

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #2

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1991 JUL -3 PM 1:58
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: STATE TAX DIVISION TITLE NUMBER: 110

RULE TYPE: INTERPRETIVE; CITE AUTHORITY W.VA. CODE § 11-10-5 AND

AMENDMENT TO AN EXISTING RULE: YES NO X W.VA. CODE § 5A-3-37

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 12C

TITLE OF RULE BEING PROPOSED: CONTRACTOR PREFERENCE FOR

DETERMINING SUCCESSFUL BIDS

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON AUGUST 5, 1991 AT 5:00 P.M. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

LEGAL DIVISION
DEPARTMENT OF TAX AND REVENUE
P. O. BOX 1005
CHARLESTON, WV 25324-1005

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

L. Frederick Williams, Jr.
L. FREDERICK WILLIAMS, JR.
STATE TAX COMMISSIONER

ATTACH A BRIEF SUMMARY OF YOUR PROPOSAL

3.00



State of West Virginia
Department of Tax and Revenue

Charleston 25305

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE
L. FREDERICK WILLIAMS, JR.
SECRETARY

GASTON CAPERTON
GOVERNOR

CONSENT TO FILE RULE

July 3, 1991

To Whom It May Concern:


Title of Rule: Contractor Preference For Determining
Successful Bids.

Title Number: 110

Series Number: 12C

Pursuant to West Virginia Code § 5F-2-2(a), the undersigned hereby consents to the filing of the foregoing rule.

Signed this third day of July, 1991.


L. Frederick Williams, Jr.
Secretary, Tax and Revenue

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Contractor Preference For Determining Successful Bids

Type of Rule: Legislative Interpretive Procedural

Agency: State Tax Division Address: State Capitol; Charleston, WV 25305

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$	\$	\$
Personal Services	-0-	-0-	-0-	-0-	-0-
Current Expense	-0-	-0-	-0-	-0-	-0-
Repairs and Alterations	-0-	-0-	-0-	-0-	-0-
Equipment	-0-	-0-	-0-	-0-	-0-
Other	-0-	-0-	-0-	-0-	-0-

2. Explanation of above estimates:

The proposed rule should have no impact on Departmental expenses.

3. Objectives of these rules:

The rule explains and clarifies the procedures relevant to determining vendor preference for competitively bid construction services in the amount of \$50,000 or more.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

The economic impact should not vary from that envisioned by the Legislature when it enacted W. Va. Code § 5A-3-37.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of citizens.

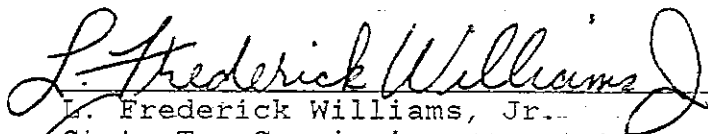
The economic impact should not vary from that envisioned by the Legislature when it enacted W. Va. Code § 5A-3-37.

C. Economic Impact on Citizens/Public at Large.

The economic impact should not vary from that envisioned by the Legislature when it enacted W. Va. Code § 5A-3-37.

Date: July 3, 1991

Signature of Agency Head or Authorized Representative


L. Frederick Williams, Jr.
State Tax Commissioner



State of West Virginia
Department of Tax and Revenue

GASTON CAPERTON
GOVERNOR

Charleston 25305

L. FREDERICK WILLIAMS, JR.
SECRETARY

STATEMENT OF CIRCUMSTANCE

The Legislature, in 1990, enacted the "Jobs for West Virginians Act of 1990," the purpose being to provide vendor preference for certain types of construction activities. The Act directs the Secretary of the Department of Tax and Revenue to promulgate rules and regulations which establish procedures for certification of residency requirements and for auditing bids.

WEST VIRGINIA INTERPRETIVE REGULATIONS
DEPARTMENT OF TAX AND REVENUE
TITLE 110
SERIES 12C
1991

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SECRETARY OF STATE

CONTRACTOR PREFERENCE FOR DETERMINING SUCCESSFUL BIDS

§ 110-12C-1. General.

