

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #2

Do Not Mark In This Box

2013 JUN 24 AM 11:48

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Treasurer's Office TITLE NUMBER: 112

RULE TYPE: Legislative CITE AUTHORITY: §12-1-2

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 06

TITLE OF RULE BEING AMENDED: Selection of State Depositories for Disbursement Accounts Through Competitive Bidding

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

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 July 24, 2013 AT 5:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Diana Stout, General Counsel

WV State Treasurer's Office
Bldg. 1, Room E-145

1900 Kanawha Blvd., E.
Charleston, WV 25305

(304) 558-5000
diana.stout@wvsto.com

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


Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

112 CSR 6

Summary

Revisions being made to 112 CSR 6, Selection of State Depositories for Disbursement Accounts through Competitive Bidding, are to update the rule to conform to the West Virginia Code and current practice, as well as to make technical corrections. Definitions are added for depository and financial institution. The rule clarifies various matters, such as financial institutions, not just banks, are able to bid; payment for disbursement accounts and related services include either compensating balances or actual payment; and account information will no longer be disclosed in bid documents.

TITLE 112
LEGISLATIVE RULE
STATE TREASURER'S OFFICE

2013 JUN 24 AM 11:48

SERIES 6
SELECTION OF STATE DEPOSITORIES FOR DISBURSEMENT ACCOUNTS
THROUGH COMPETITIVE BIDDING

STATE

§112-6-1. General.

1.1. Scope. -- This rule implements the provisions of W. Va. Code §12-1-2, which requires the Treasurer's Office to select depositories for disbursement accounts through competitive bidding by banks financial institutions in this State.

1.2. Authority. -- W. Va. Code § 12-1-2.

1.3. Filing Date. -- May 6, 1998 _____.

1.4. Effective Date. -- May 7, 1998 _____.

~~1.5. General Purpose. -- The purpose of this rule is to carry out the legislative intent as stated in W. Va. Code § 12-1-2, so that the required competitive bidding will enable the State to obtain the most efficient service at the lowest possible cost.~~

§112-6-2. Definitions.

For purposes of this rule, unless a different meaning is clearly required by the context:

2.1. "Compensating balance" means the cash balance which the State shall maintain with a depository to compensate the depository for its services;

2.2. "Depository" or "State Depository" means a financial institution insured by an agency of the federal government, which has posted any required collaterally secured bond and approved by the Treasurer.

2.3. "Disbursement account" means those accounts from which are paid moneys due from the State of West Virginia or any official, department, board, commission, political subdivision or agency thereof to any political subdivision, person, firm or corporation except moneys paid from investment accounts;

2.32.4. "Financial institution" means a bank, savings and loan association, credit union and any other similar institution under the jurisdiction and supervision of the Federal Reserve.

2.5. "Invitation to bid" means and includes requests for proposals, specifications, general information and other matters customarily included in the solicitation of bids; and

2.42.6. "Treasurer" means the West Virginia Office of the State Treasurer.

§112-6-3. Procedures for Bidding.

3.1. Eligibility for Bidding - Only those ~~banks that have been~~ financial institutions designated ~~to serve~~ as depositories for ~~State funds~~ are eligible to bid for a disbursement account.

3.2. Notice to Bidders - At least twenty-five (25) days prior to the date on which bids for a disbursement account ~~will be opened~~ are due, the Treasurer shall mail to every ~~eligible~~ depository within this state notice that bids ~~will be~~ are invited on one or more designated disbursement accounts. Any depository within this state interested in bidding on an account shall ~~then~~ make written request to the Treasurer's office for copies of the formal invitation to bid, and the Treasurer's office upon receipt of the request shall transmit the copies or make the copies available, including all necessary specifications and forms, to the depository. The Treasurer's office shall maintain a record noting the date of receipt of requests for formal invitations to bid and the date on which it mailed the invitations.

3.3. Contents of Invitations to Bid - The invitations shall state the time and place for submission of bids, ~~and shall include~~ a description of the account and the ~~service services~~ required, the approximate number of transactions or items ~~to be~~ processed monthly, the duration of ~~the contracts to be awarded, the designated account number of the accounts for which bids are being sought;~~ and such any other information as the Treasurer considers necessary.

3.4. Submission of Bids - Depositories ~~with in~~ the state shall submit bids on forms provided by the Treasurer's office ~~in duplicate~~, in a sealed envelope addressed to the Treasurer, and conspicuously marked "Sealed Bid for Disbursement Account". ~~The bidder shall also note on the envelope the account number as designated in the invitation to bid.~~ Bidders may not commingle bids for more than one account in the same envelope. Immediately upon receipt of bids, the Treasurer shall time stamp the envelope, and retain all the sealed bids in the Treasurer's office until the time set for the bid opening.

