



WEST VIRGINIA SECRETARY OF STATE

KRIS WARNER

ADMINISTRATIVE LAW DIVISION

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12/15/2025 3:44:30 PM

Office of West Virginia
Secretary Of State

NOTICE OF PUBLIC COMMENT PERIOD

AGENCY: Secretary Of State TITLE-SERIES: 153-57
RULE TYPE: Procedural Amendment to Existing Rule: No Repeal of existing rule: No
RULE NAME: Exempt Purchasing for Critical Election
Infrastructure
CITE STATUTORY AUTHORITY: W. Va. Code 51-1-12 and 5A-3-1

COMMENTS LIMITED TO:

Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 01/16/2026 5:00 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: David P. Cook
ADDRESS: State Capitol, Bldg. 1 , Ste. 157-K
Charleston, WV 25305
EMAIL: dcook@wvsos.gov

PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

PROVIDE A BRIEF SUMMARY OF THE CONTENT OF THE RULE:

Establishes the procedures of the Secretary of State's Office for procurements exempt from some or all the requirements of Chapter 5A of the We West Virginia Code.

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN THE RULE AND A STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE:

In 2025, the Legislature passed a law allowing the Secretary of State to be exempt from some requirements of Chapter 5A related to purchases of critical election infrastructure.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

None.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

None.

C. ECONOMIC IMPACT OF THE RULE ON THE STATE OR ITS RESIDENTS:

None.

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2025 Increase/Decrease (use "-")	2026 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

N/A.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

David Cook -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 153
PROCEDURAL RULE
SECRETARY OF STATE

SERIES 57
EXEMPT PURCHASING FOR CRITICAL ELECTION INFRASTRUCTURE

§153-57-1. General.

1.1. Scope. -- This rule establishes the procedures of the West Virginia Secretary of State's Office for procurements exempt from W. Va. Code §5A-3-1 et seq. or the requirements of the West Virginia Department of Administration, Purchasing Division. This rule is established in compliance with W. Va. Code §5A-1-12, under which agencies exempt from some or all of the requirements of Chapter 5A of the West Virginia Code are to adopt purchasing rules.

1.2. Authority. – W. Va. Code §51-1-12 and W. Va. Code §5A-3-1.

1.3. Filing Date. –

1.4. Effective Date. --

§153-57-2. Definitions.

2.1. "Award" means the written determination of the selection of a vendor to perform under a contract issued after encumbrance and final WVSOS approval.

2.2. "Best value procurement" means a procurement method used in awarding a contract based on evaluating and comparing all established criteria, and cost is not the sole determining factor in the award. This includes RFPs, RFIs, and EOIs.

2.3. "Bid" means an offer by a vendor in response to a request to provide critical election infrastructure systems in accordance with the specifications of the WVSOS.

2.4. "Change order" means a written modification or amendment to a WVSOS issued contract in the manner provided in the contract or upon the mutual consent of the WVSOS and the vendor.

2.5. "Chief financial officer" means the WVSOS employee designated as such who manages the WVSOS's Financial Accounting Department and is responsible for oversight and management of financial, investment, reporting, purchasing, and budgeting functions for the agency.

2.6. "Commodities" means goods, supplies, materials, equipment, or any other tangible item.

2.7. "Contract" means the binding agreement entered into between the WVSOS and a vendor to provide the commodities or services requested in the procurement and includes a purchase order.

2.8. "Critical election infrastructure systems" means commodities and services relating to 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 WVSOS.

2.9. "Direct award" means the procurement method to award a contract to a vendor able to provide critical election infrastructure systems without competitive bidding.

2.10. "Emergency procurement" means an acquisition method used when time is of the essence, unforeseen causes arise that include a threat to public health, welfare, safety, circumstances warrant immediate action to stabilize the situation, or safeguarding the state's assets, and not because of poor planning, neglect, or lack of organization.

2.11. "Expression of interest" or "EOI" means a procurement method that seeks vendors to provide information and express an interest in a procurement.

2.12. "FOIA" means the Freedom of Information Act found in W. Va. Code §29B-1-1 et seq.

2.13. "Procurement" means the process of contracting for, purchasing, renting, leasing, or otherwise acquiring, receiving, and maintaining critical election infrastructure systems.

