WEST VIRGINIA CODE CHAPTER 5a ARTICLE 1

WV Legislature

§5A-1-1. Definitions.

For the purpose of this chapter:

(1) "Commodities" means supplies, material, equipment and any other articles or things used by or furnished to a department, agency or institution of state government.

(2) "Contract" means an agreement between a state spending unit and a vendor relating to the procurement of commodities or services, or both.

(3) "Debarment" means the exclusion of a vendor from the right to bid on contracts to sell goods or supply services to the state or its subdivisions for a specified period of time.

(4) "Director" means the director of the division referred to in the heading of the article in which the word appears.

(5) "Electronic" means electrical, digital, magnetic, optical, electromagnetic or any other similar technology.

(6) "Electronic transmission" or "electronically transmitted" means any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval and reproduction of information by the recipient.

(7) "Expendable commodities" means those commodities which, when used in the ordinary course of business, will become consumed or of no market value within the period of one year or less.

(8) "Grant" means the furnishing of assistance, financial or otherwise, to any person or entity to support a program authorized by law.

(9) "Nonprofit workshops" means an establishment: (A) Where any manufacture or handiwork is carried on; (B) which is operated either by a public agency or by a cooperative or by a nonprofit private corporation or nonprofit association in which no part of the net earnings thereof inures, or may lawfully inure, to the benefit of any private shareholder or individual; (C) which is operated for the primary purpose of providing remunerative employment to blind or severely disabled persons who cannot be absorbed into the competitive labor market; and (D) which shall be approved, as evidenced by a certificate of approval, by the State Board of Vocational Education, Division of Vocational Rehabilitation.

(10) "Printing" means printing, binding, ruling, lithographing, engraving and other similar services.

(11) "Procurement" means the buying, purchasing, renting, leasing or otherwise obtaining of commodities or services.

(12) "Public funds" means funds of any character, including federal moneys, belonging to or

WV Legislature

in the custody of any state spending unit.

(13) "Record" means information that is inscribed on a read-only tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(14) "Removable property" means any personal property not permanently affixed to or forming a part of real estate.

(15) "Request for quotations" means a solicitation for a bid where cost is the primary factor in determining the award.

(16) "Responsible bidder" means a vendor who has the capability to fully perform the contract requirements, and the integrity and reliability which will assure good-faith performance.

(17) "Responsive bidder" means a vendor who has submitted a bid which conforms in all material respects to the bid solicitation.

(18) "Secretary" means the Secretary of Administration.

(19) "Services" means the furnishing of labor, time, expertise or effort, not involving the delivery of a specific end commodity or product other than one that may be incidental to the required performance.

(20) "Spending officer" means the executive head of a spending unit, or a person designated by him or her.

(21) "Spending unit" means a department, bureau, department, division, office, board commission, authority, agency or institution of the state government for which an appropriation is requested of the Governor, or to which an appropriation is made by the Legislature, unless a specific exemption from this chapter is provided in this code.

(22) "The state and its subdivisions" means the State of West Virginia, every political subdivision thereof, every administrative entity that includes such a subdivision, all municipalities and all county boards of education.

(23) "Vendor" means any person or entity that may, through contract or other means, supply the state or its subdivisions with commodities or services, and lessors of real property.

WV Legislature

§5A-1-2. Department of Administration and Office of Secretary; secretary; divisions; directors.

(a) The Department of Administration and the Office of Secretary of Administration are continued in the executive branch of state government. The secretary is the chief executive officer of the department and shall be appointed by the Governor, by and with the advice and consent of the Senate, for a term not exceeding the term of the Governor.

(b) The Department of Administration may receive federal funds.

(c) The secretary serves at the will and pleasure of the Governor. The annual compensation of the secretary shall be as specified in §6-7-2a of this code.

(d) There shall be in the Department of Administration an Aviation Division, at the discretion of the secretary, a Finance Division, a Fleet Management Division, a General Services Division, Division of Personnel, and a Purchasing Division. Each division shall be headed by a director who may also head any and all sections within that division and who shall be appointed by the secretary.

(e) There shall also be in the Department of Administration those agencies, boards, commissions, and councils specified in §5F-2-1 of this code.

WV Legislature

§5A-1-2a.

Repealed.

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

WV Legislature

§5A-1-2b.

Repealed.

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

WV Legislature

§5A-1-2c.

Repealed.

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

WV Legislature

§5A-1-3. Powers and duties of secretary, division heads and employees.

