



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

eFILED

8/31/2020 4:55:07 PM

Office of West Virginia
Secretary Of State

NOTICE OF PUBLIC COMMENT PERIOD

AGENCY: Tourism

TITLE-SERIES: 144-03

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

RULE NAME: Purchasing Procedures

CITE STATUTORY AUTHORITY: W.Va. Code 5A-1-12(a) and 5B-2I-4(e)

COMMENTS LIMITED TO:

Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 09/30/2020 4:30 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: Jack M. Rife, General Counsel Dept. of Commerce

ADDRESS: 1900 Kanawha Blvd. E., Bldg 3, Suite 600

Charleston, WV 25302

EMAIL: jack.m.rife@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 that certain controls and accountabilities are in place for the procurement of advertising and marketing agencies, consultants, enterprises, firms or persons by the Tourism Office.

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

This rule is required pursuant to H.B. 4042 which requires that agencies exempt from Department of Administration purchasing procedures promulgate procedural rules governing how they intend to handle 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:

None.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

None.

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

None.

D. FISCAL NOTE DETAIL:

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

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

No fiscal impact is expected in that the Tourism Office already follows an internal purchasing policy. This rule merely formalizes that process.

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

Yes

Jack M Rife -- 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 144
PROCEDURAL RULE
WEST VIRGINIA TOURISM OFFICE

SERIES 3
PURCHASING PROCEDURES

§144-3-1. General.

1.1. Scope – This rule is to ensure certain controls and accountabilities are in place for the procurement of advertising and marketing agencies, consultants, enterprises, firms or persons by the Tourism Office.

1.2. Authority. – W. Va. Code §5A-1-12 (a) and §5B-2I-4 (e).

1.3. Filing Date. –

1.4. Effective Date. –

§144-3-2. Definitions.

2.1. “Tourism Office” means the West Virginia Tourism Office created and established under W. Va. Code §5B-2I-1, et seq.

2.2. “Executive Director” means the Executive Director of the Tourism Office, a division of the West Virginia Department of Commerce.

2.3. “Comprehensive tourism advertising, promotion and development strategy” means a plan that outlines strategies and activities to continue, diversify and expand the tourism base of the state as a whole; create tourism jobs; advertise and market the resources offered by the state with respect to tourism advertising, promotion and development; facilitate cooperation among local, regional and private tourism enterprises; improve infrastructure on a state, regional and community level in order to facilitate tourism development; improve the tourism business climate generally; and leverage funding from sources other than the state, including local, federal and private sources.

2.4. “Expression of interest” is a best value procurement tool used in the selection of a firm which permits the State to award a contract to the most qualified vendor on the basis of demonstrated competence and qualification for the type of professional services required at a negotiated fee determined to be fair and reasonable based upon the negotiated scope of work.

2.5. “Firm” means any advertising or marketing agency, consultant, enterprise, firm or persons, as deemed by the Executive Director of the Tourism Office in his or her sole discretion, necessary or advisable to assist the Tourism Office in carrying out its powers and duties.

2.6. “Contract” means an agreement between a state spending unit and a vendor relating to the procurement of commodities, services or both.

2.7. “Statement of qualifications” means a firm’s descriptive narrative of the type, scope, and size of the proposed work; experience and technical expertise, history of past performance; qualifications, experience and professional licenses of key management and professional staff; current workload; staffing capabilities; quality control and quality assurance policies and programs; and such other information requested by the Executive Director.

2.8. “State” means State of West Virginia.

2.9. “Tourism Commission” means the public corporation and government instrumentality created by W. Va. Code §5B-2I-7 to assist the Executive Director in the development and implementation of the State’s comprehensive tourism advertising, marking, promotion, and development strategy.

§144-3-3. Overview.

3.1. The Tourism Office is an agency of the West Virginia Department of Commerce.

3.2. The Tourism Office, under the direction and charge of the Executive Director of the Tourism Office shall develop and implement a comprehensive tourism advertising, promotion and development strategy for West Virginia.

3.3. The Tourism Office may engage and retain one or more advertising and marketing agencies, consultants, enterprises, firms or persons, as deemed by the Executive Director, in his or her sole discretion, necessary or advisable to assist the Tourism Office in carrying out its powers and duties set forth in W. Va. Code §5B-2I-1.

§144-3-4. Purchasing Requirements.

4.1. Requirement for purchases \$250,000 or more.

4.1.1. In the procurement of advertising agencies, consultants, enterprises or persons, from time to time, estimated to cost \$250,000 or more, the Executive Director of the Tourism Office shall encourage such advertising and marketing agencies, consultants, enterprises, firms or persons to submit an expression of interest, which shall include a statement of qualifications, including anticipated concepts and proposed advertising, marketing and advertising campaigns. All potential contracts shall be announced by public notice published as a Class II legal advertisement in compliance with the provisions of W. Va. Code §59-3-1, *et seq.*

4.1.2. A committee of three to five representatives of the Tourism Office and/or the Tourism Commission, as selected by the chair of the Tourism Commission, shall evaluate the statements of qualifications and other materials submitted by interested firms and select three firms which, in their opinion, are best qualified to perform the desired service.

4.1.3. The committee shall then rank, in order of preference, the three firms selected and shall commence scope of service and price negotiations with the first ranked firm.

4.1.4. If the Tourism Office is unable to negotiate a satisfactory contract with the first ranked firm, at a fee determined to be fair and reasonable, price negotiations with the firm of second choice shall commence.

4.1.5. Failing accord with the second ranked firm, the committee shall undertake price negotiations with the third ranked firm.

4.1.6. If the Tourism Office is unable to negotiate a satisfactory contract with any of the selected firms, the office shall select additional firms in order of their competence and qualifications and it shall continue negotiations in accordance with this section until an agreement is reached.

4.2. Requirement for purchases less than \$250,000.

4.2.1. If the procurement of the services is estimated by the Executive Director to cost less than \$250,000, the Tourism Office shall conduct discussions with three (3) or more firms solicited on the basis of known or submitted qualifications for the assignment prior to the awarding of any contract.

4.2.2. Provided, that if a judgment is made that special circumstances exist and that seeking competition is not practical, the Tourism Office may, with the prior written approval of the Secretary of Commerce, select a firm on the basis of previous satisfactory performance and knowledge of the West Virginia Tourism Office's needs.

4.2.3. After selection, the Tourism Office and selected firm shall develop the scope of desired services and negotiate a Contract.

§144-3-5. Protests.

5.1. Protests based on expression of interest specifications must be submitted no later than five (5) working days prior to expression of interest opening. Protest of a contract award must be submitted no later than five (5) working days after award. The vendor is responsible for knowing the award dates. Protests received after these dates may be rejected at the option of the Executive Director.

5.2. All protests must be submitted in writing to the Secretary of Commerce and contain the following information:

5.2.1. The name and address of the protestor;

5.2.2. The requisition, solicitation, purchase order or contract numbers;

5.2.3. A statement of the grounds of protest;

5.2.4. Supporting documentation, if necessary; and

5.2.5. The resolution or relief sought.

5.3. Failure to submit the information in the Section 5.2. above shall be grounds for rejection of protest by the Secretary of Commerce or his or her designee.

5.4. Protest Review.

5.4.1 The Secretary of Commerce or his/her designee shall review the matter of protest and issue a written decision. Continuation or delay of Contract award is at the discretion of the Secretary of Commerce.

5.4.2. The Secretary of Commerce or his/her designee may refuse to review any protests when the matter involved has been decided in a previous protest by the Secretary of Commerce or his/her designee.

§144-3-6. Severability.

6.1. 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.