2.14. "Procurement document" means an RFP, RFI, EOI, and other document and all attachments related to the bidding or other means of acquiring critical election infrastructure systems.

2.15. "Protest" means a formal written statement from a prospective or an actual vendor that declares the vendor's dissent or disagreement as to a procurement document or process pertaining to a WVSOS procurement.

2.16. "Purchasing Division" means the West Virginia Purchasing Division under the West Virginia Department of Administration.

2.17. "Request for information" or "RFI" means a document that seeks information to aid in preparing specifications.

2.18. "Request for proposal" or "RFP" means a document issued by the WVSOS to obtain commodities and services for which cost is not the sole determining factor for award.

2.19. "Request for quotation" or "RFQ" means a document issued by the WVSOS to obtain a quotation or bid.

2.20. "Requisition" means a written or electronic request for the purchase of critical election infrastructure systems.

2.21. "Services" means intangible items, that include labor, time, expertise, maintenance, software, and service agreements.

2.22. "Specification" means a clear and accurate description of the physical, functional, or performance characteristics or nature of a critical election infrastructure system acquired, and may include requirements for inspection, testing, and performance.

2.23. "State" means the State of West Virginia.

2.24. "Total ownership or operational cost" means a procurement method that takes into consideration the costs of designing, bidding, implementing, operating, training, transitional costs,

residual value, disposal, and processes for a critical election infrastructure system for which cost is not the determining factor in award.

2.25. "Vendor" means a person or entity considering or submitting a bid, a person or entity selected as the lowest responsible and responsive vendor in connection with a bid, or a person or entity that has been awarded the contract.

2.26. "Whole-life costing" means a procurement method that takes into consideration the cost of the critical election infrastructure system being acquired over its expected life or usage and for which cost is considered but is not a determining factor.

2.27. "wvOASIS" means the state's accounting system managed by the Enterprise Resource Planning Board in conjunction with the West Virginia Department of Administration and the State Auditor's Office.

2.28. "WVSOS" means the West Virginia Secretary of State.

2.29. "WVSOS Procurement" means the unit within the WVSOS with personnel who manage the functionality of WVSOS procurement.

§153-57-3. General Information.

3.1. WVSOS procurements for critical election infrastructure systems shall be centrally processed with the WVSOS to provide economical and efficient services at a reasonable cost, using fair and reasonable competition methods and providing equitable treatment of vendors.

3.2. Methods used to determine the appropriate critical election infrastructure systems needed by the WVSOS include best value procurement, whole-life costing, and total ownership or operational costing. The requirements or limitations in a procurement document are believed to be reasonable in consideration of WVSOS.

3.3. Documentation shall be maintained for all procurements and purchases by WVSOS Procurement to protect the processes.

3.4. The chief financial officer shall audit WVSOS exempt procurement and exempt purchasing processes and files every two years beginning in 2027 to cover the period of the effective date of this rule through December 31, 2026, and then every two years thereafter.

3.5. WVSOS contracts shall comply with all applicable laws, rules and regulations. Procurement documents contain standard agency terms and conditions to aid in compliance with State law.

3.6. There shall be a blackout period from the release of an RFQ, RFP, or EOI by the WVSOS until award or cancellation during which the only contact with the WVSOS is through WVSOS Procurement.

3.7. Vendors shall be provided with instructions for submitting bids and may contact WVSOS Procurement as needed.

3.8. Every contract issued shall contain a clause that permits the WVSOS to cancel the contract upon 30 days written notice to the vendor without penalty.

3.9. Bids shall not be altered and are considered public records available for review or copying after they are opened. After award, the entire file shall be public records and available for review and copying.

3.10. Bid openings must be witnessed by two WVSOS staff members, one of whom is with WVSOS Procurement. WVSOS Procurement personnel shall read aloud the names of the vendors submitting the bids. For bids received pursuant to an RFP, WVSOS Procurement shall confirm that each original package contains a separately sealed cost proposal.

3.11. WVSOS Procurement shall provide timely written notice to the vendors that were unsuccessful in their bid not being awarded.

3.12. Negotiation may be used to finalize a contract and when needing a change order to amend or modify a current contract. Negotiation of a change in scope is permitted when circumstances dictate. A justification for a negotiated change order must be included in the file.

