



**WEST VIRGINIA
SECRETARY OF STATE**

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OFFICE OF
WEST VIRGINIA SECRETARY OF STATE

FORM 4 -- NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY **Treasurer**

RULE TYPE **Legislative**

AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **112-**

RULE NAME **Selection of State Depositories for Disbursement Accounts through Competitive Bidding⁰⁶**

CITE AUTHORITY **§12-2-2**

THE ABOVE PROPOSED LEGISLATIVE RULES, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE, IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.

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

Yes

Diana Stout -- 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-Series: 112-06



Rule Id: 10243



Document: 32055

TITLE 112
LEGISLATIVE RULE
STATE TREASURER'S OFFICE

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

§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 financial institutions in this State. The provisions of this rule do not apply to trust and investment accounts, activities and proceeds from the sale of general obligation bonds or bonds issued by the School Building Authority, the Parkways Authority, the Housing Development Fund, the Economic Development Authority, the Infrastructure and Jobs Development Counsel, the Water Development Authority or the Hospital Finance Authority.

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

1.3. Filing Date. -- ~~May 6, 2014.~~

1.4. Effective Date. -- ~~July 1, 2014.~~

1.5. Sunset Provision. – This rule shall terminate and have no further force and effect upon the expiration of five years from its effective date.

§112-6-2. Definitions.

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

2.1. "Agency" means and includes any department, board, commission, division, branch office or other separate unit of State government, and any officer or employee of an agency, who or which collects moneys due the State;

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 which is approved by the Treasurer.

"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;

"Financial institution" means a state or national bank or a state or federal savings and loan association.

"Invitation to bid" means ~~and includes requests for proposals, specifications, general information and other matters customarily included in the solicitation of bids; and~~ the notice sent to potential bidders, either via email or U.S. mail, containing information on the goods and services in connection with

one or more disbursement accounts being bid, bidding deadlines, how to obtain bid documents, how to submit bids and any other information the Treasurer considers appropriate.

2.6. “Purchasing Documents” means the request for quotations or the request for proposals and all attachments and other documents related to the bidding of the goods and services in connection with bidding for one or more disbursement accounts.

2.7. “Treasurer” means the West Virginia State Treasurer or his or her designee from the Treasurer’s office.

§112-6-3. Procedures for Bidding.

3.1. Eligibility for Bidding -- institutions designated as depositories prior to award 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 are due, the Treasurer shall mail to every depository within this state notice that bids are invited on one or more designated disbursement accounts. Any depository within this state interested in bidding on an account shall make written request to the Treasurer’s office for copies of the invitation to bid. 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 invitations to bid and the date on which it mailed the invitations.~~ The Treasurer shall send invitations to bid to every depository in this state at least thirty (30) days prior to the date on which bids for a disbursement account are due.

3.3. ~~required, the approximate number of transactions or items processed monthly, the duration of the contracts and any other information the Treasurer considers necessary.~~ Purchasing Documents -- The Treasurer shall make the purchasing documents available on the Treasurer’s website and shall mail the purchasing documents to any person or entity that cannot obtain them from the website.

3.4. Submission of Bids -- ~~Depositories in the state shall submit bids on forms provided by the Treasurer’s office, in a sealed envelope addressed to the Treasurer, and conspicuously marked “Sealed Bid for Disbursement Account”. Bidders may not commingle bids for more than one account in the same envelope. Immediately upon receipt of a bid, 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.~~ Financial Institutions shall submit bids in the format and in the time frame required by the Treasurer, as specified in the purchasing documents. The Treasurer shall record the receipt of each bid received to ensure timely receipt prior to the bid deadline.

3.5. Bid Opening -- On the date and time set for the bid opening, the Treasurer shall publicly open and read aloud the 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~~ purchasing documents are disqualified;

3.6.2. Bids require the signature of an authorized ~~bank~~ officer of the financial institution. For purposes of this section, an authorized ~~bank~~ officer is the president or a vice-president;

~~3.6.3. Prior to the bid opening, to withdraw a bid, an authorized bank officer shall submit a written request to the Treasurer; and To withdraw a bid, an authorized officer of the bidder shall submit a written request prior to the bid opening;~~

~~3.6.4. The Treasurer may reject any and all bids if the Treasurer considers rejection in the best interests of the State; and~~

~~3.6.5 The bid shall comply with all requirements of the purchasing documents.~~

§112-6-4. Award and Compensation.

~~4.1. Criteria for Award - Depending on the services desired, the Treasurer shall invite bids in terms of the price per transaction or per item processed. Subject to the Treasurer's right to reject any and all bids, the bidder submitting the lowest responsible bid in terms of price per transaction or per item processed shall receive the award. The bid price is the basis for the compensating balance as determined under Subsection 4.2 of this section. The purchasing documents shall contain the criteria for award.~~

~~4.2. Method of Compensation --~~

~~4.2.1. 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 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 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 is the rate computed by the Federal Reserve System. The following example illustrates how the compensating balance 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 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 shall agree upon a method of account settlement and include the account settlement as part of the negotiated contract for the 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 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 invitation to bid shall include the amount allowed for overhead.~~

The financial institution receiving the purchase order awarded pursuant to the purchasing documents shall submit monthly invoices detailing the goods and services provided at the rates specified in the purchase order. The Treasurer shall review the invoice and if found in order shall make payment in arrears directly to the financial institution.