer is not in employer default if it has entered into a repayment agreement with the Insurance Commissioner and remains in compliance with the obligations under the repayment agreement.

(4) "Political subdivision" means any county commission; municipality; county board of education; any instrumentality established by a county or municipality; any separate corporation or instrumentality established by one or more counties or municipalities, as permitted by law; or any public body charged by law with the performance of a government function and whose jurisdiction is coextensive with one or more counties or municipalities.

(5) "Related party" means a party, whether an individual, corporation, partnership, association, limited liability company or any other form or business association or other entity whatsoever, related to any vendor by blood, marriage, ownership or contract through which the party has a relationship of ownership or other interest with the vendor so that the party will actually or by effect receive or control a portion of the benefit, profit or other consideration from performance of a vendor contract with the party receiving an amount that meets or exceeds five percent of the total contract amount.

(b) No contract or renewal of any contract may be awarded by the state or any of its political subdivisions to any vendor or prospective vendor when the vendor or prospective vendor or a related party to the vendor or prospective vendor is a debtor and:

(1) The debt owed is an amount greater than $1,000 in the aggregate; or

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(2) The debtor is in employer default.

(c) The prohibition of this section does not apply where a vendor has contested any tax administered pursuant to Chapter 11 of this code, amount owed to the Workers' Compensation Funds as defined in §23-2C-1 *et seq*. of this code, permit fee or environmental fee or assessment and the matter has not become final or where the vendor has entered into a payment plan or agreement and the vendor is not in default of any of the provisions of such plan or agreement.

(d) By submitting a bid or contract proposal or entering into a contract with the state or any of its political subdivisions, the vendor or prospective vendor is deemed to be affirming that the vendor or prospective vendor or a related party to the vendor or prospective vendor is not in employer default and does not owe any debt in an amount in excess of $1,000 or, if a debt is owed, that the provisions of subsection (c) of this section apply. This affirmation, combined with verification of State tax compliance, will satisfy the public contracting entities verification requirements contained in §5-22-1(j) of this code.

WV Legislature

§5A-3-10b. Best value procurement.

(a) The director may utilize best value procurement to enter into a contract when he or she determines in writing that it is advantageous to the state.

(b) A solicitation for bids under best value procurement shall be made in the same manner as provided in §5A-3-10 of this code.

(c) Best value procurement awards shall be based on criteria set forth in the solicitation and information contained in the proposals submitted in response to the solicitation. Those criteria include, but are not limited to, price and the total cost of acquiring, operating, maintaining, and supporting a commodity or service over its projected lifetime, as well as technical criteria. The technical criteria may include, but are not limited to, the evaluated technical merit of the bidder's bid or proposal, the bidder's past performance, the degree to which a proposal exceeds other proposals in technical merit, the utility of any novel or unrequested items in the proposal, and the evaluated probability of performing the requirements stated in the solicitation on time, with high quality, and in a manner that accomplishes the business objectives set forth in the solicitation.

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

(e) The director may not use best value procurement to enter into government construction contracts, including, but not limited to, those set forth in §5-22-1 et seq. of this code.

WV Legislature

§5A-3-10c. Direct award procurement.

(a) The director may make a direct award of a contract without competitive bidding if:

(1) The spending unit requests a direct award in writing;

(2) The spending unit provides written justification showing that the direct award is in the best interest of the state;

(3) The spending unit provides written confirmation that competition is not available because there is no other source for the commodity or service, or that no other source would be willing or able to replace the existing source without a detrimental effect on the spending unit, the existence of a detrimental effect being determined by the director in his or her sole discretion;

(4) The director publicly advertises a notice of intent to make a direct award without competition in the state's official bid notification system, as well as any other public advertisement that the director deems appropriate, for no less than 10 business days; and

(5) No other vendor expresses an interest in providing the commodity or service in question.

(b) If a vendor expresses an interest in providing the commodity or service described in the notice of intent to make a direct award, then the spending unit must convert the direct award to a competitive bid, unless the director determines that the interest expressed by a vendor is unreasonable. The competitive bid may, at the discretion of the director, be either a request for quotation or request for proposal.

(c) The notice of intent to make a direct award shall contain the following information:

(1) A description of the commodity or service for which a direct award will be made;

(2) A time period by which delivery must be made or performance must occur;

(3) The price that will be paid for the commodity or service;

(4) Any limitations that a competing vendor would need to satisfy;

(5) An invitation to all vendors interested in providing the commodity or service to make that interest known; and

(6) Contact information for the director or his or her designee, and instructions to submit a statement of interest to the director or his or her designee.

(d) The director may refuse a spending unit's request to utilize a direct award procurement if the commodities or services have previously been obtained through competitive bidding.

WV Legislature

(e) On or before December 1, 2018, and annually thereafter, the director shall report to the Governor and the Joint Committee on Government and Finance on the spending units that have requested a direct award for their commodities or services, the type of commodity or service, and results of the direct award process.

WV Legislature

§5A-3-10d. Reverse auctions.

(a) Notwithstanding any other provision of this code, the director is hereby authorized to initiate reverse auctions to procure commodities. The director may not use reverse auctions for the procurement of services under any circumstances.

(b) Reverse auctions may be utilized if the director determines their use would be fair, economical and in the best interests of the state, and the commodities to be procured:

(1) Are subject to low price volatility;

(2) Have specifications that are common and not complex;

(3) Vary little between suppliers;

(4) Are sourced primarily based on price, with limited ancillary considerations;

(5) Require little collaboration from suppliers; and

(6) Are sold by a large, competitive supply base.

(c) For purposes of this section, "reverse auction" means a process by which bidders compete to provide commodities in an open and interactive market, including but not limited to the Internet. Reverse auction bids are opened and made public upon receipt by the director, and then bidders are given the opportunity to submit revised bids until the bidding process is complete. The contract is awarded to the lowest responsible bidder.

(d) The director may contract with qualified, industry-recognized third-party vendors to conduct reverse auctions on behalf of the director.

(e) The director shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to establish the procedures for conducting reverse auctions. The rules shall include procedures for contracting with qualified, industry-recognized third-party vendors.

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

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

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

"Prequalification agreement" means an agreement, having a term of no more than three years, between the Purchasing Division and at least two prequalified vendors authorizing a spending unit to purchase a commodity or service on a recurrent basis through the delegated prequalification bidding process defined in the prequalification agreement.

"Prequalified vendor" means a "vendor", as that term is defined in §5A-1-1 *et seq*. of this code, that has entered into a prequalification agreement with the Purchasing Division and may participate in the delegated prequalification bidding subject to the terms and conditions of the prequalification agreement.

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

(c) Prequalification agreement. —

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

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

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

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

(d) Delegated prequalification bidding procedures. —

(1) A spending unit may commence the delegated prequalification bidding process by issuing a request for a commodity or service identified in the prequalification agreement stating in

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the request the quantity of the commodity or if a service, the scope of work to be completed, to be procured.

(2) The prequalified vendor that submits the lowest bid, or if the solicitation is a best value procurement, the highest scoring responsive and responsible bidder when evaluating all factors in the best value procurement, in response to the request shall be awarded the procurement: *Provided*, That the solicitation for a best value procurement include the scoring criteria and all factors used to determine the highest scoring responsive and responsible bidder when the procurement request is released.

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

(e) Rule-making authority. — The Director of the Purchasing Division shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq*. of this code to implement this section, including, but not limited to, provisions to establish procedures for the solicitation and authorization of prequalification agreements, prequalification of vendors, and implementation of delegated prequalification bidding.

WV Legislature

§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.

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

(b) The director may authorize spending units to purchase commodities, printing and services in the amount of $2,500 or less in the open market without competitive bids: *Provided*, That the cost of maintenance and expected life of the commodities must be taken into consideration if the director determines there are nationally accepted industry standards for the commodities being purchased: *Provided, however*, That the director may authorize spending units to purchase commodities, printing, and services in an amount greater than $2,500 in the open market without competitive bids, subject to the limitations set forth in §5A-3-10(b) of this Code.

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

(d) A vendor who has been debarred pursuant to the provisions of §5A-3-33b through §5A-3-33f of this code may not bid on or be awarded a contract under this section.

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

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

(g) The bid must be received by the Purchasing Division prior to the specified date and time of the bid opening. The failure to deliver or the nonreceipt of the bid by the Purchasing

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Division prior to the appointed date and hour shall result in the rejection of the bid. The vendor is solely responsible for the receipt of bid by the Purchasing Division prior to the appointed date and hour of the bid opening. All bids will be opened publicly by two or more persons from the Purchasing Division. Vendors will be given notice of the day, time and place of the public bid opening. Bids may be viewed immediately after being opened.

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

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

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

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

WV Legislature

§5A-3-11a. Negotiation when all bids exceed budget in requisition.

(a) Spending units shall include the maximum budgeted amount available for each purchase in a requisition submitted to the Purchasing Division. No person may disclose this maximum budgeted amount to any vendor prior to the award of a contract. If all bids submitted pursuant to a solicitation exceed the funds available for the purchase, then a negotiated award may be made as set forth in this section.

(1) If the director determines in writing that there is only one responsive and responsible bidder, he or she may negotiate the price for a noncompetitive award or the specifications for a noncompetitive award based solely on the original purpose of the solicitation.