3.13. The WVSOS shall abide by the West Virginia Ethics Act and the associated promulgated rules and shall not make a purchase from a conflicted vendor or a vendor with a significant financial interest as prohibited under the West Virginia Ethics Act.

§153-57-4. Purchasing Requirements.

4.1. Documentation associated with all procurements shall be maintained in files in accordance with WVSOS record retention policy.

4.2. All purchases of critical elections infrastructure systems shall be subject to expenditure approval.

4.3. Contracts shall be issued for all procurements regardless of dollar amounts to assist with tracking and ensure proper internal controls. As defined herein, the term contract includes purchase orders.

4.4. Vendors shall be responsible for submitting a correct and accurate bid to WVSOS Procurement by the specified bid opening time, date, and location and in accordance with the procurement documents.

4.5. Prior to an award of a contract, vendors must be a registered vendor as required by the Purchasing Division, document any required license or insurance, and be in good standing with state and local entities, including but not limited to, the WVSOS and West Virginia Worker's Compensation.

4.6. A contract award is subject to the provisions of West Virginia State Code which automatically void certain contract clauses that violate State Law.

4.7. Vendors to be awarded a contract of \$1 million or more or a series of related contracts for which the cumulative total exceeds \$1 million shall submit to the WVSOS a fully completed Disclosure of Interested Parties form authorized by the West Virginia Ethics Commission.

4.8. A vendor shall not commence work on any procurement without receipt of the awarded contract by WVSOS Purchasing and any required notice to proceed. The WVSOS will not be responsible for any work by a vendor prior to and not in accordance with the contract awarded.

4.9. All requests for critical election infrastructure services shall be submitted in a written requisition to WVSOS Purchasing via email, written memo, or other method. All requests require approval of the Secretary of State or other person with the appropriate signature authority.

4.10. Upon receipt, a requisition is reviewed to determine the sourcing method for the procurement.

4.10.1. Sourcing methods considered include State sources, statewide or agency master agreements, cooperative contracts, or obtaining bids if required by the procurement method levels.

4.10.2. Any WVSOS contract usable by another state entity or a political subdivision will state the use.

4.11. Purchases and contracts for critical elections infrastructure systems shall be based on competitive bid whenever possible, subject to the following:

4.11.1. \$15,000 or less – no bids required, competition encouraged when possible;

4.11.2. \$15,000.01 to \$50,000 – a minimum of three written bids shall be required, when possible;

4.11.3. Purchases expected to exceed \$50,000 must be subject of competitive bid solicitation unless otherwise allowed under subsection 4.12 of this rule.

4.12. WVSOS Procurement may authorize purchases directly from a vendor without competitive bidding under the following circumstances:

4.12.1. It is determined that a direct award is appropriate because there is no other source for the product or service, or that no other source would be willing or able to replace the existing source without a detrimental effect on the WVSOS, in which case the WVSOS will document its due diligence in making this determination;

4.12.2. In the event of an emergency, including but not limited to unforeseen events or circumstances, delays by contractors, delays in transportation, or an unanticipated volume of work, as well as procurements related to an official declaration of emergency by the Governor or federal officials. Notwithstanding the existence of an emergency as described in this subdivision, the WVSOS shall attempt to obtain three bids whenever possible. "Emergency" does not include circumstances caused by the WVSOS's neglect, poor planning, or lack of organization;

4.12.3. The critical elections infrastructure system being sought is included on the "Impossible to Bid" list set forth in Section 9 of the West Virginia State Purchasing Division Procedures Handbook; or

4.12.4. Competitive bidding is not expressly required by statute.

4.12.4.a. When competitive bidding is not expressly required by statute and not used for a direct award, the WVSOS will evaluate vendors based upon the following criteria, where applicable, and will document its evaluation:

4.12.4.a.1. Overall experience;

4.12.4.a.2. Professional certifications or designations;

4.12.4.a.3. Company specific experience;

4.12.4.a.4. Company type experience;

4.12.4.a.5. Knowledge of company or line of business;

4.12.4.a.6. Prior work for the WVSOS;

4.12.4.a.7. Professional reputation;

4.12.4.a.8. Availability and commitment to required timeframes;

4.12.4.a.9. Adequacy of staffing, including the ability of assigned staff members to complete the contract with substitution;

4.12.4.a.10. Quality of work;

4.12.4.a.11. References from another state entity or a political subdivision;

4.12.4.a.12. References from subject matter experts;

4.12.4.a.13. Projected costs;

4.12.4.a.14. Conflicts of interest;

4.12.4.a.15. Support services available to the vendor, including but not limited to information technology services; and

4.12.4.a.16. Any other guidelines or procedures the WVSOS considers appropriate.