The secretary shall have control and supervision of the Department of Administration and shall be responsible for the work of each of its employees. The secretary shall have such power and authority as specified in section two, article two, chapter five-f of this code. The secretary shall also have the authority to employ such assistants and attorneys as may be necessary for the efficient operation of the department. The secretary, the division heads and the employees of the department shall perform the duties herein specified and shall also perform such other duties as the Governor may prescribe.

WV Legislature

§5A-1-4. Council of finance and administration.

(a) The council of finance and administration is hereby created and shall be composed of eleven members, five of whom shall serve ex officio and six of whom shall be appointed as herein provided. The ex officio members shall be the secretary of the Department of Administration, the secretary of revenue, the Attorney General or his or her designee, the state Treasurer or his or her designee and the State Auditor or his or her designee; such designees being authorized voting ones. From the membership of the Legislature, the President of the Senate shall appoint three senators as members of the council, not more than two of whom shall be members of the same political party, and the Speaker of the House of Delegates shall appoint three delegates as members of the council, not more than two of whom shall be members of the same political party. Members of the council appointed by the President of the Senate and the Speaker of the House of Delegates shall serve at the will and pleasure of the officer making their appointment. The secretary of administration shall serve as chairman of the council. Meetings of the council shall be upon call of the chairman or a majority of the members thereof. It shall be the duty of the chairman to call no less than four meetings in each fiscal year, one in each quarter, or more often as necessary, and all meetings shall be open to the public. All meetings of the council shall be held at the capitol building in a suitable committee room which shall be made available by the Legislature for such purpose: Provided, That the second quarterly meeting in each fiscal year shall be held in November and shall be a joint meeting with the Joint Committee on Government and Finance of the Legislature called jointly by the President of the Senate, Speaker of the House of Delegates and secretary of administration.

(b) The council shall serve the Department of Administration and the director of the budget in an advisory capacity for purposes of reviewing the performance of the administrative and fiscal procedures of the state, including the oversight of all federal funds, and shall have the following duties:

(1) To advise with the director of the budget in respect to matters of budgetary intent and efficiency, including the budget bill and budget document detail and format;

(2) To advise with the secretary and the director of the budget concerning studies of government and administration concerning fiscal policy as it considers appropriate;

(3) To advise with the secretary and the director of the budget in the preparation of studies designed to provide long-term capital planning and finance for state institutions and agencies; and

(4) To advise with the secretary and the director of the budget in respect to the application for, and receipt and expenditure of, anticipated or unanticipated federal funds.

(c) The appointed, nonex officio members of the council shall be entitled to receive compensation and reimbursement for expenses in connection with performance of their duties, during interim periods, if not otherwise receiving the same for identical periods, as is

WV Legislature

authorized by the applicable sections of article two-a, chapter four of the code in respect to performance of duties either within the state or, if necessary, out of state. Compensation and expenses shall be incurred and paid only after approval by the Joint Committee on Government and Finance.

WV Legislature

§5A-1-5. Reports by secretary.

The secretary shall make an annual report to the Governor concerning the conduct of the department and the administration of the state finances as they pertain to programs administered by the Department of Administration. The secretary shall also make other reports as the Governor may require.

WV Legislature

§5A-1-6. Oath and bond of secretary; bond required for director of the Purchasing Division; bonds for other directors and employees; cost of bonds.

The secretary, before entering upon the duties of his office, shall take and subscribe to the oath prescribed by Section 5, Article IV of the Constitution of West Virginia. Notwithstanding any other provisions to the contrary, the secretary shall execute a bond in the penalty of $100,000, payable to the State of West Virginia, with a corporate bonding or surety company authorized to do business in this state as surety thereon, approved by the Governor, in form prescribed by the Attorney General and conditioned upon the faithful performance of his duties and the accounting for all money and property coming into his hands by virtue of his office. The oath and bond shall be filed with the Secretary of State.

The director of the Purchasing Division shall execute a bond in the penalty of $100,000 and any person employed as a state buyer in accordance with article three of this chapter shall execute a bond in the penalty of $50,000, payable to the State of West Virginia, with a corporate bonding or surety company authorized to do business in this state as surety thereon, approved by the Governor, in form prescribed by the Attorney General and conditioned upon the faithful performance of his duties under the provisions of this chapter and all rules and regulations promulgated pursuant to such chapter and the accounting for all money and property coming into his hands by virtue of his office or position. The bonds shall be filed with the Secretary of State. In lieu of separate bonds for state buyers, a blanket surety bond may be obtained. The other division directors and all other employees of the department shall be covered by bonds in cases where the secretary thinks it necessary, which bonds shall be in the penalty prescribed by the secretary and shall be filed with the Secretary of State.