(2) If the Purchasing Division solicits bids with a request for quotation and there is more than one bidder, the director may negotiate with bidders determined in writing to be responsive and responsible, based on criteria contained in the bid invitation: Provided, That the director must negotiate first with the lowest bidder. If the director does not award the bid to the lowest bidder, he or she may close negotiations with that bidder and enter into negotiations with the next lowest bidder, and may continue to do so in like manner with the remaining responsive and responsible bidders. The director may not extend an offer to any bidder that is not first extended to the prior bidders in order of rank.

(3) If the Purchasing Division solicits bids utilizing a best value procurement, as set forth in section ten-b of this section, and there is more than one bidder, the director may negotiate with bidders determined in writing to be responsive and responsible, based on criteria contained in the bid invitation: Provided, That the director must negotiate first with the highest scoring bidder. If the director does not award the bid to the highest scoring bidder, he or she may close negotiations with that bidder and enter into negotiations with the next highest scoring bidder, and may continue to do so in like manner with the remaining responsive and responsible bidders. The director may not extend an offer to any bidder that is not first extended to the prior bidders in order of rank.

(b) After negotiations occur pursuant to subsection (a) of this section, if the director determines that more than fifteen percent of the value of the bid must be renegotiated by revising the specifications of the original solicitation, only a resolicitation may be initiated or the solicitation may be withdrawn.

(c) The director may not renegotiate with any bidder after closing negotiations with that bidder and entering into negotiations with the next bidder.

WV Legislature

§5A-3-11b. Discussion and final offers.

(a) As provided in the bid solicitation, the director may conduct discussions with, and obtain best and final offers from, responsive and responsible bidders who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Bidders must be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there may be no disclosure of any information derived from proposals submitted by competing bidders.

(b) The following contracts are exempt from this section:

(1) Government construction contracts, including, but not limited to, those set forth in article twenty-two, chapter five of this code; and

(2) The purchase of supplies and material.

WV Legislature

§5A-3-11c. Multiple awards.

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

WV Legislature

§5A-3-12. Prequalification disclosure and payment of annual fee by vendors required; form and contents; register of vendors; false certificates; penalties.

(a) The director may not accept any bid received from any vendor unless the vendor has paid the annual fee specified in §5A-3-4 of this code and has filed with the director a certificate of the vendor or the certificate of a member of the vendor's firm or, if the vendor is a corporation, the certificate of an officer, director or managing agent of the corporation, disclosing the following information:

(1) If the vendor is an individual, his or her name and city and state of residence and business address, and, if he or she has associates or partners sharing in his business, their names and city and state of residence and business addresses;

(2) If the vendor is a firm, the name and city and state of residence and business address of the firm;

(3) If the vendor is a corporation created under the laws of this state or authorized to do business in this state, the name and business address of the corporation;

(4) A statement of whether the vendor is acting as agent for some other individual, firm or corporation, and if so, a statement of the principal authorizing the representation shall be attached to the certificate or whether the vendor is doing business as another entity;

(5) The vendor's latest Dun & Bradstreet number and rating, if there is any rating as to the vendor; and

(6) The vendor's tax identification number.

(b) Whenever a change occurs in the information submitted as required, the change shall be reported immediately in the same manner as required in the original disclosure certificate.

(c) The certificate and information received by the director shall be public record.

(d) The director may waive the above requirements in the case of any corporation listed on any nationally recognized stock exchange and in the case of any vendor who or which is the sole source for the commodity in question.

(e) Any person who submits a false certificate or who knowingly files or causes to be filed with the director, a certificate containing a false statement of a material fact or omitting any material fact, is guilty of a misdemeanor and, upon conviction, shall be fined not more than $1,000, and, in the discretion of the court, confined in jail not more than one year. An individual convicted of a misdemeanor under this subsection may never hold an office of honor, trust or profit in this state, or serve as a juror.

WV Legislature

§5A-3-13. Contracts to be approved as to form; filing.

Contracts shall be approved as to form by the Attorney General. A contract that requires more than six months for its fulfillment shall be filed with the State Auditor.

WV Legislature

§5A–3-14.

Repealed.

Acts, 2010 Reg. Sess., Ch 169.

WV Legislature

§5A-3-14a.

Repealed.

Acts, 1990 Reg. Sess., Ch. 2.

WV Legislature

§5A-3-15. Emergency purchases in open market.

The director may authorize, in writing, a state spending unit to purchase in the open market, without filing requisition or estimate, specific commodities for immediate delivery to meet bona fide emergencies arising from unforeseen causes, including delays by contractors, delays in transportation and unanticipated volume of work. A report of any such purchase, together with a record of the competitive bids upon which it was based, shall be submitted at once to the director by the head of the state spending unit concerned, together with a full account of the circumstances of the emergency: Provided, That the director may waive the need for the record of competitive bids. Such report shall be entered on a record and shall be open to public inspection.

WV Legislature

§5A-3-16. Special fund; purposes; how composed.

There is hereby created a special revenue fund to be administered by the director to facilitate the following functions of the director:

(1) Purchase commodities in volume and maintain stocks to supply the needs of state spending units; and

(2) Performance of mimeographing, photostating, microfilming, multilithing, multigraphing and other work needed by spending units as provided by section twenty-seven of this article.

The amount of the fund may be fixed and changed by the Governor upon the recommendation of the secretary. If at the end of each fiscal year the cash balance plus value of commodity inventories on hand exceeds the amount so fixed, the excess in cash shall be transferred by the Governor upon recommendation of the secretary to the General Revenue Fund and become a part of the general revenue of the state. The fund shall be composed of the following:

(1) The cash balance and inventories of the fund heretofore established by this section; and

(2) Charges made by the director for commodities sold and services rendered to the state spending units as herein described: Provided, That charges shall not exceed total cost to the fund, which total cost shall include storage, supplies, equipment and salaries and wages of employees necessary to supply commodities and services in addition to purchase price of commodities.

WV Legislature

§5A-3-17. Purchases or contracts violating article void; personal liability.

If a spending unit purchases or contracts for commodities or services contrary to the provisions of this article or the rules and regulations made thereunder, in any material respect, as determined by the director, such purchase or contract shall be void and of no effect. The spending officer of such spending unit, or any other individual charged with responsibility for the purchase or contract, shall be personally liable for the costs of such purchase or contract and, if already paid out of state funds, the amount thereof may be recovered in the name of the state in an appropriate action instituted therefor: *Provided*, That the state establishes by a preponderance of the evidence that the individual acted knowingly and willfully.

WV Legislature

§5A-3-18. Substituting for commodity bearing particular trade name or brand.

If a spending unit requests the purchase of a commodity bearing a particular trade name or brand, the director may substitute, after consultation with the relevant spending unit, a commodity bearing a different trade name or brand, if the substituted commodity reasonably conforms to the adopted standard specifications and can be obtained at an equal or lower price.

WV Legislature

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

(a) Notwithstanding any other provision of this article, the director may, upon the recommendation of a state spending unit, participate in, sponsor, conduct, or administer a cooperative purchasing agreement or consortium for the purchase of commodities or services with agencies of the federal government, agencies of other states, other public bodies or other state agencies, if available and financially advantageous. At the discretion of the director, bids may be solicited to determine whether participation in such a cooperative purchasing agreement or consortium is financially advantageous.

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

WV Legislature

§5A-3-20. Spending units to submit lists of expendable commodities.

The head of every spending unit shall submit a list of expendable commodities such spending unit has on hand whenever requested to do so by the director.

WV Legislature

§5A-3-21.

Repealed.

Acts, 2010 Reg. Sess., Ch. 169.

WV Legislature

§5A-3-22.

Repealed.

Acts, 2010 Reg. Sess., Ch. 169.

WV Legislature

§5A-3-23.

Repealed.

Acts, 2010 Reg. Sess., Ch. 169.

WV Legislature

§5A-3-24.

Repealed.

Acts, 2010 Reg. Sess., Ch. 169.

WV Legislature

§5A-3-25.

Repealed.

Acts, 2010 Reg. Sess., Ch. 169.

WV Legislature

§5A-3-26.

Repealed.

Acts, 2010 Reg. Sess., Ch. 132.

WV Legislature

§5A-3-27.

Repealed.

Acts, 2008 Reg. Sess., Ch. 4.

WV Legislature

§5A-3-28. Financial interest of secretary, etc.; receiving reward from interested party; penalty; application of bribery statute.

(a) Neither the secretary, nor the director nor any employee of the Division of Purchasing, shall be financially interested, or have any beneficial personal interest, directly or indirectly, in the purchase of any commodities, services or printing, nor in any firm, partnership, corporation or association furnishing them. Neither the secretary, nor the director nor any employee of the Division of Purchasing, shall accept or receive directly or indirectly from any person, firm or corporation, known by such secretary, director or employee to be interested in any bid, contract or purchase, by rebate, gift or otherwise, any money or other thing of value whatsoever, or any promise, obligation or contract for future reward or compensation.

(b) A person who violates this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail not less than three months nor more than one year, or fined not less than $50 nor more than $1,000, or both, in the discretion of the court: Provided, That any person who violates any of the provisions of the last sentence of the first paragraph of this section under circumstances constituting the crime of bribery under the provisions of section three, article five-a, chapter sixty-one of this code, shall, upon conviction of bribery, be punished as provided in said article five-a.

WV Legislature

§5A-3-29. Penalty for violation of article.

