



**WEST VIRGINIA SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

**eFILED**

6/30/2020 3:08:57 PM

Office of West Virginia  
Secretary Of State

**NOTICE OF PUBLIC COMMENT PERIOD**

AGENCY: Economic Development Authority

TITLE-SERIES: 117-06

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

RULE NAME: Purchasing Procedure

CITE STATUTORY AUTHORITY: 31-15-6

COMMENTS LIMITED TO:

Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 07/30/2020 5 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: Caren Wilcher

ADDRESS: 180 Association Drive

Charleston, WV 25311

EMAIL: [caren.d.wilcher@wv.gov](mailto:caren.d.wilcher@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:

This rule is to ensure appropriate procedures will be followed and to ensure controls are in place for the purchase of goods and services.

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

House Bill 4042 requires an agency exempted from the requirements of WV Code 5A-3-3 to adopt procedural rules establishing its purchasing procedures.

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

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

\$0

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

\$0

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

\$0

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>	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
<b>2. Estimated Total Revenues</b>	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

**Caren D Wilcher -- 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 117  
PROCEDURAL RULE  
WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY  
  
SERIES 6  
PURCHASING PROCEDURE

**§117-6-1. General.**

1.1. Scope. -- This rule is to ensure appropriate procedures will be followed and to ensure controls are in place for the purchase of goods and services.

1.2. Authority. -- W. Va. Code §31-15-6.

1.3. Filing Date. -- .

1.4. Effective Date. -- .

**§117-6-2. Definitions.**

2.1. "Accountant" means any member of the Authority staff with a job title of Accountant and a Division of Personnel Class Specification title of Financial Reporting Specialist III.

2.2. "Associate Director" means the Associate Director of the Authority.

2.3. "Authority" means the West Virginia Economic Development Authority, a public corporation and governmental instrumentality, created and established under W. Va. Code §§31-15-1 et seq.

2.4. "Best value procurement method" means a request for proposal.

2.5. "Bid" or "bids" means anything that a vendor submits in response to a solicitation that constitutes an offer to the agency and includes, but is not limited to, documents submitted in response to a request for quotation, proposals submitted in response to a request for proposal, or proposals submitted in response to an expression of interest.

2.6. "Bid Evaluator" means the Executive Director, the Associate Director, the Director of Financial Services or any Accountant.

2.7. "Board" means the governing body of the Authority.

2.8. "Director of Financial Services" means the Director of Financial Services of the Authority.

2.9. "Executive Director" means the Executive Director of the Authority, or his or her designated representative.

2.10. "RFP" means Request for Proposal.

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

**§117-6-3. Overview.**

3.1. The Authority is charged with the responsibility to develop and advance the business prosperity

and economic welfare of the State by providing financial assistance in the form of loans, direct financing and operating leases to industrial development agencies and enterprises for the promotion and retention of new and existing commercial and industrial development.

The Authority receives no appropriations from the State's General Revenue Fund. Further, the Authority is exempt from the State's procurement policy. On a monthly basis management presents an overview of the previous months financial performance compared to budget and provides the Board a detailed list of purchasing card (PCARD) purchases.

**§117-6-4. Purchasing Requirements.**

4.1. Each payment will be evaluated based on the total amount that will be paid to a vendor during the fiscal year. The Authority will document the evaluation of each payment with a copy of the invoice or the executed contract, if applicable. If any purchase or expenditure does not involve a contract, documentation should be included as backup to the request for payment and copied with the payable/voucher. Each purchase or expenditure will be evaluated and approved as non-recurring unless it is a known recurring payment. If the purchase or expenditure is a known recurring payment it will be evaluated based on the total recurring amount of all payments and approved accordingly based on the total recurring payment amount. In the event a one-time expenditure becomes a recurring payment, the expenditure will be re-evaluated and documented at the point the expenditure became a recurring payment and approved based on the total recurring payment amount.

4.2. Requirements for purchases up to \$5,000:

4.2.1. No formal bid process is required.

4.2.2. Approval(s) on the request for payment will serve as documentation of the decision of reasonableness and will be copied with the payable.