1.1 **Scope.** - These interpretive rules are an explanation and clarification of operative procedures for the "Jobs For West Virginians Act of 1990," being vendor preference for construction services in the amount of fifty thousand dollars (\$50,000.00) or more and competitively bid.

1.2 **Authority.** - See W. Va. Code § 5A-3-37.

1.3 **Filing date.** -

1.4 **Effective date.** -

§ 110-12C-2. **Definitions.** - As used in these regulations, and unless the context clearly requires otherwise, the following terms shall have the meaning ascribed herein, and shall apply in the singular and in the plural.

2.1 **"Bid"** means an offer to perform a contract for work and labor or for supplying commodities at a specified price.

2.2 **"Bidder"** means the person who submits a bid to the Director.

2.3 **"Code"** means the Code of West Virginia of 1931, as amended.

2.4 **"Commodities"** means supplies, material, equipment, contractual services, and any other articles or things used by or furnished to a department, agency or institution of state government.

2.5 **"Contracting services"** means the furnishing of work, or both materials and work, in fulfillment of a contract for the construction, alteration, repair, decoration or improvement of a new or existing building or structure, or any part thereof, or for removal or demolition of a building or structure, or any part thereof, or for the alteration, improvement or development of real property. For purposes of this definition, the term "structure" shall include, but not be limited to, everything built up or composed of parts joined together in some definite manner and attached to real property, or which adds utility to a particular parcel of property and is intended to remain there for an indefinite period of time.

2.6 **"Construction services"** means contracting services.

2.7 "Contractual services" shall include telephone, telegraph, electric light and power, water and similar services.

2.8 "Director" means the Director of the Purchasing Division of the State of West Virginia, Department of Administration, or his delegate.

2.9 "Headquarters" or "principal place of business" means the place where the majority of the governing power and business activity of a bidder resides and is executed.

2.10 "Printing" means printing, binding, ruling, lithographing, engraving and other similar services.

2.11 "Qualified bid" means a bid or proposal which meets specifications, as determined by the Director.

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

2.13 "Resident vendor" means a vendor who:

2.13.1 Is registered in accordance with article 12, chapter 11 of the Code to transact business within the State of West Virginia;

2.13.2 Maintains a physical office in the State;

2.13.3 Has actually paid, and not just applied to pay, personal property taxes imposed by Chapter 11 of the Code on equipment used in the regular course of supplying services or commodities of the general type offered;

2.13.4 Has actually paid, and not just applied to pay, all required business taxes imposed by Chapter 11 of the Code; and

2.13.5 When selling tangible personal property, has available in this State for delivery a reasonable quantity of stock of materials of the type being offered to meet the ordinary requirements of customers.

2.14 "Secretary" means the Secretary of Tax and Revenue, or his delegate.

2.15 "Spending officer" means the executive head of a spending unit, or a person designated by him.

2.16 "Spending unit" means a department, agency or institution of the state government for which an appropriation is requested, or to which an appropriation is made by the Legislature.

2.17 "Vendor" means any person, whether selling at retail or otherwise, who is engaged in furnishing or rendering services or selling tangible personal property.

§ 110-12C-3. Preference-Construction Services. - For the period of July 1, 1990 through June 30, 1994, qualified bids for the purchase of construction services or for the construction, repair or improvement of any building or

portion thereof, estimated to cost in excess of fifty thousand dollars (\$50,000.00), whether issued as one contract or as a series of contracts, and competitively bid, may receive a maximum preference of five percent (5%). In order to be eligible for such preference, appropriate certification in writing must be made at the time the qualified bid is submitted.

3.1 A two and one-half percent (2.5%) preference will be provided for a qualified bid which is submitted by an individual resident vendor who has resided in West Virginia continuously for the four (4) years immediately preceding the date the qualified bid is submitted, or for a qualified bid which is submitted by a partnership, association or corporation resident vendor which has maintained its headquarters or principal place of business within West Virginia continuously for the four (4) years immediately preceding the date the qualified bid is submitted.

3.1.1 A partnership, association or corporation shall be deemed to meet the four (4) year continuous residency requirement if at least eighty percent (80%) of the ownership interest of such resident vendor is held by another individual, partnership, association or corporation resident vendor who otherwise meets the four (4) year continuous residency requirement.