Any person who knowingly and willfully violates a provision of this article, except where another penalty is prescribed, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail not less than ten days nor more than one year, or fined not less than ten nor more than $500, or both, in the discretion of the court.

WV Legislature

§5A-3-30. Statement of purpose; obtaining money and property under false pretenses or by fraud from the state; penalties; definition.

(a) The Legislature of the State of West Virginia hereby declares that the purpose of this statute is to promote equal and fair bidding for the purchase of commodities and services by the state, to eliminate fraud in the procurement of commodities and services by the state.

(b) It is unlawful for any person to obtain any services, money, goods or other property from the state under any contract made under the provisions of this article, by false pretense, token or representation, or by delivery of inferior commodities, with intent to defraud. A person who violates this subsection is guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility for not less than one year nor more than five years, and shall be fined not exceeding $10,000.

(c) It shall not be a defense to a charge under this section that: (1) The commodities or services purchased were accepted and used, or are being used, by the state; or (2) the commodities or services are functional or suitable for the purpose for which the commodities or services were purchased by the state notwithstanding the standard or specification issued by the purchasing agency or the division of purchasing.

(d) For the purpose of this section, "inferior commodities" includes, but shall not be limited to: (1) Any commodity which does not meet the specification or standard issued by the purchasing agency and the Division of Purchasing, or any change order approved by both the purchasing agency and Division of Purchasing; and (2) any commodity which is of a lesser quality, quantity or measure of any kind set forth within the specification or standard issued by the purchasing agency and the Division of Purchasing.

WV Legislature

§5A-3-31. Corrupt actions, combinations, collusions or conspiracies prohibited; penalties.

(a) It shall be unlawful for any person to corruptly act alone or combine, collude or conspire with one or more other persons with respect to the purchasing or supplying of services, commodities or printing to the state under the provisions of this article if the purpose or effect of such action, combination, collusion or conspiracy is either to: (1) Lessen competition among prospective vendors; or (2) cause the state to pay a higher price for such services, commodities or printing than would be or would have been paid in the absence of such action, combination, collusion or conspiracy; or (3) cause one prospective vendor or vendors to be preferred over one or more other prospective vendor or vendors.

(b) Any person who violates any provision of this section is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than one nor more than five years, and be fined not exceeding $10,000.

WV Legislature

§5A-3-32. Power of director to suspend right to bid; notice of suspension.

The director shall have the power and authority to suspend, for a period not to exceed one year, the right and privilege of a vendor to bid on state purchases when the director has reason to believe that such vendor has violated any of the provisions of the purchasing law or the rules and regulations of the director. Every vendor whose right to bid has been so suspended shall be notified thereof by a letter posted by certified mail containing the reason for such suspension.

WV Legislature

§5A-3-33. Review of suspension by secretary.

Any vendor whose right to bid on state purchases has been suspended by the director under the authority of the preceding section shall have the right to have the director's action reviewed by the secretary, who shall have the power and authority to set aside such suspension.

WV Legislature

§5A-3-33a.

Repealed.

Acts, 2006 Reg. Sess., Ch. 2.

WV Legislature

§5A-3-33b. Scope.

The provisions of sections thirty-three-a through thirty-three-f of this article govern the debarment of vendors with regard to bids under the following provisions of this code:

(a) Section one, article twenty-two, chapter five, relating to bids for construction contracts by the state and its subdivisions;

(b) Section eleven, article three, chapter five-a, relating to the purchase of supplies and printing by the state;

(c) Section eleven, article one, chapter seven, relating to bids for the purchase of commodities and printing by county commissions;

(d) Sections nineteen and twenty, article four, chapter seventeen, relating to bids for construction and reconstruction of state roads and bridges and the furnishing of materials and supplies therefor;

(e) Article nine-d, chapter eighteen, relating to the awarding of contracts by the School Building Authority; and

(f) Sections four and five, article five, chapter eighteen-b, relating to expenditures by the governing boards for higher education.

WV Legislature

§5A-3-33c. Duties.

The director has primary responsibility for administering the debarment process. The director's duties include:

(a) Obtaining lists of vendors declared ineligible under federal laws and regulations;

(b) Notification of all contracting officials for the state and its subdivisions regarding debarred vendors;

(c) Compiling and maintaining a current, consolidated list of all vendors that have been debarred or declared ineligible, the period of such debarment, and the reasons therefor;

(d) Investigating complaints about vendors from the officials of the state and its subdivisions responsible for contracting with vendors for supplies and services;

(e) Initiating and conducting debarment procedures;

(f) Proposing rules for legislative approval, pursuant to the provisions of article three, chapter twenty-nine-a of this code, for the operation of the debarment process described in the provisions of sections thirty-three-a through thirty-three-f of this article.

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§5A-3-33d. Grounds for debarment.

(a) Grounds for debarment are:

(1) Conviction of an offense involving fraud or a felony offense related to obtaining or attempting to obtain a public contract or subcontract;

(2) Conviction of any federal or state antitrust statute relating to the submission of offers;

(3) Conviction of an offense involving embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property related to the performance of a contract;

(4) Conviction of a felony offense demonstrating a lack of business integrity or business honesty that affects the present responsibility of the vendor or subcontractor;

(5) Default on obligations owed to the state, including, but not limited to, obligations owed to the workers' compensation funds, as defined in §23-2C-1 et seq. of this code, and obligations under the West Virginia Unemployment Compensation Act and West Virginia state tax and revenue laws. For purposes of this subdivision, a vendor is in default when, after due notice, the vendor fails to submit a required payment, interest thereon, or penalty, and has not entered into a repayment agreement with the appropriate agency of the state or has entered into a repayment agreement but does not remain in compliance with its obligations under the repayment agreement. In the case of a vendor granted protection by order of a federal bankruptcy court or a vendor granted an exemption under any rule of the Bureau of Employment Programs or the Insurance Commission, the director may waive debarment under §5A-3-33f of this code: Provided, That in no event may debarment be waived with respect to any vendor who has not paid all current state obligations for at least the four most recent calendar quarters, excluding the current calendar quarter, or with respect to any vendor who is in default on a repayment agreement with an agency of the state;

(6) The vendor is not in good standing with a licensing board, in that the vendor is not licensed when licensure is required by the law of this state, or the vendor has been found to be in violation of an applicable licensing law after notice, opportunity to be heard, and other due process required by law;

(7) The vendor is an active and knowing participant in dividing or planning procurements to circumvent the $25,000 threshold requiring a sealed bid or otherwise avoiding the use of a sealed bid;

(8) Violation of the terms of a public contract or subcontract for:

(A) Willful failure to substantially perform in accordance with the terms of one or more public contracts;

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(B) Performance in violation of standards established by law or generally accepted standards of the trade or profession amounting to intentionally deficient or grossly negligent performance on one or more public contracts;

(C) Use of substandard materials on one or more public contracts or defects in construction in one or more public construction projects amounting to intentionally deficient or grossly negligent performance, even if discovery of the defect is subsequent to acceptance of a construction project and expiration of any warranty thereunder; or

(D) A repeated pattern or practice of failure to perform so serious and compelling as to justify debarment; or

(9) Any other cause of a serious and compelling nature amounting to knowing and willful misconduct of the vendor that demonstrates a wanton indifference to the interests of the public and that caused, or that had a substantial likelihood of causing, serious harm to the public.

(b) For the purposes of this section, the term “conviction” includes, but may not be limited to, the entering of a deferred prosecution agreement or a plea of guilty or nolo contendere, including pleading to a lesser or related offense in exchange for some form of prosecutorial leniency.

WV Legislature

§5A-3-33e. Debarment procedure.

(a) The director shall obtain lists of vendors declared ineligible under federal laws and regulation and lists of vendors who are in default on state obligations, and shall initiate debarment proceedings with respect to such vendors, except when good cause is shown which includes evidence that the vendor has become responsible.

(1) In the case of federal ineligibility restrictions applicable to state agencies, the director shall also notify the appropriate agencies of any ineligibility determined under federal authority.

(2) The director may also initiate debarment proceedings if he or she finds probable cause for debarment for any ground set forth in section thirty-three-d of this article.

(3) The director shall initiate debarment proceedings when any state agency requests debarment of a vendor and the director finds that probable cause for debarment exists.

(b) The director shall notify the vendor by certified mail, return receipt requested, of the following:

(1) The reasons for the proposed debarment in sufficient detail to put the vendor on notice of the conduct or transactions upon which the proposed debarment is based;

(2) The causes relied upon for the proposed debarment;

(3) That within thirty working days after receipt of the notice, the vendor may submit in writing information and argument in opposition to the proposed debarment;

(4) The procedures governing debarment decision-making; and

(5) The potential effect of the proposed debarment.

(c) In the event a vendor wishes to contest the debarment decision, the director shall decide the matter in accordance with the provisions of article five, chapter twenty-nine-a of this code.

(d) In any debarment decision, the director shall make a specific finding, based on the substantial record, whether the public interest requires that the debarment decision extend to all commodities and services of the vendor, or whether the public interest allows the debarment decision to be limited to specific commodities or services.

(e) In any debarment decision, the director shall specify the length of the debarment period. The debarment period must be for the period of time that the director finds necessary and proper to protect the public from an irresponsible vendor.

(f) Proof of grounds for debarment must be clear and convincing.

WV Legislature

§5A-3-33f. Effects of debarment.

