



**WEST VIRGINIA SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

**eFILED**

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Office of West Virginia  
Secretary Of State

**NOTICE OF PUBLIC COMMENT PERIOD**

AGENCY: Municipal Pensions Oversight Board TITLE-SERIES: 211-03

RULE TYPE: Procedural Amendment to Existing Rule: No Repeal of existing rule: No

RULE NAME: Actuarial Purchasing Exemption

CITE STATUTORY AUTHORITY: §5A-1-12 and §8-22-18a(g)

COMMENTS LIMITED TO:

Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 07/27/2020 5 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: Municipal Pensions Oversight Board

ADDRESS: 301 Eagle Mountain Road, Suite 251

Charleston, WV 25311

EMAIL: michelle.t.painter@wv.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:

To ensure certain controls and accountabilities are in place for the purchase of goods and services exempt from §5A-3 et seq.

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

Passage of House Bill 4042

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

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

No Impact

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

No Impact

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

No Impact

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2020 Increase/Decrease (use "-")	2021 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>			
Personal Services			
Current Expenses			
Repairs and Alterations			
Assets			
Other			
<b>2. Estimated Total Revenues</b>			

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

No Impact

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

Yes

**Blair M Taylor -- 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.**

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TITLE 211  
PROCEDURAL RULE  
MUNICIPAL PENSIONS OVERSIGHT BOARD

SERIES 03  
ACTUARIAL PURCHASING EXEMPTION

**§211-3-1 General.**

- 1.1. Scope. – This procedural rule is to ensure certain controls and accountabilities are in place for the purchase of goods and services exempt from §5A-3 et seq.
- 1.2. Authority. – W.Va. Code §5A-1-12 and §8-22-18a(g)
- 1.3. Filing Date. –
- 1.4. Effective Date. –

**§211-3-2 Definitions.**

- 2.1. “Bid” means anything that a vendor submits in response to a solicitation that constitutes an offer to the Board and includes, but is not limited to, documents submitted in response to request for quotation, proposals submitted in response to a request for proposal or proposals submitted in response to an expression of interest.
- 2.2. “Board” means the Municipal Pensions Oversight Board.
- 2.3. “Competitive Bidding” means the process by which individuals or firms compete for an opportunity to supply specified commodities and services by submitting an offer in response to a solicitation.
- 2.4. “Direct Award” means procurement method that allows for the direct purchase of commodities or services when it is believed that only one vendor can supply the needed commodity or service under the circumstances.
- 2.5. “Emergency” means a purchase made when unforeseen circumstances arise, including delays by contractors, delays in transportation and unanticipated volume of work.
- 2.6. “Executive Director” means the Director of the Municipal Pensions Oversight Board.
- 2.7. “Municipal Pensions Oversight Board” refers to the body created in W. Va. Code §8-22-18a.
- 2.8. “Pre-bid Conference” means a meeting between vendors and agency personnel which offers an opportunity to emphasize and clarify critical aspects of a solicitation, eliminates misunderstanding and permits vendor input. Vendor attendance may be mandatory or voluntary as specified in the bid document.
- 2.9. “Request for Proposals (RFP)” means a best value procurement tool used to acquire professional and other services where the scope of work may not be well defined, and cost is

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not the sole factor in determining the award. All criteria by which the bidders will be evaluated must be contained within the bid document.

- 2.10. "Staff" includes any person employed by the Board, including the Procurement Officer.
- 2.11. As used in this rule, the following terms have the same meaning as provided in West Virginia Code §5A-1-1 and 5A-3-1 et seq., and as follows:
- 2.12. "Contract" means an agreement between a state spending unit and a vendor relating to the procurement of commodities or services, or both.
- 2.13. "Request for quotations" means a solicitation for a bid where cost is the primary factor in determining the award.
- 2.14. "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.
- 2.15. "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.
- 2.16. "wvOASIS" refers to the statewide accounting system which is used by vendors and the Board to procure goods and services.

**§211-3-3 Purchasing Requirements**

- 3.1. All purchases of goods and services by the Municipal Pensions Oversight Board are subject to expenditure approval by either the Executive Director or by the Board Chair, after Board action at a legally authorized Board meeting. Purchases of actuarial services and purchases of actuarial services to review the existing actuary's work are specifically exempted from §5A-3 et seq of WV Code pursuant to WV Code §8-22-18(a)(b)(6) and §8-22-20(a).
- 3.2. Requirement for exempted purchases less than \$25,000 will be procured as follows:
  - 3.2.1. \$0 - \$2,500 No bids required
  - 3.2.2. \$2,500.01 - \$10,000 Obtain three (3) verbal bids.
  - 3.2.3. \$10,000.01 - \$25,000 Obtain three (3) written bids.
- 3.3. Requirements for exempted purchases over \$25,000.
  - 3.3.1. Staff develops specifications for the needed services.
  - 3.3.2. The RFP/RFQ is submitted to the Board at a sanctioned board meeting for review and approval.
  - 3.3.3. An RFP/RFQ committee is established of 3-5 people of which one person must be a member of the Board who serves as the Chair of the committee.

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- 3.3.4. Members of the committee are required to sign a form stating they have no conflicts of interest.
- 3.3.5. The RFP/RFQ shall include:
  - 3.3.5.a. The date and time of a pre-bid meeting (at the discretion of the RFP Committee).
  - 3.3.5.b. The method of delivery and location for responses.
  - 3.3.5.c. The date, time, and location of the public opening of RFP responses.
  - 3.3.5.d. The method and time constraint in which a vendor may protest the award.
  - 3.3.5.e. The criteria for scoring the responses, if applicable. For example, the technical response may be valued at 70 points and the cost sheet valued at 30 points. The scoring criteria is at the discretion of the Board and may not be the same for every RFP.
- 3.3.6. Bid opportunities are publicly advertised by wvOASIS.
- 3.3.7. RFP/RFQ responses are to be sealed until the time of the public opening. The wvOASIS system will release the responses to the MPOB at such time.
- 3.3.8. Late bids will not be accepted.
- 3.3.9. Awards are made to the lowest responsible bidder, meeting all specifications, of an RFQ and/or the highest score earned in an RFP response.
- 3.3.10. Each member of the RFP/RFQ committee is to review and score, if applicable, all responses, oral presentations, if applicable, and cost estimates.
- 3.3.11. The RFP/RFQ committee makes a recommendation of award to the full Board.
- 3.3.12. The Board reviews and approves the recommendation made by the RFP/RFQ committee.

**§211-3-4 Award**

- 4.1. Staff prepares intent to award and notifies all responsible bidders.
- 4.2. The protest period begins and is set for 5 business days.
- 4.3. If no protests are filed, the award is continued.
- 4.4. Staff prepares a contract with the successful bidder. Submits the contract to legal counsel for review.

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- 4.5. Legal counsel reviews the proposed contract and negotiates with vendor's counsel if needed to comply with West Virginia state law. Staff receives final contract from legal counsel.
- 4.6. Staff sends two (2) original final contracts to successful vendor for signatures.
- 4.7. Staff submits two (2) original vendor signed contracts to the Chairperson of the Municipal Pensions Oversight Board or, if authorized, the Executive Director for signature.
- 4.8. Chairman of the Board or Executive Director signs two (2) original final contract documents.
- 4.9. The final contract is loaded in wvOASIS for subsequent payments.
- 4.10. Staff submits one (1) fully executed contract to the successful vendor which serves as the official notice to proceed.
- 4.11. Staff retains one (1) fully executed contract for record.
- 4.12. A timely notice will be sent to unsuccessful vendors via wvOASIS.