3.1.2 The entity submitting a bid and requesting preference under Section 3.1 of these regulations must meet the requirements of such Section 3.1 and must actually be performing the services required as a regular commercial activity of the bidder. If a bidder has changed the name under which it does business and such former entity meets the requirements of this Section 3.1, then the bidder shall be deemed to meet the requirements of this Section 3.1 if the activity and residence of the bidder have not changed in a material manner subsequent to the effective date of the name change.

3.2 A two and one-half percent (2.5%) preference will be provided for a qualified bid which is submitted by a resident or nonresident vendor which certifies that on an average at least sixty percent (60%) of the employees working on the project being bid will be persons who have been residents of West Virginia continuously for the two (2) years immediately preceding submission of the bid. Bidders shall be responsible for ensuring subcontractor compliance with the sixty percent (60%) requirement.

3.3 A qualified bid may receive a five percent (5%) preference if the vendor submitting that bid meets both requirements as specified in the foregoing subsections 3.1 and 3.2.

§ 110-12C-4. Certification. - To receive preference within the meaning of these regulations, a bidder must give written consent to the Department of Tax and Revenue authorizing disclosure to the Director of appropriate information which will verify that the bidder has paid the required business taxes. At the time the qualified bid is submitted, the bidder must certify, on the form provided, compliance with the requirements specified in Section 3 of these regulations.

4.1 To meet the four (4) year continuous residency requirement, the required certification shall state:

4.1.1 If an individual vendor, that the vendor is a resident vendor and has resided continuously in West Virginia for the four (4) years immediately preceding the date of certification.

4.1.2 If a partnership, association or corporation, that:

4.1.2.1 The vendor is a resident vendor and has maintained its headquarters or principal place of business continuously in West Virginia for the four (4) years immediately preceding the date of certification; or

4.1.2.2 That eighty percent (80%) of the ownership interest of vendor is held by another individual, partnership, association or corporation resident vendor which has maintained its headquarters or principal place of business continuously in West Virginia for the four (4) years immediately preceding the date of certification. For the purpose of determining the eighty percent (80%) ownership interest, only actual ownership by one entity, not joint ventures, shall be acceptable. For the purpose of meeting the four (4) year residency requirement or the eighty percent (80%) ownership interest requirement as either pertains to a joint venture, each party to a joint venture must meet the appropriate requirement.

4.2 To meet the sixty percent (60%) requirement, the certification shall state:

4.2.1 On an average, sixty percent (60%) of the employees working on the project being bid will be persons who have been residents of West Virginia continuously for the two (2) years immediately preceding submission of the bid; and

4.2.2 Sufficient records will be maintained by the bidder to verify that the average percentage of employees continuously residing in West Virginia, including the employees of any subcontractors, is sixty percent (60%) or more.

§ 110-12C-5. Investigating Certifications. - The Director shall investigate requests for preference when any portion of a certification is questioned. If it is determined that the qualified bid fails to meet a requirement for the requested preference, the Secretary, or the Director at the direction of the Secretary may:

5.1 Deny that portion of the requested preference that fails to meet the requirement, leaving the remaining requested preference in tact, if any; or

5.2 Reject the bid.

§ 110-12C-6. Preference to be Considered in Making Award. - The preference received by a bid qualified in accordance with these regulations shall be included in the determination of the award of the contract. Preference shall not be applied as between or among resident vendors, but shall be applied as between or among resident vendors(s) and non-resident vendor(s), and between or among non-resident vendors.

§ 110-12C-7. Violations. - If the Secretary determines that a vendor which received preference under these regulations has failed to continue to meet the requirements for such preference, the Secretary may order the Director to:

7.1. Rescind the contract or purchase order issued to the vendor; or

7.2. assess a penalty against such vendor in an amount not to exceed five percent (5%) of the vendor's bid. Such penalty shall be paid to the contracting agency or deducted from any unpaid balance on the contract or purchase order.

§ 110-12C-8. Jeopardizing Federal Funds. - If any portion of these regulations jeopardize the receipt of federal funds, then such portion shall be waived as being void and of no force and effect as such regulation pertains to the project.