(a) Unless the director determines in writing that there is a compelling reason to do otherwise, the state and its subdivisions may not solicit offers from, award contracts to, nor consent to subcontract with a debarred vendor during the debarment period.

(b) The contracting officer may not exercise an option to renew or otherwise extend a current contract with a debarred vendor, nor a contract which is being performed in any part by a debarred subcontractor, unless the director approves the action in writing, based on compelling reasons for exercise of the option or extension.

(c) The debarment decision may extend to all commodities and services of the vendor, or may be limited to specific commodities or services, as the director specifically finds, in the debarment procedure under §5A-3-33e of this code, to be in the public interest based on the substantial record.

(d) The director may extend the debarment to include a related party of the vendor. The director shall follow the same procedure, and afford the affiliate like notice, hearing, and other rights, for extending the debarment to the affiliate as provided for under §5A-3-33e of this code for the debarment of the vendor. For purposes of this section, a "related party" may include:

(1) Spouses, parents, children, siblings, grandparents, or grandchildren of a debarred vendor or individual;

(2) Any individual or entity that partially or completely owns, controls, or influences, or is partially or completely owned, controlled, or influenced by the actions of a debarred vendor or individual;

(3) Entities that are related under common ownership or control with a debarred vendor; or

(4) A business entity or individual that has contracted with or employed a debarred vendor or individual to perform work on one or more public contracts.

(e) The director may reduce the period or extent of debarment, upon the vendor's request supported by documentation, for the following reasons:

(1) Newly discovered material evidence;

(2) Reversal of the conviction or judgment upon which debarment was based;

(3) Elimination of the causes for which the debarment was imposed; or

(4) Other good cause shown, including evidence that the vendor has become responsible.

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(f) The director may extend the debarment period for an additional period if the director determines that the extension is necessary to protect the interests of the state. Upon the expiration of a debarment period, the director shall extend the debarment period for any vendor who has not paid all current state obligations for at least the four most recent calendar quarters, exempting the current calendar quarter, and for any vendor who is in default on a repayment agreement with an agency of the state, until such time as the cause for the extended debarment is removed. If the director extends the debarment period, the director shall follow the same procedures, and afford the vendor like notice, hearing, and other rights for extending the debarment, as provided for debarment under §5A-3-33e of this code.

(g) A debarment under this article may be waived by the director with respect to a particular contract if the director determines the debarment of the vendor would severely disrupt the operation of a governmental entity to the detriment of the general public or would not be in the public interest.

WV Legislature

§5A-3-34. Authority over inventories and property.

The director shall, under the direction and supervision of the secretary, have full authority over inventories and property.

WV Legislature

§5A-3-35. Submission of annual inventories.

The head of every spending unit of State government shall, on or before July 15, of each year, make an accounting and inventory of, and file with the director, all real and personal property, and of all equipment, supplies and commodities in its possession as of the close of the last fiscal year.

WV Legislature

§5A-3-36. Inventory of removable property.

The director has the power and duty to make and keep current an inventory of all removable property belonging to the state. Such inventory shall be kept on file in the office of the director as a public record. The inventory shall disclose the name and address of the vendor, the date of purchase, the price paid for the property therein described and the disposition thereof.

WV Legislature

§5A-3-37. Reciprocal preference; preference for resident vendors for certain contracts.

(a) For purposes of this section, a vendor shall be deemed to be a resident of this state if such vendor:

(1) Is registered in accordance with §11-12-1 et seq. of this code to transact business within the State of West Virginia;

(2) Maintains its headquarters or principal place of business in the state;

(3) Has actually paid, and not just applied to pay, personal property taxes imposed by chapter 11 of this code on equipment used in the regular course of supplying services or commodities of the general type offered; and

(4) Has actually paid, and not just applied to pay, all required business taxes imposed by chapter 11 of this code.

(b) Except as provided in §5A-3-37(c) of this code, in any instance that a purchase of commodities or printing by the director or by a state spending unit is required under the provisions of this article to be made upon competitive bids, preference shall only be given to resident vendors of West Virginia against a nonresident vendor from any state that gives or requires a preference to bidders from that state. The amount of the preference shall be equal to the amount of the preference given or required by the state of the nonresident vendor for that particular supply.

(c)(1) In any instance that a purchase of motor vehicles or construction and maintenance equipment and machinery used in highway and other infrastructure projects by the director or by a state department is required under the provisions of this article to be made upon competitive bids, the successful bid shall be determined as provided in this subsection.

(2) For purposes of this subsection, a successful bid shall be determined and accepted as follows:

(A) From an individual resident vendor who has resided in West Virginia continuously for the four years immediately preceding the date on which the bid is submitted or from a partnership, association, corporation resident vendor, or from a corporation nonresident vendor which has an affiliate or subsidiary which employs a minimum of 100 state residents and which has maintained its headquarters or principal place of business within West Virginia continuously for four years immediately preceding the date on which the bid is submitted, if the vendor’s bid does not exceed the lowest qualified bid from a nonresident vendor by more than two and one-half percent of the latter bid, and if the vendor has made written claim for the preference at the time the bid was submitted: Provided, That for purposes of this paragraph, any partnership, association, or corporation resident vendor of this state which does not meet the requirements of this paragraph solely because of the

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continuous four-year residence requirement, shall be considered to meet the requirement if at least 80 percent of the ownership interest of the resident vendor is held by another individual, partnership, association, or corporation resident vendor who otherwise meets the requirements of this paragraph, including the continuous four-year residency requirement: Provided, however, That the Purchasing Division shall promulgate rules relating to attribution of ownership among several resident vendors for purposes of determining the 80 percent ownership requirement; or

(B) From a resident vendor, if, for purposes of producing or distributing the motor vehicles or the construction and maintenance equipment and machinery used in highway and other infrastructure projects which are the subject of the vendor's bid and continuously over the entire term of the contract, on average at least 75 percent of the vendor's employees are residents of West Virginia who have resided in the state continuously for the two immediately preceding years, and the vendor's bid does not exceed the lowest qualified bid from a nonresident vendor by more than two and one-half percent of the latter bid, and if the vendor has certified the residency requirements of this paragraph and made written claim for the preference, at the time the bid was submitted; or

(C) From a nonresident vendor, which employs a minimum of 100 state residents or a nonresident vendor which has an affiliate or subsidiary which maintains its headquarters or principal place of business within West Virginia and which employs a minimum of 100 state residents, if, for purposes of producing or distributing the motor vehicles or the construction and maintenance equipment and machinery used in highway and other infrastructure projects which are the subject of the vendor's bid and continuously over the entire term of the contract, on average at least 75 percent of the vendor's employees or the vendor's affiliate's or subsidiary's employees are residents of West Virginia who have resided in the state continuously for the two immediately preceding years and the vendor's bid does not exceed the lowest qualified bid from a nonresident vendor by more than two and one-half percent of the latter bid, and if the vendor has certified the residency requirements of this paragraph and made written claim for the preference, at the time the bid was submitted; or

(D) From a vendor who meets either the requirements of both §5A-3-37(c)(2)(A) and §5A-3-37(c)(2)(B) of this code or §5A-3-37(c)(2)(A) and §5A-3-37(c)(2)(C) of this code, if the bid does not exceed the lowest qualified bid from a nonresident vendor by more than five percent of the latter bid, and if the vendor has certified the residency requirements above and made written claim for the preference at the time the bid was submitted; or

(E) From an individual resident vendor who is a veteran of the United States armed forces, the reserves or the National Guard and has resided in West Virginia continuously for the four years immediately preceding the date on which the bid is submitted, if the vendor's bid does not exceed the lowest qualified bid from a nonresident vendor by more than three and one-half percent of the latter bid, and if the vendor has made written claim for the preference at the time the bid was submitted; or

(F) From a resident vendor who is a veteran of the United States armed forces, the reserves

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or the National Guard, if, for purposes of producing or distributing motor vehicles or construction and maintenance equipment and machinery used in highway and other infrastructure projects which are the subject of the vendor's bid and continuously over the entire term of the contract, on average at least 75 percent of the vendor's employees are residents of West Virginia who have resided in the state continuously for the two immediately preceding years and the vendor's bid does not exceed the lowest qualified bid from a nonresident vendor by more than three and one-half percent of the latter bid, and if the vendor has certified the residency requirements of this paragraph and made written claim for the preference, at the time the bid was submitted; or

(G) Notwithstanding any provisions of §5A-3-37(c)(2)(A), §5A-3-37(c)(2)(B), §5A-3-37(c)(2)(C), §5A-3-37(c)(2)(D), §5A-3-37(c)(2)(E), or §5A-3-37(c)(2)(F) of this code to the contrary, if any nonresident vendor that is bidding on the purchase of motor vehicles or construction and maintenance equipment and machinery used in highway and other infrastructure projects by the director or by a state department is also certified as a small-, women-, or minority-owned business pursuant to §5A-3-59, the nonresident vendor shall be provided the same preference made available to any resident vendor under the provisions of this subdivision.

(3) If any of the requirements or provisions set forth in this section jeopardize the receipt of federal funds, then the requirement or provisions are void and of no force and effect for that specific project.

(4) The Purchasing Division shall promulgate any rules necessary to: (A) Determine that vendors have met the residence requirements described in this section; (B) establish the procedure for vendors to certify the residency requirements at the time of submitting their bids; (C) establish a procedure to audit bids which make a claim for preference permitted by this section and to reject noncomplying bids; and (D) otherwise accomplish the objectives of this subsection.