4.13. Any required vendor terms and conditions must be submitted and approved before a contract is awarded. The WVSOS will obtain approval from the Attorney General as to contract form and conformity with applicable law when required by statute or when deemed necessary by WVSOS Procurement.

4.14. Aggregate procurements in excess of \$50,000 by the WVSOS shall not circumvent the formal procurement requirements in any 12-month rolling period.

4.15. Receiving reports shall be prepared and submitted in accordance with W. Va. Code §12-3-10f.

§153-57-5. Formal procurement documents and processes.

5.1. Request for Quotation (RFQ).

5.1.1. An RFQ shall contain a detailed description of, or specification for, the item(s) being purchased, any required delivery date, quantities, bid price per unit, and information on how to complete and submit the RFQ bid and deadlines.

5.1.2. All procurement documents issued for a procurement shall include a specific date, time, and location for submission of bids.

5.1.2.a. Bids not submitted by the specified date and time to the specific location shall be rejected and not be considered.

5.1.2.b. WVSOS Procurement shall stamp bids with the date and time of actual receipt for bids physically received. Bids received through wvOASIS are stamped by the system.

5.1.2.c. Bids shall remain sealed until the specified date and time, at which time WVSOS Procurement will open the bids.

5.1.2.d. No bid received may be altered after opening.

5.1.2.e. A vendor submitting a bid may withdraw the bid at any time prior to bid opening.

5.1.3. Bids shall be reviewed by WVSOS Procurement and the WVSOS division requesting the item(s) to verify each bid meets the requirements of the RFQ.

5.1.4. An award shall be made to the responsible and responsive vendor having the lowest bid.

5.1.5. WVSOS Procurement must reject a bid that is found to be non-responsive. A non-responsive bid is one that fails to conform to the solicitation in all material respects.

5.2. Direct Awards.

5.2.1. A direct award shall be a procurement method occurring only if:

5.2.1.a. The procurement file contains the following:

5.2.1.a.1. Written justification that the direct award is in the best interests of the State;

5.2.1.a.2. Documentation of efforts used to determine that there is no other source or that no other source would be willing or able to replace the existing source without a detrimental effect; and

5.2.1.a.3. No other vendor expresses an interest in providing the critical elections infrastructure system in question.

5.2.1.b. A direct contract may be extended or renewed if the request is substantiated by a written justification of continuation of the contract.

5.2.1.c. Prior to the issuance of a direct award, the WVSOS shall post notice of the proposed award in wvOASIS for a period of ten (10) days to afford vendors the opportunity to express interest. In the event a vendor timely expresses interest, the WVSOS Procurement Division shall utilize an alternative method of procurement.

5.3. Request for Proposal (RFP).

5.3.1. RFP documentation shall define the critical election infrastructure system desired to allow comparability of bids as submitted.

5.3.2. Procurements by RFP shall be advertised through media considered advisable and not cost prohibitive, including, but not limited to, professional publications, wvOASIS, the WVSOS's website, and emails to potential vendors.

5.3.3. RFPs must contain provisions for a two-part evaluation, the first part being technical aspects of the proposal and the second part being cost to the State. The two components will be evaluated, scored, and combined to form a total score. Technical proposals must be opened first and fully evaluated prior to cost proposals being opened. Vendors shall be notified of the date and time of opening the cost portion. The highest scoring vendor will be awarded the contract.

5.3.4. All procurement documents issued for a procurement shall include a specific date, time, and location for submission of bids.

5.3.4.a. Bids not submitted by the specified date and time to the specific location shall be rejected and not be considered.

5.3.4.b. WVSOS Procurement shall stamp bids with the date and time of actual receipt for bids physically received. Bids received through wvOASIS are stamped by the system.

5.3.4.c. Bids shall remain sealed until the specified date and time, at which time WVSOS Procurement will open the bids.

5.3.4.d. No bid received may be altered after opening.