3.5. Bid Opening - On the date and time set for the bid opening, the Treasurer shall publicly open and read aloud the ~~bids~~ names of the bidders. The Treasurer shall promptly analyze the bids and make awards as provided in Section 4 of this rule.

3.6. Conditions of Bidding - All bids are subject to the following conditions:

3.6.1. Bids received after the date and time stated in the invitation ~~may not be considered~~ are disqualified;

3.6.2. Bids ~~may not be considered unless signed by~~ shall require the signature of an authorized bank officer. For purposes of this section, an authorized bank officer ~~may be either~~ is the president or a vice-president ~~or the cashier~~;

3.6.3. Prior to the bid opening, ~~bids may be withdrawn after receipt in the Treasurer's office upon written request made by an authorized bank officer~~ to withdraw a bid, an authorized bank officer shall submit a written request to the Treasurer; or

3.6.4. The Treasurer may reject any and all bids if ~~that action is considered to be the~~ Treasurer considers rejection in the best interests of the State.

§112-6-4. Award and Compensation.

4.1. Criteria for Award - Depending on the ~~service to be performed~~ services desired, the Treasurer shall invite bids in terms of the price per transaction or per item processed. ~~Accordingly, subject~~ Subject to the Treasurer 's right to reject any and all bids, the ~~contract shall be awarded in each case to the bidder who submits~~ submitting the lowest responsible bid in terms of price per transaction or per item processed shall receive the award. The bid price ~~will be~~ is the basis for the compensating balance as provided in Subsection 4.2 of this section.

4.2. Method of Compensation --

4.2.1. ~~Compensation to the depository within the state for its services shall be made by means of either compensating balances computed by the Treasurer~~ The Treasurer shall compensate a depository on a monthly basis by compensating balances or by a State warrant. To determine the monthly compensating balances, the Treasurer shall multiply the ~~depository' within the state's~~ bid price per transaction or per item processed times the number of transactions or items processed during the preceding month (the "computation month"). The product obtained ~~shall be~~ is converted to the compensating balance by using the average 90-day U. S. Treasury bill rate (bond equivalent yield) for the computation month. The average 90- day U. S. Treasury bill rate ~~shall be~~ is the rate ~~as~~ computed by the Federal Reserve System. The following example illustrates how the compensating balance ~~shall be~~ is computed and applied:

Under this example, it is assumed that:

4.2.1.a. The computation month is January;

4.2.1.b. The average 90-day U. S. Treasury bill rate for the computation month (January) was 5%;

4.2.1.c. The multiplier for annualization is 12;

4.2.1.d. The bid price per item was three cents (\$.03); and

4.2.1.e. The number of items processed in the computation month (January) was 50,000.

Accordingly, the compensating balance ~~to be maintained in the bank required~~ during February is \$360,000, derived as follows:

$$50,000 \times (\$.03) \times (12)$$

$$.05 = \$360,000$$

4.2.2. The Treasurer shall appropriately adjust the compensating balance if any overcompensation or undercompensation occurs during a given month by adjusting the balance for the following month in order to fairly compensate the depository for services rendered. The Treasurer shall perform a settlement monthly if any overcompensation or undercompensation occurs. The Treasurer and the depository ~~within the state~~ shall agree upon a method of account settlement and include the account settlement as part of the negotiated contract for the ~~Disbursement Account~~ disbursement account.

4.3. Compensation for Ancillary Services - The Treasurer may in its bid specifications require the depository to furnish certain named ancillary services in the course of providing the basic service for which bids are solicited. For example, the Treasurer may specify that a depository for disbursements shall furnish preprinted checks. The Treasurer may also specify ~~that the depository shall be compensated~~ the compensation for the cost of furnishing such ancillary services on a flow-through basis. In that event, the Treasurer shall increase the compensating balance in an amount sufficient to compensate the depository for the direct cost of furnishing the ancillary services plus a reasonable amount determined by the Treasurer for the overhead attributable to furnishing the services. ~~The amount to be allowed for the overhead shall be specified in the invitation to bid~~ shall include the amount allowed for overhead.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

112 CSR 6 Selection of State Depositories for Disbursement Accounts through Competitive Bidding

Rule Title: _____

Type of Rule: Legislative Interpretive Procedural

Agency: Treasurer's Office

Address: Bldg. 1, Room E-145
1900 Kanawha Blvd., E.
Charleston, WV 25305

Phone Number: (304) 558-5000 Email: diana.stout@wvsto.com

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

112 CSR 6 is being updated to conform to West Virginia Code and current practice, as well as make technical corrections. It is not anticipated to have any impact on costs and revenues of state government.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "--")	Next Increase/Decrease (use "--")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

112 CSR 6 Selection of State Depositories for Disbursement Accounts through Competitive Bidding

Rule Title: _____

Rule Title: _____

- 3. Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

N/A

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

N/A

Date: June 19, 2013

Signature of Agency Head or Authorized Representative

Dana Stout