(d) If the Purchasing Division determines under any audit procedure that a vendor who received a preference under this section fails to continue to meet the requirements for the preference at any time during the term of the contract for which the preference was received the Purchasing Division may: (1) Reject the vendor's bid; or (2) assess a penalty against the vendor of not more than five percent of the vendor's bid on the contract.

(e) Political subdivisions of the state including county boards of education may grant the same preferences to any vendor of this state who has made a written claim for the preference at the time a bid is submitted, but for the purposes of this subsection, in determining the lowest bid, any political subdivision shall exclude from the bid the amount of business occupation taxes which must be paid by a resident vendor to any municipality within the county comprising or located within the political subdivision as a result of being awarded the contract which is the object of the bid; in the case of a bid received by a municipality, the municipality shall exclude only the business and occupation taxes as will be paid to the municipality: Provided, That prior to soliciting any competitive bids, any political subdivision may, by majority vote of all its members in a public meeting where all the votes

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are recorded, elect not to exclude from the bid the amount of business and occupation taxes as provided in this subsection.

WV Legislature

§5A–3-37a.

Repealed.

Acts, 2010 Reg. Sess., Ch. 169.

WV Legislature

§5A–3-38.

Repealed.

Acts, 2010 Reg. Sess., Ch. 169.

WV Legislature

§5A–3-39.

Repealed.

Acts, 2010 Reg. Sess., Ch. 169.

WV Legislature

§5A–3-40.

Repealed.

Acts, 2010 Reg. Sess., Ch. 169.

WV Legislature

§5A-3-40a.

Repealed.

Acts, 2007 Reg. Sess., Ch. 214.

WV Legislature

§5A–3-41.

Repealed.

Acts, 2010 Reg. Sess., Ch. 169.

WV Legislature

§5A–3-42.

Repealed.

Acts, 2010 Reg. Sess., Ch. 169.

WV Legislature

§5A-3-43. State agency for surplus property created.

There is hereby established within the Purchasing Division and under the supervision of the director of the Purchasing Division the state agency for surplus property.

WV Legislature

§5A-3-44. Authority and duties of state agency for surplus property.

(a) The state agency for surplus property is hereby authorized and empowered (1) to acquire from the United States of America such property, including equipment, materials, books or other supplies under the control of any department or agency of the United States of America as may be usable and necessary for educational, fire protection and prevention, rescue, or public health purposes, including research; (2) to warehouse property acquired; and (3) to distribute the property to tax-supported medical institutions, hospitals, clinics, fire departments, rescue squads, health centers, school systems, schools, colleges and universities within the state, and to other nonprofit medical institutions, hospitals, clinics, volunteer fire departments, volunteer rescue squads, health centers, schools, colleges and universities within the state which have been held exempt from taxation under the Internal Revenue Code of 1986, as amended.

(b) For the purpose of executing its authority under this article, the state agency for surplus property is authorized and empowered to adopt, amend or rescind rules and regulations as may be deemed necessary, and take other action necessary and suitable in the administration of this article, including the enactment and promulgation of rules and regulations necessary to bring this article and its administration into conformity with any federal statutes or rules and regulations promulgated under federal statutes for the acquisition and disposition of surplus property.

(c) The state agency for surplus property is authorized and empowered to appoint advisory boards or committees necessary to the end that this article and the rules and regulations promulgated hereunder conform with federal statutes and rules and regulations promulgated under federal statutes for the acquisition and disposition of surplus property.

(d) The state agency for surplus property is authorized and empowered to take action, make expenditures and enter into contracts, agreements and undertakings for and in the name of the state, require reports, and make investigations as may be required by law or regulation of the United States of America in connection with the receipt, warehousing and distribution of property received by the state agency for surplus property from the United States of America.

(e) The state agency for surplus property is authorized and empowered to act as a clearinghouse of information for the public and private nonprofit institutions and agencies referred to in subsection (a) of this section, to locate property available for acquisition from the United States of America, to ascertain the terms and conditions under which the property may be obtained, to receive requests from the above-mentioned institutions and agencies and to transmit to them all available information in reference to the property, and to aid and assist the institutions and agencies in every way possible in the consummation or acquisition of transactions hereunder.

(f) The state agency for surplus property shall cooperate to the fullest extent consistent with the provisions of this article, with the departments or agencies of the United States of

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America and shall make reports in the form and containing the information the United States of America or any of its departments or agencies may from time to time require, and it shall comply with the laws of the United States of America and the rules and regulations of any of the departments or agencies of the United States of America governing the allocation, transfer, use or accounting for property donable or donated to the state.

WV Legislature

§5A-3-45. Disposition of surplus state property; semiannual report; application of proceeds from sale.

(a) The State agency for surplus property has the exclusive power and authority to make disposition of commodities or expendable commodities now owned or in the future acquired by the State when the commodities are or become obsolete or unusable or are not being used or should be replaced: *Provided*, That the director may grant authority to spending units to make disposition of commodities or expendable commodities in appropriate circumstances when determined by the director to be in the State's best interest.

(b) The agency shall determine what commodities or expendable commodities should be disposed of and make disposition in the manner which will be most advantageous to the state. The disposition may include:

(1) Transferring the particular commodities or expendable commodities between departments, after consultation with any relevant spending units, and recording the transfer in accordance with governmental accounting standards;

(2) Selling the commodities to county commissions, county boards of education, municipalities, public service districts, county building commissions, airport authorities, parks and recreation commissions, nonprofit domestic corporations qualified as tax exempt under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or volunteer fire departments in this state when the volunteer fire departments have been held exempt from taxation under Section 501(c) of the Internal Revenue Code 1986, as amended;

(3) Trading in the commodities as a part payment on the purchase of new commodities;

(4) Cannibalizing the commodities pursuant to procedures established under §5A-3-45(g) of this code;

(5) Properly disposing of the commodities as waste;

(6) Selling the commodities to the general public at the posted price or to the highest bidder by means of public auctions or sealed bids, after having first advertised the time, terms, and place of the sale as a Class II legal advertisement in compliance with the provisions of §59-3-1 et seq. of this code. The publication area for the publication is the county in which the sale is to be conducted. The sale may also be advertised in other advertising media that the agency considers advisable. The agency may sell to the highest bidder or to any one or more of the highest bidders, if there is more than one, or, if the best interest of the state will be served, reject all bids; or

(7) Selling the commodities to the highest bidder by means of an internet auction site approved by the director, as set forth in a legislative rule pursuant to the provisions of §29A-3-1 *et seq*. of this code.

(c) Upon the sale to the general public, or upon the sale of commodities or expendable

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commodities to an eligible organization, the agency shall set the price to be paid by the receiving eligible organization, with due consideration given to current market prices.

(d) The agency may sell expendable, obsolete, or unused motor vehicles owned by the state to an eligible organization, other than volunteer fire departments. In addition, the agency may sell expendable, obsolete, or unused motor vehicles owned by the state with a gross weight in excess of 4,000 pounds to an eligible volunteer fire department. The agency, with due consideration given to fair market value as determined by an independent automotive pricing guide, shall set the price at a fair market price to be paid by the receiving eligible organization for motor vehicles sold pursuant to this provision. The fair market value shall be based on a thorough inspection of the vehicle by an employee of the agency who shall consider the mileage of the vehicle and the condition of the body, engine, and tires as indicators of its fair market value. If no fair market value is available, the agency shall set the price to be paid by the receiving eligible organization with due consideration given to current market prices. The duly authorized representative of the eligible organization, for whom the motor vehicle or other similar surplus equipment is purchased or otherwise obtained, shall cause ownership and proper title to the motor vehicle to be vested only in the official name of the authorized governing body for whom the purchase or transfer was made. The ownership or title, or both, shall remain in the possession of that governing body and be nontransferable for a period of not less than one year from the date of the purchase or transfer. Resale or transfer of ownership of the motor vehicle or equipment prior to an elapsed period of one year may be made only by reason of certified unserviceability.

(e) The agency shall report to the Legislative Auditor, semiannually, all sales of commodities or expendable commodities made during the preceding six months to eligible organizations. The report shall include a description of the commodities sold, the price paid by the eligible organization which received the commodities, and to whom each commodity was sold.

(f) The proceeds of the sales or transfers shall be deposited in the State Treasury to the credit on a pro rata basis of the fund or funds out of which the purchase of the particular commodities or expendable commodities was made: *Provided*, That the agency may charge and assess fees reasonably related to the costs of care and handling with respect to the transfer, warehousing, sale, and distribution of state property disposed of or sold pursuant to the provisions of this section. Notwithstanding §5A-3-45(e) of this code, if the fund or funds out of which the purchase was made no longer exist, the spending unit may designate an alternate fund within which the proceeds must be deposited.

(g)(1) For purposes of this section, “cannibalization” means the removal of parts from one commodity to use in the creation or repair of another commodity.

(2) The Director of the Purchasing Division shall propose for promulgation legislative rules to establish procedures that permit the cannibalization of a commodity when it is in the best interests of the state. The procedures shall require the approval of the director prior to the cannibalization of the commodity under such circumstances as the procedures may prescribe.