5.3.4.e. A vendor submitting a bid may withdraw the bid at any time prior to bid opening.

5.3.5. At the date, time, and location of the bid opening, the bids received shall be opened and the names of the vendors submitting a bid read aloud and documented. WVSOS Procurement shall verify that the technical and cost portions of the bids are separate, and the cost portion is sealed.

5.3.6. If there is more than one bidder responding to the RFP, WVSOS Procurement may negotiate a lower price with the highest ranked bidder. If the contract is not awarded to the highest scoring bidder, WVSOS Procurement 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. WVSOS Procurement shall only extend an offer after it is offered to all prior bidders in order of rank.

5.3.7. WVSOS Procurement must reject a bid that is found to be non-responsive. A non-responsive bid is one that fails to conform to the solicitation in all material respects.

5.4. Emergency Procurements.

5.4.1. In the event the Governor, WVSOS, or other authorized official declares an emergency exists, WVSOS Procurement shall determine to what extent the procedures set forth in this section will apply to procurements and authorize emergency procurements.

5.4.2. An emergency procurement shall use the procurement methods in this rule to the extent practicable.

5.4.3. WVSOS Procurement shall assist in obtaining bids, preparing documentation, verifying any required vendor registration and licensing, and issue any contracts necessary.

§153-57-6. Vendor Complaints and Protests.

6.1. Complaints – A vendor may verbally or in writing complain about a procurement or purchase to WVSOS Procurement. WVSOS Procurement will provide a written response to the complaint.

6.2. Types of Protests.

6.2.1. Protests of Requirements, Specifications or Terms – Any protest relating to a procurement document, including any requirement, specification or term, or any combination thereof, must be filed in writing with the chief financial officer no later than five (5) business days prior to the specified bid opening date and time. Protests received after that date will not be considered.

6.2.2. Protests of Award – After selection of the apparent successful vendor in a procurement using an RFP, WVSOS Procurement will send a written notice of award to each vendor submitting a bid advising of the results and the date and time for a protest to be received by the chief financial officer. Vendors shall submit any protest of award no later than five (5) business days of the written notice. Protests received after the stated date and time will not be considered.

6.2.3. Written Letter of Protest – A letter of protest must be submitted in writing and contain the name and address of the protesting vendor, the procurement document number, a statement explaining why the protest has been filed, the relief sought, and any other information that may assist WVSOS Procurement in reaching a decision on this matter. The chief financial officer must receive the letter of protest by the established deadline to be considered.

6.2.4. Review of Protest and Issuing Decision – WVSOS Procurement will review the letter of protest and issue a written decision. WVSOS Procurement may contact the protesting vendor or any other entity or perform such research or investigation it considers necessary to reach a decision. Opening of the bids, evaluation of the bids or award of the contract may be delayed, as considered appropriate by WVSOS Procurement.

§153-57-7. Public Records.

7.1. Procurement documents inform vendors that the entire response submitted for that procurement and any resulting contract are considered public documents.

7.2. As public documents, procurement documents are disclosed to the public following the bid opening or award of a contract in accordance with FOIA and W. Va. Code §5A-3-1(c)(7).

7.3. Any bid or other document in a procurement file may be disclosed pursuant to a FOIA request, even if the bid or other document contains statements or labels attempting to prevent disclosure, such as confidential, trade secret, private, or any other claim.

7.4. The WVSOS shall not be liable for any disclosure of a procurement document.

7.5. If a vendor requests the WVSOS execute a non-disclosure agreement to protect portions of its bid from disclosure for an RFP procurement, it must make the request to WVSOS Procurement at least one week prior to the date of the bid opening. A non-disclosure agreement may be executed at any time to prospectively protect any procurement documents, contracts or information.

7.6. The WVSOS has no duty to inform a vendor that any procurement documents, contracts or other documents or information will be disclosed pursuant to FOIA.

§153-57-8. Violations.

8.1. Any person who authorizes or approves a purchase or contract in violation of federal or state law, this rule, or any policy or procedure adopted by the WVSOS may be held personally liable for the cost of the procurement or contract. Procurements and contracts violating federal or state law or this rule are void and of no effect.

8.2. The WVSOS will follow vendor suspensions and debarments by the federal government and the West Virginia Department of Administration, Purchasing Division.