The cost of all such surety bonds shall be paid from funds appropriated to the Department of Administration.

WV Legislature

§5A-1-7. Delegation of powers and duties by secretary.

The powers and duties vested in the secretary may be delegated by him to his assistants and employees, but the secretary shall be responsible for all official acts of the department.

WV Legislature

§5A-1-8. Right of appeal from interference with functioning of agency.

Upon occasion of a showing that the application of the authority vested under the provisions of this chapter may interfere with the successful functioning of any department, institution or agency of the government, such department, institution or agency may have the right of appeal to the Governor for review of the case and the decision or conclusion of the Governor shall govern in such cases.

WV Legislature

§5A-1-9. Reporting of state assets held to secretary and State Treasurer.

On or before July 1, 1990, the secretary of administration shall, pursuant to chapter twenty-nine-a of this code, promulgate rules requiring any and all banks, savings and loans or other financial institutions in possession of property or other assets belonging to the State of West Virginia to report on at least an annual basis, to the secretary and State Treasurer, the nature and value of said property.

WV Legislature

§5A-1-10. General procurement provisions for state spending units.

(a) Unless this code specifically provides to the contrary, all spending units, whenever possible, shall base purchases for commodities and services on a competitive process and utilize available statewide contracts.

(b) The secretary shall issue a notice to cease and desist to any spending unit when the secretary has credible evidence that a spending unit has failed, whenever possible, to purchase commodities and services on a competitive basis or to use available statewide contracts. Failure to abide by such notice may result in penalties set forth in section seventeen, article three of this chapter.

WV Legislature

§5A-1-11. State of West Virginia Equal Opportunity Coordinator.

(a) There is continued within the Department of Administration the position of the State Equal Opportunity Coordinator, who shall be appointed by the Secretary of the Department of Administration.

(b) The coordinator must be an employee of the Department of Administration and possess an in-depth working knowledge of the federal Americans with Disabilities Act, Title VII of the Civil Rights Act of 1964, The Equal Pay Act of 1963, the Age Discrimination in Employment Act of 1977, Sections 102 and 103 of the Civil Rights Act of 1991, Sections 501 and 505 of the Rehabilitation Act of 1973, and the Genetic Information Nondiscrimination Act of 2008. The coordinator shall also have an in-depth working knowledge of the challenges facing West Virginians covered under these Acts.

(c) The coordinator shall:

(1) Advise the Director of Personnel in the development of comprehensive policies and programs for the development, implementation, and monitoring of a statewide program to assure compliance with 42 U.S.C. §12101, *et seq*., the federal Americans with Disabilities Act, Title VII of the Civil Rights Act of 1964, The Equal Pay Act of 1963, the Age Discrimination in Employment Act of 1977, Sections 102 and 103 of the Civil Rights Act of 1991, Sections 501 and 505 of the Rehabilitation Act of 1973, and the Genetic Information Nondiscrimination Act of 2008;

(2) Assist in the formulation of rules and standards relating to the review, investigation, and resolution of complaints of discrimination in employment, education, housing, and public accommodation;

(3) Consult and collaborate with state and federal agency officials to develop compliance programs;

(4) Consult, train, and collaborate with, state agencies and state employees on the federal Equal Employment Opportunity Act, Americans with Disabilities Act, and related issues;

(5) Represent the state on local, state, and national committees and panels related to the Americans with Disabilities Act and the Equal Employment Opportunity Act;

(6) Advise the Governor and agency heads on federal Americans with Disabilities Act and Equal Employment Opportunity Act issues;

(7) Consult with state agencies on the hiring and employment of persons with disabilities; and

(8) Be available to inspect and advise the Real Estate Division, General Services Division, and the Purchasing Division on physical properties owned or leased by the State of West Virginia for compliance with 42 U.S.C. §12101, *et seq*., the federal Americans with

WV Legislature

Disabilities Act.

WV Legislature

§5A-1-12. Procedural rules required for exempt agencies.

(a) An agency that has been exempted from some or all of the requirements of this chapter, by either a provision of this chapter or in another provision of this code, shall adopt procedural rules, under §29A-3-1 *et seq.* or §29A-3A-1 *et seq.* of this code, establishing its purchasing procedures.

(b) For agencies that have been exempted prior to the effective date of this section, the written procedures shall be filed no later than September 1, 2020. After September 1, 2020, any agency which has not filed its procedural rule as required by this section shall follow the procurement requirements established by the Purchasing Division.

(c) For agencies that are exempted after the effective date of this section, the written procedures shall be filed before the exemption may take effect.

WV Legislature