WV Legislature

(3)(A) Under circumstances prescribed by the procedures, state agencies shall be required to submit a form, in writing or electronically, that, at a minimum, elicits the following information for the commodity the agency is requesting to cannibalize:

(i) The commodity identification number;

(ii) The commodity's acquisition date;

(iii) The commodity's acquisition cost;

(iv) A description of the commodity;

(v) Whether the commodity is operable and, if so, how well it operates;

(vi) How the agency will dispose of the remaining parts of the commodity; and

(vii) Who will cannibalize the commodity and how the person is qualified to remove and reinstall the parts.

(B) If the agency has immediate plans to use the cannibalized parts, the form shall elicit the following information for the commodity or commodities that will receive the cannibalized part or parts:

(i) The commodity identification number;

(ii) The commodity's acquisition date;

(iii) The commodity's acquisition cost;

(iv) A description of the commodity;

(v) Whether the commodity is operable;

(vi) Whether the part restores the commodity to an operable condition; and

(vii) The cost of the parts and labor to restore the commodity to an operable condition without cannibalization.

(C) If the agency intends to retain the cannibalized parts for future use, it shall provide information justifying its request.

(D) The procedures shall provide for the disposal of the residual components of cannibalized property.

(h)(1) The Director of the Purchasing Division shall propose for promulgation legislative rules to establish procedures that allow State agencies to dispose of commodities in a landfill, or by other lawful means of waste disposal, if the value of the commodity is less than

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the benefit that may be realized by the state by disposing of the commodity using another method authorized in this section. The procedures shall specify circumstances where the State agency for surplus property shall inspect the condition of the commodity prior to authorizing the disposal and those circumstances when the inspection is not necessary prior to the authorization.

(2) Whenever a State agency requests permission to dispose of a commodity in a landfill, or by other lawful means of waste disposal, the state agency for surplus property has the right to take possession of the commodity and to dispose of the commodity using any other method authorized in this section.

(3) If the State agency for surplus property determines, within 15 days of receiving a commodity, that disposing of the commodity in a landfill or by other lawful means of waste disposal would be more beneficial to the state than disposing of the commodity using any other method authorized in this section, the cost of the disposal is the responsibility of the agency from which it received the commodity.

WV Legislature

§5A-3-46. Warehousing, transfer, etc., charges.

Any charges made or fees assessed by the state agency for surplus property for the acquisition, warehousing, distribution or transfer of any property acquired by donation from the United States of America for educational purposes or public health purposes, including research, shall be limited to those reasonably related to the costs of care and handling in respect to its acquisition, receipts, warehousing, distribution or transfer by the state agency for surplus property. All charges designated herein shall be used by the state agency for surplus property to defray the general operating expenses of the state agency for surplus property.

WV Legislature

§5A-3-47. Department of agriculture and other agencies exempted.

Notwithstanding any provisions or limitations of this article, the state Department of Agriculture and any other state departments or agencies hereafter so designated are authorized and empowered to distribute food, food stamps, surplus commodities and agricultural products under contracts and agreements with the federal government or any of its departments or agencies, and the state Department of Agriculture and any other state departments or agencies hereafter so designated are authorized and empowered to adopt rules and regulations in order to conform with federal requirements and standards for such distribution and also for the proper distribution of such food, food stamps, commodities and agricultural products. To the extent set forth in this section, the provisions of this article shall not apply to the state Department of Agriculture and any other state departments or agencies hereafter so designated for the purposes set forth in this section.

WV Legislature

§5A-3-48. Travel rules; exceptions.

(a) The Secretary of Administration shall promulgate rules, including emergency rules, relating to the ownership, purchase, use, storage, maintenance and repair of all motor vehicles and aircraft owned or possessed by the State of West Virginia or any of its departments, divisions, agencies, bureaus, boards, commissions, offices or authorities.

(b) If, in the judgment of the Secretary of Administration, economy or convenience indicate the expediency thereof, the secretary may require all vehicles and the aircraft subject to regulation by this article, or those he or she may designate, to be kept in garages and other places of storage and to be made available in a manner and under the terms necessary for the official use of any departments, institutions, agencies, officers, agents and employees of the state as designated by the secretary in rules promulgated pursuant to this section.

(c) The secretary may administer the travel regulations promulgated by the Governor in accordance with section eleven, article three, chapter twelve of this code, unless otherwise determined by the Governor.

WV Legislature

§5A-3-49

Repealed

Acts, 2018 Reg. Sess., Ch. 106.

WV Legislature

§5A-3-50. Acquiring and disposing of vehicles and aircraft.

The secretary shall be empowered to purchase new vehicles and aircraft and dispose of old vehicles and aircraft as is practical from time to time.

WV Legislature

§5A-3-51. Maintenance and service to vehicles and aircraft.

The secretary may utilize any building or land owned by the state, any department, institution or agency thereof, for the storing, garaging, and repairing of such motor vehicles and aircraft. The secretary shall provide for the employment of personnel needed to manage said motor pool and to repair and service such vehicles and aircraft and for the purchase of gasoline, oil, and other supplies for use in connection therewith, and may utilize the facilities, services and employees of any department, institution or agency of the state to effectuate the purposes thereof.

WV Legislature

§5A-3-52. division; fund.

(a) The secretary may establish an aviation division within the Department of Administration to:

(1) Manage all aircraft owned or possessed by the State of West Virginia or any of its departments, divisions, agencies, bureaus, boards, commissions, offices or authorities: Provided, That, such aircraft shall not be used for personal purposes;

(2) Administer the rules, including emergency rules, promulgated under the provisions of §5A-3-48 of this code; and

(3) Perform any duties relating to aircraft owned or possessed by the State of West Virginia assigned by the secretary, which duties may include those set out in §5A-3-50 through §5A-3-53 of this code.

(b) The special revenue account, known as the Aviation Fund, is hereby continued and shall be administered by the director of the division, or in the absence of a director, by the secretary. Expenditures from this fund are authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of §12-3-1 et seq. of this code and upon fulfillment of the provisions of §11B-2-1 et seq. of this code. Any balance remaining in the special revenue account at the end of any state fiscal year does not revert to the General Revenue Fund but remains in the special revenue account and shall be used solely in a manner consistent with this article. All costs and expenses incurred pursuant to §5A-3-52 of this code, including administrative, shall be paid from those funds. Charges for operating, repairing and servicing aircraft made against any institution, agency, or department shall be paid into the Aviation Fund by that institution, department, or agency.

WV Legislature

§5A-3-53. Enforcement of travel management regulations.

If any state officer, agent or employee fails to comply with any rule or regulation of the secretary made pursuant to section forty-eight of this article, the State Auditor shall, upon order of the secretary, refuse to issue any warrant or warrants on account of expenses incurred, or to be incurred, in the purchase, operation, maintenance, or repairs of any motor vehicle or aircraft now or to be in the possession or under the control of such officer, agent or employee. The secretary may take possession of any state-owned vehicle or aircraft and transfer it to the central motor pool or to make such other disposition thereof as the secretary may direct.

WV Legislature

§5A–3-54.

Repealed.

Acts, 2010 Reg. Sess., Ch. 169.

WV Legislature

§5A–3-55.

Repealed.

Acts, 2010 Reg. Sess., Ch. 169.

WV Legislature

§5A–3-55a.

Repealed.

Acts, 2010 Reg. Sess., Ch. 169.

WV Legislature

§5A-3-56. Preference for the use of domestic steel products in state contract projects; exceptions; civil penalties.

(a)(1) Except when authorized pursuant to the provisions of subsection (b) of this section, no contractor may use or supply steel products for a state contract project other than those steel products made in the United States.

(2) As used in this section:

(A) "State contract project" means any erection or construction of, or any addition to, alteration of or other improvement to any building or structure, including, but not limited to, roads or highways, or the installation of any heating or cooling or ventilating plants or other equipment, or the supply of any materials for such projects, pursuant to a contract with the State of West Virginia for which bids were solicited on or after the effective date of this section.

(B) "Steel products" means products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated or otherwise similarly processed, or processed by a combination of two or more of such operations, from steel made by the open hearth, basic oxygen, electric furnace, bessemer or other steel making process.

(C) "United States" means the United States of America and includes all territory, continental or insular, subject to the jurisdiction of the United States.

(b) Notwithstanding any provision of subsection (a) of this section to the contrary, the director of the Purchasing Division may, in writing, authorize the use of foreign steel products if:

(1) The cost for each contract item used does not exceed one tenth of one percent of the total contract cost or $2,500, whichever is greater. For the purposes of this section, the cost is the value of the steel product as delivered to the project; or

(2) The director of the Purchasing Division determines that specified steel materials are not produced in the United States in sufficient quantity or otherwise are not reasonably available to meet contract requirements.

(c) A contractor who uses steel products in violation of subsection (a) of this section shall pay a civil penalty equal to one and one-half times the cost of the steel products used in violation of said subsection: Provided, That any contractor in violation of this section who relied in good faith upon documents of title and origin indicating that the steel products were made in the United States shall not be subject to the civil penalty. All civil penalties paid pursuant to this section shall be collected by the director and deposited in the General Revenue Fund of the state.

(d) When the director of the Purchasing Division has reasonable cause to believe that a contractor has used or is using steel products in violation of subsection (a) of this section,

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the director shall conduct an investigation to determine whether the contractor has used or is using steel products in violation of said subsection. Upon a finding by the director pursuant to the investigation that the contractor has used or is using steel products in violation of subsection (a) of this section, the director shall request the Attorney General to commence an action under this section against the contractor for the violation. Any action under this section is a civil action.