4.2.3. The purchase must receive the approval of the Executive Director, Associate Director or the Director of Financial Services.

4.3. Requirements for purchases greater than \$5,000 but not more than \$10,000:

4.3.1. No formal bid process required if prices obtained through research and inquiry are considered to be reasonable.

4.3.2. Reasonableness will be determined by comparing prices to previous purchases, other published prices or prices from more than one vendor.

4.3.3. The proposed purchase must receive the approval of the Executive Director, Associate Director or Director of Financial Services.

4.4. Requirements for purchases greater than \$10,000 but not more than \$25,000:

4.4.1. Prices or quotes will be obtained from a minimum of two (2) separate sources.

4.4.2. Price will not be the final deciding factor.

4.4.3. The proposed purchase must receive the approval of the Board.

4.5. Requirements for purchases greater than \$25,000:

4.5.1. Bids must be solicited from Class II Legal Ad as defined in W. Va. Code §59-3-2 and solicited from an adequate number of known qualified suppliers with reasonable response time permitted. This may be done in the form of an RFP, if applicable.

4.5.2. The RFP invitation must define the items or services to allow consistency and comparability of bids submitted, if applicable.

4.5.3. Each vendor is solely responsible for delivering its bid to the Authority.

4.5.4. Bids will remain sealed until the appointed date and time for opening.

4.5.5. Bids will be opened at a time and place prescribed in the RFP.

4.5.6. Bids will be reviewed and awarded by the Bid Evaluators, who will sign a form certifying they have no conflicts of interest. Each bid shall be reviewed by two (2) Bid Evaluators.

4.5.7. Any bid may be accepted or rejected, in whole or in part, as the Authority feels it to be in the best interest of the Authority. If any bid is rejected, the Authority will provide a written explanation to the bidder.

4.5.8. A bidder may make a change to a sealed bid before the bid opening. A bidder must submit changes in writing. To be effective, any change must be received prior to the date and time of the bid opening.

4.5.9. Bids will be open for public inspection at any time after the completion of the public bid opening.

4.5.10. When tie bids are received, the Authority shall break the tie by any of the following means: allowing the tied vendors to make a final offer, flip a coin, draw of the cards, or any other impartial method considered prudent by the Authority.

4.5.11. The proposed purchase must receive the approval of the Board.

4.5.12. The Authority may reject a bid that a vendor declares to be erroneous after the bid opening, but otherwise appears to be responsive, if all of the following conditions exist: (1) an error was made; (2) the error materially affected the bid; (3) rejection of the bid would not cause a hardship on the Authority, other than losing an opportunity to receive commodities, services or printing at a reduced cost; and (4) enforcement of the part of the bid in error would be unconscionable.

4.5.13. After award of any bids, the entire contract file will be made available to the public.

4.6. Protests. Protests apply only to bids, price quotes and awards made under Section 4.5.

4.6.1. The Authority will provide timely written notice to the vendors that were unsuccessful in their bid not being awarded.

4.6.2. Submission of Protest.

4.6.2.a. Protests based on bid specifications must be submitted no later than five (5) working days prior to the bid opening. The vendor is responsible for knowing the bid opening and award dates. Protests received after these dates may be rejected at the option of the Authority.

4.6.2.b. All protests must be submitted in writing to the Authority and contain the following

information:

4.6.2.b.1. The name and address of the protestor;

4.6.2.b.2. The requisition, solicitation, purchase order or contract numbers;

4.6.2.b.3. A statement of the grounds of protest;

4.6.2.b.4. Supporting documentation, if necessary; and

4.6.2.b.5. The resolution or relief sought.

4.6.2.c. Failure to submit the information required by Subdivision 4.6.2.b. shall be grounds for rejection of the protest by the Authority.

4.6.3. Protest Review.

4.6.3.a. The Executive Director or the Associate Director or his or her designee shall review the matter of protest and issue a written decision. A hearing may be conducted at the option of the Executive Director or Associate Director or his or her designee. Continuation or delay of a purchase order or contract award is at the discretion of the Executive Director or Associate Director, or his or her designee.