(e) If any of the requirements or provisions set forth in this section jeopardize the receipt of federal funds, then such requirement or provision shall be void and of no force and effect.

(f) It is the intent of the Legislature that the provisions of article nineteen, chapter five of this code continue in force, except to the extent that if any provision of said article is construed to conflict with a provision of this section, the conflict shall be resolved in favor of the provisions of this section.

(g) This section may be cited as the "West Virginia American Steel Act of 2001."

WV Legislature

§5A-3-57. Buy American task force; study; report.

(a) Findings. -- The Legislature finds that:

(1) The production of iron, steel, manufactured goods, coal and timber provides jobs and family income to many individuals in this state and, in turn, the jobs and family incomes of millions of persons in the United States;

(2) The taxes paid to the state and its political subdivisions by employers and employees engaged in the production and sale of iron, steel, manufactured goods, coal and timber are a large source of public revenues for West Virginia;

(3) The economy and general welfare of West Virginia and its people and the economy and general welfare of the United States are inseparably linked to the preservation and development of manufacturing, harvesting and mineral extraction industries in this state, as well as all the other states of this nation;

(4) The state's taxpayer dollars are better spent if reinvested with its individual and employer taxpayers in order to foster job retention and growth, particularly within the manufacturing, harvesting and mineral extraction sectors, and to ensure a broad and healthy tax base for future investments vital to the state's infrastructure; and

(5) West Virginia's procurement policies should reflect the state's and the nation's principles ensuring that the products of those companies and workers who abide by workplace safety and environmental laws, rules and regulations should be rewarded with a commonsense preference in government contracting.

(b) Declaration of policy. -- It is the policy of West Virginia that the state and its political subdivisions should aid and promote the economy of this state and the United States by requiring a preference for the procurement of iron, steel, manufactured goods, coal and timber produced in the United States in all contracts for the construction, reconstruction, repair, improvement or maintenance of public buildings and public works projects.

(c) The Purchasing Division and the Division of Labor shall jointly convene the task force created in subsection (d) of this section to study the use of American-made construction materials and manufactured goods in the various aspects of the construction and maintenance of public buildings and public works projects of the state and its political subdivisions which are funded in part by state grants, state loans or state appropriations.

(d) A task force is hereby created to assist the divisions with this study. The task force shall consist of:

(1) An architect, an engineer and a contractor, each designated by his or her respective licensing board;

(2) One representative of the largest organization representing West Virginia manufacturers;

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(3) One representative each from the Division of Highways, the School Building Authority, the Water Development Authority, the General Services Division and the Higher Education Policy Commission; and

(4) Four labor representatives chosen by the largest labor organization in the state.

(e) The study shall include, but not be limited to:

(1) The need to maintain a list of all suppliers qualified to provide construction materials and manufactured goods produced in the United States;

(2) The percentage of domestically produced construction materials and manufactured goods to be included in a construction project to qualify it as built with American made construction materials and manufactured goods; and

(3) Possible changes to the bid process, including waiver requirements.

(f) The directors of the Purchasing Division and the Division of Labor shall report the Joint Committee on Government and Finance, by December 31, 2012, on the task force's findings on the best methods of promoting the American production of iron, steel, manufactured goods, coal and timber and creating jobs through a buy American mandate, as well as the burdens and benefits of such mandate on the construction industry in West Virginia and the state's public building and public works projects.

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§5A-3-58. Creation of the Purchasing Improvement Fund.

There is hereby created in the state Treasury a special revenue account to be known as the Purchasing Improvement Fund. The Purchasing Improvement Fund shall receive funds transferred from the Purchasing Card Administration Fund by the Auditor pursuant to section ten-d, article three, chapter twelve of this code and shall be administered by the secretary. Expenditures from the fund shall be for the purposes set forth in this article and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions of article two, chapter eleven-b of this code: Provided, That for the fiscal year ending June 30, 2008, expenditures are authorized from collections rather than pursuant to appropriation by the Legislature.

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§5A-3-59. Small, women, and minority-owned businesses.

(a) As used in this section:

(1) "Minority individual" means an individual who is a citizen of the United States or a noncitizen who is in full compliance with United States immigration law and who satisfies one or more of the following definitions:

(A) "African American" means a person having origins in any of the original peoples of Africa and who is regarded as such by the community of which this person claims to be a part.

(B) "Asian American" means a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands, including, but not limited to, Japan, China, Vietnam, Samoa, Laos, Cambodia, Taiwan, Northern Mariana, the Philippines, a U.S. territory of the Pacific, India, Pakistan, Bangladesh, or Sri Lanka and who is regarded as such by the community of which this person claims to be a part.

(C) "Hispanic American" means a person having origins in any of the Spanish-speaking peoples of Mexico, South or Central America, or the Caribbean Islands or other Spanish or Portuguese cultures and who is regarded as such by the community of which this person claims to be a part.

(D) "Native American" means a person having origins in any of the original peoples of North America and who is regarded as such by the community of which this person claims to be a part or who is recognized by a tribal organization.

(2) "Minority-owned business" means a business concern that is at least 51 percent owned by one or more minority individuals or in the case of a corporation, partnership, or limited liability company or other entity, at least 51 percent of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more minority individuals and both the management and daily business operations are controlled by one or more minority individuals.

(3) "Small business" means a business, independently owned or operated by one or more persons who are citizens of the United States or noncitizens who are in full compliance with United States immigration law, which, together with affiliates, has 250 or fewer employees, or average annual gross receipts of $10 million or less averaged over the previous three years.

(4) "State agency" means any authority, board, department, instrumentality, institution, agency, or other unit of state government. "State agency" does not include any county, city, or town.

(5) "Women-owned business" means a business concern that is at least 51 percent owned by one or more women who are citizens of the United States or noncitizens who are in full compliance with United States immigration law, or in the case of a corporation, partnership

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or limited liability company or other entity, at least 51 percent of the equity ownership interest is owned by one or more women who are citizens of the United States or noncitizens who are in full compliance with United States immigration law, and both the management and daily business operations are controlled by one or more women who are citizens of the United States or noncitizens who are in full compliance with United States immigration law.

(b) The Department of Administration shall propose rules for legislative approval pursuant to §29A-3-1 *et seq.* of this code, to implement certification programs for small, women, and minority-owned businesses. These certification programs shall deny certification to vendors from states that deny like certifications to West Virginia-based small, women, or minority-owned businesses or that provide a preference for small, women, or minority-owned businesses based in that state that is not available to West Virginia-based businesses. The rules shall:

(1) Establish minimum requirements for certification of small, women, and minority-owned businesses;

(2) Provide a process for evaluating existing local, state, private sector and federal certification programs that meet the minimum requirements; and

(3) Mandate certification, without any additional paperwork or fee, of any prospective state vendor that has obtained certification under any certification program that is determined to meet the minimum requirements established in the regulations.

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§5A-3-60. Annual purchasing training.

(a) All executive department secretaries, commissioners, deputy commissioners, assistant commissioners, directors, deputy directors, assistant directors, department heads, deputy department heads and assistant department heads are hereby required to take two hours of training on purchasing procedures and purchasing cards annually.

(b) The Director of the Purchasing Division and the Auditor shall offer the two-hour training required by this section at least two times per year and shall develop its substance in accordance with the requirements of this article and other relevant provisions of this code. The training shall be recorded by audio and visual means and shall be made available to the individuals listed in subsection (a) of this section in the event they are unable to attend the training in person.

(c) All individuals listed in subsection (a) of this section shall certify, in writing and on a form developed by the Director of the Purchasing Division, the date, time, location and manner in which they took the training. Completed forms shall be returned to the director and maintained in his or her office.

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§5A-3-61. Standardization.

(a) Notwithstanding any provision in this article to the contrary, a spending unit may utilize the process described in this section to standardize purchases of commodities used by the spending unit on a repeated basis. Such standardization may result in a determination that only a specific brand name for the commodity in question will be used.

(b) Standardization is limited to commodities that represent a core function of the spending unit's mission; would yield a savings of time and money if standardized; and either require testing or evaluation to determine accuracy or consistency or require interoperability in a larger system or network. Savings of time and money must be shown without considering the traditional procurement process or the standardization process.

(c) Any standardization established under this section shall be valid for no more than four years. Upon expiration, the spending unit establishing the standardization may either take no action, which would allow the standardization to end, or undertake the process outlined in this section to establish a new standard.

(d) A spending unit desiring to establish a standard must use the following procedure:

(1) The head of the spending unit must identify the commodity to be standardized and request approval from the director to establish a standard. The head of the spending unit shall provide to the director written certification and supporting evidence verifying that the requirements for standardization have been met.

(2) The spending unit must identify the individual or individuals that will be evaluating the commodity for standardization. Each individual must certify that he or she has no conflict of interest and can evaluate the information used to standardize without favoritism or bias. At least one individual involved in the standardization evaluation must be the spending unit's procurement officer. If the spending unit has no procurement officer, the individual responsible for the spending unit's procurement must participate in the evaluation.

(3) The spending unit must advertise the intent to standardize as a request for information in the system used at that time to solicit competitive bids. The spending unit should also identify all known entities that would have an interest in providing a commodity for evaluation and ensure that they receive notice of the request for information. The request for information must be advertised and allow for responses for no less than 30 calendar days. The request for information must notify the vendor community of the following:

(A) That the spending unit is attempting to standardize state procurements for the commodity in question;

(B) That any entity interested in having its products considered for standardization should provide information on the benefits and drawbacks of that entity's products;

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(C) Any evaluation criteria that the spending unit will use in the standardization decision;

(D) The date and time by which documentation must be provided; and

(E) The approximate date and time by which a decision will be made.

(4) If the spending unit desires to conduct product testing, it must notify vendors in the request for information and establish a time period during which tests will be performed. Vendors may provide commodities for demonstration, testing, and evaluation so long as such items are provided at no cost and no risk to the state. A written record describing the nature of the testing performed and a written record of the results of that testing shall be produced pursuant to any testing conducted on all the commodities being considered. The written record of testing and results shall be provided to the Purchasing Division and preserved.

(5) The spending unit will evaluate the information received in response to the request for information, information the spending unit has obtained from its own research, the results of any product testing, and anything else the spending unit finds relevant to establish a pending standardization.

(6) The spending unit must advertise the pending standardization as a request for information in the system used at that time to solicit competitive bids for a minimum of 15 calendar days. The request for information must notify the vendor community and any vendor who has participated in the standardization evaluation process of the following:

(A) The pending decision to standardize, including any brand name that has been tentatively selected the standard;

(B) The rationale for the selection made in the pending standardization;

(C) That comments may be submitted for review for a period of 15 calendar days from the date of the advertisement;

(D) The date and time by which a final decision will be made, which will be no less than three days after the comment period has ended; and

(E) The location where the final decision will be posted.

(7) The spending unit must review the comments submitted in response to the pending standardization advertisement and make any adjustments that it deems necessary.

(8) The head of the spending unit shall notify the director of a selection of the standard commodity, and the director shall post the results of the standardization decision on the Purchasing Division’s website. The spending unit shall also specifically notify any vendor who participated in the standardization evaluation process of the results in writing, within five business days of the final standardization selection.

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(e) Any vendor that participated in the standardization process may appeal the standardization decision to the head of the spending unit. The head of the spending unit shall consider the appeal in accordance with the administrative procedures established in chapter 29A of this code.

(f) Once a standard has been established, the Purchasing Division is authorized to solicit competitive bids on behalf of the spending unit in the form of a request for quotation for the standardized commodity.

(g) The director may develop any necessary forms and reporting templates for use in standardization approval, testing, reporting, or any other forms necessary to carry out the provisions of this section. Such forms and reports shall be maintained by the Purchasing Division.

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§5A-3-62. Prohibited contract clauses.

(a) Any term or condition in any contract entered into by the state shall be void ab initio to the extent that it requires the state to:

(1) Indemnify or hold harmless any entity;

(2) Agree to binding arbitration or any other binding extra-judicial dispute resolution process;

(3) Limit liability for direct damages for bodily injury, death, or damage to property (tangible or intangible) caused by the negligence or willful misconduct of such person's employees or agents;

(4) Agree to shorten statutes of limitation established by this code;

(5) Allow automatic renewal of contracts without express written consent of the state;

(6) Agree to payment in advance (unless specifically authorized by statute or the policy of the West Virginia State Auditor);

(7) Agree to jurisdiction anywhere other than a court authorized by the West Virginia Legislature to hear the dispute;

(8) Be governed by any law other than the laws of the State of West Virginia or required federal law;

(9) Pay court costs;

(10) Pay taxes;

(11) Waive defenses;

(12) Permit assignment of contracts without express written consent from the state;

(13) Treat information as confidential contrary to the state's disclosure responsibilities under any applicable bid disclosure laws and the Freedom of Information Act;

(14) Agree to unsigned third-party terms and conditions;

(15) Limit the state's ability to cancel a contract for convenience with 30 days' notice;

(16) Give up its ownership rights or interest in any information or data, including confidential information, provided to, or collected by, a vendor on behalf of the state;

(17) Maintain any type of insurance; or

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(18) Permit modification of contract terms without prior approval from the state.

(b) No official, employee, agent, or representative of the state has the authority to contravene this section, and no oral or written expression of consent to any term or condition declared void ab initio by this section, or signature on a contract, may be deemed as such. Any contract that contains a term or condition declared void ab initio by this section shall otherwise be enforceable as if it did not contain such term or condition. All contracts entered into by the state, except for contracts with another government, shall be governed by West Virginia law notwithstanding any term or condition to the contrary.

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§5A-3-63. Prohibition on contracting with companies that boycott Israel.

(a) The Legislature finds that:

(1) The State of Israel is one of the United States' closest allies and international trading partners; and

(2) In recent years, the State of Israel and Israeli-owned businesses have been the target of boycotts that attempt to isolate Israel within the international community have served as a vehicle for spreading anti-Semitism and advocating for the elimination of the Jewish State of Israel.

(3) The State of West Virginia has an economic and a humanitarian obligation to denounce and reject the Boycott, Divestment, and Sanctions Movement against Israel, and to prevent the state or any of its instrumentalities from contracting with companies that engage in the movement;

(b) *Definitions*. – For the purposes of this section:

(1) "Boycott of Israel" means engaging in actions that are intended to penalize, inflict economic harm on, or otherwise limit commercial relations with the State of Israel or companies based in the State of Israel or in territories controlled by the State of Israel.

(2) "Company" means a corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, organization, association, or any other business entity that has 10 or more employees and operates to earn a profit: *Provided*, That the term does not include a sole proprietorship.

(3) "Public entity" means the state of West Virginia, or any political subdivision thereof, and all spending units of state government including those otherwise excluded from applicability under §5A-3-1 of this code.

(c) Effective July 1, 2022, a public entity may not enter into a contract with a company for goods or services valued at $100,000 or more unless the contract includes a written certification that the company is not currently engaged in, and will not for the duration of the contract, engage in a boycott of Israel.

(d) Any contract that violates the requirements of this section shall be void as against public policy.

(e) The Director of the Purchasing Division is authorized to promulgate legislative rules, including emergency rules, to implement the provisions of this section.

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§5A-3-64. First Amendment Preservation Act.

(a) This section shall be known and may be cited as the First Amendment Preservation Act and is hereby established by the Legislature for the purpose of preventing the state and its agencies from contracting with advertising agencies that use the services of misinformation or disinformation media reliability and bias monitors to ensure that state moneys do not fund viewpoint discrimination and that state funding advertising reaches the broadest possible audience without regard for political ideology or viewpoint.

(b) For the purposes of this section:

"Agency" means any state department, division, board, commission, institution, or other administrative agency of state government, institutions of higher education using state funds, or any political subdivisions of the state.

"Company" means any sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly owned subsidiaries, majority owned subsidiaries, or parent companies that exist for the purpose of making a profit or that are nonprofit entities.

"Media reliability and bias monitor" means a company whose primary or principal function is rating or ranking news and information sources for the factual accuracy of their content, whether published online, in print, by audio, or digitally, or by broadcasting via radio, television, cable, streaming service, or any other ways news is delivered to the public, or that provide ratings or rankings of news sources based on misinformation, bias, adherence to journalistic standards, or ethics, including, but not limited to, organizations that claim to engage in fact checking or determining overall news accuracy. For purposes of this section, the term "media reliability and bias monitor" does not include a company that only rates media outlets for audience size, viewership, and demographic information, or that monitors media outlets for the purposes of compiling press or video clippings or aggregating news sources.

(c) Notwithstanding any other provision of this code to the contrary, an agency may not:

(1) Enter into any contract or other agreement with any media reliability and bias monitor for purposes of directing the agency's advertising placements or for use of the agency's programmatic advertising purchases;

(2) Enter into any contract or agreement with any advertising or marketing agency that uses the services of a media reliability and bias monitor for purposes of directing the agency's advertising placements or for use of the agency's programmatic advertising purchases; or

(3) Enter into any contract with an entity directly or indirectly associated with any person or entity connected to:

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(A) The list of persons determined to be foreign adversaries by the Secretary of Commerce of the United States under 15 C.F.R. 791.4;

(B) The terrorist exclusion list compiled by the Secretary of State of the United States in consultation with the Attorney General of the United States under 8 U.S.C. 1182;

(C) The list of countries determined by the Secretary of State of the United States that have repeatedly provided support for acts of international terrorism under 50 U.S.C. 4813(c) and 22 U.S.C. 2780(d); and

(D) The list of individual and entities designated by, or in accordance with Executive Order 13224, issued by the President of the United States on September 23, 2021, or Executive Order 13268, issued by the President of the United States on July 2, 2002.

(d) Any agency seeking to contract for advertising or marketing services shall require all companies submitting a bid or proposal to provide written certification that the company is neither a media reliability and bias monitor nor planning to use the services of a media reliability and bias monitor for the purposes of the contract or agreement with the agency. Prior to extending, renewing, or otherwise changing or modifying an agreement or contract for advertising or marketing services in effect prior to the effective date of this section, an agency shall obtain written certification from the contractor it is neither a media reliability and bias monitor nor planning to use the services of a media reliability and bias monitor for the purposes of the contract or agreement with the agency.

(e) Nothing in this section shall be construed to prevent an agency from contracting for services which aggregate news articles and information relevant to the agency or its constituents or to prevent a company from providing analytical or statistical information on the performance of advertisements placed by an agency.

(f) The provisions of this section enacted apply to all policies, contracts, plans, or agreements subject to this section that are delivered, executed, amended, adjusted, or renewed on or after July 1, 2026.

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