4.6.3.b. The Authority may refuse to review any protests when the matter involved has been decided in a previous protest by the Authority.

**§117-6-5. Bid Evaluation.**

5.1. Each Bid Evaluator must certify that no financial, personal, or other conflict of interest exists relating to any vendor or vendor representative that has submitted a bid. The Authority may develop a form that Bid Evaluators can sign for certification purposes.

5.2. From the time a requisition is submitted to the Authority for public advertisement until an award is made, Bid Evaluators are not permitted to communicate with vendors about the solicitation or any component thereof.

**§117-6-6. Best Value Procurement.**

6.1. Requests for quotation are the preferred method of procurement, but the Authority may utilize a best value procurement method to procure goods, services, or printing. To utilize an RFP, there must be adequate justification explaining why an evaluation based on price and compliance with specifications alone would not be adequate. Each RFP shall be reviewed and approved in writing that it is in the best interest of the Authority.

**§117-6-7. Open End Contracts.**

7.1. The Authority may secure open end contracts to obtain commodities, services, or printing to supply the repetitive needs of the Authority.

**§117-6-8. Permitted Exceptions.**

8.1. Sole-Source Provider. Exceptions may be made to the provisions of this rule in instances where there is a "sole-source" provider.

8.2. Board Approved Emergency Exceptions. The Board may grant management of the Authority the ability to approve purchases or expenditures exceeding \$10,001 through a motion for emergency matter. The motion must identify the project and the types of purchases or expenditures. Management must present to the Board on an after the fact basis all payments approved through the emergency matter exception.

**§117-6-9. Remedies.**

9.1. Contract Cancellation.

9.1.1. The Executive Director or Associate Director may cancel a purchase or contract immediately under any one of the following conditions including, but not limited to:

9.1.1.a. The vendor agrees to the cancellation;

9.1.1.b. The vendor has obtained the contract by fraud, collusion, conspiracy, or is in conflict with any statutory or constitutional provision of the State;

9.1.1.c. Failure to honor any contractual term or condition or to honor standard commercial practices;

9.1.1.d. The existence of an organizational conflict of interest is identified;

9.1.1.e. Violation of any federal, state, or local law, regulation, or ordinance, and

9.1.1.f. The contract was awarded in error.

9.1.2. The Executive Director or Associate Director may cancel a purchase or contract for any reason or no reason, upon providing the vendor with 30 days' notice of the cancellation.

9.2. Opportunity to Cure. In the event that a vendor fails to honor any contractual term or condition, or violates any provision of federal, state, or local law, regulation, or ordinance, the Executive Director or Associate Director may request that the vendor remedy the contract breach or legal violation within a time frame the Executive Director or Associate Director determines to be appropriate. If the vendor fails to remedy the contract breach or legal violation or the Executive Director or Associate Director determines, at his or her sole discretion, that such a request is unlikely to yield a satisfactory result, then he or she may cancel immediately without providing the vendor an opportunity to perform a remedy.

9.3. Re-Award. The Executive Director or Associate Director may award the cancelled contract to the next lowest responsible bidder without a subsequent solicitation if the following conditions are met:

9.3.1. The next lowest responsible bidder (or next highest scoring bidder if best value procurement) is able to perform at the price contained in its original bid submission, and

9.3.2. The contract is an open-end contract, a one-time purchase contract, or a contract for work which has not yet commenced.

**§117-6-10. Violations.**

10.1. The Authority shall suspend from bidding on Authority purchases up to one (1) year, any vendor violating this procedural rule.

10.2. Any person receiving anything of value from a known interested party in awarding a purchase order or contract is subject to the provisions of W. Va Code §5A-3-28, 29, 30 and 31 unless otherwise determined by the State Ethics Commission.

**§117-6-11. Severability.**

11.1. If any word, phrase, or provision of this rule is held to be invalid, the remainder of the rule shall, to the fullest extent possible, not be affected by that holding.